

**REGULAR MEETING
AND
LAND USE PUBLIC HEARINGS**

BOARD OF COUNTY COMMISSIONERS

MAY 16, 2006

A regular meeting and Land Use Public Hearings of the Board of County Commissioners were 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 County Administrator Bruce D. Loucks, Assistant County Attorney Richard A. Browne, Executive Assistant to the Board Joann Dillon, and Deputy Clerk Karen S. Mitchell. The meeting was called to order at 9:03 A.M. followed by the Pledge of Allegiance to the Flag. (Proofs of Publication was in Order.)

I. CONSENT AGENDA

COMMISSIONER DEVOS MOVED APPROVAL OF THE FOLLOWING ITEM, SECONDED BY COMMISSIONER DeBOER. Commissioner DeBoer advised he would not be present on June 13th. CALL ON THE MOTION: DECLARED UNANIMOUS.

A. Community Development

Agenda Item A-1

Set two Public Hearings on June 13, 2006 at 10:00 A.M. and June 20, 2006 at 10:00 A.M., or as soon thereafter as possible, to consider Babcock Ranch Overlay District zoning regulations for additions to Section 3-9 of the Code of Laws and Ordinances, Charlotte County, Florida.

III. PLANNING AND ZONING AGENDA

Commissioner D'Aprile suggested taking Agenda Item #12 out of order due to the number of people present in support of the proposed name change. COMMISSIONER DeBOER MOVED TO TAKE AGENDA

ITEM #12 OUT OF ORDER, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS.

Agenda Item 12, NC-06-03-01 (Legislative) District IV

James Dossett, Development Review Manager, said Charlotte County was requesting a street name change for a portion of Toledo Blade Boulevard commencing at Collingswood Boulevard running east to Lakeview Boulevard and then north to Kenilworth Boulevard located in Sections 7, 18, 8, and 5, Township 40 South, Range 22 East, Charlotte County, Florida. Mr. Dossett explained the name change would alleviate the confusion caused in emergency situations where emergency vehicles and personnel response to the wrong areas of Toledo Blade Boulevard due to the circular configuration of this street with each end of Toledo Blade Boulevard crossing U.S. 41. Mr. Dossett stated the name originally suggested was Pirates Boulevard but due to the response and suggestion of the public at the Planning and Zoning (P&Z) Board hearing the recommendation is now to change the name of this portion of Toledo Blade Boulevard to Cochran Boulevard in honor of the first Marine from Charlotte County who lost his life serving America in World War II. Mr. Dossett summarized both staff and the P&Z Board recommend approval. **(Commissioner DeBoer was not present for this portion of the meeting.)** The following spoke in support of the proposed name change to Cochran Boulevard: Commander of the Robert L. Cochran, Jr. Chapter 82 Disabled American Veterans of Port Charlotte Bill Rivers, Linda Rivers, Lieutenant Colonel Cliff Deane U.S. Army (Ret.), Clyde Prier, Past National Commander of the American Merchant Marine Veterans John O'Connor, and Charlotte County Veterans Council President Ed Eastman. **COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (4:0). COMMISSIONER D'APRILE MOVED APPROVAL TO ADOPT RESOLUTION #2006-074 FOR PETITION NC-06-03-01, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS (4:0).**

Chairman Moore explained he has received a note requesting to continue Agenda Item #9 to a date unknown but not longer than one year.

Agenda Item 9, PP-06-02-01 (Quasi-Judicial) District I

Commissioner D'Aprile said what's been found is an active eagle's nest, the law says you can't do anything with the property within 750' of the nest for five years, he wanted on the record his request that an investigation of this property be done to truly identify this eagle's, and opined approving this for one more year wouldn't change the situation. **Chairman Moore** agreed. Richard A. Browne, Assistant County Attorney, said the one year timeframe was the applicant's request and recommended the Board remove this item from the agenda today and continue it generally subject to resubmission by the applicant whenever he chooses. **Commissioner Devos** asked if they could just continue this to the next land use meeting so more information would be available. Attorney Browne said yes. Geri L. Waksler, Esq. with the law firm of Moore and Waksler, P.A., spoke on behalf of the applicant, clarified they just discovered the active eagle's nest, they have retained the services of an environmental consulting firm, and within one year they will know if they can proceed or not but they will accept a general continuance if that's the Board's desire. Attorney Browne said he would prefer a general continuance so no one has to keep track of this. **COMMISSIONER DEVOS MOVED APPROVAL TO CONTINUE PP-06-02-01 FOR A PERIOD NOT TO EXCEED ONE (1) YEAR, SECONDED BY COMMISSIONER D'APRILE.** **Commissioner Cummings** asked if the one year clause was put in the motion intentionally. **Commissioner Devos** stated she knew Counsel said to just leave it open but this way we can be assured it will come to closure within the next year, and she also felt it would give **Commissioner D'Aprile** a level of comfort. **Commissioner D'Aprile** said thank you. **CALL ON THE MOTION: DECLARED UNANIMOUS (4:0).**

Agenda Item 1, Z-05-05-27-TDU (Quasi Judicial) District I

Jie Shao, Planner II, stated Attorney Haymans has requested this item be moved to the end of the agenda as he was in Englewood at a meeting and wouldn't be here for at an hour. **COMMISSIONER DEVOS MOVED APPROVAL TO MOVE AGENDA ITEM 1 Z-05-05-27-TDU TO THE LAST ITEM ON THIS PORTION OF THE AGENDA WHICH WOULD THEN BECOME ITEM 15, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (4:0).**

Agenda Item 2, PA-06-02-12 (Legislative) District III

(Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses for Items 2 and 3.) Inga Williams, Planner III, explained Petition PA-06-02-12 was a request by Southwest Properties, LLC for a small scale Future Land Use Map (FLUM) plan amendment from Low Density Residential (LDR) to Commercial Corridor on 0.257+ acres with a companion rezoning Petition Z-06-02-13 from Residential Single-family 5 (RSF-5) to Commercial General (CG) to allow commercial development. Ms. Williams stated the site was located at 8904 Bantry Bay Boulevard in the Englewood area, reviewed the surrounding land uses and FLUM designations, said the plan amendment and rezoning were consistent with the Comprehensive Plan (Comp Plan), a C-type buffer will be required between the existing residential areas, and both staff and the P&Z Board recommend approval of the plan amendment and rezoning petitions. Sandra Newell, Project Manager with Giffels-Webster Engineers, Inc., spoke on behalf of the applicant, clarified the parcel owned by the telephone company contains a substation and there were no plans to change that, the applicant has plenty of space for the required buffering, this project will go through Development Review Committee (DRC), and requested approval of the plan amendment and companion rezoning. **THERE BEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS (4:0). COMMISSIONER DEVOS MOVED APPROVAL TO ENACT ORDINANCE #2006-048 FOR PETITION PA-06-02-12, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (4:0).**

Agenda Item 3, Z-06-02-13 (Quasi-Judicial) District III

Inga Williams, Planner III, stated this was the companion rezoning and her previous comments applied. **Chairman Moore** clarified it was the intention that the previous public hearing dealt with both of these petitions. **(Chairman Moore polled the Board for Ex-Parte Disclosures. There were none.) COMMISSIONER DEVOS MOVED APPROVAL TO ENACT ORDINANCE #2006-049 FOR PETITION Z-06-02-13, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (4:0).**

Agenda Item 4, PA-06-03-20 (Legislative) District III
Agenda Item 5, Z-06-03-21-TDU (Quasi-Judicial) District III
Agenda Item 6, TDU-06-03-01, District III

(Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses for Items 4, 5, and 6.) (Chairman Moore polled the Board for Ex-Parte Disclosures. There were none.) Jacqlyn Smith, Planner II, explained William J. and Mary L. Tront were requesting a small scale FLUM plan amendment Petition PA-06-03-20 of 1.3+ acres from Parks and Recreation to Low Density Residential (LDR) to allow the development of a single residential home with a companion rezoning Petition Z-06-03-21-TDU from Residential Single-family 3.5 (RSF-3.5) to Residential Single-family-1 (RSF-1) and Petition TDU-06-03-01 for a transfer of one density unit. Ms. Smith stated the site was located on Fredrica Avenue in the Englewood area, reviewed the surrounding land uses and FLUM designations, said the proposed change would be compatible with the surrounding properties, the applicants have submitted a Certificate for Transferable Density to the County for the one unit of density the site will contain, and both staff and the P&Z Board recommend approval of these petitions. **Commissioner D'Aprile** asked if the property was County owned. Ms. Smith said no it was privately owned. (Discussion ensued regarding Parks & Recreation's desire to eliminate neighborhood parks in favor of regional parks, Comp Plan amendment in the works with a threshold of three acres or less, MSBU funding neighborhood parks, and this issue will be back to the Board in August.) (Deputy Clerk Karen S. Mitchell administered the oath to the prospective witness.) Geri L. Waksler, Esq. with the law firm of Moore and Waksler, P.A., spoke on behalf of GSR Capital Group who attempted to change the FLUM and rezone the Wildflower Golf Course, said she had no objection to what the applicant was requesting here, clarified in 1997 Charlotte County chose to place Parks & Recreation land use on privately held properties, that decision has forever severely limited the ability to develop or redevelop those privately held properties, opined it was no longer necessary for those privately held properties to be burdened with a Parks & Recreation land use, and asked the Board to consider looking at a policy and providing direction to staff regarding privately held Parks & Recreation designated sites. **COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY D'APRILE AND DECLARED UNANIMOUS (4:0). COMMISSIONER DEVOS MOVED APPROVAL TO ENACT ORDINANCE**

#2006-050 FOR PETITION PA-06-03-20, SECONDED BY COMMISSIONER D'APRILE. Commissioner Cummings agreed on the need for staff to review the neighborhood park issues. CALL ON THE MOTION: DECLARED UNANIMOUS (4:0). COMMISSIONER DEVOS MOVED APPROVAL TO ENACT ORDINANCE #2006-051 FOR PETITION Z-06-03-21-TDU, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (4:0). (Assistant County Administrator Kelly Shoemaker replaced County Administrator Bruce D. Loucks for this portion of the meeting.) COMMISSIONER DEVOS MOVED APPROVAL TO ADOPT RESOLUTION #2006-075 FOR PETITION TDU-06-03-01, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (4:0).

Agenda Item 7, Z-06-02-10 (Quasi-Judicial) District II

(Chairman Moore 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 property was part of the land swap between the Board and the Charlotte County School District; as part of the transaction the School Board agreed to rezone the subject property from Industrial General (IG) to Industrial Light Industrial (IL) to allow the School District's potential uses for the property which were a bus depot and warehouse, as well as provide less of an impact to the residences to the north; the site containing 6.62+ acres was located north of Henry Street, east of Florida Street, west of I-75, and south of Bailey Avenue; and both staff and the P&Z Board recommend approval. Robert H. Berntsson, Esq. with the law firm of McKinley, Ittersagen, Gunderson & Berntsson, P.A., spoke on behalf of the School Board in support of the rezoning. COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS (4:0). COMMISSIONER D'APRILE MOVED APPROVAL TO ENACT ORDINANCE #2006-052 FOR PETITION Z-06-02-10, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS (4:0).

Agenda Item 8, PA-06-02-11 (Legislative) District II

Inga Williams, Planner III, explained this property was part of a land swap between the Board and the Charlotte County School District, and as part of the transaction the County agreed to initiate a FLUM plan amendment from Public Lands and Facilities to High Intensity Industrial which would be consistent with the underlying IG zoning district. Ms. Williams said the site

containing 9.9+ acres was located north of Henry Street, east of Florida Street, west of I-75, and south of Bailey Avenue; and both staff and the P&Z Board recommend approval of this small scale FLUM plan amendment. **Commissioner Cummings** asked if this was being done because the School Board may want to sell it in the future. Ms. Williams said she didn't know but that was a possibility. Robert H. Berntsson, Esq. with the law firm of McKinley, Ittersagen, Gunderson & Berntsson, P.A., spoke on behalf of the applicant and explained that as part of the exchange this property was seen as potentially excess property so through the exchange process the School Board wants to have the ability to sell off this excess land to the private section. **COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (4:0). COMMISSIONER D'APRILE MOVED APPROVAL TO ENACT ORDINANCE #2006-053 FOR PETITION PA-06-02-11, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS (4:0).**

RECESS: 10:10 A.M. - 10:23 A.M.

(Commissioner Devos was not present for this portion of the meeting.)

Agenda Item 10, PP-06-02-02 (Quasi-Judicial) District IV

(Chairman Moore polled the Board for Ex-Parte Disclosures. There was none.) (Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses.) James Dossett, Development Review Manager, explained twice in 2005 American Invest, LC requested a Preliminary Plat for a 16 lot residential subdivision known as River Palms but it was denied both times. **(Commissioner Devos was present for this portion of the meeting.)** Mr. Dossett said the project has now been reduced to eight (8) residential lots on 5.02+ acres located on the west side of McHugh Street about 475 feet north of Eleanor Avenue and south of Wainright Drive; each lot would be about 0.563 acres with a 50' ingress/egress easement across the south side of Lots 1 through 6 and north/south between Lots 7 and 8 and Lot 6 to serve as the private road for all eight lots that will be privately maintained; and the site will be serviced by wells and private septic tanks but written verification from the Charlotte County Health Department accepting the wells and septic will be required before submitting for Final Plat. Mr. Dossett stated

both staff and the P&Z Board recommend approval. Bartley Arrington, Johnson Engineering, spoke on behalf of the applicant in support of the petition and staff's report. Jim DeGross, Quality Homes Residential Director, said he resides on the adjacent 2.5 acres, this has been before the Board three times, we're a low density one house per 2.5 acres neighborhood, this proposal doesn't comply, since the beginning everything American Invest has brought to the Board has been a falsehood, and nothing has changed. Murry Baker agreed with Mr. DeGross, said these people have lied and been untruthful to the Board and staff since the beginning, commented on the history of this proposal, and asked the Board to continue their consistency by saying no now and in the future. Rick Hodel said he's been a professional engineer in Florida for 10 years along with 10 years of environmental engineering experience; commented on the high probability this plan would kill 12 mature pine trees and on recommendations to save these trees; and asked the Board to deny this but if they do decide to approve it to at least include conditions for saving the trees. Dick Carl said he resides in the area, American Invest's online website advertises they have approved zoning for eight lots which obviously isn't true, he's afraid that if this is approved it will set a precedent, and asked the Board to deny this petition. Debra Havlick spoke in opposition to this petition, stated they're having problems with their wells now so allowing more would only make the problems worse, these people are liars, right now they are marketing these dry lots as having a community boat ramp so they're lying again, she is very opposed to having them in their neighborhood, and asked the Board to vote this down. Bartlett Arrington, Johnson Engineering, spoke on behalf of American Invest, stated these lots conform to RSF-3.5 zoning which would allow 17.5 lots but was denied by the Board, the only method to proceed with developing the lots as intended was with well and septic which requires a minimum lot size of .5 acre with 150' setback along the Ingersol Waterway, they were allowed to remove the trees on their site provided they have a tree removal permit, and opined the main issue is the eight lots do meet County requirements. **COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS (4:0).** Commissioner D'Aprile said this is exactly what he's against and has been against since the beginning, people buy in unique areas like this for privacy, even though this area is zoned RSF-3.5 it should be changed, it's the

Board's responsibility to protect residents in situations like this, he doesn't want to set a precedent, he's personally seen this area, he could probably support three acre parcels but not what's proposed because it would undermine the entire area, and he could not and will not agree with this especially since these people haven't been honest in the past. **Commissioner Devos** stated she missed the Ex-parte poll done earlier she wanted to acknowledge she had none to declare. **Commissioner Devos** stated since this is quasi-judicial it puts her in a real quandary because she agrees with **Commissioner D'Aprile**, she didn't think this was the right and best fit, and the only expert testimony from those objecting was the engineer (Mr. Hodel). Richard A. Browne, Assistant County Attorney, said the Board's decision must be based on competent substantial evidence, under Florida case law the staff report and recommendation itself were considered competent substantial evidence, and past public hearings on this matter can come into play but it must be announced. **Commissioner Devos** recalled the issue of the dry slips and that it certainly wasn't brought forward to the Board, she was very upset, said what was being advertised on the internet hadn't been approved by the Board, and with the history of this project she just wasn't comfortable moving forward because she just doesn't think it's legitimate. Attorney Browne pointed out the Board had turned this project down twice in the past, recalled it was second time when the applicant had promised both utilities would be brought to the site but when they showed up for the presentation the Board was told that wasn't economically feasible, and said the Board has a right to remember those things. **Commissioner Devos** clarified her opinion will be based on her collective experience with this particular project. **Commissioner Cummings** agreed there was a history with this project they all recall, noted the Comp Plan's intent is to reduce density in suburban areas such as this, the Hunt Estate was a shining example of the success of this approach, recalled his discussion with the applicant before he acquired the property where he related this very story, and the applicant said he'd been hoping to acquire that land to do just that. **Commissioner Cummings** said he also recalled telling the applicant it would be in complete contradiction to everything the Board was trying to do in the area, he told the applicant before he bought the property that he would not have his vote to do that, and said he felt the applicant should have known what he was getting into considering he was warned fair and square.

Commissioner Cummings summarized he thought the Board should look at some of the subdivision regulations here as well as in the rural service areas because improvement was needed. **COMMISSIONER CUMMINGS MOVED DENIAL OF PETITION PP-06-02-02, SECONDED BY COMMISSIONER DEVOS AND DECLARED UNANIMOUS (4:0).**

Agenda Item 11, PV-06-02-02 (Legislative) District II

James Dossett, Development Review Manager, explained John C. Scoles has applied to vacate the following portion of Sunshine Park containing 1.98+ acres: Lots 45, 46 and 47 of Block B; Lots 49 through 62 of Block A; Lots 1 through 7 of Block D; and a portion of Carmalita Street from the SW corner of Lot 46 to Sunshine Boulevard, and portions of Sunshine Boulevard from NW corner of Lot 49 and NE corner of Lot 45 to SW of Carmalita and 2nd Street between Block A & D to Jerry Street and from N side 2nd Street to the end of Lot 7. Mr. Dossett reported all utilities have been notified, the City of Punta Gorda was opposed to closing a portion of 2nd Street unless a public utility easement was created to allow a public water system connection between Jerry Avenue and Sunshine Boulevard, and the P&Z Board recommended approval with the condition that a current survey be provided. Mr. Dossett reported there was a slight glitch; the written information included vacating a section of Jerry Avenue from 2nd Street between Block A and D to Jerry Street from the north side of 2nd Street to the end of Lot 7, but this wasn't represented on the graphics provided so it's not reflected on the staff prepared material either; and the applicant has asked us to consider adding that in as part of the vacation but staff doesn't support that request. Mr. Dossett summarized staff recommends approval of the vacation as presented here not to include Jerry Avenue because it would create a substandard intersection. John C. Scoles spoke from the audience saying he had no objection to the staff recommendation. **THERE BEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (4:0).** **COMMISSIONER D'APRILE MOVED APPROVAL TO ADOPT RESOLUTION #2006-076, SECONDED BY COMMISSIONER DEVOS.** **Commissioner Devos** asked why this was being requested. Mr. Dossett responded the applicant owns all this property and there was discussion about rezoning all of it in the future to make it more developable. Mr. Scoles clarified he does intend to seek a rezoning to Industrial Light (IL). **Commissioner Devos** asked

what IL allows. Inga Williams, Planner III, said IL would allow things such as manufacturing, outdoor storage, and contractors' businesses. **Commissioner Devos** asked if those uses would include a car wash. Ms. Williams said yes. **Commissioner Devos** said her concern was compatibility, cited the problems with the people living behind the existing car wash on U.S. 41, and though she doesn't have a problem with the plat vacation she cautioned the applicant to keep compatibility in mind. **CALL ON THE MOTION: DECLARED UNANIMOUS (4:0).**

Agenda Item 13, TDU Appeal to the Board (Quasi-Judicial)
Agenda Item 14, CSZ-06-04-09

(Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses.) (Chairman Moore polled the Board for Ex-Parte Disclosures. There was none.) Michael Konefal, Community Development Director, stated these two items were linked, Item #13 was an appeal of the Transfer of Density Units (TDU) Ordinance by Carmalita Investments, and whatever the decision is on #13 will be applied to Item #14 for LO Land Assets, LP, which will be the amount of Certified Sending Zone (CSZ) units under the TDU Ordinance. Mr. Konefal explained the subject property was located just east of the City of Punta Gorda; the Preliminary Plat was approved for 701 single and multi-family dwelling units, the Comp Plan would allow almost 1,500 units leaving 799 units, and the applicant is requesting four (4) of the 799 units remain on the property and 795 units be transferred offsite. Mr. Konefal stated there are two methods within the TDU Ordinance to calculate excess developable units as explained on page 3 of staff's report - one is by dividing zoning into the total property area which would generate 372 units of transferable density, and the second is calculating the amount of developable land from the approved preliminary plat which would generate 297 units of transferable density, but the applicant was requesting the entire difference of 795 units be given for other purposes in the Urban Service Area. Mr. Konefal said this was the first year of dealing with the application of the TDU Ordinance, during the last six months developers have come up with unique ways to calculate excess density, recently there have been a number of applications for density units from East County on substandard or undersized lots, this is permitted in the TDU Ordinance but he wasn't sure if that was really the intent of the TDU Ordinance, and one

thing not intended was for the difference to become a new revenue source. Mr. Konefal noted the applicant chose to develop at a lower density, the Sending Zone is actually an ideal location to retain the density for full buildout development, and summarized staff recommended approval but with only 297 units of transferable density. Geri L. Waksler, Esq. with the law firm of Moore and Waksler, P.A., spoke on behalf of the applicant, distributed and reviewed her letter to Ms. Williams dated January 23, 2006, agreed there were several definitions of how to calculate excess/surplus density, and requested approval with 795 transferable density units. **THERE BEING NO ONE WISHING TO SPEAK FOR OR AGAINST, COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (4:0).** Commissioner D'Aprile said he liked seeing lower density and asked how staff came up with 297 units. Mr. Konefal said by excluding all non-developable areas like lakes, right-of-ways (ROWS), roads and sidewalks. **(Commissioner DeBoer was present for this portion of the meeting.)** Commissioner D'Aprile asked then how you get to 1,500 units. Mr. Konefal said by going to multi-story buildings. **Commissioner D'Aprile** stated he understood both staff's and the applicant's points of view but he's confused, and he doesn't know which way to go on this. Attorney Waksler noted Mr. Konefal's staff report states he doesn't believe 1,500 units could be developed on this site because of the new of the new codes for drainage, parking and roadways; and if they start pulling out those kinds of things they would be going against the basis on which the TDU Ordinance was adopted which was the fear of maximum buildout. Attorney Waksler recalled the definition of a qualifying sending zone is a piece of vacant property with an approved development plan that allows units less than what you could build, if you calculate surplus based on that definition the surplus is the difference between what you could build under the Zoning and Land Use and what you have chosen to build under the approved plan, and when you subtract one from the other you get the surplus. **Commissioner D'Aprile** said that's where he agrees with staff in a sense, it was the developer's decision not to build all the density, and if the developer wants to build 1,500 units he can but if he doesn't then the developer has to take responsibility for the additional roads and drainage or whatever is necessary reducing the amount of density that can be claimed. Attorney Waksler responded that without a site plan for 1,500 units they don't know how much it

should be reduced if all, and added the developer made the choice to build less than the full 1,500 units based on the provision in the TDU Ordinance that says the surplus density would be eligible for certificates of transferable density. **Commissioner D'Aprile** opined the TDU Ordinance needs to be revised so there's no misunderstanding on how this works. **Commissioner Cummings** said this is an ideal infill development site, he's not sure how much of an incentive they should create for transferring density out of this to another location, the intent of the TDU is to shift development to the most appropriate locations, there's no easy answer because the right to develop is not the same as the right to sell those development units, and he's hesitant to transfer density out of here to some area that's less desirable for development. **Commissioner Devos** recalled it was the Board's intent that substandard lots would have one unit, they also decided having a single definition would be best because what they have now is very confusing, said it's not the County's business to provide someone with the ability to sell 700 of these units like here so he can make a profit on the other end but it is our business to decide what is the right and best use of this property, she didn't recall anything about excluding infrastructure areas, and she didn't have a problem with 795 units because she'd want the same if it were her. **Chairman Moore** said until the rules are changed they have to deal with this as written and he agreed with **Commissioner Devos**. **Commissioner DeBoer** said the issue is how you calculate the number of units, the current method just doesn't work because it doesn't address the fact that property can have different density it just specifically goes by minimum lot size, he hadn't had a lot of time for review because this material only arrived on his desk this morning, and he will side with the applicant if this is decided on today. **Commissioner Devos** opined their dilemma today shows this needs to be revisited as soon as possible. **Chairman Moore** asked why the material arrived so late. Mr. Konefal responded primarily due to being short staffed. **Commissioner Cummings** said there would be no excavated material leaving the site. Attorney Waksler said that was correct. **Commissioner Cummings** stated the 297 units were calculated based on excluding infrastructure. Mr. Konefal said yes. **Commissioner Cummings** indicated this will create problems in the future. **Commissioner D'Aprile** indicated they need to find a happy medium but for today he agreed with the applicant. **COMMISSIONER D'APRILE MOVED APPROVAL TO ADOPT**

RESOLUTION #2006-077 WITH 795 UNITS PERMITTED TO BE TRANSFERRED OFFSITE, SECONDED BY COMMISSIONER DEVOS. Commissioner Devos said they need a workshop very soon. Mr. Konefal responded it was already in the works. **Commissioner Cummings** asked if the impact of multi-story development would be part of the discussion. Mr. Konefal said that could be included. **Commissioner Cummings** agreed on the need to find something that works across the board through residential and multi-family, and noted there were also impacts from commercial development but they've never really figured out how to handle it in the context of the TDU. **CALL ON THE MOTION: CHAIRMAN MOORE AND COMMISSIONERS D'APRILE, DeBOER AND DEVOS VOTED "YES" AND COMMISSIONER CUMMINGS VOTED "NO." MOTION CARRIED: (4:1).** Mr. Konefal said the next was Agenda Item #14 which is to reiterate the same number you just came up. **COMMISSIONER DeBOER MOVED APPROVAL TO ADOPT RESOLUTION #2006-078 FOR 795 UNITS PETITION CSZ-06-04-09, SECONDED BY COMMISSIONER DEVOS. CALL ON THE MOTION: CHAIRMAN MOORE AND COMMISSIONERS D'APRILE, DeBOER AND DEVOS VOTED "YES" AND COMMISSIONER CUMMINGS VOTED "NO." MOTION CARRIED: (4:1).**

(Commissioner Devos was not present for this portion of the meeting.)

Agenda Item 15, Z-05-05-27-TDU (Quasi Judicial) District I

(Deputy Clerk Karen S. Mitchell administered the oath to prospective witnesses.) (Chairman Moore polled the Board for Ex-Parte Disclosures. There were none.) Jie Shao, Planner II, explained Dugan Porter was requesting a rezoning of 9.53+ acres from Agricultural Estate (AE) to Planned Development (PD), the site was located at 25276 Tangerine Avenue in the Port Charlotte area, the purpose of the rezoning was to allow for development of 47 single-family homes, and the proposed PD would increase the maximum allowable density from one (1) unit per acre to five (5) units per acre. Ms. Shao stated the site was currently vacant, reviewed surrounding land uses and FLUM designations, stated the proposed change would not be contrary to the Comp Plan, and development trends in this area have made this property appropriate for higher density residential development. Ms. Shao said both staff and the P&Z Board recommend approval with conditions 'a through 'q' as listed in the proposed

ordinance but the applicant is in disagreement with condition 'b':

- b. The subject property currently retains nine (9) units of density. The applicant is proposing to develop a total of 47 units. The subject property will require a total of 38 units of transferred density. The transfer of density units must be approved by the Board of County Commissioners prior to Preliminary Plat application or Final DRC application, whichever shall occur first.

Ms. Shoe explained the existing AE zoning has a maximum allowable density of one (1) unit per acre, a portion of the site has a FLUM designation of Medium Density Residential which allows five to ten units per acre, the applicant claims there's an inconsistency so the base density should be higher than one (5) unit, staff disagrees because both the AE zoning and the Medium Density Residential FLUM designation allow residential development so basically there's no inconsistency between the zoning and the FLUM, per the TDU Ordinance the most restrictive designation is applied which in this situation would be AE with one (1) unit per acre, and since the site contains 9.53 acres the base density is 9 units. Michael P. Haymans, Esq. with the law firm of Farr, Farr, Emerich, Hackett & Carr, P.A., spoke on behalf of the applicant, said they accept the proposed conditions except 'b' which deals with the calculation of TDUs, and read from portions of the Comprehensive Land Use Plan which states that on any lot or parcel in which the Zoning Atlas is inconsistent with the FLUM the County will regard the FLUM as depicting the appropriate developable land use unless the text of the Comp Plan clearly states otherwise. Attorney Haymans stated on the 6.57 acres with a FLUM designation of Medium Density Residential the density should be 5 units per acre for a total of 35 density units resulting in the necessity to buy an additional 12 units of density to allow the development of 47 single-family homes. Attorney Haymans summarized the issue is the number of units they need to buy. Ms. Shao agreed there were areas of inconsistency that need to be corrected. **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 D'Aprile said the applicant agrees with everything except the density. Attorney Haymans said yes, the issue is

having to buy 12 units versus 38 units under staff's interpretation and the more dollars spent in land cost causes the price of the housing to go up. **Chairman Moore** said he agreed there are inconsistencies that still exist but he was inclined to agree with the applicant. **Commissioner Cummings** said usually the most restrictive rule applies and he will support staff's recommended conditions. **Commissioner DeBoer** noted they'd received a replacement to the conditions but there's no strike-through and underline, and asked for clarification on the changes. Ms. Shao said condition 'j' was revised because the Tangerine right-of-way (ROW) is too narrow and the applicant needs to build a 5' wide sidewalk along Tangerine Avenue which would encroach on the 25' setback. **(County Administrator Bruce D. Loucks replaced Assistant County Administrator Kelly Shoemaker for the remainder of the meeting.)** **Commissioner DeBoer** asked how many units the applicant calculated. Attorney Haymans clarified 6.57 acres multiplied by 5 is 32.85 plus 2.96 acres multiplied by 1 is 2.96 for a total of 35.81 rounded down to 35 development units applicable to this property, they are applying for 47 in the PD, and the difference is 12 units they would have to purchase. **COMMISSIONER CUMMINGS MOVED APPROVAL TO ENACT ORDINANCE #2006-054 INCLUDING THE REPLACEMENT EXHIBIT B OF CONDITIONS A THROUGH Q REQUIRING THE PURCHASE OF 38 UNITS, SECONDED BY COMMISSIONER DeBOER. COMMISSIONER DeBOER MOVED AN AMENDMENT TO THE MOTION AMENDING EXHIBIT B PARAGRAPH B AS FOLLOWS: "THE SUBJECT PROPERTY CURRENTLY RETAINS 35 UNITS OF DENSITY. THE APPLICANT IS PROPOSING TO DEVELOP A TOTAL OF 47 UNITS. THE SUBJECT PROPERTY WILL REQUIRE A TOTAL OF 12 UNITS OF TRANSFERRED DENSITY...", SECONDED BY COMMISSIONER D'APRILE. CALL ON THE MAIN MOTION: CHAIRMAN MOORE AND COMMISSIONERS D'APRILE AND DeBOER VOTED "YES" AND COMMISSIONER CUMMINGS VOTED "NO." MOTION CARRIED: (3:1) CALL ON THE AMENDED MOTION: CHAIRMAN MOORE AND COMMISSIONERS D'APRILE AND DeBOER VOTED "YES" AND COMMISSIONER CUMMINGS VOTED "NO." MOTION CARRIED: (3:1).**

RECESS: 12:40 P.M. - 2:01 P.M.

(Commissioner Devos and Finance Director Ann Navan were present and Commissioner DeBoer was not present for the remainder of the meeting. Commissioner Cummings was not present for this portion of the meeting.)

II. PUBLIC HEARING AGENDA

2:00 P.M.

Agenda Item 1, Budget - Consider an Ordinance correcting impact fees for new construction in Charlotte County (Proof of Publication was in Order.)

Raymond Sandrock, Budget Director, explained the proposed ordinance will adjust the residential impact fees per square foot downward for the following three categories: Law Enforcement \$0.15 to \$0.09; Fire & EMS \$0.20 to \$0.12; and Public Buildings \$0.39 to \$0.23. Mr. Sandrock said the new impact fee schedule was adopted by the Board on February 28, 2006 with implementation for June 1, 2006; the overall reduction will be \$0.30 per square foot with all other rates remaining unchanged; and the P&Z Board found this adjustment was consistent with the Comp Plan and recommended staying with the June 1st implementation date. Mr. Sandrock commented on Senate Bill 1194 dealing with impact fees that was recently passed but not yet signed by the Governor. **(Commissioner Cummings was present for the remainder of the meeting.)** Mr. Sandrock summarized if anything more develops he will bring it back to the Board. **Commissioner Devos** asked the average administrative fee. James C. Nicholas, Ph.D. responded typically around the state it's 3%. Mr. Sandrock said the proposed square footage rate reflects a lowered administrative fee of 2% but if that rates needs to be adjusted to 3% he would bring back an amendment to the ordinance. David Goodrich asked this be delayed until next fiscal year, said this increase plus other rising taxes will add \$2,200 to \$5,000 to the cost of a home for an average family of four, and many people are moving out of Charlotte County to avoid this County's higher fees. Suzanne Graham, Charlotte/DeSoto Building Industry Association (CDBIA) President, stated the CDBIA was asking the Board to delay implementation due to inconsistencies and flaws in the report, Mr. Sandrock told the P&Z Board a delay in implementation will cost the County revenue but she felt it wouldn't, there were areas where the language wasn't specific, this will make new homes unaffordable to first-time home buyers, and opined everyone needs to have accurate figures now not a year from now. Richard Sinclair, Sinclair Custom Homes President, stated there are issues that either aren't addressed or not addressed

properly such as the having to pay higher impact fees because some permits were being delayed due to scrub jay or gopher tortoise issues, and if the permit expires during the delay the higher rate will then apply which wasn't fair. Mr. Sinclair opined they should be able to define the administrative fees without a year delay, the \$80 million to \$100 million deficit in road impact fees really shows the weakness of this, and asked the Board to take the time to review this more thoroughly with more common sense and logic. Jon Bednerik CDBIA Executive Officer, said they don't feel the passage of new legislation in Tallahassee will affect the ordinance other than provide more clarity, there's clearly a public need as well as a need to ensure there are uniform standards for the development of impact fees, delaying passage of the amended ordinance until after July 1st will ensure it will stand up to a court challenge, and opined the County should seek broad based funding methods to cover infrastructure costs not just impact fees. **COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (4:0).** Mr. Sandrock and Dr. Nicholas responded to citizens input regarding administration fees, loss of revenue, new legislation, infrastructure funding sources, and use of localized data in the study. **Commissioner Devos** explained the cost of building roads was a moving target because costs continue to rise, and the examples given for delays in permitting should be taken into consideration. **Commissioner Devos** asked if someone would address the issue of an audit to ensure accountability. Ann Navan, Finance Director, said she believed it would be part of the normal year-end audit by the Board's audit team but she didn't know if the state would require a separate audit opinion just on impact fees. **Commissioner Devos** stated she saw no advantage to delaying the implementation by one month or waiting for the Governor's signature since there's nothing in the amended ordinance that new legislation would prevent. **Commissioner D'Aprile** asked if staff knew of any inconsistencies. Mr. Sandrock said no, this started as a draft that was fine tuned, and the only changes since February 28th were those presented today. **Commissioner D'Aprile** asked if there was any advantage to a one-month delay. Daniel E. Gallagher, Jr., Deputy County Attorney, said the amendment corrects the residential impact fee rates for both schedules 1 and 2 but the remaining impact fee rates approved February 28th will go into effect on June 1st regardless of what happens today, and if no action on this amendment is taken today

or before June 1st then the residential impact fee rates approved February 28th will go into effect June 1st but they would be unenforceable because the data they're based on was wrong. **Commissioner D'Aprile** stated an increase is necessary to support growth but he didn't support doing so through ad valorem increase, and asked the revenues expected. Mr. Sandrock said the estimate was an additional \$60 million over five years for a projected total of \$92 million. **Chairman Moore** said increases are never popular but he felt this was the best way to provide what people want to support new growth and thanked staff for the work they'd done. **Commissioner D'Aprile** asked for clarification on the use of real transfer taxes. Dr. Nichols reiterated that wasn't legally available. **COMMISSIONER DEVOS MOVED APPROVAL TO ENACT ORDINANCE #2006-055, SECONDED BY COMMISSIONER D'APRILE AND DECLARED UNANIMOUS (4:0).**

MEETING ADJOURNED: 2:42 P.M.

Signature on file in Commission Minutes
Thomas G. Moore
Chairman

ATTEST:

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

**By: Signature on file in Commission Minutes
Deputy Clerk**

/ksm