

TRANSFER OF DENSITY UNITS PUBLIC WORKSHOP

BOARD OF COUNTY COMMISSIONERS

JANUARY 25, 2006

A workshop of the Board of County Commissioners was held at the Murdock Administration Complex in Room 119, Port Charlotte, Florida. The following members were present: Chairman Thomas G. Moore and Commissioners Thomas C. D'Aprile, Adam Cummings, Matthew D. DeBoer and Sara J. Devos. Also in attendance were Assistant County Administrator Roger Baltz, Assistant County Attorney Richard A. Browne, Executive Assistant to the Board of County Commissioners Judy Hunter, and Deputy Clerk Gail Manley. The workshop was called to order at **10:01 A.M.** followed by the Pledge of Allegiance to the Flag.

1. Brief Review of the TDR and TDU Ordinances

Inga Williams, Planner III, explained the purpose of the workshop was for the Board's requested annual review and revision if necessary of the Transfer of Density Units (TDU) ordinance. Ms. Williams explained the Transfer of Development Rights (TDR) ordinance was updated in 2001 to make it mandatory that when a property owner increased density on their property they had to transfer that density to the site, and under that ordinance the criteria for the Sending Zones (SZ) emphasized Environmentally Sensitive (ES) lands, Coastal High Hazard property, and substandard platted lots outside the Urban Service Area (USA). Ms. Williams stated under the TDR ordinance they severed 923 units of ES substandard platted lot density units for a total of 268 acres, and 650 units of substandard platted lots outside the USA for a total of 38 acres which were then preserved for agricultural use, so a total of 1,573 platted lots had their density severed. Ms. Williams explained the types of density that were severed shifted slightly with the adoption of the TDU ordinance; and the emphasis was still in ES lands, Coastal High Hazard property, and substandard platted lots but we also included the ability to remove excess density from lands that were developed below what their zoning and future land use would allow. Ms. Williams said through the past year under the TDU ordinance they have certified 7,879 substandard lots outside the USA, and 170 units from the Tropical Storm Surge and

Category 1 Storm Surge zones with 41 of those lots being substandard. Ms. Williams advised during the past year staff completed the Certification of the Density Units process and tracking system, they still need to complete the revision of this ordinance and an online tracking database, and as of yet they haven't actually transferred any density to any property.

2. Summary of Staff's Proposed Revisions

Ms. Williams reviewed the 12 proposed changes detailed in her memorandum to the Board dated January 18, 2006 titled "Summary and Analysis of Staff's Proposed Changes to the Transfer of Density Units ordinance" and contained in the packet material.

3. Land Use Practitioner Group's Requested Changes

- a. Determination of Density Units on a Property
- b. Storm Surge Exception
- c. Covenant
- d. Application of TDU Ordinance
- e. Land Acquisition Trust Fund

Nicole C. E. Dozier, Zoning Official, referred to her memorandum to the Board dated January 11, 2006 titled "Density Calculations/Definitions" found in the packet material, said the primary thing they'd like to do with regard to density was be able to transfer development rights from parcels that have a development possibility which means excluding undevelopable parcels, they have combined the way they determine density on Receiving Zones (RZ) and SZ so that the same definition of density is in the TDU ordinance and in the Zoning ordinance, and they were going along with the Practitioner Group's requested changes as staff felt this would be beneficial. Ms. Williams said she wasn't going to individually go through the material for each of the remaining items in this category but appropriate staff members were present should the Board have any questions.

4. Incentives for Work Force Housing

Debrah Forester, Redevelopment Manager, explained the current TDU provision provides that TDUs weren't necessary for housing units available to the very low and low income segment of the population which was at the 80% of the area median income, and Enterprise Charlotte was concerned with the need for additional

workforce housing that employers coming into the area will be looking for. Ms. Forester said there's a growing gap in the need for workforce housing for the group that goes above the 80% and even the 120% level, currently the County provides subsidy for the group that falls below 100% of area median income, SHIP funds can be available for housing that costs about \$189,000 but the average selling price in today's market was about \$239,000, and increases in impact fees and TDUs could be passed on to the new home purchaser raising the average price to \$259,000 so there may be a need for some incentives to assure the County has a growing base of workforce housing. Ms. Forester presented some recommendations made by the Enterprise Charlotte Task Force for the Board to consider: provide additional availability for workforce housing by not requiring the TDUs for housing that goes up to 150% of the median income; it would also be tied to the average selling price in the area and that would be tied to a 20 year fixed period; and if the home was sold before the 20 years were up the home owners would have to pay for a TDU at the current market rate. **Commissioner Cummings** summarized the request was for the Board to provide a waiver of the TDU requirement for any housing hitting the market up to 150% of median. Ms. Forester concurred. **Commissioner Cummings** agreed they need to solve the problem of affordable housing but said he didn't feel using the TDU was the way to do it. **Chairman Moore** agreed. **Commissioner DeBoer** agreed, said there might be a need in here for something saying the Board may consider a project independently based on certain criteria but just saying 150% of median income doesn't work, and he would rather the policy for affordable housing be based on someone providing a needs survey showing us the specific needs at designated income levels and also total housing costs to ensure they're meeting the need not just saying a percentage of income. **Commissioner Devos** agreed on the need for an affordable housing policy but said she felt they need to have a workshop to determine affordability and then determine how to meet the need. Thomas A. Cookingham, Planning Services Manager, advised staff had already started looking at some of these issues, they're willing to work with the various affordable housing groups to develop options one being increasing density from the current maximum of 15 units per acre thereby reducing the cost by economies of scale, and he supported having a workshop. **Commissioner DeBoer** opined increasing density won't reduce the housing cost enough to reach the desired low income market, and it would be better to address

affordable housing as a policy so it can include all the necessary tools to see if we can be effective in the market. **Commissioner Cummings** agreed affordable housing was going to continue to move up the Board's priority ladder, said he'd rather help a few people and do it well than help a lot of people but do it poorly, and opined the lower the income the higher the priority should be and where the resources should be directed.

5. Discussion and Commissioners' Proposed Revisions

Chairman Moore noted there were some Land Use Practitioner Group members present and invited them to address the Board. Robert H. Berntsson, Esq. with the law firm of McKinley, Ittersagen, Gunderson & Berntsson, P.A., commended the Board for reviewing the TDU ordinance, said there's unanimity that the density definition needs to be the same between the Zoning and the TDU ordinances, they feel strongly the transfer should be based on the slosh map where Category 1 density stays in Category 1 or higher but TDUs were treated differently than the actual development of a piece of property because there's no County regulation that deals with moving density across zones, and encouraged the Board to delete the FEMA regulation requirement when they look at the TDU. Attorney Berntsson referred to his letter to Ms. Williams dated December 2, 2005 titled "Land Use Practitioner Group's requested changes" and reviewed the five key points. Geri L. Waksler, Esq. with the law firm of Moore and Waksler, P.A., agreed with many of Attorney Berntsson's comments, said it was very important to recognize this was advertised as a workshop for the TDU ordinance which was very different from a workshop on the zoning code definition of density, we agree with staff there should be just one definition of density that being the zoning code density, and as soon as possible there should be a separate workshop scheduled for what that density definition should be but it shouldn't be settled in the context of the TDU workshop. Attorney Waksler commented on areas of agreement in the material titled "Revised TDU petition with strikethrough and underlined changes." Attorney Waksler said what the Land Use Practitioner Group would like to see happen is on those areas where they have agreement with staff, if the Board is also in agreement with those changes, that the Board direct staff to very quickly do an interim change to the ordinance; and concurrently ask staff to schedule a second workshop but allow the Land Use

Practitioner Group time to develop consensus on the new items staff recommended, then allow them time to meet with staff to come to consensus, and then allow their group and staff to make presentations to the Board. Todd Rebol, Banks Engineering, said he agreed with the majority of what Attorneys Berntsson and Waksler said, commented on the issue of fixing the cost of the TDUs, and noted there's a lot of risk when a developer buys a piece of property or is investigating a piece of property for feasibility because if something happens to that piece of property like an eagle lands on it, there's no way to recoup the money invested. Mr. Rebol stated when the TDU comes into play it will just add another unpredictable variable, right now the current private sector market for TDUs was \$8,000 to \$12,000 so no one was coming to the County to buy density because the average cost in mid or south County was \$25,000 to \$30,000, and he felt there will be a point when the private market dries up forcing people to come to the County for density but if the cost was still what it is now there's going to be no new development which will force people into buying scattered lots. Andy Dodd agreed with Attorney's Berntsson and Waksler, said he felt there was good consensus in the Land Use Practitioner Group, commended Ms. Williams' efforts to make the ordinance fit the process that has evolved, said he applauded the efforts of the task force that's looking into the workforce housing issue, he supported some type of bonus density for workforce housing which he agreed should be income driven as opposed to what the median price of homes are, he didn't object to any distinction between the 'A' and 'V' zone because the 'V' zone was a higher risk, and he didn't resist placing more of the burden on an applicant because he himself has had a free ride for a long time.

6. Public Comments

Gerald J. Lefave said he was concerned with the wetlands part of this not the TDUs, he has a piece of property that has considerable wetlands on it, he's already been through Southwest Florida Water Management District (SWFWMD) and the entire mitigation program, suggested the County should follow SWFWMD and the Department of Environmental Protection (DEP) programs to find an alternative to just taking somebody's wetlands away from them, and opined this wasn't a TDU thing it was a zoning thing.

7. Commissioner Comments

Commissioner DeBoer asked if staff wanted the suggested interim hearing to take care of the consensus items because he was concerned that would just add more to staff's workload, and said he just didn't think there're that many issues they're in disagreement on. Ms. Williams said she preferred to take some time to work with the Land Use Practitioner Group and only do it once. **Commissioner DeBoer** said he has problems with how the SZ were working, there are obscure plats from the 1920's with huge areas of substandard platted lots that still have development rights and he wondered what will happen when these areas get replatted, and he supported setting one price but it should be low enough to be attractive to enable accumulating some money into a fund to be used to create green space or matching money to get State money to buy parks. **Commissioner Devos** agreed with **Commissioner DeBoer** but said she thought when substandard lots were in a SZ they weren't left with any buildable rights. Ms. Williams explained the SZ density certified so far as substandard has mostly been in east County, the lots have been 4,000 s.f. to 5,000 s.f. each, for every 10 acres left on the property one unit of density is retained which comes from one of those lots, in other words they basically retain one of those substandard lots equating to one unit per 10 acres, i.e., if someone has 500 substandard lots on 20 acres and they want to retain two units of density, they would transfer out 498 units and retain two units of density. **Commissioner Devos** said if someone owns 10 acres that has three different zones on it, the entire parcel should be treated the same. James C. Evetts, Chief Building Official, said the issue Attorney Berntsson was talking about was if you have a parcel of property on the waterfront you can decide if you want build it in a 'V' or 'A' zone, and when you build in a 'V' zone you've increased the cost of that building astronomically because it's going to take much more of the brunt force from storms so whether the residents actually evacuate from that area they're in more danger being in the 'V' zone than the 'A' zone. Mr. Evetts explained staff's opposed to transferring density units into the 'V' zone because every time the ISO comes in they ask if we've increased density in the special hazard zone, that's one of the things we're regulated on and one of the things our insurance premiums are based on, if we answer yes then ISO is going to go through everything we've got to make sure we haven't increased more

units on the waterfront in the dangerous areas, and added that Wayne Sallade's issue with this was the fact that people do not evacuate. **Commissioner Devos** clarified what she's talking about is where density already exists on a parcel, so we're not increasing density we're dictating where buildings can be built on a parcel with multiple zones including a 'V' zone, and what the Board is saying is that you can't move density around on that parcel. Mr. Evetts responded that's a zoning issue. **Chairman Moore** asked for clarification on the swirl line that comes up on the Auditorium property which is causing some trouble. Mr. Evetts explained when the County did their flood mapping they asked if Punta Gorda wanted to do their flood map at the same time but they did not, and now there's a little variance between the County and City maps. **(Discussion ensued regarding the transfer of density from one zone to another zone within the same parcel.)** Attorney Berntsson clarified, "I think this discussion is relevant, if I may, just because it's the premise. If the premise is on the SZ piece of property, that you can't move all your density down into the Velocity zone, then it's appropriate to say it can only be moved into like zones. But the rules today as they exist, if you've got this four units on a piece of property that's half in the 'A' zone and half in the 'V' zone, under our rules today, all four of those units can be built right down in the 'V' zone with the higher regulations for the structure and things of that nature from the Building Department's standpoint, but all four of those units go down into the 'V' zone today and nobody says that when you develop that property we increase the density in the 'V' zone because we've always allowed you to, for lack of a better word, cluster all of your units down in one area. So the point is, that's exactly what we do when we transfer them then, since they all could have been in the 'V' zone on property A, you can put them all in the 'V' zone on property B. That's the assumption that we're talking about. If the rule was you couldn't move those two units from 'A' to 'V' on the SZ, then you shouldn't be able to do it on the RZ, but since you can do it on the SZ, then you should be able to do it on the RZ. I think that simplifies the argument and I think the answer, I mean I don't fill out the forms, but the answer should be, if there was a rezoning of the property that density was transferred from another 'V' zone property where it could have been developed, there is no net increase in 'V' zone. It's whether you're just going to have them all right here or whether you're going to have

them over there." **Commissioner Cummings** asked with the removal of the wording ~~from a less restrictive flood zone to a more restrictive flood zone~~ or in Item 2 of the "Land Use Practitioner Group's requested changes" what happens if you've got a piece of property that's mostly all AE but one of those properties has a portion of it that's 'V' zone, are you suggesting you should be able to transfer from the one that's only AE to the one that's a combination of AE and 'V'. Attorney Berntsson responded you probably could be able to do that. **Commissioner Cummings** said so then you could take the density from a solely AE zone, transfer it into one that's got AE and 'V' and push it all down into the 'V' zone, and that's going to trigger Mr. Evetts' problem of increasing the density in a 'V' zone. Attorney Berntsson said they could write language to address it. **Commissioner Cummings** said he was hesitant to strike the language altogether because it seems eminently reasonable that you don't want to be taking development from less restrictive flood zones to more restrictive flood zones but possible to use levels of gradation. **Commissioner Devos** said it appears this isn't something they're going to fix today. Ms. Williams stated she agreed with Attorney Berntsson that the gradations between AE's are restrictive, mapping them and figuring out what density is within which AE zone is difficult, and in West County she can see if there's some 'V' zone on the developing or SZ property that you treat it all as Velocity. Attorney Berntsson added he felt they're real close, he agreed with 99% of what Ms. Williams just said, so maybe in the process of everyone working together that's something they can come to consensus on, and it's a perfect example of why that process would work well. **Commissioner Cummings** said he was inclined to look at 'V' zones versus others and then go into breaking it out more along the lines of Storm Surge Category 1, Category 2, etc., some slightly broader gradation; he felt they should go ahead with the ones they all agree on; it appears there's still some disagreement in terms of wetlands as to what's developable, he thought the idea in the TDU is looking at what is or is not developable and trying to transfer it to more appropriate locations though we have big disagreements as to what 'more appropriate' means; and he felt when they're looking at manmade excavations they need to look very hard at what our Class I excavations are, what they mean, and what they do versus a Class III, because if it's part of a residential development he felt there's a much stronger argument that they should get to retain their development rights provided

it's being done as an enhancement to the residential. **Commissioner Cummings** said regarding the price of TDUs, he didn't think they were supposed to be competing with the private sector, and if someone wanted to go to the County they're going to pay premium for the convenience of it, and he gets anxious when they talk about 'let's sell at a loss and make up for it in volume' because it may feel real good right then because you get a whole bunch of cash but in the long run you'll just keep getting further and further behind.

MEETING ADJOURNED: 11:55 A.M.

Thomas G. Moore
Chairman

ATTEST:

**BARBARA T. SCOTT, CLERK
OF THE CIRCUIT COURT AND
EX-OFFICIO TO THE BOARD
OF COUNTY COMMISSIONERS**

By:

Deputy Clerk

gm/ksm