

**LAND USE PUBLIC HEARINGS**

**BOARD OF COUNTY COMMISSIONERS**

**SEPTEMBER 20, 2005**

Public Hearings on Land Use petitions were held at the Murdock Administration Complex in Room 119, Port Charlotte, Florida. The following members were present: Vice Chairman Thomas G. Moore and Commissioners Thomas C. D'Aprile and Matthew D. DeBoer. Also in attendance were Assistant County Administrator Roger Baltz, Assistant County Attorney Richard A. Browne, Executive Assistant to the Board Joann Dillon, and Deputy Clerk Gail Manley. (**Chairman Sara J. Devos and Commissioner Adam Cummings were not present for the meeting.**) The meeting was called to order at **9:00 A.M.** followed by the Pledge of Allegiance to the Flag. (**Proof of Publication was in Order.**)

**I. CHANGES TO THE AGENDA**

**Deletions:** Agenda Item 3, Petition CSZ-05-07-06 for Certification of a Sending Zone filed by Up The Creek Partners

Agenda Item 6, Petition PA-05-05-34-LS for an amendment to the Recreation and Open Space Element of the 1997-2010 Comprehensive Plan

**COMMISSIONER DeBOER MOVED APPROVAL OF THE CHANGES TO THE AGENDA, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0).**

**II. PLANNING AND ZONING AGENDA**

Agenda Item 1 - PV-05-06-09 (Legislative) (District III) (Proof of Publication was in Order.)

James Dossett, Development Review Manager, announced Up The Creek Partners, Risk All LLC filed this petition in conjunction with Petition PP-05-06-07; this petition is for vacation of Lot 21, Block A, Mobile Gardens Subdivision and Lot 12 with portions of Lots 11 and 13, Grove City Land Company Subdivision on approximately 13.647 acres located north of Oyster Creek, south of Mobile Gardens Subdivision; Planning & Zoning (P&Z) Board

heard the petition on August 8, 2005 and recommended denial; explained the Board's decision should be made on a fairly debatable basis; Utilities, Public Works, and Environmental Services had no objections to approval of the vacation; Zoning had an objection because the MHS zoning does not allow for a road to cross a single family lot; Land Development has an objection to the vacation based on Florida Statute 177.101(3), County Code Section 3-3-6.05, Land Use Element Objective 4-4, and the review process; and if this petition and PP-05-06-07 are approved, the Subdivision could be subjected to additional 190 automobiles per day (10 trips per day for 19 lot owners). Geri L. Waksler, Moore & Waksler P.A., appeared on behalf of petitioner by objecting to the requirement of filing for and obtaining the vacation prior to consideration of PP-05-06-07 under Florida Statute 177.01(2) and stated the vacation complies with all County Codes and Florida Statutes ownership and access rights. Mary Sprague, a County resident since 1979, a Professional Engineer, and a qualified expert witness in land development, design, and permitting of roadways, utilities, stormwater, and drainage of industrial, commercial, and residential projects; explained when the original land was purchased 10 years ago, Oyster Creek split the property into three parcels on which Landmark Landings was developed on the east side, the south side abuts County land, and the subject parcel is on the north side of Oyster Creek and south of Mobile Gardens; shortly after the acquisition, petitioner tried to gain access to the land locked parcel via the Dunwoody property which is now owned by the County; she first contacted the County in February 1999, signed a willing owner's statement in October 1999, and the County closed on the Dunwoody property in November 1999; in July 2001, Florida Communities Trust (FCT) in conjunction with the County made a very low offer that was declined, then she approached the County to purchase an easement through the property; good faith negotiations continued for five years to purchase or trade for an easement even though the County Attorney advised that the way of necessity was through Mobile Gardens based on letters of November 5, 2002 and March 9, 2004 from Assistant County Attorney Lewis Whitehead; petitioner started to pursue this access by sending a letter to Zoning Director Tom Smith to request if petitioner would be allowed to provide site access through a residential lot in Mobile Gardens, discussions were held regarding development plans, in November 2004 Mr. Smith responded with a letter of no objection provided

a buffer was constructed between petitioner's lot and two adjacent lots with a development limited of 19 lots in lieu of the 70 units allowed under the zoning designation, and petitioner agreed; the development limitation will be guaranteed by approval of the Transfer of Density Units application; and in May 2004 petitioner acquired the adjacent parcel directly to the north and in September 2004 purchased Lot 21 in Mobile Gardens to provide access. Ms. Sprague advised staff never indicated that a road or driveway was not an allowable use in an MHS zoning district or the proposed use was not in compliance with the Comprehensive Plan; zoning regulations cannot be arbitrarily applied; there are no zoning restrictions, ordinances, or any laws prohibiting the use of a road or driveway in MHS or any other zoning district; she has confirmed that all development issues have been addressed and that central water and sewer are available; and public benefits include the elimination of two dead-end lines, better water quality and flow, and the installation of additional fire hydrants and an interceptor swale along the northern property line to provide better drainage. Ms. Sprague reported by the end of 2004, petitioner had invested over \$500,000 to obtain access to develop their property in a manner consistent with County policy and reviewed 14 examples found in the packet and other examples granting access via easements over lots or through resolutions approved by the Board. Attorney Waksler commented on the examples shown on the map that provided access to subdivisions, pointed out no specific Code provision has been referenced that prohibits vacation of platted lots to provide such access, and the last example is specific to access through a MHS lot which is the same zoning in this petition; the Comprehensive Plan section referenced by staff deals with subdivision of land which is not the issue before the Board; pointed out dedication provisions for Mobile Homes Gardens plat allows for the dedication of easements around the perimeter of the lots to Charlotte County for utilities drainage and purposes consistent with development of the land; recalled none of the County Departments objected to the vacation; petitioner has agreed to grant back easements through the lot they are seeking to have vacated; and requested approval of the vacation. Mr. Dossett stated many times during the last year, attorneys have requested vacation of an underlying plat for clarification with a new subdivision plat immediately thereafter; vacation of Lot 21 may be required pursuant to the covenants on the property; even through Mr.

Smith had no objection in 2004, the vacation is inconsistent with the current Code; and staff's recommendation for denial is primarily based on Florida Statutes and Comprehensive Plan requirements. Michael P. Haymans, Farr Law Firm, appeared on behalf of Mobile Gardens Association and residents in opposition to the plat vacation and PP-05-06-07 due to numerous concerns; reminded the Board of the "fairly debatable" standard for decision-making purposes; suggested the Board consider the common sense of vacating a single lot; stated approval will create increased traffic and pedestrian safety hazards; this is an insular over 55 secured community; and requested denial. Raymond H. Bardwell, former Professional Engineer, Joyce Shull, Mobile Gardens Homeowners Association President, Joseph Andres, Kenneth E. Yoerger, Don Del Gatta, Sandra Galloway, Dave Jackett, Jim O'Dell, Mobile Gardens Homeowners Association Vice President, Thomas K. Gasheen, Marlene Nibert for herself and her husband Carroll L. Nibert, Christine Vejnovich, Robert Bodtke, Norma Staler, and Bob Willoghby, as well as others in the audience who were identified by a raising of hands, expressed opposition to the vacation based on various factors including the health, safety, and welfare of residents and to keep the community as it is today. Gregory Weyers, a Professional Surveyor Mapper, a qualified expert witness, and partner in the Hidden Waters development, outlined his qualifications and summarized numerous encroachments onto the Hidden Waters property and into public drainage and utility easements along the rear of lots in the 900 block of Via Deluna identified during and after his initial property survey. **COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS (3:0).** Commissioner D'Aprile expressed opposition to increasing traffic in this and other senior communities; because staff's position has changed regarding approval of the vacation, suggested a solution be found to allow the developer access to the landlocked property; and questioned the possibility of building an access road and appropriate drainage on land adjacent to the Park. Mr. Dossett stated a 20 feet wide easement would not be sufficient to construct a road and drainage improvements to serve 19 units but there may have been a 40' easement recently granted to someone else across Park property to provide access and that size of an easement would be sufficient for the road and drainage improvements. **Commissioner D'Aprile** stated that would be his preference. **Commissioner DeBoer** pointed out two distinct issues

exist for the right to develop and the right to access; the issue at hand is the right to access; there are vested rights to develop 70 units on the property which is one of the trade offs to reduce it to 19 units with access through Mobile Gardens; if access is provided over County property to other roads, then other residents will complain; if the developer is forced to go another route and pay more for access, they would probably ask to develop the full 70 units; and all of the other possible outcomes, including court actions, would be more offensive than what is being proposed. **Vice Chairman Moore** explained access could be across the stream off of San Casa but that would be costly; the land is worth a lot of TDUs; and he has not heard justification to allow access through Mobile Gardens. **Commissioner D'Aprile** agreed with **Commissioner DeBoer** on petitioner's right to develop 70 units, acknowledged efforts to negotiate a reasonable solution, and questioned what petitioner would do to make it better for residents. Ms. Sprague expressed a willingness to negotiate; recalled a gravel road constructed by the County in the Park to the center of the west property line off of Shadow Lane and it was suggested that a temporary easement be obtained for construction vehicles to use the gravel road for development purposes; estimated the time of construction would be three to five months; indicated a traffic study might be done as part of the final Development Review Committee (DRC) proceeding but conversations with traffic engineers indicate the 19 additional lots will not generate a significant increase in traffic or lower the level of service; agreed to limit traffic to deed restriction standards and work with contractors on the importance of driving through the subdivision; she met and received a letter from Public Works Director Thomas O'Kane about no objection to the project; and expressed a willingness to work with residents of Mobile Gardens as well as the County Attorney's Office to draft a temporary easement over County property to access the development for construction purposes. **Commissioner D'Aprile** stated too many loose ends exist. Mr. Dossett stated a temporary easement might be possible but he would have to get with Parks, Recreation and Cultural Resources Director Laura Kleiss-Hoeft to ascertain the impact on the park. **Commissioner D'Aprile** opposed construction traffic accessing the development through the subdivision. Ms. Sprague indicated a willingness to bond the entrance road into her property as well as take a video of the entire path of construction along Via Deluna and offered to bond the roads so

at the end of construction, repairs and/or replacements would be done to County standards. **Commissioner DeBoer** stated another access would initiate complaints from other residents, the offer to bond against any roadway damages is probably the best alternative, and a decision should be made today. **COMMISSIONER DeBOER MOVED APPROVAL OF PLAT VACATION PETITION PV-05-06-09, A PORTION OF GROVE CITY LAND SUBDIVISION AND MOBILE GARDENS, SECONDED BY VICE CHAIRMAN MOORE. CALL ON THE MOTION: COMMISSIONER DeBOER VOTED "YES" AND VICE CHAIRMAN MOORE AND COMMISSIONER D'APRILE VOTE "NO." MOTION FAILED: (2:1). COMMISSIONER DeBOER MOVED DENIAL OF PLAT VACATION PETITION PV-05-06-09, SECONDED BY COMMISSIONER D'APRILE. VICE CHAIRMAN MOORE AND COMMISSIONER D'APRILE VOTED "YES" AND COMMISSIONER DeBOER VOTED "NO." MOTION CARRIED: (2:1).**

**RECESS: 10:55 A.M. - 11:04 A.M.**

Agenda Item 2 - PP-05-06-07 (Quasi-Judicial)(District III)  
(Proof of Publication was in Order.)

**(Deputy Clerk Gail Manley administered the oath to prospective witnesses.)** Mr. Dossett presented the request for preliminary plat approval filed by Up The Creek Partners, Risk All LLC for Hidden Waters Subdivision consisting of 19 residential lots, north of Oyster Creek, south of Mobile Gardens, on approximately 13.647 acres; Utilities, Public Works, and Environmental Services had no objections but Zoning objects because an access road to a subdivision cannot take place across a single family lot since it would be the only use on the lot and it would become the primary use; Land Development staff objects based upon Policy 4.4.2 of the Future Land Use Element of the Comprehensive Plan that requires, prior to plating of a specific parcel of lands, a plat vacation must have been approved for any previous plat of that land area which is inconsistent with the new proposed plat; the Board just denied the vacation of Lot 21; and requested denial. **(Vice Chairman Moore polled the Board for ex parte communications. Commissioner DeBoer stated he had conversations with Ms. Sprague and Attorney Waksler about the history and development of the project and received correspondence and pictures on the encroachments from them as well as numerous letters from citizens in opposition that have not met the level of substantial competent evidence except, perhaps, the professional engineer who spoke during the prior**

petition hearing. Commissioner D'Aprile concurred. Vice Chairman Moore concurred with regard to the communications.) Attorney Waksler appeared on behalf of petitioner seeking a preliminary plat approval for a 19-unit single-family subdivision and stated she has questions for Mr. Dossett and Planner III Jorge Perez as part of cross-examination. Attorney Waksler requested Mr. Dossett to reference the specific County Code section that prohibits the use of a lot for access. Mr. Dossett advised the Code sets out allowable uses and a road is not listed as a primary use for a single-family lot. Attorney Waksler questioned if there is any zoning district that lists roads or driveways as permitted primary uses. Mr. Dossett responded no. Attorney Waksler asked if Public Works reviewed the preliminary plat including access through Lot 21 without objection. Mr. Dossett indicated yes but they did not review for zoning aspects. Attorney Waksler asked Mr. Perez if he could identify zoning districts that list roads or driveways as a principal permitted use. Mr. Perez responded no. Attorney Waksler questioned the accuracy that no building permit will be issued for lots having less than 50 feet of frontage. Mr. Perez stated no; the Code states that no building permit will be issued unless there is a variance as required under Section 3-9-10. Attorney Waksler explained her statement related to the staff report reference of the 50-foot wide lot frontage. Mr. Perez explained pursuant to Section 3-9-93 "no permit shall be issued for the erection of structures on a parcel of land or lot which does not abut a right-of-way for at least 50 feet." Attorney Waksler questioned the existence of an exception for properties of an irregular shape if there is a minimum building lot with 50 feet at the required front setback line. Mr. Perez stated a process exists for an exception. Attorney Waksler asked if any lots within the proposed subdivision measure less than a 50-foot width at the required setback line. Mr. Perez clarified the memorandum does not indicate there are lots that do not meet the 50-foot width; staff recommends that lots be reconfigured to meet the minimum width of 50 feet as measured at the front yard setback line; and added if the distance in feet is not specifically noted on the plat, then staff would recommend that petitioner graphically demonstrate compliance. Attorney Waksler concluded that is an advisory comment and not a finding by staff that the plat is inconsistent with the Code. Mr. Perez advised staff did not find or find the plat inconsistent. Attorney Waksler questioned if the same thing

applies to the comment regarding the 80 feet required minimum width at the mid point of the lot. Mr. Perez explained the cluster housing provision is applicable by right in a multi-family district and staff is not holding petitioner to the 80-foot requirement. Attorney Waksler pointed out the Board has the discretion to approve this preliminary plat even though the plat vacation was denied; the preliminary plat complies with all Code provisions and Florida Statutes; and called Ms. Sprague and Mr. Weyers to affirm their testimonies in the prior hearing. Ms. Sprague affirmed the testimony she gave in the legislative hearing for the plat vacation applies to this hearing and the testimony was true and correct. Mr. Weyers affirmed his testimony during the previous hearing was true and correct; stated the preliminary plat, as submitted, was prepared by him; and the proposed lot sizes measured 50 feet or greater at the 25 feet front setback line and 80 feet or greater measured along the mid-point of the lots. Attorney Waksler introduced Michael Sprague to speak on the results of the environmental study performed on the site. Michael Sprague, a qualified expert witness regarding environmental issues, one of the owners of Hidden Waters, and a 32-year County resident, outlined his professional qualifications and summarized the results of the study including the area to be placed in a conservation easement, artificial wetlands in the northwest corner of the property, and the wildlife survey conducted during various visits for bald eagles, gopher tortoises, and scrub jays. Attorney Waksler entered the previous testimony and exhibits by Ms. Sprague and Mr. Weyers. Attorney Waksler stated Florida Statute 177 makes it clear that recording of a new plat automatically annuls an underlying plat, staff could not specifically identify any zoning district that lists a road or driveway as a permitted use, roads and driveways are accessory uses permitted in all zoning districts, the testimony of Mr. Weyers indicates the lot sizes are in compliance with the 50 feet and 80 feet width requirements, County departments had no objections to the plat, the overall site does not contain any scrub jays or scrub jay habitats, the environmentally sensitive wetlands are preserved on the plat, and summarized residents' complaints regarding the proposed plat. Attorney Haymans, on behalf of Mobile Gardens Association, followed by Raymond H. Bardwell, Marlene Nibert, Thomas K. Glasheen, Bob Willoughby, Sandra Galloway, Norma Staler, James O'Dell, Joseph Andres, Joyce Shull, Dave Jackett, Don Del Gatta, commented in

opposition and incorporated true and correct testimony proffered in the previous hearing. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0).** Attorney Waksler testified the dedicated roadways within Mobile Gardens are 50 feet wide as shown on the plat even though testimony has been given that the actual pavement area is 18 feet wide; easements are reserved to the County, not in favor of individual property owners; County staff has indicated no objection to the use of this lot for access; evidence has established the preliminary plat complies with all County Code provisions; and requested approval. **Commissioner DeBoer** pointed out the Board serves as a ruling body as a Judge does in court cases, a decision must be based on competent substantial evidence with little weight given to opinions unless that testimony and evidence are presented by qualified professionals, and incorporated his comments from the prior hearing. **Commissioner D'Aprile** stated petitioner has a right to develop and commented in support based upon the decision-making standards in a quasi-judicial proceeding. **Vice Chairman Moore** requested assistance in the future from the County Attorney's Office regarding testimony in quasi-judicial proceedings and expressed opposition to approving the preliminary plat without access. **COMMISSIONER DeBOER MOVED APPROVAL OF PRELIMINARY PLAT PETITION, PP-05-06-07, HIDDEN WATERS, FILED BY UP THE CREEK PARTNERS, RISK ALL LLC, SECONDED BY VICE CHAIRMAN D'APRILE. CALL ON THE MOTION: COMMISSIONERS D'APRILE AND DeBOER VOTED "YES" AND VICE CHAIRMAN MOORE VOTED "NO." MOTION CARRIED: (2:1).**

Agenda Item 3, SV-05-06-10 (Legislative)(District I) (Proof of Publication was in Order.)

Mr. Dossett presented the petition filed by Earl and Sharon Goodwyne and JDMF Properties, Inc. for a street vacation of a section of Seventh Street, located north of Bloxham Avenue and between Block 75, Lot 1 and Block 73, Lots 1 and 2 of the plat recorded as "Town of North and South Cleveland"; the right-of-way is about .42 acres and 40 feet wide and 460 feet in length; there are no objections by utilities and County departments; P&Z Board heard the petition on August 8, 2005 and recommends approval; and staff recommends approval. Sharon Goodwyne, owner the bottom half of the property, requested approval of the vacation. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC**

HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0). COMMISSIONER DeBOER MOVED APPROVAL TO ADOPT RESOLUTION #2005-185 APPROVING STREET VACATION PETITION SV-05-06-10, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0).

Agenda Item 4, Charlotte Harbor CRA Residential Zoning District Revisions (Legislative)(Proof of Publication was in Order.)

Jorge Perez, Planner III, presented the ordinance reducing current Charlotte Harbor CRA residential front yard requirements from 25 feet to 10 feet to provide more flexibility of the land development regulations, this is the second of two public hearings, and offered to answer questions. Dick Loftus, Charlotte Harbor CRA Advisory Committee Chairman, appeared on behalf of the Committee in support of the change in setbacks. COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS (3:0). COMMISSIONER D'APRILE MOVED APPROVAL TO ENACT ORDINANCE #2005-072 AMENDING THE FRONT YARD REQUIREMENTS FOR RESIDENTIAL USES AND ZONING DISTRICTS AS SET FORTH IN THE CHARLOTTE HARBOR COMMUNITY DEVELOPMENT CODE BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING STAFF REPORTED DATED JUNE 27, 2005, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARINGS, SECONDED BY COMMISSIONER DeBOER. Commissioner DeBoer stated this is ineffectual and he will vote against it. CALL ON THE MOTION: CHAIRMAN MOORE AND COMMISSIONER D'APRILE VOTED "YES" AND COMMISSIONER DeBOER VOTED "NO." MOTION CARRIED: (2:1).

Agenda Item 5, Z-05-06-46 (Quasi-Judicial)(District II)(Proof of Publication was in Order.)

(Vice Chairman Moore polled the Board for Ex-Parte Disclosures. There were none.) (Deputy Clerk Gail Manley administered the oath to prospective witnesses.) Jie Shao, Planner II, presented the petition on behalf of the Board for a rezoning from Residential Multi-Family-12 (RMF-12) to Office, Medical, and Institutional (OMI) on a site located east of Elliott Street, south of Marion Avenue, west of Bay Palms Mobile Home Park, and north of Olympia Avenue, in Punta Gorda; the existing Zoning designation for the site is RMF-12 and the Future Land Use Map (FLUM) designations are Commercial Center and Commercial Corridor; approval of the petition will correct the

inconsistency between the designations; the site is suitable for OMI uses; results of a survey indicated six of eight property owners are in favor of the OMI rezoning; and staff and the P&Z Board recommend approval. **Commissioner DeBoer** stated Florida Statutes require correction of inconsistencies between the FLUM and Zoning designations. Ms. Shao agreed. **Commissioner DeBoer** questioned the existence of a governing designation in the Florida Statutes. Thomas A. Cookingham, Planning Services Manager, stated the primary rule is that the zoning must be in compliance with the Comprehensive Plan but the Board has the discretion to determine which is the best designation. **Commissioner DeBoer** concluded no governing statutory language exists but the general practice is that the zoning be consistent with the FLUM. **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 (3:0). COMMISSIONER DeBOER MOVED APPROVAL TO ENACT ORDINANCE #2005-073 APPROVING Z-05-06-46 BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED JULY 29, 2005, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0).**

Agenda Item 6, PA-05-06-47 (Legislative)(District II)(Proof of Publication was in Order.)

Ms. Shao presented the petition on behalf of the Board for a small-scale plan amendment from Commercial Center to Low Density Residential on a site located north of Olympia Avenue, east of Benning Court, south of Marion Avenue, and west of Marlympia Way in Punta Gorda; the zoning designation is Mobile Home Park (MHP) and the FLUM designation is Commercial Center; approval of the petition will correct the inconsistency; Low Density Residential is not the ideal option since the site is surrounded by Commercial land uses to the north, east, west, and south; last year, the majority of the mobile homes were seriously damaged by Hurricane Charley and most have been replaced; based upon the property owners desire to keep the mobile home park, staff recommends approval; and P&Z Board recommended approval. **Commissioner DeBoer** pointed out this is a situation in which the Board will be exercising its discretion as part of the legislative process. **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 (3:0).**

**COMMISSIONER DeBOER MOVED APPROVAL TO ENACT ORDINANCE #2005-074 APPROVING PETITION PA-05-06-47 BASED ON THE FINDINGS AND ANALYSIS CONTAINING IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED JULY 29, 2005 AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0).**

Agenda Item 7, PA-05-06-43 (Legislative)(District II)(Proof of Publication was in order)

Jan Rogers, Planner II, presented the request to amend the FLUM designation from Low Density Residential and High Density Residential to Commercial Center on an approximate 9.79 acre site divided in two locations; one area is north of Marion Avenue between Elliot Street and Setter Street and the other site is south of Olympia Avenue and north of LaVilla Road in Punta Gorda; current zoning designations are Commercial Intensive (CI), Commercial General (CG) and OMI; the FLUM and zoning designations are inconsistent and approval of the petition will correct the inconsistency; staff recommends approval; and the P&Z Board recommended approval with the exception of the Punta Gorda Marina parcel (account number 0099002-000000-0) which they recommended retain the High Density FLUM classification. Philip Palmer, Trustee of the John and Sandra Woolston Trust who own Punta Gorda Marina, advised Sandra Woolston is deceased and John Woolston is in the audience; they acquired the property in three separate transactions; he intends to continue operating a marina on the site; the property to the west is High Density Residential and the Woolston's home is on High Density Residential property to the north; the property runs from Marion Avenue to Charlotte Harbor; and requested the FLUM designation remain as High Density Residential.

**COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS (3:0). COMMISSIONER D'APRILE MOVED APPROVAL TO ENACT ORDINANCE #2005-075 APPROVING PETITION PA-05-06-43 BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED JULY 29, 2005, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER DeBOER.** Commissioner DeBoer requested clarification that the motion excludes the Punta Gorda Marina parcel. Richard Brown, Assistant County Attorney, stated the title of the ordinance allows the Board the discretion to exclude the parcel. **COMMISSIONER D'APRILE AMENDED**

**THE MOTION TO EXCLUDE THE PUNTA GORDA MARINA PARCEL AS READ INTO THE RECORD, SECONDED BY COMMISSIONER DeBOER. CALL ON THE MOTION, AS AMENDED, DECLARED UNANIMOUS (3:0).**

**COMMISSIONER DeBOER MOVED APPROVAL TO TAKE ORIGINAL AGENDA ITEM 12, PETITION PA-05-06-39, OUT OF ORDER, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0). (After a discussion between staff and outside attorney, it was decided the item to be taken out of order should be Agenda Item 11.) COMMISSIONER DeBOER MOVED APPROVAL TO TAKE ORIGINAL AGENDA ITEM 11, PETITION Z-05-06-38, OUT OF ORDER, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0).**

Agenda Item 8, Z-05-06-38 (Quasi-Judicial)(District II)Proof of Publication was in order)

Inga Williams, Planner III, presented the petition filed on behalf of the Board for rezoning from Industrial Light (IL) to Commercial Industrial (CI) to correct an inconsistency between the FLUM and Zoning Atlas on approximately 10.48 acres located south of Marion Avenue, north of Duncan Road (US 17), west of I-75, and east of Florida Street. (**Vice Chairman Moore polled the Board for ex parte communications and there were none.**) (**Deputy Clerk Gail Manley administered the oath to prospective witnesses.**) Ms. Williams continued the presentation for the first of two required public hearings; the site contains a Commercial Center FLUM and an Industrial Light zoning designation; surrounding properties also contain a Commercial Center FLUM, except for an inconsistency to the west, which contains a Low Intensity Industrial FLUM (PA-05-06-39 is a request for a change to Commercial Center); surrounding zoning districts are CI and Commercial Highway; staff is requesting a change from Industrial Light zoning to CI zoning to correct an inconsistency with the FLUM designation and surrounding zoning designations; staff recommends approval; and P&Z Board recommended denial because the FLUM designation should be changed to Industrial. Attorney Haymans, appeared on behalf of Jim Smith, Trustee, that owns two parcels adjacent to the west of the site; Mr. Smith has owned the property for many years and has relied on the Industrial zoning since it abuts the railroad and it may be considered as a railroad side connection in the future as permitted in Industrial Light uses; agreed with staff on the Industrial Light zoning for the furniture refinishing and

manufacturing company; requested the zoning be retained; and suggested a Comprehensive Plan change be done to correct the inconsistency. Bill Kopp stated he has known Mr. Smith for some time; the property has been zoned Industrial for at least 26 years and there are Industrial uses within the warehouse; there is a potential for a railroad siding; Piper Road will come out to the Shell Station; the Airport Commerce Park area will see great growth potential in the future; and agreed with the P&Z Board recommendation for denial. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0).** Commissioner D'Aprile stated a change from Industrial Light zoning would be inappropriate with existing Industrial uses and expressed a preference to deny the petition. **Vice Chairman Moore** questioned what would occur if the designation were all Industrial Light. Ms. Williams explained a Plan Amendment would be necessary to correct the inconsistency. **Commissioner DeBoer** explained this is an administrative process commenced by staff based on the need to correct inconsistencies, suggested the Board use its discretion to determine which of the FLUM or zoning designations be changed in this instance. **COMMISSIONER DeBOER MOVED DENIAL OF THE REQUEST TO REZONE THE PROPERTY AND DIRECT STAFF TO BRING BACK A FUTURE LAND USE MAP AMENDMENT FOR COMPLIANCE, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0).**

**COMMISSIONER DeBOER MOVED APPROVAL TO TAKE ORIGINAL AGENDA ITEMS 14, PA-05-06-41, AND 15, Z-05-06-42, OUT OF ORDER, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0).**

Agenda Item 9, PA-05-06-41 (Legislative)(District I)(Proof of Publication was in order)

Ms. Shao stated she has one presentation for PA-05-06-41 and Z-05-06-42. **Commissioner DeBoer** suggested the oath be administered at this time and testimony incorporated into the next hearing. **(Deputy Clerk Gail Manley administered the oath to prospective witnesses.)** Ms. Shao presented PA-05-06-41 for a small scale plan amendment on approximately 1.67 acres of a larger parcel comprised of 2.23 acres from Mixed Use (MU) to Commercial within the Charlotte Harbor Community Redevelopment Area (CRA) and the companion rezoning from MU to Commercial Intensive (CI) filed by Riverstone Property, LLC; the site is known as the former Rainbow Flea Market at 4628 Tamiami Trail;

the property is divided by two FLUM and zoning designations; the north portion of the site has a Commercial FLUM and a CI zoning designation; the south portion, which is the subject of PA-05-06-41, has MU FLUM and MU zoning; the purpose of PA-05-06-41 is to consolidate the property's zoning and land use designations into one consistent designation as the Commercial FLUM and CI zoning; the purpose of Z-05-06-42 is to unify the south portion of the property with the north portion's CI zoning; the proposed rezoning would allow intensive uses which could create potential negative visual impacts on US 41 and create an inconsistency with current and proposed CRA Development Plans; this zoning designation was consciously placed on both sides of Harper Avenue during creation of the CRA Community Plan to ensure that similar types of development and redevelopment would occur along the roadway; the site contains the former Rainbow Flea Market building, that was seriously damaged by Hurricane Charley, and parking; the MU FLUM and MU zoning restricts CI uses and promotes combination of residential and less intensive commercial development; the Charlotte Harbor CRA Advisory Committee recommended denial of the proposed FLUM change and rezoning; staff recommends denial of the plan amendment and rezoning; and P&Z Board recommended approval of the plan amendment and rezoning on 3:1 votes. Attorney Haymans appeared on behalf of petitioner; explained an error was made during the planning stages because platted lots and streets were used as boundaries without regard to actual ownership; the MU and CI boundary used a street that had been vacated and split the FLUM/zoning on an existing building in half; all of the property was CI; reviewed surrounding uses and stated the site use is more appropriate as CI rather than MU; the property is currently listed for lease or sale; the RV repair service property to the east also has split designations; and approval of this petition will fix a problem created by the CRA and staff. Dick Loftus, Charlotte Harbor CRA Advisory Committee Chairman, stated the CRA recommended denial and commented in support of staff's position. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0).** Commissioner D'Aprile expressed concern about CI fronting US 41 at Harper Avenue and stated he does not want to see another gas station. Attorney Haymans explained the total parcel is a \$3 million property, the market will drive development, and it is very unlikely that a gas station would be built on this priced property. **COMMISSIONER DeBOER MOVED APPROVAL TO ENACT ORDINANCE**

**#2005-076 APPROVING PETITION PA-05-06-41 FILED BY RIVERSTONE PROPERTY, LLC, BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED JULY 29, 2005 AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECONDED BY VICE CHAIRMAN MOORE. CALL ON THE MOTION: CHAIRMAN MOORE AND COMMISSIONER DeBOER VOTED "YES" AND COMMISSIONER D'APRILE VOTED "NO." MOTION CARRIED: (2:1).**

Agenda Item 10, Z-05-06-42 (Quasi-Judicial)(District I)(Proof of Publication was in order)

**Vice Chairman Moore polled the Board for ex parte communications. Commissioners DeBoer and D'Aprile and Vice Chairman Moore acknowledged discussions with Attorney Haymans.) Ms. Shao incorporated the presentation from PA-05-06-41 into this hearing. Attorney Haymans incorporated his comments from the prior hearing and offered his comments for factual content and opinions as a land use expert. Mr. Loftus requested his comments from the previous hearing be incorporated herein. COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0). COMMISSIONER DeBOER MOVED APPROVAL TO ENACT ORDINANCE #2005-077 APPROVING PETITION Z-05-06-42 FILED BY RIVERSTONE PROPERTY, LLC BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED JULY 29, 2005, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECONDED BY VICE CHAIRMAN MOORE. Commissioner D'Aprile expressed opposition. CALL ON THE MOTION: VICE CHAIRMAN MOORE AND COMMISSIONER DeBOER VOTED "YES" AND COMMISSIONER D'APRILE VOTED "NO." MOTION CARRIED: (2:1).**

**COMMISSIONER DeBOER MOVED APPROVAL TO TAKE ORIGINAL AGENDA ITEM 17, WAIVER FOR WAL-MART SUPERCENTER, OUT OF ORDER, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0).**

Agenda Item 11, Proposed waiver of the requirements of Section 3-9-63 of the Code of Laws and Ordinances, Charlotte County, Florida (Access to Commercial Uses) (District II)(Proof of Publication was in order)

**(Deputy Clerk Gail Manley administered the oath to prospective witnesses.) Inga Williams, Planner III, presented the request for waiver filed by Wal-Mart to develop a new Supercenter at the**

southwest corner of the intersection of North Jones Loop Road and Taylor Road; three access points are proposed on Jones Loop, Taylor, and Indian Springs Roads but a waiver is required to place one access point on Indian Springs since it is considered at residential road because Single-Family Residential zoning is on the west side; the Code prohibits access to a residential road when there is access onto other County roads and Policy 2.2.7 of the Future Land Use Element of the Comprehensive Plan also prohibits access via a residential road if there are other access points; petitioner submitted a traffic analysis that was reviewed by Community Development and Public Works staff and both Departments recommended approval of the waiver because the access onto Indian Springs Road would enhance public safety; and recommended approval of the waiver. Attorney Waksler appeared with John McLindez, a Traffic Engineer with CPH Engineers, stated Public Works and Community Development staff have reviewed and approved the request because it will increase public safety and traffic flows without significant adverse impacts to surrounding property owners, and concurred with staff's report and recommendation to approve the waiver. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0). COMMISSIONER D'APRILE MOVED APPROVAL TO ADOPT RESOLUTION #2005-186, SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS (3:0).**

**RECESS: 1:10 P.M. - 2:02 P.M.**

Agenda Item 12, Z-05-06-45 (Quasi-Judicial)(District II)(Proof of Publication was in order

**(Vice Chairman Moore polled the Board for ex parte communications and there were none. Deputy Clerk Gail Manley administered the oath to prospective witnesses.)** Ms. Williams presented the petition filed by staff for rezoning approximately .88 acre from Commercial General to Residential Multi Family-10 (RMF-10) located south of Olympia Avenue, west of Charlotte Street, north of Lavilla Road, and east of Marlympia Way in Punta Gorda; the FLUM designation is High density Residential and the zoning is currently Commercial General; there are two homes existing on the site and zoning to the south is Residential Multi Family-5 (RMF-5); approval of the rezoning will correct an inconsistency between the zoning and FLUM; the

RMF-10 zoning keeps with the existing character of the neighborhood and the rezoning is appropriate due to the limited capacity of traffic that Lavilla Road is able to accommodate; the petition will not contribute to decreasing property values or negatively affect living conditions for other properties in the area; and staff and P&Z Board recommend approval. **SEEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0). COMMISSIONER DeBOER MOVED APPROVAL TO ENACT ORDINANCE #2005-078 APPROVING Z-05-06-45 BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED JULY 29, 2005, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0).**

Agenda Item 13, PA-05-06-39 (Legislative)(District II)(Proof of Publication was in order)

Ms. Williams presented the petition filed by staff for a small-scale plan amendment to correct a discrepancy between the Low Intensity Industrial FLUM and the Commercial Intensive Zoning designations on about 9.56 acres located south of Marion Avenue, north of Duncan Road (US 17), west of I-75, and east of Florida street; the site contains a Low Intensity Industrial FLUM and a CI zoning; staff does not consider this area appropriate for development of Light Industrial uses; the surrounding properties contain a Commercial Center FLUM and adjacent zoning is Commercial Industrial and Commercial Highway except for an Light Industrial zoning located to the east which is an inconsistency and the subject of the rezoning; and staff and P&Z Board recommend approval. **SEEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0). COMMISSIONER D'APRILE MOVED APPROVAL TO ENACT ORDINANCE #2005-079 APPROVING PA-05-06-39 BASED ON THE PLANNING AND ZONING DIVISION STAFF REPORT DATED JULY 29, 2005, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS (3:0).**

Agenda Item 14, Z-05-06-48 (Quasi-Judicial)\_(District II)(Proof of Publication was in order)

(Vice Chairman Moore polled the Board for ex parte communications and there were none. Deputy Clerk Gail Manley administered the oath to prospective witnesses.) Dylan Mullenix, Planner II, presented the staff initiated rezoning petition from Residential Multi Family-12 (RMF-12) to Commercial Intensive (CI) on about .57 acres located adjacent to Marion Avenue, west of I-75, north of US 17, and east of Florida Street in Punt Gorda; the site is within the Infill Area of the Urban Service Area; approval of the rezoning will correct an inconsistency between the zoning and FLUM designations; the area to the east contains vacant commercial lands; the site has a Commercial Center FLUM with a CI zoning; the area to the south contains vacant commercial lands and non-conforming residential units; the area has a Commercial Center FLUM classification with a CI zoning; the area to the west contains vacant commercial, warehouses, and non-conforming single family residential units with a Commercial Center FLUM and CI zoning designations; the area to the north contains single family residential units and this area has a Low Density Residential FLUM classification with Residential Multi Family-5 zoning designations; staff has determined the rezoning is consistent with the Comprehensive Plan; and staff and the P&Z Board recommend approval. **SEEING NO ON WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0). COMMISSIONER DeBOER MOVED APPROVAL TO ENACT ORDINANCE #2005-080 APPROVING Z-05-06-48 BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORTED JULY 29, 2005, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0).**

Agenda Item 15, Revision of Commercial Design Standards (First of Two Public Hearings)(Proof of Publication was in order)

Thomas A. Cookingham, Planning Services Manager, explained this is the first of two public hearings required to revise the Commercial Design Standards; as a result of Board discussion on June 28, 2005 staff was directed to meet with stakeholders including Charlotte Builders and Contractors Association and Chamber of Commerce; suggestions were made for modifications and

staff recommends the following changes: (1) application of the design standards to existing structures; (2) the placement of "overhead" doors on the primary facade of structures; and (3) the design treatment of buildings facing away from adjacent streets; and the second public hearing will be held on October 11, 2005. **Commissioner DeBoer** stated painting overhead doors the same color as the primary facade will not accomplish much. Mr. Cookingham recalled prior comments regarding garage doors, explained staff's intent is to minimize the affect by painting them the same color as the primary facade and/or recessing the doors; stated there is no perfect solution; and related one of the stakeholders suggested painting murals on these types of doors. **Commissioner D'Aprile** pointed out most of the garage doors are open during business hours and suggested overhead door entrances be installed at the rear. Mr. Cookingham stated applicants would be required to demonstrate a need for an overhead door on the primary facade; if there is sufficient space for an overhead on the side or rear, staff would consider that first. **SEEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0).** **Vice Chairman Moore** announced this is the first of two public hearings and no Board action is necessary at this time.

Agenda Item 16, CSZ-05-06-05 - Certification of a Sending Zoning (District I)(Proof of Publication was in order)

(**Vice Chairman Moore** polled the Board for **ex parte communications** and there were none. **Deputy Clerk Gail Manley** administered the oath to prospective witnesses.) Ms. Williams presented the petition filed by Five Cross Land Trust for Certification of a Sending Zoning for Dixie Estates Subdivision Unit A located in the East County Planning District, outside of the Urban Service; the area consists of substandard platted lots; the FLUM designation is Agriculture and the zoning designation is Agriculture General; the applicants are requesting retention of two (2) units of density; the total number of units owned by the applicants are 429 and they intend to certify 427 units of density; and staff recommends approval. **Commissioner DeBoer** questioned the existence of other units to be transferred in the subdivision. Ms. Williams advised staff would be bringing back certain out parcels for deplattting as shown on the map. **COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC**

HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0). COMMISSIONER DeBOER MOVED APPROVAL TO ADOPT RESOLUTION #2005-187 AND THE ACCOMPANYING CONSERVATION EASEMENT, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (3:0).

Commissioner DeBoer suggested staff incorporate language for height variances based on buildings considered as landmarks and certain distances between such buildings.

MEETING ADJOURNED: 2:27 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