

BOARD OF COUNTY COMMISSIONERS

MARCH 13, 2007

A round table 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 Loftus, Commissioner Duffy, Commissioner Cummings, Commissioner D'Aprile, and Commissioner Moore. Also in attendance were County Administrator Loucks, Assistant County Attorney Browne, and Minutes Supervisor Nice. The following members were absent: None. The meeting was called to order at **1:05 PM**.

Community Development Director Michael Konefal reviewed the agenda.

A. Update on the Bove project, City of Punta Gorda annexed property (Time: 15 minutes)

Mr. Konefal updated Board Members on the Transfer of Density Units (TDUs) issue dealing with the Bove project that was brought back as a result of a joint meeting with the City of Punta Gorda in December 2006, explained the development is located in a Coastal High Hazard area, TDUs may be transferred to Coastal High Hazard areas if the more expensive High Hazard Units are purchased, the developer said the purchase would make the affordable housing project unfeasible, and staff was asked to bring back a solution. Planner Inga Williams stated the developer proposes development of 178 units, the base density is approximately 46 units, the County's TDU ordinance requires the developer to go through the appeal process since the property was subsequently annexed to the City; and the County does not recognize the City being allowed to transfer density. City of Punta Gorda Chief Planner Joan LeBeau indicated discussions since last July have been held with Regional Planning Council (RPC) and Department of Community Affairs (DCA) officials regarding the City's base line density, the application will probably go before the Housing Committee in March and the Council in April, an additional 126 units need to be transferred for a total units on the site of 176 workforce housing units; the City may partner with the private developer; and this will be a reallocation of existing density to this project.

Commissioner D'Aprile asked where the density would come from. Ms. LeBeau stated the City has just over 1,000 units available for transfer; application has been made to DCA to move the units onto the outskirts of the City; an Objections, Recommendations and Comments (ORC) was received from DCA with one comment; and staff is moving forward with the application. Ms. LeBeau reported City staff will be recommending approval to the Council pursuant to language in the 1988 Comprehensive Plan. Attorney Geri Waksler explained the TDU Ordinance indicates applicability to annexed property by a certain date and the project site was subsequently annexed; the Comprehensive Plan allows the City to bank density for use; referenced the letter provided on the methodology and multiplier for a discount deed restriction on the property for this workforce housing project; and requested reconsideration to allow the City to use excess density on this site without going through the appeal process.

Mr. Konefal stated agreement has been reached on the transfer of the units from downtown; the Board could interpret the TDU Ordinance in a flexible way, rewrite it, or require the developer to go through the appeal process; and reviewed the time line.

Ms. LeBeau reiterated the application is anticipated to be before the Council at its first meeting in April. Mr. Konefal reported staff will bring it back to the Board at the first meeting in April prior to the Council's meeting. **Commissioner Cummings** expressed concern about the number of appeals being granted. Mr. Konefal indicated the Bove appeal will be brought back to the Board on April 10, 2007 and the transfer of density from the downtown area will be on the Council's agenda for April 18, 2007.

B. Bill Pable, Regional Planning Administrator for the Southwest Team, Department of Community Affairs (Time: 10 minutes)

Mr. Pable gave a slide presentation including an Overview, the Platted Lands Challenge for Rotonda, Comprehensive Planning and Platted Lands based on the 1997 Comprehensive Plan, the 1990 Settlement Agreement and Final Order, Adoption of the TDR Ordinance in 1994, the 1995 Evaluation and Appraisal Report (EAR), the 1997 Comprehensive Plan and Objective 1.4 to reduce

density by 1% by 2005, the 2003 EAR showed the 1% goal had been met with a reduction of 15,000 lots, DCA found non-compliance, the 2005 Proposed change in Policy 1.4.5, TDUs as a Tool, and Conclusions that failure to consistently use TDUs may result in increased development of wetlands, high hazard and outlying lots, degrade the County's irreplaceable natural resources; and increase cost of public facilities and services; and TDUs are most viable when the local government shows restraint in approval of development rights. **Commissioner Duffy** requested the number of counties that have adopted TDU ordinances. Mr. Pable expressed uncertainty. **Commissioner Cummings** questioned if the 1% reduction was before Babcock Ranch. Mr. Pable indicated a lack of knowledge. **Commissioner Cummings** advised the 1% reduction was reached prior to Babcock Ranch.

Commissioner Cummings concluded the County must show a 1% reduction trend. Mr. Pable concurred. **Commissioner Cummings** requested examples of permanent retired TDRs when no acquisition was involved. Mr. Konefal stated some government purchases have been retired and changed to Preservation or Conservation designations. Mr. Pable agreed to work with State staff to make sure they are aware of the County's efforts to reduce density and he offered to work with Mr. Konefal. **Commissioner Duffy** referenced Objective 1.4 on reduction of platted lots and requested a list of retired density units. Mr. Konefal recalled an email was sent to Commissioners a couple months ago and the Babcock lots were added to the list. Mr. Konefal read the email on the reduction of units listing reductions per year and the additional units for Babcock brought the total up to 307+ units in January 2007.

Mr. Konefal commented on the Burnt Store Road development and other areas in the County that are ready for development.

Commissioner Duffy said she spoke with someone who indicated the purpose of the TDU ordinance was to transfer density to less desired areas. **Commissioner Moore** stated he does not consider the TDU ordinance as the primary tool to reduce density but it affords the Board the opportunity to shift density within the County. Mr. Pable agreed and advised other tools are available to reduce density e.g. urban service boundaries.

C. General Issues from Developer's Perspective, Geri Waksler, Representative of the Land Use Practitioner's Group (Time: 10 minutes)

Attorney Waksler stated a complete presentation should include transfer within storm surge areas and less restrictive Coastal High Hazard areas. Attorney Waksler stated the TDU ordinance was originally viewed as an incentive ordinance to get rid of platted lots or move them to other more viable development, preservation, or conservation areas; the maximum was calculated on the greatest number pursuant to zoning designations. Attorney Waksler referred to the densities for Babcock Ranch and the Sandhill DRI and recalled Babcock Ranch was never platted.

Attorney Waksler stated developers are not giving up TDUs, they are being kept for resale as in many agricultural situations with underlying TDUs. Attorney Waksler stated more commercial is needed off of US 41; the TDU ordinance focuses on controlling density; the proportionate share ordinance requires developers to pay for development impacts e.g. infrastructure including sewer and water lines and roads for new development. Attorney Waksler stated the existing TDU ordinance is very complex and difficult to interpret and implement.

Attorney Waksler commented on "granny flats" that could have served for workforce housing instead of workers living in North Ft. Myers or East Charlotte County. Attorney Waksler referenced a letter from Inga Williams dated January 26, 2007 and reported staff and practitioners agree on the need for a unified methodology but differ in the calculation. Attorney Waksler enumerated requirements for TDUs.

Attorney Waksler suggested a fee be established annually with adjustments based on market values and explained density must be transferred from storm surge to storm surge districts and from FEMA zones to like FEMA zones.

Todd Rebol, Banks Engineering, reviewed the packet on what FEMA is and the Special Flood Hazard Areas, read the definition for the Special Flood Hazard Areas, reported on the level of hazard determined by FEMA, base flood elevations, flood way flood

planes, storm surges, coastal surge flood planes, and reviewed the slosh packet.

Mr. Rebol referred to page 15 in the packet on the slosh model, page 25 on slosh modeling based on 20% to 25%; page 28 of the Overall Slosh Map for Charlotte County used as a planning tool; three different scenarios of FEMA flood planes based on flood elevations in Charlotte County in pages 31 through 40; and explained how this information applies to the TDU ordinance. **Chairman Loftus** expressed appreciation for the presentation. Mr. Konefal asked for direction on following the agenda or continuing with the Coastal High Hazard segment. **Chairman Loftus** suggested a recess and returning to the agenda.

RECESS: 2:30 PM TO 2:40 PM

D. Overview/History of TDR and TDU Ordinances, Inga Williams, Community Development Department, and Brad Walters, Real Estate Services Department (Time: 10 minutes)

Planner Inga Williams reviewed the history of the TDR ordinance; the ordinance was revised in 2001 with the focus on environmentally sensitive lands within the Urban Service Area that removed almost 1,500 lots; the ordinance was revised in 2004 to enlarge Sending Zones; Receiving Zones were modified to allow transfers into environmentally sensitive areas as long as mitigation was allowed; and transfers were allowed between properties in the Tropical and Category Storm Surge Zones on a like-to-like or less hazardous basis; density from a Sending Zone was certified; and density transfer was allowed to a Receiving Zone.

Ms. Williams continued with the overview on the history of the ordinance revisions; commented on the two methods to transfer density e.g. by certificate and purchase as shown on tables listed on the County website; offered to review certified transfers of 9,847 units outside of the Urban Service Area; explained there are a minimum of 10,000 more substandard units, 700 units in Coastal areas, 29 units were certified due to the lack of water and sewer of which 3 actual transfers have been accomplished; 632 approved transfers requiring Board approval; 8 appeals to the ordinance; and all 8 appeals have been approved.

Ms. Williams indicated excess density from a proposed development should be dissolved. **Commissioner Moore** requested clarification. Ms. Williams stated in 2004 a bank was developed for excess density value but it is a phantom use since it was not implemented. **Commissioner Moore** concluded if density is not used, it is lost. Ms. Williams stated no one has actually calculated the County's base density and there is also a cap. **Commissioner Duffy** stated one law has to be implemented and recalled some developers have reduced density on a voluntary basis. **Chairman Loftus** agreed on the necessity for one policy.

Commissioner Cummings stated the units are not dissolved unless zoning or land use is changed or the units are transferred off and commented on the Wildflower Golf Course project. **Commissioner Duffy** requested a copy of the issues to be addressed. Ms. Williams agreed with **Commissioner Cummings** and offered to provide the practitioner's list. **Commissioner Cummings** recalled a workshop was held with staff and practitioners and the same issues are now being rehashed.

Chairman Loftus stated one rule is needed in lieu of numerous staff interpretations. **Commissioner D'Aprile** indicated the ordinance should be simplified and TDUs were created to manage growth not to provide for growth in the future. **Commissioner Cummings** opined the quantity of development was to be reduced and an incentive was provided to give full value for each lot under a pilot program but now there is more pressure to develop. **Commissioner Duffy** questioned the lack of a set fee. Mr. Konefal enumerated two methods to transfer units: a developer may sell units to another developer, which is being done, and the second alternative deals with the Land Acquisition Trust Fund and requested Mr. Walters to provide prices. **Commissioner Cummings** stated the fee should be based on the average assessment and the acquisition cost by the County. Mr. Loucks recalled the original ordinance had a fixed cost but market conditions have dictated variable costs.

Brad Walters explained costs are based on the total price, closing fees, and attorney fees to acquire the property; the price range has been coming down over the last year; and currently the range is \$15,000 to \$17,500 per lot. Mr. Konefal explained the price is set at the development stage as set out in the current ordinance.

Commissioner D'Aprile requested clarification on what happens to the monies paid by developers. Mr. Konefal stated the monies are deposited in the Land Acquisition Trust Fund.

E. Discussion of transfers of density within the Coastal High Hazard Area, Wayne Sallade, Emergency Management Director, and Mike Konefal, Community Development Director (Time: 20 minutes)

Mr. Konefal commented on transfers of density within the Coastal High Hazard area; advised the Comprehensive Plan discourages development in coastal areas; the TDU ordinance directs transfers of density in like areas; the FEMA map is generally used as a reference for insurance purposes; it shows elevations; there are three events e.g. storm surge, hurricane, and rain; and rescue efforts following any one of these events is very costly.

Mr. Konefal explained there is a cost to putting people in harms way and staff recommends the like-to-like transfers remain.

Emergency Management Director Wayne Sallade commented on destruction as a result of Tropical Storm Gabrielle, the largest flood event in 75 years, and Hurricane Charley. Mr. Sallade identified four problem areas in Charlotte County e.g. Cape Haze Peninsula, Burnt Store Road area because of Cape Coral evacuation, Port Charlotte, and Punta Gorda; referenced a letter he wrote to Ms. Williams in January 2006 about redoing all storm surge models and evacuation times/models. Mr. Sallade estimated 18 to 21 hours to clear the Cape Haze Peninsula; reported it is easier to clear Punta Gorda; and pointed out major problems arise after a storm event to access people who did not evacuate. **Commissioner D'Aprile** concluded roads in and out of the County are not practical for evacuation. Mr. Sallade stated none of the roads in Southwest Florida are practical for evacuation and there is no easy way out.

Commissioner D'Aprile concluded growth needs to be controlled. (Many in the audience indicated agreement.) **Commissioner Duffy** stated no matter what is done, I-75 would still become a parking lot. Mr. Sallade indicated people evacuating should use Kings Highway, SR 74 or 17; I-75 is in the process of being widened;

and recalled Port Charlotte and Punta Gorda looked like ghost towns after evacuations for Ivan.

Commissioner Cummings recalled evacuation times from the Cape Haze Peninsula were similar to those of the Burnt Store Road area once people from the Cape reached CR 775 and expressed concern about transfers of density to the Burnt Store and Coastal High Hazard areas. Mr. Sallade stated increases along Burnt Store Road and River Road will adversely impact evacuation efforts tremendously.

Mr. Konefal stated a TDU ordinance appeal is on the agenda for the next Land Use Public Hearings. **Commissioner D'Aprile** expressed appreciation for staff's educational efforts. **Commissioner Cummings** stated this began as part of the Comprehensive Planning process; enumerated three points: do not give TDUs away, the baseline for development is established by the accumulation of all County regulations, and the Board cannot continue to grant appeals since waivers weaken the process.

Commissioner Duffy stated she wanted to achieved a better understanding of the TDU ordinance, commented on the need to reduce density and development, the Board needs to be reasonable and do what is the best for the entire community, and expressed appreciation for the opportunity for this discussion.

Chairman Loftus thanked everyone for their efforts and participation in the Round Table discussion.

ADJOURNED: 3:50 PM

Signature on file in Commission Minutes
Chairman

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

By: Signature on file in Commission Minutes
Deputy Clerk

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