

LAND USE PUBLIC HEARINGS

BOARD OF COUNTY COMMISSIONERS

OCTOBER 18, 2005

Public Hearings before the Board of County Commissioners on Planning and Zoning Land Use petitions were held at the Murdock Administration Complex in Room 119, Port Charlotte, Florida. The following members were present: Chairman Sara J. Devos and Commissioners Thomas G. Moore, Thomas C. D'Aprile and Matthew D. DeBoer. (**Commissioner Adam Cummings was not present for this meeting.**) Also in attendance were County Administrator Bruce D. Loucks, Assistant County Attorney Richard A. Browne, Executive Assistant to the Board of County Commissioners Joann Dillon and Deputy Clerk Karen S. Mitchell. 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.**)

I. Continuation of Preliminary Plat Issue
Up the Creek LLC (no materials)

Chairman Devos explained they'd been asked if the Board would continue the Preliminary Plat issue with the Up the Creek LLC, both she and **Commissioner Cummings** were absent at the previous hearing, and any Commissioner who was absent or who voted in favor of this plat issue has the opportunity to bring it back. **Chairman Devos** clarified this wasn't a public workshop today, all they were doing was deciding if this will come back to them because if it does come back it has to be readvertised, and **Commissioner Moore** was not allowed to participate because he previously voted in opposition to this plat issue. **Chairman Devos** stated she'd very carefully reviewed the taped film of the actual hearing, the first part was a legislative hearing where emotions and personal feelings were allowed to influence a Board member's decision but the next was a quasi-judicial hearing which has very strict rules that only allow the Board to use expert testimony in their decision. **Chairman Devos** said there really wasn't any expert testimony presented for the Up the Creek side, and therefore, the only testimony they were really allowed to consider was testimony that would make her support allowing the preliminary plat issue. **Chairman Devos** concluded

there was no support to bring it back for a public hearing and it will just continue to move through the process.

Chairman Devos stated they have a shorter agenda today along with a workshop scheduled at 3:00 P.M. and asked that the Board have a discussion regarding Babcock Ranch at 2:00 P.M. **Chairman Devos** explained Attorney Knowlton needs guidance on the interlocal planning agreement because they're meeting tomorrow. **COMMISSIONER DeBOER MOVED TO ADD TO THE AGENDA AT 2:00 P.M. A DISCUSSION ON THE PROPOSED FOUR-PARTY AGREEMENT, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (4:0).** **Chairman Devos** asked if there would be a presentation at 2:00 P.M. **Commissioner DeBoer** said they were getting to that point in time where the conflicts become a little more contentious so there's a lot more arm wrestling going on, he didn't know if Ms. Armstrong was going to be here to do a presentation but he won't be as he has to go to Tallahassee, and he'd already read through the agreement and given his comments to Attorney Browne and Attorney Knowlton. **Commissioner DeBoer** stated he wants to ensure they protect their interests, agreed water was an inviolate and said it kills the deal if it's not there. **Chairman Devos** said she was glad **Commissioner DeBoer** was going to Tallahassee and for the record it was the South Florida Water Management District (SFWMD) not the Southwest Florida Water Management District (SWFWMD) as incorrectly stated in the newspaper today.

II. PLANNING AND ZONING AGENDA

Agenda Item 1 - Z-05-07-53 (Quasi Judicial) District I

Jie Shao, Planner II, announced the applicant has asked that this petition be continued for up to one year from the date of the application. **COMMISSIONER DeBOER MOVED APPROVAL TO CONTINUE PETITION Z-05-07-53 FOR A PERIOD NOT TO EXCEED ONE YEAR FROM THE DATE OF THE APPLICATION, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (4:0).**

Agenda Item 2 - PA-05-07-50 (Legislative) District I

Inga Williams, Planner III, explained this was a small scale plan amendment to amend the Future Land Use of 11 parcels from Low Density Residential to Commercial Corridor, the site contains 10+ acres located east of Duncan Road in the Cleveland Area, there were nine property owners involved who were notified by letter, staff received five responses indicating support of the change to commercial, and this request was initiated by staff. Ms. Williams reviewed the surrounding land use classifications and zoning designations, and staff has determined this amendment was consistent with the Comprehensive Plan (Comp Plan). Ms. Williams stated both staff and the P&Z Board recommend approval. **Commissioner DeBoer** asked if the adjacent property owners had been notified. Ms. Williams said yes. **Commissioner DeBoer** noted the previous petition which was continued had a staff recommendation of denial because the petition requested a change to Commercial Intensive (CI) that abuts residential, property buffering couldn't be obtained and asked the difference here. Ms. Williams agreed, clarified this petition has vacant High Density Residential (HDR) to the south which was less of a problem than putting CI next to single-family, Cleveland Avenue was considered a semi-buffer to the existing single-family area, and there was vacant agricultural land with one house in the middle but the agricultural land provides a large buffer. **Commissioner DeBoer** said he'll let it go but he's not seeing a great distinction between this and the recommendation of denial on the Harbour Heights one. Ms. Williams clarified in this situation it was all CI where in Harbour Heights it was more Commercial General (CG). **Chairman Devos** noted CI allows for onsite open storage of business vehicles which was one of the chief complaints regarding the previous petition because this abuts HDR. **Commissioner D'Aprile** referred to the previous petition, said there were a lot of problems in Harbour Heights with people who have property zoned CG but operating as if it were CI, the community development plan needs to address this particular situation, opined that was the reason the previous petition was continued, and noted this area was quite blighted. **Commissioner D'Aprile** summarized he had no problem with this petition as it appears there was a lot of buffering available. Thomas A. Cookingham, Planning Services Manager, concurred with **Commissioner D'Aprile's** observations, and explained that since the community plan was in the process

staff felt it was premature to rezone CG to CI when this was a contentious issue with a majority of the community. **Commissioner DeBoer** clarified his comments weren't directed at Harbour Heights, this item appeared to be similar and he was just looking for an across-the-board standard if there was one. **THERE BEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS (4:0). COMMISSIONER DeBOER MOVED APPROVAL TO ENACT ORDINANCE #2005-082 FOR PETITION PA-05-07-50, SECONDED BY COMMISSIONER D'APRILE.** Chairman Devos said her comment was similar to **Commissioner DeBoer's** in that she would like to know what the standard is if there is a standard used to make these decisions, and suggested they have a discussion on this in the future. **CALL ON THE MOTION: DECLARED UNANIMOUS (4:0).**

Agenda Item 3, Z-05-07-51 (Quasi-Judicial) District I

(Chairman Devos polled the Board for Ex-Parte Disclosures. There were none.) (Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses.) Inga Williams, Planner III, explained this was a rezoning request from Residential Multi-family-5 (RMF-5) to CI, this was the companion rezoning to the previous petition, and the same comments from the previous petition apply. Ms. Williams added that staff knows more CI zoning was needed, they look for areas of least impact to residents, and that was part of the reason for staff's decision. **THERE BEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (4:0). COMMISSIONER DeBOER MOVED APPROVAL TO ENACT ORDINANCE #2005-083 FOR PETITION Z-05-07-51, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (4:0).**

Agenda Item 4, Z-05-07-52 (Quasi-Judicial) District III

(Chairman Devos polled the Board for Ex-Parte Disclosures. There were none.) (Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses.) Inga Williams, Planner III, explained ABC RV Corporation was requesting a rezoning from Planned Development (PD) to Residential Multi-family-5 (RMF-5), the site contained 10.10+ acres and it was located south of San Casa Boulevard and east of Tenth Street in the Grove City area.

Ms. Williams reported the property has been the subject of two prior hearings - a rezoning from Mobile Home Conventional (MHC) to PD and a plan amendment from Low Density Residential (LDR) to RV Park; the ordinance adopting the plan amendment requires the property owner to transfer density prior to the amendment becoming official but this has not occurred therefore the plan amendment approving the RV Park designation was never made official on the FLUM, and the designation remains LDR. Ms. Williams stated staff discussed the options with the owner's representative, and the option to rezone to RMF-5 was chosen which requires no transfer of density to the property as 5 units per acre was the density the property retained prior to the rezoning to PD. Ms. Williams said both staff and the P&Z Board recommend approval. Diane McClellon, Esq. with the law firm of Wotitzky, Wotitzky, Ross et al, spoke on behalf of the applicant in support of the petition and staff's recommendation. **THERE BEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS (4:0). COMMISSIONER D'APRILE MOVED APPROVAL TO ENACT ORDINANCE #2005-084 FOR PETITION Z-05-07-52, SECONDED BY COMMISSIONER DeBOER AND DECLARED UNANIMOUS (4:0).**

Ms. Williams stated Attorney Browne has indicated it would be appropriate in the future to place Certification of a Sending Zone items, such as the next two agenda items, on the Consent Agenda if the Board wished. **(Board consensus.)**

Agenda Item 5, CSZ-05-08-09 - Certification of a Sending Zone

Inga Williams, Planner III, explained Coral Cove Development, Inc. was requesting a Certification of Sending Zone (CSZ) density units, the property was in the West County Planning District inside the Urban Service Area (USA) located south of Creek Side Drive and west of West Branch Coral Creek, it contains 9.65+ acres, and submerged lands were not included in the calculation of acreage as those lands belong to the State of Florida. Ms. Williams said the property qualified as a Sending Zone because it was located in a Tropical Storm Surge/10 AE Flood Zone, the applicants were requesting to retain three (3) units of density and certify 39 units of density, the units of density will all be Tropical Storm Surge/10 AE Flood Zone density units located in West county, and there were wetlands

located on the property which will be preserved by the covenant. Ms. Williams stated staff recommended approval of the proposed resolution and covenant. Geri L. Waksler, Esq. with the law firm of Moore and Waksler, P.A., spoke on behalf of the applicant, and stated they were in possession of a fully executed restrictive covenant that will be recorded immediately after Board approval of this item. **THERE BEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (4:0). COMMISSIONER DeBOER MOVED APPROVAL TO ADOPT RESOLUTION #2005-207 FOR PETITION CSZ-05-08-09, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (4:0).**

Agenda Item 6, CSZ-05-08-10 - Certification of a Sending Zone

Inga Williams, Planner III, explained Sandra W. Welles was requesting a CSZ density units, the property was located in the East County Planning District outside the USA, and it consists of substandard platted lots within the Del Verde Subdivision Sections A and B. Ms. Williams stated the FLUM designation was Agriculture and the zoning designation was Agricultural General. Ms. Williams said the applicant was requesting retention of one (1) unit of density per 10 acres, the total number of units owned by the applicant were 1,716, and the applicant will retain 21 units and certify 1,695 units. Ms. Williams advised according to the Florida Land Use Cover and Forms Classification System (FLUCCS) map there were 47.5 acres of wetlands which will be preserved from development by the covenant. Geri L. Waksler, Esq. with the law firm of Moore and Waksler, P.A., spoke on behalf of the applicant, and stated they were in possession of a fully executed restrictive covenant that will be recorded immediately after Board approval of this item. **THERE BEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER DeBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE AND DECLARED UNANIMOUS (4:0). COMMISSIONER DeBOER MOVED APPROVAL TO ADOPT RESOLUTION #2005-208 FOR PETITION CSZ-05-08-10, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (4:0).**

Chairman Devos announced she has received word that Mrs. Armstrong was giving a Babcock presentation to Lee County beginning at 10:30 A.M. and she plans to be in Charlotte County to make the Board's 2:00 P.M. schedule.

RECESS: 9:55 A.M. - 2:05 P.M.

(County Attorney Janette S. Knowlton replaced Assistant County Attorney Richard A. Browne, and Commissioner DeBoer and Executive Assistant Joann Dillon were not present for the remainder of the meeting.)

Discussion on Babcock Ranch

Janette S. Knowlton, County Attorney, apologized for the last minute distribution of the interlocal planning agreement, explained she felt they were at the point now where she would like to get some preliminary Board comments to give her some direction, there will be further presentations to the Board with plenty of opportunity for discussion and input on this document, and advised Outside Counsel Attorney Cari Roth hasn't had an opportunity yet to review the document. Attorney Knowlton pointed out the following items in the document: Item 8 - Mr. Kitson has agreed to go through the Development of Regional Impact (DRI) process if either one or both of the counties request that; Item 9 - These are the default provisions; and Item 11 - These are the deal killers; and she recommended adding two provisions - (1) if South Florida Water Management District (SFWMD) fails to approve Item 14 which was the water supply, and (2) if Mr. Kitson fails to timely submit a complete sufficient Rural Land Stewardship Program (RLSP) application. Attorney Knowlton clarified regarding the water supply, she needs to know if this is a deal they want to go through, i.e., if the water supply was unavailable, is a preservation sufficient or is the water supply really critical to the deal. **Commissioner Moore** said he was reluctant to say it was a deal killer at this time but it is extremely important, referred to item (2) on page 11 and expressed confusion at the February 28, 2006 date because the Water Authority (WA) won't commit more water to us than we can show need for at any given time. Attorney Knowlton responded the date was negotiable. **Commissioner D'Aprile** stated he's said this before and he'll say it again, that if they can't get the water then this isn't a done deal, and noted that it's SFWMD's policy not to allow the transfer of water over lines but opined that policy could be overridden by the Governor's Cabinet or the Governor himself. Attorney Knowlton stated that was her understanding also. **Chairman Devos** said the water was the most important thing to her, another concern was the DRI as she would

like the County to be in control instead of the Regional Planning Council (RPC), she'd like to put into the four-party agreement exactly what they want regarding stewardship, and if those things were added to the contract then the DRI process probably wouldn't be necessary. **Chairman Devos** said it was her understanding they had until March to withdraw their support if the Board wasn't happy with how it was proceeding but that's not the feeling she's getting from this document. **Chairman Devos** agreed with **Commissioner D'Aprile** that policy can be amended, said she spoke with Ms. Armstrong yesterday and what we need out of SFWMD is legal to do but SFWMD has a policy that just doesn't allow for it, so they still need to do some work there. **Chairman Devos** said she wanted to read **Commissioner DeBoer's** comments into the record as he had to leave for Tallahassee: "As I am leaving for Tallahassee prior to our discussion on this agreement, I would like to share some thoughts. Most important is that Charlotte County, through its cooperation and actions, will create the wealth necessary to make this happen. This is not meant to trivialize the State actions contributing directly some \$355 million. The wealth we create and the political burden we bear to accomplish this are commensurate with that of the Governor, Cabinet, and legislature. We are, therefore not, nor should be considered less than an equal partner. In the agreement, we need to assert our position as a partner by protecting our interests along with articulating our needs. Two examples are that we should not give up our local control by putting this through a DRI at the Regional Planning Council. Second is that a commitment to 10 mgd of potable water has always been inviolate condition of approval. I have given Mrs. Knowlton and Mr. Browne other comments/concerns that are not of great consequence. I also suggested that language be added that aborts vested rights obtained under the Temporary Overlay if the final phase (RLS) is not successfully nor timely completed as a result of action or inaction by the developer." Eva Armstrong, Department of Environmental Protection Division of State Lands Director, gave a slide presentation titled Babcock Ranch, A Florida Forever Land Acquisition Project, which paralleled her handout and detailed the following: Vision, Resource Value, Financial Summary, Project Summary, Highlights of the Agreement for Sale and Purchase, and Highlights of the Management Agreement. **(Discussion ensued regarding water rights, private versus public utility, including management of the preserve in**

the four-party agreement, preservation of existing trees, replanting, and maintenance of the ranch.)

MEETING ADJOURNED: 2:58 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

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