

REGULAR MEETING AND LAND USE PUBLIC HEARINGS

BOARD OF COUNTY COMMISSIONERS

MAY 17, 2005

A regular meeting of the Board of County Commissioners and Land Use Public Hearings 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, County Attorney Janette S. Knowlton, Executive Assistant to the Board Joann Dillon, and Supervisor of Minutes Diane J. Nice. The meeting was called to order at **9:07 A.M.** followed by the Pledge of Allegiance to the Flag. **(Proof of Publication was in Order.)**

REGULAR AGENDA

Agenda Item 1 - Charlotte County Mental Health Services/Safe Haven

Chairman Devos announced Charlotte County Mental Health Services requested the Board consider providing additional funds for construction and operation of the Safe Haven facility; the Chairman has been requested to sign appropriate documentation for the \$125,000 grant application that was approved including a signed commitment from the Board of County Commissioners. Dr. Ross is in attendance for questions, and opened the floor to questions or a Motion; and indicated Dr. Ross visited with each Commissioner except **Commissioner D'Aprile**. **(There were no questions from the Board and no citizen input.)** **Commissioner Moore** stated he believed the project is very important but the timing was wrong due to the status of the budget and suggested consideration of the request in August or September even though it would cause the loss of a \$121,000 grant. **Commissioner Cummings** indicated this program is more than a jail diversion program; it provides benefits to the community in terms of improving the lives of clients of the facility and improving the public safety of the community; these facilities are less costly in daily cost than jails; notwithstanding the difficulties with the cash flow and budget, there is a substantial increase in

domestic violence and the mental health services are becoming a more critical component of the community's infrastructure, particularly after "Charley" since post-traumatic symptoms are still on the increase, compounded with the State having closed G. Pierce Wood a couple years ago, and the predictions the local mental health services people. **Commissioner Cummings** opined this is a project that makes sense from a dollar, public safety, and public good standpoint and it should move forward. **Commissioner D'Aprile** said he has been studying this project for several days; if the Homeless Coalition were to build a facility with the County supporting homeless and destitute families, he would support allocating funds; he does not believe it would lower the impact on Charlotte County jails and opposes building the facility and having it taken advantage of by persons in surrounding areas or coming from other states who are not and have not been Charlotte County residents. **Commissioner D'Aprile** expressed support of the facility being built in Charlotte County as long as surrounding communities contribute to its support. **Commissioner Devos** stated the facility was only for Charlotte County residents. **Commissioner D'Aprile** said this had not been clarified previously, asked Sheriff Davenport and Dr. Ross if these persons were Charlotte County residents, and was told no, they were homeless. **Commissioner D'Aprile** said it would be very difficult to determine residency and he would support allocating funds based upon proof of Charlotte County residency. **COMMISSIONER CUMMINGS MOVED FOR APPROVAL, SECONDED BY CHAIRMAN DEVOS. CALL OF THE MOTION FAILED (2:3) WITH COMMISSIONERS DeBOER, D'APRILE, and MOORE OPPOSING THE MOTION.**

Agenda Item 2 - Kosinski Bridge

Gary Wilkins appeared as a member of the Charlotte County Palm Island Advisory Committee, indicated Richard Wilson of Wilson Structural Consultants was present to answer technical questions; and Commissioners had received his preliminary report, final report, and cost assessment. Mr. Wilkins summarized the reports as well as a fourth alternative for repair of the existing bridge by removing and replacing the deck, leaving the pilings and many of the stringers in place; Mr. Wilson's conclusions are that repair of the bridge is feasible, financially cost effective, and within the budget of the taxing unit; it would cost less than \$500,000 instead of spending approximately \$2 Million up front for a new concrete

structure; repairing the bridge now would eliminate a great deal of water disruption because pilings would not be pulled up and redone; \$2 Million would not have to be spent up front; and, the islanders would receive the structure they want which is harmonious and compatible with the island. **Chairman Devos** said she brought this issue back today based upon conversations with Mr. Wilkins because the final report indicated the bridge can be repaired; she is not comfortable with the safety of the bridge by only making repairs; and she voted on the concrete bridge last time but now will support replacing the Kosinski Bridge with a wooden structure. **Commissioner D'Aprile** stated if a wooden bridge is what the residents want, that is what they should get; originally he was of the thought the wooden bridge was a replacement, not a repair but this item is being brought back as a repaired item; and asked what the cost was to replace the bridge. Tom O'Kane, Public Works Director, pointed out the last page of Mr. Wilson's report contains a summary that the County's structural engineers, American Engineers, estimated \$1.3 Million for a two-lane timber bridge and \$924,000 for a one-lane wooden bridge. Mr. O'Kane advised there presently exists a two-lane bridge being operated as a one-lane bridge due to deterioration. **Commissioner D'Aprile** expressed the belief that a two-lane bridge would be best, according to Mr. Wilson the present structure is pretty sound but not for the long term. Mr. O'Kane said he would debate that issue because the Anne Merry Bridge, made of the same material, collapsed five years ago; the same type of cracking is being seen in the Kosinski Bridge; and it might be difficult to get an engineer to certify the pilings. **Commissioner D'Aprile** indicated concern over the life expectancy of a bridge where a new structure is constructed on top of an old structure. Mr. O'Kane mentioned that Mr. Wilson's report reflected a design life of about 15 years, the same estimate as the County's engineers for the normal design life of a wooden bridge; the difference being that once everything is replaced the estimated life cycle of the replacement bridge is 35 years. **Commissioner D'Aprile** said he prefers a wooden bridge. Mr. O'Kane reported the \$2.4 Million estimate included other elements; the Anne Merry Bridge still has abutments that need to be replaced and some residents would like to see the pilings under the Anne Merry Bridge removed, and some paving between the two bridges. **Commissioner Cummings** asked the cost of the other elements. Mr. O'Kane said the difference was about \$500,000 and part of the cost was design

for permitting a wooden bridge; the engineers are concerned about a 30' span over the channel; ekki wood has a high strength, which would span the 30', but it is questionable whether pine beams would be able to span the 30'; if it is feasible there might not be a permitting problem with the Coast Guard as they are reasonably lenient as long as there is a not a reduction in channel width or height. **Commissioner Moore** asked Mr. O'Kane if he concurred with the life cycle costs of the concrete bridge at \$1.8 Million, a timber bridge at about \$6 Million, and \$2 Million for bridge repair. Mr. O'Kane said he has not seen evidence that these are not accurate estimates and advised the deck on the Kosinski Bridge is pressure treated pine and that Mr. Wilson's report indicates it needs to be replaced. **COMMISSIONER DeBOER MOVED FOR APPROVAL TO DIRECT STAFF TO REPLACE THE KOSINSKI BRIDGE WITH A WOODEN STRUCTURE, SECONDED BY COMMISSIONER D'APRILE.** **Commissioner Moore** asked if this Motion was for "Alternate 2", being a new wooden two-lane bridge. Chairman Devos clarified it was for a new wooden two-lane bridge. **Commissioner Cummings** indicated it was a bad idea. **CALL OF THE MOTION: MOTION CARRIED 3:2 WITH COMMISSIONERS MOORE AND CUMMINGS OPPOSING THE MOTION.**

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

LAND USE PUBLIC HEARINGS

Agenda Item 1 - PA-05-04-23-LS (Legislative)

Thomas A. Cookingham, Planning Services Manager, presented petition PA-05-04-23-LS for transmittal to the Department of Community Affairs (DCA) to amend policies 2.10.7 of the Future Land Use Element, add Policy 6.1.8, change Policy 14.2.1 of the Transportation Element, and change Appendix C of the Capital Improvement Element; the purpose is to create exceptions to the current concurrency requirements under 9J.5 of the Administrative Code to allow urban redevelopment areas such as Murdock Village CRA and Charlotte Harbor CRA; the Community Development Department and the Planning and Zoning (P & Z) Board recommend transmittal of the petition to DCA. **Commissioner DeBoer** referred to the report that states there will be no significant impact on the Florida Interstate Highway system, and asked Mr. Cookingham to define "no significant impact." Mr.

Cookingham indicated data analysis reflect trips generated by Murdock Village and Charlotte Harbor CRA's would have no significant effect on I-75. **Commissioner DeBoer** expressed concern of the wording that the two CRA's "shall" meet all five requirements instead of "shall substantially" meet all requirements. **Commissioner DeBoer** asked Mr. Cookingham why "Certificates of Occupancy" was listed in Policy 2.10.7, as no Building Permit is issued if infrastructure is not in. Mr. Cookingham stated it would provide consistency throughout the Comprehensive Plan and that concurrency requirements are done prior to issuance of building permits. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS. COMMISSIONER D'APRILE MOVED FOR APPROVAL TO TRANSMIT PETITION PA-05-04-23-LS TO THE DEPARTMENT OF COMMUNITY AFFAIRS FOR AN OBJECTIONS, RECOMMENDATIONS, AND COMMENTS (ORC) REPORT BASED UPON THE PLANNING AND ZONING DIVISION STAFF REPORT DATED APRIL 26, 2005 AND THE EVIDENCE PRESENTED AT THE MAY 9, 2004 HEARING SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS.** **Commissioner DeBoer** suggested the Board and staff allow as much latitude as possible in the decision making process. **Commissioner Moore** asked about the down side to changing the word "substantially" vs. "all". Mr. Cookingham said the verbage came directly from Administrative Code 9J5 and believes the Code calls for that verbage to get the exception.

Agenda Item 2 - Z-04-12-71 (Quasi-Judicial)

(Chairman Devos polled the Board for Ex-parte Disclosures. There were none.)(Supervisor of Minutes Diane J. Nice, administered the oath to prospective witnesses.) Inga Williams, Planner III, presented the petition for rezoning from Mobile Home Subdivision to Mobile Home Conventional for Charlotte Park Replat Partial Section 2; this is the third of four re-zonings to allow the residents to replace their mobile homes with conventional homes; and staff and P&Z Board recommend approval. **COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS. COMMISSIONER DeBOER MOVED FOR APPROVAL TO ENACT ORDINANCE 2005-033 BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION REPORT DATED FEBRUARY 28, 2005 AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.**

Agenda Item 3 - Z-04-11-58 (Quasi-Judicial)

(Chairman Devos polled the Board for Ex-parte Disclosures. There were none.)(Supervisor of Minutes Diane J. Nice, administered the oath to prospective witnesses.) Barbara L. Jefferies, Planner III, gave a slide presentation on the petition filed by HLA Holdings, LLLP, for a rezoning from Office, Medical and Institutional (OMI), Residential Multi Family (RMF-12), Residential Multi Family (RMF-10) and Agricultural Estates (AE) to Planned Development (PD) for Phil Palmer's redevelopment of Heritage Lake Park, located North of Tangelo Avenue, South of Rampart Boulevard, East of I-75, and West of Nuremberg Boulevard, in the Deep Creek area; the future land use of this facility is Medium Density Residential; the Board approved a plan amendment about three months ago; the site is currently under construction; slides reflected plantings around the facilities and houses North and West of the site and a nursing home West of the site; staff recommends approval with conditions; approval will not result in an increase in overall density, the density will be moved around on the parcel; the area is compatible with this type of development; and the project will be a condominium complex with some multi-family development, with 470 units on 75 acres. Bill McBride, of Charlotte Engineering, appeared on behalf of the applicant and indicates there are two phases; the first is the current zoning request that went through Development Review Committee (DCR), preliminary plat has been reviewed by the Board, the final plat is expected to be presented to the Board in June 2005, for the first phase and the purpose of this hearing is to spread density on the site. Mr. McBride informed the Board (1) the applicant's desire to determine location of trees on a 1 per 2,000 development ration; less than 10,000 square feet and the applicant would like the opportunity to cluster trees to make park settings instead of one tree on each lot; (2) 25 foot PD buffering has been historical in Charlotte County for years, currently there is a roadway inside one of the buffers on the plan viewed as an egress point and there were no objections by staff to it, there is also a 6' wall along that corridor and the road would not be seen from public view, and the PD buffering will be compatible with adjacent land uses; (3) foundation permits for phase 2 have been obtained, many of the phase 2 foundations have been built, much of the zoning in the phase 2 area is RMF-10, the applicant has requested vertical permits

under the multi-family classification and unified control; and (4) applicant wishes to reserve the right to transfer density in the future if the opportunity is available to expand the PD to another piece of land with a lessor zoning. Phil Palmer, the co-developer with Robert Morris of the Heritage Lake property, reported 6,000 trees have already been purchased and about half of them are on the site for planting; this is about two-thirds of the total trees to be installed and requested tree points be looked at as a whole, rather than on individual lots, because the development has cluster housing in the park villa areas which has small lots. **Commissioner DeBoer** inquired as to when the vertical permits were to be obtained. Mr. Palmer stated he would like to pull vertical permits after this hearing because the entire process is lengthy, he does not believe there are any problems, timing is important, and advised contracts can be written for units but title cannot pass to units. **Commissioner DeBoer** concluded the applicant was bearing all financial burden if compliance was not met. Mr. Palmer acknowledged affirmatively. **Commissioner DeBoer** inquired about banking the TDUs pursuant to the Ordinance. Ms. Jefferies said there was a certificate process but Mr. Palmer had not made such a request until this moment, there are 192 units at this time, Mr. Palmer is asking to be allowed to transfer in the future unused units to adjacent property or another site. **Commissioner DeBoer** asked if the ordinance presently provided for that. **Chairman Devos** responded affirmatively. **Commissioner Moore** requested clarification of the language dealing with changes in the Ordinance. Mr. McBride said sometimes ordinances are subject to change and they wish to have the flexibility of having certain things "grandfathered" and retain additional units not being used on the site. Ms. Jefferies explained limitations exist with the certificates, those are law at this time, and Mr. Palmer could only use those in certain property locations. Mr. Palmer indicated no exception regarding the certificates was being requested. **Commissioner Moore** asked what would happen if the ordinance changes in the future. Ms. Jefferies said the certificates would be applicable to the current ordinance, and if the ordinance changed, it would be applicable to future TDUs. **Commissioner Moore** questioned if the certificates would be "grandfathered" in. Ms. Jefferies said this is typically what the Board does. Richard A. Brown, Assistant County Attorney, expressed understanding that a separate procedure exists in the Code for severing out unused units and they should not be

blended into this hearing today, but should be filed and processed as a separate application. **Commissioner DeBoer** said this Board cannot make commitments for future Boards. Mr. McBride said it was not their intention to "grandfather" this in, but the applicant wants to be certain the Board was aware of the intentions and that steps would be taken to make application to secure those TDUs since all of the density will not be used at this time. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS. COMMISSIONER DeBOER MOVED FOR APPROVAL TO ENACT ORDINANCE 2005-034 BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT FOR PETITION Z-04-11-58, DATED APRIL 25, 2005, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.** **Commissioner DeBoer** asked how the caveats regarding tree points being clustered and conditions would be added and indicated his endorsement allowing the trees to be clustered based on this developer's prior projects. **Commissioner DeBoer** said he also has no objections to the other three items requested and asked if each item needed to be stated in the record. Ms. Jefferies said there is a change in the conditions as to letters "L" and "P" based on Mr. Palmer's request, and the conditions would be approved as modified. **COMMISSIONER DEBOER AMENDED THE MOTION TO INCLUDE "WITH THE STAFF CONDITIONS AS MODIFIED IN TODAY'S HEARING", SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.** **Commissioner DeBoer** thanked staff for working with developers up to the time of the hearing. **Commissioner Cummings** confirmed his understanding of the changes as deal with the condition of tree points, item "P", the buffer does not include changing when permits can be pulled, or "grandfathering" transfer of density units above and beyond what the law normally allows. Ms. Jefferies acknowledged that was affirmative. **Commissioner DeBoer** stated the TDUs are addressed in the ordinance and expressed uncertainty that the vertical permit issue had been addressed. Ms. Jeffries said staff could be directed to work with the developer on vertical permits. **COMMISSIONER DeBOER MOVED TO DIRECT STAFF TO WORK WITH APPLICANT ON THE VERTICAL PERMIT ISSUE, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.** **Commissioner D'Aprile** made an observation that in viewing the area around the streets of Tangelo, Tangerine and Nova Lane that I-75 cuts the area in half; he suggested staff consider for safety purposes leaving the street names of the populated area the same but changing the

names of those sections of streets of the non-populated area in order to assist emergency personnel.

RECESS: 10:21 A.M. - 10:30 A.M.

Agenda Item 4 - Z-05-02-04 (Quasi-Judicial)

(Chairman Devos polled the Board for Ex-parte Disclosures. There were none.) (Supervisor of Minutes Diane J. Nice, administered the oath to prospective witnesses.) Jason Utley, Planner II, gave a slide presentation of Petition Z-05-02-04, filed by Miami Valley Ready Mix of Florida, Inc. for a rezoning from Industrial Light (IL) to Industrial General (IG) on a parcel south of Jones Loop Road and back to the West of Taylor Street; the entire area is currently zoned High Intensity Industrial, which is the current future land use; staff recommends approval due to the fact that it is located within a High Intensity area and in close proximity of the Industrial General area; and the site is about 6.3 acres. Michael Haymans, Farr Law Firm, appeared on behalf of John McGovern of Miami Valley Ready Mix of Florida, Inc.; and adopted staff's recommendation and report. (Assistant County Administrator Kelly Shoemaker replaced County Administrator Bruce D. Loucks for this portion of the meeting.) **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.** Commissioner D'Aprile asked Attorney Haymans for the property's use. Attorney Haymans replied it would be used for a concrete plant, similar to other uses in the industrial subdivision, with access from both Eagle to Acline and Pheasant to Taylor; indicated there would be a truss plant in this industrial subdivision, located on Taylor, due East of the subject property; and this concrete plant would serve the great construction needs in Charlotte County, helping overcome some of the concrete scarcity that has been here for the past year. **Commissioner D'Aprile** asked about the type of buffering and it's location in proximity to US 41. Attorney Haymans said the site was interior to the entire subdivision. **COMMISSIONER DeBOER MOVED FOR APPROVAL TO ENACT ORDINANCE 2005-035 BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT FOR PETITION Z-05-02-04, DATED APRIL 6, 2005, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECOND BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.**

Agenda Item 5 - Z-05-02-05 (Quasi-Judicial)

(Chairman Devos polled the Board for Ex-parte Disclosures. Commissioner DeBoer stated the matter has been before the Board before and is of Public Record. Chairman Devos, Commissioners D'Aprile, Cummings and Moore acknowledged the same.)(Supervisor of Minutes Diane J. Nice, administered the oath to prospective witnesses.) Jason Utley, Planner II, gave a slide presentation on the rezoning petition from Planned Development (PD) to Commercial General (CG), filed by Timothy B. Towles, Trustee, on a 9.3 acre parcel South of Airport Road, West of Taylor Road, North of Coral Ridge Drive and East of Cooper Street; the future land use designation is Commercial Center; this was rezoned to PD in January 2004 and PD uses would be allowed on the property until such time as market conditions support a use of the property and staff recommends approval. **Commissioner Cummings** asked if the last part had a condition in the PD that said upon the time the market conditions in the area support a Commercial General use of the property. Mr. Utley said it was his understanding based upon explanation to him by Attorney Berntsson that the initial intent was to go to a Commercial General zoning designation but the market did not support it past January 2004 and now the rapid change in the market makes this an appropriate location for a CG parcel. **Commissioner Cummings** questioned if this was part of the approved PD. Mr. Utley explained it was in the agenda summary, and the PD allowed for more intense uses such as boat and RV storage, and the CG will allow for less intense uses. Mr. Cookingham clarified the original request was for CI rezoning; at that time staff indicated it was not appropriate given the nearness of the college and the Enterprise Charlotte Airport Park and all of the alternative uses applicant indicated they wanted to have RV storage which is allowed under the CI. Rob Berntsson, McKinley Law Firm, stated this has been the third time the matter has been before the Board; the first time was for a plan amendment and CI rezoning and the Board approved the plan amendment, but not CI; the applicant wanted to receive CG long-term but in the short-term until the market caught up, there was interest in RV storage; this was brought again before the Board under a PD for outside storage until such time as the property could be developed for a CG use, and the applicant has requested a change to CG zoning with intended development as a Commercial General shopping-type center. **COMMISSIONER DeBOER MOVED TO CLOSE THE**

PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS. COMMISSIONER D'APRILE MOVED FOR APPROVAL TO ENACT ORDINANCE 2005-036 BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT FOR PETITION Z-05-02-05, DATED APRIL 6, 2005, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS.

Agenda Item 6 - Z-05-02-06 (Quasi-Judicial)

(Chairman Devos polled the Board for Ex-parte Disclosures. There were none.)(Supervisor of Minutes Diane J. Nice, administered the oath to prospective witnesses.) Inga Williams, Planner III, gave a slide presentation on the rezoning petition from Agricultural Estates (AE) to Industrial Light (IL) filed by Donna and Nigel White, located West of Burnt Store Road between US 41 and Taylor Road; this property and the surrounding area have a Low Intensity Industrial future land use; the current zoning is AE; applicant is requesting the rezoning to be consistent with the future land use; and recommends approval. Rob Berntsson, McKinley Law Firm, joined in the staff report and findings specific to the rezoning criteria; stated that the property was purchased from the Haymans family even though the land use and zoning did not match; in order to use the property it would be necessary to change the zoning; the owner of the property is under contract to sell the property; and the purchaser intends to build one of the IL uses, but he does not know exactly what will go on site. **COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS. COMMISSIONER D'APRILE MOVED FOR APPROVAL TO ENACT ORDINANCE 2005-037 BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED APRIL 1, 2005, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS.** Commissioner DeBoer asked how many feet front Burnt Store Road. Ms. Williams indicated she did not know. Commissioner DeBoer wondered if there had been several rezonings on the East side of Burnt Store Road. Ms. Williams said there were plan amendments to rural estate residential with a rezoning for five of the parcels to the North and a rezoning to Industrial on one parcel at the tip where Taylor Road and Burnt Store Road intersect. Commissioner DeBoer expressed the belief that a conflict in uses along Burnt Store Road will occur in the future. Commissioner

Cummings asked if the buffering requirement was triggered by the zoning and Future Land Use Map (FLUM) or by the actual current usage or a combination. Ms. Williams replied it was triggered by the zoning.

Agenda Item 7 - PA-05-02-09 (Legislative) and Agenda Item 8 - Z-05-02-10 (Quasi-Judicial)(consolidated)

(Chairman Devos polled the Board for Ex-parte Disclosures. There were none.)(Supervisor of Minutes Diane J. Nice, administered the oath to prospective witnesses.) Inga Williams, Planner III, explained Bryce Gillam filed PA-05-02-09 requesting plan amendment from High Density Residential to Commercial Corridor and Z-05-02-10 for a rezoning from Residential Multi-family 10 to OMI on approximately .8 acres, located South of Olympia Avenue, West of Scott Street and East of Elliott Street; the area is mainly commercial or proposed future medical; the property in the request is consistent with development in the area and staff recommends approval. Warren Ross, Wotitzky Law Firm, appeared on behalf of the applicant; joined in staff's report and recommendations; indicated Mr. Gillam wishes to develop professional offices on the site; and presented letters from adjoining property owners who have no objection to the proposed development. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS. COMMISSIONER DeBOER MOVED FOR APPROVAL TO ENACT ORDINANCE 2005-038 BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED APRIL 1, 2005, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.**

COMMISSIONER D'APRILE MOVED FOR APPROVAL TO ENACT ORDINANCE 2005-039 BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED APRIL 1, 2005, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS.

Agenda Item 9 - Revision of US 41 Zoning District Overlay (Legislative), Item 10 - PA-04-12-72 (Legislative), Item 11- PA-04-12-73 (Legislative), Item 12- PA-05-01-03 (Legislative) and Item 13 - Z-05-01-01 (Quasi-Judicial)(consolidated)

(Chairman Devos polled the Board for Ex-parte Disclosures. Commissioner DeBoer said there have been prior hearings, and regular Board meetings. Chairman Devos, Commissioners D'Aprile, Cummings and Moore acknowledged the same.)(Supervisor of Minutes Diane J. Nice, administered the oath to prospective witnesses.)
Jie Shao, Planner II, explained the three small-scale plan amendments are from Commercial Corridor and Low Density Residential, a revision to US 41 Overlay Mixed Use District and a rezoning from Residential Single Family (RSF) - 3.5 to Commercial General; all five petitions are related to US 41; there will be one presentation for all five petitions; this is the second public hearing on the US 41 revision Overlay, the first occurred on April 19, 2005; and the following were discussed:

- (1) Fence or wall should be mandatory in the buffering requirements to protect adjacent residential neighborhood. Staff revised a portion of the Code.
- (2) Maximum building heights on the rear lots of the development, including front expansion and rear lots development, should be lowered from 40' to 38' to be compatible with existing single family residents. Staff incorporated such provisions.
- (3) The intent of the Overlay regarding the traffic on the residential road is inappropriate. Staff deleted it from the Code.
- (4) A proposed revision should increase the minimum lot size for commercial development on rear lots only to limit strip mall type development prevalent along US 41.

Ms. Shao stated the proposed Code changes should be incentive based, not restricted; from an economical and practical standpoint it will be difficult to have one large commercial development due to a combination of restrictions and development standards in the proposed overlay Code, storm water and off-street parking requirements; staff suggested leaving this portion of the Code unchanged; and recommended approval of the revisions to US 41 Overlay. Ms. Shao presented aerials of the

three small-scale plan amendments and re-zoning areas, located on the West side of US 41 from West Tarpon Boulevard to Elkcam Boulevard which is also a target area of the US 41 beautification project; the three small-scale plan amendments will allow property owners to redevelop and expand their businesses and allow mixed development; the proposed rezoning is for an area presently RSF-3.5, to Commercial General, and will allow property owners along US 41 to expand their business to the rear lots and provide commercial services to the neighborhood; and advised approval of the petitions will accomplish the goals of the US 41 beautification project and redevelopment of the US 41 Corridor; and staff recommends approval. **Chairman Devos** indicated there was only one staff report for all of the petitions and revision pertaining to the Overlay District and one Public Hearing would cover items 9 through 13. Phil Trejo applauded the overlay work done with reference to item 9 and expressed surprise at not having significant input from citizens of the community; opined truck traffic needs to be addressed on residential roads; recalled previous discussions, including a meeting on February 24, 2004, with staff recommendation not to re-zone this particular area for various reasons which should be re-evaluated; and some areas were better suited for this type development. Dick Ford, a Port Charlotte resident and commercial realtor, commented on item 9; indicated a primary issue is the appearance of US 41; another important issue is the utility of the land and it's usefulness; pointed out Hurricane Charley created an urgency of rebuilding and many of the property owners may not be in a position to conform to some of the new district standards; and asked if some of the proposed improvements were funded by sales tax. **Chairman Devos** answered yes although uncertain of the amount. Mr. Ford said it would take some time to complete the project and a reliable funding source was needed other than sales tax revenues; suggested it might be appropriate to discuss a series of CRA's along this district with taxing and financing authorities, using 2005 as a base line year. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS.** **Chairman Devos** said sales revenues are to be used from West Tarpon to Port Charlotte Boulevard. Commission DeBoer said the sales tax dollars would only fund that part and another sales tax item was for beautification for US 41. **Chairman Devos** clarified approximately \$1.1 to \$1.3 Million in sales tax was being used for West Tarpon to Port

Charlotte Boulevard. **Chairman Devos** asked Mr. Cookingham to respond to the inquiry regarding truck traffic and suitability of the area. Mr. Cookingham stated he does not recall excluding any of the areas from the re-zoning and there is a potential for truck traffic coming onto the residential streets for deliveries. **Commissioner DeBoer** indicated this matter is a Public Works issue, not a zoning issue, and a different public hearing is held for those. **Chairman Devos** said she wanted to attempt to answer the question on truck traffic, what could be done was a large part of the previous discussion, and Mr. Trejo was not present. **Commissioner DeBoer** said the request indicates a business shall not utilize ingress or egress unless an overriding need can be demonstrated and requested clarification. Ms. Shao said it is basically for front expansion to the rear, normally ingress and egress from residential is not wanted unless the need is demonstrated and flexibility was given there. **Commissioner DeBoer** stated it was never his intention that there would be no ingress and egress from the back roads, it was not intended for truck traffic to be in the residential area nor to see people open separate businesses on the second layer of lots with their only ingress and egress being the back road. **Commissioner DeBoer** said this is why the last time the matter was heard he noted that monument signs should not be allowed, only signs mounted flat on the walls, that people who live in the neighborhood in the back should be able to access the businesses without getting onto the access road, but they should not be allowed to advertise in such a way that it will draw transient traffic into the back areas. **Commissioner DeBoer** said the monument signs were still in there, and assumed the rest of the Commissioners wanted monument signs to remain in there for the back roads. **Commissioner DeBoer** said fences and walls were listed for the back, but his preference is walls and he assumes the issue regarding 40' vs. 38' was in the wording he previously gave and it was just as easy to say 38'. **Commissioner D'Aprile** agreed with the 38' and the need for signage on the back roads, and recommended some type of unified/universal wall, with signs against the wall rather than monument signs, which would beautify and protect adjacent residents because shrubs and fences are not usually maintained over the years. **Commissioner D'Aprile** requested clarification whether new businesses to the rear, different than those in the front, will be allowed, or for businesses at the front to expand to the rear; opined business at the front should purchase the lot behind and expand to the

back because if the lot to the rear operates a different business, there will be more traffic. **Commissioner Moore** asked Mr. Cookingham if erecting a wall would be his recommendation. Mr. Cookingham replied that it would depend on what the Board wants but the wall with a landscape buffer would provide the highest level of protection to adjacent residences. **Commissioner Moore** said he was of the impression that monument signs had been eliminated for the back lot and pressed opposition to monument signs on the back street. **Commissioner Cummings** thinks signs that are perpendicular to the wall should be allowed and provide for landscaping in front of the wall. **Commissioner Cummings** asked if the re-zoning is approved could someone build a house on the property. Mr. Cookingham responded no but existing homes would be legal, conforming, uses for the overlay district only and only commercial could be built on the lots. **Commissioner Cummings** asked how far does one go in balancing the needs of the majority and the rights of the individual and the best use is the expansion of existing businesses toward the back and having larger parcels; that puts the vacant lot owner at a disadvantage to existing business because only the existing business would be interested in purchasing the property; the vacant lot owner should retain the ability to develop their respective vacant lots in some manner. **Commissioner Cummings** advised he would not have a problem with having a different standard for intensity of the business if it were to be accessed from the rear but he would not want to exclude it so it could only expand from existing businesses because the vacant lot owner deserves protection to sell or develop his property. **Chairman Devos** stated it appears an effort is being made by the Board to deal with all issues at one time but there will not be a one size fits all solution. **Chairman Devos** stated people want to redevelop the former hotel into offices, commercial, retail; it will be necessary to build closer to the service road with parking in the rear; one of the proposed businesses is a jewelry store and people probably will not want to park in the rear for access into the jewelry store especially if a wall is erected. **Chairman Devos** said she initially thought fencing would provide a nice transition but not the wood picket-type fence. **Chairman Devos** stated signs are all right and mentioned Dr. Alpern's attractive monument sign on Port Charlotte Boulevard. **Commissioner D'Aprile** asked if a decision had to be made today on walls vs. fences. **Chairman Devos** answered affirmatively. **Commissioner D'Aprile** referenced

staff's recommendation a wall is best suited for the residents and businesses; if a decision must be made now, he would support a wall unless there is a type of unified fence, not a wooden picket fence to provide protection for the residents against the businesses. **Commissioner D'Aprile** commented in support of a wall but the type and height of the wall needs to be determined; which is very difficult to do at this moment without suggested setting a workshop in order to review options and make a rational decision unless a decision must be now. **Commissioner Cummings** recalled about ten years ago a proposal for a corridor management study for US #41 that would have established US 41 for scenic by-way money but the project never proceeded because of concerns with zoning expansion. **Commissioner Cummings** agreed this issue is very complex but everyone has agreed something needs to be done. **COMMISSIONER CUMMINGS MOVED FOR APPROVAL OF STAFF'S RECOMMENDATIONS WITH EXCEPTION OF REFERENCES TO FENCES TO BE DELETED FROM THE CODE, SECONDED BY COMMISSIONER DeBOER. Commissioner Moore** expressed concern regarding the impact of 50 square foot monument signs on the residential neighborhood. **Commissioner DeBoer** agreed with **Commissioner Moore**, stated **Commissioner Cummings** was searching for compromise, and opined a request for a monument sign in this area would be brought back for Board action quickly. **COMMISSIONER CUMMINGS MOVED FOR APPROVAL TO ENACT ORDINANCE 2005-040 BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED APRIL 6, 2005, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, REVISING SECTION 3-9-52, "U.S. HIGHWAY 41 ZONING DISTRICT OVERLAY", SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS.**

COMMISSIONER DeBOER MOVED FOR APPROVAL TO ENACT ORDINANCE 2005-041 BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED MARCH 3, 2005, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING FOR PETITION PA-04-12-72, SECONDED BY COMMISSIONER CUMMINGS AND DECLARED UNANIMOUS.

COMMISSIONER CUMMINGS MOVED FOR APPROVAL TO ENACT ORDINANCE 2005-042 BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED MARCH 3, 2005, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING FOR PETITION PA-04-12-73, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.

COMMISSIONER CUMMINGS MOVED FOR APPROVAL TO ENACT ORDINANCE 2005-043 BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED MARCH 3, 2005, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING FOR PETITION PA-05-01-03, SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS.

COMMISSIONER CUMMINGS MOVED FOR APPROVAL TO ENACT ORDINANCE 2005-044 BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED MARCH 3, 2005, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING FOR PETITION Z-05-01-01, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS.

Rob Berntsson, McKinley Law Firm, requested that Agenda Item 19, SMH Group Condominiums (DRC-P-04-40)(Quasi-Judicial) and Agenda Item 20, Moreland Townhomes, LLC (Quasi-Judicial), be continued to the June meeting. COMMISSIONER DeBOER MOVED FOR APPROVAL TO CONTINUE AGENDA ITEM 19, SMH GROUP CONDOMINIUMS (DRC-P-04-40) (QUASI-JUDICIAL) AND AGENDA ITEM 20, MORELAND TOWNHOMES, LLC (QUASI-JUDICIAL), TO THE JUNE 2005 LAND USE MEETING, SECONDED BY COMMISSIONER CUMMINGS AND DECLARED UNANIMOUS.

Agenda Item 14 - PA-05-02-07 (Legislative) and Agenda Item 15 - Z-05-02-08 (Quasi-Judicial)(consolidated)

(Chairman Devos polled the Board for Ex-parte Disclosures. There were none.)(Supervisor of Minutes Diane J. Nice, administered the oath to prospective witnesses.) Jie Shao, Planner II, explained Mitsubishi Automobile Agency, has filed for a small-scale amendment from Low Density Residential to Commercial Corridor and a companion rezoning from Commercial General and Residential Single Family (RSF) - 3.5, to Planned Development (PD); presented visuals of the site located Southeast of Ellicott Circle and Southwest of US 41 within the US 41 Overlay boundaries, and South of the site are all RSF-3.5; in 1998 the existing auto sales business was approved by special exception with conditions prohibiting automobile repair service; approval of both petitions will expand the existing car dealership and place an automobile repair service at the rear of the site; the proposed development is one of the intensive uses prohibited by the Overlay Code; staff met with applicant on moving the sales building and proposed repair service to the

front lots facing US 41 in order to minimize impact on residences; applicant did not incorporate the suggested changes; and staff recommends denial of both petitions. **Commissioner Cummings** advised of an contact with Applicant its engineer on the petition being presented and why it was a good proposal. **Commissioner Moore** and **Chairman Devos** said they had the same conversations, **Commissioner D'Aprile** had none, **Commissioner DeBoer** had none. Rob Berntsson, McKinley Law Firm, stated he would combine his comments for the plan amendment and rezoning; introduced Mr. Thompson, Mr. Collum and Mr. Perpesque, of Mitsubishi Automobile Agency; explained this was a request for a plan amendment and re-zoning on a 1.76 acre parcel; an acre of which already has the Commercial Corridor designation; extending the Commercial Corridor designation is in keeping with discussion earlier today; the majority of this block where the Commercial Corridor exists already extends to the second tier of lots; existing homes on residential lands were virtually destroyed by Hurricane Charley and are surrounded by commercial on two sides and roadways on the remaining two sides; and redevelopment of this parcel as a residential unit is unlikely and inappropriate. Attorney Berntsson explained the commercial land use on the FLUM, this request is consistent with the Comprehensive Plan policies, because of the buffering techniques the PD allows, stated the residential properties are protected from more intensive use by installation of a wall with landscaping on the outside; the PD allows compatibility with residential uses and meets the first standard of re-zoning; it is consistent with commercial uses along the two-block wide portion of US 41 which contains Commercial Intensive (CI) Zoning on three of the four corners at Midway Blvd. that abuts directly to residential; PD requires a 25' setback and enhanced buffering that complies with condition 2; as to condition 3, there should be no increased traffic load as new and used car purchasers already travel on US 41 going to dealerships further north or south; as to condition 4 on re-zoning and conditions to be changed, there have been many condition changes not only because of Charley, but as a result of numerous reasons; a new car dealership is not inconsistent with beautification of US 41 with an appropriate site plan as shown in this project; the Overlay District specifically allows for PD rezoning for compatibility with US 41 improvements; the proposed change would not influence living conditions based on the PD enhancements and would not negatively effect public safety or reduce light and

air in compliance with conditions 5,6 and 7. Attorney Berntsson reported the existing used car business has grown to a point where a new car dealership is appropriate with accessory uses; lots 1 and 2 are now inappropriate for residential use; at meetings of the applicant, their engineer, staff and the P & Z Board, the main issue was to lessen the impact to residential by putting the building closer to the US 41 side. Attorney Berntsson indicated staff was opposed to the petitions due to noise concerns; suggested moving the buildings forward would reduce the noise to the south; in order to address the issue, a study was done by Quietly Making Noise, LLC, an acoustical consulting and noise control professional, that was distributed to the Clerk and the Commissioners, specifically for conclusions on page 9 of 17; the prior pages are the basis for the conclusions; concluded an 8' buffering wall provides greater protection to the residential properties because the wall will not only buffer the proposed project, but buffer the ambient noise from US 41; noted of the 9 conclusions item 3 is the most important and indicated the barrier wall of the projected average sound levels are 46 dba or less, which is similar to typical nighttime noise level limits for residential areas; item 4 reflects predicted maximum sound levels, which are bursts of sounds not long-term sound, within the average of 50 to 55 decibels, with exception of one scenario at 56 decibels, still within acceptable sound levels; asked approval of the plan as submitted because putting the car dealership at the front of US 41 does not work as the inventory of new and used cars need to be out front and there is no actual need to move the buildings forward to US 41 because the noise level to the surrounding properties is well within acceptable levels; offered to answer questions and requested time for rebuttal. Phil Trejo said this use is not wanted in the neighborhood due to noise, body work, and paint smells, and this is too intensive to abut the residential area.

(Supervisor of Minutes Diane J. Nice administered the oath to Eileen Taso.) Ms. Taso, an Ellicott Circle resident, stated she, her husband, and neighbors have concerns because Ellicott Circle is a no-truck-route circle and a quiet street where elderly and young people walk, jog, play and bike; additional buildings would be a detriment to the area; and one of the homes on Lots 1 and 2 was a lovely home and could be rebuilt. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY**

COMMISSIONER MOORE AND DECLARED UNANIMOUS. (County Administrator Bruce D. Loucks replaced Assistant County Administrator Kelly Shoemaker for the remainder of the meeting.) Attorney Berntsson addressed concerns by stating there would be no body work or paint fumes in this facility; the site plan indicates no access from the rear because of a continuous wall and storm water; and all access would be from US 41. **Commissioner DeBoer** inquired on the use of external speakers. Attorney Berntsson indicated to his knowledge no external speakers would be used since pagers, beepers and cellphones would be used. **Commissioner D'Aprile** said he is familiar with noise that is generated from an automotive repair center and realizes the reputation of some of the auto shops are not wanted in residential areas, and he has a concern with a car dealership being located in the middle of a residential area due to detrimental impacts on residents. **Commissioner D'Aprile** asked Attorney Berntsson if there was a dealership on this site at the present time. Attorney Berntsson replied there has been a used car lot on the site since 1998 or 1999 by virtue of a special exception. **Commissioner D'Aprile** said a used car lot is not the same as a repair facility, and questioned the intent to erect a wall all the way around Elliott Circle. Attorney Berntsson answered affirmatively, as shown on the site plan, explained applicant's willingness to erect an 8' wall based upon the noise study that was done which showed that the proposed wall would keep noise to the adjoining property well within the acceptable limits and reduce noise from US 41. **Commissioner D'Aprile** requested confirmation there would not be a paint shop at this facility. Attorney Berntsson replied affirmatively. **Commissioner D'Aprile** said there are other noise factors at an automotive repair center and dealership and asked if an 8' wall around this dealership would be sufficient. Attorney Berntsson said the company that did the noise study went to a similar type facility and size facility. **Commissioner D'Aprile** asked if a concrete wall would be erected. Attorney Berntsson said he was not sure but it would either be concrete or Styrofoam with stucco overlay. **COMMISSIONER MOORE MOVED FOR APPROVAL TO ENACT ORDINANCE 2005-045, BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED APRIL 6, 2005, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING FOR PETITION PA-05-02-07, SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS.** **Commissioner DeBoer** stated that most of his support for the motion is based upon the competent, substantial evidence which addresses the noise

concern has been presented. **Chairman Devos** said the greatest concern the Board has is the need to protect residential areas, and this proposal does so by preventing access from the residential road. Mr. Cookingham reminded the Board the motion should include an amendment of item 8 of the PD for an 8' wall in lieu of a 6' wall. Attorney Berntsson said that matter also applies to the PD petition **Commissioner D'Aprile** asked for confirmation that there is no egress on this wall from Ellicott Circle. Attorney Berntsson replied affirmatively and requested the Board insure the site plan for the Pine Development Ordinance is the plan submitted with the addition of the 8' wall and not the limited conditions in the staff report. **Commissioner D'Aprile** suggested an additional condition to prohibit an auto body repair shop or paint shop on the site. Attorney Berntsson reviewed a copy of the Board information, requested condition 1 be deleted and re-number the remaining conditions, and amend condition 8 to reflect an 8' high opaque wall in lieu of a 6' wall. **Commissioner Moore** suggested the prohibition of an auto body repair shop or paint shop be condition 1 and the remaining conditions need not be re-numbered. Attorney Berntsson said it might be appropriate to add a condition that the building be constructed in general accordance with the site plan that was submitted and all of the representations be included in the Ordinance. **COMMISSIONER MOORE MOVED FOR APPROVAL OF THE FOLLOWING CHANGES TO THE ORDINANCE: THAT ALL CHANGES BE MADE TO THE ORDINANCE: DELETE THE EXISTING LANGUAGE IN CONDITION 1 AND SUBSTITUTE "THERE SHALL BE NO AUTO BODY SHOP OR PAINT SHOP", REVISE CONDITION 8 FROM A 6' OPAQUE WALL TO AN 8' OPAQUE WALL, AND THAT THE PROJECT WILL BE DEVELOPED IN ACCORDANCE WITH THE SITE PLAN AS SUBMITTED, SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS.**

COMMISSIONER DeBOER MOVED FOR APPROVAL TO ENACT ORDINANCE 2005-046, AS AMENDED, BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT FOR PETITION Z-05-02-08, DATED APRIL 6, 2005, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS.

Agenda Item 16 - SV-05-02-02 (Legislative)

James Dossett, Development Review Division Manager, presented petition SV-05-02-02 filed by John Zack, for vacation of Pico

Drive which is an existing 30' wide unimproved right-of-way or about 0.09 acres; and the applicant intends to reconfigure 8 lots shown in visuals with an additional portion of land into 5 lots; the area is in a Coastal High-Hazard Zone and density will be limited to 3.5 units per acre if re-platted; currently 8 houses might be built on those lots but applicant will reduce it to 5 units with the additional land from the street vacation; staff and the P&Z Board have reviewed and recommend approval of the petition. **Chairman DeVos** inquired if the applicant had a presentation. The applicant indicated no by a hand wave. Gail Buray stated she owned the property on the other side and asked confirmation of her understanding that the street being vacated would be divided so that half goes each way. **Chairman Devos** responded affirmatively. **COMMISSIONER MOORE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS. COMMISSIONER CUMMINGS MOVED FOR APPROVAL TO ADOPT RESOLUTION 2005-080 VACATING A PORTION OF PICO DRIVE, LOCATED BETWEEN CYRANO DRIVE AND EUCALYPTUS DRIVE, PUNTA GORDA AREA, CHARLOTTE COUNTY PETITION SV-05-02-02, SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS.**

Agenda Item 17 - PV-05-02-03 (Legislative)

James Dossett, Development Review Division Manager, presented PV-05-02-03, filed by The Village of Holiday Lakes Charlotte County Home Owners Association pertaining to 10 residential lots that surround Loris Court, where amenities have been put in; the vacation will consolidate 10 lots into one parcel of common property; the P&Z Board heard this petition on April 11, 2005 and recommended approval with one condition for easements to Florida Power and Light (FPL) and Charlotte County Utilities (CCU). Mike Cripps, Manager of Village of Holiday Lakes, stated there is a concern in granting an easement to the utilities because all of The Village of Holiday Lakes is served by Charlotte County Utilities, and Loris Court itself has county utilities right up the middle and once it crosses over a certain boundary line, the utilities become the responsibility of the Homeowner Association, so they are not certain what public easement can be granted to CCU. Mr. Cripps recalled General Development Corporation never developed the 10 building lots and later common elements were constructed and carried on by the Association. **Commissioner Moore** asked for clarification of the utilities. Mr. Cripps explained CCU services the Village, the

actual sewer line runs up the middle of Loris Court, and once the sewer line crosses over the dark red line it becomes the responsibility of the Homeowners, so there is uncertainty regarding the easement grant. Mr. Dossett said the exact location of the utility lines are not represented, but if the lines were outside of the public right-of-way, the utility and FPL are covering themselves; at the terminus of the junction referenced there is usually a small easement granted, it probably already exists for meters and cleanouts; and it is not anticipated the easements would delay the vacation. **Commissioner Moore** asked applicants position on the requirement of grant of the easements. Mr. Cripps agreed. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS. COMMISSIONER CUMMINGS MOVED FOR APPROVAL TO ADOPT RESOLUTION 2005-081 VACATING A PORTION OF THE PLAT OF VILLAGE OF HOLIDAY LAKE SUBDIVISION FOR PETITION PV-05-02-03 WITH THE CONDITION FOR GRANT OF EASEMENTS, SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS.**

Agenda Item 18 - SV-05-01-01 (Legislative)

James Dossett, Development Review Division Manager, presented petition SV-05-01-01 filed by Sandy Lane, LLC for vacation of a portion of Eighth Street, Dakota Avenue and a certain alleyway shown on the visuals; all utilities were notified and FPL and the Englewood Water District have improvements that will be impacted; they are requesting appropriate easements be granted prior to vacation of the right-of-ways; the site contains approximately 0.65 acres if all is vacated; staff initially presented the petition to P&Z with a recommendation for denial because consolidation of the acreage would produce 5 more lots, a portion of which is in a Coastal High Hazard Zone, Category 1, Storm Surge area, and it may be developed into residential multi-family without platting; the Comprehensive Plan directs platting in a Coastal High Hazard Zone would allow a maximum density of 3.5 units per acre instead of RMF-5. Mr. Dossett indicated staff presented to P&Z a recommendation of approval with two conditions to require appropriate easements and establishment of the number of units but at this time staff recommends denial based on the 2 unit difference because if the 66 units can be built without a side agreement, which is much higher than 3.5, and there is no control because no re-platting is required; there is control in giving applicant the

approximate 2/3 additional acre, and a side agreement is required restricting development to 60 units on all of the property; and showed on the visuals the property owned by applicant. Attorney Berntsson indicated the applicant was in ownership of the property all the way to the end with no houses on the block and stated the vacated area would not serve as a street. **Commissioner D'Aprile** asked who owned the property across the street from the property to be vacated. Attorney Berntsson said it was owned by the County and produced a graphic showing the applicant owns the block being shown and the two succeeding blocks to the south, the road between is vacated, Eighth Street has been vacated, the County owns half of it and the applicant owns the other half; his initial thought was that the County would probably vacate the entire roadway because it owns the other side, but decided to submit the current application that does not prohibit the County from vacating their portion; indicated two months ago the first street vacation came before the P&Z Board with a TDU density issue; up to that point he advised clients that a street vacation was not all that difficult to obtain; suggested placing a covenant on the land directing that density would not increase as a result of a vacation; staff calculated density, not taking into account the non-conforming nature of the plotted lots that are already on the property; explained the graphic shows if the application for vacation is denied, 63 units would be allowed on the property, the lots are 30; wide, 8 units can be built on Block 2; there is no disagreement between staff, he and his client, that 55 units can be built on the property to the south, only on the number of units at the top of the visual; the applicant is willing to limit the density for the project to 62 units with the condition that no more than 8 units be placed on the land that already allows 8 units; staff's position requires a recalculation to 5 units, plus the 55 on the southern part for a total of 60 units; if applicant is able to use the additional land from the vacation toward density, it would allow 66 units overall on the project; applicant is willing to limit development to 62 units and provide a covenant that would be recorded and run with the land stating no more than 62 total units and no more than 8 units on Block 2; said this compromise has been presented but staff does not believe it is acceptable; and the question is not whether or not the vacation is good or bad, but requiring an applicant to reduce density under what is currently allowed. **COMMISSIONER DeBOER MOVED TO CLOSE THE**

PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS. Commissioner Moore requested staff's current position on the 62 vs. 60 units. Mr. Dossett replied Comprehensive Plan limits development in Coastal High Hazard Zones to not more than 3.5 units per acre but the wording was "you shall not have more than 3.5 units per acre on platted properties" and staff recommends approval with two conditions to require appropriate easements and 3 separate agreements to allow development of an accumulative aggregate number of 60 units. Attorney Berntsson clarified it is 62 units based upon his client's 60 plus the 2 that exist; the Comprehensive Plan makes perfect sense when applied in a different circumstance but not in this case; the land has already been platted and applicant is entitled to 8 units ; there is no dispute on the 8 single family homes that could be built on Block 2 with or without the vacation; the difference is, the Comprehensive Plan (1) talks about vacating antiquated plats which is being done and (2) penalizing someone for the vacation is not appropriate; there is no disagreement with staff in what they are attempting to accomplish in another unplatted piece of property but in this instance there are vested, platted property rights. **Commissioner Moore** questioned if applicant requested the land be vacated. Attorney Berntsson stated applicant is not using the land for additional density because they are reducing the density and the net density is reduced because there is more land with fewer units. **Commissioner Cummings** said he doesn't agree with the entire statement of not penalizing somebody, believing there is a public asset that is currently owned and asking to be granted, and he doesn't think it unreasonable for the public to be given something in exchange for granting property to a private entity. **Commissioner Cummings** disagreed because there is a public asset that is currently owned and asking to be granted, and he does not think it unreasonable for the public to be given something in exchange for granting property to a private entity; he does not view it as penalizing, but creating an exchange; there should be a public good for which he sees potential for a PD to create a more superior development instead of making substandard lots longer since the County owns the property on the other side of the road, it might be more prudent to vacate the entire thing and remove the County's obligation to provide a road; commented in support of staff's recommendation, vacating the entire road, and allowing 60 units and asked Mr. Dossett if there was some reason the County would not want to vacate the entire road. Mr.

Dossett advised Public Works uses half of the right-of-way for maintenance of the stormwater facilities; if it was vacated Public Works could continue using it because the other half would still be County property but there would be a difference in liability i.e., County property vs. public right-of-way; and it would be worth looking into. Mr. Dossett reported the County Attorney's office, Community Development, and the applicant have spent a lot of time on this; staff cannot tie this vacation to a future PD being submitted; Attorney Berntsson suggested the side agreements be recorded at the same time; the entire street would be vacated; the County would get half of it, but it would be public right-of-way, which would possibly be a cleaner situation; and he and Attorney Berntsson have discussed the 60 units vs. 62 units during which Attorney Berntsson indicated the real issue is the density reduction and it appears the County could say it vacated the right-of-way and also reduced density. **Commissioner Moore** said it could get complicated if the Board were to deny the petition. Attorney Berntsson stated he assumed the plan had been shared; explained the plan is for a multi-family condominium project; the two neighbors support the project and willing to sign limitations on the density; and there has been discussion with Public Works, and there may be more, about taking over maintenance responsibility of the pond and making that a part of the amenity of the overall project. **Commissioner D'Aprile** asked if these were high-end condominiums. Attorney Berntsson stated they were relatively high-end. **Commissioner D'Aprile** said the issue is 2 units that costs around \$600,000 for the developer and he does not see a problem with 2 additional units. Mr. Dossett said if this area was not vacated and applicant continued to develop, it would be a patch-work; if the petition is approved the County would be getting a better designed development instead of having three little developments that are criss-crossed with public right-of-ways. **Chairman Devos** agreed with **Commissioner Cummings** on vacating the entire road due to Attorney Berntsson's statement that the owners are perhaps willing to take over the management of that area, and it would alleviate one more shell road. **Chairman Devos** agreed two units would not make a significant difference but would like to see the entire road vacated and Public Works not have to worry about the maintenance of that area. Attorney Berntsson said there would be nothing to stop the County from coming back and doing that. **Commissioner Moore** said there is a very large pond requiring a great deal of maintenance surrounded

by fencing and the Board should be careful in assurances regarding the maintenance. **Commissioner Moore** said, on behalf of the people of Grove City, that no matter what part of the County is vacated, they reject that the County should be reimbursed in some form. **COMMISSIONER CUMMINGS MOVED FOR APPROVAL TO ADOPT RESOLUTION 2005-082 AND PETITION SV-05-01-01, WITH THE AMENDMENT THAT ALL OF THAT PORTION OF EIGHTH STREET IS VACATED, WITH THE TWO PORTIONS GOING TO THE COUNTY AND THE APPLICANT, AND THAT THE TOTAL UNITS ALLOWED BE PURSUANT TO STAFF'S RECOMMENDATION AS THEIR DETERMINATION IS MOST CONSISTENT WITH THE COMPREHENSIVE PLAN, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS.** **Chairman Devos** asked if there is further discussion on applicant taking over management of the area. Attorney Berntsson replied two more units would go a long way to providing maintenance. **Commissioner Cummings** stated it is easier to grant units than it is to remove them from the FLUM if Applicant wishes to continue talking with Public Works and staff determines there is sufficient public good that something should be granted through the TDU Ordinance, then a proposal could be brought back; if applicant wants to negotiate with staff on the two units in exchange for maintenance, **Commissioner Cummings** would be willing to consider it. **Chairman Devos** agreed. **Chairman Devos** said she mentioned long ago her concerns about garages on U.S. #41, now there are more, most of them facing U.S. #41 and whatever criteria allows them should be changed expeditiously.

MEETING ADJOURNED: 1:15 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**

djn/gm