

BOARD OF COUNTY COMMISSIONERS - LAND USE HEARINGS

MARCH 18, 2008

Land Use Public Hearings were held at the Murdock Administration Complex in Room 119, Port Charlotte, Florida. The following members were present: Chairman D'Aprile, Commissioner Duffy, Commissioner Moore, Commissioner Cummings, and Commissioner Loftus. Also in attendance were Assistant County Attorney Browne, County Administrator Loucks, Executive Assistant Dillon, and Deputy Clerk Lansing. The following members were absent: None.

The meeting was called to order at 9:00 a.m., followed by the Pledge of Allegiance. (Proofs of Publication were in order.)

(Commissioner Cummings was not present for this portion of the meeting).

Chairman D'Aprile announced the cancellation of the 1:00 PM Executive Session and advised a motion and vote was required.

COMMISSIONER MOORE MOVED TO APPROVE CANCELLATION OF THE 1:00 PM EXECUTIVE SESSION, SECONDED BY COMMISSIONER LOFTUS.

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

County Administrator Loucks advised overflow seating was available in Room B106; noted the March 25, 2008 Regular Board Agenda included a 2:00 PM Economic Development Workshop; requested it be rescheduled for when the full Board was available; and stated a motion and vote was required.

COMMISSIONER LOFTUS MOVED TO RESCHEDULE THE MARCH 25, 2008 ECONOMIC DEVELOPMENT WORKSHOP, SECONDED BY COMMISSIONER MOORE.

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

A. Regular Agenda

1. Real Estate Services - Approve the Resolution authorizing the Chairman to execute the County Deed conveying the Real Property to Charlotte County Habitat for Humanity, Inc., a Florida non profit corporation.

Resolution 2008-028

Paul Payette provided a short overview of the proposed Resolution.

COMMISSIONER LOFTUS MOVED TO APPROVE RESOLUTION 2008-028 AUTHORIZING THE CHAIRMAN TO EXECUTE THE COUNTY DEED CONVEYING THE REAL PROPERTY TO CHARLOTTE COUNTY HABITAT FOR HUMANITY, INC., SECONDED BY COMMISSIONER MOORE.

Motion Carried 4:0.

ABSENT: Commissioner Cummings.

(Commissioner Cummings was present for the remainder of the meeting).

B. Planning and Zoning Agenda

1. Planned Development Zoning District revision-Legislative-Countywide
An Ordinance amending Chapter 3-9, Article II, Zoning District Regulations of the Charlotte County Code of Laws and Ordinances, revising the Planned Development Zoning District, Section 3-9-49, regarding certain design criteria, development standards and procedures of the code. Applicant: Charlotte County Board of County Commissioners. Recommendation: Growth Management Department: Approval - Planning and Zoning Board: Denial

Inga Williams provided the Board with a colored copy of the proposed Ordinance highlighting Planning and Zoning Board (P&Z) changes made, detailed four (4) staff requests related to the Ordinance, advised P&Z recommended denial of the change, and mentioned public comments associated with waterfront height modification.

Commissioner Moore indicated if the PD was adopted it would include language that Manasota Key overlay would stand on its own. Ms. Williams noted conversations with the Manasota Key Group, explained if approved staff would make changes to the Code, and stated Manasota Key Code would override the County Code.

Ms. Williams assured the Board this Code was not based on any specific project; opined the changes were overdue; would provide a new direction for Charlotte County; used a visual overview to detail the proposed Code changes; and described their Intent. Attorney Browne interjected the need to discuss Item 10 Intent after the meeting. **Chairman D'Aprile** expressed confusion related to Attorney Browne's request. Attorney Browne explained PD case law and noted if approved language changes may be needed.

Ms. Williams explained the strikethroughs on pages 6,7, and 8, clarified the term "open space", and continued to provide detail for each code change listed on the visual presentation.

Commissioner Moore questioned the reverter clause. Ms. Williams responded and advised the applicant would be given additional time. **Commissioner Duffy** asked if the PD modifications would be more lenient for the developer, questioned if density or setbacks would be changed, asked if landscaping requirements were designed to conserve water, and asked about open space requirements. Ms. Williams stated the modifications would allow builders more flexibility in many areas; confirmed no change in density; indicated the 25' setback was eliminated; noted landscaping was designed to conserve water; and discussed changes in open space.

Mr. Loucks provided clarification that this was the first of two public hearings and this Board vote would only decide whether to move forward to the second public hearing.

Commissioner D'Aprile asked public speakers to please state their position, advise their County residence, and avoid repeating statements already made.

Don Root opined the County would be more competitive, provide better flexibility, would attract better jobs and businesses, and expressed it was important to proceed. **Commissioner Cummings** commented on having flexibility with specific standards and opined the need for predictability. Mr. Root noted the issue would be whether the County was willing to be open minded, negotiate solutions, and create a cooperative reputation. **Commissioner Duffy** clarified this PD was Countywide.

Bob Carol urged the Board not to approve the changes, opined the code changes would mean anything goes, and noted the need to preserve our low-keyed, relaxed way of life.

Bob Melvin opined this change would make the County more flexible, noted how much the County has to offer, stated the need to allow changes in zoning, and voiced the Boards decision would indicate whether Charlotte County is open or closed for business.

Michael Haymans stated his familiarity with zoning code laws; opined the need for better opportunities and flexibility; mentioned citizen involvement; commented on staff being aware of what the County needs; and stated 65' would still maintain the concept and blend in.

Randee LaSalle spoke on behalf of Chris King; agreed the intent of the Ordinance was sound but tipped in favor of the developer; noted waterfront setbacks should be adjusted not eliminated; opined less oversight and public input would occur with the proposed changes; and asked the Board to review the short and long term effects.

Steven Brown pointed out if approved this proposal would remove development standards that have been in place for many years, would leave decisions to staff, would take final approval from the Board of County Commissioners, and would no longer give the developer the guidelines needed. Mr. Brown expressed offence that staff stated final Board approval was only a courtesy, opined public comment would be removed, and asked for denial of a second public hearing.

Karen Mower opined the need for new visitors, revenues, and commercial venues to balance the residential and spoke in support of the proposed Ordinance.

Albert Tasayo opined this Ordinance is the County's economic stimulus and spoke in favor of approval.

Martin Lyons provided handouts of his remarks, spoke against the proposed PD waterfront height relaxation amendments, pointed out P&Z recommendation to deny, noted the 1,200' rule allows shoreline enjoyment, and asked for denial.

Thomas Knight provided a petition, noted many were unable to attend, mentioned he has watched the County grow, voiced the need for flexibility to help increase employment, and urged the Board move forward for further discussion.

Holly Hayes spoke in favor of the proposed changes and opined the need for jobs and growth in the community.

Marvin Medintz focused on the haste of the Board, provided a blueprint of the negative kind of development that could be built in West County, quoted Chairman Hess and Attorney Browne from the February P&Z Hearing, mentioned the Sunshine Law, opined the County has a serious problem with decision making procedures, and asked the Board to slow down, start over, examine the long term risks, and reject this proposal.

Julie Mathis spoke in support of the amendment and commended forward thinking.

Suzanne Graham spoke in favor of the amendment; noted it would help the entire County; indicated the importance of creating more jobs, putting local contractors and suppliers back to work; and keeping the money in Charlotte County.

Douglas Tucker opined it is our duty to leave Charlotte County better than it was found; discussed the down economy, high unemployment, and the need for flexibility to encourage growth; pointed out the building industry makes up 60% of the County's workforce; noted the need to employ our residents, opined height could protect more green space, and protect pristine land.

Richard Flint expressed concern with the level of unemployment in Charlotte County; indicated the need for a better economic engine to provide long term employment; commented one project is not enough to solve the problems; opined working together to select the right project and location; mentioned zoning, height restrictions, and procedures; and opined this was the wrong way to proceed.

Lane Deidrick spoke in support of the amendment and on behalf of over 700 members of the Chamber of Commerce, asked the Board to trust staff and their analysis, and opined the need for flexibility to move forward and be competitive.

Andy Dodd commended staff for taking on this hard task, voiced his support, and asked for approval to move forward.

Dan Dalessie explained the difference between plan developments and conventional zoning districts, opined PDs allowed for creativity and public input, discussed height and density, and mentioned keeping within the time frame.

Debra Highsmith expressed concern that gaps between intent and appearance are closed before approval, discussed PD zoning and heights in the Burnt Store area, asked for code language to be made clearer, and expressed the need for positive fiscal impact.

Jim Sanders spoke in favor of moving forward; represented 600 Charlotte/DeSoto Building Association members and 15,000 employees; voiced it is time to update the 20-year old Code; mentioned member comments that it is difficult to do business in Charlotte County; opined the code would allow better planning and address green building technologies.

Ernst Sturge spoke in favor of the proposed changes; opined the Ordinance would provide opportunities for flexibility, economic enhancement, and more open space; commended staff; and asked the Board to trust their recommendations.

Ted George stated although boating is the number one industry in Florida it has taken a hard hit over the last two years with the decrease in public access; indicated his business must move by 2010; commented the new codes may help the marina find another home; agreed with the proposed height increases and required community enhancements; and urged the Board to move forward.

Betsy McCallem urged the Board to be careful when deciding on the waterfront Ordinance; expressed belief that developers and their attorneys would profit; opined West County does not have the infrastructure or amenities needed when considering a luxury hotel; asked for an official motion to be made to exempt the Manasota Key overlay stand; read a letter written by Betty Sue Carol opposing the zoning and the PD revisions.

Bill Truex recommended moving forward in discussions, suggested possible language improvements, and the need for landscape planning and green space.

Tom Smith stated he was very familiar with PD regulations; agreed with most changes; opposed to the way the waterfront regulations were thrown out; read a portion of the existing regulations related to height; suggested clarification was needed on page two; and asked why this was a legislative hearing.

Lynn Seibert discussed the downward Florida real estate market; mentioned height restrictions; said proposed changes would not create economic development; and opined this location does not have the population or upscale amenities needed to encourage a luxury hotel and could not stay open more than six months a year.

Sara Watkins represented Gasparilla Island Conservation and Improvement Association (GICIA); spoke in opposition of the proposed elimination of the current 35' height restriction within 1,200 feet of major water bodies; expressed emergency evacuation concerns for the island; discussed set backs; impact studies; and the existing height rules were created because residents demanded them and do not want high rise buildings to cover the sunsets.

James Hart opined the proposed changes would provide the best development opportunities to Charlotte County; noted it would put out a welcome mat for future growth; would increase public green space; and asked the Board to move forward.

RECESS 11:10 AM - 11:25 AM

(Public Hearing Continued...Agenda Item B-1)

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

Dan Wear spoke for the working class who were unable to attend; urged the Commissioners to be pro-business and stimulate the economy; opined the changes would allow flexibility; increase revenue; promote case-by-case review; and asked the Board to vote yes.

Randy Keicins spoke in favor of moving forward for continued discussions, described Charlotte County as a low key community, mentioned open space and retention ponds, and challenged objectors to compare the existing Ordinance with proposed changes.

Penny Riley expressed concern with proposed high-rise development; asked the Board to envision the tip of the Cape Haze Peninsula; noted not receiving revenues from the existing empty condos; indicated there would be an increase of people and traffic to reach services; and suggested developing industrial parks to create higher paying jobs.

Jim Quinn encouraged the Board to move forward; suggested they consider citizen concerns; noted the amount of input heard to decide on whether to set a second Public Hearing; recommended meeting with staff to tie up loose ends; and move forward.

Scott Roberts said he was worried about the Placida community, attended the P&Z Board meeting, noted they denied a portion of the proposed Ordinance, and opined there is no room for fudge.

Bill McBride expressed concern with the PD language; noted the need for clear intent, mentioned CRAs, setbacks, heights, read portions of the proposed Ordinance, opined the changes would take away the Boards right to waive or deviate, and asked if the Board would still have the right to overrule if this Ordinance is passed. **Chairman D'Aprile** advised his question would be answered.

Mike Adams stated he loves living in a high-rise and is in the process of building a high end luxury residential project on the Peace River in Sarasota County; opined the economy will be back in less than 10 years; spoke in support of PDs and most of the proposed Ordinance; and mentioned keeping as much flexibility as possible.

Pat Larendine urged the Board to be pro active on the amendment, noted the importance of flexibility for the entire County, and opined the need for industry to relieve taxpayers.

Kathleen Roarer expressed concern related to open space; public space; drainage; pavements; setbacks; lack of guidelines; public input; low impact development concepts; and encouraged the Board to return the proposed revisions back to staff for updating and present it again later at another Public Hearing.

Don Libby asked if an Environmental Protection Agency (EPA) study was done on the property, noted that when Mercury was on the property they ran motors 24 hours a day putting pollutants into the water, and expressed concern if dredged the pollution would run into Placida Harbor.

Chairman D'Aprile responded that studies were required prior to any project approvals.

Rob Bernsson noted the existing PD Code is 20 years old; quoted Steven Brown; noted the Ordinance applied to the entire County; clarified density and special zoning regulations; mentioned flexibility with community enhancements; explained the Commissioners have final approval prior to site plan approval; and urged the Board to support the change.

Larry B. Jones commended **Commissioner Moore** for the Manasota Key overlay exemption; indicated the 65' reference is truly 82'; and noted zoning gives citizens an advance guarantee of what can be built next to them.

Sue Reskey spoke against moving forward; noted flexibility within existing PDs; read portions of the proposed Ordinance; mentioned retention ponds related to open space; noted recommendations made by the Charlotte Assembly; and asked the Commissioners to reinstate standards, increase open space in coastal high hazard areas, and set a maximum 35' height throughout the County.

Percey Angelo spoke in opposition to the PD and waterfront height amendments, noted the P&Z Board had rejected the amendments, and mentioned lack of standards and the exclusion of public input.

Jeri Waksler noted the existing PD Ordinance is difficult and outdated, opined the proposed Ordinance will provide the best opportunity to achieve goals, and asked the Board to move to a second hearing.

Todd Rebol opined smart growth is positive and not about reducing property rights or limiting density; stated vertical building is needed and reduces the footprint; voiced the desire for more open space; said developers would avoid wetlands if they could build up; and noted the need to work together to increase the tax base.

Chairman D'Aprile recommended staff maintain a list of citizen questions to be addressed and asked for a motion to close the Public Hearing.

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

Commissioner Cummings indicated we are a nation of laws; mentioned in 1994 a Board of County Commissioners (BCC) running mate won with an anti growth campaign; suggested the process should not rely on which staff member is dealing with which developer at what time and who was elected to the Board at that time. **Commissioner Cummings** noted the need for clear standards, flexibility with detail, predictability, density, footprints, heights limitations, and stated neighborhood plans should prevail.

Commissioner Duffy noticed citizens seemed to fall within two opinion groups, retirees and/or those who live near the water and working citizens looking for community progress and jobs; opined the importance of economic development linked to the PD Ordinance; took offense to comments related to Sunshine Law violations; mentioned hotel development, available shoreline and possible locations; commended staff for considering an improved look for retention ponds; confirmed the Commissioners do have the preliminary final DRC approval prior to consent agenda approval; and recognized those opposed to staff recommendations now were the same people who asked the Board to listen to staff last year.

Commissioner Loftus agreed tax base diversification was needed; noted presently 86% of taxes are paid through residential; stated we are hurting since our biggest industry was building related and opined it would be sometime before we see an improvement; stated the need for economic development to help provide good jobs; noted the need for amenities and a waterfront point to attract visitors; mentioned a possible water taxi to transport tourists back and forth to Englewood; commended staff for changing PD flexibility; pointed out most citizens agree to the increase in height with open space; commented on regulations and appeals; and agreed that Manasota Key Overlay should be protected.

Commissioner Moore opined everything had been said and he would discuss further in the future.

Commissioner Cummings commented that he does not see this issue as a conflict between retirees and working citizens; stated the majority had height limitation concerns; mentioned economic diversification could include tourist development in addition to service industries; explained the difference between legislative and quasi-judicial; and noted many citizens were not considered experts and were unable to make decisions without clear standards.

Chairman D'Aprile voiced his desire to improve our community; noted height concerns; said he was disturbed with the state of the economy; was in favor of economic development; and asked if the Board wanted to continue discussions at a second Public Hearing.

COMMISSIONER LOFTUS MOVED TO SET A SECOND PUBLIC HEARING APRIL 8, 2008 TO APPROVE AMENDMENT 3-9-49, SECONDED BY COMMISSIONER DUFFY.

Motion Carried 5:0.

RECESS 1:00 - 2:00 PM

COMMISSIONER LOFTUS MOVED TO SET A SECOND PUBLIC HEARING TO APPROVE AMENDMENT 3-9, SECONDED BY COMMISSIONER MOORE.

Motion Carried 5:0.

2. Waterfront Property code revision - Legislative - Countywide
An Ordinance amending Chapter 3-9, Article III, Zoning Special Regulations of the Charlotte County Code of Laws and Ordinances, Section 3-9-98, regarding modifications to building height and building setbacks from property lines.
Applicant: Charlotte County Board of County Commissioners.
Recommendation: Growth Management Department: Approval -
Planning and Zoning Board: Approval with two changes

Ordinance 2008-027

Ms. Williams provided an overview of the proposed revision to the waterfront property code, referred to a visual slide, and read language changes into the record.

Commissioner Moore asked for page and line clarification. Ms. Williams responded page 3, line 23.

Debra Highsmith pointed out that not all upscale waterfront resort heights needed to be high-rise, noted their inclusion under the current waterfront code, read current zoning codes allowing heights within the County, stated it was ridiculous to claim Charlotte County is not open for business, and said she was sad to see Chambers of Commerce pit their members against their patrons.

B.J. Galberaith indicated Section A of the proposed waterfront Ordinance allowed industrial uses and marine businesses to build up to the seawall; opined it was dangerous, too close to the water, would invite serious future problems; read Section A-2; asked that the Overlay be excused from the waterfront; noted working with Ms. Williams to eliminate conflicts; and advised they would be on an Agenda in the near future.

James Corcoran Jr. advised he was a retired engineer; noted speaking at the Zoning Board hearing; mentioned his sloped home in New Jersey; suggested no slope sizes above 35 feet; and opined it would add at least 10 feet and another floor.

Betsy McCallem read a statement from Betty Sue Carol regarding the proposed Waterfront Property Code Revision, discussed FEMA regulations, and setback points.

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

Ms. Williams advised the marine business language was already included in the Code; noted Manasota Key Code would override any other code; mentioned the only setbacks removed were related to the Charlotte Harbor CRA area; and expressed confusion related to Mr. Corcorans height comments.

Chairman D'Aprile clarified Mr. Corcorans point, suggested if the slope was adjusted language should be added to forbid living space on the additional floor, and opened the subject to discussion. **Commissioner Moore** agreed and asked about the measurements of the roof line. **Chairman D'Aprile** stressed the importance that no extra living space inside or around the outside would be allowed and stated he would not vote unless that language was included.

Ms. Williams said the mid point would still be at 35' no matter what the slope height, noted the problem could be solved with language stating the maximum slope elevation of 1 to 3 be allowed, and continued to discuss the issue with the Board.

Commissioner Loftus and **Commissioner Moore** asked for **Chairman D'Aprile's** consent of the proposed language. Attorney Browne suggested adding language stating Manasota Key Overlay District was exempt. Ms. Williams responded.

Commissioner Cummings pointed out neighborhood plans work and are unique from the rest of the County. **Commissioner Moore** disagreed with the term "neighborhood plans". **Commissioner Cummings** explained the difference between adopted neighborhood plans and excepting a study. **Commissioner Moore** agreed. **Commissioner Loftus** commented that upon adoption specific language would be included prior to a vote. Ms. Williams summarized the proposed language changes for the record.

Commissioner Cummings asked Attorney Browne about the principals of law related to specific language. Attorney Browne explained in the event of conflict the general rule of construction allowed the more specific language to prevail over general language and opined in this case both were specific. **Commissioner Cummings** commented on the need to include standard language in the Zoning Code to assure an adopted neighborhood plan standard would prevail over Countywide standard.

COMMISSIONER LOFTUS MOVED TO APPROVE ORDINANCE 2008-027 REVISING THE WATERFRONT PROPERTY CODE WITH TWO CHANGES AND INCLUDING MODIFICATIONS READ INTO THE RECORD, SECONDED BY COMMISSIONER MOORE.

Motion Carried 5:0.

3. *Fertilizer Ordinance - Legislative - Countywide* An Ordinance amending Chapter 3-9 of the Charlotte County Zoning Code, creating a Fertilizer Ordinance, Section 3-9-64.1, providing for the regulation of fertilizers; providing for purpose and intent; providing for definitions; providing for applicability; providing for the location, timing, content, rates, and methods of fertilizer application; providing for exemptions; providing for certification and training; providing for enforcement and penalties; providing for administrative relief; providing for conflict with other Ordinances; providing for severability; and providing for an effective date. Applicant Charlotte County Board of County Commissioners. Recommendation: Growth Management Department: Approval - Planning and Zoning Board: Approval

Ordinance 2008-028

Jim Thompson advised the Commissioners to correct a typographical error on page 4, asked them to add the word "not" to paragraph D-2, and read the corrected sentence into the record.

Mr. Thompson explained the reason for the proposed Fertilizer Ordinance was to protect natural resources, surface waters, and wetlands and noted Ralph Mitchell was available to answer questions.

Cris Costello spoke on behalf of several organizations and businesses, provided handouts, opined consistency was important, asked for Charlotte County Ordinances to be consistent with surrounding counties, and recommended language.

Betsy McCallem spoke in support of the Fertilizer Ordinance, opined approval would greatly improve water quality, and quoted facts on red tide.

B. J. Galberaith urged the Board to pass the Fertilizer Ordinance and discussed red tide blooms.

Don Chaney mentioned being able to eat everything out of the gulf when he was a child; noted the amount of coastal pollution in the gulf now; discussed red tide, algae, and blooms; indicated what is in fertilizers; and advised County fertilizer statistics.

Unidentified citizen asked the Commissioners to allow the current decisions to be made business friendly and positive for the environment; opined the need for more education and clear standards; noted cost estimates; quoted interested representatives and read legislator comments.

Debra Highsmith spoke in support of the Fertilizer Ordinance; provided a visual presentation previously viewed at the planning meeting; discussed Fertilizer Ordinances, Planned Development Zoning District Revisions, Waterfront Property Code Revisions, and pleaded the case for strong standards for set backs, heights, buffers, and landscaping.

Tami Kushnir spoke in favor of the Fertilizer Ordinance; provided handouts; commended the Board; mentioned she is involved with a nature friendly fertilizer business; and discussed education and positive changes to the environment.

Erica Santella spoke in favor of the Fertilizer Ordinance, urged Charlotte County to adopt the Consumer Fertilizer Task Force Model Ordinance, and discussed science related issues.

Mike Holsinger stated education is important but not enough, indicated the need for consistency among neighboring County Ordinances, and summarized science research.

Suzanne Graham indicated she had an issue with being required to pay for an additional license fee.

Nick Lobetto urged the Commissioners to read the science related pamphlets handed out.

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

Motion Carried 5:0.

Commissioner Moore commented there should be consistency among Ordinances; agreed with the Ordinance except for the four month

black out period; asked staff for slow release clarification; and discussed red tide and run off.

Mr. Thompson opined this Ordinance is critical to reduce nutrient run off and protect the community, noted people need to carefully follow instructions to lower pollution, compared the Ordinance to the State Task Force Model Ordinance, and explained the Ordinance in detail.

Commissioner Moore asked if there would be less conflict if the County followed the State model. Mr. Thompson noted the State legislature would be considering this Ordinance in their legislative session this year and asked Attorney Rooney to provide detail. Attorney Rooney explained the Bill is at Committee; would be retroactive to the beginning of 2008; and opined not knowing until the Bill goes to floor.

Commissioner Cummings mentioned Charlotte County as a phosphate area; noted other regions are considered nitrogen areas; and opined standards would be effected. Mr. Thompson responded.

Commissioner Duffy asked how floratom would be effected and about certification fees. Ralph Mitchell explained floratom required more attention and water. Mr. Thompson provided details of the proposed \$25.00 Best Management Practice Class for businesses and noted citizens were welcome to attend.

Commissioner Duffy opined why the County should adopt the State Model now instead of amending the County Ordinance later, noted having no present standards, discussed many positive options already being used, and asked staff if they agreed. Mr. Thompson noted there were only three differences in the Ordinances, opined any standards adopted would be an improvement, and mentioned changes could be made as science develops.

Commissioner Loftus liked the Ordinance; disagreed with the black out period; opined 3' was adequate; noted the effective date should be moved up, expressed the importance of education; and opined the need to change our ways.

Commissioner Cummings suggested creating incentives within the Fertilizer Ordinance to encourage people to use draught tolerant

grasses, commented that grass will grow during the black out period without the use of fertilizer, mentioned working regionally, and opined approving the Ordinance.

COMMISSIONER LOFTUS MOVED TO APPROVE FERTILIZER ORDINANCE 2008-028 INCLUDING THE ELIMINATION OF THE BLACKOUT PERIOD, AMENDING 10' TO 3', AND EFFECTIVE IMMEDIATELY WITH 180 DAY GRACE PERIOD AS READ INTO THE RECORD, SECONDED BY COMMISSIONER MOORE.

Chairman D'Aprile asked how the Ordinance would be enforced and how people would be notified. Mr. Thompson commented businesses would need to be certified and mentioned outreach programs to educate residents. **Commissioner Loftus** suggested inserting notices in water bills.

Commissioner Moore asked for confirmation on slow release nitrogen and noted he would prefer following the State Model of 30%. **Commissioner Duffy** asked if 50% was available in Charlotte County. Staff advised it was available but stores would sell out their existing stock before restocking the 50%.

Motion Carried 4:1. Commissioner Cummings opposing.

Mr. Thompson asked for effective date clarification and it was read into the record.

RECESS 3:45 PM- 4:00 PM

4. PP-07-10-15 - Quasi Judicial - Commission District III Charlotte Properties, LLC has applied for a Preliminary Plat, Parkside Subdivision, for a subdivision consisting of 48 lots for cluster housing in Section 27, Township 41 South, Range 20 East. The site, consisting of ten (10) acres, more or less, is located on the east side of Gasparilla Pines Boulevard, south of Wildflower Unit 1 subdivision, west of Rotonda Circle and northeast of Golden Tee in Commission District III. Recommendation: Building Construction Services Department: Approval - Planning and Zoning Board: Approval with three conditions

(Deputy Clerk Lansing administered the oath to prospective witnesses for (Item 4) this quasi-judicial petition. **Chairman**

D'Aprile polled the Board for ex-parte disclosures and there were none.)

Barbara Jeffries described the Preliminary Plat in detail, used a visual map, provided the history of changes previously made to the plat, advised approval with three conditions, and illustrated the results of the proposed change.

Attorney *Bernsson* spoke on behalf of the Petitioner, noted an engineer was present to answer any technical questions, mentioned special exceptions were already approved for 10 acres allowing 50 units on the plat, stated they proposed 48 units, indicated several amenities being provided, and explained they were in agreement to conditions in the staff report.

Commissioner Loftus asked if there was any issue with the Conservation Overlay or if any land was set aside for conservation. Attorney *Bernsson* explained they were not within a Conservation Overlay and noted they were meeting the open space Ordinance.

James Corcoran provided handouts, mentioned he owns lot 17, noted the proposed black top is 5 ft from his property, expressed concern that the driveway will be larger than the road, noted flooding, drainage, and the need for additional buffers.

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

Motion Carried 5:0.

Attorney *Bernsson* advised this is not a Planned Development, addressed citizen concerns, and stated they are meeting all the requirements.

Ms. Jeffries added buffers were not required and described the driveway, landscaping, and sidewalk areas. **Commissioner Moore** asked about the sidewalk location. *Ms. Jeffries* responded.

COMMISSIONER MOORE MOVED TO APPROVE ITEM 4 WITH CONDITIONS, SECONDED BY COMMISSIONER LOFTUS.

Motion Carried 5:0.

5. NOPC-07-10-68 - Quasi-Judicial - Commission District I
KH Holdings, LLC c/o Robert H. Bernsson, Esq., is requesting to amend the Development Order and Map H for the Sandhill Development of Regional Impact to allow a hotel and associated commercial use on the land identified as C-24, containing 3.8 acres, in Tract 2, by reallocating 13,400 square feet of 30,400 square feet of Commercial to 120 hotel units and retaining 17,000 square feet for Commercial; to revise monitoring requirement to a biannual report; to address a scrivener's error reflecting the previously approved buildout date of 2012; and to modify any conditions that may suggest a conflict with this objective. The property is generally located south of DeSoto County, west of the Deep Creek area, north of Rampart Boulevard, and east of Loveland Boulevard; Sections 7, Township 40 South, and Range 23 East in Port Charlotte, Florida; a complete legal description is on file. Recommendation: Growth Management Department: Approval - Planning and Zoning Board: Approval

Resolution 2008-029

(Deputy Clerk Lansing administered the oath to prospective witnesses for this (Item 5) quasi-judicial petition. **Chairman D'Aprile** polled the Board for ex-parte disclosures and there were none.)

Sean Smith outlined the Development Order amendment and Map H.

Attorney Bernsson represented the Petitioner, described the reason for the amendment, and requested approval.

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

Motion Carried 5:0.

COMMISSIONER LOFTUS MOVED TO APPROVE RESOLUTION 2008-029, SECONDED BY COMMISSIONER MOORE.

Motion Carried 5:0.

6. Z-07-12-96-TDU - Quasi-Judicial - Commission District II An Ordinance approving an amendment to the Charlotte County Zoning Atlas from Agriculture Estates (AE) to Planned Development (PD), including approval of an increase in density per the Transfer of Density Units Ordinance, for property located south of Notre Dame Boulevard, north of Shotgun Road, west of Green Gulf Boulevard, and east of Burnt Store Road; in the Punta Gorda area, Florida, containing 132.7± acres; Commission District II; Petition No. Z-07-12-96-TDU; applicant: The Bryan W. Paul Family LTD Partnership. Recommendation: Growth Management Department: Approval - Planning and Zoning Board: Approval with conditions

Ordinance 2008-029

(Deputy Clerk Lansing administered the oath to prospective witnesses for (Item 6) this quasi-judicial petition. **Chairman D'Aprile** polled the Board for ex-parte disclosures and there were none.)

Jie Shao provided detail of the proposed Ordinance amendment, noted it would be approved with conditions, and advised the applicant was in agreement to the conditions.

Commissioner Moore asked for entrance location detail. Daniel DeLisi responded and pointed out the entrance locations.

Neale Montgomery spoke on behalf of the Petitioner, mentioned policies, and asked for approval.

Commissioner Cummings asked for location clarification as related to Tropical Gulf Acres. Mr. DeLisi responded in detail. **Commissioner Cummings** opined connectivity was a good thing. Mr. DeLisi agreed.

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

Commissioner Moore asked Mr. DeLisa if CCU utilities included water and sewer and asked if they would be built on time. Mr. DeLisa explained a review meeting was scheduled with CCU and the County Attorney.

COMMISSIONER LOFTUS MOVED TO APPROVE ORDINANCE 2008-029,
SECONDED BY COMMISSIONER MOORE.
Motion Carried 5:0.

7. PA-07-12-97 - Legislative - Commission District I An Ordinance pursuant to Section 163.3187(1)(C), Florida Statutes, adopting a Small Scale Plan Amendment to the Charlotte County Future Land Use Map from Low Density Residential to Commercial Center, for property located north of Duncan Road (U.S. 17), south of Riverside Drive, east of I-75 and west of Regent Road, in the Punta Gorda area, Florida, containing 5.93± acres; Commission District I; Petition No. PA-07-12-97; applicant: Pete Reppucci. Recommendation: Growth Management Department: Approval - Planning and Zoning Board: Approval

Ordinance 2008-030

Chairman D'Aprile explained Items 7 and 8 were companions, would be considered together, and called for the oath first. (Deputy Clerk Lansing administered the oath to prospective witnesses for (Item 8) this quasi-judicial petition. Chairman D'Aprile polled the Board for ex-parte disclosures and there were none.)

Ms. Shao explained this was a unified Petition, noted the companion Petition would approve with conditions, provided detail for both, and stated the applicant was in agreement with all conditions.

Attorney Bernsson represented the Petitioner, spoke on behalf of the plan amendments and rezonings, mentioned utilizing the railroad to transport and unload aggregate, and briefly provided detail for both items.

Commissioner Moore asked if water and sewer were already there. Attorney Bernsson advised Punta Gorda would bring it in. Chairman D'Aprile asked what aggregate would be carried on

railroad cars. Attorney Bernsson advised the aggregate would consist of rocks, stones and roadway construction materials.

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

Motion Carried 5:0.

COMMISSIONER LOFTUS MOVED TO APPROVE ORDINANCE 2008-030, SECONDED BY COMMISSIONER MOORE.

Motion Carried 5:0.

8. Z-07-12-98 - Quasi-Judicial - Commission District I An Ordinance approving an amendment to the Charlotte County Zoning Atlas from Commercial Intensive (CI), Commercial Highway (CH) and Residential Multi-family 5(RMF-5) to Planned Development (PD), for property located north of Duncan Road (U.S. 17), south of Riverside Drive, east of I-75 and west of Regent Road, in the Punta Gorda area, Florida, containing 19.76± acres; Commission District I; Petition No. Z-07-12-98; applicant: Pete Reppucci. Recommendation: Growth Management Department: Approval - Planning and Zoning Board: Approval with conditions

Ordinance 2008-031

COMMISSIONER MOORE MOVED TO APPROVE ORDINANCE 2008-031 WITH CONDITIONS, SECONDED BY COMMISSIONER LOFTUS.

Motion Carried 5:0.

9. Z-07-05-38 - Quasi-Judicial - Commission District IV An Ordinance approving an amendment to the Charlotte County Zoning Atlas from Residential Single-Family-3.5 (RSF-3.5) to Environmentally Sensitive (ES), for property generally located west of Flamingo Boulevard, east of Pear Street, south of Carbon Avenue, and north of Como Street, in the Port Charlotte area, containing 150± acres; Commission District IV; Petition No. Z-07-05-38; applicant: Board of County Commissioners. Recommendation: Growth Management Department: Approval - Planning and Zoning Board: Approval

Ordinance 2008-032

(Deputy Clerk Lansing administered the oath to prospective witnesses for (Item 9) this quasi-judicial petition. **Chairman D'Aprile** polled the Board for ex-parte disclosures and there were none.)

Jeffrey Crimer advised this was the second Public Hearing, stated the proposed rezoning amendment was to provide Scrub Jay mitigation in the Flamingo Boulevard area, and offered to answer questions.

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

COMMISSIONER MOORE MOVED TO APPROVE ORDINANCE 2008-032, SECONDED BY COMMISSIONER LOFTUS.
Motion Carried 5:0.

10. PA-07-11-70 - Legislative - Commission District III
Pursuant to Section 163.3187(1)(C), Florida Statutes, adopting a Small Scale Future Land Use Map Amendment to the Charlotte County Comprehensive Plan amending the Charlotte County Future Land Use Map from Low Density Residential and High Density Residential to Parks and Recreation, for property located north of Oyster Creek, northeast of Lemon Bay, and west of Placida Road (C.R. 775), in the Englewood area, Florida, containing 9.68± acres; Commission District III; Petition No. PA-07-11-70; applicant: Charlotte County Board of County Commissioners. Recommendation: Growth Management Department: Approval - Planning and Zoning Board: Approval

Ordinance 2008-033

Mr. Crimer described the purpose for the proposed amendment and offered to answer questions.

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

COMMISSIONER MOORE MOVED TO APPROVE ORDINANCE 2008-033, SECONDED BY COMMISSIONER LOFTUS.

Motion Carried 5:0.

11. Vested Rights Ordinance - Legislative - Countywide An Ordinance amending the Code of Laws and Ordinances of Charlotte County, Florida; amending Chapter 3-5 to add Article XXVI; adopting a Vested Rights Ordinance relating to the determination of vested rights, the modification of a determination of vested rights, and the establishment of procedures for such determinations or modifications of determinations; providing for severability; and, providing an effective date. Recommendation: Growth Management Department: Approval - Planning and Zoning Board: Planning and Zoning hearing occurs on March 10, 2008.

Ordinance 2008-026

Matt Trepal explained the purpose of the proposed Ordinance was to establish a process for determining claims of vested rights and offered to answer any questions.

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

Motion Carried 5:0.

COMMISSIONER LOFTUS MOVED TO APPROVE ORDINANCE 2008-026 AMENDING CHAPTER 3-5 TO ADD ARTICLE XXVI (P&Z HEARING ON MARCH 10, 2008), SECONDED BY COMMISSIONER MOORE.

Commissioner Cummings asked if this Amendment would help close old vested rights claims and create their timeframes, questioned if this would create a time limitation, and asked if this was in relation to the proposed contract with Kitson and Partners. Attorney Browne explained this would fulfill Murdock Village conditions precedent, advised it was a requirement for the proposed Kitson and Partners contract, and noted the need for this process for other future projects. Mr. Trepal explained there was no time limit and mentioned there may be confusion with the 15 day limit to challenge a Vested Rights determination. Commissioner Cummings continued a short discussion with staff.

Motion Carried 5:0.

Chairman D'Aprile asked for final comments from the Board. Commissioner Cummings commented that with flexible PDs the County will need experts to implement a level playing field since the applicants will have their experts submit studies which the County will need to analyze and opined there might be an expense involved. Commissioner Duffy stated she was informed at recess that 50% fertilizer was not readily available in Charlotte County, opined the County could not expect citizens to comply with the Ordinance if they were unable to purchase the required fertilizer, and said she hoped it would be available within 180 days. Commissioner Moore noted the Ordinance could be amended. Attorney Browne advised the Ordinance could be reconsidered at the next Land Use meeting.

Chairman D'Aprile offered information on free hurricane and wind home inspections, advised the State of Florida would match up to \$5000 for hurricane related home improvements, and provided the following contact information: myfloridasafehomes.com / 1-866-513-6734.

Adjourned: 5:05 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

JL