

LAND USE PUBLIC HEARINGS

BOARD OF COUNTY COMMISSIONERS

JULY 18, 2006

A meeting of the Board of County Commissioner was held at the Murdock Administration Complex in Room 119, Port Charlotte, Florida. The following members were present: Chairman Moore, Commissioner D'Aprile, and Commissioner DeBoer. Also in attendance were County Administrator Loucks, Assistant County Attorney Brown, Executive Assistant Dillon, Minutes Supervisor Nice, and Deputy Clerk Mitchell. The following members were absent: Commissioner Cummings and Commissioner Devos.

The meeting was called to order at **9:00 AM.** (**Proof of publication was in order.**)

I. PLANNING AND ZONING AGENDA

9. PV-06-02-01 Legislative Commission District IV

Wilmington Retail, Ltd., has applied for a Plat Vacation for a portion of the east side of Kevitt Boulevard, a portion of Englewood Road, and a portion of the west side of Wilmington Boulevard, as recorded in Plat Book 10, Pages 1-A through 1-Z-33, in the Public Records of Charlotte County, Florida. The request is for an 80 foot strip of land on three sides of Tract E, consisting of 6.668± acres, and is located in Section 5, Township 41 South, Range 26 East, Commission District IV. A complete legal description is on file. (**Continued from June 20, 2006**) **RECOMMENDATION: Community Development Department: Approval Planning and Zoning Board: Approval Item has been pulled by staff.**

10. PV-06-04-06 Legislative Commission District IV

Crown Plaza, LLC has applied for a plat vacation to vacate a portion Port Charlotte Subdivision Section Ninety Five, as recorded in Plat Book 10, Pages 1-A, 1-Y, 1-Z8 in the Official Records of Charlotte County, Florida. The request is to vacate the 50' of right-of-way commencing at the southwest corner of

Tract P on Kevitt Boulevard, along with the 30 foot Park site, running north to the north side of the Access Road on the south side SR 776; continuing east along with the 50 foot right of way known as the Access Road, (south of SR 776) and a 100 foot portion of the 35 foot Park site, both running from Kevitt Boulevard to Gulfstream Boulevard. The site consists of 3.71± acres, located in Section 5, 6, and 7, Township 41S, Range 21E, in Commission District IV. **RECOMMENDATION: Community Development Department: Approval Planning and Zoning Board: Approval Item has been pulled by staff.**

Chairman Moore reported staff has requested to pull Agenda Items #9 and #10 from today's agenda.

COMMISSIONER D'APRILE MOVED TO REMOVE AGENDA ITEMS #9 AND #10, SECONDED BY COMMISSIONER DEBOER.

Motion Carried 3:0.

ABSENT:

Commissioner Cummings and Commissioner Devos.

Chairman Moore said there was a request from staff to take Agenda Item #6 first due to timing issues of those in attendance for this item. **Commissioner DeBoer** said there were a lot of citizens here for another hearing and asked why Item #6 was important. Assistant County Attorney Brown explained their office requested the change because the County Attorney handling the Jay Rock matter was scheduled to be in a meeting at 10:00 am, and though that schedule has changed arrangements had already been made with Attorney Haymans so they were still requesting Item #6 be moved to the head of the list. **Commissioner D'Aprile** said he had no problem if that's the Board's desire.

PRESENT:

Commissioner Cummings and Commissioner Devos.

COMMISSIONER DEVOS MOVED TO TAKE AGENDA ITEM #6 OUT OF ORDER, SECONDED BY COMMISSIONER CUMMINGS.

Motion Carried 5:0.

6. Petition 01-EX-07 Quasi-Judicial Commission District I

Michael Haymans, on behalf of Jay Rock Mine, is requesting a waiver of all of the provisions of Article XXI of the Charlotte County Code 3-4-441 and Article XXIII of the Charlotte County Code 3-5-470 for a Group III Excavation. The project is located on the north side of Cook Brown Road, 1 mile west of SR 31 in Section 23, Township 42 South, and Range 25 East, Commission District 1. The site contains 325.9 +/- acres, zoned agricultural. The applicant proposes to excavate 282 acres to extract 12,600,000 cubic yards. **RECOMMENDATION: Community Development Department: Denial**

(Deputy Clerk Mitchell administered the oath to prospective witnesses.)

Chairman Moore apologized for the oversight and asked everyone to stand for the Pledge of Allegiance.

(Chairman Moore polled the Board for ex-parte communications. All Board members acknowledged a meeting with Attorney Haymans and other communications already part of the record.)

James Dossett reviewed the goldenrod, staff report and the chronological history of the Jay Rock matter; stated the original 10 year permit expired in December 4, 2005; application for a new Group III excavation was made on March 31, 2001; Stop Work Orders were placed on Jay Rock on December 23, 2005 and April 21, 2006 for operating without a permit; as of April 7, 2006 the County still had not received the requested documents required for a complete application submittal; and this has come back to the Board because in April 2006 the applicant requested the excavation application be reviewed under the old ordinance.

Mr. Dossett said in June 2006 the applicant requested a waiver of Article XXI of the permitting ordinance to allow Jay Rock to continue to work, originally there were 16 items missing from the application, and as of yesterday three items were still missing. Mr. Dossett stated staff's recommendation is a denial based on Article XXI, Section 3-5-453 which he reviewed.

Mr. Dossett said if the waiver request is granted that does not grant the permit itself it just grants Jay Rock the right to be reviewed by the Board at a future time.

Commissioner Devos asked what are the three missing articles.

Mr. Dossett said 1) both the reclamation and the excavation plan lack septic drain fields and wells pursuant to Section 3-5-4493 and 3-5-4498 and it is critical that this information be part of the application package; 2) as regards Section 3-5-4494, it appears the reclamation plan doesn't reflect all reserved conservation areas; and 3) the Florida Department of Environmental Protection (FDEP) mining permit prescribes that no dewatering be used in this site but the permit from Southwest Florida Water Management District (SWFWMD) addresses dewatering, i.e., that dewatering will be used on the site, so there's a conflict between the two state permits issued on this site that needs to be resolved before staff can review the plan.

Commissioner D'Aprile asked for an explanation of dewatering. Mr. Dossett clarified.

Attorney Haymans spoke on behalf of applicant in support of the application.

Attorney Haymans explained the reasons for the previous delays and continuances.

Attorney Haymans reviewed the history of this project, the items that are at issue, the compromises the applicant has made which he felt should resolve these issues, and the undo hardship that would result if this waiver is not granted. Attorney Haymans said he felt the waiver request was reasonable and he hoped the Board would approve this request so they can continue with the permit process.

Scott Weber explained they were a mining corporation in operation since 1946 in Michigan. Attorney Haymans questioned Scott Weber about his background, his involvement in this project, and the monetary investment to this date. Attorney Haymans stated he was begging the Board to grant this request so all these people won't lose their jobs and Mr. Scott won't have

to declare bankruptcy, and asked Mr. Weber's employees in the audience to stand (about 10 people responded).

Attorney Haymans clarified they were only asking for short-term limited relief to be able to continue mining a limited area, and clarified the waiver request time frame would be until they have a permit in hand for the rest of the operation or such time as the Board says is reasonable.

Attorney Haymans said the issue of identifying the well and septic between the area of 500 feet and one-half mile has been completed and will be resolved today when he turns over the requested information to Mr. Quick.

Attorney Haymans stated the reclamation area identified in the current plans represents what's required now, and if the Army Corps determines Jay Rock has additional federal jurisdictional wetlands that have to be mitigated then the mitigation area will be increased from what is shown on the plans staff has right now, so what Mr. Dossett characterizes as a failure to adequately describe is in reality an unknown in the plans.

Attorney Haymans reiterated their request to be allowed to continue.

Commissioner Devos said her understanding of the maintenance of Cook-Brown Road was that Jay Rock maintains the section from Coral Rock to S.R. 31 and asked if that was correct.

Attorney Haymans said no, explained most of the damage was from Coral Rock's entrance to S.R. 31, Jay Rock didn't operate from 1995 to 2004, staff told Jay Rock and Coral Rock to bring this roadway up to standard and continue to maintain it, following discussions Jay Rock paved the roadway from Coral Rock back to them and Coral Rock paved from it's entrance to S.R. 31, summarized there is not an agreement between Coral Rock and Jay Rock, and per the existing developers' agreements both companies have an obligation which means Public Works can call on both or either of them depending on who Public Works believes to be responsible or put a claim against the respective bond.

Commissioner Devos asked the reason for the short-term waiver.

Attorney Haymans said they only want a short-term release until this comes back to the Board to make the decision about whether their application is complete and he felt they have everything necessary for permit approval either in hand or ready to submit.

Commissioner Devos asked staff how long before this comes back to the Board. Mr. Dossett said once they have all the information they should be able to review it within 10 days and then schedule it for public hearing before the Board.

County Attorney Aleksandr Boksner clarified once Mr. Quick determines the application is complete pursuant to Article XXI he must forward copies to the County departments involved, those departments must complete their review of the application within 15 days to confirm the applicant has satisfied all other conditions, those recommendations are then remitted to Mr. Quick who makes a final report of the findings of the various departments which is then presented to the Board, and the whole process shouldn't take more than 30 days.

Commissioner Devos asked if there's still three items outstanding does that mean that none of the other departments have reviewed this yet because if that's the case then the Board doesn't know if there are really only three items. Mr. Dossett said the Commissioner was correct, and the three missing items are necessary before it can be considered a complete file and distributed for review by the other departments.

Mike Rickard said last year he started a small trucking business, Jay Rock is the only local mine who gave him an account to purchase products, and if Jay Rock's doors are closed he will be forced to close his new business.

Joe Bonness said he represented Coral Rock and Better Roads, commented on the road maintenance agreement, said they will be a 30% user of the road, and he felt a proper agreement would include Ajax because Ajax has so much more traffic that damages the road.

Gary Frommer said he was the General Manager for Coral Rock, they currently have a road bond but with the extra traffic on the road their lawyers don't feel the bond could be upheld at this time, they've held a road bond since 1999 but it will be

null and void if the County allows another excavation operation to run on top of their bond without some kind of agreement on Coral Rock's bond, they were currently in the process of permitting 900 acres adjacent to their operation, it took them four years to get their Army Corps permit, opined the issue of job loss was moot because there are jobs out there and said even Coral Rock is hiring right now.

Tony Rodriguez said he works for Mr. Weber, Jay Rock was doing everything right, he agreed there are jobs out there but the job market doesn't pay the wages Jay Rock is paying and Jay Rock also pays for all his benefits including medical.

COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER DEVOS.

Motion Carried 5:0.

Attorney Haymans rebutted comments made regarding Coral Rock's road and reclamation bond, and said Jay Rock's bond has not been released by Charlotte County for the roadways and the reclamation and the County can be assured they will do everything they're obligated to do including maintaining their portion of Cook-Brown Road all the way to S.R. 31.

Attorney Haymans rebutted comments made about the wetlands, clarified the area in question today doesn't involve the wetlands or federal permits, and presented a copy of FDEP's letter dated January 27, 2006 regarding dewatering modification.

Attorney Haymans reiterated the issue today is for a short-term for a limited area.

Attorney Haymans rebutted comments made due to false representations and asked for approval of a temporary waiver for a limited area.

Commissioner D'Aprile asked what is a short-term waiver request and how long is it in effect. Mr. Dossett said the length of time hasn't been defined yet, Jay Rock's permit has expired but they have been allowed to continue to operate, noted if the Board decides to grant the waiver request it must meet Chapter 3-5-453(b) where this is unique to this site and no other

excavation site which staff fails to see, and it doesn't allow them to excavate material they'll have to get in line.

Commissioner D'Aprile asked how long it will take to satisfy the three issues the County is concerned with. Attorney Haymans said the FDEP issue is resolved; the well and septic information will be given to Mr. Quick today; and regarding the reclamation issue they have created a marsh for mitigation, if additional mitigation is required Jay Rock will create it but that hasn't been determined yet, and if this becomes necessary it will be shown on the plan.

Attorney Haymans stated they're asking for 60 days to wrap up the three issues but for safety he's asking 90 days.

Commissioner D'Aprile said he recalled telling Attorney Haymans in his office that he felt Jay Rock should be responsible for more than 50% of the road but he felt this will be resolved, he didn't mind the 60 to 90 days but as far as he's concerned if this isn't resolved within that period of time the operation will be closed, staff is trying to abide by the rules and regulations, and he understands the frustration on both sides because he doesn't want people to lose their jobs either but reiterated these things must be resolved within the 90 days.

Mr. Dossett reiterated Jay Rock's permit to operate ended in December 2005 so he doesn't know if the Board can extend a permit that doesn't exist and added the request before the Board was for a waiver of the ordinance to be heard, it wasn't a request for them to continue operations. Attorney Haymans responded yes it is.

Attorney Brown said he's confused as well and asked if the petition was made under 3-5-453. Attorney Haymans responded the waiver request wasn't just for a waiver of information it included being allowed to operate temporarily without a permit until the permit has been received or you shut us down because we didn't get the permit.

Commissioner DeBoer said this started out as a quasi judicial matter, the hardships expressed today don't qualify under the 'undue hardships' definition, it appears the process allows an application to be filed on March 31, 2001 and not heard by the

Board until July 18, 2006, and opined that in five years and three months there's no justifiable reason why the information is still incomplete.

COMMISSIONER DEBOER MOVED TO GRANT TEMPORARY RELIEF FOR THE EXCAVATION IN THE SOUTHEAST QUADRANT AS REQUESTED FOR 90 DAYS AND GIVE THE APPLICANT 40 DAYS TO SUBMIT THE INFORMATION AND GIVE STAFF 30 DAYS FOR STAFF TO REVIEW IT AND NO MORE THAN 20 DAYS TO ADVERTISE AND HOLD A FINAL PUBLIC HEARING ON THE ISSUANCE OF THE PERMIT AND ISSUE A 90 DAY PERMIT FOR THEM TO CONTINUE, SECONDED BY COMMISSIONER DEVOS. Chairman Moore said he'd begged Attorney Haymans not to let this go this far and opined this needs to get fixed because people are getting hurt.

Motion Carried 5:0.

RECESS: 10:32 AM - 10:45 AM

1. Revision to the Manasota Key Zoning District Overlay Quasi-Judicial Commission District III

Per Chapter 125.66, F.S., an ordinance pursuant to Section 3-9-53, Code of Laws and Ordinances of Charlotte County, Florida; amending Section 3-9-53(e); creating a list of zoning district permissible and prohibited within the Manasota and Sandpiper Key Zoning District Overlay Code; creating provisions for Planned Developments (PD) on Manasota and Sandpiper Key; creating the Manasota Multi-family Tourist (MMF-T) zoning district; providing for intent; providing for a list of principal permissible uses and structures; providing for special exceptions; providing for development standards; providing for severability; and providing an effective date. **RECOMMENDATION: Community Development Department: Approval Planning and Zoning Board: Approval**

Chairman Moore noted this was a quasi-judicial hearing. **Jorge Perez** said this hearing was advertised as legislative. **Attorney Brown** concurred.

Mr. Perez reviewed the goldenrod and gave a slide presentation detailing the Manasota Key Zoning Amendments that create a list of zoning districts not compatible with the Manasota Overlay Zoning District and provide provisions for two new future zoning classifications, i.e., Manasota Multi-Family Tourist (MMF-T) and

Future Planned Developments (PD). Mr. Perez clarified in previous years PDs were used to stretch a use that would not otherwise be permissible under the strict zoning and also to be a little bit more flexible with the land development regulations, setbacks, parking and things like that.

Commissioner Devos asked how this was more flexible. Mr. Perez explained it was more flexible in terms of land development regulations but not in terms of use.

Commissioner Devos said some of the legal issues they're dealing with now are because the County wasn't flexible in things such as setbacks and asked how this will affect these issues. Mr. Perez clarified none of the projects under litigation involve PD areas and the main issues with land development regulations on Manasota Key stem from the fact that the lots are so narrow.

Commissioner Devos asked if someone could do a PD on a site that is that small. Mr. Perez said yes but the waterfront ordinance or the wedding cake approach would still be applicable.

Commissioner Devos recalled one project where the developer wanted to combine two properties but the Board made the developer double the size of their buffering because they treated all the requirements as two different parcels. Mr. Perez said that would still be applicable.

Commissioner Devos said she gets worried when she hears about making things more flexible because they've been so strict with the implementation.

Commissioner DeBoer asked if by adding these changes would they be allowing flexibility that would conflict with what they've been so strictly adhering to. Mr. Perez said no.

Commissioner Devos said she still had some real questions about this whole thing and asked Mr. Perez to meet with her before the next hearing.

(Assistant County Administrator Baltz replaced County Administrator Loucks.)

Mr. Perez continued his slide presentation detailing the proposed MMF-T zoning district and additional provisions for new PDs.

Commissioners D'Aprile and DeBoer expressed confusion because they've always tried to site multi-family next to single-family as opposed to all the other zoning they could put next to it.

Commissioner Devos recalled they're in litigation over parking and said staff needs to make sure that whatever's being proposed here doesn't involve anything they're already in litigation over.

Commissioner DeBoer said he's just as uncomfortable as Commissioner Devos regarding the flexibility issues and asked Mr. Perez to visit with him as well.

Commissioner D'Aprile agreed on the need to make sure nothing conflicts with any current litigation. Mr. Perez said he'll asked Legal to review everything with him to make sure.

Steve Stump read a prepared statement concerning zoning districts he felt should be removed so as not to mislead anyone into thinking these districts are available for future development, and said he looked forward to participating.

Wayne Largent endorsed the Board's efforts to maintain what they've accomplished so far, and said they were trying to define what is permissible in a PD without allowing people to get around what's been accomplished.

Commissioner DeBoer opined Mr. Largent gave a good explanation of what the residents want out there. **Commissioner Devos** agreed and said she feels better about what's being proposed.

COMMISSIONER DEBOER MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE.

Motion Carried 5:0.

Commissioner Devos asked staff to ensure MMF-T doesn't include overnight stays because of the traffic issues out there.

Chairman Moore announced the second public hearing would be August 15, 2006 at 9:00 AM.

2. PA-06-05-29 Legislative Commission District III

An Ordinance pursuant to Section 163.3187(1)(C), Florida Statutes, adopting a Small Scale Future Land Use Map amendment to the Charlotte County Comprehensive Plan from Medium Density Residential to Commercial Center for property located at 7160 Pinebay Blvd; containing 3.195± acres, in the Englewood area; Commission District III; Petition No. PA-06-05-29; applicant Charlotte County Board of Commissioners. **RECOMMENDATION: Community Development Department: Approval Planning and Zoning Board: Approval**

Inga Williams stated staff wished to continue this item to August 15, 2006 at 9:00 am because there is significantly more acreage involved than what was advertised. Attorney Brown said he felt this should be readvertised.

COMMISSIONER DEVOS MOVED TO CONTINUE PA-06-05-29 TO AUGUST 15, 2006 AT 9:00 AM, SECONDED BY COMMISSIONER D'APRILE.

Motion Carried 5:0.

Commissioner DeBoer noted they neglected to take citizen input and the residents were present. (Attorney Haymans and the residents in the audience said were they would be present next time.) **Commissioner DeBoer** said he was okay with that if the people were satisfied.

3. PA-06-02-18 Legislative Commission District III

An Ordinance pursuant to Section 163.3187(1)(C), Florida Statutes, adopting a Small Scale Future Land Use Map amendment to the Charlotte County Comprehensive Plan from Low Density Residential to Medium Density Residential for property located at 2820 Waterside Drive; containing 3.3± acres, in the Englewood area; Commission District III; Petition No. PA-06-02-18; applicant Lemon Bay Holdings LLC. **RECOMMENDATION: Community Development Department: Approval Planning and Zoning Board: Approval**

4. Z-06-02-19-TDU Quasi-Judicial Commission District III

An Ordinance approving an amendment to the Charlotte County Zoning Atlas from Residential Multi-family-10 (RMF-10) and Mobile Home Conventional (MHC) to Planned Development (PD), for property located at 2820 Waterside Drive; containing 5.88± acres, in the Port Charlotte area; Commission District III; Petition No. Z-06-02-19-TDU; applicant Lemon Bay Holdings LLC.

**RECOMMENDATION: Community Development Department: Approval
Planning and Zoning Board: Approval**

Chairman Moore advised Agenda Items 3 and 4 would be combined into one presentation.

(Deputy Clerk Mitchell administered the oath to prospective witnesses. Chairman Moore polled the Board for ex parte communications. Chairman Moore and Commissioners D'Aprile and DeBoer said yes and they would file the appropriate forms.)

Jie Shao explained this was a request for a small scale plan amendment PA-06-02-18 from Low Density Residential to Medium Density Residential for 3.3+ acres along with a companion rezoning Z-06-02-19-TDU from Residential Multi-family-10 (RMF-10) and Mobile Home Conventional (MHC) to PD for 5.88+ acres to allow the applicant to develop 58 multi-family residential condominium units. Ms. Shao reviewed the goldenrods and related materials, and reported receiving objections from residents and the Grove City Planning Committee. Ms. Shao stated the Development Review Committee (DRC) recommended approval with conditions to the Concept Plan associated with the PD. Ms. Shao said both staff and the Planning & Zoning (P&Z) Board recommend approval with conditions 'a through w' as detailed in the proposed rezoning ordinance.

Attorney Geri Waksler spoke on behalf of the applicant in support of both petitions.

Attorney Waksler clarified this request involves only 17 new residential units because 41 units have already been approved.

Attorney Waksler explained a TDU will be required but not all increased density results in negative impacts and commented on the traffic study done by Herston Engineering.

Attorney Waksler stated there are no negative impacts.

Attorney Waksler commented on existing and future approved developments that allow multi-family directly adjacent to single-family.

Attorney Waksler said her client accepts all the proposed conditions and requested approval of both petitions.

Margaret Taylor spoke in opposition to these petitions, asked those community members in the audience who have voiced concerns in the past to stand (about one dozen stood), read her prepared statement which detailed the concerns of the residents, and requested the Board table this project if not reject it completely.

Audrey Shinski spoke in opposition to these proposals, said the residents don't want this project because it will increase density, they don't support transferring density into Grove City, and opined zoning regulations should never be overridden.

Mary Watko spoke in opposition to these proposals, noted errors in the map staff provided, said she doesn't understand this request because the site is in a coastal high hazard area, and asked the Board not to approve this proposed project.

Jack Taylor said the applicant's requests are totally inappropriate for Lemon Bay and the Grove City area of Englewood, read his prepared statement which detailed his oppositions to these proposals, and requested denial.

Nancy Christensen reported they were in the process of getting their community plan finalized and they look forward to moving ahead with their visions for Grove City.

Steve Schoff gave a slide presentation in opposition to these petitions.

Linda Frost voiced opposition to both petitions and reviewed the material in the packet she'd provided Chairman Moore.

**COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING,
SECONDED BY COMMISSIONER DEVOS.**

Motion Carried 5:0.

Attorney Waksler rebutted some of the comments made during citizen input.

Attorney Waksler said the applicant would be willing to make as a condition of the approval that they would resurface the roads if they are damaged during construction.

Ms. Shao said staff received Southwest Florida Water Management District's (SWFWMD) violation letter, she and Ms. Williams visited the site July 7, 2006 but they found no illegal activity had occurred on the subject site, she then contacted SWFWMD, and she was told the intent of the letter was to request the applicant sit down with SWFWMD to discuss the proposed development. Attorney Waksler advised this meeting had already taken place.

Attorney Waksler reiterated there were no negative impacts to the community and asked the Board to take that into consideration.

Commissioner D'Aprile asked the height of these buildings. Attorney Waksler responded 35 feet and clarified that per the waterfront ordinance a building within 1,200 feet of the water may not be higher than 35 feet and this property is entirely within 1,200 feet of the water.

Chairman Moore recalled someone made reference to a dock and said he thought you couldn't have a dock without a house. Attorney Waksler clarified the Code does not allow for an accessory use to be built before a permitted use with the exception of docks which may be placed on a property prior to the primary use going up.

Chairman Moore said two of pictures shown were very damaging regarding the mangroves. Attorney Waksler said she has no knowledge of any violations since her client took ownership earlier this year.

Chairman Moore asked about the availability of reuse water. Attorney Waksler said they haven't discussed the use of gray water with the Englewood Water District (EWD).

Chairman Moore asked staff how they can include this statement about reuse. Attorney Waksler responded she discussed this with Ms. Shao and it was her understanding that condition was to be modified to read 'when available.' Ms. Shao agreed.

Chairman Moore asked if these units would be part of the Street & Drainage MSBU. Attorney Waksler said yes if there is an MSBU adjacent to this property.

Chairman Moore recalled the street on the south side of the property was called Kentucky at one time and asked if it had been vacated.

Attorney Waksler said the survey her client had done does not indicate that road has been vacated although it is just a paper road.

Commissioner DeBoer said he was deeply troubled by the fact that they vacated the right-of-way, alley and plat based on representations that they were reducing density from fifty-four to four units in February 16, 1999, he sees no reason the property can't be developed as it is zoned, and he's ready to vote against petition.

COMMISSIONER DEBOER MOVED TO DENY PETITION PA-06-02-18, SECONDED BY COMMISSIONER D'APRILE.

Motion Carried 5:0.

Attorney Waksler stated they will withdraw the rezoning petition at this point.

5. Z-06-02-16-TDU Quasi-Judicial Commission District I

An Ordinance approving an amendment to the Charlotte County Zoning Atlas from Agricultural Estates (AE) to Planned Development (PD), for property located north of Turbak Drive, south of Peace River Shores Boulevard, east of Cobalt Boulevard and west of Duncan Road (U.S. 17); containing 138.32± acres, in

the Punta Gorda area; Commission District I; Petition No. Z-06-02-16-TDU; applicant KB Home of Fort Myers LLC. **RECOMMENDATION: Community Development Department: Approval Planning and Zoning Board: Approval**

(Deputy Clerk Mitchell administered the oath to prospective witnesses.)

(Chairman Moore polled the Board for ex-parte communications. Commissioner D'Aprile said yes and he would file the appropriate form.)

Ms. Shao explained KB Home Fort Myers LLC was requesting a rezoning from Agriculture Estates (AE) to PD on 138.32 acres to increase the maximum allowable residential density from one unit per acre to 2.6 units per acres, this change will allow for a development totaling 351 dwelling units and allow for a mixed use development including residential and commercial uses on the subject site. Ms. Shao reviewed the goldenrod; said the DRC, staff and the Planning & Zoning (P&Z) Board recommend approval with conditions 'a through aa' as detailed in the proposed ordinance, and the applicant has agreed to all conditions.

Attorney Waksler spoke on behalf of the applicant in support of staff's report and all proposed conditions, and requested approval.

COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE.

Motion Carried 5:0.

COMMISSIONER DEVOS MOVED TO APPROVE ORDINANCE #2006-067, SECONDED BY COMMISSIONER D'APRILE. Commissioner DeBoer asked is there internal access to the commercial site.

Attorney Waksler said yes there will be access internally.

Commissioner DeBoer noted they need to do something relatively quickly to master plan this corridor due to the lack of adequate shopping nodes. Attorney Waksler recalled the Board approved a large scale plan amendment of a large area along U.S. 17 to be changed from AG to Commercial but DCA found it non-compliant so

there's a real problem with trying to put in commercial nodes in advance of residential development, and she's just begun the process of working with DCA to see what can be done to satisfy DCA's concerns.

Commissioner DeBoer opined DCA has tendency to micro-manage growth in Florida.

Chairman Moore asked if there were plans for the sewage treatment plant out there to supply reuse water?

Todd Rebol said this was being investigated.

Chairman Moore asked if there was an affordable housing element to this. Attorney Waksler said no.

Motion Carried 5:0.

7. PV-06-04-04 Legislative Commission District I

Five Crossland Trust has applied for a plat vacation to vacate Section "A" of Dixie Estates Subdivision, a Subdivision in the SW 1/4 of Section 30, Township 40 South, Range 26 East, as recorded in Plat Book 1, Page 51 of the Public Records of Charlotte County, Florida, less and except the following lots: Lots 18, 19, 20, 21 and 22 of Block 1; Lots 1, 2, 3, 4 and 5 of Block 2; Lots 6 and 7 of Block 7; Lots 14 and 15 of Block 8; Lots 1 and 2 of Block 13; Lots 6, 7, 8, 9 and 10 of Block 15; as well as all Rights-of-Way, less and except Dahlia Street from Avocado Avenue to Eucalyptus Avenue; Bananna Avenue from Dahlia Street, north to Aster Street (1,242 feet); Coconut Avenue, from Dahlia Street north to the northwest corner of Lot 14, Block 8, and the northeast corner of Lot 17, Block 9 (511 feet); Broadway, from Dahlia Street north to northwest corner of Lot 6, Block 7 and the northeast corner of Lot 25, Block 8 (713 feet); Date Avenue, from Dahlia Street north to the northwest corner of Lot 6, Block 15, and the northeast corner of Lot 25, Block 14 (279 feet). The site consists of 27± acres and is in Commission District I. **RECOMMENDATION: Community Development Department: Approval Planning and Zoning Board: Approval**

Mr. Dossett reviewed the goldenrod, explained this was a housekeeping item to allow for a sending zone, there were no

objections from the utilities, and said both staff and the P&Z Board recommend approval.

COMMISSIONER DEVOS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE.

Motion Carried 5:0.

COMMISSIONER D'APRILE MOVED TO APPROVE RESOLUTION #2006-113, SECONDED BY COMMISSIONER DEBOER.

Motion Carried 5:0.

8. SV-06-04-05 Legislative Commission District III

William R. and Nancy J. Smith have made a Street Vacation Request to vacate a portion of Missouri Avenue, bounded on the east by Bourbon Street (Fourth St); on the west by Waterside Drive (Third Street), on the North by Grove City Block 172, Lots 10 and 11, and the South by Grove City Block 182, Lots 1 and 20, and a portion of the alley located between Grove City Block 182, Lot 18, 19 and 20 and Grove City Block 182, Lots 1, 2 and 3, a portion of Grove City Subdivision as recorded in Plat Book 1, Page 4 of the Public Records of Charlotte County, Florida. The site consisting of .27± acres, is located in Section 17, Township 41, Range 20, in Commission District III.
**RECOMMENDATION: Community Development Department: Approval
Planning and Zoning Board: Approval**

Mr. Dossett reviewed the goldenrod, advised that Florida Power & Light (FP&L) and Sprint both have facilities there and need easements, said both staff and the P&Z Board recommend approval with two conditions the first of which has been revised to reflect the easement required for Sprint, and both these conditions are in the proposed resolution.

Commissioner DeBoer asked if this vacation may leave a portion of an alley open. Mr. Dossett said staff researched this and they found no problems.

**COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING,
SECONDED BY COMMISSIONER DEBOER.**

Motion Carried 5:0.

**COMMISSIONER DEVOS MOVED TO APPROVE RESOLUTION #2006-114,
SECONDED BY COMMISSIONER D'APRILE.**

Motion Carried 5:0.

Mike Konefal said there was one additional item, recalled at the last Board meeting there was an issue brought up regarding noncompliance findings with DCA, he sent an e-mail to each of the Commissioners about those four noncompliance findings and provided information, and asked if the Board wished him to address this further at this time. **Commissioner Devos** said she hadn't read the e-mail yet and suggested this be put on next week's agenda. **(Board consensus.)** **Chairman Moore** said he talked with Mr. Konefal yesterday, he respectfully disagrees with the e-mail because in this case he feels these issues are important, and he felt more Board input was needed.

Commissioner D'Aprile said he had one other item, Ordinance #2005-081 deals with overhead garage doors that are visible and face U.S. 41 but he didn't know that it would be applied to all areas of the County including industrial parks and displayed a picture. **Commissioner D'Aprile** said the ordinance says these doors should be recessed back three feet, he doesn't know why since you can still see them so what does this solve, and he wants this to come back to the Board at the next meeting for more discussion because he felt they made a mistake.

Commissioner Devos said she never considered it would impact an industrial park because that wasn't her intent.

Commissioner D'Aprile said he knew that but it's happened and he wants Board input.

Commissioner Devos asked if a public hearing was needed. Attorney Brown said a public hearing would be needed to amend the ordinance. **Commissioner Devos** said due to the need for this to be advertised it couldn't come back next week.

Chairman Moore asked how much time staff would needed. Mr. Konefal explained it would need to go to the P&Z Board and then to this Board, and since this would need to be advertised it'll take a couple of months but from the standpoint of the change the amount of work is minimal so he'll bring it back as soon as possible.

Commissioner DeBoer said he felt this will take a bit of time so they need to bring it back for discussion first so staff knows what they want.

MEETING ADJOURNED: 1:52 PM

Signature on file in Commission Minutes
Chairman Moore

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