

BOARD OF COUNTY COMMISSIONERS - LAND USE HEARINGS

JUNE 19, 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 D'Aprile, and Commissioner Moore. Also in attendance were County Administrator Loucks, Assistant County Attorney Browne, Executive Assistant Dillon, and Deputy Clerk Manley. The following members were absent: Commissioner Cummings.

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

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

County Administrator Loucks reviewed an events calendar for the Budget that he had presented to the Board, indicated that some events have changed due to the new tax legislation, and advised that a meeting with the Board is needed as we go into developing the budget reduction scenario in order to get the Board's thoughts, ideas, feedback and input in order to put the budgets together and bring them back to the Board.

Chairman Loftus advised the meeting procedure and time limits for speakers, and requested that in the interest of time that condominium associations or groups have one representative speak, rather than each individual person.

1. PA-07-03-15 Legislative Commission District V 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 Corridor to U.S. 41 Overlay Mixed Use, for property located at 3491 Tamiami Trail (U.S. 41); containing 1.9± acres; Commission District V; Petition No. PA-07-03-15; applicant: ALCO Florida Holding II, LLC, c/o Allen Heise.
2. Z-07-03-16 Quasi-Judicial Commission District V An Ordinance approving an amendment to the Charlotte County Zoning Atlas from Commercial Tourist (CT) to Commercial

General (CG), for property located at 3491 Tamiami Trail (U.S. 41).; containing .54± acre; Commission District V; Petition No. Z-07-03-16; applicant: ALCO Florida Holding II, LLC, c/o Allen Heise. Ordinance 2007-044

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

(Deputy Clerk Manley administered the oath to prospective witnesses for all agenda items.) Chairman Loftus stated that he would announce if petitions are Quasi Judicial and requested that speakers advise if they have been sworn in.

Planner II Jie Shao presented the petition for a Small-Scale Plan Future Land Use Map (FLUM) Amendment from Commercial Corridor to U.S. 41 Overlay Mixed Use; reported that Petition Number Z-07-03-16 is a companion rezoning from Commercial Tourist (CT) to Commercial General (CG); and that this is the site of the Port Charlotte Motel which was damaged by hurricane Charley. Ms. Shao advised that the purpose of the petition is to allow the applicant/developer to redevelop and have a unified development plan on the entire site and take advantage of the U.S. 41 Overlay codes; that the site is bordered by commercial uses to the north and east, and some single-family homes to the south and west, and is located within the geographic boundary of the U.S. 41 Zoning District Overlay; that the proposed change is consistent with the intent of the U.S. 41 Zoning District Overlay; and that Community Development Department and the Planning and Zoning Board recommend approval of both petitions.

Attorney Warren Ross presented a handout of an article from the April issue of Harborside Magazine about two projects being done on US 41, spoke on behalf of applicant, stated that the applicant is committed to work with staff to have the plan consistent with the County Code, and requested approval. Chairman Loftus opened the public hearing.

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

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

COMMISSIONER D'APRILE MOVED TO APPROVE ORDINANCE 207-043,
SECONDED BY COMMISSIONER MOORE.

Commissioner Duffy pointed out that the paperwork states District 4, but that this is District 5, and that a new Ordinance is needed. The correction to the motion was noted.

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

COMMISSIONER D'APRILE MOVED TO APPROVE ORDINANCE 2007-044,
SECONDED BY COMMISSIONER MOORE.

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

3. PA-06-08-55 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 Public Lands & Facilities to Low Intensity Industrial, for property located at 25505 Old Landfill Road, in the Port Charlotte area; Containing 9.9 acres more or less; Commission District I; Petition No. PA-06-08-55; applicant: Waste Management, Inc.
4. Z-06-08-56 Quasi-Judicial Commission District I An Ordinance approving an amendment to the Charlotte County Zoning Atlas from Agriculture Estates (AE) to Industrial Light (IL), for property located at 25505 Old Landfill Road, in the Port Charlotte area; Containing 9.9 acres more or less; Commission District I; Petition No. PA-06-08-56; applicant: Waste Management, Inc.

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

Ms. Shao presented petition PA-06-08-55 for a Small-Scale Plan FLUM Amendment from Public Lands & Facilities to Low Intensity Industrial; advised that Petition Z-06-08-56 is a companion rezoning from Agriculture Estates (AE) to Industrial Light (IL); and that the site is located at 25505 Old Landfill Road, in the Port Charlotte, Florida area. Ms. Shao advised that in contrast to misinformation from surrounding neighbors, the applicant only

owns 9.9 ± acres; and that the purpose of the proposed plan amendment and rezoning is to relocate the existing Waste Management Administrative and Maintenance Facilities to the subject site. Ms. Shao stated that the hurricane damage, together with growing pains experienced by the County as a whole, requires Waste Management to seek a larger, more efficient, site in order to fulfill its contract with the County for solid waste removal and better serve the citizens. Ms. Shao stated that the site was an old landfill; that the Charlotte County Wastewater Treatment Plant is located to the north and east of the subject site; that the nearest vacant land designated residential use is approximately 700' to the south, and the nearest existing single family home or condominium is approximately 175' from the subject site; that the site is currently vacant and located in the Suburban Area of the Urban Service Area; that the proposed change does not meet Policy 2.2.15 (b) of the Future Land Use Element of the Comprehensive Plan, but applicant is working with the Public Works on building a road parallel to Loveland Boulevard, to Olean Boulevard, and to Kings Highway, to direct trucks away from Loveland; that 4 goals, 6 objectives, and 14 policies of the Comprehensive Plan support the proposed change; that the proposed change to Low Intensity Industrial is consistent with Policy 2.2.13 of the Future Land Use Element of the Comprehensive Plan, which states that Industrial designated lands shall be located within the Urban Service Area; that the Planning and Zoning Board recommends denial of the plan amendment because the petition was not consistent with 2.2.15 (b) of the Future Land Use Element of the Comprehensive Plan; that staff reviewed the petition and concluded that the proposed change is justified; and that Community Development Department recommends approval of the plan amendment. Ms. Shao advised that the Community Development Departments recommends approval of the IL rezoning, and that the Planning and Zoning Board recommends denial because the applicant failed to establish that the property is unusable as currently AE zoning designation. Ms. Shao explained that this site would not be a landfill; that there would be an office building, storage and maintenance for the Waste Management trucks.

Betty Williams stated that Economic Development has been working with Melissa Doyle of Waste Management to find a suitable site to relocate its facility from Harbor View Road; that the process began in 2003; and that it is important for Waste Management to

be within the Urban Service Area in order to keep trash collection fees as low as possible for the citizens.

Ms. Williams advised that Janet Watermeyer, consultant for Economic Development, was requested to work with Waste Management and to help identify some Light Industrial sites in Charlotte County, and pointed out that the Waste Management problems became more critical after hurricane Charley destroyed its original facility.

Ms. Watermeyer explained difficulties in locating proper sites for Waste Management and why this property was selected; indicated that they knew there would be transportation issues if using this site; that they have worked closely with FDOT; and that Wesley Millard of Public Works, working with Utilities, found an access road that would be accommodating.

Mr. Millard reported that Public Works has worked closely with many departments on the project; that Old Landfill Road comes over to Loveland Boulevard, but that it is not appropriate for traffic to go directly into Loveland Boulevard; and that the best solution is to take Old Landfill Road, swing it north, then straight into Olean Boulevard for a short section, and directly over to Kings Highway, which is an arterial route with a full median opening and a traffic signal. Mr. Millard advised that there has also been discussion of a roadway going from the project area south to Harborview Road, which is also an arterial route, and which would give Waste Management or other developments on the site the best access.

Commissioner D'Aprile inquired if this was a road that goes from Landfill Road to Westchester Boulevard and then to Harborview Road. Mr. Mallard advised that the road would go directly to Harborview; commented further on the direction of the proposed road; reiterated that no traffic would be on Loveland; provided a slide showing the easement paralleling Loveland Boulevard; and stated that the easement is available for use.

Attorney Neale Montgomery spoke on behalf of the applicant, and addressed misrepresentations that were raised at the Planning and Zoning meeting; advised that the homes that are near the roadway are right next to a trucking operation that presently exists; that the site is an old landfill, which is not suitable

for agricultural land; and indicated that many people were in support of the plan.

Commissioner D'Aprile requested that Mr. Millard provide a better picture for the audience to have a better understanding of where the route would be. Mr. Millard reviewed a Transportation Plan slide and reiterated the need to keep trucks off Loveland Boulevard; indicated that the slide does not show it, but that on the east side of the property there is a road that would go directly to Harborview Road, which could be later developed into a connection to allow traffic to go either to Kings Highway or Harborview Road; but that he is not certain when this would happen.

Melissa Doyle, District Manager for Waste Management of Charlotte County provided an overview of Waste Management; explained the difficulties that employees and staff are experiencing due to disrepair of the buildings; reported that Waste Management provides service to 92,000 citizens, purchased the property on Old Landfill Road, and has expanded as much as possible at the current Harborview Road location.

Ms. Doyle stated that repurposing the old landfill site to fit Waste Management's hauling company needs is an appropriate solution for Waste Management and Charlotte County; explained that the proposed new facility is attractive and state-of-the-art; that the building would allow trucks to drive through; and would have an enclosed truck wash with re-cycled water.

Ms. Doyle explained that Waste Management is presently surrounded by residential, has always been considered a good neighbor, and has never received any complaints; that the property purchased was within the Urban Service Area and priced within reason; that Waste Management wants to move the maintenance and truck facility to the new site; that there is no change to the existing operation that would be done at the new site; and that building on the old landfill would help keep cost down to customers.

Ted Treesh, of T.R. Transportation Consultants (consultant) advised that consultant prepared the traffic analysis in support of the amendment request; opined that based upon its analysis the proposed land use change is consistent with the Future and Use Element; that consultant agrees with the information provided

in the staff report that addresses the future level of service on the surrounding roadways; and that from a capacity standpoint, there is sufficient capacity to accommodate this requested change. Mr. Treesh stated that the new roadway connection would provide a safe, efficient, and direct connection to Kings Highway, connecting the use directly to an urban arterial roadway; that consultant would work with Public Works and staff on the final geometrics of the roadway that would be a parallel facility to Loveland Boulevard, with a direct connection to Olean Boulevard, and eventually to Kings Highway. Mr. Treesh pointed out that from a trip generation standpoint, the facility has a capacity of 70 vehicles, that employees would arrive beginning about 4:00 AM; that most trucks are gone by 5:30 AM, and are vacant from the site until when they return from their routes; and that from a weekday morning peak hour standpoint impacts for this use are minimal. Mr. Treesh stated that consultant would work with staff on the ultimate design of the parallel facility and the intersection at Loveland Boulevard to accommodate this use.

Attorney Browne clarified that Mr. Treesh was with T.R. Transportation Consultants, and that T.R. Transportation Consultants was the consultant to Waste Management; and requested that Ms. Doyle ratify the comments made by Mr. Treesh and confirm that if the petitions are approved, that Waste Management would follow through and do the road improvements that were described. Ms. Doyle stated that Waste Management commits to doing the road improvements as indicated, with the connection going directly through Old Landfill Road, the Wastewater spray field, and Olean Boulevard, connecting to Kings Highway. Attorney Montgomery suggested that if the alternative roadway is desired by the Board, that it direct staff to work with Waste Management and come back with a Developer's Agreement. Mr. Browne agreed, and stated that the commitments were in the absence of a Development Agreement.

Chairman Loftus inquired if this would commit Waste Management to work with the County in developing the new road, and also in the future going out to Harborview Road. Mr. Treesh replied affirmatively.

Dan DiLisi of DiLisi/Fitzgerald commented on compatibility of the proposed facility and the noise study that was submitted;

reviewed some of the policies in the Comprehensive Plan, and reviewed some of the planning issues that were expressed by the public.

Mr. DiLisi opined that the Comprehensive Plan change is really not necessary, commented on the limited uses of the site, Policy 1.3.1, 2.2.14, and 2.2.15 (b). Mr. DiLisi opined that direct fronting does not mean direct access; compared the access to the Airport Overlay access; and opined that the site provides the requirements of the infrastructure element, Chapter 4.

Commissioner D'Aprile reported that he lives very close to the site, attended meetings, and received letters from concerned citizens; indicated that what he heard and received is not true to the facts he has heard so far; expressed concern that the site is approximately 10 acres, with an additional 70 acres adjoining; and inquired if expansion was anticipated into the 70 acres. Mr. DiLisi stated that there has been a lot of misperception; that after investigating what will actually go on this site believes there has been an unfair treatment; and opined that from a capability standpoint this is an issue of fairness.

Attorney Montgomery advised that Waste Management only owns the 10 acre site; that in order to expand they would have to buy acreage and come back in front of the Board with the same issues being addressed today; but that there is nothing beyond the 10 acres at issue before the Board today. **Commissioner D'Aprile** inquired if the trucks would be empty before coming into the depot.

Mr. DiLisi commented on developer's ability to sell property next to this site, and indicated he does not believe Waste Management locating on the site would be a factor. Mr. DiLisi stated that some residents have expressed concern with sound, smell and noise; suggested looking at the existing facility to determine how current residents have dealt with it; and reported that if there were such problems the adjoining neighbors would not have built a garden next to the current facility.

Attorney Montgomery said her understanding is that the trucks are not filled with garbage when they return to the facility; and pointed out that the trucks would be cleaned in an enclosed area using recycled water. **Commissioner D'Aprile** asked if the truck

maximum is 70, and asked about buffering. Attorney Montgomery replied that the facility is designed for 70 trucks and commented on the planned buffering.

Commissioner D'Aprile stated that the site has 18" of dirt on it, and inquired how a building would be placed on it. Ms. Doyle explained that there would be \$800,000 additional construction cost involved to build a facility with a ground that has a lot of movement to it; that there would be pilings, and a specific process where the soil is amended and compacted; indicated that it is expensive for depth of concrete required; and pointed out that the entire property is concrete for a specific reason.

Attorney Montgomery reiterated that the site has limited use because of the fact it only has 18" of fill dirt, and indicated that the concrete thickness provides a protective barrier for odor control.

Chairman Loftus commented on the buffering. Attorney Montgomery passed out the power points, and advised that Ms. Doyle has provided the Board with a list of her contact persons.

RECESS: 10:15 AM - 10:25 AM

(Deputy Clerk Manley administered the oath to Attorney Jim Koines, Frank Messina, and David Chiaramonte.)

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

Chairman Loftus opened the public hearing. The following spoke in opposition to the petitions: Attorney Warren Ross on behalf of his client, Tim Verwiebe of Inside Tree Farms, Tim Verwiebe, Aleshia Macomber, Attorney Jim Koines, Sheila Jerrom, on behalf of residents of Loveland Courtyard Condominium Association, Jim Warden, Margaret Gillespee, Director of Park Place Estates, John Piazza, Developer of Park Place, Carol Nunes, Richard Rzasa, James Ratz, of DR Horton & River Club of Port Charlotte, Mary Rothman, David Chiaramontes, Vince DiProva, Gertrude Osborne, and Attorney Michael Haymans, Attorney for Park Place.

The following spoke in favor of the petitions: Tom Rice, President of Enterprise Charlotte, Wanda King, Frank Messina,

Frank Doolity, Lori Cantz, and Attorney Kevin Russell on behalf of Land Resource Manager, Inc.

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

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

Mr. DiLisi responded to issues raised; commented on his visit to the Wildwood, Florida facility; disagreed with Attorney Haymans' interpretation of the Comprehensive Plan, and indicated that it should be looked at in the manner the Board has interpreted direct access in the past; and opined that the facility would not add a blemish.

Attorney Montgomery advised that the site is not appropriate or suitable as Agricultural (AG); explained that there were many misconceptions, and the only thing before the Board is the 10 acres, which are 1400' away; that traffic would not be on Loveland Boulevard; that the site is centrally located and efficient to reach all areas of the County; that the issues before the Board is if it the site is compatible and consistent with the Comprehensive Plan; that the answer is yes, and approval is requested.

Commissioner D'Aprile inquired if Planning and Zoning Board denied both the Quasi Judicial and the Legislative portions. Ms. Shao replied affirmatively. **Commissioner D'Aprile** stated that he is concerned when people say that a decision was made before the hearing, and advised that is not true; indicated that he does not know why a developer would build next to a landfill to begin with; that the request meets with the Comprehensive Plan; that he does not have all the answers about what else could be raised on the land, but opined that Waste Management might be the best alternative; stated that the road is not a problem and that the presentation was of accurate information; expressed concern that we have not gone far enough to determine what the effects would be; that he has no problem with the 10 acres, but is disturbed that this could extend into the 70 acres.

Commissioner Duffy stated that it is unfortunate that residents were given wrong information at the beginning and wrong opinions established; advised that the site is not a landfill or transfer

station; that it is consistent with the Comprehensive Plan; that traffic has been addressed; that the current trucking company is there and she has not heard complaints from the residents; that trucks bring sludge down to the reclamation center and she has not heard complaints about that; commented on the school site on Loveland Boulevard and noise from students who drive cars; and opined that the benefits of locating at the site outweigh the negatives.

Commissioner Moore inquired if there was public water and sewer to the site. Ms. Shao said Charlotte County Utilities (CCU) would provide water and sewer to the site. **Commissioner Moore** inquired about water retention and how it would be processed. Attorney Montgomery advised it must meet Southwest Florida Water Management District (SWFWMD) standards. **Commissioner Moore** asked if the road was based upon someone's word, or if it is binding and if the developer was pinned down on the road with testimony. Attorney Browne stated that was his concern without a binding Developer's Agreement, but that testimony was given to bind the developer on the road. Ms. Shao commented on the change not meeting 2.2.15 (b) of the Comprehensive Plan. Attorney Browne commented on the interpretations of the Comprehensive Plan.

Commissioner Moore stated there must be concern of what is best for the community and county and would support the issue. **Chairman Loftus** commented on improper information going out through the community; stated that the operation has been successful in Charlotte Harbor; and would support it. **Commissioner D'Aprile** advised that he would not support the issue because he does not know the results of the extensions, and requested additional clarification on the extension of the 70 acres.

COMMISSIONER MOORE MOVED TO APPROVE ORDINANCE 2007-045, SECONDED BY COMMISSIONER DUFFY.

Motion Carried 3:1. Commissioner D'Aprile opposing.

ABSENT: Commissioner Cummings.

COMMISSIONER MOORE MOVED TO APPROVE ORDINANCE 2007-046, SECONDED BY COMMISSIONER DUFFY.

Motion Carried 3:1. Commissioner D'Aprile opposing.

ABSENT: Commissioner Cummings.

Chairman Loftus polled the Board to take agenda 14 out of order. Consensus was for approval.

RECESS: 12:01 PM - 1:10 PM

Chairman Loftus polled the Board to hear agenda items 5 and 6 before the lunch break. Commissioner Moore pointed out that agenda item 6 is not being heard. Consensus was for approval.

14. PV 07-03-04 Legislative Commission District II Robert Tholemeier has applied to vacate a portion of Tropical Gulf Acres Unit 6, more particularly described as Lot 7, Block 80 of Tropical Gulf Acres Unit 6, as recorded in Plat Book 3, Page 67 A of the Official Records of Charlotte County, Florida located in Section 03, Township 42, Range 23. The site, consisting of .29 acres, more or less, is located north of Tribune Boulevard on the west side of Green Gulf Boulevard in Commission District II. A complete legal description is on file.

Community Development Review Manager James Dossett presented the vacation petition; explained that the site is currently zoned RSF3.5; that the purpose of the request is to provide access to the applicant's 20 acre AE parcel at the rear of Lot 7; that all utilities have been notified, and the only utility affected in FP&L; that the 10' utility easement that Mr. Tholemeier provided FP&L on the north side of Lot 7 shall not be vacated and will remain in effect; that Public Works objected to the vacation due to a ten (10') foot existing drainage and utility easement along the south property line which is for an open outfall; that applicant would be required to provide a new ten (10') foot drainage and utility easement along the southerly property line and a thirty-foot (30') wide drainage easement along the rear boundary of the property to maintain the existing drainage flow in the area prior to recording of the vacation; that staff recommends approval of PV 07-03-04 with three (3) conditions: (1) FP&L easement on the north side of Lot 7 shall not be vacated as it was not part of the original plat, (2) Applicant must provide a new ten (10') foot drainage and utility easement along the south property line to the County prior to recording of the vacation, (3) Applicant must provide a thirty (30') foot drainage easement along the rear property line to the County; that the Planning and Zoning Board heard this petition on May 14, 2007 and

recommend approval with three (3) conditions previously listed. Mr. Dossett pointed out that this is in Burnt Store Overlay and that no commercial use or mixed use can be done without coming before the Board; that the applicant has provided the paperwork for the 3 easements; that staff recommends approval with the 3 conditions, at which time the easements would be recorded prior to the vacation being filed.

Commissioner Moore clarified that vacating the lot gives applicant access to Green Gulf Boulevard and inquired how payment to the MSBU would be handled. Attorney Browne advised the property would not automatically become part of the MSBU; that the boundaries of the MSBU would need to be expanded to include it. **Commissioner Moore** expressed concern that it would not be good for the neighborhood.

Robert Tholemeier advised that he was looking for property suitable for agricultural; that he located the lot and acreage, which were owned by the same person; and that prior to purchasing the property he was told by County staff that it was acceptable to use the lot to access the 20 acres. Mr. Tholomeier commented on efforts he has gone through to put in a ditch and driveway; indicated that there was a fire that destroyed the trees; and stated that without access from this lot there is no access to his 20-acre parcel. Mr. Tholemeier explained that there are several other owners that have access to their properties only through the lots.

Mr. Tholemeier explained that he is not asking to up zone or put in multiple units; that Zoning has informed him that he does not need a special exemption to use the lot to access the farm; and that he wishes only to clarify the boundaries to be one contiguous piece of property. Mr. Tholemeier advised that he has done everything above board and has disclosed everything; and stated that he would pay his TDU's now or in the future.

Mr. Tholemeier clarified for **Commissioner D'Aprile** that he owned 20 acres and that the lot was 1/4 acre. **Chairman Loftus** opened the public hearing.

Tom Strawson, President of Tropical Gulf Acres (TGA) advised that he did not realize other properties are also landlocked, and expressed concern of setting a precedence; indicated that traffic

would come into a community that has problems with its road; indicated that the property would eventually be able to have houses on it and that TGA would become the driveway to a gated community; and requested that if the vacation is granted a restriction be placed on the property that it is one person's private agricultural farm, and that applicant must pay into the MSBU.

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

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

Commissioner D'Aprile pointed out that we cannot land lock anyone. Attorney Browne explained that there is a Statute which allows the applicant to file an action in the Circuit Court to gain an easement of necessity. Mr. Dossett explained that the applicant is only trying to make the driveway use a legal use on this one lot. **Commissioner Moore** opined that the last act that landlocked the applicant is the party who must get him back out. Attorney Browne said that is where you look first if it is feasible. **Commissioner D'Aprile** inquired if this is the only way to get to the property. Mr. Dossett said this is the closest way without requiring easements from someone else, and that other owners are not giving up easements or rights-of-way.

Commissioner D'Aprile stated that we do not want to set precedence, and inquired if there was anything that can be done to prevent this from expanding into a larger development. Mr. Dossett said this is in the Burnt Store Overlay and that anything other than an AE use would have to come back before the Board for a PD rezoning. **Commissioner D'Aprile** asked if anything could be put in writing. Attorney Browne commented on restrictive covenants and risk factors.

Commissioner Moore inquired if we were in the process of re-writing the rules about going through a lot to access other areas. Mr. Dossett explained that Land Development Regulations are being re-written, and that is one of the things being clarified.

Chairman Loftus expressed concern of opening the property to development, and with the MSBU's, and inquired if, once the lot

is opened as an entrance to the acreage, the entire property could become part of the MSBU. Attorney Browne replied affirmatively. **Chairman Loftus** stated he would like to see as a condition that the lot and applicant's 20 acre parcel would become part of the MSBU. **Commissioners D'Aprile and Duffy** agreed. Mr. Dossett clarified that applicant is only putting in a driveway, not a road, and stated that he is not certain if this MSBU is based upon acreage or number of units.

COMMISSIONER D'APRILE MOVED TO APPROVE PV 07-03-04, PLAT VACATION OF A PORTION OF TROPICAL GULF ACRES UNIT 6, MORE PARTICULARLY DESCRIBED AS LOT 7, BLOCK 80 OF TROPICAL GULF ACRES, WITH THE 3 CONDITIONS STATED ON THE GOLDENROD AND A 4TH CONDITION THAT BOTH THE 20 ACRE ± PARCEL OWNED BY THE APPLICANT AND LOT 7, BLOCK 80, TROPICAL GULF ACRES, SHALL BE PART OF THE TROPICAL GULF ACRES MSBU THAT CURRENTLY EXISTS, SECONDED BY COMMISSIONER DUFFY.

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

5. PA-06-07-42 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 Low Density Residential to Commercial Corridor, for property located south and east of Wall Street, west of Ainger Creek and north of South McCall Rd.; Containing 3.04± acres; Commission District III; Petition No. PA-06-07-42; applicant: Robert L. McGuire.

Planner II Martina Kuche advised that at applicant's request, with staff concurring, the companion rezoning, Petition Z-06-07-43, is being continued; that staff would address and request a decision on Land Use Amendment, Petition PA-06-07-42; recalled that at the April 26, 2007 meeting applicant's petition requested a Land Use Change from Low Density Residential to Commercial Corridor for 3.04 acres ±; that originally recommendation was denial based upon the requested companion rezoning to Commercial General (CG) because staff believed the request to CG was premature, and the item was tabled to today's follow-up hearing; that subsequent to the April 26, 2007 meeting, staff and management met with the applicant and his representative to discuss if it would be feasible to move forward with the Planned

Development Zoning in the future, and indicated that applicant has shown efforts in working toward the Planned Development. Ms. Kuche presented the petition based upon the memorandum and packet material; stated that Community Development has no objections to applicant's request to go to Commercial Corridor, but is looking at the present time for a Planned Development Rezoning, which would come before the Board possibly in a Workshop/Roundtable session in the next few months. Ms. Kuche advised that Community Development recommends approval of the petition, and that originally the Planning and Zoning Board recommended approval as well.

Attorney Michael Haymans appeared on behalf of the applicant, and indicated that he has no presentation. **Chairman Loftus** opened the public hearing.

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

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

Commissioner Moore commented that Ms. Kuche has been very involved in the S.R. 776 Corridor, and inquired if she was personally satisfied at this stage. Ms. Kuche replied affirmatively. **Commissioner Moore** stated that he would support the motion.

COMMISSIONER MOORE MOVED TO APPROVE ORDINANCE 2007-047, SECONDED BY COMMISSIONER D'APRILE.

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

6. Z-06-07-43 Quasi-Judicial Commission District III An Ordinance approving an amendment to the Charlotte County Zoning Atlas from Residential Single-family 2.5 (RSF-2.5) to Commercial General (CG), for property located south and east of Wall Street, west of Ainger Creek and north of South McCall Rd.; Containing 3.04± acres; Commission District III; Petition No. Z-06-07-43; applicant: Robert L. McGuire.

At the request of applicant this item will not be heard today, but at a later date.

RECESS: 12:40 PM - 2:00 PM

Chairman Loftus advised that as a housekeeping matter, the motion and second for approval of Agenda Item 5 referenced an improperly stated petition number, and clarified that the correct Petition Number is PA-06-07-42.

Chairman Loftus reported that Attorney Warren Ross requested that agenda item 13 be moved up. Attorney Ross modified the request and asked that Agenda Item 13 be continued to the July 17, 2007 Land Use Meeting. Consensus of the Board for continuance was given.

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

B. PUBLIC HEARING AGENDA - 2:00 PM

1. First Public Hearing to Amend Article XXIII of the Codes of Charlotte County, along with accompanying fee resolution, relating to excavation and earthmoving activities.

Mr. Dossett stated that Community Development was instructed to organize representatives of the stake holders/panel to gather information that would be relevant to amending Article XXIII, which is the County Excavation and Earthmoving Ordinance, to place better controls on the mining industry and be more realistic of what is going on in the County. Mr. Dossett commented on permits that have been issued and how many yards of dirt have been moved since the initial discussion.

Mr. Dossett said there have been several public hearings and meetings, including one additional hearing other than what was originally scheduled; that the shopping list was taken, along with many other issues that were brought forward; and that the meetings resulted in 14 major items listed on the goldenrod. Mr. Dossett indicated that he would like to run through the 14 items, then look at the things that could not be addressed, because we thought they were inappropriate or possibly in some cases illegal to do; and thanked the legal staff for their assistance.

Mr. Dossett explained that there is no intent to eliminate the mining industry; that it is important to the County and State; and stated he was disappointed that there was so little public input. Mr. Dossett provided a slide presentation and review of the 14 significant changes.

Mr. Dossett reviewed the proposed application fees, and topics, concerns and issues by the Excavation Panel not reflected in the proposed CH XXIII Amendments; stated that 4 mines are scheduled for review in July and 1 in August; that the ad went out today for July; that the Panel requests that at the second reading, which is in July, that the Board adopt the proposed amendments and make if effective essentially on anyone who has an approved preliminary; and that anyone who does not get an approval in July must follow the new rules. Mr. Dossett advised that there is a vesting process that people can use, but indicated that we are trying to close the door in July, and the purpose of using the preliminary approval as the cut-off point.

Chairman Loftus thanked Mr. Dossett, staff, attorneys, stake holders/panel and all others involved. Mr. Dossett asked members of the panel to stand and be recognized.

Commissioner D'Aprile commented on the haul route reflected in the Ordinance, and requested wording be changed to "the haul route shall be the County line." Mr. Dossett explained that some of the mines are dug for a particular group and can trace out haul routes, but that others are just mining with no particular source, and it is hard to track those hauls, which is why the verbiage is as stated. **Commissioner D'Aprile** commented on item (c) page 15 of the proposed amendments concerning "Applicants proposing to haul 10,000 or more cubic yards of material on any road under County jurisdiction shall meet with the County Engineer to discuss the proposed haul route(s) and associated traffic and pavement impacts.", and opined that this should be mandatory. Mr. Dossett stated that stronger language on that item could be used if the Board wishes. **Commissioner D'Aprile** stated that he wants strong protection for the County; and that if it impacts our roads it should be clarified.

Commissioner Duffy inquired if there were exceptions for no scales on Group IV. Attorney Derek Rooney explained that Group

III's are the only ones required to have their own scales on site; and that all Groups must designate a spot near the ingress and egress point on their site where the Florida Department of Transportation (FDOT) can bring their vehicles with portable scales. **Commissioner Duffy** inquired about large reservoirs. Mr. Dossett advised that would be unlikely because a land owner would not want to go through the DRI process. **Commissioner Duffy** inquired about turn lanes, including Group IV. Mr. Dossett explained that turn lanes would be individually looked at. **Commissioner Duffy** opined that there must be a rule for it. Mr. Dossett explained that the same rule applies for all, and that speed, site distance, sight distance, etc. are considered.

Commissioner Duffy asked what other departments would have objections and what type of objections they would have. Mr. Dossett explained that now there is a 25% cap on the Group II site; that most sites can be developed and not use more than 25% of the site for stormwater management; that certain industry and uses take a larger area, but would require a State or Federal ruling; and would prevent a 100 acre parcel from having a 90 acre lake on it. **Commissioner Duffy** agreed that it was a good idea not to address TDU's in this Ordinance.

Commissioner Duffy commented on final disposition, and opined that the possibility of a very large pit becoming a surface water source could be encouraged with the land owners; commented on vesting and indicated that the stake holders agreed to abide by the new regulations and fees even though the permits were not yet approved. Mr. Dossett explained that a representative of some of the excavators said that, but that he was told that the representative was not speaking for the entire group, and that since that time at least one has come in asking for relief on scales and turn lanes.

Commissioner D'Aprile inquired if consideration was given where there is an impact on Prairie Creek or Shell Creek. Mr. Dossett advised they rely on the State to do that. **Chairman Loftus** opened the public hearing.

Attorney Michael Haymans stated that there are 3 major types of excavation that serve different purposes; indicated there are tradeoffs; and opined that mines provide a resource that is available to service human needs.

Steven Brown, Environmental Policy Specialist for the Conservancy of Southwest Florida, commented on the Group IV permits and accumulative impacts; opined that this is the appropriate avenue to address TDU's; and that wildlife impacts were not addressed as thoroughly as they should have been. Mr. Brown expressed concern with the issue of vesting and indicated that the clause sounds as though it is going back on an assurance that was given by the mining interests initially that they would be held to whatever ordinance came out of the process; and commented on Charlotte County Zoning Code Section 3.9.30.

Clarke Keller lives on Washington Loop Road; commented on mining excavators working with the County on surface water; indicated that mining should be taxed as heavy industry; expressed concern with heavy truck traffic; opined that the School Board should be represented here due to the school bus drivers that must operate on roads impacted by heavy truck traffic; applauded the Board for stopping the mines being dug in the area; and stated that there should be a moratorium on mining.

Eric DeHaven of the Southwest Florida Water Management District (SWFWMD) thanked the County staff and County Commission for allowing input from SWFWMD, which was critical in getting Group IV included in the ordinance; and commented on the permitting process of SWFWMD, and the minimum flow and level for the amount of water that should come over the Hendrickson Dam at the City of Punta Gorda's reservoir being developed by SWFWMD. Mr. DeHaven indicated that the turn lanes were not as hard and fast in the ordinance as he prefers; opined that Group IV should be exempt, but indicated that if the County staff can look at the need for turn lanes objectively with the benefit that the Group IV's will put into place from an environmental standpoint, keeping agricultural where it belongs in Charlotte County, it can work, but will require some give and take; and indicated he would not want an applicant not to go forward because of the cost of turn lanes; and opined that preliminary approval should be vested.

Attorney Robert Berntsson encouraged the Board to watch the videos of the meetings and listen to the dialogue exchange; requested that the Board adopt the ordinance as presented; commented on the vesting issue and the zoning category

issue; indicated that he does not represent anyone in the FARMS program, but strongly supports it and any relief that can be given to them. **Commissioner Duffy** requested clarification of the term "start all over" with regards to vesting, and Attorney Berntsson explained his remarks.

Commissioner Duffy stated that she would never expect anyone to reapply, but to only pay the new fees and continue in the same process. Mr. Berntsson explained that there are studies required under the new ordinance that were not required under the previous ordinance. **Chairman Loftus** pointed out that in the permitting process it takes 2 or 3 years for all the studies that must be done to get to the point of a hearing officer. **Commissioner Duffy** asked if the FARMS program participants had to go through the 2 year process with the studies as well. Mr. Dossett advised that the requirements in the Group IV program are more abbreviated than in the Group III's.

Commissioner Duffy asked how many are in the FARMS program. Mr. DeHaven said there about 9 projects in Charlotte County in the FARMS program, and about 7 involve excavation reservoirs; some of which use pre-existing reservoirs; that there are others who intend to come into the FARMS program, but are waiting for final determination of the ordinance. **Commissioner D'Aprile** inquired if the 7 and 9 FARMS permits were in the Shell Creek area. Mr. DeHaven said most are, explained that most are not very deep, but that there are good reasons to go deeper, and explained the restrictions for how far they could dig.

Jon Finstrom reported that on the panel there were 4 representing the mining industry, 4 on environmental concerns, and 1 for Charlotte County agriculture resources; indicated he considered himself the environmentalist, and expressed concern with endangered species and greenhouse gases. Mr. Finstrom advised legislation is being drafted on the State level, which would limit the County's ability to govern mining activities at all, and opined that the ordinances should be written properly because mining is important to Florida. Mr. Finstrom commented on truck traffic, vesting, TDU's and Agriculture, and requested support to approve the ordinance as drafted.

Barbara Carlton, of the Peace River Citrus Growers Association, advised that this was a broad panel; agrees that the Board should

review the videos of the panel meetings; appreciates the comments on Agriculture, and agrees that what is wanted is to protect the farmer's ability to farm; supports the preliminary vesting as part of the ordinance; indicated that time is of the essence in the permitting process and that it would be unfair to have to start over; and stated that she would follow up her comments with written comments.

Attorney Waksler stated that the grouping of the excavations are of the County's own doing because all of the Agricultural (AG) property has been put in one area; that many grove owners had their crops destroyed by citrus canker and excavation gives them an opportunity to put their property to use; that the County through its policies, ordinances and direction to staff have limited viable uses for East County; and opined that they should have the right to put their property to economically viable uses.

Bill McDaniel commented on specificity of haul route; indicated that he currently operates 3 mines in the County and makes up 3 of the applications that Community Development is currently working on; commented on definitions and vesting; indicated that creation of new mines creates a disbursement of truck traffic, but that new mines do not necessarily create new truck traffic, and opined that is based upon supply and demand. Mr. McDaniel reported that the County does not have a base line study with regards to the Environmental study on the East part of the County, and indicated that there is insufficient information to do a moratorium because a base line study is needed.

Commissioner D'Aprile disagreed that new mines do not create new truck traffic. Mr. McDaniel explained that different trucks service a particular market place based upon demand, and that opening new mines would create more traffic only if demand calls for it.

Commissioner D'Aprile reported truck trip statistics if all the permits were in full operation and the economy picks up again, which he opined would eventually happen. **Commissioner D'Aprile** said he presumes that not all of the mines would be in full operation at the same time. Mr. McDaniel indicated that **Commissioner D'Aprile** is talking about the maximum traffic if all mines were operating fully, which is not likely to be a reality; and stated that there are maximum trips that can occur,

but also a large amount of dynamics that would occur during that same time frame.

Todd Rebol of Banks Engineering stated that the trucks will come regardless of whether they are inside or outside Charlotte County, but that we have control if they are within Charlotte County; commented on trips created per day, and indicated that Public Works makes certain that haul route roads are able to support the traffic; commented on vesting; and stated that industry works with regulatory agencies through other problems such as AG with citrus canker, and opined the same can happen with excavation.

Ruth Brumberg indicated she was a member of the panel; stated that there were some positive changes in the ordinance, but would like to have seen more; indicated that a natural resource study on how the mines affect Shell and Prairie Creeks is needed; and read comments contained in a handout she presented.

Sue Reske, of the Greater Charlotte Harbor Group of the Sierra Club, advised that she sat on the panel, provided a handout, and commented on traffic impacts, how the County would be reimbursed, and the haul route.

Gary Bayne, of Southwest Engineering, advised that he served on the panel; commented on cumulative impacts for ground water; explained the procedure used; and stated that economics would dictate the truck traffic.

(Assistant County Administrator Kelly Shoemaker replaced County Administrator Bruce Loucks for this portion of the meeting.)

Attorney Michael Whitt, who represents Coral Rock, stated that almost everything that is being said about impacts, applications, mines, trucks, etc, deal with dirt mines, not rock mines; that there are 4 rock mines in Charlotte County, and that most of the aggregate stays on site; that rock mines will not increase truck traffic; that dirt is everywhere, but rock is not, and must be mined where it is found, and that only certain rock is approved by FDOT; commented on the effects vesting has on Coral Rock permits; stated that there is a rock crisis, not a dirt crisis; and requested that the provision for vesting be modified to take

into account those who have pending preliminary approval dates, and that those who were set for preliminary approval be vested.

Mr. Dossett stated that he has no problems with Attorney Whitt's comments, and indicated that there has been discussion on having this be effective on anything that was heard, not approved, but heard, prior to, because the advertisement was sent out and the door closed today at noon.

Gary Frommer, General Manager of Coral Rock, stated that Coral Rock has the largest number of lakes in Charlotte County; that there have been discussions with government entities about using the lakes as ground water storage; that they are required by permit to take all water into their operation that comes through sheet flow and cannot discharge it; that Coral Rock can fit in with the water scenario in any manner with incentives and guidelines; indicated that the Lee County density ground water reduction area study includes the southern part and portions of the eastern part of Charlotte County; and opined that information could help the County with density reduction areas and modeling.

Commissioner Duffy stated that she would like to get more information on sheet flow. Mr. Frommer reported that it flows over Cook Brown Road from August to October.

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

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

Commissioner D'Aprile explained that this is the first of two public hearings; that he has learned a lot today, but still have concerns of traffic; and that he would like for members of the mining industry to sit down with him and explain their thoughts on the matter.

Commissioner D'Aprile commented on mining in Agricultural lands only in one spot. Mr. Dossett explained that it was the way the first ordinance was written for AG and AE lands where a Group III could go; and commented on the groups that can go anywhere, and those which cannot.

Commissioner D'Aprile asked how many mines there were before the rush, and why the rush. Mr. Dossett gave a general estimate, and explained that our land is cheap and other county rules are stricter; and reviewed permits coming up. **Commissioner D'Aprile** stated there is a lot of misinformation right now, and expressed concern in over-indulgence in the number of mines being allowed, what we are trading off, and if it would be more dangerous to be on the roads.

Chairman Loftus indicated that the mining industry should address the concerns of the Board before July 19, 2007.

Commissioner Duffy expressed concern of incorrect information being furnished to the Board; requested that Mr. Dossett make a list of all the permits, how many are FARMS permits, total number of acres, total being requested to mine, location of the mind; indicated that clarification is needed on the vesting issue before the next meeting; that more information is needed on the new studies and what the requirements are for each; and stated that she does not want anyone to have to start over in the application process.

Chairman Loftus opined that the Peace River Water Authority could guide the Board on utilization of water sources from the ponds; and suggested looking at the Urban Service Area for a special zoning throughout the County to help alleviate traffic.

Commissioner Moore expressed appreciation for staff and those who served on the panel, and indicated the results are impressive; stated that nothing would be finalized the first time around; indicated that the ordinance is important and that everyone needs to work together for the good of the County. Chairman Loftus agreed.

RECESS: 4:15 PM - 4:25 PM

7. Z-07-02-06 Quasi-Judicial Commission District I An Ordinance approving an amendment to the Charlotte County Zoning Atlas from Residential Multi-family 12 (RMF12) to Residential Multi-family 10 (RMF10), for property located at 2150 Luther Road; containing 2.21± acres, in the Port Charlotte area; Commission District I; Petition No. Z-07-02-06: applicant Charlotte County Board of Commissioners.

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

Community Development Planning Manager Jeff Ruggieri stated that this is a County-initiated inconsistency; that the standard methodology being used to contact property owners may not be the most effective, and that more effort is needed in contacting owners in these inconsistency situations to be certain we are not trampling on anyone's desires or rights; that Community Development recommends this item be continued to next month's meeting so that a better job can be done of contacting the applicant; and requested that even though there has not been success in contacting the applicant, the public hearing be opened in the perchance that the landowner has shown up and the issue can be addressed. **Chairman Loftus** opened the public hearing.

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

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

Chairman Loftus advised that this item is continued to the July 17, 2007 Land Use Meeting.

Commissioner Moore asked how notification is made. Mr. Ruggieri explained the standard practice, indicated that in this case staff has been unable to obtain a phone number for the applicant, nor has the applicant responded to any of the mail. Commissioner Moore asked if the applicant pays their taxes. Mr. Ruggieri stated that was checked and the taxes are paid.

8. Z-07-02-09 Quasi-Judicial Commission District II An Ordinance approving an amendment to the Charlotte County Zoning Atlas from Agriculture Estate (AE) to Commercial General (CG), for property located at 2200 and 2230 Education Avenue; containing 2.87± acres, in the Punta Gorda area; Commission District II; Petition No. Z-07-02-09: applicant Charlotte County Board of Commissioners.

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

Mr. Ruggieri advised that this petition is also an inconsistency, and that staff recommends continuance to the July 19, 2007 Land Use Meeting, and that the public hearing be opened in the perchance that the landowner is present to speak. **Chairman Loftus** opened the public hearing.

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

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

Mr. Ruggieri advised that he was approached in the hallway by the landowner of agenda item 8 who had just purchased the property, and inquired if the Board would consider hearing the petition today. **Chairman Loftus** replied affirmatively.

9. PP 07-03-06 Quasi Judicial Commission District IV Crown Gateway, LLC has applied for a Preliminary Plat for a re-plat of Lot 3 of Crown Plaza, for a subdivision consisting of five commercial sites in Sections 5, 6, 7 & 8, Township 41 South, Range 21 East. The site, consisting of 15.35 acres, more or less, is located on the south side of State Road 776, west of Gulfstream Boulevard and east of Kevitt Boulevard, in Commission District IV. A complete legal description is on file.

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

Mr. Dossett presented the petition and reviewed the staff report and analysis in the packet material; stated that staff recommends approval with the following two (2) conditions: (1) The applicant must re-dedicate a 30' wide roadway easement from Kevitt Boulevard to Gulfstream Boulevard in the same location as the original easement for Crown Plaza plat, and (2) The applicant must correct the survey violations of Florida Administrative Code 61G17-6 per the County Surveyor; and indicated that the petition was heard by the Planning and Zoning Board on May 14, 2007, with recommendation for approval with the two conditions.

Commissioner Moore stated that he understands there would be a 30' easement, but requested clarification that applicant would construct the road. Mr. Dossett replied affirmatively, and advised that would be part of the development. Chairman Loftus opened the public hearing.

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

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

COMMISSIONER D'APRILE MOVED TO APPROVE PRELIMINARY PLAT FOR A RE-PLAT OF LOT 3 OF CROWN PLAZA, APPLICANT, CROWN GATEWAY, LLC, PETITION PP 07-03-06, WITH THE TWO (2) CONDITIONS, SECONDED BY COMMISSIONER MOORE.

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

10. PP 07-02-03 Quasi Judicial Commission District III Lomas Developments, LLC has applied for a Preliminary Plat for The Preserve at Rotonda Lakes, Unit One, a subdivision consisting of 15 single family lots in Section 18 and 19, Township 41 South, Range 21 East. This is a re-plat of Lots 26 and 27, Block 59 of Rotonda Lakes subdivision, as recorded in Plat Book 8, Page 22-Z of the public records of Charlotte County, Florida. The site, consisting of 4.25 acres, more or less, is located west of Rotonda Boulevard East, south of Basswood Drive, north of Antis Drive, Rotonda Lakes in Commission District III. A complete legal description is on file.

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

Mr. Dossett advised that there are two petitions by the same applicant with very similar scenarios; reviewed the staff report and analysis in the packet material; indicated that the Planning and Zoning Department recommended approval with 4 conditions; stated that all 4 conditions have been met, and that no conditions currently exist; and advised that staff recommends approval of Preliminary Plat PP 07-02-03, The Preserve at Rotonda Lakes, Unit One.

Kenneth Yurkovich, with Adaptive Engineering, spoke on behalf of the applicant, stated he was sworn in, advised that all of the conditions of staff have been met, and requested approval of the petition. Chairman Loftus opened the public hearing.

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

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

COMMISSIONER MOORE MOVED TO APPROVE PETITION PP 07-02-03, PRELIMINARY PLAT FOR THE PRESERVE OF ROTONDA LAKES, UNIT ONE, APPLICANT, LOMAS DEVELOPMENTS, LLC, SECONDED BY COMMISSIONER D'APRILE.

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

11. PP 07-02-02 Quasi Judicial Commission District III Lomas Developments, LLC has applied for a Preliminary Plat for The Preserve at Rotonda Lakes, Unit Two, a subdivision consisting of 17 single family lots in Section 19, Township 41 South, Range 21 East. This is a re-plat of Lot 7, Block 63 of Rotonda Lakes subdivision, as recorded in Plat Book 8, Page 22-Z of the public records of Charlotte County, Florida. The site, consisting of 4.33 acres, more or less, is located west and north of Rotonda Boulevard East, south and east of Lomas Road, Rotonda Lakes in Commission District III. A complete legal description is on file.

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

Mr. Dossett reported that this petition is a very similar situation to the previous petition; reviewed the staff report and analysis in the packet material; stated that the Planning and Zoning Department heard the petition May 14, 2007 and recommended approval contingent upon 3 conditions; advised that all previously existing conditions have been met; and that staff recommends approval of Preliminary Plat PP 07-02-02, The Preserve at Rotonda Lakes Unit Two. **Chairman Loftus** opened the public hearing.

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

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

COMMISSIONER MOORE MOVED TO APPROVE PETITION PP 07-02-02, PRELIMINARY PLAT FOR THE PRESERVE AT ROTONDA LAKES, UNIT TWO, APPLICANT, LOMAS DEVELOPMENTS, LLC, SECONDED BY COMMISSIONER D'APRILE.

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

12. PV 07-02-01 Legislative Commission District I Karim and Sajida Khudairi, Trustees, have applied to vacate a portion of Dixie Estates, Subsection A, (namely Block 0002, Lots 1-5), a subdivision as recorded in Plat Book 1, Page 51 of the Public Records of Charlotte County, Florida, and all of Dixie Estates, Subdivision B, a subdivision as recorded in Plat Book 1, Page 52 of the Public Records of Charlotte County, Florida, less and except Block 18, Lots 29-32; Block 20, Lots 104 and 29-32; Block 21, Lots 1-4; Block 23, Lots 6 & 7; Block 24, Lots 1-4; Block 25, Lots 17-20; Block 41, Lots 17-26; Block 42, Lots 1-4; Block 44, Lots 1-4, 12, and 20-22; and all rights-of-ways. The site, consisting of 55 acres, more or less, is located north of Bermont Road and east of SR 31, in Section 31, Township 40S, Range 26E, in Commission District I. A complete legal description is on file.

Mr. Dossett presented the plat vacation based upon the staff report and analysis in the packet material; stated that the site is part of the process for a Transfer of Density Unit (TDU); that only the lots are being vacated in this case in order to take care of the TDU process, and that the road right-of-ways will stay in place for now, because there are still some lots that are owned individually; that staff recommends approval; that this was heard by the Planning and Zoning Department on May 14, 2007, and approval recommended with 2 conditions; and advised that the 2 conditions have been met.

The applicant did not appear before the Board to speak. **Chairman Loftus** opened the public hearing.

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

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

COMMISSIONER MOORE MOVED TO APPROVE RESOLUTION 2007-081 WITH NO
CONDITIONS, SECONDED BY COMMISSIONER D'APRILE.

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

13. SV 07-03-03 Legislative Commission District I Gary and Cathryn Baughman have applied to vacate a portion of Misty Avenue (formerly known as Mitchell Avenue) lying southeasterly Beechwood Street, northwesterly of the existing railroad right-of-way, between Lot 4 of Block 20 and Lot 3 of Block 21 of Holyman's Subdivision, South Cleveland, as recorded in Plat Book 1, Page 22 of the Public Records of Charlotte County, Florida. The site, consisting of 0.13 acres, more or less, is located in Section 34, Township 40 South, Range 23 East, in Commission District I. A complete legal description is on file.

Chairman Loftus advised that at the request of Attorney Ross Agenda Item 13 was continued to the July 17, 2007 Land Use Meeting.

15. Revision of Charlotte Harbor Community Development Code - Buffers 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 exemption options to front-yard buffer requirements; providing inclusion in the County Code and severability; and providing an effective date. Applicant: Charlotte County Board of County Commissioners.

Planner II Seann Smith advised that this petition is to address a challenge in the CRA text, addressing an inconsistency that contradicts the intent of providing for development in the CRA; that what is wanted is to allow applicants to relocate landscaping onsite elsewhere in the buffer so that the amount of material onsite is not reduced, but it would allow applicants to create solutions that encourages pedestrian oriented design, while complying with the existing regulation requiring a setback

of a minimum of zero feet and a maximum of nine feet. Mr. Smith indicated that the site that triggered this proposed revision was Quality Door at 4327 Pinnacle Street; reviewed the conflicting issues, the Intent and proposed Solutions. Mr. Smith stated that the intent is to give applicants an option to propose alternative designs that relocates material elsewhere, giving quality hardscape and pedestrian oriented design such as you want to see in a more urbanized area. Mr. Smith stated that on May 14, 2007 the Planning and Zoning Board recommended the changes; that since then a number of scrivener errors were addressed, which do not significantly affect the proposed amendment and do not require that it be brought back to Planning and Zoning.

Chairman Loftus agreed that this was needed to comply with the design standards, and opened the public hearing.

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

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

COMMISSIONER D'APRILE MOVED TO APPROVE ORDINANCE 2007-049, SECONDED BY COMMISSIONER MOORE.

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

8. Z-07-02-09 Quasi-Judicial Commission District II An Ordinance approving an amendment to the Charlotte County Zoning Atlas from Agriculture Estate (AE) to Commercial General (CG), for property located at 2200 and 2230 Education Avenue; containing 2.87± acres, in the Punta Gorda area; Commission District II; Petition No. Z-07-02-09: applicant Charlotte County Board of Commissioners.
(CONTINUED)

Ms. Shao advised that earlier today this agenda item was tabled, but that the owner is here; that the owner just purchased the property June 9, 2007, and has presented a copy of his deed, which is in order. Ms. Shao reviewed the site location and inconsistencies.

Commissioner Duffy asked why the property lines go in. Ms. Shao advised she did not know. (**Chairman Loftus** polled the Board for

ex-parte disclosures and there were none.) Commissioner D'Aprile suggested a possibility of why the line goes in. Chairman Loftus opened the public hearing.

Michael Gosmar advised that he is the owner of record and was sworn in, that the cut in was a newly cut road, that he plans to use the property for commercial use, and requested approval of the amendment.

COMMISSIONER DUFFY MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER MOORE.

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

COMMISSIONER D'APRILE MOVED TO APPROVE ORDINANCE 2007-048, SECONDED BY COMMISSIONER MOORE.

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

ADJOURNED 5:00 PM

Signature on file 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

gm