

BOARD OF COUNTY COMMISSIONERS

NOVEMBER 27, 2007

A regular meeting was held at the Murdock Administration Complex in Room 119, Port Charlotte, Florida. The following members were present: Chairman Loftus, Commissioner Duffy, Commissioner D'Aprile, Commissioner Moore, and Commissioner Cummings. Also in attendance were County Administrator Loucks, County Attorney Knowlton, Executive Assistant Blair, Minutes Supervisor Nice, and Minutes Secretary Lansing. The following members were absent: None. The meeting was called to order at 9:00 AM.

The Invocation was given by Pastor Mark Clark, Grace Bible Church, followed by the Pledge of Allegiance.

ELECTION OF CHAIRMAN AND VICE CHAIRMAN

Chairman Loftus relinquished the gavel to Attorney Knowlton. Attorney Knowlton opened the floor for nominations for Chairman.

COMMISSIONER CUMMINGS NOMINATED COMMISSIONER D'APRILE FOR CHAIRMAN, SECONDED BY COMMISSIONER MOORE. COMMISSIONER CUMMINGS MOVED TO CLOSE THE NOMINATIONS, SECONDED BY COMMISSIONER MOORE. Motion Carried 5:0.

CALL ON THE MOTION FOR CHAIRMAN. Motion Carried 5:0.

Attorney Knowlton opened the floor for nominations for Vice Chairman.

COMMISSIONER CUMMINGS NOMINATED COMMISSIONER MOORE FOR VICE CHAIRMAN, SECONDED BY COMMISSIONER D'APRILE. COMMISSIONER CUMMINGS MOVED TO CLOSE THE NOMINATIONS, SECONDED BY COMMISSIONER D'APRILE. Motion Carried 5:0.

CALL ON THE MOTION FOR VICE CHAIRMAN. Motion Carried 5:0.

Attorney Knowlton relinquished the gavel to Chairman D'Aprile. Chairman D'Aprile accepted the gavel with appreciation.

Commissioner Duffy thanked Commissioner Loftus for doing a great job as Chairman. Chairman D'Aprile concurred.

Changes to the Agenda

Addition #1, Administration, Agenda Item Z-4, Consider naming the Sheriff's Office Training Center, located on Airport Road, the Major Terry Branscome Training Center, in honor of Terry's long time service and devotion to serving the citizens of Charlotte County of 26 years.

Addition #2, El Jobean Christmas Parade Proclamation

Change #1, County Attorney, move Agenda Item W-2 to Agenda Item E-1, County Attorney, Set a Public Hearing for 10:00 AM, or as soon thereafter as can be heard, on December 11, 2007 to consider an ordinance amending County Code Chapter 3-8, Article II, concerning Standards for Water and Sewer Utilities.

Change #2, Purchasing, Agenda Item L-1, Change the estimated annual cost of \$250,000 to approximately \$60,000 for Charlotte County File #08-031, Disposal of Waste Tires, allowing the piggyback of Brevard County Bid #B-5-07-74/Waste Tire Shredding or Removal and Disposal Services, with Wheelabrator Ridge Energy, Inc. from the date of award through May 24, 2008 at the unit prices bid.

Change #3, Human Services, Agenda Item N-1, Appoint or reappoint one County Commissioner to CAAAB for ~~2008-2009~~ 2007-2008.

Commissioner Cummings requested Agenda Item Z-4, naming the Sheriff's Office Training Center as the Major Terry Branscome Training Center, be moved forward on the agenda prior to Proclamations.

COMMISSIONER CUMMINGS MOVED TO APPROVE CHANGES TO THE AGENDA, SECONDED BY COMMISSIONER LOFTUS.
Motion Carried 5:0.

V. REGULAR AGENDA

Z. Regular Agenda

(4) Administration, RECOMMENDED ACTION: Consider naming the Sheriff's Office Training Center, located on Airport Road, the Major Terry Branscome Training Center, in honor of Terry's long time service and devotion to serving the citizens of Charlotte County of 26 years.

COMMISSIONER CUMMINGS MOVED TO APPROVE NAMING THE SHERIFF'S OFFICE TRAINING CENTER, LOCATED ON AIRPORT ROAD, THE MAJOR TERRY BRANSCOME TRAINING CENTER, SECONDED BY COMMISSIONER LOFTUS.

Motion Carried 5:0.

Major William Cameron expressed appreciation for naming of the Center in honor of Terry Branscome and advised the funeral for Major Branscome will be held at 10:00 AM today.

Proclamations - Commissioner Loftus

COMMISSIONER CUMMINGS MOVED TO APPROVE CHAMBER OF COMMERCE CHRISTMAS PARADE DAY PROCLAMATION, SECONDED BY CHAIRMAN LOFTUS.

Motion Carried 5:0.

Ron Thomas accepted the Proclamation and invited everyone to attend.

COMMISSIONER MOORE MOVED TO APPROVE PEARL HARBOR REMEMBRANCE DAY PROCLAMATION, SECONDED BY COMMISSIONER CUMMINGS.

Motion Carried 5:0.

Randy Spence accepted the Proclamation; congratulated Chairman D'Aprile; thanked Commissioner Loftus for a job well done as former Chairman; recognized the veterans who died, served and continue to serve; and invited everyone to attend the ceremony on December 7, 2007 at 10:00 AM in El Jobean.

COMMISSIONER CUMMINGS MOVED TO APPROVE SHOP CHARLOTTE MONTH PROCLAMATION, SECONDED BY COMMISSIONER MOORE.

Motion Carried 5:0.

Teri Ashley invited everyone to Shop Charlotte and keep the dollars in Charlotte County.

COMMISSIONER CUMMINGS MOVED TO APPROVE EL JOBEAN CHRISTMAS PARADE PROCLAMATION, SECONDED BY COMMISSIONER MOORE.

Motion Carried 5:0.

James Marshall accepted the Proclamation and invited everyone to come out, participate, and view the parade.

Employee Recognition - None

Award Presentation

Tim Center, Council for Sustainable Florida Director, presented a resolution from the Governor and Legislature with the Legacy Award for the County's participation in conjunction with other counties, U.S. Fish and Wildlife, and Kitson and Partners in the preservation of Babcock Ranch; advised the Council works with private entities, State and Federal agencies, and governments; offered to work with the County on Comprehensive Plan amendments with the Department of Community Affairs, and growth management and water issues; commented on the importance of green building to create a more sustainable green community that is environmentally friendly and a win-win situation for everyone; thanked Mr. Kitson for his efforts; and suggested Board Members contact Jon Devries, Gulf Coast Community Foundation, with questions.

I. CITIZEN INPUT - AGENDA ITEMS ONLY

Attorney Geri Waksler requested clarification regarding elimination of Florida Gulf Coast University within Murdock Village as Agenda Item Z-4. **Chairman D'Aprile** stated it is no longer on the agenda. Attorney Waksler stated she then has no comments.

Attorney Michael Haymans requested approval of the TDU ordinance with two changes: strike the last paragraph and send density out now rather than in an emergency situation or change in development attitude and change the receiving area to allow building at the maximum density.

Andy Dodd encouraged the Board to purchase the environmental and scrub jay properties with the highest possible reimbursement, stated more than \$260,000,000 worth of land has been taken off the tax roll due to the 50% reduction in scrub jay properties,

and completion of the County wide HCP is needed to secure the most Conservation Charlotte funding.

II. COMMITTEE VACANCIES

Charlotte County is seeking volunteers to serve on the following Committees:

Ackerman Waterway Unit - seeking one regular member and one alternate member to serve on the Ackerman Waterway Unit Advisory Committee. Must be a resident of the Ackerman Waterway Unit.

Beaches and Shores Advisory Committee is seeking one member to serve as the District 4 representative. Applicant must be a resident of Charlotte County and have an interest in the preservation of beaches and shores. Committee meets the first Thursday of each month at 9:00am in Murdock. Term is for four-years.

Construction Industry Licensing Board - Seeking a volunteer representing the "Consumer Advocate" category. Volunteer must be a resident of Charlotte County for at least 2 years and have no financial interest, direct or indirect, in the building trades. Length of term: 4 years.

Northwest Port Charlotte Waterway Unit is seeking five (5) regular members and one (1) alternate member to serve on the Committee. Must be residents of the Northwest Port Charlotte Waterway Unit and have an interest or knowledge of the unit.

Punta Gorda Community Redevelopment Agency - Seeking one member. Appointee must be a Charlotte County resident and shall serve for a four (4) year term. The purpose of the Agency is to implement the policies, projects, and programs contained in the Punta Gorda Downtown Redevelopment Plan.

Tropical Gulf Acres Street & Drainage Unit Advisory Board - seeking one member. Volunteer must be a resident of Charlotte County and reside within the boundaries of the unit. Length of term: until 2/27/09

Town Estates Street & Drainage Unit Advisory Board is seeking one volunteer. This is a three (3) year term, effective immediately and it expires on Jan. 23, 2010.

Construction Board of Adjustments and Appeals - is seeking one member to serve as the alternate on this Board. Must be a member of the construction industry holding a current license. Term will expire in April 2009.

III. REPORTS RECEIVED AND FILED

County Investment Report/Annual Interest on Investments,
September 30, 2007

IV. CONSENT AGENDA

COMMISSIONER CUMMINGS MOVED TO APPROVE IV. CONSENT
AGENDA, SECONDED BY COMMISSIONER MOORE.
Motion Carried 5:0.

Clerk of the Circuit Court

A. Finance Division

(1) RECOMMENDED ACTION: Approve Clerk's Finance Memoranda.
BUDGETED ACTION: None

Memorandum #1 - Status of Contingency Reserves - FY 06/07
Memorandum #1A - Status of Contingency Reserves - FY 07/08
Memorandum #2 - Total Disbursements for the period
November 6 through 16, 2007 in the amount of \$16,032,175.34

B. Minutes Division

(1) RECOMMENDED ACTION: Approve Minutes:

9:00 AM	10/09/07	BCC Regular
9:00 AM	10/16/07	Land Use Public Hearings

BUDGETED ACTION: None

Board of County Commissioners

C. Commission Office

(1) RECOMMENDED ACTION: Appoint Mr. Norbert J. Trohoski as a member to the Manasota/Sandpiper Key Advisory Committee to represent businesses within the boundaries of the Unit. The term shall be for three years. Mr. Trohoski will replace Mr. Mike McClain whose term expired on October 12, 2007, and who wishes to not be reappointed. The vacancy has been duly advertised. BUDGETED ACTION: None

(2) RECOMMENDED ACTION: Appoint Mr. Stephen Vieira to finish out the resigned term of Brad Wasmus to the Harbour Heights Street & Drainage Unit Advisory Committee. The appointment is effective immediately and will expire on February 13, 2008. BUDGETED ACTION: None

D. Administration - No Items.

E. County Attorney

(1) RECOMMENDED ACTION: Set a public hearing for 10:00 AM (or as soon as can be heard) on December 11, 2007, to consider an ordinance amending County Code Chapter 3-8, Article II, concerning Standards for Water and Sewer Utilities. BUDGETED ACTION: None

F. Budget Office

(1) RECOMMENDED ACTION: Approve a resolution authorizing the refinancing of an existing loan of \$5,000,000 from the Pooled Commercial Paper Loan Program to fund land acquisition for the Murdock Village Redevelopment project. BUDGETED ACTION: None

Resolution 2007-181

(2) RECOMMENDED ACTION: Approve a resolution designating the Charlotte County Sheriff's Office (Sheriff) as a recipient of the Charlotte County Drug Abuse Trust Fund grant and awarding the amount of \$29,450 from the Drug Abuse Trust Fund to the Sheriff to assist in funding a three-pronged approach to substance abuse prevention. BUDGETED ACTION: FY08 Budget Amount is \$29,450.

Resolution 2007-182

G. Community Development

(1) *RECOMMENDED ACTION: Approve a Certification of Transferable Density Units, CSZ-07-10-07, and an accompanying conservation easement. BUDGETED ACTION: None*

Resolution 2007-183

H. Economic Development

(1) *RECOMMENDED ACTION: Affirm Enterprise Charlotte's nomination of Charlotte Miller and Frank Bell to serve as Community-At-Large representatives from January 1, 2008 through December 31, 2009. BUDGETED ACTION: None*

(2) *RECOMMENDED ACTION: Authorize the use of Charlotte Harbor Community Redevelopment Area tax increment funds, up to \$50,000, to improve the Scenic Park within the Charlotte Harbor Community Redevelopment Area. BUDGETED ACTION: Tax Increment Revenues are budgeted in the Charlotte Harbor Trust Fund account.*

(3) *RECOMMENDED ACTION: Set a public hearing for December 11, 2007 at 10:00 a.m., or as soon thereafter as may be heard, to consider an ordinance creating the Murdock Village Municipal Service Taxing Unit (MSTU). BUDGETED ACTION: None*

(4) *RECOMMENDED ACTION: Set a public hearing for December 11, 2007 at 10:00 a.m., or as soon thereafter as may be heard, to consider an ordinance removing properties from the Greater Port Charlotte Street and Drainage MSBU which will be included in the Murdock Village Community Redevelopment Area and the proposed Murdock Village MSTU. BUDGETED ACTION: None*

(5) *RECOMMENDED ACTION: Set a public hearing for December 11, 2007 at 10:00 a.m., or as soon thereafter as may be heard, to consider an ordinance amending the territory of the Northwest Port Charlotte Street and Drainage Unit (MSBU) by removing those properties which will be included in the Murdock Village Community Redevelopment Area and the proposed Murdock Village MSTU. BUDGETED ACTION: None*

J. Environmental Services - No Items.

K. Facilities Construction and Maintenance - No Items.

L. General Services

(1) RECOMMENDED ACTION: a) Approve Charlotte County File #08-031, Disposal of Waste Tires, allowing the 'Piggyback' of Brevard County Bid #B-5-07-74/Waste Tire Shredding or Removal & Disposal Services, with Wheelabrator Ridge Energy, Inc., from date of award through and including May 24, 2008, at the unit prices bid for an estimated annual cost of approximately \$60,000 and b) Authorize the County Administrator to approve the renewal options for up to two additional one-year terms, at the same prices, terms and conditions, by mutual consent. BUDGETED ACTION: Budgeted under the Solid Waste Department tire shredding account line in the amount of \$60,000 for FY 07/08.

(2) RECOMMENDED ACTION: a) Approve Award of the Request for Proposal #08-007, Engineers of Record - CCU, with 15 top-ranked firms as listed below for the term January 1, 2008 up to and including December 31, 2010; and b) Authorize the Chairman to sign the contracts; and c) Authorize the County Administrator to approve renewal of two additional one-year terms, at the same terms and conditions, by mutual consent. BUDGETED ACTION: FY 08 Utility Capital Improvement Program Project Budget is \$6,300,000 for Engineering/Design.

(3) RECOMMENDED ACTION: a) Approve Amendment #1 to Contract #07-330, Mass Notification System-Interactive Voice Response in the amount of \$18,000 for a total revised Contract Amount of \$163,000; and b) Authorize the Chairman to sign the Amendment. BUDGETED ACTION: None - Funding is in the General Fund.

M. Human Resources - No Items.

N. Human Services

(1) RECOMMENDED ACTION: a) Approve the reappointment of three elected officials: Frank Desquin, Larry Friedman and Alleen Miller to the Community Action Agency Advisory Board (CAAAB); b) Appoint or reappoint one County Commissioner to CAAAB for 2007-

2008 (currently held by Adam Cummings); and c) Reappoint four members from the business/private sector: Bonnie Holbach, Sali Perry, Dee Rutko, and Kim Gaut. BUDGETED ACTION: None

(2) RECOMMENDED ACTION: a) Approve Charlotte County's participation in the National Association of Counties (NACo) Prescription Drug Discount Card Program and; b) Authorize Chairman to sign the contract between NACo, the County, and CaremarkPCS Health, L.P. BUDGETED ACTION: None

Agreement 2007-074

P. Information Technology - No Items.

Q. Parks, Recreation and Cultural Resources

(1) RECOMMENDED ACTION: Approve renaming the Scenic Park at the intersection of Melbourne Street and Scenic Avenue in Charlotte Harbor to Chester Roberts Park. BUDGETED ACTION: Budgeted amount \$50,000.

R. Public Safety

(1) RECOMMENDED ACTION: Approve the Frequency Reconfiguration Agreement with Nextel South Corporation. BUDGETED ACTION: None

Under **Agreement 2006-072**

S. Public Works

(1) RECOMMENDED ACTION: Accept, approve, and authorize the Chair to sign, a right-of-way map for a portion of Henry Street, a dedicated public road, a portion of which was constructed by the Florida Department of Transportation (FDOT), and a portion constructed by Charlotte County. Both portions have been maintained by Charlotte County for more than four years in accordance with the requirements of Section 95.361(1) Florida Statutes. BUDGETED ACTION: None - Acceptance of map only.

T. Real Estate Services

(1) RECOMMENDED ACTION: Approve the attached Resolution to accept a nineteen-foot (19'±') wide, more or less, non-exclusive

drainage, utility and traffic signal easement granted by Harbor Square Plaza, L.L.C., to be located within Section 8, Township 40 South, Range 22 East. BUDGETED ACTION: None

Resolution 2007-184

(2) RECOMMENDED ACTION: Approve the attached Resolution authorizing the exchange of the County's interest in one platted lot located in Port Charlotte Subdivision, Section 93 for the interest in one privately owned platted lot that is located in Punta Gorda Isles Subdivision, Section 20 for the purpose of relocating a lift station in the Punta Gorda Isles area. BUDGETED ACTION: None

Resolution 2007-185

(3) RECOMMENDED ACTION: Approve the Resolution authorizing the Chairman to execute the Agreement for Purchase and Sale of Real Property, described as Charlotte County Property Appraiser Parcel Identification Number 0070866-000320-9. (1147 Kings Highway) BUDGETED ACTION: None

Resolution 2007-186

(4) RECOMMENDED ACTION: Authorize the Chairman of the Board of County Commissioners to approve a resolution for the exchange of county owned property for property owned by the School Board of Charlotte County and to execute the Agreement for the exchange. BUDGETED ACTION: None

Resolution 2007-187

V. Tourism Development - No Items.

W. Utilities

(1) RECOMMENDED ACTION: Approve Cooperative Funding Agreements between the Southwest Florida Water Management District (SWFWMD) and Charlotte County Utilities for three projects as required each year by SWFWMD to continue funding for projects approved in previous years. BUDGETED ACTION: None

Grant 2006-004-Rotonda ASR Wells, Agreement 2005-010-Regional Reclaimed Water Expansion, and Agreement 2007-067 Toilet Replacement Program

X. Building & Construction Services - No Items.

Y. Other Agencies - No Items.

V. REGULAR AGENDA

Z. Regular Agenda

(1) Environmental and Extension Services, RECOMMENDED ACTION: The Conservation Charlotte - Bond Ranch agenda item was originally set for consideration by the Board of County Commissioners at the November 13, 2007 Board meeting, but action was postponed pending receipt of additional information.

Andy Stevens requested clarification of options discussed at PreAgenda on bringing forth four or five sites including Thornton Key, Welles and Ryals Ranches or an A/B list. **Commissioner Moore** asked if all data has been gathered including appraisals. Mr. Stevens explained the negotiation and prioritization process of the Advisory Committee. **Commissioner Moore** commented in support of voting on three to five parcels in lieu of sites on an individual basis. **Commissioner Loftus** expressed a preference to the Committee to review and provide a list of parcels from willing sellers. David Sumpter stated he has been working with the Committee to prioritize recommendations for acquisition of sites based on certain criteria with funding options and partnering with Southwest Florida Water Management District and pointed out difficulties that occur when trying to gather the necessary data and conclude negotiations within a timeframe reasonable to a number of willing sellers. Mr. Stevens reported either procedure would be appropriate under the ordinance. **Commissioner Moore** stated the Committee should gather the information, with the assistance of consultants and experts, and an overall strategy should be brought to the Board but indicated a willingness to move forward under either option. Mr. Stevens stated the Committee's intent is to bring the best possible information to the Board to make an informed decision. **Commissioners Loftus and Duffy** commented in support of an A/B list being brought to the Board. Mr. Stevens suggested an item

be placed on the Board's agenda for December 4 or 11, 2007 meeting to bring back the list. **Commissioner Duffy** commented in support of acquiring a lot of scrub jay property.

Commissioner Cummings stated if acquisition of scrub jay property is a priority of the Board, more larger tracts of scrub jay property in South County can be acquired than coastal mangrove properties. **Commissioner Moore** stated the acquisition of scrub jay properties should not be the highest priority. Mr. Sumpter cautioned the Board to make sure that this would not be perceived as a mitigation bank for scrub jay properties. **Commissioner Cummings** requested equitable distribution throughout the County; pointed out two levels of recommendation exist for acquisition e.g. does it meet the required criteria in the ordinance and is it worth purchasing based on the price; and stated the Committee wants clear direction on differences between appraisal amounts and general estimates by sellers.

Commissioner Loftus opined a land owner should be allowed to provide an asking price before money is expended on appraisals. **Chairman D'Aprile** explained the major purpose of the program is for acquisition for environmentally sensitive lands preservation and then scrub jay lands can be addressed. **Commissioner Duffy** stated there are 10,000 lots that property owners cannot build on due to scrub jay; recalled 1,700 to 1,800 acres are needed for scrub jay mitigation of which 800 acres have already been acquired; and indicated the County wide Habitat Conservation Plan (HCP) be developed in order to secure funding from United States Fish and Wildlife Service or Florida Fish and Wildlife Conservation Commission.

Commissioner Moore stated people in West County are not territorial regarding acquisition of environmental lands as long as it is done within the County. **Commissioner Cummings** concluded the asking price should be considered prior to getting an appraisal; reported an HCP plan is necessary and start up money is needed to establish the bank for the plan; and stated the Committee is willing to provide whatever the Board wants.

Mr. Loucks pointed out the agenda item dealing with the Bond Ranch acquisition was continued November 13, 2007 subject to receipt of additional information. Mr. Stevens reported the Committee has tabled the acquisition until further discussion

with the seller or representative. **Chairman D'Aprile** opined the Committee needs to work further on the Bond Ranch acquisition and bring back additional information. County Attorney Knowlton concluded three Board Members want an A/B list brought back. Mr. Stevens advised the form utilized by the Committee requires a seller to provide the asking price. **Commissioner Loftus** stated the HCP should be part of the criteria. Mr. Stevens explained proposals have been accepted for review in conjunction for developing the County wide HCP.

RECESS: 10:07: AM - 10:20 AM

VI. PUBLIC HEARING AGENDA - 10:00 A.M.
(Proofs of publication were in order.)

(1) Budget, **RECOMMENDED ACTION:** Consider adopting an ordinance updating the Capital Improvements Program for FY2007/2008 through FY2012/2013.

County Budget Officer Sandrock explained the purpose of the public hearing and ordinance is to update the CIP and the first year of funding was approved at the final budget public hearing on September 27, 2007.

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

Commissioner Loftus questioned changing the CIP during the year; expressed concern about maintenance costs paid out of ad valorem and sales tax revenues for the Fire Training Burn Building, on CIP page M-4, and suggested seeking Federal funds in conjunction with the Airport Authority and working on a regional basis; offered to provide documentation relative to CIP page D-7 concerning the GDC Land Purchases and MSBU debts of over \$4 million. Mr. Sandrock reported the CIP is updated with amendments throughout the year and Board approval is secured prior to project commencement and indicated an issue still exists regarding the debt on the Manchester Lock. **Commissioner Loftus** suggested the Board prioritize projects to expedite and get better prices, save funds, and provide jobs. **Commissioner Cummings** recalled fire departments outside of Charlotte County paid to use the training facility and expressed the belief

that a partnership may already exist but he wants to make sure the citizens of Charlotte County derive the greatest benefit. **Commissioner Duffy** stated the cost of asphalt has increased and commented in support of expediting paving projects.

**COMMISSIONER MOORE MOVED TO APPROVE ORDINANCE 2007-082, SECONDED BY COMMISSIONER LOFTUS.
Motion Carried 5:0.**

(2) Community Development, **RECOMMENDED ACTION:** Consider adopting the revised Transfer of Density Units ordinance.

Inga Williams stated no changes have been made to the ordinance since the November 13, 2007 hearing. **Commissioner Duffy** requested an explanation of submerged lands density in the ordinance. Ms. Williams stated natural submerged lands have density under the gross density definition that can be transferred but excavated lands do not have density.

Misty Nichols requested the Board strengthen the ordinance and restrict the transfer of density to coastal high hazard zones especially the Cape Haze and Placida areas and ensure reasonable evacuation times for residents.

Penny Rieley, individually and as a TDU panel member, stated the TDU ordinance bars the use of density in coastal areas, developed areas, non-developable areas due to covenants and easements, and submerged lands; referenced the agenda item regarding the marina appeal to the TDU ordinance to be considered later in the meeting; expressed support for staff's recommendation regarding developed properties; and requested rejection.

Percy Medintz, a member of the TDU panel, stated the existing ordinance bars transfer of density from Duffy's on SR 776 to Wildflower on Placida Road and requested the Board reject the language in the proposed ordinance that would allow such a transfer; commented in support of staff's recommendation and analysis to deny the marina's appeal to the TDU ordinance; requested rejection of the proposed change to allow excavations to sell off density as well as materials mined and excavated; and urged expeditious Board action.

Ruth Bromberg, a citizen member of the TDU panel, encouraged the Board to adopt citizen requests on affordable housing issues; stated it would be very risky to set up a program without limits on free density; evidence shows ample affordable housing units are on the market e.g. more than 1,300 units under \$150,000; 75% of the County's population might qualify for affordable housing under the proposed ordinance; it is essential that any new density not increase evacuation times; and suggested 100% of the median income for the affordable housing density as set out in the citizen's exhibit.

Steven Brown, Southwest Florida Conservancy and a member of the citizen's group that worked on the TDU ordinance revisions, advised the Conservancy's primary goal is to use environmentally sensitive lands as Sending Zones, protect water bodies, and transfer density east of I-75 to Infill Areas and encouraged the Board to calculate density units being created by the proposed ordinance and where they will occur; and offered future assistance from the Conservancy.

Attorney Waksler stated citizens who worked with the TDU panel did not want to accept any of the panel's recommendations; explained density exists and will continue to exist on submerged lands; recalled Todd Rebol worked on flood elevation concerns regarding Wildflower on Placida Road; 80% of the land on Wildflower is located outside of the coastal high hazard area; and encouraged the Board to adopt the ordinance today.

Richard Flint, Placida Harbor Condominium and Friends of Cape Haze, stated if the ordinance is adopted as proposed by staff, there will be a lot of confusion and controversy regarding what can be done with submerged lands; outlined the history of Placida Harbor that was dug out by Mote and questioned the calculation of density units; referenced density language excluded from the Preamble of the ordinance in light of the Comprehensive Plan requirement to remove density from the coastal areas; and requested adoption of the language proposed by the citizens committee.

Jim Ressler stated the County's Comprehensive Plan addresses numerous important concept and growth management issues; the TDU ordinance is really about managing growth; the Comprehensive Plan

includes policies and goals to manage growth and quality of life for residents, reduce over platting, public safety, hurricane evacuation, fiscal liability, and infrastructure costs; the TDU ordinance allows shifting of density and runs counter to the Comprehensive Plan; and urged the Board to make the changes referenced by citizens.

Andy Dodd, Cape Haze resident, stated the existing ordinance treats West County different in that density can be transferred out but not into the area and flood is the proxy of risk on the Cape Haze Peninsula that should be used as a restraint to transfer of density within West County.

David Crane, a professional engineer and alternate member on the TDU panel, reminded the Board that coastal high hazard areas are protected from transfers of density; every TDU, excavation, planned development, and zoning changes are brought before the Board; and urged the Board to retain the existing TDU ordinance.

Attorney Robert H. Berntsson stated the County's TDU ordinance serves a different purpose than such ordinances in other counties; commented on confusion regarding the calculation of density versus density under zoning designations; on the affordable housing side, he has represented Rotonda West and Charleston Cay affordable housing complexes; opined the affordable housing language does not go far enough; the waiver section should be deleted from the ordinance; the entire TDU ordinance has thwarted smart growth management; and expressed concern about the process for bringing all information necessary for Board Members to make informed decisions.

Marvin Medintz, a Cape Haze resident and an alternative TDU panel member, clarified discussions regarding what the TDU controls versus what zoning designations control; stated removal of density is required by the Comprehensive Plan and the settlement with DCA; stated inventing density in the wrong locations could create another Wildflower; the existing ordinance provides more protection against transferring density to non-developable properties than language proposed in the revised ordinance; and requested the Board accept citizens' proposals in order to retain the status quo.

Sue Reske stated the Sierra Club agreed with the observation made by one of the Commissioners recently that changes to the TDU ordinance might be putting the cart before the horse; requested retention of the existing ordinance to prohibit transfer of density from submerged and non-developable lands and less restrictive flood zones; commented in support of using 100% not 120% of the median income regarding affordable housing; and urged the Board to listen to citizens and retain the existing TDU ordinance.

Bill Gibson, Sanctuary at Cape Haze Condominium President, asked for a show of hands of people who support the citizens' position to changing the TDU ordinance and the majority of the audience raised their hands. Mr. Gibson wondered why anyone would want to transfer units into coastal areas due to the slow down in the building industry and the high number of vacant units.

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

Chairman D'Aprile stated he is not content with the situation and requested input from Board Members. Assistant County Attorney Brown cautioned the Board not to discuss the quasi-judicial Gasparilla Marina appeal at this time.

Commissioner Moore explained many emails he has received express concern about removing the density cap. Jeff Ruggeri explained the proposed ordinance does not remove the cap. Commissioner Moore stated the old and new ordinance indicate submerged density may not be transferred. Mr. Ruggeri concurred. Commissioner Moore commented in support for West County residents, encouraged residents to evacuate instead of riding out hurricanes, and recalled the Land Acquisition Trust Fund has never been used. Mr. Ruggeri agreed about the non-use of the Fund and reported it is much more economical for citizens to purchase density units on the private market. Mr. Ruggeri explained density units on natural submerged lands may be transferred contingent upon meeting certain requirements. Commissioner Moore expressed reluctance to give up the waiver provision.

Commissioner Loftus agreed with Commissioner Moore about restrictions on transferring density in the coast high hazard area in West County and the waiver. Mr. Ruggeri indicated staff is prepared to make the two changes. Commissioner Duffy concurred regarding the waiver provision. Commissioner Cummings requested verification that the waiver and appeal processes are separate and recalled a DCA official indicated the Board should avoid waivers of the ordinance. Attorney Brown agreed and explained the intent of the waiver provision in the ordinance that has been utilized in four instances including Wildflower where 400 additional units were created and Babcock Ranch where 10,000 units were created. Commissioner Cummings recalled 16,533 new units were created on Babcock Ranch. Commissioner Cummings stated the goal of the TDU ordinance is to shift density not to reduce density and commented on the need to address flood issues in West County and the Burnt Store sector.

Commissioner D'Aprile stated issues relating to affordable housing, flood zone language, and waivers need to be discussed for amendments to the ordinance. County Attorney Knowlton requested specific direction on each issue e.g. three Board Members expressed concerns about flood elevations in West County as well as concerns about affordable housing and waivers.

COMMISSIONER MOORE MOVED TO APPROVE EXPANSION OF THE FLOOD ELEVATION CLAUSE IN THE ORDINANCE AS IT USED TO BE FOR WEST COUNTY, SECONDED BY COMMISSIONER LOFTUS.

Commissioner Cummings requested addition of property included in the Burnt Store Sector Plan. Mr. Loucks recalled some of the property runs to US 41 and these parcels are not in flood zones. Commissioner Cummings stated it would only be applicable to Coastal High Hazard Areas. Commissioner Loftus opined his concerns are specific to Coastal High Hazard Areas in West County whereas those areas in Burnt Store can be addressed under the Plan.

COMMISSIONER MOORE MOVED TO APPROVE FLOOD ELEVATION LANGUAGE IN THE ORDINANCE, AS AMENDED, TO INCLUDE THE BURNT STORE AREA, SECONDED BY COMMISSIONER LOFTUS.

Mr. Ruggeri indicated staff was prepared to read into the record the change relative to flood zones in West County. Chairman

D'Aprile suggested staff bring back the revised language at 2:00 PM.

Motion Carried 5:0.

Commissioner Cummings requested confirmation on staff bringing back the revision at 2:00 PM. Mr. Ruggeri responded in the affirmative. **Commissioner Duffy** concluded modifications will be made regarding West County, the Burnt Store Area (the west side of Burnt Store Road) and waivers. Mr. Ruggeri noted three Commissioners in support of excluding the waiver language. Attorney Knowlton stated the Board needs to consider the waiver provision in that it would not prohibit another Babcock situation but it would prevent another Wildflower situation. Attorney Brown explained it would not prohibit a large scale plan amendment as was done with Babcock whereas the Wildflower process and should have come to the Board as a Comprehensive Plan amendment, and stated it would be at the Board's discretion.

Attorney Knowlton recommended the waiver provision be retained.

COMMISSIONER MOORE MOVED APPROVAL TO RETAIN THE WAIVER LANGUAGE IN THE ORDINANCE, SECONDED BY COMMISSIONER LOFTUS.

Motion Carried 5:0.

Attorney Knowlton suggested the Board address concerns regarding the affordable housing issue. Mr. Ruggeri recalled staff's recommendation of 80% to 100% was changed to 120% during the first public hearing. **Commissioner Cummings** stated 100% calculates to 50% of the population which is a pretty big target.

COMMISSIONER LOFTUS MOVED APPROVAL TO REDUCE THE AFFORDABLE HOUSING PERCENTAGE TO 100, SECONDED BY COMMISSIONER MOORE.

Commissioner Cummings pointed out people who fall within the 80% of median income would be exempted. **Commissioner Moore** concluded density would be created at 100% and the number of additional units could increase significantly. **Chairman D'Aprile** commented in support of eliminating the affordable housing language. **Commissioner Loftus** expressed concern about having sufficient workforce housing in the future. **Commissioner Cummings** opined workforce housing may be an issue in a few years but taxpayers should be made aware of the subsidy to provide

affordable housing. **Chairman D'Aprile** reiterated opposition to the motion. **Commissioner Moore** requested the Board's option to deal with the motion and second on the floor. Attorney Knowlton pointed out the motion may be amended or withdrawn. **Chairman D'Aprile** stated a motion is on the floor to reduce 120% to 100%. **Commissioner Cummings** expressed support for the reduction but he will make a motion to remove the affordable housing language.

Motion Carried 4:1. Chairman D'Aprile opposing.

COMMISSIONER CUMMINGS MOVED APPROVAL TO REMOVE THE AFFORDABLE HOUSING EXEMPTION LANGUAGE FROM THE ORDINANCE, SECONDED BY COMMISSIONER MOORE.

Motion Carried 4:1: Commissioner Loftus opposing.

COMMISSIONER LOFTUS MOVED APPROVAL TO ACCEPT THE ORDINANCE AS MODIFIED. **Commissioner Cummings** reminded the Board that two concerns have not been addressed, one of which was on retention of the density cap. **COMMISSIONER MOORE SECONDED THE MOTION.** **Commissioner Cummings** expressed opposition since unresolved issues still exist. Attorney Knowlton suggested the motion and second be withdrawn. **COMMISSIONER LOFTUS WITHDREW THE MOTION AND COMMISSIONER MOORE WITHDREW THE SECOND.** **COMMISSIONER CUMMINGS MOVED APPROVAL TO RESTORE THE OLD LANGUAGE REGARDING THE DENSITY CAP.** **Chairman D'Aprile** announced the motion failed for lack of a second.

COMMISSIONER CUMMINGS MOVED APPROVAL TO REVISE THE LANGUAGE PERTAINING TO NATURAL VERSUS MAN MADE SUBMERGED LANDS AND PREVENT TRANSFER OF DENSITY TO NON-DEVELOPABLE PROPERTIES.

Mr. Ruggeri clarified staff's position that a property owner who excavates has the right to ask to transfer density off of the site but more usually density has been transferred to uplands on the excavation site and preserved into perpetuity.

Commissioner Moore concluded that **Commissioner Cummings** does not want to allow transfer of density off of natural submerged lands.

COMMISSIONER CUMMINGS MOVED APPROVAL TO ELIMINATE THE NATURAL SUBMERGED LANDS FOR TRANSFER OF DENSITY, SECONDED BY CHAIRMAN D'APRILE.

Commissioner Loftus concurred with staff's recommendation. Chairman D'Aprile requested clarification on transfer of density off of man-made submerged lands. COMMISSIONER CUMMINGS CLARIFIED THE MOTION FOR A PROHIBITION AGAINST TRANSFER OF DENSITY OFF OF ANY SUBMERGED LANDS.

Commissioner Duffy expressed concern about preventing transfer of density off of a waterfront lot with natural submerged lands caused by a natural occurrence e.g. hurricanes. Mr. Ruggeri stated the property owner would not be allowed to redevelop it or transfer the density. Commissioner Cummings pointed out barrier islands move and sea levels change and density would be moved e.g. from one side of the road to the other side of the road. Mr. Ruggeri concurred.

Motion Failed 2:3. Commissioners Duffy, Loftus, and Moore opposing.

Attorney Knowlton indicated staff has prepared the flood zone transfer language instead of bringing it back at 2:00 PM. Ms. Williams read the addition to Subsection 3-5-430(B)(1)(iv)(a) "Notwithstanding this exception, no transfers of density from a less to a more restrictive flood zone may take place in the West County Planning District or on property west of Burnt Store Road."

COMMISSIONER LOFTUS MOVED APPROVAL OF ORDINANCE 2007-032, AS REVISED, SECONDED BY COMMISSIONER MOORE.

Motion Carried 4:1. Commissioner Cummings opposing.

Commissioner Moore concluded that Commissioner Cummings does not want to allow transfer of density off of natural submerged lands.

COMMISSIONER CUMMINGS MOVED APPROVAL TO ELIMINATE THE NATURAL SUBMERGED LANDS FOR TRANSFER OF DENSITY, SECONDED BY CHAIRMAN D'APRILE.

Commissioner Loftus concurred with staff's recommendation. Chairman D'Aprile announced transfer of density off of man-made submerged lands.

COMMISSIONER CUMMINGS CLARIFIED THE MOTION FOR A PROHIBITION AGAINST TRANSFER OF DENSITY OFF OF ANY SUBMERGED LANDS.

Commissioner Duffy expressed concern about preventing transfer of density off of a waterfront lot with natural submerged lands caused by a natural occurrence e.g. hurricanes. Mr. Ruggeri stated the property owner would not be allowed to redevelop it or transfer the density. Commissioner Cummings pointed out barrier islands move and sea levels change and density would be move e.g. from one side of the road to the other side of the road. Mr. Ruggeri concurred.

Motion Failed 2:3. Commissioners Duffy, Loftus, and Moore opposing.

Attorney Knowlton indicated staff has prepared the flood zone transfer language instead of bringing it back at 2:00 PM. Ms. Williams read the addition to Subsection 3-5-430(B)(1)(iv)(a) "Not withstanding this exception, no transfers of density from a less to a more restrictive flood zone may take place in the West County Planning District or on property west of Burnt Store Road."

COMMISSIONER LOFTUS MOVED APPROVAL OF ORDINANCE 2007-032, AS REVISED TO RETAIN THE WAIVER LANGUAGE AND EXCLUDE THE AFFORDABLE HOUSING EXEMPTION LANGUAGE, SECONDED BY COMMISSIONER MOORE. Motion Carried 4:1. Commissioner Cummings opposing.

RECESS: 12:20 PM - 12:29 PM

(3) Public Works, **RECOMMENDED ACTION:** Consider approving an ordinance amending the Harbour Heights Street and Drainage MSBU. The proposed amendment would change the method of assessing properties within the unit from front footage to Equivalent Residential Unit (ERU), as defined in Chapter 4-6, Article 1, of the Charlotte County Code. The ordinance also provides for the addition of property to the unit, improved legal descriptions, powers of the governing board and the issuance of debt obligations.

Dawn Harrison explained the purpose of the ordinance is to change the method for assessing properties from front footage to ERU calculations.

COMMISSIONER LOFTUS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER CUMMINGS.

Motion Carried 4:0.

ABSENT: Commissioner Moore.

COMMISSIONER LOFTUS MOVED TO APPROVE ORDINANCE 2007-084 AS REVISED TO REFLECT ARTICLE XIII, SECONDED BY COMMISSIONER CUMMINGS.

Motion Carried 4:0.

ABSENT: Commissioner Moore.

(4) Public Works, RECOMMENDED ACTION: Consider approving an ordinance amending the Harbour Heights Waterway Maintenance District. The proposed ordinance would change the District from a special district to a municipal services benefit unit. The ordinance would also change the method of assessment from front footage to Equivalent Residential Unit (ERU) and provide for improved legal descriptions, powers of the governing body and the issuance of debt obligations and such other general changes to bring the language of the ordinance into conformity with other MSBUs in the county.

Ms. Harrison explained the purpose of the ordinance revisions.

Joan Hayes commented on the lot size and \$10 per front foot calculation.

COMMISSIONER CUMMINGS MOVED TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER LOFTUS.

Motion Carried 5:0.

COMMISSIONER CUMMINGS MOVED TO APPROVE ORDINANCE 2007-085, SECONDED BY COMMISSIONER LOFTUS.

Motion Carried 5:0.

(5) Community Development, RECOMMENDED ACTION: The Community Development Department recommends denial of the Appeal to the TDU ordinance.

Ms. Williams advised this is a quasi-judicial proceeding. (Minutes Supervisor Nice administered the oath. Chairman D'Aprile polled the Board for ex-parte disclosures.

Commissioner Cummings noted meetings with Attorney Haymans and various individuals and public discussions at Board meetings. Attorney Haymans clarified areas that have been covered and will be covered during this hearing. Commissioner Duffy recalled a conversation with Attorney Haymans. Commissioners Moore and Loftus and Chairman D'Aprile noted various discussions.)

Ms. Williams gave a slide presentation on the site, outlined issues regarding the calculation and transfer of density and a special exception placed as a result of a non-conforming use on the multi-family residential area, and reported staff recommends denial.

Attorney Haymans appeared on behalf of appellant, Progressive Investments Inc. of Lake Placid and Attorney Anthony Dubbaneh, in support of the appeal and reviewed the handout provided to Board Members; explained title was inspected because of disputes with adjacent land owners and portions sold off to anglers; historic research was conducted on the site including development of the marina in the 1960's; stated the residential component of marinas has become more valuable and the trend will continue to convert marinas to residential thereby reducing boating facilities and access; most marinas are not making money and equity interests are having to be sold for condominiums; and referenced a three-part newspaper article about a marina in Palm Beach County.

Attorney Haymans advised owners of the marina could decide to close the marina or build condominiums, handouts were distributed on floatation homes, referenced an ordinance in Ft. Lauderdale on floating homes and numerous newspaper articles on desalination plants, global warming, and advised the Comprehensive Plan and zoning would allow floating homes. Randy Keeling summarized his background and engineering experience of over 30 years, commented on the permitability of permanent homes, and opined this is a unique tract of land that can be developed.

Attorney Haymans stated density exists based on the Comprehensive Plan and zoning designation, the Board has the discretion to allow the transfer of density out of the Cape Haze Peninsula area or allow the issuance of restricted certificates, approval will protect a working asset that provides boating for residents and tourists, TDUs do not create density but transfer of the units will protect a working asset and eliminate density, there will be

no cost to the County; and asked for grant of the appeal to severe the density.

Commissioner Moore concluded density may be transferred out of West County. Attorney Haymans stated that can be made a condition of the certificates. Marvin Medintz pointed out the certificates of density would have to be recorded and he is not sure about this.

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

Motion Carried 5:0.

Commissioner Moore pointed out staff has indicated this is not permissible. Attorney Brown pointed out the new TDU ordinance is not effective but appellant can do it if approved by the Board. Attorney Haymans recalled discussion earlier about the difference between waivers and appeals and he is sure that the Board has the legal ability to recognize these units under the existing ordinance. **Chairman D'Aprile** agreed the land would be more valuable to developers instead of maintaining a marina on the site, expressed concern about setting a precedent in this case, and questioned the possibility of subsidizing this area. Attorney Haymans stated after this application, because of the revised TDU ordinance, no precedent will be set because any new applications will not be considered unless a large scale plan amendment is approved as was done regarding Babcock Ranch. Attorney Haymans stated there is no other private basin in Charlotte County with the zoning for submerged lands and the marina. **Commissioner Cummings** reviewed the quasi-judicial standards and process and stated staff has not provided any rebuttal. Ms. Williams expressed uncertainty about the permitting for closing off of a portion of the basin for the marina; explained the uplands are commercial and a plan amendment would have to be approved to allow construction of residential; pointed out 42 units of density could be severed and calculated \$2,500 per unit would not keep the marina afloat; density could be transferred to tropical storm surge areas within other sectors of the County; this is not an approvable Sending Zone; and requested denial.

Commissioner Cummings stated this can have a broader impact on excavations in other parts of the County; enumerated policies and

objectives that have to be met; and noted property surrounding the submerged land contains various types of land uses.

COMMISSIONER CUMMINGS MOVED TO DENY THE APPEAL TO THE TDU ORDINANCE AS RECOMMENDED BY STAFF, SECONDED BY COMMISSIONER MOORE.

Commissioner Loftus stated he would deny the appeal based upon the quasi-judicial process and criteria requirements.

Motion Carried 4:1. Chairman D'Aprile opposing.

Commissioner Cummings suggested adoption of a Blue Belt Plan with citing and identifying future sites and incentives for commercial marinas. *Commissioner Loftus* agreed with *Commissioner Cummings* on the need for a Blue Belt Plan and providing assistance to marinas. Mr. Loucks suggested the study be updated since it 12 years old. *Chairman D'Aprile* commented in support of providing incentives to commercial marinas.

VII. PRESENTATION AGENDA - No Items.

VIII. PUBLIC WORKSHOP AGENDA - No Items.

IX. BOARD WORKSHOP AGENDA - No Items.

V. REGULAR AGENDA

Z. Regular Agenda

(2) Environmental and Extension Services, **RECOMMENDED ACTION:** Approve the Resolution to borrow an amount not to exceed \$14,337,000 from the Pooled Commercial Paper Loan Program to accomplish the purchase of environmentally sensitive lands under the Conservation Charlotte Program.

Mr. Loucks explained the Buck Creek purchase and funding sources utilized, there is a need to reimburse Solid Waste, and reviewed options. *Commissioner Cummings* stated the issue is clear e.g. pay it from the General Fund from Reserves or from Conservation Charlotte Funds; the Committee would prefer the payment be made out of the General Fund but if the position of the Board has changed, the Committee would not oppose the Board,

and either option can be justified. **Commissioner Loftus** questioned the urgency of making a decision today. Chief Deputy White explained the closing documents include \$2.9 million for the Buck Creek; it can be eliminated but the acquisition was approved about a month ago by resolution and this action would provide the funding. **Commissioner Moore** opined the funds should be taken out of Reserves. **Chairman D'Aprile** stated he is personally against spending any more money from the General Fund or financing for the acquisition. **Commissioner Cummings** recalled the decision was made prior to approval of the referendum with the hope for reimbursement from Conservation Charlotte funds, if the referendum was approved, and reiterated there is no conflict with the Committee. **Commissioner Duffy** suggested leaving it alone. Chief Deputy White stated the impact was \$8 million and now it is \$3 million.

COMMISSIONER CUMMINGS MOVED TO APPROVE RESOLUTION 2007-188, SECONDED BY COMMISSIONER LOFTUS.
Motion Carried 3:2. Chairman D'Aprile and Commissioner Moore opposing.

(3) County Administration, **RECOMMENDED ACTION:** Request Board approval to reorganize two departments by: (1) moving some services and positions previously organized under the existing Community Development Department to the Building Constructions Services Department and eliminating two full-time positions; (2) renaming the Community Development Department to "Growth Management Department", as reorganized; (3) Further, Board's advice and consent (confirmation) to the appointment of Jeffrey Ruggieri, as department head and Director of Growth Management.

Mr. Loucks summarized the purpose of the reorganization and the recurring \$200,000 annual savings. **Commissioner Loftus** stated the Code Enforcement Board should be kept where they area. Mr. Loucks explained Code Enforcement is linked with zoning and enforcement of building codes. **Commissioner Moore** expressed support for the County Administrator's recommendation.

COMMISSIONER CUMMINGS MOVED TO APPROVE REORGANIZATION OF TWO DEPARTMENTS BY: (1) MOVING SOME SERVICES AND POSITIONS PREVIOUSLY ORGANIZED UNDER THE EXISTING COMMUNITY DEVELOPMENT DEPARTMENT TO THE BUILDING CONSTRUCTIONS SERVICES DEPARTMENT AND ELIMINATING TWO FULL-TIME POSITIONS; (2) RENAMING THE

COMMUNITY DEVELOPMENT DEPARTMENT TO "GROWTH MANAGEMENT DEPARTMENT", AS REORGANIZED; AND APPOINTING JEFFREY RUGGIERI, AS DEPARTMENT HEAD AND DIRECTOR OF GROWTH MANAGEMENT, SECONDED BY COMMISSIONER MOORE.

Motion Carried 4:1. Chairman D'Aprile opposing.

RECESS: 1:50 PM - 2:30 PM

VI. PUBLIC HEARING AGENDA - 2:00 P.M.

(1) Community Development, RECOMMENDED ACTION: Discuss a proposed Ordinance to amend the Zoning Code to establish a new zoning district titled "Excavation and Mining (EM)", in accordance with Section 125.66 FS.

Nicole Dozier explained staff was directed on October 23, 2007 to prepare a mining and excavation district ordinance, the Planning & Zoning Board held a hearing and recommended two changes to expand the boundary to .5 mile and for the agricultural use to continue until it converts over to the mining use, and offered to answer questions. **Chairman D'Aprile** requested clarification on Group III excavations. Ms. Dozier explained and stated the ordinance would be applicable to agricultural including agricultural estates.

Chuck Kindle presented a notebook of over 1,500 signatures on a petition and over 65 signatures on the on-line petition to Save Washington Loop; commented on safety hazards based on increased truck traffic that are incompatible with the area; encouraged the Board to review the informative comments on the on-line petition; and explained this will also be presented to the City of Punta Gorda Council.

Lawrence Martin expressed concern about mining and excavations in close proximity to water sources; suggested eliminating "west" or adding "east" of I-75 in the language for protection at least one mile in order to control mining away from water sources; advised the City has recognized the need to address mining impacts; referenced a letter from Dr. Sidney Bocus; and suggested looking at sparsity in relation to agricultural lands with future growth.

Gail Giles requested the establishment of special protection areas for Shell and Prairie Creeks and Washington Loop Road.

Robert Boehm asked the Board to consider notifying residents and land owners within .5 mile instead of 200 feet; stated although he has no objection to agricultural uses he is uncertain about exemptions for agricultural lands; requested the language "west of I-75" be stricken; and applauded staff for getting this matter expedited.

Steven Brown, a Palm Shores resident, applauded the Board for taking steps to protect water sources and suggested including a requirement for legislation in a plan amendment that applications for mining must be submitted.

Attorney Waksler encouraged the Board to consider providing for the zoning to revert back after closure of excavations.

Attorney Haymans stated that every agricultural property owner should get notice of this; assured Commissioners that many agricultural land owners have no clue the Board is about to take one of their rights away; every agricultural land owner would be eligible for a Burt Harris claim if this is adopted; mining materials are not used in agricultural areas, such materials are used in developed areas for building, roads, paving; and adoption of the ordinance will increase costs for everyone.

Ron Hill commented on a 15% increase in material costs based on closure of a mine in Collier County; asked the Board to reflect on worst things than a mine; and suggested mandating septic systems.

Attorney Berntsson pointed out the zoning ordinance does not include agricultural or restoration uses, there is no setback for abutting property other than vacant residential, excavation will take density off of the property, and the density issue and some unintended impacts need to be addressed.

Michael Whitt, on behalf of Coral Rock Aggregate Mine, stated dirt is not an equivalent to rock; aggregate goes into building schools and is the base for construction in the entire State; Charlotte County is being talked about in Tallahassee since the County is pushing the Legislature to take action on a mining moratorium; materials shipped in from other counties will increase costs to residents and commercial; and suggested the Board not treat rock like dirt.

Gary Frommer, Coral Rock Aggregate Mine, agreed with Mr. Whitt's comments; outlined the rock area in the County and Earthsource which is located within Babcock Ranch; advised zoning has allowed for residential encroachment onto mine lands; suggested the Board review the geographical survey; reported land owners in the Jones Loop area have asked him to put a mine in that area and he has refused since residential does not mix with mining; Coral Rock is producing material for Ajax Paving for the I-75 expansion project as well as other local projects; infrastructure costs are going sky high and cited the increased cost of asphalt; and stated Coral Rock officials were not notified of this meeting.

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

Chairman D'Aprile pointed out this is the first of two public hearings. Commissioner Duffy stated Washington Loop is a residential area and requested clarification that an application must be filed for a mining operation on agricultural lands. Ms. Dozier stated an extra step or additional procedure will be required to conduct a mining operation in a particular location and the ordinance will not take away any rights. Commissioner Duffy concluded the intent of the ordinance is to make sure that mines are located in appropriate areas, opined consideration needs to be given to aggregate locations, and reversions back to agricultural uses. Ms. Dozier agreed insofar as agricultural was being done prior to mining operations, otherwise a rezoning would be required. Commissioner Loftus request input from the County's Traffic Engineer. Russell Moore, County Traffic Engineer, reported traffic impact statements are required with each application for review by staff; the level of service is based on the overall traffic e.g. SR 31 has a lot of truck traffic but it has not changed the level of service. Commissioner Loftus stated it is based on trip generations and not the type of vehicles. Mr. Moore stated consideration is not given on the type of vehicle unless there might be a large number of tractor trailer rigs. Commissioner Loftus expressed concern about the impacts of automobiles versus trucks. Mr. Moore said traffic counts for existing service can be analyzed and trucks have impacts on pedestrians, bicyclists, and automobiles.

Commissioner Moore opined citizens and residents are harsh on Public Works, residents want safety on roadways, they are looking for stronger standards, and questioned the availability of options to do traffic studies. Mr. Moore expressed a willingness to receive direction from the Board to establish stronger standards. Mr. Moore indicated staff works diligently to reduce traffic impacts and accidents; this year has been the year with the lowest number of accidents in many years; and staff is concerned with safety and truck impacts to Washington Loop residents.

Commissioner Cummings stated two groups of issues exist regarding future applications and existing applications; the proposed ordinance provides greater protection than the current ordinance; suggested requiring a mining operation be done pursuant to planned development requirements to provide greater controls over buffers, setbacks, etc.; an underlying land use amendment should be required for Commercial Group III mining operations; and staff and the Board need to make commitments to bring as much information to the Board as possible in order for Commissioners to be able to make informed decisions.

Mr. Moore reported accidents are monitored. **Chairman D'Aprile** expressed concern about the addition of more mines in this one area that will impact residents and the water shed; stated a study should be done to ascertain impacts on safety and the water shed; and requested verification that mining and agricultural can be done on agricultural lands. Ms. Dozier concurred and pointed out after completion of the mining operation, the use would revert back to agricultural. Ms. Dozier stated, as part of the permitting process, a recent fee was imposed on trucks. **Chairman D'Aprile** questioned how the rock mining industry will be protected. James Dossett stated the burden is on the applicant dealing with EM zones. **Chairman D'Aprile** recognized the Board sometimes take rights away but questioned the rights of people around these mines. Mr. Dossett suggested establishing a special land use; stated approval today would not impact the current applications; and indicated another meeting might be beneficial concerning the establishment of a specific land use category for rock or aggregate extraction. **Chairman D'Aprile** explained Board Members are very concerned about the safety of residents and he is uncomfortable with the proposed ordinance.

Commissioner Cummings concluded the primary sources of aggregates are located in the South Florida Water Management District and not around Washington Loop Road or Shell and Prairie Creeks; and pointed out existing permitted operations will not be impacted by this ordinance. Mr. Dossett questioned the possibility of using more sophisticated models. Assistant County Attorney Rooney stated existing traffic analysis models are utilized. **Commissioner Cummings** encouraged using the more informative traffic and hydraulic models and stated the Board will need to make commitments to make this happen e.g. some type of land use designation with conditions such as a Planned Development. Ms. Dozier suggested staff incorporate some of the Planned Development procedures and Future Land Use Map amendment language into the ordinance prior to the next public hearing. **Chairman D'Aprile** requested details for number of permitted mines, mines that will not be impacted by this ordinance, and the number of mines and length of operation before closure.

(2) Community Development, RECOMMENDED ACTION: Discuss a proposed Ordinance to amend the Excavation Code to require new Group III Excavations to obtain a zoning classification of "Excavation and Mining (EM)", in accordance with Section 125.66 FS.

Ms. Dozier explained this public hearing is a clean up process for two items.

Mr. Whitt, Coral Rock Aggregate Mine, explained more sophisticated analyses equipment are being utilized and agreed this would be a good idea because there is a big difference between a car and a truck.

Mr. Brown commented on the procedures requiring a super majority vote to hold at least one of the two public hearings at a time other than 5:01 PM. **Chairman D'Aprile** expressed uncertainty but recognized the authorization of the Board to set public hearings. **Commissioner Moore** expressed uncertainty regarding the process and pointed out meetings are televised for review by the public at numerous times. **Commissioner Loftus** expressed the wish that the mining operations be notified of the second public hearing.

Mr. Martin questioned if mines in the Washington Loop area that have not received final approval will be impacted by this

ordinance and requested clarification if more sophisticated models are being utilized dealing with existing mine operations as far a traffic and hydrology and protections for the water supply. Mr. Dossett explained the process including notification

Attorney Haymans pointed out the new standards will not apply to the Triple D mining application and it is vested under the old standards.

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

Motion Carried 5:0.

Commissioner Cummings stated there was consensus on land use and traffic issues and requested input from staff on costs for traffic and hydraulic studies. Mr. Loucks indicated staff will bring back the requested information. **Commissioner Duffy** agreed on the need to know the costs.

X. CITIZEN INPUT - ANY SUBJECT

Mr. Whitt asked that the more sophisticated analyses not be applicable to mining applications that are vested.

Attorney Haymans pointed out the P&J application has been vested and the only thing remains is for rebuttal so the application will not be impacted by the new ordinance; commented on the possible need for a referendum to change the zoning designation; suggested application of the new zoning district to protect the aggregate supply at the same time that the ordinance is applied; and suggested that rock be separated and divided out in the new zoning district.

Mr. Boehm pointed out agricultural is for live stock and food production not in mining areas; the three mines and reservoir will have cumulative impacts and suggested cumulative impact studies be conducted on traffic and hydrology; and pointed out the market dictates mining operation placements.

Mr. Tucker, Vice Chairman of the Environmentally Sensitive Lands Oversight Committee, commented on the Buck Creek acquisition and funding options including the Florida Communities Trust grant and

stated it is important to have appraisals for review and decision making purposes at Committee and Board levels.

Mr. Martin suggested it would be advantageous to contact Lee County on such studies.

Attorney Waksler, as a private citizen and 24-year resident, stated she is appalled that the Board has added \$10,000 to the cost of each affordable housing unit by eliminating density that might have been used for affordable housing and pointed out the Board should question why 75% of the workforce qualify for affordable housing.

Attorney Berntsson stated eliminating the waiver provision in the TDU ordinance will have serious impacts; recalled recent land use amendments have been approved based on inclusion of affordable housing units but now the incentives have been eliminated; and stated the Board needs to be more careful.

Mr. Crane reported SWFWMD already requires hydraulic models and he does not want the Board to place another service on staff that will duplicate what is already being done.

AA. County Administrator

Mr. Loucks advised the County's HCP was advertised on November 23, 2007 and the next time period will be 60 days; referenced the memorandum he received requesting a reduction in Skate Park Fees; and suggested at least some Board Members be on the tarmac to welcome the first Skybus arrival at Punta Gorda Airport.

Robert Hebert reported the next Legislative Delegation meeting is scheduled on December 6, 2007 and reviewed a couple items not on the list e.g. exemption of purchasing items under the Sunshine will be taken care of at the State level and pointed out changes were made to suggestions submitted by **Commissioner Moore**; Congressman Mahoney will be meeting with the Board on Friday to discuss issues for the Legislative Delegation; and requested consensus on items since he will be working with the Chairman.

BB. County Attorney

CC. Commissioner Comments

Commissioner Cummings requested assurance that the 80% and 100% regarding affordable housing are applicable to this area's median income. Mr. Hebert concurred and cautioned as the housing prices increase, more people will not be able to afford to live in Charlotte County. *Commissioner Cummings* commented on the \$10,000 increase relative to property that was purchased and not properly zoned; the County has done a lot to provide affordable housing; and took exception to comments on the need to rehash old information.

Commissioner Moore thanked *Commissioner Loftus* for his prior tenure as Chairman. *Commissioner Loftus* requested input regarding the interest of Board Members to serve on the Canvassing Board and suggested *Commissioner Cummings* or himself.

COMMISSIONER MOORE MOVED APPROVAL TO APPOINT COMMISSIONER LOFTUS TO SERVE ON THE CANVASSING BOARD, SECONDED BY COMMISSIONER CUMMINGS.

Commissioner Cummings stated this appointment should be done on an annual basis when committee assignments are done.

Motion Carried 5:0.

Chairman D'Aprile stated he has served on the Board for seven years and he will do the best he can.

ADJOURNED: 4:45 PM

Signature on file in Commission Minutes
Chairman

ATTEST:

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

By: Signature on file in Commission Minutes
Deputy Clerk

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