

BOARD OF COUNTY COMMISSIONERS - LAND USE HEARINGS

JULY 17, 2007

Land Use Public Hearings were held at the Murdock Administration Complex in Room 119, Port Charlotte, Florida. The following members were present: Chairman Loftus, Commissioner Duffy, Commissioner Cummings, Commissioner D'Aprile, and Commissioner Moore. Also in attendance were County Administrator Loucks, Assistant County Attorney Browne, Executive Assistant Dillon, and Deputy Clerk Mitchell. The following members were absent: None. The meeting was called to order at 9:00 AM, followed by the Pledge of Allegiance.

PLANNING AND ZONING AGENDA (Proofs of Publication were in Order.)

1. Commission District I, II, III, IV, V An ordinance of Charlotte County, Florida, providing that the Code of Laws and Ordinances of Charlotte County, Florida, be amended by amending Article XXIII, excavation and earthmoving; by providing for revision of definitions, creating of a new group, specifying new design standards, procedures and fees; providing for procedures for vested rights and applicable Judicial review for the specific matters addressed herein; providing for conflict with other ordinances; providing for severability; providing for a term; providing an effective date, and providing for an accompanying fee resolution.

James Dossett stated this is the second of two public hearings, reviewed the changes since the first hearing as detailed in the packet material in particular the vesting rights, and explained there will be more changes being presented this morning that are not in the material.

Commissioner D'Aprile asked the number of existing mines and how many mines are coming up. Mr. Dossett said about five months ago they had 35 applications on the table, at that time 22-24 mines had operation permits but some have not operated in several years, and they still have about 25 mines currently in the works. **Commissioner D'Aprile** asked if there are any restrictions or limits to the number of mines allowed. Mr.

Dossett said there was nothing in the ordinance now or proposed that would limit the number of mines in Charlotte County.

Commissioner D'Aprile asked if staff knew how many mining operations will expire in the next couple years. Mr. Dossett said some of the mines were over 10 years old and have reapplied. **Commissioner D'Aprile** said he's more concerned about the number of new mines and what could happen if the County experiences another building/growth boom. Mr. Dossett responded Charlotte County could do what other counties have done and create a specific zoning district for mines.

Commissioner Duffy asked how many of the 36 applications are FARMS projects. Mr. Dossett said about six. **Commissioner Duffy** asked how many of the 36 are current mines that are expanding. Mr. Dossett said three. **Commissioner Duffy** asked how did Sarasota County limit the number of mines. Mr. Dossett responded through rezoning.

Commissioner Cummings asked if that process was only through rezoning or is it also the underlying land use. Mr. Dossett said it's available anywhere but he would expect they would have to look at the Future Land Use Map to make sure it's allowed. **Commissioner Cummings** said he didn't think it's something they'd want to do today.

Mr. Dossett opined everyone involved agrees this is something they should look at in the future.

The following people spoke in opposition to the proposed ordinance: Ian Dack, Steven Brown, Jim Story, Nancy Haast, Tom Musgrove, Jeff Loria, Rudy Castro, David Goodrich, Jerry, Fehr, Tom Pinder, Lawrence Martin, Rich Fried, Clarke Keller, Brad Kelsky, Gary Mastry, and Patty Castro.

Terri Behling spoke on behalf of the Southwest Florida Water Management District (SWFWMD) in support of their actions during the permitting process.

The following people spoke in support of the proposed ordinance: Michael Haymans, Geri Waksler, Debra Highsmith, Robert Berntsson, Sue Reske, Gary Bayne, Ron Mahan, Jessica Christianson on behalf of Wes Brumback, Randy Keiling, and David Crane.

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

Motion Carried 5:0.

RECESS: 11:01 AM - 11:15 AM

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

Mr. Dossett responded to public input regarding water quality, the NPEDS permit, and some new vesting language that should address the conflict of interest issue mentioned by Attorney Berntsson.

Attorney Derek Rooney said he has reviewed the language presented in the packet material and by Ms. Highsmith and Ms. Reske, if they choose to adopt it he asked the Board to adopt his modified version because it flows better with the ordinance, and it will allow them to effectuate the changes the Board is trying to achieve. Attorney Rooney reviewed his proposed language changes to the following areas: page 17, Sections 3-5-481(c) and (f); page 19, Section 3-5-482(a)(4)(E); page 21, Section 3-5-482(a)(4)(GG), (HH), and (II) ; page 41, Section 3-5-495(c) and (d); and page 42, new section added, Section 3-5-496; and asked the Board to approve the proposed ordinance with these requested revisions.

Attorney Rooney stated if the Board decides to offset any burden placed on Attorney Berntsson's client Washington Loop LLC as a result of last Friday's hearing and the conflict of interest with Mr. Russell, he would suggest his revision to the language on page 40, Section 3-5-494(a)(1)(A), be adopted.

Commissioner Cummings said he felt mitigation to roads is important, mining will increase trip generation because the market for dirt is all of southwest Florida, they need to improve their understanding of both the traffic and the hydrologic impacts, he felt they have two options - they can approve this or do nothing allowing more applications under the existing regulations, he felt this does provide for addressing cumulative impacts but they need to begin building the data to back-up this ordinance, and he supports moving ahead with Attorney Rooney's revisions.

COMMISSIONER CUMMINGS MOVED TO APPROVE OF THE PROPOSED CHANGES AS READ BY MR. ROONEY AS A MODIFICATION TO THE ORDINANCE, SECONDED BY COMMISSIONER MOORE.

Commissioner Moore said he'd spoken with Dan Quick who told him road mitigation wasn't needed but he doesn't object to that language being in the ordinance, and he supports the motion.

Commissioner Duffy thanked Mr. Dossett and Attorney Rooney for everything they've done especially considering the short time frame, and also all those on the committee. Commissioner Duffy said since the Sierra Club was part of the committee why wasn't the new language they proposed today part of the new language presented by staff. Attorney Rooney explained the Sierra Club wasn't able to provide any new language at that time. Commissioner Duffy stated she just doesn't like last minute changes to something as important as this.

Commissioner Duffy asked if the committee has any objections to this new language. Mr. Dossett responded regarding the water quality monitoring one of the engineers advised him the additional cost could be from \$3,000 to \$10,000 per month.

Commissioner Duffy asked if that was duplication of SWFWMD's water quality monitoring. Ms. Behling said she'll have to check into that because they do require water quality monitoring but she didn't have the specifics.

Mr. Dossett clarified some of the language Attorney Rooney suggested was that monitoring would be required but the specifics would be determined by the Board through a resolution. Commissioner Duffy opined then it shouldn't be in the ordinance. Mr. Dossett responded then staff would have to bring the ordinance back with a modification.

Commissioner Duffy asked what's the best approach. Attorney Rooney explained until a resolution is adopted stating what is to be tested for the language in the ordinance has no effect and no testing is required.

Chairman Loftus said he's concerned because the costs are unknown. Commissioner Cummings stated the costs will depend on what the Board adopts as requirements. Mr. Dossett agreed and said when the resolution is brought to the Board staff will be able to provide details and costs.

Commissioner Duffy asked for the new language again. Attorney Rooney re-read the proposed water monitoring language as detailed in Section 3-5-496, page 42 of the proposed ordinance.

Commissioner D'Aprile said he's not entirely satisfied, reiterated there should be something in the ordinance restricting the number of mines allowed, said he felt they shouldn't allow any mines near any homes or nearby development, he liked the idea of setting up a mining district, he supports only allowing new applications when old existing mine permits expire, he felt mining could go even deeper into the agricultural areas, and he liked the proposed changes but he doesn't like being the dirt provider for all of southwest Florida.

Chairman Loftus agreed they should look at zoning certain areas for mining, suggested West County because there's a lot of growth and development and it would result in reduced truck traffic, and thanked staff and all those who participated in this process.

Motion Carried 5:0.

COMMISSIONER CUMMINGS MOVED TO APPROVE ORDINANCE 2007-054 AS AMENDED, SECONDED BY COMMISSIONER MOORE.

Motion Carried 5:0.

Commissioner Cummings stated he also supports looking into a mining zoning district, all the safety issues that previously applied to Burnt Store Road also apply to Washington Loop Road, and if there's a way to manage that he supports pursuing it.

COMMISSIONER D'APRILE MOVED TO APPROVE RESOLUTION 2007-096, SECONDED BY COMMISSIONER MOORE.

Motion Carried 5:0.

2. Boca Grande Community Plan Legislative Commission District III Pursuant to Objective 2.9 (Community Planning) of the Future Land Use Element of the 1997-2010 Comprehensive Plan, a public presentation is being made by the Boca Grande Community Planning Panel regarding the Boca Grande Community Plan. The Community Planning Panel is seeking acceptance of the Community Plan by Charlotte County.

Jeffrey Crimer explained the plan is for the Charlotte County portion only, it was developed along with a similar plan for the Lee County portion which was adopted as part of the Lee County Comprehensive Plan (Comp Plan) in December 2005, gave a brief slide presentation on the highlights of the plan as detailed in his memorandum and the packet material, stated staff was asking the Board to accept but not adopt the Boca Grande Community Plan, and advised the Planning & Zoning (P&Z) Board has recommended acceptance of the plan with two revisions detailed in the material.

Tom Smith spoke on behalf of the Boca Grande Community Planning Association which is presenting this plan, reviewed the process since he was retained, and commented on the reasons behind the proposed changes as incorporated in the proposed plan.

Commissioner D'Aprile opined this will work out very well but said it appears the plan is attempting to control business or tourism. Mr. Smith responded that isn't the intent but the island is small so they are looking to the future in trying to protect it.

Commissioner D'Aprile voiced concern with the wording 'to better regulate new businesses'. Mr. Smith responded 'manage' might be a better word, the intent is to simply be able to better keep a good planning order in the community, and gave examples of what could happen in the future that could cause problems for the island.

Commissioner D'Aprile asked who makes final decision on that. Mr. Smith responded the Board of County Commissioners because it'll have to come through as a zoning amendment. **Commissioner D'Aprile** said then he's fine.

Commissioner Moore asked if they could do a majority of the document clearing house issues through internet. Mr. Crimer said he thought most of it could be transmitted via email. **Commissioner Moore** said if that's possible he thought it would make things easier on both sides.

Commissioner Moore said he didn't see anything that raised concerns for him, CCU and the Gasparilla Water Authority are working well together which he felt was a long time coming, and he thought this was a good plan.

Commissioner Duffy asked if the residents were comfortable with this plan. Mr. Smith said yes for the most part, and they have worked hard to get a consensus of the community as well as County staff.

Tom Knight distributed and read a letter from Melissa Knight in opposition to the proposed plan due to the negative impacts to the residents of Placida. Mr. Knight agreed with Mrs. Knight, stated past actions have shown the residents of Boca Grande don't want their island to become a tourist destination, Placida property values will decline, and it's time to stop this.

Tim Dickson said this affects his family as they are property owners on the Boca Grande Causeway, commented on problems he has encountered by restrictions imposed by the Water Authority, and said he doesn't care what they do with their island but they shouldn't be allowed to dictate what Placida does.

Edward Hoopes said they started this project about four years ago, the intent was to establish a good working relationship with Charlotte County, agreed nothing will happen regarding implementation without the Board's approval, and thanked staff for all their help.

Mr. Smith stated there's nothing in plan that even suggests they want to control development in Placida, opined Mr. Knight was probably looking at the old 2004/2005 version of the plan, and reiterated this plan addresses only the upper third of the island and nothing more.

Chairman Loftus said he supports having community plans but the Boca Grande plan shouldn't have any impact on Placida, agreed

with **Commissioner D'Aprile's** concerns regarding the regulation of businesses in Placida, and reiterated he wants to make sure the plan stays within the confines of Boca Grande.

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

Commissioner Cummings summarized if they accept this plan it just means they have accepted receipt of the plan. Mr. Crimer said that's correct. **Commissioner Cummings** said until it becomes part of the County's Comp Plan it remains just a plan. Mr. Crimer explained as part of the acceptance the Boca Grande community will want to establish a committee to make recommendations to the Board.

Commissioner Cummings said he sees a lot of common goals and thoughts for people who live in both areas, and he sees no harm in approving acceptance of the plan.

Commissioner Moore agreed communication between the two communities is very important, the needs of the Boca Grande community are very different, disagreed with the comment that this plan will diminish property values in Placida, and reiterated his support.

Commissioner Cummings recalled comments from previous meetings on the need for retaining the unique qualities of individual communities, and said he supported that approach.

COMMISSIONER CUMMINGS MOVED TO APPROVE ACCEPTANCE OF THE BOCA GRANDE COMMUNITY PLAN, SECONDED BY COMMISSIONER MOORE.
Motion Carried 4:1. Chairman Loftus opposing.

APPLICATION Z-07-02-06 HAS BEEN WITHDRAWN BY STAFF

3. 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 County Commissioners.

4. PP 07-04-07 Quasi Judicial Commission District III Bel Aire at Windward, LLC has applied for a Preliminary Plat to re-plat Lots 55 thru 63 of Cape Haze - Windward Subdivision, for a subdivision consisting of seventeen (17) lots for cluster housing in Section 34, Township 41 South, Range 20 East. The site, consisting of 3.2868 acres, more or less, is located on the west side of Windward Road, west of Cape Haze Drive in the Rotonda area of Charlotte County in Commission District III. A complete legal description is on file.

Mr. Dossett explained both items 4 and 5 deal with the same applicant. (Chairman Loftus polled the Board for ex-parte communications. There were none.) Mr. Dossett continued, presented the findings and analysis as detailed in the packet material, and stated both staff and P&Z Board recommended approval with three conditions:

1. The applicant must provide elevation on benchmarks for Final Plat.
2. The applicant must comply with all requirements of the Environmental and Landscape and Tree Compliance prior to final DRC approval.
3. All stormwater issues must be satisfied per the Stormwater Management Division of Public Works.

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

Commissioner Cummings asked the number of units. Mr. Dossett responded this is multi-family zoned, so they could have gone up to 10 lots per acre or 30 units.

**COMMISSIONER D'APRILE MOVED TO APPROVE PP-07-04-07 PRELIMINARY PLAT FOR BEL AIRE AT WINDWARD - UNIT 2 WITH THREE CONDITIONS, SECONDED BY COMMISSIONER CUMMINGS.
Motion Carried 5:0.**

5. PP 07-04-08 Quasi Judicial Commission District III Bel Aire at Windward, LLC has applied for a Preliminary Plat to re-plat Lots 64 thru 71 of Cape Haze - Windward Subdivision, for a subdivision consisting of fourteen (14) lots for cluster housing in Section 34, Township 41 South, Range 20 East. The site, consisting of 2.8416 acres, more or less, is located on the east side of Windward Road, west of Cape Haze Drive in the Rotonda area of Charlotte County in Commission District III. A complete legal description is on file.

Mr. Dossett stated this is the second application for Bel Aire at Windward, LLC and his same comments from the previous petition apply.

(Chairman Loftus polled the Board for ex-parte communications. There were none.)

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

COMMISSIONER MOORE MOVED TO APPROVE PP-07-04-08 PRELIMINARY PLAT FOR BEL AIRE AT WINDWARD - UNIT 3 WITH THREE CONDITIONS, SECONDED BY COMMISSIONER CUMMINGS.
Motion Carried 5:0.

6. 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 of 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.

Mr. Dossett reviewed the packet material, stated initially there were two conditions but both conditions have been meet, and both staff and the P&Z Board recommend approval.

Attorney Warren Ross spoke on behalf of the applicant, said he had nothing further to add to Mr. Dossett's presentation, and requested approval.

Charlotte Pattie said she objects to any more streets being closed in the Cleveland area, she lives two blocks from this street, they have had severe flooding problems since Cleveland Avenue was closed, they need a street opened up not more streets closed, they only have three streets now that cross the railroad to use for evacuation, there are two mobile home parks with very senior citizens, their area continues to grow, and asked to Board not to close any more streets.

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

Attorney Ross presented rebuttal, said when his clients purchased the property there were no indications of any the problems presented by the previous speaker, opined there are other solutions to the evacuation issue, and requested approval.

Commissioner D'Aprile said he understands this street has never been used. Attorney Ross responded his clients had only owned it for about five or six years, and it's his clients' understanding it has never been used.

Commissioner D'Aprile said he also understood this is not used for evacuation. Attorney Ross agreed.

Commissioner Cummings asked if the County would be allowed to build a road across that railroad right-of-way. Mr. Dossett explained getting permission from the railroad is very difficult, they would have to get permission to build on it, and Public Works has no interest in building a road across it at this point since it was so close to the other crossing.

Commissioner Cummings asked legal if a crossing was needed could they easily use eminent domain for this purpose. Attorney Browne said in theory he didn't know why it would be any more difficult but he didn't know if railroads have any special protection from eminent domain without looking into it.

Commissioner Cummings said he didn't see see any public benefit to this particular corridor, and he supports closing it.

COMMISSIONER MOORE MOVED TO APPROVE RESOLUTION 2007-097, SECONDED BY COMMISSIONER D'APRILE.

Chairman Loftus asked staff to look into the flooding and evacuation concerns brought up during citizen input.

Motion Carried 5:0.

ADJOURNED: 1:10 PM

Signature on file in Commission Minutes
Chairman

ATTEST:

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

By: Signature on file in Commission Minutes
Deputy Clerk

/ksm