

**BOARD OF COUNTY COMMISSIONERS**  
**REGULAR MEETING AND LAND USE HEARINGS**  
**FEBRUARY 20, 2007**

A regular meeting of the Board of County Commissioners, and Land Use Public Hearings were held at the Murdock Administration Complex in Room 119, Port Charlotte, Florida. The following members were present: Chairman Loftus, Commissioner Duffy, Commissioner Cummings, Commissioner D'Aprile, and Commissioner Moore. Also in attendance were Assistant County Administrator Baltz, Assistant County Attorney Browne, Executive Assistant Gant, and Deputy Clerk Manley. The following members were absent: None. The meeting was called to order at **9:00 AM**, followed by the Pledge of Allegiance to the flag. (**Proof of Publication was in order.**)

**Changes to the Agenda:**

**Addition #1:** Approve and appoint Commissioner nominations as members of the Charlotte Assembly Steering Committee

**COMMISSIONER D'APRILE MOVED TO APPROVE CHANGES TO THE AGENDA, SECONDED BY COMMISSIONER MOORE.**

**Motion Carried 5:0.**

**CITIZENS INPUT - AGENDA ITEMS ONLY** - None

**A. REGULAR AGENDA**

1. Economic Development - **RECOMMENDED ACTION:** The Board of County Commissioners and Ex-Officio as the governing board of the Charlotte County Community Redevelopment Agency review and endorse the selected banner design for the U.S. 41 bridges.

Debrah Forester introduced John Benande to speak on behalf of Team Punta Gorda regarding the "Bridging the Shorelines" banners to be placed on the decorative light poles for the Baron Collier and Gilchrist Route 41 bridges.

John Benande commented on the artist entry contest held by Team Punta Gorda for banner design for the U.S. 41 bridges; presented a slide presentation of the first, second and third place winners; and requested Board approval.

**COMMISSIONER CUMMINGS MOVED TO APPROVE BANNER DESIGN WINNER FOR THE U.S. 41 BRIDGES, SECONDED BY COMMISSIONER D'APRILE.  
Motion Carried 5:0.**

*Commissioner Moore* commented on the lack of funding data in the agenda material.

2. Commission Office - RECOMMENDED ACTION: Approve and appoint Commissioner nominations as members of the Charlotte Assembly Steering Committee.

**COMMISSIONER CUMMINGS MOVED TO APPROVE APPOINTMENT OF COMMISSIONER NOMINATIONS AS MEMBERS OF THE CHARLOTTE ASSEMBLY STEERING COMMITTEE, SECONDED BY COMMISSIONER D'APRILE.  
Motion Carried 5:0.**

**B. PLANNING AND ZONING AGENDA**

1. PP 06-10-07 Quasi Judicial Commission District III Lennar Communities, Inc. has applied for a Preliminary Plat for West Charlotte Harbor Boat & Tennis Club, a subdivision consisting of 135 single - family residential lots in Sections 9, 10, 15 and 16, Township 41 South, Range 21 East. The site, consisting of 99.6 acres, more or less, is located east of Gasparilla Road (CR 771), south of the Butterford Waterway, north of Abalone Road in Commission District III. A complete legal description is on file.

**(Deputy Clerk Manley administered the oath.)**

James Dossett gave a slide presentation, and advised that Lennar Communities, Inc. has applied for a Preliminary Plat for West Charlotte Harbor Boat and Tennis Club, petition PP 06-10-07. Mr. Dossett advised that the Preliminary Plat document had 8 corrections to be made before submitting for final plat, indicated that 7 of the conditions have been met, that the 8th condition dealing with the sidewalk off the site itself was

withdrawn, and that staff and Planning and Zoning Board recommend approval.

**Commissioner Moore** asked what the basis was for dropping the sidewalk. Mr. Dossett explained the sidewalk requirement.

Attorney Michael Haymans appeared on behalf of Petitioner in favor of the petition.

Citizen input - none

**COMMISSIONER D'APRILE MOVED TO APPROVE CLOSING THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE.**

**Motion Carried 5:0.**

**COMMISSIONER D'APRILE MOVED TO APPROVE PRELIMINARY PLAT PETITION PP 06-10-07 FOR WEST CHARLOTTE HARBOR BOAT & TENNIS CLUB, WITH CONDITIONS PREVIOUSLY STATED, SECONDED BY COMMISSIONER MOORE.**

**Motion Carried 5:0.**

2. PV 06-10-17 Legislative Commission District IV Centex Homes has applied for a Plat Vacation to vacate a portion of Plan of Ward 6, City of El Jobean, namely Lot 1743 and the adjoining un-vacated right of way; together with Lots 1248 and 1249 and the adjoining un-vacated right of way and alleyway, as recorded in Plat Book 1, Page 61 of the Public Records of Charlotte County, Florida. The site is located in Section 17, Township 40 South, Range 21 East, and consists of 0.95 acres, more or less, in Commission District IV. A complete legal description is on file.

James Dossett gave a slide presentation of Centex Homes Plat Vacation petition PV 06-10-17, and explained that this is a housekeeping issue for Sawgrasse Point, Unit IV, Riverwood. **(Chairman Loftus polled the Board for ex-parte disclosures on agenda item 1, Petition PP 06-10-07. There were none.)** Mr. Dossett stated no additional buildable lots are added, that staff and the Planning and Zoning Board recommend approval with one condition for preservation of the entire wetland habitat stated on the goldenrod, and advised that the condition has been met.

Attorney Charles Mann spoke on behalf of the petitioner in favor of the petition, stated that petitioner agrees with the condition, and advised Mark Haines, surveyor, of Wilson/Miller is available for questions.

Citizen input - None

**COMMISSIONER D'APRILE MOVED TO APPROVE CLOSING THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE.**

**Motion Carried 5:0.**

**COMMISSIONER D'APRILE MOVED TO APPROVE RESOLUTION 2007-027, SECONDED BY COMMISSIONER MOORE.**

**Motion Carried 5:0.**

**Commissioner Moore** asked if El Jobean was a city. An unidentified member of the audience stated that the town of El Jobean was platted in 1928.

3. Appeal of the Transfer of Density Units Ordinance Commission District II 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 Burnt Store Land Group, LLC, located at 12421 or 12441 Burnt Store Road, containing 80 acres more or less.

Inga Williams stated that agenda item 3 is an appeal to the Transfer of Density Units (TDU) Ordinance by Burnt Store Land Group, LLC. Ms. Williams reported that petitioner owns 80 acres, more or less, adjacent to Burnt Store Road, and that to the north and west is state-owned land. Ms. Williams stated that 73 of the 80 acres are in the Coastal High Hazard Area (CHHA), and that the flood zone elevation requirement on the site is 10'. Ms. Williams advised that the proposed Sending Zone property is in West County to the east of County Road (C.R.) 771, and within the tropical storm surge, and the elevation in the flood zone is 8' for this property. Ms. Williams reviewed staff concerns, and reported that staff recommends denial.

(Chairman Loftus advised that this agenda item is not stated as such, but that it is Quasi Judicial, and polled the Board for ex parte. Commissioner Cummings reported he met with Mr. Delise

and Attorney Berntsson, who covered basically the same material that staff had, and expressed that they thought the evacuation time on the Sending Zone would be longer than the evacuation time in the Receiving Zone. Commissioners Duffy, D'Aprile and Moore, and Chairman Loftus advised their ex parte was the same.)

Attorney Robert Berntsson advised that he had been sworn, and spoke on behalf of applicant in favor of petition; advised that because this is Quasi Judicial there are 6 required findings for the Board, and reviewed the requirements.

Attorney Berntsson pointed out a correction required in the fourth Whereas clause on the first page of the Resolution, which states that the appellant requests that 73 units of density be transferred from property it owns, and clarified it is not property appellant owns, but property appellant will own the density units from.

Dan Delise indicated that he has worked considerably on the Burnt Store Plan, and spoke in favor of the petition.

Debra Heismith advised that she had been sworn in, thanked the Planning staff for their courtesies when she contacted the office, and spoke in opposition of the petition.

Sue Reske advised that she had been sworn in, and spoke in opposition of the petition.

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

Attorney Berntsson advised that the only reason applicant is here on appeal is the AE-8 versus AE-10, and stated that density allowed for this property by the Burnt Store area plan is not being exceeded.

**Commissioner D'Aprile** commented on concerns with transfer of density, and requested clarification that everything is in accordance with the Comprehensive Plan (Comp Plan), and that the only problem in this hearing is consideration of the property height for flood or evacuation purposes. Ms. Williams stated that development on the property meets the Comprehensive Plan,

allowing for development of 1 unit per acre on the site with transfer of density, and that the appeal today is based upon a 2' elevation difference.

**Commissioner Cummings** and Attorney Berntsson discussed elevation and flood risk concerns, and the difference in FEMA elevation requirements.

Mr. Delise commented on revisions to FEMA maps, and how it changes evaluations, and pointed out that there are two competing policies, a Coastal High Hazard evacuation policy, and a flood policy, and that the Board needs to judge which is more valuable.

**Commissioner Cummings** indicated that consideration should be given in the future of the Burnt Store Plan to require that developers provide for a short - distance evacuation; commented on water supply concerns; stated he has mixed feelings about the application; expressed concern that the TDU elements of the Comprehensive Plan in the Ordinance have been undermined, and that the process needs defending; and inquired if the applicant had at least two months before the next development process.

Attorney Berntsson stated the applicant was prepared to begin with the planned development application, pending the outcome of this hearing, and commented on other properties zoned Village Residential.

**Commissioner D'Aprile** commented on elevation safety issues, and asked Ms. Williams that, hypothetically, if the lots were 1 acre each and individually owned, in this 80 acre parcel, could houses have been built on this piece of property under the same conditions that presently exist.

Ms. Williams advised that if the parcel had been subdivided and considered vested in some manner, the County would have had to allow the homeowners to develop.

**Commissioner D'Aprile** said his concerns are for the safety of the people who would reside in these homes, and stated that it would not go away because this land is lower than the transfer property.

Attorney Berntsson explained that what is developed on the site as one unit per acre would be elevated to a 10' FEMA elevation, regardless of where the units are transferred from; that there is a premium for the cost of TDU units in West County because they cannot come from anywhere else, they can only stay there or move somewhere else; and indicated that the real question is where does transfer of density come from.

**Commissioner Duffy** asked for clarification that allowing this to happen would be consistent with the Comprehensive Plan. Ms. Williams explained that allowing development of the site is consistent; that the Burnt Store Overlay Plan designated the site Village Residential, which allows transfer of density up to one unit per acre; that at the present time the base density is one unit per ten acres; that there are 8 units on this property, and applicant needs to bring in 63 units within the CHHA; that bringing in the 63 units would put applicant at one unit per acre within the CHHA, which is consistent with the Village Residential Future Land Use Designation. **Commissioner Duffy** indicated a positive is that the evacuation time at Burnt Store Road is significantly less than at Cape Haze.

**Commissioner Moore** inquired if a price could be put on AE-8 and AE-10 TDU units in West County. Attorney Berntsson said he is not aware of any AE-10 units in West County, but he has heard desired costs as high as \$75,000 per unit for coastal, and that typically coastal units in the Cape Haze area are in the \$30,000 range, and those he is aware of are AE-8.

**Commissioner Moore** indicated he was not impressed with the discussion on clearance times; that he believes Burnt Store Road is a far superior evacuation area; and indicated there have been many contradictions in the discussions.

**Commissioner Cummings** stated that the Board has conflicting testimony, and is also trying to weigh the relative merits of two different issues, the overall flood elevation and how frequently, and how soon the development would be put at risk based upon different flood elevation, versus evacuation times, which has conflicting testimony.

**Commissioner Cummings** explained that the Board has expressed the need for a TDU workshop; that appeals keep coming before the

Board before a workshop has been done; and indicated that this matter and the other appeals should be tabled until the workshop has been held. **Chairman Loftus** explained that the TDU workshop is scheduled for March 5, 2007.

**Commissioner D'Aprile** stated he is in favor of the workshop; does not think the 2' issue is a problem, but is concerned with the TDUs; and would second **Commissioner Cummings'** motion.

Attorney Berntsson pointed out that the applicant has waited a year and a half for the workshop that the Board has intended to have; that his client has contractual obligations; that the Ordinance today allows an appeal; and requested the Board consider this petition today.

**Chairman Loftus** indicated he would entertain a motion; acknowledged the need to move forward on a workshop, but stated that this property has been on hold, and that due consideration should be given.

**Commissioner Cummings** clarified there he had not made a motion, only discussion and a suggestion, and indicated that more than one workshop would be needed on the Comprehensive Plan.

**COMMISSIONER D'APRILE MOVED TO APPROVE RESOLUTION FOR DISCUSSION, SECONDED BY COMMISSIONER MOORE.**

**Commissioner Moore** stated he has no objections to the project, but it tugs at the quality and strength of the TDU Ordinance; he believes it would be best worked out in the workshops; and indicated that although he seconded the motion for discussion, he cannot vote in favor of it.

**Commissioner Cummings** indicated that there are valid arguments on both sides, and thinks if this is brought back after the workshop with clear guidelines, he might be able to support it; indicated he does not like for the Board to look at vague appeals, rather than having a policy that produces the results wanted; and said he cannot support the petition at this time.

**Motion Failed 1:4. Chairman Loftus, Commissioner Duffy, Commissioner Cummings, and Commissioner Moore opposing.**

**Commissioner Duffy** asked if it was too late to go back to tabling of the matter. **Chairman Loftus** stated that the motion had been called, and failed by a 1/4 vote, with **Commissioner D'Aprile** voting in favor. **Commissioner Moore** questioned that all members had actually voted, and requested verification by a show of hands.

Attorney Berntsson stated the applicant is willing to come back after the workshop, but not wait until the Ordinance amendment, if the Board would table this matter to the March meeting after the workshop.

**Commissioner D'Aprile** withdrew his motion for approval of the appeal until such time as the workshop is held, and then consider it at a later date.

Attorney Browne indicated a motion was made to grant the appeal, which failed on a 1/4 vote, but stated that because of the confusion, with consensus of the Board, it could be re-done. **Chairman Loftus confirmed that Commissioner D'Aprile had withdrawn his motion. Commissioner D'Aprile replied affirmatively. Commissioner Moore withdrew his second.**

**Commissioner Cummings** asked Attorney Browne if the Board could, in its own discretion, re-file the application as it is now so that the advertising requirement could be met and it be brought back at the next Land Use Hearing.

Attorney Browne advised that the Board could reconsider the action it just took; that one of the four Commissioners on the prevailing side could make a motion to reconsider the last vote, and the Board could start over.

**COMMISSIONER CUMMINGS MOVED TO APPROVE RECONSIDERATION OF THE VOTE JUST TAKEN, WHICH WAS TO DENY THE PETITION, SECONDED BY COMMISSIONER D'APRILE.**

**Motion Carried 5:0.**

**COMMISSIONER CUMMINGS MOVED TO APPROVE REHEARING THE APPEAL AFTER THE BOARD OF COUNTY COMMISSIONERS HOLDS THE WORKSHOP COVERING THE TDU ORDINANCE, WHICH WOULD OCCUR MARCH 6, 2007 AT 9:00 AM, SECONDED BY COMMISSIONER D'APRILE.**

Attorney Berntsson clarified that the appeal would be heard March 20, 2007 at 9:00 AM, and that March 6, 2007 at 9:00 AM would be the workshop. **Chairman Loftus** replied affirmatively.

**Motion Carried 5:0.**

**Commissioner Moore** informed the Board that he and **Chairman Loftus** attended a lecture by John Thaxton of Sarasota County on Roberts Rules, and indicated that if the Board makes a motion, it may not be taken back, because once the motion is made, action must be taken in some fashion.

**C. CITIZEN INPUT - ANY SUBJECT**

Gail Dyals of El Jobean commented on FEMA flood zones for El Jobean, and requested that Waterside Drive Petition Number Z-06-10-57 be re-visited.

Dennis Cline requested that the Board hear new evidence on illegal fill activity, and re-evaluate the decision made at the January 16, 2007 hearing on Waterside Drive, Petition Z-06-10-57.

Linda Frost of Englewood presented handout material, and requested that the Board reconsider Petition Number Z-06-10-57, rezoning at 2820 Waterside Drive, heard at the January 16, 2007 Land Use Hearing. Ms. Frost inquired if she was correct in stating that a motion for reconsideration must come from a Commissioner who voted with the prevailing side, but that any Commissioner could second the motion.

Peter Paske expressed concern that developers are destroying so much natural vegetation.

Ruth Bromberg asked that Ms. Frost's question regarding procedure for reconsideration of the rezoning hearing of 2820 Waterside Drive be answered. **Chairman Loftus** explained that answers are given at the end of citizen input.

Debra Heismith commented on density.

Charlotte Ventola suggested that the Board consider that hard cases make bad law when making decisions.

Randi LaSalle expressed concern with construction being done on coastal properties.

**D. ADMINISTRATOR/COUNTY ATTORNEY/COMMISSIONERS /COMMENTS**

**County Administrator** - None

**County Attorney** - None

**Commissioner Moore** commented on how upset citizens were with property tax increases, and inconsistencies, and indicated possible changes would come out of Tallahassee.

**Commissioner Cummings** indicated he was not on the prevailing side of the Waterside Drive vote, that any Commissioner could second the vote, and that he would be happy to do so, should a Commissioner who was on the prevailing side make a motion.

**Commissioner Cummings** advised that DeSoto County opposed North Port being allowed a seat on the Water Authority due to concerns of Sarasota County having two voices, even though it was one vote. **Commissioner Cummings** reported a suggestion was made to allow Punta Gorda and Arcadia to have non-voting ex-officio members sit on the Board, indicated that it had merit and helps address Punta Gorda's desires to have greater voice to the Water Authority level, and stated he could offer the suggestion.

**Chairman Loftus** inquired if **Commissioner Cummings** wanted direction from the Board regarding his comments on Arcadia and the City of Punta Gorda involvement with the Water Authority. **Commissioner Cummings** replied affirmatively.

**Commissioner Duffy** inquired if Manatee County would then want Bradenton to be a member. **Commissioner Cummings** indicated that was possible, but hoped if that happened Manatee County would offer more. **Chairman Loftus** stated that **Commissioner Cummings** has consensus of the Board to proceed with his suggestion.

**Commissioner Moore** stated the Water Authority needs to be better, stronger and more inclusive, which can only be done by getting others involved, and supported **Commissioner Cummings'** suggestion.

**Chairman Loftus** explained that for reconsideration of a vote, a motion must be made by a Commissioner from the prevailing side, and that any other Commissioner can second the motion.

**ADJOURNED: 11:10 AM**

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**

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