

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

**MARCH 20, 2007**

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 County Administrator Loucks, Assistant County Attorney Browne, Executive Assistant Dillon, and Deputy Clerk Mitchell. The following members were absent: None. The meeting was called to order at **9:00 AM**, followed by the Pledge of Allegiance.

**(Deputy Clerk Mitchell administered the oath to prospective witnesses for all quasi-judicial hearings.)**

**A. PLANNING AND ZONING AGENDA (Proof of Publication was in Order.)**

1. Revision of Charlotte Harbor Community Development Code Legislative Commission District I & V An ordinance amending Charlotte County Code, Section 3-9-50.5, Charlotte Harbor Community Development Code, of Charlotte County; providing for amendments to the maximum allowable Floor Area Ratio; providing for amendments to the maximum allowable building coverage; providing for amendments to the allowable use distribution on sites; providing for clarification of zoning designations; providing inclusion in the County Code and severability; and providing an effective date. Applicant, the Charlotte County Board of County Commissioners.

Seann Smith explained the purpose of the proposed ordinance is to bring the Development Code into compliance with the Comprehensive Plan; and gave a PowerPoint presentation titled Charlotte Harbor Community Development code that paralleled the material and detailed the changes to the text for the CRA regarding floor area ratio, built coverage, and use distributions on site.

**Commissioner D'Aprile** asked if the floor area ratio definition has been changed.

Mr. Smith said no, they were simply increasing the maximum floor ratio in two of the zoning districts in the CRA, that being Neighborhood Business Residential and Mixed Use.

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

**COMMISSIONER D'APRILE MOVED TO APPROVE ORDINANCE 2007-006, SECONDED BY COMMISSIONER CUMMINGS.  
Motion Carried 5:0.**

2. PP-06-12-08 Quasi Judicial Commission District IV  
Crown Plaza, LLC has applied for a Preliminary Plat for Crown Plaza, a subdivision consisting of 3 commercial general lots in Sections 5, 6, 7 and 8, Township 41 South, Range 21 East. The site, consisting of 31.455 acres, more or less, is located on the south side of SR 776, between Kevitt Boulevard and Gulfstream Boulevard in Commission District IV. A complete legal description is on file.

James Dossett presented the findings and analysis as detailed in the packet material and staff report dated January 9, 2007; and stated both staff and the Planning & Zoning Board recommend approval of the proposed preliminary plat.

**(Chairman Loftus polled the Board for ex-parte disclosure and there was none.)**

**Commissioner D'Aprile** asked if all past CCU issues regarding things like drainage have been addressed. Mr. Dossett said yes.

Ryan Hirstein with F.M.O. Engineering spoke on behalf of the applicant in support of the staff report and agreed to comply with the conditions.

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

**COMMISSIONER D'APRILE MOVED TO APPROVE PRELIMINARY PLAT PP-06-12-08 FOR CROWN PLAZA WITH CONDITIONS, SECONDED BY COMMISSIONER MOORE.**

**Motion Carried 5:0.**

3. SV 06-12-19 Legislative Commission District IV  
Charlotte County Board of County Commissioners has applied to vacate portions of Howell St., and Moss Dr. and all of Tomahawk St. (platted as Torrence St.), Beckerich St. (platted as Ballfour St.), Whittle St. (platted as Woodward St.), and Vernor Avenue, located in the Port Charlotte Section 35 subdivision, as recorded in Plat Book 5, Page 39C of the Public Records of Charlotte County, Florida. The site, consisting of 5.53 acres, more or less, is located in Section 11, Township 40, Range 21, and is located in Commission District IV. A complete legal description is on file.

Mr. Dossett explained this staff-initiated request was more of a housekeeping matter, this is part of the Murdock Village Plan involving property that is part of a swap with the School Board, prior to making the swap the County had agreed to vacate certain streets in this part of Murdock Village as detailed in the packet material and supported by the visual presentation, and stated both staff and the Planning & Zoning Board recommend approval of the proposed street vacation.

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

**Motion Carried 5:0.**

**COMMISSIONER D'APRILE MOVED TO APPROVE RESOLUTION 2007-042, SECONDED BY COMMISSIONER MOORE.**

**Motion Carried 5:0.**

4. Z-06-12-68-TDU Quasi-Judicial Commission District II  
An Ordinance approving an amendment to the Charlotte County Zoning Atlas from Agriculture Estates (AE) to Planned Development (PD), for property located at 8979 Burnt Store Road, in the Punta Gorda area; Containing 49.25 acres more or less; Commission District II; Petition No. Z-06-12-68-TDU; applicant: Old Burnt Store 50 LLC.

Jie Shao presented findings and analysis as detailed in the packet material and supported by the visual presentation, and stated both staff and the Planning & Zoning Board recommend approval of this Planned Development rezoning with conditions "a" through "x" as detailed in the proposed ordinance.

**(Chairman Loftus polled the Board for ex-parte disclosure. Commissioner Moore said he had a previous meeting in his office with the attorney involved.)**

Todd Helt with Weiler Engineering spoke on behalf of the applicant in support of staff's report and approved the conditions.

**Commissioner D'Aprile** voiced concern that the condition of this road can't keep up with the rapid growth of this area and asked if this is being addressed, especially putting in infrastructure before the developers come in.

Bruce Loucks clarified the location of this, even though it's called Burnt Store Road, is actually near the corner of Burnt Store and Taylor Roads north of U.S. 41, so it's not the Burnt Store Road we usually thinking of, and it's not in the Burnt Store Road corridor.

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

**COMMISSIONER CUMMINGS MOVED TO APPROVE ORDINANCE 2007-007, SECONDED BY COMMISSIONER MOORE.**

**Chairman Loftus** advised he'd misspoken earlier as he did have ex-parte disclosure and he would file the appropriate form.

**Motion Carried 5:0.**

5. Appeal of the Transfer of Density Units Ordinance Quasi-Judicial 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.

**(Deputy Clerk Mitchell administered the oath to Mr. Ruggieri.)**

Jeff Ruggieri explained this was a continuance of the February 20, 2007 hearing where much of the discussion centered on the difference in the flood elevation from the Sending Zone which is 8 and the Receiving zone which is 10; recalled the Board voted to defer action until after the TDU Workshop held March 13, 2007; and said at this time staff's recommendation is still to deny the requested appeal.

Attorney Robert Berntsson spoke on behalf of the applicant seeking approval of the requested appeal; asked that all previous testimony and evidence introduced during the first public hearing be included in this hearing as part of the Board's decision process; clarified they were seeking to relocate up to 73 units of AE-8 Tropical Storm density from the Cape Haze peninsula from a property that's already been approved as a Sending Zone to the Burnt Store Corridor where the Receiving Zone is Tropical Storm AE-10 category; and they were not seeking a waiver of the TDU ordinance but rather utilizing a basic tenet of that ordinance which provides for an appeal process.

**(Deputy Clerk administered the oath to prospective witnesses for this item.)**

Matthew Wey Senior Transportation Engineer with Carter Burgess reviewed the key findings of their hurricane evacuation study as detailed in his handout titled Project Summary Sheet.

Attorney Berntsson clarified they were seeking a maximum of one unit per acre density as allowed by the Burnt Store Overlay Plan and the Comp Plan, the Burnt Store plan requires elevation of all properties in the Tropical Storm and Category 1 to the Category 2 elevation, and the Burnt Store Road Corridor the Category 2 elevation is 8.3 feet which is a difference of 0.3 feet from the units being transferred.

**Commissioner D'Aprile** summarized the issue revolves around a two foot difference in FEMA's required base flood elevation for structures, and the Gasparilla sending zone elevation is lower than the Burnt Store receiving zone.

Todd Rebol with Banks Engineering commented on FEMA issues relating to coastal flood designations and the required elevations.

Mr. Rebol said he thought the confusion was coming between road elevations versus FEMA base flood elevations; and base flood elevation is determined by FEMA and is what they use when they model an area for coastal surge.

Mr. Rebol distributed and reviewed two GIS maps detailing elevation information for the Receiving and Sending Zones.

**Commissioner Duffy** summarized the two issues are base flood elevation and the VE and AE zones. Mr. Rebol agreed.

Attorney Berntsson clarified the only reason they were before the Board today is because they were seeking to take units designated as 8 by FEMA and place them on a piece of property that has a 10 elevation and will be built to a 10 elevation so they will essentially be meeting more stringent requirements.

Attorney Berntsson stated the proposed resolution indicates his client owns the property the units are coming from but that is not correct, they are buying those units from another owner.

Mr. Wey clarified the hurricane evacuation study was focused on Burnt Store so the proposed improvements were specific to Burnt Store Road and the southern Charlotte County and northern Lee County area.

Attorney Berntsson said it was his opinion that no matter what road improvements are made in Cape Haze the bottom line is evacuation from Burnt Store Road would be better than from the Cape Haze peninsula, and the trade-off of two feet in elevation is minor compared to leaving those density units on the Cape Haze peninsula.

**Commissioner Duffy** asked the planned use for the property. Attorney Berntsson said up to 80 single family homes through the Planned Development (PD) process.

**Commissioner Moore** voiced support for moving density off the Cape Haze peninsula.

Ruth Bromberg spoke on behalf of Sierra Club, recalled comments made at last week's roundtable discussion, eight previous appeals of the TDU ordinance have been approved, opined these approvals have set a precedence, the Board must consider evacuation from Cape Coral which uses Burnt Store Road as one of their three main evacuation routes, and asked for denial.

Sue Resky commented on her research, opined the Board needs to see the financial statements from the developer, and requested denial.

Marvin Medintz asked the Board to support staff's recommendation of denial, said he lives on the peninsula, and he supports getting density out of there but this isn't the case in which to do that.

Deb Highsmith opined the ordinance is a good one but said the people just want the County to use it in a clean manner, Burnt Store Road will remain a substandard road for years to come, urged to Board to revisit some of the Boards recent decisions, and requested denial.

**(Deputy Clerk Mitchell administered the oath to Mr. Betterton.)**

Greg Betterton spoke in opposition of the proposed appeal of the TDU ordinance.

Randee LaSalle from Rotonda West said she felt there's too much growth in this area, they moved here for the open space the County had, she felt the appeal process is taking the teeth out of the ordinance, the attorneys make it sound like their developments make sense but staff has recommended denial, agreed with **Commissioner Cummings'** and **Commissioner D'Aprile's** comments that the problem is growth, and said the people of this County aren't happy.

**(Deputy Clerk Mitchell administered the oath to Mr. Dodd.)**

Andy Dodd commented on the need to move these units off the Cape Haze peninsula.

David Crane voiced support for the proposed appeal.

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

**Motion Carried 5:0.**

Attorney Berntsson presented rebuttal to citizen's input comments, noted a majority of the comments do not meet the requirements of quasi-judicial, and requested approval.

Attorney Berntsson clarified there have been approximately 25 to 30 applications that have gone through and appeared on the Board's agenda to have a TDU sending or receiving zone approved.

**Commissioner Cummings** asked staff if they knew the number of transfers of development units that have occurred and the approval of different sending zones. Mr. Ruggieri responded there have been three transfers and eight appeals, and all eight appeals were granted.

**Commissioner Cummings** said it appears they were doing a large percentage of these transfers by appeal rather than making sure the process does what the Board wants it to do, with the additional evacuation evidence he was not willing to continue approving appeals, and he's not prepared to support this appeal unless they're willing to fix the process.

**Commissioner D'Aprile** said a quasi-judicial hearing is factual information that comes to the Board and they have to make their decision on that not on emotions and because of that he has no choice but to approve this instead of doing what he wants which is to vote against it.

**Commissioner Moore** said he felt strongly there should be an appeal clause, the hearing today is quasi-judicial so testimony is supposed to be based on substantial competent evidence but a majority of the evidence presented hasn't been substantiated, the applicant isn't wrong with what they're doing because of the

wording in the TDU ordinance but he can't support this today, he agreed with the need to fix the TDU ordinance, and reiterated he just can't support this today.

**Commissioner Duffy** said she arrived this morning thinking she couldn't approve this, she'd listened carefully to the speakers' comments, agreed the ordinance is vague, said it appears what's being proposed is legal, she has always felt they have to protect the rights of the property owners, and asked if staff agreed with the attorney's assessment regarding going from an 8 to a 10.

Mr. Ruggieri said no, the attorney and the applicant took more of a site specific view in that the houses are equally safe but staff's position is more of the community as a whole, and the public safety view in that they have two more feet of water between what's in the peninsula versus the Burnt Store area.

**Commissioner Duffy** asked if it's legal going from an 8 to a 10. Attorney Browne responded there has been competent evidence on both sides and the Board can rule either way.

**Commissioner Cummings** agreed **Commissioner D'Aprile** raised a legitimate point that this is a quasi-judicial hearing, said based on what they'd heard they could rule either way, and opined they were not obligated to approve this.

**Chairman Loftus** agreed with Attorney Browne that there's evidence on both sides, said he believes very strongly in the appellate process, they haven't tweaked the process but it needs to be done as quickly as possible, he supports relief of the peninsula regarding evacuation, recalled staff already said they would support transfers within the AE districts without anything as far as height is concerned which he agreed with, evacuation time is very critical in both of these areas, testimony heard today indicated there was better evacuation time from Burnt Store, and he will support this.

**Commissioner Moore** noted if a hurricane comes you need to get out yesterday because this is a low county.

**Chairman Loftus** said the County is remiss in not building higher hurricane-proof buildings and hurricane shelters.

COMMISSIONER DUFFY MOVED TO APPROVE RESOLUTION 2007-043,  
SECONDED BY COMMISSIONER D'APRILE.

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

RECESS: 11:13 AM - 11:27 AM

(Assistant County Administrator Baltz replaced County  
Administrator Loucks for this portion of the meeting.)

6. Commission District I, II, III, IV, V Legislative An ordinance of Charlotte County, Florida, providing that the Code of Laws and Ordinances of Charlotte County, Florida, be amended by amending Article XXIII, excavation and earthmoving; by providing for a temporary restriction on the processing and issuance of excavation and earthmoving permits; providing for procedures for vested rights and applicable Judicial review for the specific matters addressed herein; providing for conflict with other ordinances; providing for severability; providing for a term; and providing an effective date.

Mr. Dossett recalled as a result of the Board's workshop in February staff was asked to bring back a recommendation of how to address the Board's concerns regarding the excavation activities in Charlotte County.

Mr. Dossett explained this is the first of two public hearings on a request for an amendment to the County's excavation ordinance, at the Planning & Zoning hearing last evening the Board recommended denial but also recommended certain issues be addressed within the next few weeks, staff still recommends approval of the proposed ordinance which essentially temporarily restricts Group II and Group III excavations in the County, and reviewed the packet material.

Mr. Dossett said the biggest issue appears to be truck traffic and commented on major concerns as listed in the packet material.

Mr. Dossett explained they were not asking for a moratorium on all mines only for some breathing room to rewrite this ordinance, a vesting system has been included, commented on Sarasota County's special zoning for mining, and on the methods used by other surrounding counties.

Eric DeHaven with SWFWMD said they would like to see language in the proposed amendment to the current ordinance that would exempt or vest some of the applications in the process that could be verified to be legitimate FARMS projects, they definitely do have an issue with their Shell Prairie Creek Watershed Management Plan on the water quality in the area so they really don't want to lose a year in their 10 year process due to the moratorium, and they would be interested in working with County staff to help draft an ordinance that could capture the FARMS projects.

Christa Strauss with Peace River Valley Citrus Growers Association read a letter from their Executive Director and distributed copies of it along with a letter from Michael Sparks with Florida Citrus Mutual who was unable to attend today's hearing.

Jon Finstrom said he was in the process of working toward a permitted Group II mining permit, commented on his process to date, opined those applications currently in process should be allowed to proceed if a moratorium is approved, they were opposed to any moratorium, and opined workshops on this issue would be better than a moratorium.

John Bednerik Executive Officer with Charlotte/DeSoto Building Industry Association said dirt is the building block on which everything is built, agreed permitting restrictions can be improved but a moratorium in building in Charlotte County is the wrong way to go, and they oppose a moratorium.

Noel Marton with the Florida Department of Agricultural and Consumer Services (DACS) Office of Agricultural Water Policy commented on the FARMS program explaining it is a cooperative funding venture between DACS and the Water Management District.

Kendal Hicks District Conservationist with the U.S. Department of Agriculture said they work closely with the Water Management District personnel and commented on EQUIP, the Environmental Quality Incentives Program.

Dana Clement spoke on behalf of the East Charlotte Drainage District and said they wanted to on the record as strong supporters of the reasonable assurance plan whose goal it is to improve water quality through surface water and reservoirs in the eastern Charlotte County corridor.

Bill McDaniel Owner/Operator of Big Island Excavating said he was currently operating three mining operations in this municipality, he operates under the FARMS program, he doesn't support the moratorium, and he was willing to work with staff to help the Board make a more informed decision.

Wes Brumback owner of TRB Groves commented on conditions in his grove, said he wants to deepen an existing mine to store more water, and he wants to work closely with staff to provide input from the agricultural community.

Attorney Michael Whitt representing Coral Rock asked that they not be included in the "dirt" issue as they are a rock provided, voiced opposition to any moratorium, stated vesting is scary because there's no hearing date process in the ordinance, noted two of the 22 pending applications were for aggregate mines for expansion of existing operations, asked that they be specifically exempted from this ordinance because their application is for an extension of an existing mine, and distributed a copy of the Strategic Aggregates Study prepared by Lampl Herbert Consultants.

Sam Joseph FDOT Assistant Materials Engineer for Districts 1 and 7 in Bartow said the cost for materials is skyrocketing especially for aggregates, referred to the report prepared for FDOT which was distributed by Attorney Whitt, distributed copies of the Strategic Aggregates Study prepared by their Chief Engineer and copies of the report titled The Miami-Dade County Lake Belt Litigation, and urged the Board to review the material thoroughly.

Mr. Rebol commented on the economic impact from this proposed moratorium.

Gary Frommer Coral Rock General Manager spoke in opposition to the moratorium, noted contrary to what staff has said no one from the County has spoken to any of the industry representatives he knows, and asked for a delay in making this decision.

Attorney Michael Haymans spoke on behalf of two clients who have pending applications, voiced opposition to a moratorium they believe is inappropriate, agreed aggregates should be excluded, and legitimate applications that are vested should be specifically listed by application number in the ordinance.

Attorney Steve Hartsell agreed with Attorney Haymans, pending applications are not being properly addressed, and stated he didn't support the moratorium.

Randy Keeling with Johnson Engineering opined the moratorium isn't needed, Charlotte County's ordinance is very good compared to surrounding counties, and commented on potential problems with the proposed ordinance.

Attorney Berntsson spoke in opposition to the proposed moratorium and urged the Board to conduct a workshop where everyone can participate.

Attorney Geri Waksler spoke on behalf of Florida Lakes, Inc. in opposition to the proposed moratorium, and suggested the Board form an advisory committee giving them eight to ten weeks to address the Board's concerns.

Ralph Bond spoke in opposition to the moratorium, and asked not to be stripped of his property rights and the uses he currently enjoys.

Joe Bonness spoke in opposition to the proposed moratorium, and said the Board needs to look at the economic impact of a moratorium so what happened in Collier County doesn't happen here.

**Chairman Loftus** announced the second public hearing will be on April 2, 2007.

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

**Motion Carried 5:0.**

**Commissioner D'Aprile** said he's the one who brought this all up in an effort to bring everyone together, he doesn't want a moratorium but he doesn't see anyone present from the groups who have complained about this, and asked how many of the 22 mines will end in a year or two if there's a moratorium.

Mr. Dossett said he's only aware of one or two.

**Commissioner D'Aprile** said he doesn't support a moratorium, he does support getting a group together, he supports increasing the fees, more pits will affect our roads, he doesn't want to ruin this County, he needs to know facts before these 22 mining applications come before this Board, and suggested all these folks get together to find a solution before this Board decides to put a stop to this.

**Commissioner D'Aprile** added he will fight any TDUs that result when a mining operation is over.

**Chairman Loftus** commended **Commissioner D'Aprile's** past efforts, and summarized the Commissioner would like to see the mining industry work with staff to get something done before the second hearing on April 2, 2007. **Commissioner D'Aprile** said he was very serious about that but unfortunately he won't be here on April 2, 2007.

**Commissioner Moore** agreed, said he supports the FARMS program, opined there's no reason this moratorium should take a year, and everyone needs to get together.

**Commissioner Duffy** said she was opposed to a moratorium based on feedback she's received from the public, she felt they'd been given incomplete and incorrect information at their TDU roundtable discussion which has caused a huge over reaction by everyone, she felt the ordinance only needs to be tweaked, she would like to see them add another class/group for FARMS

projects, some pending permits need to be allowed to move forward, she expects staff to get feedback from anyone who wants to be involved, she felt increasing the fee was absolutely necessary, and reiterated she would prefer to accomplish this without a moratorium in a short period of time of maybe six weeks.

**(Assistant County Administrator Shoemaker replaced Assistant County Administrator Baltz for the remainder of the meeting.)**

**Commissioner Cummings** said he would reserve judgment until the second public hearing, noted paragraph (f) on page 5 of ordinance states the Board controls the term of any moratorium, opined those applications in the process would be governed by the old not the new ordinance, and said he supported open communication among everyone involved to figure out what's in the best interest of Charlotte County and making it happen as expeditiously as possible.

**Chairman Loftus** said he strongly supports people getting together to work out a resolution as quickly as possible and hopefully before the second public hearing.

**ADJOURNED: 1:08 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**

**/ksm**