

BOARD OF COUNTY COMMISSIONERS - LAND USE HEARINGS

MAY 15, 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 Assistant County Administrator Shoemaker, Assistant County Attorney Browne, Executive Assistant Dillon, and Minutes Supervisor Nice. The following members were absent: None. The meeting was called to order at 9:00 AM.

Chairman Loftus announced legislative and quasi-judicial procedures.

A. PLANNING AND ZONING AGENDA - 9:00 AM (Proof of publication was in order)

1. PA-07-01-01-LS (Legislative) Commission District III Pursuant to Section 163.3184(3), Florida Statutes, transmit a Large Scale Future Land Use Map Amendment to the Department of Community Affairs for an Objections, Recommendations, and Comments report, amending the Charlotte County Future Land Use Map from Parks and Recreation to Commercial Center for 5± acres and Low Density Residential for 74.62± acres, for property located east of C.R. 775, and south and west of Gasparilla Pines Boulevard, containing 79.62 acres more or less, in the Cape Haze area; Commission District III; Petition No. PA-07-01-01-LS; applicant GSR Capital Group LLC. Recommendations: Community Development Department: Approval and Planning and Zoning Board: Approval.

Planner II Shao presented the petition for a large-scale plan amendment for development of residential and commercial uses on the site; this is the third petition to amend the Future Land Use on this property; prior proposals resulted in multiple comments from the Department of Community Affairs (DCA) and denials by the Board; the applicant has submitted updated information to address DCA's comments; on December 19, 2006, the Board approved a developer's agreement between the County and the applicant that addressed density in order to recognize that the

property was reclassified from Low Density Residential to Parks and Recreation in 1997 and restored the density of five units per gross acre; staff recommends approval of the transmittal to DCA for an Objections, Recommendations, and Comments (ORC) Report based upon meetings held to address concerns about traffic, road level of service, and water and sewer services; and the Planning and Zoning Board (P&Z) recommended approval of the transmittal on a 3:1 vote. Ms. Shao commented on the public notification in the local newspaper in lieu of written notice; referenced a December letter with an incorrect statement since some of the parks in West County still have Low Density Residential land use designation; and pointed out no density change will be done with approval of the petition. Ms. Shao asked the public to sign-in.

Commissioner Cummings asked about any notations on the master plan limiting development on Tract 4 to 600 units. Ms. Shao stated she did not see it until this morning.

Attorney Waksler appeared in support of petitioner, reviewed the history of land use and zoning proposed as a result of the three petitions filed, reported all of DCA's concerns have been addressed, the property owner has met with surrounding property owners to address their concerns, advised the master development plan and Development of Regional Impact (DRI) vested rights do not preclude redevelopment of the site, compared similarities between this site and Murdock Village, reviewed issues raised by DCA including the school system capacity to which Dr. Roseann Samson submitted a letter indicating sufficient capacity, the impact on Lemon Bay Preserve and the development agreement requiring preservation of 36.79 of the 79.62 acres, the impact on CR 775, and wastewater capacity. Todd Rebol, Banks Engineering, recalled concerns at the Planning & Zoning hearing on potential impacts of stormwater runoff, stated there is no functioning stormwater system on the site, explained the degradation and nutrient loading to Lemon Bay, and reported redevelopment of the site will require conformance to current stormwater regulations.

Attorney Waksler summarized the points raised by Mr. Rebol e.g. all runoff is untreated and development will require a stormwater system that will improve the quality of runoff into Lemon Bay; pursuant to the proportionate share ordinance, the developer is required to have a traffic impact analysis conducted and

fund transportation improvements to maintain the required level of service on impacted roadways; none of the residents along Placida Road have paid road impact fees but the developer will; reviewed the July 1, 2006 e-mail from Dan Trescott, Southwest Florida Regional Planning Council (SWFRPC), regarding an analysis on evacuation times ranging from 6.9 and 8.0 hours submitted into the record; Wayne Sallade has spoken about a 20-hour clearance time but this is different than the 16-hour range for a Category V event; many objections have been received from the Little Gasparilla Island Improvement Association; pointed out many residents on Boca Grande and Little Gasparilla are gone during the summer months; most of the site is not in the Coastal High Hazard e.g. 30 of the 290 units will be within the Coastal Hazard Area; Utilities of Sandalhaven, through an agreement with Englewood Water District, will provide wastewater service and Charlotte County Utilities will provide water service; funding for design and construction of line upgrades are in the Capital Improvements Program (CIP) and upgrades for the Englewood Interconnect will be ready by late 2007 along with the other upgrades; the 1 mgd capacity from Englewood Water District will reduce usage from the Peace River; site planning approval will be sought subsequent to approval of this amendment; each of the condominium associations surrounding the site support this project; the land use change is consistent with the Comprehensive Plan and Infill Area, Urban Service Area requirements; and requested transmittal approval.

Percy Medintz, a member of the Cape Haze Property Owners Association (CHPOA), distributed letters addressed to the Board dated May 10 and 14, 2007 and attachments with copies to various organizations and individuals, compared the 2007 proposed site plan submitted by GSR and the site plan from the 1970's, referenced page 4 of the promise by the developer to construct a quality golf course, and the last page showing the Golf Course/Housing Master Plan on the limit of 600 units on Tract 4 (the golf course and condominiums), 550 units already exist, the golf course has been developed as a golf course, and stated the Board's decision will not impact Murdock Village project. **Commissioner D'Aprile** asked Ms. Medintz to continue even though the time limit had expired. Ms. Medintz reported the current owner of the site owned the property in 1986, the owner was aware of development limitations when he previously owned the property, GSR's request is unfair to neighbors, the development agreement

does not restore density on the property, and thanked the Board for the opportunity to speak in opposition.

Sue Reske commented on research conducted and inaccuracies found in Official Records in the Clerk of the Circuit Court's Office as well as data from the Regional Planning Council and the Division of Corporations; outlined the basic history as provided in the handout starting from 1942; stated only 48 of the 600 original units are still allowable since 552 units have been accounted for on Tract 4; the Board did not change the Future Land Use designation to Parks and Recreation in December 2006 as stated by petitioner's attorney, and requested the Board to uphold the Comprehensive Plan and vote no to the transmittal.

Misty Nichols read a statement in opposition to the petition of behalf of the Gasparilla Island Conservation and Improvement Association and about 1,100 members based on concerns of adverse impacts from increased traffic and public health and safety issues related to evacuation times; referenced excerpts in e-mails from Dan Trescott and Wayne Sallade on evacuation of Cape Haze Peninsula and Little Gasparilla, and requested denial of the transmittal.

Richard Flint, a Placida Harbor resident since 1991, expressed concerns on the deterioration caused by increased traffic and reduced water pressure; commented on the rights of property owners and home owners adjacent to the site; stated the open space was preserved for all time; referenced concurrency issues and infrastructure issues associated to water, sewer, schools, parks and recreation, and roads as set out in the Comprehensive Plan; and requested denial.

Irene Dorsey, a resident adjacent to the golf course, commented on the increased tax assessment for her unit over looking the golf course and the perpetual easement for access over portions of the golf course, stated her view looks more like Africa than a golf course, referenced the perpetual maintenance that has not been performed since all of the grass is dead and brown, and opined homeowners have been cheated.

Kathleen Rohrer, Lemon Bay Conservancy Vice President, commented in opposition to the transmittal by stating petitioner had an opportunity to perform due diligence; the land owner has received

a reasonable profit from sales from homeowners who were promised a certain quality of life that will be adversely impacted if this site plan is approved; roads are inadequate for currently occupied homes; the potable water supply is insufficient; referenced the Charlotte County Community Plan upheld by DCA and the need for open green spaces.

Marvin Medintz acknowledged the staggering amount of information Board Members have been provided and incorporated his comments made on behalf of CHPOA, community organizations listed in his statement, and he and his wife; read the statement in opposition based on the insufficiency of water capacity as shown on Charlotte County Utilities data, as of March 2007, that the water demand from Central and West County was 12.304 mgd versus the permitted plant capacity of 12.758 mgd and the actual total month flow or amount purchased of 12.5304 mgd; referenced the deal between Sandalhaven and Englewood Water District in that EWD will take 500,000 gpd by the end of 2008; there are no commitments to provide wastewater treatment capacity to the development and Utility records show that such capacity is not available; and stated the increased load on wastewater and potable water utilities would violate the Comprehensive Plan.

Lynne Seibert requested denial of the Wildflower amendment based on the Coastal Management chapter of Florida Statutes to direct population growth away from Coastal High Hazard Zones and reduce evacuation times; commented on water, sewer, traffic, and evacuation deficiencies that have been proven in the Cape Haze area; stated approval will reduce property values in the area and impact other developments in this market slow down; there are over 2,300 condominium and single family units in the area; and the proposed development will increase traffic, adversely impact safety hazards, and reduce the already low water pressure.

Frank MacTaggart, Fiddlers Green Condominium Phase I President, commented in support of the proposed construction, the truthfulness of due diligence performed by the developer and Attorney Waksler, and the efforts expended to address residents' concerns.

James Marshall, El Jobean Community League President, stated the reality of the situation is that evacuation is possible from West County including Cape Haze only via Englewood, El Jobean to US 41

or River Road; commented on the insufficiency of water in the area that will increase with approval of the proposed development; and pointed out the recommendation from P&Z was not unanimous.

Billy Stovall, Fiddlers Green Property Owners Association member, expressed support for the transmittal based on meetings between the developer and adjacent property and owners associations to address open space concerns and the development agreement entered into to place the property in preservation and pointed out the proposed development is consistent with the Comprehensive Plan.

Rani Ben David referenced meetings with adjacent property owners to address concerns about insufficient of water; stated the land use change was done in 1997; requested approving the transmittal to DCA; advised work still needs to continue with residents of Fiddlers Green I and II; and reiterated the County acknowledged the change from 1997 in the agreement approved in December 2006.

Willis S. Peterson, Fiddlers Green Phase II resident, informed the Board that he initially bought a unit in Phase I, about 15 years ago he bought the unit in Phase II in which he current resides, and stated the developer has made more effort to work with home owners than any other developer he knows.

Fran Shaffer, a Sanctuary resident whose unit overlooks the golf course, indicated opposition based on the adverse impacts from the insufficiency of infrastructure.

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

Motion Carried 5:0.

Attorney Waksler explained representations were made by a prior owner of the site that are not consistent with current Comprehensive Plan and Zoning Regulations; this project is similar to Murdock Village since portions of the property were identified for condominiums, homes, and parks; DCA has once reviewed the request and all concerns have been addressed; distributed copies of an e-mail from Dan Trescott on the 6.9 to 8.0 evacuation range; explained Charlotte County Utilities has sufficient water to meet increased needs; pointed out the interconnect with Englewood will provide an additional 250,000

gpd; reiterated efforts by the developer to satisfy residents' concerns; and requested approval of the transmittal.

Ms. Shao provided copies of the public notices for the public hearings held on February 27, 1997 by the Planning & Zoning Board and March 18, 1997 by the Board of County Commissioners. **Commissioner Duffy** requested confirmation that staff's position is that the development will be consistent with the Comprehensive Plan. Ms. Shao agreed. **Commissioner Moore** requested verification of Sandalhaven Utilities' current operations under the Consent Order. Ms. Shao stated information is included in the packet from Sandalhaven on the availability of sufficient capacity. **Commissioner Moore** questioned the possibility that Sandalhaven's rates might triple. Ms. Shao expressed uncertainty. **Commissioner D'Aprile** asked for confirmation that the proposed development will comply with the Comprehensive Plan. Ms. Shao stated yes, if the plan amendment is approved. **Commissioner D'Aprile** pointed out a former owner limited development to 600 units and questioned if the County is bound by that promise. Ms. Shao stated a Planned Development is available. **Commissioner D'Aprile** stated he listens to facts and he needs reassurance if these are real facts and detrimental to the community or if the developer is legally allowed to develop the proposed site plan; recognized the developer's efforts to address residents concerns; and requested clarification. Ms. Shao stated when staff conducted the review, nothing was identified in writing that limited development to 600 units on the site. **Commissioner D'Aprile** stated he will not vote on hearsay. **Chairman Loftus** agreed and indicated concern about water and wastewater capacities. **Commissioner Cummings** questioned the threshold for the Board's decision. Assistant County Attorney Browne explained the legislative threshold and stated it is not necessary to have competent substantial evidence only that opinions differ. **Commissioner Cummings** concluded the Board has discretion to do what is best for the public interest.

Commissioner Cummings requested the zoning on the golf course site from the 1970s. Ms. Shao stated residential. Ms. Shao explained staff reviews information provided and concluded no ordinance has been adopted on the site to limit the number of units. **Chairman Loftus** recalled General Development designated a number of park sites in 1992 and stated water, wastewater, and road capacities must be sufficient to meet the needs of

residents. **Commissioner Duffy** stated she has spoken with residents from West County and reviewed all of the paperwork provided; indicated all of her concerns have been addressed by staff regarding evacuation and water availability; noted immediately adjacent residents are not in opposition to the proposed development; acknowledged the Notices of Public Hearing; and expressed support for the land use change. **Commissioner Moore** stated commitments were made by prior owners, he does not see a need for additional condominiums units today in this area, there is no long-range water commitment from EWD, recognized staff's efforts to comply with regulations in the review process and public notice requirements, Board Members have the right to show what their vision is for this area, and indicated opposition. **Commissioner Cummings** recognized the Board's discretionary rights, the fairness issues of adjacent property owners and associations, and expressed opposition.

Commissioner D'Aprile opined this is a compassionate legislative hearing and not a quasi-judicial hearing; stated the developer has bent over backwards to perform due diligence; and he has not received verification on the 600 unit limitation.

COMMISSIONER D'APRILE MOVED TO DENY TRANSMITTAL OF THE LARGE SCALE FUTURE LAND USE MAP AMENDMENT TO THE DEPARTMENT OF COMMUNITY AFFAIRS FOR PA-07-01-01-LS BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING STAFF REPORT DATED MARCH 21, 2007 AND THE EVIDENCE PRESENTED AT THE HEARING, SECONDED BY COMMISSIONER MOORE.

Motion Carried 3:2. Chairman Loftus and Commissioner Duffy opposing.

RECESS: 10:55 AM - 11:05 AM

Reconsider Agreement 2006-073 between GSR Capital Group, LLC and the County

Commissioner Moore advised he was one of four Board Members who voted in support of the December 19, 2006 developer's agreement and, based upon the prior action, he is requesting reconsideration of the agreement due to erroneous information and this development cannot be constructed on land designated for Parks and Recreation.

COMMISSIONER MOORE MOVED TO RECONSIDER AND REVOKE AGREEMENT 2006-073 BETWEEN GSR CAPITAL GROUP, LLC AND THE COUNTY, SECONDED BY COMMISSIONER CUMMINGS.

Chairman Loftus requested direction on the legality of the reconsideration. Assistant County Attorney Browne stated if the motion was made based on erroneous information, the matter might be reconsidered at this time. **Commissioner Moore** commented on inaccuracies that possibly swayed votes during the December 19, 2006 meeting relative to the developer's agreement. Assistant County Attorney Browne reiterated three votes in favor would rescind the prior motion. **Commissioner Moore** commented on differences in density units, the history and reasoning on the FLUM data and opined erroneous information was provided to the Board. **Commissioner Duffy** requested staff to substantiate the limit to 600 units. Ms. Shao stated there was a preliminary master plan but the number of units was not limited to 600. **Commissioner Cummings** noted the letter from developer's attorney indicating that the developer would limit development on Tract 4 to 600 units followed by a letter from Thomas Frame, pointed out Wildflower was not on the list of parks mentioned in the Comprehensive Plan, and only public parks were on the list. **Commissioner Moore** reiterated inconsistencies in developable density units. Attorney Browne stated this might open the County to litigation and suggested the Board consider what is right. **Commissioner Duffy** suggested staff be given additional time to research the validity of the information and expressed the belief that this is an attempt to take away property owners' rights. **Chairman Loftus** stated this is not in the best interest of the community and he will not vote in support.

Motion Carried 3:2. Chairman Loftus and Commissioner Duffy opposing.

2. PA-06-11-64-LS (Legislative) Commission District II Pursuant to Section 163.3184(3), Florida Statutes, transmit a Large Scale Future Land Use Map Amendment to the Department of Community Affairs for an Objections, Recommendations, and Comments report, amending the Charlotte County Future Land Use Map from Agriculture to Medium Density Residential, for property located at 27350 or 27360 Jones Loop Road, in the Punta Gorda area, containing 40.55

acres more or less; Commission District II; Petition No. PA-06-11-64-LS; applicant S. W. Florida Land Twenty LLC. Recommendations: Community Development Department: Denial and Planning and Zoning Board: Denial.

Attorney Browne verified withdrawal of Petition PA-06-11-64-LS on the record.

3. PA-07-02-13 (Legislative) Commission District I An Ordinance pursuant to Section 163.3187(1)(C), Florida Statutes, adopting a Small Scale Future Land Use Map Amendment to the Charlotte County Comprehensive Plan from Coastal Residential to Low Density Residential, for property located east of I-75, south of the Peace River, west of Darst Avenue, and north of Island View Drive, in the Punta Gorda area; Containing 9.99 acres more or less; Commission District I; Petition No. PA-07-02-13; applicant: Peace River Island LLC. Recommendations: Community Development Department: Approval and Planning and Zoning Board: Approval.

(Minutes Supervisor Nice administered the oath. Chairman Loftus polled the Board for ex-parte disclosures and all Board Members acknowledged such disclosures.)

Ms. Shao presented the petition for a small scale plan amendment; advised there is a companion rezoning petition (Z-07-02-14) from Environmentally Sensitive and Residential Single-family-5 to Planned Development; the rezoning site contains a total of 16.93+ acres; the subject site is located east of I-75, south of the Peace River, west of Darst Avenue, and north of Pleasant Street, in the Punta Gorda area for construction of a residential development consisting of 55 units; the site is located within the Suburban Area of the Urban Service Area; on January 16, 2007, the Board granted the Transfer of Density Units (TDU) appeal so this relieves the requirement to buy density; the TDU appeal acknowledged the vest density of 85 substandard platted lots on the Island); the proposed Low Density Residential Future Land Use Map (FLUM) designation allow a maximum density of five units per acre; staff has determined that the proposed amendment is justified; staff recommends approval; and P&Z recommended approval.

Geri Waksler appeared on behalf of petitioner in support of the land use change and rezoning based on environmental studies. Ian Vincent explained environmental aspects on the site plan to preserve the maximum wetlands; explained the wetlands quality or wetlands function line developed on the site including approximately 2/3's of all wetlands; 5.6+ acre wetlands preservation is on the site; and no endangered species were found on the site. Attorney Waksler pointed out some wetland impacts are found in the upper left corner which was one of the most poorly functioning area and the northwestern corner; the number of units has been reduced, an increased buffer is being installed around the mangrove area; all exotics will be removed and fish habitat will be increased; there will be no pavement on the Island, the roads will be crushed shell that will increase water runoff, the homes will be bungalow style fronting on the waterway or overlooking mangrove areas, parking will be off the Island with substantial buffering with access from Peace Island Drive; a Type D Buffer will be placed around the site which is normally utilized in industrial areas including three layers of ground covers, shrubs, and trees; buffers will be placed at 25 and 15 feet from residences; the parking area will contain stormwater retention and lighting; parking off the Island will create less stormwater retention and pervious surfaces on the Island; parking on the Island would be totally contrary to efforts to address concerns; petitioner has maintained development at 3.5 units per acre which is lower than the 5 units per acre allowed under Low Density Residential; the proposed 55 units development will reduce 38 density units and the developer has agreed to forfeit transfer of these units.

Attorney Waksler advised residents noted in green in the green area support the change whereas residents in the red area oppose the development; since 1928, development has been approved for 86 density units; accepted all conditions as proposed by staff; stated evidence on the buffering was not provided at the P&Z meeting; and requested approval of the land use and rezoning petitions.

Bill White asked to be sworn in. (**Minutes Supervisor Nice administered the oath.**) Mr. White explained the green area represents vacant lots, some of which the homes were demolished as a result of Hurricane Charley; stated a parking lot in any residential neighborhood is not beneficial; stated this is

generally a old home neighborhood; the density would go from 10 units to 55 units; and requested denial.

Robert Moses, Island View Drive resident, recognized the developer's efforts to satisfy everyone's concerns; stated the development will enhance property values; and he has no objection to the parking area as proposed with buffering.

Ken Cruttender, owner of lots 32 and 33, stated his home is located 10 feet above sea level and he will have a view overlooking the parking area; the majority of homes are from the 1950s and 1960s; this is a boat ramp community; and asked the Board to agree with condition p as revised by P&Z.

Thomas Smith stated he has attended meetings on the proposed development, opined this is a very good project that will meet special concerns of islanders, residents do have concerns about the parking, off island parking will reduce the traffic on the Island, and this is a unique project that he is supports.

Robert Douglas, owner of lot 14, stated he has attended meetings, the plan is reasonable, it addresses traffic and environmental concerns, and requested the Board's support.

Clifford Rice stated he was not sworn in. (**Minutes Supervisor Nice administered the oath.**) Mr. Rice expressed concern about the parking area, the type of people who might congregate at the parking area, increased noise, and requested denial.

Henry Radel, owner of lot 16, stated it is a nice design, he would rather deal with a developer who is upfront instead of one building a high rise in three years or in the future, and the Board will need to address the parking issue.

Terry Grill, a long time Island resident, stated it is about time a developer did something and this appears to be a good project.

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

Motion Carried 5:0.

Commissioner D'Aprile questioned the inclusion of gates at the parking area. Attorney Waksler agreed to the addition of gates

at the parking area as a condition. Commissioner Cummings stated he does not accept the staff report segment on the reduction of 55 units, indicated concern about the parking lot, and recognized future development could be at a lower than proposed density.

COMMISSIONER D'APRILE MOVED TO APPROVE ORDINANCE # 2007-035 WITH CONDITIONS A THROUGH Z BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED MARCH 21, 2007 AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE.

Motion Carried 4:1. Commissioner Cummings opposing.

4. Z-07-02-14 (Quasi-Judicial) Commission District I An Ordinance approving an amendment to the Charlotte County Zoning Atlas from Environmentally Sensitive (ES) and Residential Single-family-5 (RSF5) to Planned Development (PD), for property located east of I-75, south of the Peace River, west of Darst Avenue, and north of Pleasant Street, in the Punta Gorda area; Containing 16.93 acres more or less; Commission District I; Petition No. Z-07-02-14; applicant: Peace River Island LLC. Recommendations: Community Development Department: Approval with conditions and Planning and Zoning Board: Approval with conditions.

Ms. Shao stated this is the companion rezoning petition to PA-07-02-13.

COMMISSIONER D'APRILE MOVED TO APPROVE ORDINANCE 2007-036 BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED MARCH 21, 2007 AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING INCLUDING CONDITIONS A THROUGH Y AND P AS REVISED TO REQUIRE ACCESS CONTROLLED (GATED) PARKING OFF THE ISLAND, SECONDED BY COMMISSIONER DUFFY.

Motion Carried 4:1. Commissioner Cummings opposing.

5. PV 07-02-02 (Legislative) Commission District I Tranquility Island, LLC has applied to vacate a portion of Bay Shores Subdivision, more particularly described as all of Blocks I, J, K and L, along with the adjoining streets and park sites of Bay Shores, a subdivision as recorded in Plat Book 2, Page 49, of the Public Records of Charlotte County, Florida, located in Section 33, Township 40, Range 23. The site,

consisting of 17.06 acres more or less, is an island located south of the Peace River, east of I-75, north of Island View Drive, and west of Darst Avenue, in Commission District I. A complete legal description is on file. Recommendations: Community Development Department: Approval and Planning and Zoning Board: Approval with conditions.

Development Review Manager Dossett presented the vacation petition; explained the site is currently zoned Environmentally Sensitive with a Future Land Use Designation of Coastal Residential; the vacation would permit a residential development; this petition cannot proceed without adoption of an ordinance approving the rezoning; the entire site is within the Tropical Storm Surge Zone; all utilities have been notified and none will be affected; staff has reviewed the petition and recommends approval with two conditions: (1) Applicant must be approved for a small scale plan amendment and a Planned Development rezoning of the property before this petition can be approved and (2) Applicant must provide a current certified metes and bound survey which includes the total acreage of the project; the P&Z Board heard the petition on April 9, 2007 and recommended approval with the two conditions.

Attorney Waksler joined in staff's report and requested approval on behalf of petitioner.

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

COMMISSIONER D'APRILE MOVED TO APPROVE RESOLUTION 2007-072,
SECONDED BY COMMISSIONER MOORE.
Motion Carried 4:1. Commissioner Cummings opposing.

Ms. Shao requested the Board take Agenda Items 9 and 10 at this time. (Board consensus.)

9. PA-06-07-46 (Legislative) Commission District III An Ordinance pursuant to Section 163.3187(1)(C), Florida Statutes, adopting a Small Scale Future Land Use Map Amendment to the Charlotte County Comprehensive Plan from Commercial Center to Low Density Residential, for property located at 4700 Arlington Drive, in the Cape Haze area;

Containing 4.57 acres more or less; Commission District III; Petition No. PA-06-07-46; applicant: Preserve at Cape Haze Inc. Recommendations: Community Development Department: Approval and Planning and Zoning Board: Approval.

(Chairman Loftus polled the Board for ex-parte disclosures and all Board Members noted such disclosures.)

Ms. Shao presented the petition for a small scale plan amendment on approximately 4.3 acres; there is a companion rezoning (Petition Z-06-07-47-TDU); the site is located at 4700 Arlington Drive in the Cape Haze area to pursue a residential development; the site is currently vacant and located in the Infill Area of the Urban Service Area; the site is an enclave of Commercial Intensive land with a Commercial Center FLUM located at the dead end of a Residential street; this is incompatible with the development pattern in the surrounding area and is generally considered an undesirable zoning designation for properties adjacent to Environmentally Sensitive areas such as the West Branch of Coral Creek and Amberjack Cove; staff recommends approval; and P&Z recommended approval.

Attorney Waksler appeared in support on behalf of petitioner; distributed an aerial of the site and a excerpt and full set of the Amended and Restated Declaration of Covenants for Cape Haze Windward; advised building heights are restricted to 35 feet but petitioner has proposed 30 feet which is consistent with surrounding structures; there will be a 25 foot setback and buffer adjacent to the one adjacent single family home. John Swan explained the buffers required and those proposed by the developer, stated the proposed buffers exceed the requirements, and outlined the various types of trees and shrubbery. Dan DeLisi stated this is a change from commercial to multi-family, outlined incompatibility concerns between commercial and residential, the buffer will be four times intense as that required by Land Development Regulations, and reported numerous compatible multi-family and single family residential communities e.g. Baldwin Park, Orlando, Florida.

Attorney Waksler stated this townhouse development will not increase traffic as single family homes or condominiums; referenced the Amended Restrictive Convenants approved by community residents limiting Tract E to commercial tourist uses;

no height restrictions are placed on these uses but the developer is proposing two levels consistent with existing structures; the petitioner accepts all conditions recommended by staff; and requested approval.

Attorney Warren Ross appeared on behalf of Cape Haze Windward Property Owners Association in opposition to the proposed development as outlined on page three of the handout on density, intensity, lot size, single family stand alone/detached homes versus condominiums, height and size of residences.

Ed Kimmel stated it is a beautiful parcel and he tried to buy it, there are single family stand alone homes on three sides of the proposed development; he bought his lot and built a home with the expectation that a commercial would be on one side; referenced the 1997-2010 Comprehensive Plan and noted Tract E is in the Coastal High Hazard Zone; the development plan uses the pond, ditch, and easements as well as about 90% of Amberjack Creek; and suggested the developer bring back a survey specifying total buildable areas. Mr. Kimmel asked those in opposition to stand and the majority stood up. Ann Dever, 300 Coral Creek Drive, stated the aerial is incorrect and does not show Arlington Drive and the proposed 20 condominium units are not compatible and will stick out like a sore thumb.

Jim Surrate stated he was only partially sworn in. (**Minutes Supervisor Nice administered the oath.**) Mr. Surrate stated no one in Cape Haze Windward Property Owners Association supports the proposed development; 14 of the 20 townhouses are three stories high and 6 of the units are four stories high; the project is totally over powering and will adversely impact this high end residential community and lower property values; referenced Article III, Section 3 of the Restrictive Covenants on single family zoning can be applied to this property; Windward was originally established as a community of single family stand alone residential homes; suggested a developer could construct six or seven single family homes and still make a profit; and requested denial.

Jerry Haley stated he was not sworn in. (**Minutes Supervisor Nice administered the oath to seven additional people.**) Mr. Haley pointed out the single family residences and preservation

areas on the aerial in contradiction of some of the testimony and expressed opposition.

John Brandenberger stated Article III, Section 3 does not preclude development of single family homes on Tract E; questioned the capacity of the pond to handle the increased runoff and who is to perform maintenance of the pond; reported the homes to the south are in a low area and residents are concerned about height visibility and the impact of increased boat ramp traffic; and requested denial.

Jay Carruthers stated all of the homes are single family and single story except three that are not in the deed restricted area, therefore, multi-story structures would not be compatible; the two proposed buildings are 190 to 192 feet long which is much larger than a single family home; no dumpsters are seen in the development; expressed concern about a 50' tree over hanging his home; the proposed development is not compatible with the neighborhood; and requested denial.

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

Attorney Waksler referenced Objective 5.1 of the Comprehensive Plan on limiting new plat proposals to 3.5 and pointed out this is not a new plat; compatibility means orderly and efficient incorporation with existing uses; pointed out the compatibility of the proposed development; referenced Article III, Section 3 on commercial and multi-family uses allowed under Commercial Tourist; pointed out residents who built homes in the subdivision were clearly put on notice about commercial development including a restaurant or a boat storage facility; residential multi-family is compatible on the site; and requested approval of the rezoning and land use change. Ms. Shao stated the legal description includes the mean high water line and net versus gross density.

Commissioner Moore requested clarification on the purpose of the change from Commercial Center to Low Density Residential under PA-06-07-46. Ms. Shao explained the necessity of changing the FLUM to accommodate Low Density Residential. **Commissioner Moore** questioned the legality of constructing single family homes on the tract. Ms. Shao answered affirmatively with the rezoning and

land use change approval. **Commissioner Moore** opined the proposed development is not compatible with the existing neighborhood. **Commissioner Cummings** stated the Board has more discretion to view compatibility in a legislative proceeding than in a quasi-judicial proceeding and, if agenda item 9 is approved, then competent substantial evidence would be applicable to agenda item 10. **Chairman Loftus** expressed concern about the existing Commercial Intensive designation and requested verification that the proposed development would not exceed height standards. Attorney Waksler explained two stories over a garage and certain elevations must be met. **Commissioner Cummings** stated two stories above base flood elevation. Attorney Waksler advised the garage is in front of the townhouse, construction would be limited to two habitable stories above base flood elevation, which is not necessarily ground level, and will not exceed 30 feet above base flood elevation; and reported the development will comply with the height restriction ordinance.

Commissioner Moore requested clarification of **Commissioner Cummings** reasoning. **Commissioner Cummings** explained denial of item 9 would mean that the underlying land use would remain Commercial Center and the Residential Planned Development would be inconsistent. Ms. Shao agreed. **Commissioner Cummings** stated approval of item 9 would be the competent substantial evidence to support item 10.

COMMISSIONER MOORE MOVED TO DENY PA-06-07-46 BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED SEPTEMBER 15, 2006 AND THE EVIDENCE PRESENTED AT THE HEARING, SECONDED BY COMMISSIONER CUMMINGS.

Chairman Loftus concluded two two-story homes exist in the area and this proposal is better than other uses allowed in Commercial Intensive. **Commissioner Moore** expressed concern about allowable Commercial Intensive uses. **Commissioner Duffy** agreed with **Commissioner Moore**. **Commissioner D'Aprile** stated no problem exists with changing the Commercial Intensive to Residential but the people would prefer single family homes and questioned the possibility of making the townhouses to appear similar to single family homes. Attorney Waksler pointed out the developer has committed to reducing the height to 30 feet, the garages will be front of the townhomes, and accepted such a condition. **Commissioner D'Aprile** questioned if the site plan would come

back as a final plan approval. Attorney Waksler stated typically final detail approvals are on the Consent Agenda but Board Members may pull any item for discussion to determine the consistency with the approved concept plan and conditions.

Motion Declined: 2:3. Commissioner Duffy, Commissioner Cummings, and Commissioner D'Aprile opposing.

Commissioner Cummings stated the project is not the ideal development for the community but it might be better than other possible future development proposals. **Commissioner Moore** advised he has had many conversations with people in the neighborhood and agreed with **Commissioner Cummings**.

COMMISSIONER D'APRILE MOVED TO APPROVE ORDINANCE 2007-038 WITH CONDITIONS AS STATED BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED SEPTEMBER 15, 2006 AND THE EVIDENCE PRESENTED AT THE HEARING, SECONDED BY COMMISSIONER DUFFY.

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

10. Z-06-07-47-TDU (Quasi-Judicial) Commission District III An Ordinance approving an amendment to the Charlotte County Zoning Atlas from Commercial Intensive (CI) to Planned Development (PD), for property located at 4700 Arlington Drive, in the Cape Haze area; Containing 4.57 acres more or less; Commission District III; Petition No. PA-06-07-46; applicant: Preserve at Cape Haze Inc. Recommendations: Community Development Department: Approval and Planning and Zoning Board: Approval.

COMMISSIONER D'APRILE MOVED TO APPROVE ORDINANCE 2007-039 APPROVING Z-06-07-47-TDU, WITH CONDITIONS A THROUGH U, BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED SEPTEMBER 15, 2006 AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER DUFFY.

Commissioner Cummings stated approval of item 9 eliminated his discretion to vote against this item and concluded that Attorney Waksler has indicated the townhouses will look more like single family homes than condominiums. **Chairman Loftus** stated a

resolution has been reached with the developer on the 30 feet limitation and the townhouses would be two-story and look similar to single family homes. Attorney Waksler nodded yes. **Commissioner Moore** agreed with **Commissioner Cummings** on voting to support this item based on approval of item 9.

Motion Carried 5:0.

RECESS: 1:25 PM - 2:00 PM

A. PLANNING AND ZONING AGENDA - 2:00 PM (Proof of publication was in order.)

(Minutes Supervisor Nice administered the oath. Chairman Loftus explained one presentation would be accepted from staff and petitioner on both petitions. Chairman Loftus polled the Board for ex-parte disclosures and all Board Members noted such disclosures.)

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

11. SO-07-02-01 (Quasi Judicial) Commission District I An application under The Code of Laws and Ordinances of Charlotte County, Florida, Chapter I-12, Article V Solid Waste Management Facility Sighting, seeking approval for a solid waste facility and Class I land fill, on property located South of County Road 74, East of State Road 31 and West of Glades County; containing 1,276± acres; Commission District I; Petition No. SO-07-02-01; applicant Omni Waste of Charlotte, LLC. Recommendations: Community Development Department: Denial and Planning and Zoning Board: No Recommendation.

Jeff Ruggieri explained staff presentation will take about 45 minutes, introduced staff, advised petitioner's presentation should last about one hour followed by public input and asked that staff be allowed input after public comments. Mr. Ruggieri reported staff recommends denial and the proposed development is in direct contrast to the public interest, health, and safety; the proposed development does not comply with the Land Fill Citing Ordinance and Section 2.1.1 of the Future Land Use Element of the Comprehensive Plan; the County lost 34% of agricultural

lands from 1997 through 2002; it is up to the Department of Community Affairs (DCA) to decide if the project is a Planned Development; and no letter has been sent to DCA requesting such a ruling.

Mr. Ruggieri stated Islands and Lee Counties have demonstrated a need for more land fill space during the next 10 years; if the Board accepts petitioner's explanation of need, then the Board accepts the need for a need for the facility; the regional need is not mentioned in the ordinance or Code, therefore, it would be contravention of the Code; petitioner has entered statements into the record on the regional need that are inappropriate and should not be made a part of the public hearing process; staff's first recommendation is denial in total or, alternatively, to approve the project with conditions in the staff report and have a developer's agreement brought back; and reiterated staff's recommendation is total denial. Andy Stevens indicated staff has environmental concerns on water resource impacts and regulatory impacts under normal weather scenarios including contamination of ground water resources, breeding habitats; exotic vegetation growth into Babcock Ranch; traffic impacts on endangered species including the Florida panthers, black bears, and numerous birds; road traffic is projected to increase by 20% that will adversely impact habitats, wildlife, and individuals; and reiterated these concerns are by staff, Florida Department of Environmental Protection (FDEP), Division of Lands, and Division of Forestry, Consumer Services. Jim Thomson presented a history of solid waste and curbside collection systems; reported the open cell has capacity until 2022 and 100 acres has been acquired for an additional 40 to 50 years; programs have been implemented for yard waste, household hazardous waste, waste tires curbside, needles, used motor oils and filters as well as West and Mid-County recycling facilities in conjunction with Center for Abuse and Rape Emergency (CARE); the Keep Charlotte Beautiful Program, Code Enforcement in conjunction with the Sheriff's Office. Mr. Thomson opined, if this facility is permitted, once the permit is issued, petitioner would probably ask for expansion in the next five to ten years; petitioner's facility will provide disposal but no incentives for recycling; and they may very likely sell the facility once it is in operation. Mr. Thomson suggested two conditions for approval: (1) exclude Charlotte County waste and (2) accept no waste from outside of the United States and no waste that is not regulated or managed by FDEP or Environmental

Protection Agency (EPA). Marc Rogoff reviewed Charlotte County's current facilities e.g. Zemel Road Landfill, two recycle centers in West and Mid-County, solid waste collection and assessment program, household hazardous waste program at the recycling centers, the County clean-up, and educational recycling programs. Mr. Rogoff pointed out the current landfill has capacity until 2022 or 2023 depending on population growth within the County; there is a 189-acre parcel to the west that could be acquired for future expansion; also the County could ask for an expansion of the height during the renewal process; the system and landfill have received National awards and it has stable tipping fees and assessments, long-term reserves for loan programs and a high level of service; tipping fees have only increased a few dollars in the last six to seven years to pay for clean up from Hurricane Charley; \$12.5 million and \$6.5 million in generated revenues; about \$11.2 million has been set aside for closure of the landfill and \$8 million for post-closure maintenance; the County has an outstanding bond; it will not be closed out until 2011 and the annual debt service is approximately \$1 million; referenced a recent Supreme Court decision and staff considered loss of tonages; a minimum 25% tonage loss is anticipated; the County would need to look at ways to minimize costs e.g. layoffs, employment freezes, and increased assessments. Mr. Rogoff stated the County's facility is a viable, good functioning system with sufficient capacity; and suggested expanding the Zemel Road facility instead of approving the Omni petition.

Attorney Robert H. Berntsson invited Ken Smith, District 4 Commissioner of Osceola County, to speak at this time. **Board consensus.** Commissioner Smith commented in support of the Omni facility; recognized this Board's difficult decision; the Osceola County staff had many of the same concerns regarding the environment, wildlife habitats, and impacts on water sources; reported almost 81% of Osceola County has been set aside for future preservation; there have been no adverse environmental or traffic impacts from Omni's facility; commented on the concerns of what is happening in Tallahassee with budgetary cuts; advised Osceola County has received almost \$3.5 million from Omni since January 2004; the closest community has also received almost \$800,000 as the host community; expressed the belief that the Omni facility in Osceola County has been a plus for its citizens; and offered to answered questions. Tom Greer, District

4 Osceola County School Board Member, stated Omni has provided \$432,000 to the School District and Foundation; the School Board revenues have been used for finger printing of employees and a partnership with the Foundation to provide a Christmas dinner for the less fortunate; funds have also been utilized for scholarships and school supplies, four full time counselors were hired for after school to meet with parents between 3:00 and 8:00 PM; the counselors have garnered an additional \$8 million for scholarships as well as other school activities; the community has definitely benefited from it; and the students have benefited on a long-term basis. Attorney Berntsson appeared on behalf of Omni's petition for a solid waste facility and landfill; reported numerous meetings have been held with staff and the community; requested testimony and evidence submitted be made a part of the public record; and submitted resumes, Exhibit B denoting conditions of approval, and an April 20, 2007 letter from Mike McDaniel, DCA. Attorney Berntsson requested the Board to make specific findings and pointed out Public Work's staff changed its recommendation to approval; the testimony and evidence will provide competent substantial evidence and show all application requirements have been fulfilled; the proposed rezoning is not in contravention of the Comprehensive Plan; this proposal does not represent a significant loss in the agricultural land uses; there is no Comprehensive Plan objective that will be violated; this will not adversely impact the Babcock Ranch development or schools but provide additional revenues to the School Board and make use of green energy for long-term benefits; the Citing Ordinance was adopted in 1998 and requires a rezoning on the property; growth in Florida has dictated the need for additional land fill space; the Evans property owners would not support this project if the operation would adversely impact its 9,000 acres surrounding the site; the Route 74/31 intersection will be improved; additional funds will be made available for firefighters and sheriff's deputies; the property was to be used for citrus groves but it was not viable due to citrus canker; and requested approval based on competent substantial evidence. Attorney Berntsson stated the SCS report is not applicable since Omni has committed to not accepting waste streams from within the County; Omni is not going to be in competition with the County since a need has been shown that additional landfill space is needed for surrounding counties; this is the first step in the process e.g. concept approval and rezoning that would allow petitioner to go to DEP;

and all agency requirements must be met prior to bringing the petition back for final approval.

Kenneth W. Cargill gave a slide presentation on the location of the proposed site including the project layout on the property used for cattle grazing even though it is permitted for a citrus grove, existing wetlands have been degraded to ponds for cattle grazing; reported the proposed project is a state-of-the-art facility; permits are necessary from DEP, US Army Corps of Engineers, and Fish and Wildlife; landfill design is geared to protecting water resources, surface water resources and boundaries; most of the County's water is located in the Southwest Florida Water Management District, South Florida Water Management District, and sub-basins; explained the liner system is comprised of a soil component, bentonite and two layers to provide redundancy in the liner system will be installed; the landfill is basically a bathtub 20 feet deep to collect liquids and move them off site; on top of the plastic will be two feet of soil and sod; there will be 26 ground water monitoring wells; stormwater retention and treatment are necessary as part of the DEP permit; Omni proposes to keep water on site to treat it, more than required, and return water back to the site, except that which exceeds the 100 year storm; continued the slide presentation with pictures of construction and compaction of subgrade, survey control during construction, final grading on the berm; the geomembrane arrival, deployment, and fusion after air pressure and vacuum testing on every lineal foot; reported 23 cells with sumps are proposed for this project with back-up pumps; showed a final sump before installation of the protective cover on the liner system; explained the system is monitored 100% of the time by a third-party monitoring firm that must keep detailed records that are certified by a professional engineer before the DEP does an on-site inspection. Mr. Cargill summarized the facility operation plan that sets procedures to assure odors are controlled and no unauthorized waste enters the landfill; six inches of soil covers each day's waste; trucks are weighed and inspected numerous times; the waste is compacted into a dense mass to keep odors down; final cover soil over geomembrane has at least two feet of soil and sod; commented on landfill end uses; the site must be maintained and leachate removed and treated for 30 years as established by the Legislature; landfill gases will be gathered for at least 25 years after closure of the landfill; the gas can be burned in a

generator to produce electricity and provide electricity to several thousand homes; and power companies are looking for green energy. Mr. Cargill stated this project is an enhanced technological facility to be located in eastern Charlotte County and opined there will be no ground or surface water contamination from this facility.

Donald J. Strickland stated Omni has gone to a lot of effort to evaluate water resource conditions at the site; commented on the Surface Water Resources map and reminded the Board that Omni proposes to retain water from a 100 year two hour storm event on site; water cannot be released into Jacks Branch until all treatment requirements have been met; the Omni facility will be in a separate sub-basin from Telegraph Swamp; explained steps to be taken to assure surface water protection; reviewed slides on Regional Stratigraphy; Groundwater Protection through a monitoring network, natural protection for potable water and hydology prevents impacts to future wells on Babcock Ranch.

Richard M. Reiff continued the slide presentation based on the traffic impact analysis estimated at 240 vehicles for daily traffic of which 50% will come from the east and 50% from the west; the traffic counts were conducted in May 2005 and July 2006; traffic level of service analysis and effects on roadway maintenance on Bermont Road, SR 31, and CR 74; Omni intends to advance \$2 million for improvements to the SR 31/Bermont Road intersection by adding signalization and left turn lanes for all approaches.

Donald Ross stated there are no scrub jays on the site; continued the slide presentation with a review of environmental surveys on the site including wetlands and protected species of the project site and surrounding areas; advised more intensive surveys are required at a later date for Federal and State permitting; explained the area-wide protected species utilization map and the aerial on panthers and RCWs in the buffer area; outlined the Comprehensive Plan Standards that Omni must comply with; pointed out panthers are nocturnal so there is very little likelihood of the operation impacting the panthers since it is a daytime operation; the Omni operation will not impact mitigation areas; summarized the relationship to Babcock Ranch and the Charlotte Harbor Flatwoods which is located on three sides of the Zemel

Road Landfill; and commented on the location of landfill in Osceola County in relation to several wildlife management areas.

Stanley P. Geberer reviewed the needs analysis wherein a regional need has been validated in the Fishkind report; reported the Omni facility will not take Charlotte County waste unless requested by the County; the Omni facility will be available for emergency disposal such as hurricane and emergency debris; the Omni facility will be available for County waste water treatment plant residuals; summarized the findings of the economic and fiscal benefits of \$156.2 million including ongoing construction costs and earnings of \$53.2 million and the fiscal benefits of \$70.4 million including host fees; stated Omni will provide benefits totaling \$91.35 million over the life of the project.

Steven K. Luce continued the slide presentation by commenting on the Charlotte County Land Development Code, Chapter 1-12, Solid Waste; the proposed site and facility is in compliance with Comprehensive Plan requirements as set out in the Future Land Use Element; pointed out the half-mile and two mile buffers on the aerials, the proximity to Babcock Ranch, the Zemel Road Landfill Vicinity, and the Pinellas and Manatee County Landfills, and the slide of the map on the landfill area in Sarasota County in relationship to existing homes and new residential developments.

Attorney Berntsson asked for rebuttal time subsequent to public input.

RECESS: 4:05 PM - 4:15 PM

Mr. Ruggieri stated applicant indicated no objections have been received but 75 e-mails in opposition have been received; the letter from DCA is not a binding letter of determination or a clearance letter as required in Florida Statutes; neither he nor the State Agency has received such a request for a letter of determination as of last Friday; stated there is no argument that the proposed facility is top notch but there is not a regional need at this time; and requested denial. **Commissioner Duffy** requested clarification on an option for the Board to withhold approval pending State and Federal permitting. Attorney Berntsson explained that is part of the Planned Development Ordinance subject to final development approval. Attorney Browne

stated that is always a condition of final approval. Attorney Berntsson explained the two-step development approval process.

Commissioner Duffy advised she is a member of the Local Education Committee and has ascertained there is no conflict of interest. **Chairman Loftus** opened the public input segment and requested the oath be administered to those who have not been sworn in. (**Minutes Supervisor Nice administered the oath.**)

Sara Devos appeared in support of the Omni petition; suggested the Landfill Citing Ordinance be updated; stated the Omni facility would not be in competition with the County landfill; commented on the difficulty of rejecting a \$2 million revenue stream in light of budgetary cuts from Tallahassee; the landfill can create a good economic flow for the County, lessen the tax burden on residents, and bring in good paying jobs; and it is in the public interest.

Dan Cheskey suggested the Board approve staff's recommendation; commented on the need to look to the future; questioned if Omni is putting up a \$2 million bond to repair leakage; and suggested the County research what other counties have done in this position.

Nancy Payton, on behalf of Florida and National Wildlife Federations, commented in opposition based on cumulative impacts on Florida wildlife including habitats, fish, and Florida panthers; expressed concern about truck traffic coming in from 16 counties and their impacts early in the morning and evening; referenced 9 panther road kills on Florida roadways and the last one occurred at 6:45 AM; the direct environmental consequences and indirect secondary cumulative impacts have not been researched fully; Charlotte County has obligations under the Comprehensive Plan, the State Growth Management Act, and the Federal Endangered Species Act to protect Florida Panthers and water sources; the Federations urged denial of the petitions based on listed species concerns, incompatibility, local traffic impacts, and regional transportation issues.

Charlie Shoe, Clear Channel Radio, stated he has examined the Osceola plant and found that Omni did an incredible job; suggested a government and private enterprise partnership to

increase the County's revenue streams in light of projected budget shortfalls.

Steven Brown appeared, on behalf of Conservancy of Southwest Florida and individually, commented on the panther conservation zone and the population of 100 with a viable population of 240; the Conservancy staff has been working with various groups in the County on the Earthmoving and Mining Ordinance; the Conservancy supports staff's recommendation to deny the applications; as a resident, stated no need has been demonstrated for a regional facility; the landfill at Zemel Road is a viable operation and meets the County's needs; requested the Board consider cumulative impacts along with traffic and safety hazards; and deny the petitions.

Clarke Keller suggested considering what is going on in other counties relating to landfill, stated a lot of projected economic benefits can be derived from competition, and commented on adverse road impacts and traffic safety hazards.

Pete Qusius, Southwest Florida Audubon Society President, stated there has not been enough information on the impacts on roads and wildlife corridors; suggested caution in considering the real need for such a facility.

Patricia R. Swindle asked the Board to deny the petitions.

Ron Hammel, Grove Citrus Growers Association, stated one of the goals is to work with local governments to enhance agricultural operations as well as sustaining agricultural and citrus operations; commented on the investment of millions of dollars to fight citrus canker and other diseases; expressed appreciation for the Board's efforts; revenues from the Omni operation might be utilized to preserve the Evans property for agricultural uses and other agricultural operations in the County; the Association supports good government policy in relation to agricultural operations; and commented in support of the Omni petitions.

Ruth Bromberg, a member of the local Siera Group, stated it is really a garbage dump for waste from numerous other counties and asked if the Board wants Charlotte County to be garage dump; the County does not need a dump; the Zemel Road landfill has sufficient capacity; the Zemel Road facility is not out dated; a

variety of community wide programs that have been implemented including the West and Mid-County recycling centers; stated Omni could sell the site at any time; there is a big difference between Osceola County and Charlotte County e.g. Charlotte County does not need a dump; Sarasota and DeSoto Counties turned down an Omni dump; if the County needs an additional landfill, the County should earn all of the revenues to meet residents' needs; and requested denial.

Ron Thomas stated Omni is making a good commitment to this community.

Sue Reske stated Charlotte County does not need a landfill; even though Omni would provide \$2 million in revenues to the County, there could be adverse economic and environmental impacts on the County and Babcock Ranch including groundwater and aquifer contamination; expressed concern about the impacts from increased truck traffic on roadways and Florida panthers; 9 panthers have died in Southwest Florida this year; adverse impacts can only increase with growth; and requested the Board vote against the petitions.

Marilyn Goodwin expressed concerns about surface and ground water contaminations; stated the risk is too great; and asked the Board to deny the petitions.

W. Cort Frohlich stated Omni is a good corporate citizen but staff made an excellent presentation in opposition and requested the Board to make a decision based on the long-term effect.

Cari Roth appeared on behalf of Lykes that is located just over the Glades border and adjacent to the proposed site and Babcock Ranch specifically relating to the impact on property values; Lykes Brothers is looking into a rural lands stewardship program; they are concerned about protecting panthers and birds and habitats; the petitioner has failed to discuss regional implications on traffic and endangered species; the Comprehensive Plan requires the Board to consider Charlotte County needs not other counties' needs; the location of the proposed site is incompatible; and requested denial.

Ryan Bruce, CEO and owner of the Evans property which is the site for the proposed facility; reported extensive research was done

including engineering studies, land appraisals of landfills all over the Country including nearby counties; opined valuation is a non-issue; this kind of alternative use is very appropriate on agricultural lands; the agricultural operations would be enhanced through the use of water from the salty wells; and requested approval.

Tish Easley Thomas, of the Education Foundation, stated she has followed the Osceola County situation and funds provided by Omni for low-income students; stated the \$290,000 promised by Omni would allow more students to attend college.

Andy Dodd thanked Omni representatives for their commitment; pointed out the \$2 million a year would have a net affect of about \$.5 billion in valuation assessments; the \$2 million would not be subject to rollback; and suggested the Board consider the additional revenue from a budgetary standpoint.

Rex Koch stated he has researched this on the internet and attended the P&Z meeting; noted statements made by Paula Hess regarding economic benefits; he has spent a lot of time securing funds for non-profits and charities and he is aware of difficulties of procuring more revenue; commented in support of the Omni project and welcomed them with open arms.

Terry Todd stated this is the third presentation he has set through regarding the Omni applications from DRC, P&Z, and the Board; the location is probably not the best; considerable money has been expended on the linkage of the wildlife corridors; Lykes is a major land owner on the Glades and joined with other counties and agencies to create and implement the wildlife corridor.

Gabriole Van Bryce asked the Board to deny the petitions and questioned what Omni is putting on the table as far as reaping benefits from the green energy, closure and mitigation costs; expressed concern about repair/maintenance associated with leakage and/or tears in the liner; stated ground water is a critical issue for Charlotte County; asked for the PSI for the impermeable barrier; the County should benefit from the green energy revenues; Kitson and Partners are working to create a jewel of an environment on Babcock Ranch; and she is totally against the proposed landfill.

Bobbie Daughtry, a Punta Gorda resident, stated what Omni has done for the community and intends to continue to do out weighs possible adverse impacts; approval of the petitions will be a win-win situation; the \$2 million for improvements to the Bermont/US 31 intersection is needed; and expressed support for it.

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

RECESS: 5:30 PM - 5:40 PM

Attorney Berntsson advised Don Ross will address the environmental and panther concerns. Mr. Ross advised stray male panthers travel throughout the State; Fish & Wildlife is expanding the plan to enhance panther breeding populations in this area; Omni representatives are working with staff and agencies towards a commitment to make this happen and the plan is a work in progress. Attorney David Dee, from Tampa who represents 26 counties and cities in the State, advised if Omni is approved today, data will be submitted to the Department of Agriculture and the Department of Environmental Protection; this facility will supplement the County's system, if necessary, as could have been done with debris from Hurricane Charley, in order to preserve capacity at the Zemel Road landfill; Omni will coordinate and work with the County and the community in setting a preferential rate for hurricane debris; most of his clients are happy to have one solid waste disposal facility but Charlotte County would have two facilities; if the County ever decided to get out of the landfill business, Omni would be available to take over; the SCS report recognizes the need for a regional facility; the notion of regional cooperation is not new e.g. Charlotte County receives water from DeSoto County and electricity from Lee County; Omni can assist with local needs and local needs should not be considered for denial basis; and referenced case law. Attorney Dee stated the proposed site is exceptional; the project is a first-rate design; and asked for the opportunity to move forward to the Department of Environmental Protection and Fish and Wildlife for permitting prior to coming back to the Board.

Attorney Berntsson offered Omni representatives in the first two rows to answer questions; stated this project provides many benefits to the community; the Board has received many e-mails in support of the project; the facility is a top notch design; Omni has shown need over and over again; the Landfill Ordinance does not preclude a second landfill and solid waste facility in the County; experts have given testimony on panthers; this is a quasi-judicial proceeding for the sighting act and rezoning; reviewed the conditions to be incorporated in the ordinance including 22 through 31 as proposed by Omni; and stated everything required has been submitted for this project.

Mr. Ruggeri advised the Landfill Sighting Ordinance requires an analysis on the need for additional solid waste capacity which has not been addressed especially on the local level and explained the Sighting Ordinance is another level of overview. **Commissioner Cummings** pointed out this is a preliminary step in the process, this is a quasi-judicial proceeding, and he has listened to both sides.

COMMISSIONER CUMMINGS MOVED TO DENY AN APPLICATION UNDER THE CODE OF LAWS AND ORDINANCES OF CHARLOTTE COUNTY, FLORIDA, CHAPTER I-12, ARTICLE V SOLID WASTE MANAGEMENT FACILITY SIGHTING, SEEKING APPROVAL FOR A SOLID WASTE FACILITY AND CLASS I LAND FILL, ON PROPERTY LOCATED SOUTH OF COUNTY ROAD 74, EAST OF STATE ROAD 31 AND WEST OF GLADES COUNTY; CONTAINING 1,276± ACRES IN COMMISSION DISTRICT I UNDER PETITION NO. SO-07-02-01 FILED BY APPLICANT OMNI WASTE OF CHARLOTTE, LLC, SECONDED BY COMMISSIONER MOORE.

Commissioner D'Aprile stated this is the wrong site for a landfill. **Commissioner Duffy** indicated opposition because she needs to protect the citizens of Charlotte County but if the facility was to be placed in another location, she might support it. **Chairman Loftus** stated Omni has demonstrated that it can be a good community neighbor and it would be an economic boost to the County but he is concerned about the need for the facility and the location in close proximity to Babcock Ranch; if the facility was sited in a different location he might support it.

Motion Carried 5:0.

12. Z-07-02-12 (Quasi Judicial) Commission District I An Ordinance approving an amendment to the Charlotte County Zoning Atlas from Agriculture, General (AG) to Planned Development (PD), for property located South of County Road 74, East of State Road 31 and West of Glades County; containing 1,276± acres; Commission District I; Petition No. Z-07-02-12; applicant Omni Waste of Charlotte, LLC. Recommendation: Community Development Department: Denial and Planning and Zoning Board: No Recommendation.

Attorney Berntsson withdrew the petition based upon the Board's denial of S-07-02-01.

6. Z-07-02-10-TDU (Quasi-Judicial) Commission District II An Ordinance approving an amendment to the Charlotte County Zoning Atlas from Agricultural Estates (AE) to Planned Development (PD), for property located south of Tribune Boulevard, north of Tern Bay Boulevard, east of Burnt Store Road and west of Green Gulf Boulevard; containing 330± acres, in the Punta Gorda area; Commission District II; Petition No. Z-07-02-10-TDU; applicant: Coral Creek Burnt Store, LLC c/o Resource Conservation Properties, Inc and Charlotte Orange Grove, LLC c/o Michael Saadeh, Managing Member. Recommendations: Community Development Department: Approval with conditions and Planning and Zoning Board: Approval with conditions.

(Chairman Loftus polled the Board for ex-parte disclosures and there were none. Minutes Supervisor Nice administered the oath.)

Ms. Shao presented the petition for rezoning on the vacant 330+ acres adjacent to Burnt Store Road; the property is designated as Village Residential according to the FLUM; the propose of the petition would allow a combination of residential and commercial uses; the residential portion includes 999 units with a commercial development at the intersection of Burnt Store Road and the future Tucker's Grade Extension; the site is located within the Burnt Store Road Corridor, an area targeted by the County for increased development; the area is within the geographic boundary of the recently approved Burnt store Area Plan that serves to coordinate future improvements for

transportation, utilities, environmental linkages, water management, and land use along the Burnt Store Road Corridor; the proposed development is compatible with surrounding land uses and is consistent with the intent of the Burnt Store Area Plan and the Comprehensive Plan; DRC recommended approval of the concept plan with conditions; staff recommends approval with conditions a through y; P&Z recommended approval with conditions a through y; and expressed the belief that the applicant agrees with all conditions.

Attorney Waksler appeared on behalf of the applicant in support of the petition; stated no portion of the site is located within the Coastal High Hazard Zone; the 999 units requested is less than what is allowed; each pod will contain residential and/or commercial with final approval during the final approval process by the Board; commented on the amenities, utilities services; a proposed development agreement has been submitted for the widening of Burnt Store Road; DRC, staff, P&Z recommended approval with the conditions; the applicant accepts all conditions; and requested approval.

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

Motion Carried 5:0.

Commissioner Cummings requested Mr. DeLisi to confirm that this development will provide more than its proportionate share of the Burnt Store Road improvements pursuant to the concept plan of the Burnt Store Corridor wherein each development would pay for its fair share.

Mr. DeLisi explained the Burnt Store Plan includes a proportionate share requirement for up-front funding from developers; estimated about \$3.5 or \$3.6 million from this developer; the applicant is working with CCU staff to make sure lines are extended and creating financial options.

Commissioner Cummings requested an explanation of access other than from Burnt Store Road.

Mr. DeLisi stated Burnt Store Road is to the west and Tucker's Grade is to the north for access and multiple roadway networks

are being proposed e.g. parallel north and south to the east and west.

Commissioner Cummings questioned the likelihood of inter-connectivity between the parcels later in the process.

Ms. Shao commented on the linkage provided by sidewalks, bicycle paths, and driveways.

Commissioner Cummings expressed concerns about the inter-connectivity and suggested a sub-Development of Regional Impact might be appropriate.

COMMISSIONER CUMMINGS MOVED TO APPROVE ORDINANCE 2007-037, WITH CONDITIONS A THROUGH Y, BASED ON THE FINDINGS AND ANALYSIS CONTAINED IN THE PLANNING AND ZONING DIVISION STAFF REPORT DATED MARCH 21, 2007 AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, SECONDED BY COMMISSIONER D'APRILE.

Motion Carried 5:0.

7. PP 07-02-05 (Quasi Judicial) Commission District I Beazer Homes Corporation has applied for a Preliminary Plat for Calusa Creek Phase One, a subdivision consisting of 124 single family lots in Section 35, Township 40, Range 23. This is a re-plat of a portion of the Calusa Creek Subdivision, as recorded in Plat Book 20, Pages 3 thru 3K, as recorded in the public records of Charlotte County, Florida. The site, consisting of 16.415 acres, more or less, is located east of Duncan Road off Sandy Shore Drive, located in Commission District I. A complete legal description is on file. Recommendations: Community Development Department: Approval with conditions and Planning and Zoning Board: Approval with conditions.

Mr. Dossett advised staff reviewed the application and determined that the proposed project will not be required to go through DRC site plan review a second time; it was previously reviewed under DRC-F-05-14-PP and approved for 124 condominiums but it is now being amended for fee simple townhouses; and the reason for the modification is due to high insurance costs for condominiums versus fee simple townhouses. (**Chairman Loftus polled the Board for ex-parte disclosures and there were none.**) Mr. Dossett explained the applicant received a variance for minimum lot width

from the Board of Zoning Appeals; the proposed is located within the Category 2 Storm Surge Zone; the Zoning District is Residential Multi-family-12 (RMF-12); the underlying FLUM designation is High Density Residential; the proposed development is consistent with the Comprehensive Plan and Zoning District; Southwest Florida Water Management District (SWFWMD) has authorized construction of an extension to the City of Punta Gorda water supply; and the Department of Environmental Protection (DEP) has authorized construction of a Domestic Wastewater Collection Transmission System to the City of Punta Gorda's Wastewater Treatment Plant; the street name of Shell Mound Circle shall remain but due to replatting of this site, the area will need to be re-addressed; two construction permits were pulled for Building One for six units and the applicant will be required to obtain new permits from Construction Services Division using the corrected addresses; the new addresses must be posted properly on the individual units in order to obtain Certificates of Occupancy; there are two concrete monuments illustrated on the plat drawings but the surveyor failed to incorporate the coordinate values in the description; due to the modification of the project to townhouses, the applicant was desiring to have the preliminary petition heard by the P&Z and then proceed to the Board for both preliminary and final approval but the applicant is unable to provide all documents required for final plat for the May hearing and the County cannot process the final plat mylar by the May hearing, the applicant is moving forward to obtain only Preliminary Plata approval in order to obtain allowable building permits within the project; the applicant will be submitting for final plat approval within the next few weeks; staff recommends approval with the following conditions: (1) Applicant is required to obtain new addresses for the units already permitted; (2) Applicant is required to obtain new building permits for the two buildings under construction; and (3) Incorporate the coordinate values on the legal description of the mylar with a new survey showing lots. Mr. Dossett advised P&Z heard the petition on April 9, 2007 and recommended approval with four conditions including applicant is to provide proof that these conditions have been met to the Land Development Department. Mr. Dossett requested deletion of the fourth condition insofar as recommending that recordation not take place until verification that all conditions have been met from the Community Development staff.

Attorney Waksler appeared on behalf of the applicant in support of the petition; concurred with the recommendation of staff and the purpose of the change to reduce insurance costs. Commissioner Moore questioned the status of the unused density units. Attorney Waksler explained this is part of a larger project and the applicant will be keeping the units as of this time.

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

COMMISSIONER D'APRILE MOVED TO APPROVE PP 07-02-05 FOR A PRELIMINARY PLAT FOR CALUSA CREEK PHASE ONE WITH THE THREE CONDITIONS AS STATED BY STAFF, SECONDED BY COMMISSIONER CUMMINGS.
Motion Carried 5:0.

8. PP 07-02-04 (Quasi Judicial) Commission District II Home Dynamics Corporation has applied for a Preliminary Plat for Burnt Store 80 Acres, a subdivision consisting of 108 single family lots (a Planned Development) in Sections 29 and 32, Township 42, Range 23. The site, consisting of 80.15 acres, more or less, is located east of Burnt Store Road, (off Harbor Side Boulevard), southeast of Harborside Woods Subdivision and south of Punta Gorda Isles Section 16 subdivision, located in Commission District II. A complete legal description is on file. Recommendations: Community Development Department: Approval with conditions and Planning and Zoning Board: Approval with conditions.

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

Mr. Dossett reported staff has reviewed the application on the property located within the Category 4-5 Storm Surge Zone; the zoning district of the site is Planned Development with an underlying Land Use designation of Village Residential, Low Density Residential, and Limited Development; the existing Planned Development zoning allows for reduced lot widths and lot area for attached townhouse residential development; the proposed development is consistent with the Comprehensive Plan and zoning district and will not increase the allowable development density;

this phase is part of a larger project; roads will be constructed to County standards but remain private; central water and sewer will be provided by Charlotte County Utilities; on the Final Plat mylar, the name of the Health Department Director needs to be changed to Herman Velasco; there are no street names on the preliminary plat drawings; a list of street names must be submitted to the County Addressing Section to be checked for availability, verification, and approval prior to final plat submittal; a PDF disc of the overall site plan must be provided to the Addressing Section; the final plat submittal must incorporate the coordinate values in the description; the applicant must comply with all environmental issues stated as conditions of final DRC approval including submittal of an approved SWFWMD Environmental Resource Permit (ERP) and US Army Corps of Engineer permit for the proposed faux bridge; staff recommends approval with the following conditions and P&Z heard the petition on April 9, 2007 and recommended approval with the same conditions: (1) Change the name of the Health Department Director on the Final Plat mylar to Herman Velasco; (2) Submit a list of proposed Street Names to the County Addressing Section for approval; (3) Incorporate the coordinate values on the legal description of the mylar; and (4) Provide SWFWMD ERP and US Army Corps of Engineer permits for the proposed faux bridge.

Mr. Rebol agreed with staff's comments for this project which is phase 1 of a 2 phase project. **Commissioner Moore** questioned the water and reuse water sources and the inclusion of sidewalks. Mr. Rebol answered CCU and sidewalks are included in the plan. **Commissioner Cummings** requested the developer's portions of the infrastructure. Mr. Rebol stated the proportionate share analysis will be done to determine developer's share.

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

COMMISSIONER D'APRILE MOVED TO APPROVE PP 07-02-04 FOR A PRELIMINARY PLAT FOR BURNT STORE 80 ACRES WITH FOUR CONDITIONS, SECONDED BY COMMISSIONER MOORE.
Motion Carried 5:0.

Commissioner Duffy stated the agenda for today was too long and suggested limiting public comments to three minutes instead of five minutes.

Mr. Loucks reminded everyone about the Murdock Village Workshop scheduled for Thursday, May 24, 2007 at 1:00 PM to discuss elements of the development agreement, Friday morning is the Advisory Board meeting on the concept plan with individual briefings prior to that meeting, and the ground breaking for the Event Center is at 11:00 AM that morning.

ADJOURNED: 6:50 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

djn