

**BOARD OF COUNTY COMMISSIONERS - LAND USE HEARINGS**

**JANUARY 16, 2007**

A regular meeting 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 Loftus, Commissioner Cummings, Commissioner D'Aprile, Commissioner Moore, and Commissioner Duffy. Also in attendance were Assistant County Attorney Browne, Assistant County Administrator Roger Baltz, Executive Assistant Dillon, and Minutes Supervisor Nice. The following members were absent: None.

The meeting was called to order at 9:00 AM followed by the Pledge of Allegiance.

Change to the Agenda:

**Chairman Loftus** announced Deletion #1 - Agenda Item I-A, Community Development, It is recommended that the Board of County Commissioners enter into a Master Development of Regional Impact (DRI) Agreement with Lee County, the Southwest Florida Regional Planning Council, and Babcock Property Holdings. LLC, with respect to the Babcock Ranch DRI Process will be heard at another time.

**(Chairman Loftus requested the oath be administered to prospective witnesses with regard to the quasi-judicial hearings. Minutes Supervisor Nice administered the oath.)**

**I. Citizen Input**

Tom Smith, a Sandpiper Key resident, asked the Board to reconsider the decision made during the last Land Use Public Hearing on the Wildflower Golf Course development agreement.

**Commissioner Moore** questioned the need for a motion and vote on the Change to the Agenda. Assistant County Attorney Brown stated the agenda item was deleted at the request of applicant and a motion and vote are not necessary.

**II. Planning and Zoning Agenda**

1. Z-06-10-57 Quasi-Judicial Commission District III An Ordinance approving an amendment to the Charlotte County Zoning Atlas from Residential Multi-family-10 (RMF10) 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

Jie Shao reported the Planning and Zoning Board recommended denial of the petition on a 3:2 vote.

**(Chairman Loftus polled the Board for ex-parte disclosures. All Board Members disclosed ex-parte communications.)**

Ms. Shao gave a slide presentation on the petition for rezoning from Mobile Home Conventional to Residential Multi-Family-5 (RMF-5) on 2.92 acres located at 2820 Waterside Drive; the rezoning is consistent with the Future Land Use Map (FLUM) and the Comprehensive Plan; Planning & Zoning Board (P&Z) heard the petition on January 8, 2007 and recommended denial on a 3:2 vote based on concerns raised by residents concerning illegal failings that occurred in 1999 to 2000 time frame and a possible increase in developable units; explained no increase in density will occur since the existing developable units on the site is five units per acre; and as a result of additional review after the P&Z Board meeting, staff still recommends approval.

Attorney Geri Waksler appeared on behalf of applicant in support of the rezoning; reported Lemon Bay Holdings owns the 2.92 acre site and the contiguous approximate 3-acre parcel to the north; the 3-acre parcel is zoned RMF-10 with Medium Density and the 2.92-acre site is zoned MHC five units per acre; the zoning classifications have existed since 1987; reviewed the prior legislative application that resulted in no action being taken and the plat vacation that eliminated 54 substandard lots and created four large estate tracts; explained the rezoning will not increase density but allow multi-family development on both parcels; and requested Ian Vincent from W. Dexter Bender & Associates to comment on residents' concerns on the fill.

Ian Vincent updated the Board on the history of the site commencing with the preliminary assessment conducted in March 2006; a Notice of Inquiry received in July 2006 from the Southwest Florida Water Management District (SWFWMD); a field inspection done with SWFWMD officials and the 1999 aerial of the possible violation site; approximately 30 soil borings conducted indicated two distinct levels and types of fill; SWFWMD and Florida Department of Environmental Protection (FDEP) have not issued any violations; opined aeriels do not reflect everything; and a letter has been received from FDEP with SWFWMD in agreement that any potential environment issues will be addressed during the environmental permitting process. Mr. Vincent opined that there has not been an unauthorized fill on the site based on his review.

Linda Frost read a partial statement on behalf of the Grove City community in opposition as a result of a meeting scheduled for December 2006 and cancelled by Lemon Bay Holdings, Dr. Tarn's grant of a vacation of two streets and relate alleys, and former **Commissioner** DeBoer in July 2006 made a motion to deny the developer's application on this property recognized one cannot ignore the history of this property and no property is guaranteed developmnt to its maximum density."

**Commissioner D'Aprile** expressed concern about increased density and wetland issues and requested clarification on the location of wetland violations. Attorney Waksler explained two parcels will be combined for one development and the subject parcel to the south does not contain any wetland fill violations based on the soil borings. Attorney Waksler referenced the handout containing a letter from SWFWMD dated September 19, 2006 closing out the alleged violation complaint indicating no violation would be pursued on the site. **Commissioner Moore** noted complaints were made and agreed that SWFWMD is not taking any action at this time. Attorney Waksler read from the letter that SWFWMD is not pursuing any alleged violations but the petitioner has the burden once the two sites are combined for development to mitigate violations, if any are found; and the wetland fill was done prior to petitioner's acquisition in January 2006. Attorney Waksler explained the site plans handed out, one of which complies with all of the setbacks; the fill did not create more uplands for development; reiterated staff did not change the recommendation for approval based on specific Comprehensive

Plan policies; the rezoning is consistent with surrounding FLUM and zoning designations, the density pattern remains unchanged and with no increased impact on utilities, roads, and schools; traffic flows will be reduced; mobile homes in the Coastal High Hazard area will be eliminated; the site will have to complete with the height ordinance; there will be more open space than with mobile homes; the rezoning will not impact traffic safety; this petition complies with rezoning standards; requested approval and rebuttal time.

**Commissioner Cummings** referenced the letter from SWFWMD and questioned where it addresses the wetland fill issue since it only addresses mangrove trimming. Mr. Vincent requested verification if the letter is of final closure of inquiry. Attorney Waksler presented the original notice of inquiry dated July 26, 2006 about clearing, trimming, and wetlands. **Commissioner Cummings** asked the elevations prior to and after filling. Mr. Vincent estimated four feet when the two layers of fill are combined. Attorney Waksler explained development will occur above the level of fill and the Federal Emergency Management Agency (FEMA) regulations and fill will not necessary for the development. **Commissioner Cummings** stated he will wait for additional testimony since very little testimony has been provided on the thresholds and quasi-judicial standards, and questioned if some of the issues raised will be addressed during the Development Review Committee (DRC) process. Ms. Shao responded development on site issues will be addressed during that process.

**Chairman Loftus** announced public hearing procedures.

Polly Allen read a statement in opposition to the proposed rezoning and indicated a zoning change to allow condominium development should not be considered until the County has investigated the illegal filling of the wetlands and enforced FEMA regulations; denial of the petition will not take away development potential since density is not being changed on the site; filling wetlands creates obstruction to flood waters and storm surges. Ms. Allen introduced two large historical aerial photographs from 1998 in black and white and 2004 in color showing the wetland and fill areas.

Mary Watko read from a statement by commenting on the limited access to her property and the elimination of an evacuation route to the north to Massachusetts Avenue which is on higher ground and less likely to flood than Florida Avenue; indicated she witnessed the cutting of mangroves and filling; the illegal filling has endangered her property; and no action should be taken on the rezoning.

John Taylor, a practicing marine biologist in Florida and a Board Member of Lemon Bay Conservancy, enumerated specific reasons in opposition to the rezoning and development request.

Attorney Ralph Brooks, on behalf of Herbert Small and Polly Allen, pointed out Lemon Bay Holdings at the last minute cancelled the meeting in December 2006 with the Grove City Planning Committee; the published agenda is inaccurate since it indicates the application is for a Planned Development (PD); the P&Z Board resolution recommending denial is not in the packet for this Board's consideration; showed photographs of the illegal filling; referenced Code building requirements under 3-5-91 specific to land clearing and filling permits that were violated; and requested additional time. **(Board consensus to allow one additional minute.)** Attorney Brooks stated single family homes are allowed in the MHC and that is what is being constructed in the area; RMF-3.5 and RSF-3.5 are both compatible in this area; referenced inconsistencies with the Comprehensive Plan and the Florida Supreme Court case of Snyder vs. Brevard County; provided additional documentation on the history of the site and letters in opposition to the proposed rezoning.

Gail Sorenson read a statement into the record requesting rejection of the zoning petition citing the Snyder case, commented on the need for preservation, and encouraged the Board to take a stand for the environment and the character of communities.

Phillip Leeds distributed a photograph of Florida Avenue, one block off of Placida, that is one of the two ways to the site, with his trailer and a home where two school age children live, and pointed out increased safety hazards from large truck traffic.

Janet Doerr finished reading Polly Allen's statement in opposition to the proposed rezoning and development.

Timothy Hillebrand stated he was not sworn in. (**Minutes Supervisor Nice administered the oath.**) Mr. Hillebrand, appeared on behalf of his mother who lives near the site, in opposition to the rezoning due to the incompatibility of condominiums with single family homes, mobile homes, and duplexes in the area; the condominiums will increase the load on public facilities and public safety, and the possible contamination of Lemon Bay depending upon the contents of the wetlands fill; and requested denial.

**COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER CUMMINGS.  
Motion Carried 5:0.**

Attorney Waksler asked Todd Rebol, Banks Engineering, to rebut comments concerning FEMA regulations.

**Commissioner D'Aprile** reiterated this petition is only for the rezoning and questioned petitioner's ownership of the property. Attorney Waksler reiterated petitioner purchased the property in January 2006, due diligence did not indicate any violations or conditions on the plat, 43 developable units are allowed, and the rezoning is consistent with the Comprehensive Plan. **Commissioner D'Aprile** acknowledged resident's concerns and indicated a reluctance to approve the rezoning. Attorney Waksler submitted one of the original notices sent to property owners indicating the rezoning to RMF-5 on the 2.92 acres only not PD and explained cancellation of the December 2006 meeting with residents of Grove City due to a letter from Linda Frost, of the Grove City Planning Committee, objecting to the latest proposal. Attorney Waksler testified filling was performed prior to petitioner's acquisition of the site; there is no justification that any violations have taken place, filled wetlands occurred prior to Lemon Bay Holdings' acquisition; the filling had no impact on FEMA requirements, her client committed no violations on the property but will be required to pay the price for the violation, if any; approval of the rezoning will reduce the number of manufactured homes in a flood plane area, reduce traffic impacts on residents; the Level of Service on Placida Road will not be reduced because of this development;

the rezoning is consistent with the Comprehensive Plan; and no evidence has been presented contrary to the standards for rezoning. **Commissioner Duffy** requested the date of the illegal filling. Attorney Waksler expressed uncertainty about the original filling and stated the second filling occurred on the first fill during Dr. Tarn's ownership on the northern parcel and outside of the 2.92 acres which is the subject of the rezoning. **Commissioner Duffy** noted complaints were made during the last year and expressed uncertainty of why complaints were not brought earlier.

**Commissioner Cummings** requested verification that RSF is allowed in MHC and RMF. Ms. Shao responded affirmatively. **Commissioner Duffy** requested verification that mobile homes could be erected if this petition is not approved. Ms. Shao indicated yes for 14 units. **Commissioner Moore** requested when the dock was constructed. Ms. Shao suggested Susie Derheimer respond. (**Minutes Supervisor Nice administered the oath to Ms. Derheimer.**) Ms. Derheimer reported the dock was permitted in 2004. **Commissioner Moore** questioned the existence of a dock without a house on the property. Attorney Waksler advised a dock is the only accessory use that can be constructed prior to a primary residence. **Commissioner Moore** stated the County made an error years ago, the P&Z report was not included even though that hearing was held prior to publication of the agenda, stated the rezoning is not compatible with the adjacent area, expressed uncertainty when this Board will have additional input on the proposed project, and indicated dissatisfaction with SWFWMD's handling of the fill issue. Attorney Browne stated he attended the P&Z hearing and explained this Board will have more opportunities to address the proposed development. **Commissioner Cummings** asked for minutes from the P&Z hearing, recalled the original intent of the vacation was to provide for four single family residential homes, and pointed out several of the quasi-judicial standards have been met.

**COMMISSIONER CUMMINGS MOVED TO DENY PETITION Z-06-10-57 BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED NOVEMBER 17, 2006 AND TESTIMONY AND EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE.**

**Commissioners D'Aprile and Duffy** indicated opposition even though quasi-judicial standards have been met and there is not a legal reason to deny the petition. **Chairman Loftus** expressed concern about the inconsistencies with the published notice and letters to owners and concurred with **Commissioners Cummings and Duffy**.

**Motion Failed 2:3. Chairman Loftus, Tricia Duffy, and Commissioner D'Aprile opposing.**

**Commissioner Cummings** pointed out no action has been taken since the motion to deny failed.

**COMMISSIONER D'APRILE MOVED TO APPROVE ORDINANCE 2007-001 FOR THE REZONING FROM MHC TO RMF-5 AS REQUESTED IN PETITION Z-06-10-57, SECONDED BY COMMISSIONER DUFFY.**

**Motion Carried 3:2. Chairman Loftus and Commissioner Moore opposing.**

**Commissioner Cummings** commented on testimony and evidence provided on the existing fill, the lack of evidence on the fill permit, and language removed from the Comprehensive Plan that authorizes the Board to selectively enforce such a problem even though it is under the State's jurisdiction. **Chairman Loftus** recalled testimony that the fill was on the adjacent parcel and not the subject site. **Commissioner Cummings** indicated reluctance to agree based on the lines on the aerial. **Commissioner Moore** stated that Board has the authority to make spot changes. **Commissioner Cummings** clarified the Board would defer to the SWFWMD and FDEP but there is expertise on staff to address environmental issues. **Chairman Loftus** requested a copy of Sheriff's Department reports on citizens' complaints. **Commissioner D'Aprile** expressed dissatisfaction with the situation and opined fines for violations are not large enough to curtail illegal actions as in one instance when a property owner constructed a boat launch site, was fined \$30,000 and sold the property for \$10 million.

**RECESS: 10:52 A.M. - 11:08A.M.**

2. PV 06-10-16 (Legislative) Commission District II Charlotte County School Board has applied for a Plat Vacation to vacate a portion of Clay's Subdivision and

Forest Park Subdivision and the streets adjacent thereto, more particularly described as those lands being bounded by Cooper Street to the west, Henry Street to the south, Education Avenue to the east and Carmalita Street to the north, and the 1/2 vacated Cypress Street adjacent thereto; less and except Lot 25 of Clay's Subdivision, all of which is located in Section 8, Township 41 South, Range 23 East, consisting of 79 ± acres, in Commission District II. A complete legal description is on file. RECOMMENDATION: Community Development Department: Approval with conditions and Planning and Zoning Board: Approval with conditions

**(Nice administered the oath to Mr. Dossett for PP-06-10-06.)**

Development Review Manager James Dossett explained the Land Use and Development Regulations (LDRs) are being rewritten, interdepartmental and interagency summit to determine the entity authorizations and obligations, and Code Compliance Enforcement Regulations to be brought back on the next level of participation. **Commissioner Cummings** suggested as part of the LDRs revision that criteria be included to allow low density in the Rural Service Area to occur in a low impact fashion and retain a certain percentage of the land in its natural state. Mr. Dossett commented on the efforts of Nicole Dossier and staff regarding the LDRs and Code Compliance regulations.

Mr. Dossett gave a slide presentation and summarized the petition to vacate the plat which is a portion of Clay's Subdivision and Forest Park Subdivision and adjacent streets filed by the Charlotte County School Board; part of the land is located in the County and most of the land is located in the City of Punta Gorda specifically in the area of Charlotte High School; the site is 78 acres; P&Z Board heard the petition on December 11, 2006 and recommended approval with two conditions, one of which has already been resolved and the remaining condition is that the applicant provide either an easement or letter stating no easement is required from each utility; and requested approval. Attorney Robert Berntsson appeared on behalf of the Charlotte County School Board, clarified the property concerns not only Charlotte High School but also Punta Gorda Middle School both of which are being rebuilt after Hurricane Charley, all vacation work was performed with the City in the mid-1990's, requested deletion of the condition based on a letter from him to be written that all necessary easements

will be provided to utilities, and assured the Board that all necessary easements will be provided.

**Commissioner D'Aprile** requested staff's position on deletion of the condition. Mr. Dossett stated no objection since it is the School Board but cautioned this will be the last time the petition will be before this Board.

**COMMISSIONER CUMMINGS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE.**  
**Motion Carried 5:0.**

**COMMISSIONER D'APRILE MOVED TO APPROVE RESOLUTION 2007-011 AND DELETION OF THE CONDITION, SECONDED BY COMMISSIONER CUMMINGS.**  
**Motion Carried 5:0.**

3. PP 06-10-06 (Quasi-Judicial) Commission District III JEC One, LLC has applied for a Preliminary Plat for South Gulf Cove Manor, a subdivision consisting of 13 single family residential lots in Section 28, Township 41, Range 21. The site, consisting of 3.923 acres, more or less, is located south of Fort Myers Avenue, north of Appleton Boulevard, and on the east and west sides of Sunday Drive in South Gulf Cove. The site currently consists of two parcels, one on each side of Sunday Drive, and is located in Commission District III. A complete legal description is on file. RECOMMENDATION: Community Development Department: Approval and Planning and Zoning Board: Approval

Mr. Dossett presented the petition for a preliminary plat for South Gulf Cove Manor, consisting of 13 single family home sites on 3.923 acres located south of Fort Myers Avenue, north of Appleton Boulevard and on the east and west sides of Sunday Drive in South Gulf Cove and requested approval with two conditions for the street names to be corrected and agreement with the County for construction of six-foot sidewalks when the units are developed.

**Commissioner Moore** requested verification on resolution of the two conditions. Mr. Dossett stated the conditions are a part of the DRC process and should not have been included and boring will be required at the time of sewer hookup.

(Chairman Loftus polled the Board for ex-parte disclosures and there were none.)

Greg Weyers, Landmark Land Consultants, appeared on behalf of applicant by concurring with Mr. Dossett's statements and advised the applicant will enter into an agreement with the County prior to final plat application.

**COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE.  
Motion Carried 5:0.**

**COMMISSIONER D'APRILE MOVED TO APPROVE PRELIMINARY PLAT PETITION PP-06-10-06 FILED BY JEC ONE, LLC FOR SOUTH GULF COVE MANOR WITH THE TWO CONDITIONS, SECONDED BY COMMISSIONER MOORE.  
Motion Carried 5:0.**

4. Appeal of the TDU Ordinance (Quasi-Judicial) Commission District III Resolution of the Board of County Commissioners, waiving certain requirements of Chapter 3-5, Article XX, Code of Laws and Ordinances, Charlotte County, Florida (Transfer of Density Units) for property owned by The Hammocks Cape Haze, LLC, located North of Williamsburg Way, West of Lemon Lake and East of Placida Road (CR 775).  
**RECOMMENDATION:** Community Development Department: Approval with conditions

Planner Inga Williams presented the petition to transfer excess density on 37.64 acres approved for 234 developable density units; petitioner has submitted a site plan for 480 units; staff is recommending calculations be done by the same method utilized in the Carmalita Investments appeal requiring removal of undevelopable property (the portion of Lemon Lake within the property boundaries) and multiplying the remaining acreage by the zoning district designated density (RMF-15 and RMF-10) for a net gross density; petitioner has calculated 246 excess units whereas staff has calculated 227 units; and staff is requesting consistency in utilizing this methodology to determine the access density.

(Chairman Loftus polled the Board for ex-parte disclosures and there were none.)

Attorney Berntsson appeared on behalf of the applicant, explained zoning allows 486 units; petitioner's site plan allows for 480 units; by subtracting the 234 units approved for development 246 units can be transferred; staff recommends 227 units; and requested approval to transfer 246 units, if not, at the very least a specific number of units be determined for transfer.

**COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER CUMMINGS.  
Motion Carried 5:0.**

**Commissioner Moore** concluded the issue involves 19 units; requested a direct comparison with the Carmalita property. Attorney Berntsson recalled a water body feature was excluded and there may have been other issues and this petitioner decided not to mitigate the lake for the additional 6 density units. Attorney Berntsson recalled the TDU ordinance was approved in December, he met with staff in January, and the interpretation has changed over time; in good faith he has worked with staff during the 18-month period; and the issue is 19 units over the 227 units calculated by staff. **Commissioner Moore** questioned the location of the site in the Coastal High Hazard Zone. Attorney Berntsson clarified part of the site is located east of C.R. 775.

**COMMISSIONER D'APRILE MOVED TO APPROVE RESOLUTION 2007-012 WITH THE DENSITY UNIT CALCULATION AS RECOMMENDED BY STAFF, SECONDED BY COMMISSIONER CUMMINGS.  
Motion Carried 4:1. Commissioner Moore opposing.**

Attorney Berntsson concluded the number of units is 227. (**Board consensus.**)

5. Appeal of the TDU Ordinance (Quasi-Judicial) Commission District III  
A Resolution of the Board of County Commissioners, waiving certain requirements of Chapter 3-5, Article XX, Code of Laws and Ordinances, Charlotte County, Florida (Transfer of Density Units) for property owned by Peace River Island, LLC., located North of Island View Drive, South of the Peace River, West of Darst Avenue, and East of Glenholm Avenue. RECOMMENDATION: Community Development

Department: Denial

Ms. Williams presented the petition filed by Peace River Island, LLC to transfer all 85 density units, instead of the 10 units allowed, to develop Tranquility Island that was platted in 1929 for 85 units as part of the Bay Shores Subdivision and appeal Sections 3-5-435 and 3-5-454(b) of the TDU ordinance; staff did not find justification; and requested denial of all three appeals since the lots are substandard; the third appeal is to create this as a Receiving Zone for transfer of the units; and staff recommends denial of both requests and the third appeal would be useless without approval of the first two.

**(Chairman Loftus polled the Board for ex-parte disclosures and all Board Members disclosed ex-parte communications.)**

Attorney Waksler appeared on behalf of applicant on appeal of the TDU ordinance for three variances; stated the island platted in 1926 contains 85 non-conforming lots; referenced and passed around an aerial showing the large mangrove wetlands; applicant will have to mitigate for the road constructions whereas single family owners would not be required to do so; applicant intends to develop 59 not 85 units on the site as shown on the plat, aerial, and schematic of the proposed construction; reviewed the five findings required for approval of appeals to the TDU ordinance; water and sewer services will be extended to the site; a conservation easement will be placed on the mangrove area; fronts of the bungalow style raised structures will face the water; approval of the appeal will be consistent with density set out in the Comprehensive Plan for Coastal Areas and reduce density by 26 units; growth will be directed to areas that better provide services; environmentally sensitive wetlands and salt water marshes will be preserved as required by the Comprehensive Plan; nothing is accomplished by denying this appeal; staff's recommendation for denial does not provide any justification for transfer of more than 10 units; and requested grant of the appeal.

**Commissioner Cummings** questioned what the area is if it is not a wetland or upland on the uplands survey. Attorney Waksler explained it is an area beneath the mean high water line as submerged land on the survey, high quality wetlands but not all of the wetlands will be preserved, none of the jurisdictional

agencies have provided opinions so all of the lines on the surveys are preliminary. **Commissioner Cummings** expressed concern about the way the proposed development was portrayed to him on the site plan during a meeting with Attorney Waksler versus the significant amount of land on the survey not identified as uplands and wetlands. Attorney Waksler reviewed the survey. **(Minutes Supervisor Nice administered the oath.)** David Crane, the project engineer, stated the SWFWMD has not made an official determination on the wetlands and uplands boundaries. Attorney Waksler stated the environmental consultant has had input in the site plan and a survey of the property has been conducted. **Commissioner Cummings** stated this might not be a final determination since the survey is preliminary. Attorney Waksler stated there will be some wetland impacts but not to the extent shown on the survey.

**Chairman Loftus** announced public input procedures. **(Minutes Supervisor Nice administered the oath.)** Clifford Rice stated he resides at the entrance of the island, it is underwater for a good part of the year and should not be developed. **(Minutes Supervisor Nice administered the oath.)** Michaelo (Mike) Bennett stated he resides on the east side of the island, he has mixed feelings because this development would financially benefit the island and surrounding area, the ideal situation would have been for the County to acquire the island for preservation, and if development occurs, condominiums should not be allowed. **(Minutes Supervisor Nice administered the oath.)** Tom Smith stated the applicant has addressed many community concerns, he believes that the proposed development will be beneficial to the local community, and commented in support of the project.

**COMMISSIONER D'APRILE MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER CUMMINGS.**  
**Motion Carried 5:0.**

**Commissioner D'Aprile** requested verification of contacts between the applicant and residents. Attorney Waksler indicated impacted property owners were more comfortable with the proposed development after a meeting with the developer and Mr. Rice declined to meet with the developer on a one-to-one basis. Ms. Williams explained applicant is transferring density on site rather than purchasing density in West County or another

Tropical Storm Area. Attorney Waksler stated the issue is that individual owners are exempt from SWFWMD review. Ms. Derheimer explained private owners would still be required to go through the State and Federal permitting process e.g. FDEP and the Army of Corps of Engineers. Ms. Williams pointed out all of the lots are vested but substandard and most of the homes are built on two or three lots. **(Discussion ensued regarding the location of wetlands, mangroves, and uplands on the island on the flex map, the map submitted as part of the DRC process, and the protected species assessment map.)** Attorney Waksler reiterated wetlands will be impacted by the development but not to the extent on the survey. Ms. Derheimer indicated 3.6 acres of mangrove swamp will be impacted but it has not been verified by the agency. Ms. Williams pointed out the proposed site plan is not consistent with the Comprehensive Plan. **Commissioner Cummings** commented on the unlikelihood of permit issuance for the project and approval from State, local, and Federal entities. Ms. Williams agreed. Attorney Waksler reported applicant has met with FDEP and the Army Corps of Engineers who have responded favorably to the proposed site plan and development. **Commissioner D'Aprile** opined this is the type of development he would support instead of individual lot development. **Chairman Loftus** stated the proposed development is unique and beneficial to the community but expressed concern about Fire/EMS response issues. Attorney Waksler advised the bridge will be built to withstand fire trucks and EMS vehicles and the roads will be wide enough to accommodate these vehicles. **Commissioner Duffy** stated this development could be very beneficial but she is concerned with the number of developable units. Attorney Waksler explained the development is within the 3.5 units per acre designation with sufficient open and green space; the wetlands are mostly isolated on the island; no permits have been issued by the agencies; and development into wetlands and uplands must be justified before permit issuance. **Commissioner Duffy** requested an explanation of vesting. Ms. Williams stated the Comprehensive Plan looks to reduce density in Coastal High Hazard areas. Attorney Browne stated the plat of 1926 would never be permitted today and the units are being severed from the plat. **Commissioner Duffy** concluded this is a good development.

**Commissioner Cummings** commented on the likelihood of applicant developing 85 units on the site, he does not believe that the

testimony and evidence has met the quasi-judicial standards and it undermines the TDU ordinance. **Commissioner Cummings** pointed out the survey showing the uplands is only preliminary but the decision today by the Board is not preliminary in giving the applicant TDUs. Attorney Waksler recalled in the application, the applicant's willingness to accept a condition to prohibit sale of the units off of the island; the purpose of the TDU ordinance was to eliminate substandard lots and place development on uplands. **Commissioner Cummings** stated the proposed development is not consistent with the Comprehensive Plan.

**COMMISSIONER CUMMINGS MOVED TO DENY THE TDU APPEAL, SECONDED BY COMMISSIONER MOORE.**

**Chairman Loftus** asked Attorney Waksler for a delay to obtain additional information on the total uplands. Attorney Waksler stated her client's preference is to obtain a decision today and the proposed development will be brought back before this Board on two more occasions.

**Motion Failed 2:3. Chairman Loftus, Commissioner Duffy, and Commissioner Moore opposing.**

**COMMISSIONER D'APRILE MOVED TO APPROVE RESOLUTION 2007-013, SECONDED BY COMMISSIONER DUFFY.**

**Commissioner Cummings** stated this is not a sustainable precedent. **Commissioner Moore** suggested a workshop be scheduled on the TDU ordinance to discuss impacts since its adoption and to better understand it. **Chairman Loftus** agreed and asked that the workshop be scheduled as quickly as possible. **Commissioner D'Aprile** agreed with **Commissioner Cummings** in not setting a precedent without justification. **Commissioner D'Aprile** pointed out this project provides controlled development. **Commissioner Duffy** stated the Board has an ethical obligation to address the public good. **Chairman Loftus** indicated that 26 units would go away and the applicant is asking for 59 units. Ms. Williams advised it is inconsistent with the Comprehensive Plan.

**Motion Carried 3:2. Commissioner Cummings and Commissioner Moore opposing.**

**Commissioner Moore** stated the Board needs to make a decision today on the reconsideration of the Wildflower Golf Course project. **Commissioner Moore** opposed reconsideration. **Commissioner Duffy and Chairman Loftus** stated they would not change their votes. **Commissioner Cummings** stated over 3,000 density units have been added since 2000 when over 1,400 units were to be reduced. **Commissioner Cummings** reported a Water Authority meeting will be held tomorrow, one of the items on the agenda is the integrated water agreement, on which he has a lot of unanswered questions and concerns including the hybrid type of government and the use of excess allocations; if the plan is rewritten, Charlotte County should get 2.1 mgd of the 3 mgd increase in capacity; the pilot program on the minimum levels and the extent to which water might be withdrawn down to the salt levels; indicated uncertainty regarding the cost of sources to address unreliability; and requested input. **Chairman Loftus** questioned the need to approve the plan tomorrow. **Commissioner Cummings** expressed a willingness to receive information but he is not willing to adopt the plan at this time. **Commissioner Duffy** suggested scheduling a joint meeting with member counties. **Chairman Loftus** recalled Commissioner Staub is in the process of scheduling a joint meeting on growth management issues between Sarasota and Charlotte Counties.

**MEETING ADJOURNED: 1:05 P.M.**

Signature on file in Commission Minutes  
Chairman Loftus

**ATTEST:**

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

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

djn