

LAND USE PUBLIC HEARINGS

BOARD OF COUNTY COMMISSIONERS

APRIL 19, 2005

Public Hearings before the Board of County Commissioners on Planning and Zoning Land Use petitions were held at the Murdock Administration Complex in Room 119, Port Charlotte, Florida. The following members were present: Chairman Sara J. 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 Richard A. Browne, Executive Assistant to the Board of County Commissioners Bonnie Stoner, and Deputy Clerk Karen S. Mitchell. The meeting was called to order at **9:06 A.M.** followed by the Pledge of Allegiance to the Flag. (**Proof of Publication was in Order.**)

PLANNING AND ZONING AGENDA

Agenda Item 1 - Z-04-12-71 (Quasi Judicial) District II

(Chairman Devos polled the Board for Ex-Parte Disclosures. There were none.) (Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses.) Inga Williams, Planner III, explained this is the first of two required public hearings on a rezoning request from Mobile Home Subdivision (MHS) to Mobile Home Conventional (MHC) for 10.56+ acres containing 50 platted lots located north of Aqui Esta Drive, east of Conecta Drive, south of Magdalena Drive and west of Banyan Way and Marlin Place known as Charlotte Park Replat Partial Section 2. Ms. Williams reviewed the surrounding Future Land Use Map (FLUM) zoning designations and land uses, said the rezoning was in response to multiple telephone calls staff received from property owners of MHS lots that sustained damages from Hurricane Charley, and staff recommends 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 TO SET THE SECOND PUBLIC HEARING FOR MAY 17, 2005 AT 9:00 A.M., OR AS SOON THEREAFTER AS MAY BE HEARD, FOR ADOPTION OF AN ORDINANCE APPROVING PETITION Z-**

04-12-71, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.

Agenda Item 2, PA-04-11-67-LS (Legislative)

Joan LeBeau, Planner III, explained this is a Large Scale Plan Amendment and staff is requesting transmittal of policy changes in the Future Land Use Element (FLUE) as detailed in the memorandum dated March 2, 2005 to the Department of Community Affairs (DCA) as proposed in the Evaluation and Appraisal Report (EAR) of the County's Comprehensive Plan (Comp Plan). Ms. LeBeau stated the County adopted the EAR in December 2003, DCA found the report sufficient in February 2004, and Florida Statutes require the local government to adopt recommendations of the report within 18 months after the report is determined sufficient. Ms. LeBeau reported staff and the Planning & Zoning (P&Z) Board recommend transmittal to DCA. **THERE BEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS. COMMISSIONER DeBOER MOVED APPROVAL TO TRANSMIT THE POLICY CHANGES TO THE FUTURE LAND USE MAP TO THE DEPARTMENT OF COMMUNITY AFFAIRS AS PROPOSED IN THE EAR OF CHARLOTTE COUNTY'S COMPREHENSIVE PLAN FOR PETITION PA-04-11-67-LS, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.**

Agenda Item 3, PA-04-11-68-LS (Legislative)

Ms. LeBeau explained this is a request to transmit the proposed definition of substandard dwelling unit in the Housing Element as detailed in the memorandum dated March 2, 2005 to DCA as proposed in the EAR of the County's Comp Plan, the County adopted the EAR in December 2003, DCA found the report sufficient in February 2004, and Florida Statutes require the local government to adopt the recommendations of the report within 18 months after the report is determined sufficient. Ms. LeBeau stated staff and the P&Z Board recommend transmittal to DCA. **Commissioner DeBoer** asked if the change would enhance the County's ability to deal with abandoned dwellings. Ms. LeBeau responded affirmatively. **THERE BEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS. COMMISSIONER DeBOER MOVED APPROVAL TO TRANSMIT THE POLICY CHANGES TO THE HOUSING ELEMENT TO THE DEPARTMENT OF COMMUNITY**

**AFFAIRS AS PROPOSED IN THE EAR OF CHARLOTTE COUNTY'S
COMPREHENSIVE PLAN FOR PETITION PA-04-11-67-LS, SECONDED BY
COMMISSIONER MOORE AND DECLARED UNANIMOUS.**

Agenda Item 4, Revision of U.S. 41 Zoning District Overlay
(Legislative)

Jie Shao, Planner II, explained this is the first of two public hearings for adoption of revisions to the U.S. 41 Zoning District Overlay along with three small-scale plan amendments and a rezoning; the second public hearings and final adoption of the revisions and other petitions will be heard on May 17, 2005; the primary purpose of this hearing is to expand commercial development into residential areas on both sides of U.S. 41 and out approximately one block; and in November 2004 the Board adopted the U.S. 41 Overlay Zoning District from the Sarasota County line to the north side of the Peace River Bridge excluding the Charlotte Harbor Redevelopment Area. Ms. Shao outlined seven major changes:

1. Special exception uses under Commercial General (CG) zoning district will be prohibited.
2. Mixed commercial, residential mixed uses, and multi-family development will be allowed.
3. Commercial and multi-family developments on rear lots will be allowed subject to special protection restrictions:
 - Less intensive commercial uses will be allowed due to the traffic, noise and visual impacts.
 - Signage requirements will be reduced.
 - Off-street parking requirements will be applicable on rear lot developments i.e. parking in rights-of-ways will be prohibited.
 - Rear lot development must emulate or resemble residential structures.
 - Buffering requirements will be increased to Type B.
 - Outdoor lighting requirements will be more stringent.
4. If a property is rezoned to Planned Development (PD), the 25-foot setback may be waived on a case-by-case basis.
5. Existing single-family residences are recognized and conforming.
6. Lot coverage increased from 50% to 60% and Floor Area Ratio from 0.6 to 1.2. A previous Comprehensive Plan amendment by

the County Commission on January 18, 2005 authorizes this revision.

Commissioner D'Aprile said he was very pleased with the material and the amount of work Ms. Shao has done. **Commissioner DeBoer** summarized revisions will create stricter mitigations and restrict variances, in effect protections for adjacent properties will be tightened up. Ms. Shao agreed. **Chairman Devos** asked about the height. Ms. Shao said the maximum heights would be 60' for front lots and 40' for rear lots. **Chairman Devos** said residential abutting this area is all single-story residential, opined new commercial construction will go with metal roofs even though there are no residential homes in the area with metal roofs, and she is concerned about issues arising for applying design standards that emulate a residential structure as occurred with metal storage structures. **Chairman Devos** asked if signage restrictions apply only to rear lots. Ms. Shao said yes. Thomas A. Cookingham, Planning Services Manager, clarified this situation occurs any time when residential is adjacent to commercial, staff tried to establish restrictions to provide a transition for development of individual lots and expansion of existing commercial, and staff almost defeated the purpose of expanding the commercial if they limit it to looking exactly like or emulating residential single-family areas. **Chairman Devos** said she wants to make sure the wrong message is not sent to residential neighborhoods but she also wants everyone to understand they are trying to be sensitive to abutting properties. Geri L. Waksler advised she is a 20+ year resident and business owner along U.S. 41 who supports these revisions in order to make a huge esthetic improvement and encourage redevelopment. Lisa Trejo stated this will create a new strip facing single-family homes, the area behind the Port Charlotte Post Office is an example that is not pretty, this is only going to add to the existing mess, she is concerned regarding the lack of buffers, opined protection of residential just keeps getting less and less, and this is not going in the right direction because commercial buildings of 60' and 40' will not ever look residential areas. Ed Palmer expressed concerns due to increased traffic noise and the lack of continuity. Dana Trejo asked the location of commercial loading docks since they will not be allowed at the rear. **COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS.** **Commissioner D'Aprile** stated buffering is critical and requested an explanation of Type B buffering. Mr.

Cookingham said Type B buffering ranges from 7' to 15' in width, a fence is required with landscaping but the type of fencing material is not specified since it is dependent upon the developer, a fence is not required with a buffer width greater than 15', and offered to talk with concerned residents. **Commissioner DeBoer** said he favored something that requires fencing as part of the buffer with regard to the rear lots. Mr. Cookingham opined economics will probably drive developers to install fencing to reduce the amount of property used for buffers but he cannot guarantee that will happen. **Commissioner DeBoer** said he preferred changing it to require fencing. **Commissioner DeBoer** stated the height of a structure fronting U.S. 41 could go up 60' with no restrictions even though it abuts residential property that allows a maximum height of 38' and this would apply to all of U.S. 41. **Commissioner DeBoer** said the intent regarding loading docks is not to restrict their location but to address issues regarding commercial access to the property and suggested prohibiting commercial traffic on the streets behind. Mr. Cookingham said the problem is when you have a single commercial lot in the rear, the only access would be from a residential street. **Commissioner DeBoer** stated the Board's intention was not to create a separate row of businesses but to get people to consolidate properties. Mr. Cookingham agreed the intent was to encourage consolidation. **Commissioner DeBoer** agreed to leave the residential height at the current 38' maximum and suggested the existing ordinance be applicable to commercial property that abuts a single-family residential home. Mr. Cookingham added the Overlay considers existing single-family homes as legal conforming uses even though they are in Commercial General (CG) areas. **Chairman Devos** interrupted and clarified **Commissioner's DeBoer's** statement pertained to reducing the rear height maximum from 40' to 38'. **Commissioner DeBoer** expressed concern that the Overlay would take precedent over the existing Code and he wants to give residents peace of mind that the existing Code would govern the height on the rear lots unless there is no abutting developed properties. **Chairman Devos** recalled discussion on consolidating for larger types of development because they did not want homes turned into commercial and create alleyways for delivery purposes. **Commissioner DeBoer** agreed, said one of his concerns is the maximum size of signs, and signs at the rear should be allowed only if there is rear access. **Chairman Devos** said she did not know how they could have an alleyway because a business could be located in the middle of the alleyway and have

property in the rear. **Commissioner DeBoer** said intent is to have properties set up in such a way that consolidation of properties is used for one business, so whether they call them incentives or disincentives or a combination of both, they need to exist in the overlay so that people investing in these properties would follow the Board's intent. **Commissioner DeBoer** stated the referenced on page 5 line 4 on reducing traffic demand seems to be contradictory to the Board's intent, questioned the method of reducing traffic in areas where bigger commercial properties are located that generate more services and customers, and commented on the need to mitigate adverse impacts as a result of traffic noise, velocity, and air pollution on residential roads in the vicinity of the U.S. 41 corridor. **Commissioner Moore** asked if there was a requirement that buffer plantings must live. Mr. Cookingham said yes landscaping is into perpetuity and property owners are required to maintain it. **Commissioner DeBoer** stated the existing height restriction ordinance should apply to commercial development abutting existing single family residential and the new ordinance should govern once those single family residences are no longer in existence or property does not abut. **Chairman Devos** agreed with **Commissioner DeBoer** that 2' difference between 38' and 40' height does make a difference to existing neighborhoods. **Commissioner D'Aprile** said 2' is not a big deal to him, this is the first of two hearings, and there is time to make a future decision. **Commissioner Cummings** said the only issue concerning the 2' would be if there is any difference between residential and commercial construction that would create a need for the difference. **Chairman Devos** asked staff to provide answers at the next public hearing. **Commissioner Cummings** stated consolidation of lots would be a worthwhile goal and questioned the necessity for buffering of a business on the backside that faces residential. Mr. Cookingham stated the front of the business facing residential would require buffering and explained the intent is to minimize the impact on residential. **Commissioner Cummings** recalled a prior discussion on running utilities down the rear alley rather than at the front facing U.S. 41. **Chairman Devos** and **Commissioner Moore** stated down the alley. **Commissioner DeBoer** expressed understanding that the Board did not make a decision on the issue because engineering could provide utilities in either location. **Commissioner Cummings** expressed concern about running utility lines under buildings. Mr. Loucks stated **Commissioner DeBoer** is correct in that the decision was left open ended in terms of where to run

sewer lines because areas along U.S. 41 have different configurations that would require review on a case-by-case basis and pointed out utility lines are maintained and accessible that run under rivers and underground. **Chairman Devos** suggested establishing a minimum lot size for commercial development at the rear unless the abutting property is owned. Mr. Cookingham stated that might be done and suggested doing that before the property is rezoned to alleviate the possibility of creating more legally non-conforming uses on lots within the overlay. **Commissioner Cummings** stated he is not convinced the right answer is to allow access only from the U.S. 41 side, expressed the belief that as build out occurs people will find alternate routes through residential neighborhoods to avoid higher traffic volume on U.S. 41, and commented on the need to establish commercial nodes in other parts of the County. **COMMISSIONER D'APRILE MOVED APPROVAL TO SET THE SECOND PUBLIC HEARING ON MAY 17, 2005 AT 9:00 A.M. OR AS SOON THEREAFTER AS MAY BE HEARD FOR ADOPTION OF AN ORDINANCE APPROVING PETITION Z-04-12-71, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS.** **Commissioner DeBoer** suggested Board Members meet individually with staff prior to the next public hearing.

Agenda Item 5, PA-05-01-02 (Legislative) District I

Inga Williams, Planner III, explained this is a request by Beazer Homes, Inc. for a Small Scale Plan Amendment from Commercial Corridor to High Density Residential and the approximate 8.08 acre site is a portion of a 110.36 acre property that was utilized for cattle grazing located south of U.S. 17 (Duncan Road), north of Bermont Road, east of Maize Drive, and west of Quail Drive; gave a slide presentation on site and surrounding land uses and zoning designations; the property has a total residential density potential of 1,166 units; on February 4, 2005 the Board of Zoning Appeals (BZA) approved the applicant's request to extend the uses allowed in the RMF-12 portion to a portion of the CI zoned area but because the Commercial Corridor FLUM does not allow residential uses, the applicant is requesting the FLUM amendment to High Density Residential; and recommended approval. **Commissioner DeBoer** questioned the use of Duncan Road in lieu of U.S. 17 in Punta Gorda. Ms. Williams stated the local name for U.S. 17 is Duncan Road. **Commissioner Cummings** questioned the necessity for the RMF development to provide buffering from adjacent Commercial Intensive. Ms. Williams stated usually the

most intensive use must buffer from the least intensive use and in this instance when the Commercial Intensive property is developed they would have to buffer from the Multi-Family. **Commissioner Cummings** requested if the existing owner of the CI property owns the portion that is not getting changed. Ms. Williams responded affirmatively. Geri L. Waksler, Esq. with the law firm of Moore and Waksler, P.A., appeared on behalf of the applicant, clarified DePlonte Properties was the prior owner of the property and Beazer Homes is a separate entity from DePlonte; the property to the west shown on the slide is not currently under Beazer's control; and the application does not affect that property. Attorney Waksler advised Beazer Homes petitioned the BZA for the ability to use the RMF use across the entire property they own as well as the commercial property owned by a separate entity; the BZA approved the RMF use for the entire parcel conditioned upon buffering from the commercial at the time that the commercial use is developed i.e. Beazer controls both the commercial and RMF and the site plan designates a 40' strip in the residential area from the Commercial Intensive area; and approval of the application will extend RMF over the whole parcel and provide consistency between the zoning use and land use designation. **THERE BEING NO ONE WISHING TO SPEAK, COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS.** **Commissioner DeBoer** requested an explanation about the density issue. Attorney Waksler stated there is more density on the property than Beazer Homes intends to use across the whole parcel and approval by BZA was subject to limitation of the density to that which existed prior to the land use change and the applicant does not intend to seek any additional density as a result of the land use change. **COMMISSIONER DeBOER MOVED APPROVAL TO ENACT ORDINANCE #2005-027 APPROVING PETITION PA-05-01-02 FILED BY BEAZER HOMES, INC. BASED UPON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION REPORT DATED MARCH 4, 2005 AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.**

RECESS: 10:25 A.M. - 10:35 A.M.

Agenda Item 6, PP-05-01-01 (Quasi-Judicial) District I

James Dossett, Development Review Manager, explained Robert Conley is requesting a Preliminary Plat for Old Oak Estates consisting of six residential lots on 7.68 acres located north of Nova Lane,

east of Minneola Avenue, south of Tangerine Avenue and west of I-75. (**Chairman Devos polled the Board for Ex-Parte Disclosures and Commissioner D'Aprile indicated he has a lengthy list of ex-parte contacts.**) (**Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses.**) Mr. Dossett stated the site is within the Urban Service Area (USA), zoned Agricultural Estates (AE) which requires a minimum of one (1) acre lots, six (6) more lots are proposed, and the proposed development will be served by a private road and individual well and septic systems; both staff and the P&Z Board recommend approval; and as a result of citizens concerns about the condition of Nova Lane and Minneola Avenue expressed during the P&Z hearing, he reviewed the roadways and showed slides that indicate the average 22' wide roads are in good condition in comparison with other County roadways. Geris L. Waksler, Esq. with the law firm of Moore and Waksler, P.A., appeared on behalf of the applicant, who is requesting approval of a plat for a six-lot subdivision located on Nova Lane in Suncoast Estates; summarized the history since the 1960's regarding the six unlawfully subdivided lots; reported applicant is seeking to lawfully subdivide the six lots which have Rural Estate Residential land use which allows up to two units per acre, it is zoned AE which allows one unit per acre, and the density is .8 units per acre; there are no deed restrictions on this property or any surrounding property prohibiting subdivision of the lands; 1.25 acres are still rural in nature and will maintain the character of the neighborhood; no water or sewer is available in this area and the lots will be served by wells and septic; Policy 9.1.7 of the Comprehensive Plan states land owners of new development within the Infill Area or previously certificated areas where central potable water or sewer service is not available may elect to use wells and septic; Nova Lane is a private road and still owned by the developer not the property owners association, the developer is a defunct corporation, maintenance and repair costs have been borne by residents of Nova Lane; reported Mr. Conley is committed to paying his proportionate share of maintenance and improvements required for the road and drainage; and requested approval. **Commissioner Cummings** requested verification that the property is within the Infill Area. Attorney Waksler responded affirmatively. Cindy Drawdy stated the area is unique since it is AE and she is concerned about a developer consolidating parcels and constructing new homes on smaller lots; there is only one exit from her property onto Suncoast Boulevard; a development of several hundred homes is

being built along Nova Lane; the School Board has plans for a high school at Suncoast and Loveland Boulevard; and more growth will create a traffic jam. Ken Alfin, President of Tangerine Avenue Home Owners Association, appeared on behalf of 20 property owners and expressed opposition to the petition because it is inconsistent with surrounding uses and would increase adverse traffic impacts and damage to roadways. Sherman A. Drawdy stated another parcel to the north is for sale which might be consolidated for building new homes; advised the area is AE; commented on the difference between AE and Residential Estates; if the petition is approved, it will destroy a way of life that cannot be replaced; growth in this area must be stopped; there is no buffer to maintain wildlife habitats in the area; requested the petition be tabled for further review of the Agricultural zoning designations; and suggested one home be allowed on 2.5 acres or five acres. Wallace E. Eichelkraut and Jane Eichelkraut, almost 30-year residents, commented on wildlife in the area including a Florida panther, bobcats, rabbits, turtles, and the bird sanctuary and requested the petition be tabled and put aside. Susan Turner, a 20-year Suncoast Estates resident, commented on the difficulty of maintaining the road and stated an association could be established if more people move into the area to provide more money for better roads and homes. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS.** (Assistant County Administrator Roger Baltz replaced County Administrator Bruce D. Loucks for this portion of the meeting.) Attorney Waksler corrected an earlier statement to reflect the property is located in the Suburban Area not the Infill Area, it is located in the Charlotte County Utilities (CCU) service area, CCU serves Maple Leaf Estates that is adjacent to this area, and the developer has agreed to connect to water and sewer should they be made available. **Chairman Devos** requested an explanation from the Assistant County Attorney regarding the decision-making criteria. Richard Brown, Assistant County Attorney, stated the quasi-judicial hearing process requires decisions be made on competent substantial evidence. **Commissioner D'Aprile** stated he has been a Nova Lane homeowner since 1976, the roads in the area have been maintained by residents, people bought property in this area because they wanted non-congested home sites, opined approval of the petition will allow development into this community where homeowners want to retain Suncoast Estates as it is, expressed understanding that a goal of the Board is to reduce density, and expressed opposition to the petition.

Commissioner DeBoer questioned if surrounding properties might be subdivided to the density being requested on this site. James Dossett, Development Review Manager, stated AE zoning allows for one unit per acre that can be subdivided based on the zoning classification and Future Land Use Map. **Commissioner DeBoer** requested the current development density. Mr. Dossett stated no more than one unit per three acres and in a lot of cases one unit per five acres. **Commissioner DeBoer** queried the number of the parcels within the subdivision. Mr. Dossett expressed uncertainty. **Commissioner DeBoer** estimated 50 parcels with 8 units per parcel for a density of 400 units. **Commissioner Moore** stated no justification has been provided to deny the petition based upon quasi-judicial standards. **Chairman Devos** agreed with **Commissioner Moore**. **Commissioner DeBoer** pointed out the petition requests platting of a parcel that is inconsistent with the character of the neighborhood and development of surrounding properties and stated the petition should be denied. **Commissioner Cummings** agreed with **Commissioner DeBoer** because the Comprehensive Plan directs that parcels be consistent with the surrounding neighborhood, the land is in a Suburban Area where density should be reduced, expressed concern with subdividing large parcels for 80' x 120' lot development, and this is in direct contradiction to the Comprehensive Plan. **COMMISSIONER CUMMINGS MOVED FOR DENIAL OF PRELIMINARY PLAT PETITION PP-05-02-02 FOR OLD OAK ESTATES, SECONDED BY COMMISSIONER DeBOER. CALL ON THE MOTION: COMMISSIONERS CUMMINGS, D'APRILE, AND DeBOER VOTED "YES" AND CHAIRMAN DEVOS AND COMMISSIONER MOORE VOTED "NO." MOTION CARRIED: (3:2).**

Agenda Item 7, PP-05-01-02 (Quasi-Judicial) District IV

(Chairman Devos polled the Board for Ex-Parte Disclosures. There were none.) (Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses.) James Dossett, Development Review Manager, explained Flagship Builders and Developers, Inc. is requesting a Preliminary Plat for River Haven Estates consisting of 32 residential lots on 22.5 acres located north of Markham Avenue, east of Apollo Waterway, south of Hughes Avenue, and west of Casper Street. Mr. Dossett said the development would be served by public sewer and water, the road system would be constructed to County standards but privately maintained, the current zoning is RSF-3.5 which requires a minimum lot size of 10,000 sq. ft., and the proposed minimum lot size is 10,200 sq.

ft. not including road right-of-ways (ROWS) or easements. Mr. Dossett stated Public Works has indicated the County is responsible for maintenance of the canal, and staff and the P&Z Board recommend approval with one condition - Developer needs to dedicate a 15 foot wide canal maintenance easement on lots and tracts lying next to the Apollo Waterway, along with an ingress/egress easement over Tract H and Lot 1. Sandra R. Newell, Giffels-Webster Engineers, Inc. Project Manager, appeared on behalf of applicant; explained preliminary approval has been received from the Development Review Committee (DRC) and a recommendation for approval of the project from the P&Z Board; it is consistent with the Comprehensive Plan, land use, and zoning; advised applicant agrees with the condition and is moving forward for a permit. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.** Commissioner DeBoer stated he has questions since he did not receive the plat and requested an explanation of a portion of the map and the average lot size. Mr. Dossett explained the center area is a very wet area and the smallest lot size is 10,200 square feet. Ms. Newell added lots range from approximately 1/4 to 1/3 of an acre, the water retention area is larger than required, and an unnamed and unnavigatable title water is in the process of being permitted. Commissioner DeBoer advised his questions stem from concerns about the structures, their vertical heights, and the amount of green space. **COMMISSIONER DeBOER MOVED FOR APPROVAL OF PRELIMINARY PLAT PETITION PP-05-01-02, FILED BY FLAGSHIP BUILDERS AND DEVELOPERS, INC. FOR RIVER HAVEN ESTATES WITH THE ONE CONDITION OF PROVIDING A CANAL MAINTENANCE EASEMENT, SECONDED BY COMMISSIONER D'APRILE. CALL ON THE MOTION: CHAIRMAN DEVOS AND COMMISSIONERS D'APRILE, DeBOER, AND MOORE VOTED "YES" AND COMMISSIONER CUMMINGS VOTED "NO." MOTION CARRIED: (4:1).** Commissioner Cummings commented on the need to schedule a workshop to discuss reducing density and increasing variations in the Suburban Area and the Comprehensive Plan, utility policies, and zoning code. **Chairman Devos** agreed.

Agenda Item 8, PP-04-08-17 (Quasi-Judicial) District IV

(Chairman Devos polled the Board for Ex-Parte Disclosures. There were none.) (Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses.) Commissioner DeBoer requested a copy of the plat for review at this time. **Chairman Devos** requested an opportunity to review the plat. James

Dossett, Development Review Manager, explained Michael Hovey is requesting a Preliminary Plat for The Brooks At Collingswood Point consisting of 19 residential lots located north of Wing Avenue, east of Joseph Street, south of Lake Worth Boulevard, and west of Collingswood Boulevard; the site located within the Category Hurricane Surge Zone is zoned RSF-3.5; and public water, sewer and roads are proposed. Mr. Dossett advised staff and the P&Z Board recommend approval and the condition to resolve survey plat issues with the County Surveyor has been done. John Cavoli, Cavoli Engineering, appeared on behalf of applicant, agreed with staff's comments, and requested approval. **COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS. COMMISSIONER D'APRILE MOVED APPROVAL OF PRELIMINARY PLAT PETITION PP-04-08-17, FILED BY MICHAEL HOVEY, FOR THE BROOKS AT COLLINGSWOOD POINT, SECONDED BY COMMISSIONER DeBOER.** **Commissioner Cummings** expressed support for the project since it is located within the Infill Area. **Commissioner DeBoer** agreed and suggested a workshop be set to discuss incentives that were eliminated from the transfer of development policy and recalled the Board at one time targeted this part of the County to reduce density because the infrastructure would never be adequate for the build out scenario. **Commissioner DeBoer** stated it would be helpful to know if changes to land use are located within an Infill Area. **CALL ON THE MOTION: DECLARED UNANIMOUS.**

Agenda Item 9, PP-04-12-24 (Quasi-Judicial) District II

(Chairman Devos polled the Board for Ex-Parte Disclosures. Commissioner DeBoer pointed out Mr. Dossett provided the plat and there is nothing controversial. All Board Members had meetings with Attorney Waksler. Commissioner DeBoer stated he had a meeting with the applicant and Attorney Waksler on the ratio of the overall density to green space and the relationship between this property, the Edison Campus, and a future Florida Gulf Coast University Campus.) (Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses.) James Dossett, Development Review Manager, explained Carmalita Investment LLC, Greg Morris is requesting a Preliminary Plat for Parkside Preserves that consists of 701 lots located north of Airport Road, south of Carmalita Street, and east of Education Street on 196.87+ acres; the project was continued from March 15, 2005 with a request for better graphics. Mr. Dossett said the P&Z

Board recommended approval and corrected the agenda to indicate that staff recommended approval with three conditions:

1. Indicate lot widths at building setback lines.
2. Provide SWFWMD and USACOE (if required) Permits prior to presentation to the Board of County Commissioners.
3. Resolve street name, benchmark requirements, and drainage easement description issues.

Geri L. Waksler, of with the law firm of Moore and Waksler, P.A., appeared for applicant; stated the project is located within the Infill Area and sidewalks will be provided throughout; the proposed development is one-half of the density; and requested approval. **COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS. COMMISSIONER D'APRILE MOVED APPROVAL OF PRELIMINARY PLAT PETITION PP-04-12-24 FOR PARKSIDE PRESERVES WITH THE THREE CONDITIONS, SECONDED BY COMMISSIONER MOORE.** Mr. Dossett advised the applicant has resolved the conditions. **Commissioner Cummings** pointed out the plan provides space for recreation and suggested developers be encouraged to include playgrounds and neighborhood type facilities within walking distance as target open space uses. **Commissioner DeBoer** agreed with **Commissioner Cummings**. **CALL ON THE MOTION: DECLARED UNANIMOUS.**

Agenda Item 10, PP-04-08-15 (Quasi-Judicial) District IV)

(Chairman Devos polled the Board for Ex-Parte Disclosures. Commissioners Cummings, D'Aprile, DeBoer, and Chairman Devos reported ex-parte contacts.) (Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses.) James Dossett, Development Review Manager, explained the preliminary plat request for River Palms filed by American Investment LC is a revisit since the Board consensus on March 22, 2005 was the applicant may be reheard without going through the P&Z process again; the request is for a Preliminary Plat consisting of 16 single family lots on 5.02+ acres located north of Eleanor Avenue, south of the Jupiter Waterway, east of the Ingersol Waterway, and west of McHugh Street; and reported the zoning is RSF-3.5 and the project proposes public water and septic and private road systems. Mr. Dossett recalled on January 21, 2005 the P&Z Board recommended approval; on February 15, 2005 the Board denied the petition based on the

issue concerning extension of sanitary sewer; and reported applicant has proposed extension of a 3.5 mile long force main and installation of a lift station to provide public sewer. **Chairman Devos** questioned the proximity of Eleanor Avenue to the site. (**Commissioner Moore reported an ex-parte communication with the applicant.**) Ken Chadbourne, of American Investment, L.C., pointed out the location of Eleanor Avenue; introduced James W. Herston, Herston Engineering; advised Johnson Engineering has relabeled lot boundaries to show the street that is not part of the lot dimensions for the minimum square footage; advised the smallest lot in River Palms is larger than lots located within the 32-lot River Haven subdivision; lots start at 10,250 square feet; the applicant has proposed installation of the additional sewer main at a cost of \$1.5 million but the cost was prohibitive for the 16 lots; he has contacted the adjacent property owner, who has proposed development of 100 lots in River Haven, regarding financial assistance for the extension; the applicant has agreed with some of the property owners to install a privacy wall; applicant constructs 2,400 to 3,500 square foot higher-end homes; and reviewed efforts to make this project occur. Murray Baker, Helene Panaretos, James DeGross, Residential Director of Quality Homes who distributed a packet of American Investment's website, Debra Havlick, Rick Hodel, Tom McIntyre, and John McFadzon, expressed opposition to the project based on lies, fraudulent business practices including permits to clear and develop, and greed of the applicant; the lack of applicant's noncompliance and disregard with Charlotte County Codes; applicant's violation of marketing laws by invading the privacy of property owners by taking photographs and advertising home pictures for monetary gain without express written permission; a complaint has been filed with the Department of Professional Regulations (DPR) and it is under investigation; a request was made to direct the applicant to cease and desist until completion of the DPR investigation; concerns about environmental and safety impacts from stormwater runoff, additional boats, and docks; and requests were made to maintain the quality and character of the existing community by denying the application. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMIOUS.** Mr. Chadbourne responded to concerns about water issues, lot prices are to be determined as noted on the website, no marketing has been done on the number of boat docks, clearing was based on the survey, a

stop work was issued because a gopher tortoise inspection was not done by Environmental Department staff but three-days later the permit was issued after a site inspection was performed, applicant has donated \$1,800 to the Open Space Habitat Fund at \$300 per acre and paid \$384 for tree points for the land clearing permit, and applicant has never been fined or ever had a warning or problems with complying with requests from County officials. **Commissioner DeBoer** stated the Board skillfully avoided reconsideration and a rehearing has been accomplished today and pointed out unless a motion is made on the original action, the Board need not do anything more on the application and move on to the next application. **Chairman Devos** opined the intention of **Commissioner D'Aprile** was to bring the matter back for reconsideration. **Commissioner D'Aprile** stated the matter was brought back for reconsideration because new information has been provided subsequent to the original decision. **Chairman Devos** recalled **Commissioner Cummings** indicated anyone should have the opportunity to bring a matter back but he was going to oppose the motion and clarified a motion is necessary if a vote is to be taken. **Commissioner D'Aprile** stated his intention was to conduct a rehearing. **Commissioner Moore** requested the original motion and vote. **Commissioner DeBoer** stated the original motion was to deny the petition on a 3:0 vote, two Commissioners were absent, any Commissioner on the prevailing side or absent might bring back the motion, and according to Robert's Rules of Order lacking a motion to reconsider the denial the Board can move on to the next petition. **COMMISSIONER MOORE MOVED FOR RECONSIDERATION OF THE DENIAL OF PETITION PP-04-08-15 FOR RIVER PALMS, SECONDED BY CHAIRMAN DEVOS. CALL ON THE MOTION: CHAIRMAN DEVOS AND COMMISSIONER MOORE VOTED "YES" AND COMMISSIONERS CUMMINGS, D'APRILE AND DeBOER VOTED "NO." MOTION FAILED: (3:2).**

RECESS: 12:43 P.M. - 2:06 P.M.

(Assistant County Administrator Kelly Shoemaker replaced Assistant County Administrator Roger Baltz for this portion of the meeting.)

Agenda Item 11, SV-04-09-18 (Quasi-Judicial) District II

James Dossett, Development Review Manager, explained Curtis and Sheri Fullom have applied to vacate a portion of Cleveland

Avenue that is 417.12 feet long and 40 feet wide for a total of 0.4+ acres lying between Riverside Drive formerly First Street and the platted Front Street which was vacated August 5, 1925; the portion to be vacated lies between Lots 1 and 4 of Block 1 North and Lots 2 and 3 of Block 1 South; and all four lots were owned by the petitioners. Mr. Dossett stated the Board continued the petition on January 18, 2005, during a hearing wherein a lot of citizen input was received, with a request for applicants to provide additional information. Gerl L. Waksler, Esq. with the law firm of Moore and Waksler, P.A., appeared on behalf of applicants in support of the petition; recalled major issues from the January hearing dealt with the historical use of the property and access from Cleveland Avenue to the Peace River; presented the history and ownership of the site and nearby lots; mentioned a lot of testimony at the January hearing concerned fishing and swimming from the pier; use of Cleveland Avenue for access to the Peace River does not mean the use was by right but by permissive use; explained the jog on the map was the driveway into the hotel and the pier was accessed from the hotel's property; reviewed real estate transactions to the north and south including the street vacation by the County in 1958 and deeds that did not reference the street vacation; language in the deeds is not determinative based on Florida Supreme Court case, Smith vs. Horn; the key issue in the hearing is whether Cleveland Avenue provides access to the Peace River; reviewed the handout containing evidence that shows Cleveland does not provide access; and requested approval. Warren Ross, of the law firm of Wotitzky, Wotitzky, Ross, Goldman, Sturges & Tuttle, P.A., appeared in opposition to the petition on behalf of numerous homeowners who reside near the proposed street vacation; proffered and reviewed testimony and evidence in the handout including a copy of a plat recorded in the Public Records reflecting access to the Peace River and excepting the public's presumed right of access to the River via Cleveland Avenue; focused his argument on the 1925 vacation and documentation set forth in the handout; and requested denial. Greg Martin commented in opposition in order to retain the charm of his community. Jane Gringrich proffered photographs of her flooded property after heavy rains and hurricanes along Riverside Drive that does not have any drainage. Jean Summerville recalled her comments before the Board on January 18, 2005 meeting on the neighborhood access to the Peace River, expressed continued opposition against giving away a part of Cleveland's heritage,

and suggested a park be established to retain public access to the Peace River. "US" Cleveland, a resident since 1943, stated the drainage along U.S. 17 and Riverside Drive goes to the Peace River; access was always open to the River; and why change it. Patrick Farino, a resident along the Peace River, suggested a park be established at the end of Cleveland with a boat ramp. Ruth Allen, a 69-year resident, stated she and many people enjoy the Peace River and expressed opposition to vacating any more waterfront property. Anna M. Henderson stated she and her husband, Philip, own property at the corner of Misty Avenue and Riverside Drive that they are preparing to demolish and rebuild; they have had the lot to the water cleared of debris and overgrown greenery to see the River; commented on the efforts of residents in the Cleveland community to gather information, including the proffered petitions with 211 signatures, in support of keeping Cleveland Avenue open from Riverside Drive to the Peace River. Philip Henderson distributed photographs reflecting street accesses to the Peace River and suggested the Board take action to refer this matter to a Circuit Judge. Curt Fullom, the applicant, and his wife, pointed out the 1925 vacation used the plural use of the verb "are" hereby vacated; noted First Street was relabeled Riverside Drive and interpreted that all of Front Street between First Street and the River was vacated; stated the plat map in Public Works refers to the 1958 recorded vacation; advised a mobile home has been on the site at the end of the Harbor from 1966, until destructed by Charley, which contradicts the survey map; Riverside is 45 mph and there is not adequate distance or site for a turn around with a trailer; and distributed an aerial that was included in Attorney Waksler's information showing the segment of the road clearly curves around to the front of the hotel and access to the River was by permission of the hotel. **(County Administrator Bruce D. Loucks replaced Assistant County Administrator Kelly Shoemaker for this portion of the meeting.)** Charlotte Pattee, a 49-year Riverside Drive resident, suggested Attorney Waksler review plans of Palms and Pines from the 1950s because Mr. McCloud did not own it at that time; Mr. McCloud's grandparent's owned it and her mother and father-in-law managed it; expressed opposition to closing Cleveland Avenue; stated if Cleveland Avenue is closed, Riverside Drive also should be closed for traffic safety; and encouraged the Board to carefully consider the vacation. Mark Philips, a 19-year Cleveland resident, recalled the plat of the hotel that burnt down in the 1960's depicted a wharf that looked like an

extension of Cleveland Avenue; commented on the unlikelihood that the 1925 vacation took place due to the amount of River traffic and the access to the hotel; and a mobile home placed at the end of the street does not indicate the roadway was vacated. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS.** Commissioner Cummings pointed out this is a legislative matter and the Board has an ethical obligation to decide on the public's legal right to access the property, whether or not it accesses the River; if the road is vacated, public access will be denied; and opined this asset should be retained for the public good. Commissioner Moore questioned resolution of the 4" water main in the rights-of-way or easements. Mr. Dossett indicated the issue would be addressed if the applicants change the use on the property and probably should be a condition for approval of the vacation. Commissioner D'Aprile agreed with Commissioner Cummings on retaining the property for public access to the River but apparently the public is not using that point to access the River since debris clogs the access. Commissioner DeBoer pointed out numerous documents from 1956, 1958, and 1959 have been provided reflecting vacations of various portions of Front Street; a warranty deed, absent of a vacation, does not mean that did not take place since the vacated portion would become a part of the property; and based on the evidence, access to the waterfront does not exist. Chairman Devos agreed with Commissioner DeBoer. **COMMISSIONER DeBOER MOVED APPROVAL TO ADOPT RESOLUTION #2005-063 FOR PETITION SV-04-09-18 FILED BY CURTIS AND SHERI FULLOM, VACATING A PORTION OF CLEVELAND AVENUE, SECONDED BY COMMISSIONER MOORE. CALL ON THE MOTION: CHAIRMAN DEVOS AND COMMISSIONERS D'APRILE, DeBOER, AND MOORE VOTED "YES" AND COMMISSIONER CUMMINGS VOTED "NO." MOTION CARRIED: (4:1).**

(County Attorney Janette S. Knowlton replaced Assistant County Attorney Richard Browne for the remainder of the meeting.)

Agenda Item 12, DRC-F-01-22 (Quasi-Judicial) District III

(Chairman Devos polled the Board for Ex-Parte Disclosures. There were none.) (Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses.) Jorge Perez, Planner III, explained Olympia LLC is seeking an exception from the Interim Development Controls (IDC) imposed on Manasota and Sandpiper Key on September 21, 2004 for The Fountains of Manasota Key

condominium project; presented slides of the site location and adjacent area, zoning and Future Land Use Map (FLUM) designations; the project received final DRC approval on April 11, 2002 which expired April 11, 2003 and the project was issued building permits in September, 2002 and they have expired; the Board will probably hear testimony that the IDC has put a stop to the project but the applicant did not renew the permit in the 16-month period after expiration until adoption of the IDC; the land was purchased for \$1.7 million plus carrying cost, taxes, and insurance costs of \$92,000, a full set of plan and permit fees of \$200,000, the final fee for this exception is \$300, and the analysis does not include an estimate of the land appreciation; the monetary liability, monetary exposure to third-parties, and the inability to receive a reasonable return on the property - the County has done everything that it is required to do and there is nothing left to do; the property was originally platted as a road-to-bay lot and it was subdivided into four lots that contains one structure; buffer requirements would restrict construction to a 10' wide strip of land each on the north and south; the property is approximately 1.3 acres with small scale condominiums to the north and single-family residential areas to the west and south of the site; prior to the Overlay Code, the site could have contained 15 units and may currently contain as many as 12 units; most of the buildings comply with the height restriction of 52 or three stories of habitable space over parking with exception of roof excess towers; proposed buffers are in compliance; the IDC and the Manasota Key Plan are consistent with the Comprehensive Plan; reiterated the applicant failed to apply for new building permits within the 16-month period; recommended denial of the petition; and requested rebuttal time after citizen input. Robert Lincoln, of the law firm of Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A., appeared on behalf of the applicant in support of the petition; explained the project received DRC and permit approvals; stated he met with Mr. Perez on March 31, 2005; and requested a copy of the staff report on several occasions. **Commissioner DeBoer** questioned the relevance of the testimony since the Board's decision will be made on the time period prior to adoption of the IDC. Janette S. Knowlton, County Attorney, stated the time frame when petitioner's attorney received the staff report is irrelevant and the Board's decision will be made on specific factors. Attorney Lincoln advised staff did not handle the issue in conformity with the

Public Records Law or professionalism that indicates staff has a slanted attitude. **Chairman Devos** interrupted Attorney Lincoln and summarized the issue before the Board deals with the relevancy of the expired permits to the Board's possibility of granting an exception to the ordinance. Attorney Knowlton concurred. **Chairman Devos** requested Attorney Lincoln to limit questions to relevant issues. Attorney Lincoln questioned staff regarding DRC and Southwest Florida Water Management District (SWFWMD) permits, water and sewer connection permits for 15 units, and the impact of the IDC on the applicant as far as monetary liability and investment back on the property; approval of the project under the prior Code and Comprehensive Plan; and reapplication prior to implementation of the IDC. **Commissioner DeBoer** objected to the line of questioning since staff has been asked to speculate on what may have occurred. Attorney Knowlton expressed uncertainty that staff will have the answers and suggested Attorney Lincoln present a witness who can answer the questions. Attorney Lincoln advised his witness does not control the DRC process. **Chairman Devos** again requested Attorney Lincoln to limit questions to relevant issues and questioned if Attorney Lincoln's client is reapplying for the permits. Attorney Lincoln stated the applicant is requesting an exception to allow him to reapply for the site plan that was previously approved. **Chairman Devos** requested an explanation on why applicant did not reapply during the IDC process. Attorney Lincoln reported the applicant applied for an exception in December; there was not sufficient time to obtain certifications and resubmit the plan after the client found out about the threat of a moratorium and before the IDC and DRC process closed down; the applicant was informed that no further applications would be accepted after the October 28th date; and the only option was for the applicant to file for an exception in order to reapply. **Chairman Devos** reviewed the chronology i.e. DRC approval was issued in April 2002, the building permit was issued in April 11, 2002. Attorney Lincoln stated permits were requested by the prior owner, final plan approval was received in 2002, and then building permits were applied for. **Chairman Devos** concluded the applicant had at least 16 months to reapply for DRC approval prior to adoption of the ordinance, the building permit expired 10 to 14 months ago, and stated she has not heard justification for granting an exception. Attorney Lincoln stated adoption of the IDC ordinance precluded filing of new applications and indicated the applicant was advised by

staff that the only way to get the prior final site plan reissued was to submit a new application with updated drawings and survey certifications. **Chairman Devos** requested the reason why applicant allowed the permit to expire. Attorney Lincoln explained the previous owners of the property did not act on the permit; because of financial problems, the prior owners sold and marketed the property having been through the acceptance process; the SWFWMD permit was still valid; permits for water and sewer for 15 units are still valid; and last Summer the new owner did not have sufficient time to reapply. Attorney Knowlton stated it appears Attorney Lincoln has made his point on that issue and suggested he present evidence on criteria for Board consideration. Attorney Lincoln questioned Albert Knoepffler, Manager of Marina Mar, LLC, who testified on his background experience including this project starting from the Fall of 2003 based upon the prior permits; the need to file recertifications of the drawings and surveys; being advised by staff of the shut down for accepting applications regarding Manasota Key in early November prior to adoption of the IDC ordinance; reviewed Exhibit B on financial impacts on 10 and 15-unit developments as of last Summer prior to the dramatic escalation in construction materials; he would incur a high loss if the development proceeded without the current densities; reviewed proposed building and site plans in Exhibits A and D including green spaces, setbacks, buffers, building heights, pool deck, additional density, and parking; and outlined proposed site plan changes. Attorney Knowlton requested Attorney Lincoln to summarize the issues for which exceptions are needed. Attorney Lincoln stated the 10' green buffer area on the north side, additional density, and parking. **Commissioner Moore** requested when the applicant took possession of the land. Attorney Lincoln stated February 2004 and advised SWFWMD water and sewer permits were assigned with the change in property ownership. **Chairman Devos** stated the DRC and building permits were expired prior to the change in ownership and applicant's procrastination has cost him plenty. Attorney Lincoln stated the Board's acceptance of the Community Plan on September 21 was not an amendment to the Comprehensive Plan or the Redevelopment Regulations; there was no notice that it dealt with a land development regulation so there was no issue to challenge; between the time the status quo was to be changed and the time when staff shut down the DRC process prior to the adoption of the IDC ordinance, the applicant was told that he

could not file an updated application for the site plan in November prior to adoption of the IDC but he could file for an exception to bring forward a site plan that was previously consistent with DRC and building permit processes. Betsy McCallun, a member of the Manasota Key Sandpiper Key Advisory Board and Architectural Board, read a statement that echoes the sentiments of all Advisory Board members in opposition to the proposed project based upon inadequate buffer zones and increased density. Mike McClain, a member of the Manasota Sandpiper Key Advisory Board, stated it is not our responsibility to make up for a lack of due diligence on a developer's part and expressed opposition based upon increased density. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS.** **Commissioner DeBoer** questioned if the IDC ordinance and the Community Plan had not been adopted, would the referenced 2002 plan comply with all of the 2004 development regulations. Mr. Perez stated no. **Commissioner DeBoer** pointed out staff cannot guarantee laws and land use regulations will not change between the time a permit is applied for and issued; considered a lot of testimony as irrelevant; there seems to be a misunderstanding of staff's duties and developer's obligations during the permitting process; requested clarification on whether the plans previously submitted and the changes verbalized have been presented to staff and the DRC; and the response was affirmative. **Commissioner Cummings** stated testimony from petitioner indicates a lot of could have, should have, and would have situations but the facts are that the permits expired and the Codes changed; there was sufficient time to keep the permits current; and there was no solid legal argument proffered by petitioner. **COMMISSIONER CUMMINGS MOVED FOR DENIAL OF PETITION DRC-F-01-22 FOR THE FOUNTAINS OF MANASOTA KEY CONDOMINIUM, SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS.**

RECESS: 4:17 P.M. - 4:33 P.M.

Agenda Item 13, DRC-PF-04-43 (Quasi-Judicial) District III

(Chairman Devos polled the Board for Ex-Parte Disclosures. There were none.) (Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses.) Jorge Perez, Planner III, explained the petition was heard by the Board on March 14, 2005 and referred back to staff to meet with petitioner concerning

Oceanaire Breeze Condominiums; presented slides on the site and adjacent uses; stated the zoning is Commercial Tourist (CT) and the parcel will not suffer a reduction in density as counted by each individual lot of the project; the project started in 2002 as Keys Condominium; Ordinance 2003-001 was enacted to change the Comprehensive Plan regarding Commercial Corridor lands containing 10 units instead of 15 units per acre; DRC heard the Oceanaire Breeze project on October 28, 2004 and it was continued to the month prior to the IDC effective date; the investment back expectations total \$1.3 million; the project has been in design and development with the current owner since May 2002; Attorney Berntsson has made a statement regarding the monetary liability but there has been no evidence; the lots were platted in 1946 and professional services and accessory structures were built in the 1950s; the site is almost one acre and 14 units are proposed; as a result of meetings with petitioner and his engineers, the proposed four-story complex over parking has been decreased to three stories over parking to comply with the 52' height limit and number of story limits for CT areas on the Island; the project has been revised to provide 28 parking spaces for the 14 units and parking, pool, and deck areas were moved to keep stormwater retention at least 10 feet from the north and south property lines; the front is comprised of at least 10 feet of green space and a double driveway and the rear of the project provides green space and semi-retention areas; petitioner is requesting an exception from calculating the 10 feet of the overall building height for green roof areas in order to utilize it as part of the stormwater system with routine maintenance; recommended denial even though petitioner has modified the project as compatible as possible with the Overlay Code; and suggested the following conditions along with DRC sufficiency:

1. The project shall proceed in substantial conformance with the documents presented at this hearing, especially in substantial conformance with the site plan presented by Giffels-Webster and included as part of this petition (hereinafter the "site plan").
2. The project shall include a 10 foot wide buffer strip along and parallel to the north and south boundaries of the project site, as generally shown on the "site plan". Said buffer strips shall not contain any swimming pools, decks, balconies, or dumpster areas. To the greatest extent

- possible, said buffer strips shall not contain stormwater retention ponds.
3. The project shall consist of three (3) stories of residential space over parking.
 4. The roof may contain green areas on the roof with limited access paths. Said access paths shall be designed, built and maintained to guarantee safe rooftop access while discouraging active uses on the rooftop.
 5. The project shall provide 28 parking spaces as shown on the "site plan". All driveways shall be paved with permeable surfaces such as shell or block pavers. Areas labeled as "garage" on the "site plan" may be paved with concrete.
 6. The project shall continue with the Development Review Committee approval process as required by County Code, with conditions 1 to 5 above, in addition to all applicable land development regulations.

Robert Berntsson, Attorney with McKinley, Ittersagen, Gunderson & Berntsson, P.A., appeared on behalf of petitioner, with Giffels-Webster Engineers, Inc. Civil Engineer Sandra Newell, P.E.; stated since Mr. Perez did not indicate that petitioner would stipulate to the conditions for approval, it is necessary to provide more details; this is a continuation of the March 15, 2005 hearing; a meeting was held with County staff on March 23, 2005 during which petitioner made many compromises to comply with the Overlay Code and the only issue is the roof top garden; the Manasota Commercial Tourist (MCT) Zoning Code did not adopt parking, buffer, or setback requirements and the only exception is the roof top green space as part of the stormwater area. Mr. Perez stated buffer requirements were inadvertently omitted from the MCT and expressed uncertainty concerning parking requirements. Attorney Berntsson advised MCT Code, page 28 of the Ordinance, provides that Development Standards set forth in subsection 3-9-53(g)(8) of the Zoning Code shall apply to Residential and Mixed Use Development; sections (8) and (9) deal with building heights; section (10) deals with the no-fill area; section (11) applies to setback, driveway, and green space areas; section (12) concerns parking requirements; stated none of these sections have been incorporated into the MCT but petitioner is providing two parking spaces per unit and 10 feet of buffer space on either side which is more than currently exists on the site; advised petitioner originally came in for the DRC pre-application in 2003, it was determined that Commercial Corridor had no residential density, Ordinance #2004-

003 replaced the density, and this project could move forward; petitioner has made every attempt, except for the green roof, to comply with all requirements; and requested approval with the following amendment to condition #4 as a project amenity:

4. The roof may contain green areas on the roof with access paths. Said access paths shall be designed, built, and maintained to guarantee safe rooftop access.

B.J. Galberaith, a member of the Architectural Review Committee (ARC) and Advisory Committee, agreed the developer has made changes including a 34 feet wide driveway which is 12 feet wider than required in the Plan, the condominium layout provides for 69.41% of impervious surfaces, opined safety requirements should be imposed on the rooftop garden that is to provide a running and jogging path, the new building plans indicate the height will be a maximum of 62 feet above the high water line and the Manasota Plan allows 52 feet, the project invades a 10 foot buffer strip with driveways, the design includes a dumpster in front of the building, the proposed stormwater retention area invades the rear setback requirements, parking is short of the requirement, and requested denial of the petition. **COMMISSIONER MOORE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS.** Attorney Berntsson disagreed with Mrs. Galberaith because the setback, buffer, stormwater, and parking issues are not applicable in this zoning district and they are not relevant; petitioner has increased parking, provided buffers, and reduced the number of stories from four to three stories; and encouraged approval with the six conditions as modified. **Commissioner Moore** requested verification that a running path is to be located on the roof. Attorney Berntsson stated the original design was a very active rooftop with a large glass atrium and even though the atrium has been removed from the plan, petitioner desires to retain the path with access for residents and maintenance; explained adequate buffers will be provided; stated the ordinance directs that 10 feet be added to the building height if anything is on the rooftop; the dumpster is buffered in the front in compliance with buffer codes; stated the MCT Landscape, Buffers and Screening provisions require them to be in accordance with the buffer code, Section 3-5-391, which is applicable on a County-wide basis; and there are no special buffer requirements for MCT districts. **(Executive Assistant Jenine Thornley replaced Executive Assistant Bonnie Stonner for the remainder of the**

meeting.) **Commissioner DeBoer** requested the outstanding issue. Mr. Perez explained the exception for the 10' for the rooftop and the over riding circumstances of the approval history with the inconsistency with the Comprehensive Plan that was amended in early 2003. Attorney Berntsson advised he obtained the January 2004 date from Inga Williams for Ordinance # 2004-003, enacted on January 13, 2004, and the client started with filings in May 2004 after hiring a new engineer. Mr. Perez pointed out petitioner filed for DRC approval in October 2004, approximately 10 months after resolution of the Comprehensive Plan issue. **Commissioner D'Aprile** requested the purpose of the rooftop green space. Attorney Berntsson explained it is part of the project's stormwater system that has been permitted by Southwest Florida Water Management District and the County Stormwater Plan, it is an amenity to the overall project, and reported the architect testified at the March 2005 hearing that it also had a cooling element. **Commissioner D'Aprile** questioned the 10' height requirement. Attorney Berntsson stated the redesigned building height is 46' above the high water line and there is a 10' addition because of the green space on the roof. **Commissioner DeBoer** recalled continuance was based on the project application being submitted in October 2004, the IDC was adopted in November 2004, and this is the primary reason to deny the application. Mr. Perez clarified petitioner submitted a revised set of drawings at the hearing that staff and the Board had not seen and the Board decided to postpone a decision for a month. **Commissioner DeBoer** stated it is not appropriate for the Board to negotiate changes to drawings that should have been reviewed by staff; the Board was willing to continue the hearing because petitioner met the criteria of being in the process and was eligible for an exception regarding the type of vegetation on the roof. Attorney Knowlton explained Attorney Ortel did the last presentation for petitioner and made sketch type compromises that day and in the interim changes were made including the number of floors. **Commissioner DeBoer** stated if the only outstanding issue is the use of the rooftop, then he would take an opposite position to Attorney Berntsson since it would allow additional uses of the roof, and suggested the pathways be limited to a certain distance from the parapet wall. Attorney Berntsson stated a rooftop plan has been submitted and if it is acceptable, the plan will not be modified. **Commissioner Cummings** stated there is no density issue but there is a timing issue and the only real exception is on interpreting the active rooftop as a basis for adding 10' to the building

height. Mr. Perez added the intent of the conditions is to guarantee the project will be completed in substantial conformance with the revised drawings. **Commissioner Cummings** pointed out the building height limit is 52 feet and the project's actual height is 46 feet. Attorney Berntsson agreed and pointed out a parapet wall around the project. Sandra Newell, Giffels-Webster Engineers, Inc., stated the actual height of the building from the AHWL is 46 feet. **Commissioner Cummings** concluded the addition of a 6-foot fence would increase the building height to 52 feet. Ms. Newell concurred. Attorney Berntsson stated the developer has no intention of installing a fence. **Commissioner Cummings** stated petitioner has met the intent of the ordinance. **Commissioner D'Aprile** requested clarification on the deletion of discouraging active uses on the rooftop as part of condition #4. Attorney Berntsson stated his objection to the language stemmed from discussions with staff that indicated going on the roof and walking on the path is an active use versus no one is allowed on the roof. **Commissioner D'Aprile** expressed concern about "excessive uses" such as volleyball, etc. being allowed on the rooftop. Attorney Berntsson reported the design has no volleyball or basketball courts or active recreation facilities on the rooftop and only running, walking, or jogging will be allowed on the rooftop. Attorney Knowlton suggested adding to condition #4 "for maintenance purposes, walking or jogging only" following "The roof may contain green areas on the roof with limited access paths." **Commissioner D'Aprile** concurred. Attorney Berntsson agreed to the additional language. **Chairman Devos** commented in support of the petition although she is reluctant based on prior developments with rooftop amenities. Attorney Berntsson stated this is an innovative use of the rooftop with green space for walking and jogging. **COMMISSIONER DeBOER MOVED APPROVAL OF PETITION DRC-PF-04-43 BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION MEMORANDUM DATED APRIL 1, 2005 AND THE EVIDENCE AND TESTIMONY PRESENTED AT THE PUBLIC HEARING TODAY, FOR AN EXCEPTION FROM ORDINANCE #2004-066 FOR OCEANAIRE BREEZE CONDOMINIUMS WITH THE SIX STIPULATIONS PRESENTED AS PART OF STAFF'S RECOMMENDATION AND MODIFICATION OF #4 TO ADD THE ROOF MAY CONTAIN GREEN AREAS WITH LIMITED ACCESS PATHS FOR WALKING OR JOGGING IN CONFORMANCE WITH THE ROOFTOP SKETCH PROVIDED AS EVIDENCE TODAY, SECONDED BY COMMISSIONER D'APRILE. (Chairman Devos requested Ex-Parte Disclosures from Commissioner Cummings and he responded none.) CALL ON THE MOTION: DECLARED UNANIMOUS.**

Agenda Item 14, DRC-PF-04-44 (Quasi-Judicial) District III

(Chairman Devos polled the Board for Ex-Parte Disclosures. There were none.) (Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses.) Jorge Perez, Planner III, explained the project site is located between North Beach Road, Lemon Bay, and Manasota Key; prior to the Overlay Code the project was zoned Residential Multi-Family-10 (RMF-10) and after implementation of the Code, the density changed from 10 to 7.5 units per acre; the site is surrounded on three sides by RMF-10 and Lemon Bay zoned Marine Park; Marina Mar LLC is seeking an exception from the IDC imposed on Manasota and Sandpiper Key on November 23, 2004 for the Alamanda Condominium; the project submitted a Preliminary DRC Application on June 11, 2004; and the DRC heard and continued the project on October 28, 2004 due to compliance with the waterfront ordinance that regulated building heights, setbacks, and internal vehicle circulation; and no DRC approvals or building permits have been issued for the project. Mr. Perez advised petitioner has not provided necessary state and Federal permits; petitioner purchased the land for \$1.5 million with carrying costs of \$50,000 a year, development expenses to the date of submission was \$80,000 plus the \$300 filing fee; petitioner's application mentioned several million dollars worth of probable deposits by prospective buyers and IDC exception criteria specifically excludes buyers of residential units and the deposits should not be qualified as part of the liability; the property contains small structures built in the 1950s and there appears to be no development attempts until the 2004 DRC filing; the site is 1.02 acres with Residential uses and since implementation of the Overlay Code, the density would be six units per acre; proposed building heights, setbacks, and density are at issue with the Overlay Code; two roof access towers represent 4.6% of the total footprint of the building and they protrude above the 52 feet height limit; petitioner has indicated the towers can be adjusted to comply with the height limitation; project setbacks are in compliance but proposed buffer strips are 15 feet instead of the required 20 feet; petitioner is requesting an exception to the density requirement since the project density is 10 units instead of six units; the Manasota Key Plan and Overlay Code are supported by Policy 2.1.9 of the Comprehensive Plan; and pointed out on a slide the driveway that has an internal isle for

parking to be placed underneath the building; recommended denial; and suggested the following conditions if approved:

1. The project shall proceed in substantial conformance with the documents presented at this hearing, especially in substantial conformance with the site plan presented by Herston engineering and included as part of this petition (hereinafter the "site plan").
2. The project shall include a 15 foot wide buffer strip along and parallel to the north and south boundaries of the project site, as generally shown on the "site plan". Said buffer strips shall not contain any swimming pools, decks, balconies, or dumpster areas. The only exceptions to this 15 foot width shall be for parking spaces required by the Manasota and Sandpiper Key Zoning Overlay Code and for the dumpster; said parking spaces and dumpster shall be located at least 10 feet from the north property line as shown in the "site plan". To the greatest extent possible, said buffer strips shall not contain stormwater retention ponds.
3. The project shall consist of two (2) and three (3) stories of residential space over parking.
4. The project shall provide parking spaces as shown in the "site plan". All driveways shall be paved with permeable surfaces such as shell or block pavers. Parking areas directly underneath the building, as shown on the "site plan" may be paved with concrete.
5. The project shall continue with the Development Review Committee approval process as required by County Code, with conditions 1 to 4, above, fully applicable in addition to all other land development regulations.

Robert Lincoln, of Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A., referenced Exhibit A, Plan modifications handout; stated petitioner has modified the plan based on agreement with Advisory Board members; petitioner is requesting exceptions to the density requirement of 10 to 8 units and 15 feet buffer strips instead of 20 feet buffer strips; changes to the Plan include density, removal of the elevator stair tower, relocation of paths and dumpsters to allow 15 feet buffer strips, impervious paving, an architectural detail to accommodate air conditioning units, and boat docks must not obstruct the channel; petitioner filed for DRC approval in June and DRC comments did not come back until the week of October 20,

2004 with a notice, of about the same time, that the petition would be before the DRC on October 27, 2004; the proposed project complies with the 8 units per acre under the Community Plan but the IDC reduced density in the district to 7.5 units; 15 feet buffer strips in lieu of one buffer strip per lot; changes were made regarding the impervious paving surface, parking, and architectural criteria in the Community Plan and other elements in the Plan and Code; there are very few elements at issue; and agreement has been received from the Advisory Committee. **Chairman Devos** questioned the difference in the handout versus what has been presented to staff and the Board. Attorney Lincoln stated the handout reflects some modifications. Albert Knoepffler, the developer, reviewed the site plan i.e. the building has a footprint of about 25% of the site and 75% will be green areas or impervious driveway; the building is comprised of a front part that is two stories over parking and the rear is three stories over parking with a central courtyard; the towers are six feet above the 52 feet height limit; there will be a 30 feet setback at the front and a buffer with about 178 feet on the north side and 148 feet on the south side, and from 110 to 69 feet in the rear setback with green and landscaped areas and a pool and sitting areas along the landscaped area; the elevator, stair towers will be redesigned to reduce the height; pointed out parking and dumpster areas; the architectural aspects of the building complement the island character; density has been reduced from 10 to 8 units; and stated a reduction to six units would create a large financial loss. B.J. Galberaith, Chairperson of the ARC and Manasota Sandpiper Key Advisory Committee, advised the Sandpiper Condominium Complex ARC met with the developer on April 9, 2005 to discuss and propose exceptions to the Overlay adopted February 15, 2005; stated this project does not meet the necessary criteria for an exception from the IDC; significant changes have been proposed by the developer for Board consideration; and requested consideration of:

1. The project shall consist of eight (8) residential units. Building height shall not exceed the lesser of 52 feet of structure height or three (3) stores of living area. The property was previously zoned to allow 10 residential units and the Overlay limits the density to six residential units.

2. Side buffers will be 15 feet of green space. The Overlay Code requires 20 feet.
3. Two parking spaces per residence shall be provided under the living areas. Four outside permeable parking spaces will reduce the buffer zone to 10 feet in depth only in that area.
4. The mansard roof design shown on the plans shall be extended throughout the entire project.
5. The proposed dumpster shall be removed.
6. Boat docks will not extend and block the channels.
7. Driveways shall be permeable.
8. The project shall comply with all other provisions of the Manasota Sandpiper Key Zoning District Overlay.

Commissioner DeBoer requested clarification that the Committee's recommendation is for approval subject to the eight provisions. Ms. Galberaith responded affirmatively. **COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS.** **Commissioner DeBoer** requested confirmation of staff's position regarding the modified plan. Attorney Lincoln stated petitioner has agreed with the stipulations except phrasing and the boat dock and advised they are consistent with the conditions in Exhibit A and petitioner would defer to their language. **Commissioner DeBoer** requested verification that the boat dock will not be extended so as to block the channel. Attorney Lincoln advised the initial site plan included a boat dock and both parties have agreed and initialed the change. Mr. Perez stated he has no objection to the stipulations and they do not conflict with staff's position. Attorney Knowlton suggested that staff's recommendation to adopt the site plan as submitted and the stipulations be adopted by the Board. **Commissioner Moore** pointed out Attorney Lincoln has expressed a willingness to accept the stipulations. **COMMISSIONER DeBOER MOVED FOR APPROVAL OF PETITION DRC-PF-04-44 BASED ON THE FINDINGS AND ANALYSIS CONTAINING IN THE PLANNING AND ZONING DIVISION MEMORANDUM DATED APRIL 1, 2005 AND THE EVIDENCE AND TESTIMONY PRESENTED AT THE PUBLIC HEARING TODAY, FOR AN EXCEPTION FROM ORDINANCE #2004-066 FOR ALAMANDA CONDOMINIUM WITH THE STIPULATIONS PRESENTED AS PART OF STAFF'S RECOMMENDATION AND THE APRIL 18, 2005 LETTER AS AGREED TO BY THE PETITIONER AND THE MANASOTA SANDPIPER KEY ADVISORY COMMITTEE, SECONDED BY COMMISSIONER D'APRILE.** **Commissioner Cummings** requested verification of staff's review of Exhibit A (April 18,

2005 letter) presented by Attorney Lincoln. Mr. Perez stated he saw the letter submitted by the Advisory Committee but not the one submitted by Attorney Lincoln. **Commissioner Cummings** requested verification that Exhibit A is included in the motion. **Commissioner DeBoer** responded no. **Commissioner Cummings** questioned Mr. Perez on the letter achieving the intent. Mr. Perez indicated he did not see any discrepancies between the Advisory Committee's letter and staff's conditions and suggested both be adopted. **Commissioner Cummings** expressed reluctance in supporting the motion. **Chairman Devos** recalled the issue relating to the stairs and it is not mentioned in the April 18, 2005 letter. Attorney Lincoln reported petitioner offered to limit the height. Mr. Perez referenced Criteria #9, Subsection A indicates that applicant has agreed to lower the towers to comply with the 52-foot height limit. **Chairman Devos** suggested Exhibit A be included in the motion. Attorney Knowlton recommended Exhibit A be included and consistencies, if any, be governed by the most restrictive. **COMMISSIONER DeBOER AMENDED THE MOTION TO ADD APPROVAL OF EXHIBIT A AND ANY CONSISTENCIES BE GOVERNED BY THE MOST RESTRICTIVE PROVISION, SECONDED BY COMMISSIONER D'APRILE. CALL ON THE MOTION: CHAIRMAN DEVOS AND COMMISSIONERS D'APRILE, DeBOER, AND MOORE VOTED "YES" AND COMMISSIONER CUMMINGS VOTED "NO." MOTION CARRIED: (4:1).**

Agenda Item 15, DRC-P-04-35 (Quasi-Judicial) District III

(Chairman Devos polled the Board for Ex-Parte Disclosures. There were none.) (Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses.) Jorge Perez, Planner III, explained Venetian Sands Condominium is seeking an exception from the IDC imposed on Manasota and Sandpiper Key on November 23, 2004; the project is located on the Gulf side of Manasota Key consisting of two lots that extend from the beach to North Beach Road; reviewed the FLUM designations and zoning maps showing a density reduction to 7.5 units per acre; the project received Preliminary DRC approval on September 23, 2004; petitioner would have to have state and Federal permits in hand prior to applying for final DRC approval; the investment back expectations are approximately \$250,000 including impact fees to the Englewood Water District for a 10-unit complex; the analysis does not include a current value on the property; the application contains a statement by Attorney Berntsson on the monetary liability to third parties and petitioner's ability to

obtain a reasonable return; the property is vacant as reflected by the aerial; the history reflects a submission in 2001 for Smith Cove Condominiums that was reviewed for final DRC approval in August 2003 and continued until August 2004; a significantly reconfigured project was submitted under the current application filed by Venetian Sands on July 29, 2004, two months prior to the acceptance of the Manasota Plan by the Board; the property is vacant and zoned for multi-family uses on 1.07 acres; the multi-family uses are consistent since the changes in density would allow 8 or fewer units; the Manasota Plan will allow 8 units at the most; the project contains four levels of livable space over parking whereas the Manasota Plan allows three habitable levels over parking; the building height exceeds the 52 feet height limit and interior yards measure as little as 7.67 feet and the Plan directs two buffer strips since two lots would be consolidated; the project does not provide the required parking spaces, it contains a driveway within the north interior site yard and the Plan directs that interior site yards not contain driveways or paved surfaces; and requested denial based on the differences between the project and the Plan. Robert H. Berntsson, Esq., of McKinley, Ittersagen, Gunderson & Berntsson, P.A., appeared on behalf of petitioner by stating this is the fifth project proposed by Page Corporation on Manasota Key; the other four projects have gone through the approval process, three of which are under construction and Boulder Point will be coming back for final DRC approval in the near future; this project has all permits in hand for final approval; final approval was requested in February 2005 and it was rejected due to the IDC; Preliminary DRC approval was received on September 23, 2004 for the petition filed in July 2004; and the petition was initially scheduled to be heard by the DRC on August 19, 2004 and continued due to Charley. Attorney Berntsson read from a verbatim of the P&Z Board meeting of August 9, 2004 when he indicated that he "wanted to accomplish one thing. It is my understanding that it has been presented today that this plan is just that. We're adopting the plan. The day after the County Commission adopted nothing would be different with regard to zoning or land use. There is a lot of uncertainty as to what is going to happen. It is my understanding that anything that will change will be done by ordinance so that the day after this becomes effective, nothing has changed. Chairman Paula Hess replied exactly and it takes a long time for it to start working." Attorney Berntsson explained the Plan is retroactively being applied back to the

date that the Board heard it which is contrary to what was represented during the P&Z meeting; he has met with staff to negotiate a compromise i.e. the proposed tower height will be reduced and petitioner is willing to reduce tower heights on Boulder Point, the Palms, and the Gulf Breeze projects. **Chairman Devos** requested the height. Attorney Berntsson reported the project's building height is 55 feet and the tower extends up to the low 60's feet to provide for roof access and petitioner is willing to reduce the other project towers by 6 feet under what they were approved at. Russell Klier, a Professional Engineer with Landmark Land Consultants, stated he commenced working on the project in September 2003; Preliminary DRC approval for the project was received with very minor conditions and all permits were submitted in the package for final DRC approval; parking was increased to 2 spaces from 1.5 spaces per unit; confirmed the developer's willingness to reduce towers to comply with height restrictions; and the property was configured on 92 feet width but required buffer strips would limit development to 52 feet and 8 units would probably not go on that width. Attorney Berntsson pointed out on August 19, 2004 during the DRC process, Mr. Perez indicated the property was classified as Medium Density Residential by the FLUM, the proposed project is consistent with the Comprehensive Plan, there are no concurrency issues with the project, reported his client feels strongly about having vested rights claims on the property as referenced in the letter submitted to the Chairman in December 2004, this issue can be worked on, and suggested compromising to achieve a positive effect on this and other projects in the future. **Chairman Devos** requested the compromises from petitioner. Attorney Berntsson outlined the reductions on the three other projects, the redesign of the parking to provide two spaces per unit, enhanced architectural features to comply with Architectural Committee goals and stated issues remain on density and buffers. **Commissioner D'Aprile** questioned the status of the other projects. Attorney Berntsson reported the Palms and Gulf Breeze have building permits and are under construction and Boulder Point sought an exception, received DRC approval, and it will probably come back to this Board as a consent agenda item for approval of the Planned Development (PD). **Chairman Devos** concluded that the hurricanes delayed the process last year. Attorney Berntsson stated DRC approval was received on September 23, 2004, two days after this Board approved the Plan; the petition was initially scheduled to go to DRC on August 19, 2004;

and it was continued due to the hurricanes. Betsy McCallum read a statement regarding the Manasota and Sandpiper Key Steering Committee July 2003 meeting; during the Summer of 2003 many newspaper articles appeared on the Plan and its standards; in October 2003 notices were published for more specialized participation on the Committee; although Mell Allman, a partner in Peter Page who had applied for membership, did not qualify, he was aware of the development of the Plan and its standards; Page Development had ample time to comply with the Plan; and reported the Architectural Committee and Advisory Committee request denial based upon non-compliance with the density, height, and setback restrictions. Attorney Berntsson requested the reason why Mr. Allman did not qualify. Ms. McCallum stated he was not a resident or a business owner on the Key. Attorney Berntsson requested Ms. McCallum's opinion on the developer's willingness to reduce the other tower heights. Ms. McCallum stated the other criteria must be met and she cannot speak for other Committee members. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRIL AND DECLARED UNANIMOUS.** Commissioner Cummings recalled the staff report included a letter from Attorney Berntsson that references the September 23, 2004 DRC Preliminary Approval. Mr. Perez concurred. Commissioner Cummings requested verification that the threshold is final versus preliminary DRC approval. Mr. Perez recalled that all projects with final DRC prior to September 21, 2004 would be grand fathered in. Attorney Berntsson questioned the date be October 28, 2004 for final DRC approval. Mr. Perez stated he did not remember. Commissioner DeBoer questioned Attorney Knowlton on defending the Board's decision if it is denial of the petition. Attorney Knowlton responded affirmatively since only preliminary DRC approval was received on this project. **COMMISSIONER DeBOER MOVED FOR DENIAL OF PETITION DRC-P-04-35 FOR VENETIAN SANDS CONDOMINIUM, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS.**

Commissioner DeBoer requested staff bring back a proposal to deal with Agricultural Estates issues to limit density as discussed in the petition for a change relating to the property behind Maple Leaf Estates. Commissioner D'Aprile agreed and stated the property is Sun Coast Estates.

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April 19, 2005

MEETING ADJOURNED: 6:40 P.M.

Signature on file in Commission Minutes
Sara J. 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/djn