

CHARLOTTE COUNTY PLANNING AND ZONING BOARD
Administration Center, 18500 Murdock Circle, Room 119, Port Charlotte, Florida
Minutes of Regular Meeting
February 9, 2009 @ 1:30 p.m.

Call to Order

Chair Hess called the meeting to order at 1:30 p.m. and it was noted a quorum was present.

Roll Call

PRESENT

Paula Hess
Audrey Seay
Michael Gravesen
James Marshall
Brenda Bossman

ABSENT

ATTENDING

Richard Browne, Assistant County Attorney
Gayle Moore, Recording Secretary
Donna Widmeyer, School Board

APPROVAL OF MINUTES

The minutes of January 12, 2009 were approved as circulated.

ANNOUNCEMENTS

None

PETITIONS

NOPC-08-09-40

Legislative

Commission District IV

Mango Development Group, Inc. is requesting to amend the Master Development Order (MDO), Increments I, II and IV and their respective Map H for the Murdock Development of Regional Impact to: 1. update all amendments to the MDO and Increments I, II, and IV into unified documents; 2. remove a 9-acre parcel labeled waterway from the MDO; 3. modify landscaping requirements to defer to current County landscaping requirements; 4. convert and transfer development rights within the MDO by: a) converting 94,905 square feet of industrial development within Increment I to as much as 40,000 square feet of commercial and transfer that square footage to Parcel 2 of Increment IV; b) transfer 140,000 square feet of commercial from Increment II to Parcel 2 of Increment IV; c) convert up to 16,000 square feet of office and 250 hotel rooms currently allowed on Parcel 2 of Increment IV to as much as 98,000 square feet of commercial. This conversion and transfer shall allow up to 588,974 square feet of commercial, or up to 566,974 of commercial and 100 hotel rooms on Parcel 2 of Increment IV. The DRI is generally located approximately 1.5 straight line miles south of the Sarasota County line or 3.75 driving miles on U.S. 41 south of the Sarasota County line, east of Collingswood Boulevard, west of Lion Heart Waterway and almost all of the property is located south of Veterans Boulevard and El Jobean Road; Sections 7 & 8, Township 40 South, Range 22 East in Port Charlotte, Florida; a complete legal description is on file.

Staff Presentation

Seann Smith, Planner II, presented the findings and analysis with a recommendation of *Approval*, based on the reasons stated in the staff report dated January 23, 2009. **Mr. Smith** provided details on the background of the development and the changes being sought, noting that one of the objectives was to update all amendments to the master development order into unified documentation. Mr. Smith noted that any prior individualized landscaping requirements will now defer to the County's landscaping requirements, and he gave detail on the other changes being implemented as well.

Questions for Staff

Ms. Seay asked for confirmation that this is basically a housekeeping change to reflect current conditions; **Mr. Smith** agreed that description was essentially correct.

Applicant's Presentation

Robert H. Bertsson, Esq., applicant's agent, spoke in support of the petition. He offered some history of the Murdock DRI with comments on the nature of the area as currently developed; he also mentioned the desirability of ending up with a single document which incorporates all the changes made over time. **Mr. Bertsson** also mentioned the changed standards in landscaping requirements and Staff's interest in having the new standards reflected in the DRI documents.

Public Input

None.

- **Ms. Seay** moved to close the public hearing, second by **Mr. Marshall** with a unanimous vote.

Discussion

None.

Recommendation

Mr. Marshall moved that application **NOPC-08-09-40** be forwarded to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated January 23, 2009, along with the evidence presented at today's meeting, second by **Ms. Seay** with a unanimous vote.

Revision of Manasota and Sandpiper

Key Zoning District Overlay Code Legislative Commission District III

An ordinance amending Chapter 3-9 of the Code of Laws and Ordinances of Charlotte County, Florida, by amending Section 3-9-53, Manasota and Sandpiper Key Zoning District Overlay; providing for conflict with other ordinances; providing for severability; and, providing an effective date. Applicant: Charlotte County Board of County Commissioners.

Staff Presentation

Roxann Read, Planner II, presented the findings and analysis with a recommendation of *Approval*, based on the reasons stated in the staff report dated January 29, 2009. She offered a brief description of the process undertaken to revise the Overlay Code for the keys, and reviewed the documents handed out to the Board members.

Minutes of Regular Meeting Continued

February 9, 2009 @ 1:30 P.M.

These minutes have been approved by the Charlotte County Planning and Zoning Board.

Questions for Staff

Chair Hess asked if staff was aware of the reservations expressed by Manasota Key Advisory Committee members over the process and the end result, which **Ms. Read** acknowledged, noting that one document tendered by the group had only been received this morning. **Chair Hess** noted that the author of the document, Betty Sue Carroll, who was present in the audience, could comment on the memo she created.

Public Input

Mr. Bob Carroll, resident of Manasota Key, representing the Manasota Key Association, spoke of concerns over the changes. He emphasized the importance of the island's ambiance to its residents and visitors, and expressed concerns over how the changes suggested in the staff documents might threaten this ambiance, particularly:

Pile pounding versus auguring. **Chair Hess** noted that pile-driving permits are governed by state law; **Ms. Read** noted that, according to the County's Building Official, it would take an amendment of the Florida State Building Code to restrict or prevent pile-driving and, according to **County Attorney Rich Browne**, any such restriction would be limited to a single year unless adopted as part of the state Building Code. He also noted that the Building Department has said that they would not enforce it. **Mr. Carroll** responded, citing visitors who have said they would not return to vacation in the area on account of such noise. **Mr. Browne** suggested it might be possible to address the matter through the County's noise ordinance. **Mr. Marshall** wondered how often the pile-driving activity occurs; **Mr. Carroll** said that it's not just new construction at issue but also rebuilding activities that would require pilings according to new code. He noted that those could be put in either by pile-driving or by auguring, an alternative technique.

Required set-backs. **Mr. Carroll** spoke to the issue of a possible "concrete jungle" future for the island if the set-backs are not observed. He conceded that most property owners wanted to maximize the use of their property; he noted that the issue affected both visibility of the water and also run-off.

Fire protection. **Mr. Carroll** noted that County legal staff has already indicated that fire hydrant location does not belong in a land use code; but residents want to know how to get adequate protection, especially before there is more development.

Chair Hess asked if his presentation covered everything on the email sent to her; he said they were just three general concerns. **Chair Hess** asked for more information about the perceived weakness of the fire protection. **Mr. Browne** said that fire hydrant location was covered in some other section of County Code. **Mr. Carroll** said the concern was over two issues: how much water could be gotten onto the island to begin with, and second, where the fire hydrants are located; this has nothing to do with response of EMS / Firefighters. **Mr. Carroll** said residents had been told that if a new, larger building was built at the south end of the Key, that building's sprinkler system would suck so much water out of the system that hydrants further down the line would not receive adequate water.

Chair Hess asked what response Mr. Carroll got from the Fire Department; he was not familiar with the Fire Department position. **Ms. Read** offered the information that the number of hydrants was driven by the available water pressure. **Ms. Bossman** said the water does come a great distance, from the mainland, which is the reason the pressure is low. **Chair Hess** assigned Mr. Ruggieri to investigate the water pressure matter; **Mr. Ruggieri** responded regarding the language that the Advisory Committee was seeking to add, requiring developments to put in fire hydrants irrespective of the impact of that specific development. The Code requires any new development to provide their own fire protection; this is regulated in the subdivision code. The Zoning Code cannot exact a fire hydrant from

a developer for an impact that their development isn't proposing, and that was the language that was removed.

Ms. Bossman asked for clarification: if a new building is built and the associated fire hydrant impacts others, that's not their problem? **Mr. Ruggieri** referred back to Fire Service inspections and the Fire Marshall's role in the DRC review process; he said this community is in Englewood Fire District, and so they are the ones to talk to. Further discussion ensued on this subject. **Chair Hess** further urged Mr. Carroll to talk to the Fire Marshall for his area; **Mr. Carroll** said the Committee has had a member looking into it for a year but with no success. **The Chair** asked Ms. Read to help the Committee get the Fire Marshall to communicate directly with the island residents.

Chair Hess next asked about Mr. Carroll's objections to the new language concerning the set-backs and he admitted not having read the most recent draft staff report and the code; it was clarified that Mr. Carroll did not represent the Advisory Committee. **Chair Hess** asked for someone from the Advisory Committee who had read it to approach and speak.

Ms. B.J. Galberaith, of the Manasota Key Advisory Committee, responded to a question from the Chair, saying the group had received the draft document a week ago but did not have enough time to do due diligence on the massive changes in the draft; **Chair Hess** asked Ms. Read to comment on why the changes were so extensive; **Ms. Read** asked to hear what the speaker was referring to in order to respond directly, noting she had only gotten the Committee's notes immediately before the meeting and had not yet reviewed them. **Chair Hess** asked for clarification on who would be speaking to the issues raised in the document created by Betty Sue Carroll which had been emailed to the Board; **Ms. Galberaith** said she was to speak on the unresolved issues listed on attachment two.

Ms. Galberaith began with a history of the overlay ordinance to date and community participation in creating it. **Chair Hess** asked that she direct her comments to staff and let staff respond, observing that ultimately the matter may need to go back for more work. **Ms. Galberaith** spoke concerning the issue of allowing structures within the set-backs, specifically fences, which she said were eliminated in error by a prior staff member; she said this issue had been discussed with Ms. Read, who had been asked to restore the original terminology. As for awnings or overhangs, the community does not want to see them in the setbacks. New development which is much higher than old development is cutting off light and views from old development; there is also a problem with run-off flooding neighboring properties.

Ms. Read said there had been no changes to set-backs, except to clarify what the Gulf of Mexico setbacks are, consistent with the Waterfront Code. The "no-overhangs" language is in the Code now.

Aggregating lots for development was the next issue. **Ms. Galberaith** said she has talked to Mr. Browne at length about this; the Committee has been urged to keep the language because it is related to their density concerns. **Mr. Browne** noted that density reductions are a Bert Harris issue. **Ms. Galberaith** stated in that case, the Committee wants density to be added by whole units only, not partial; she noted this is how it is done now, but the Committee wants it stated specifically in their code in case the County changes its policy.

Chair Hess observed that the meeting is becoming a rewriting of this plan which is not what this meeting is about; she advised that the matter needs to go back to staff and go

through some more conferences with the Committee until the changes are ready. **Ms. Read** and **Ms. Galberaith** both agreed that course of action would be agreeable, and that they could meet prior to the scheduled hearing before the Commissioners. **Ms. Bossman** observed that the BCC meeting would also have to be continued, so that the matter could come back before the Planning and Zoning Board with the changes in place; **Ms. Galberaith** also objected to the revised timeline, saying that the tourists who would come to voice their opinion would be gone by May. It then became evident that there were a number of people in the audience who did not agree with the Committee's position and who want to be heard also. The subject of whether or not the revised document would be able to come back before the Planning and Zoning Board or whether it would have to go directly to the Commissioners was left open.

Ms. Galberaith continued her presentation, covering the subject of a second emergency entrance for a PD and ending with the subject of pile driving; **Chair Hess** noted there were alternative approaches to that issue, which **Ms. Galberaith** disputed. **Assistant County Attorney Mr. Rooney** responded that in terms of legal status, pile driving was a matter under the Florida Building Code, subservient to the State, and the Building Official will not enforce anything in the zoning code against pile-driving; he noted pile driving is a building technique and not a land use matter, therefore can't appropriately be addressed through the Zoning Code. Further discussion ensued on the pile-driving issue; **Mr. Rooney** discussed the types of circumstances in which a ban against pile-driving could evolve into a takings issue.

Chair Hess sought and received clarification that all the available options for addressing the issue had been put before the Advisory Committee and that the Advisory Committee was not satisfied with any of the suggested remedies. The Advisory Committee's preference, as described by **Ms. Galberaith** would be to allow pile-driving but to require the builder to do studies on existing adjacent properties, to post a sign warning of impending pile driving for the benefit of tourists and others who could protect their expensive belongings such as camera from falling off tables, requiring either a bond or insurance policy so that surrounding properties would not have to sue for damages, and many other provisions designed to protect surrounding properties. **Chair Hess** asked if such provisions could be added to the Land Development Regulations, as pertaining to the barrier island only; **Mr. Rooney** stated that he believed that there already existing a bond requirement to protect surrounding properties from damages due to construction, but that the limits, which are set by State law, are fairly low.

Further discussion ensued on whether the matter needed to come back before the Planning and Zoning Board before going to the Commissioners; it was deemed not to be necessary.

Ms. Madeleine Basham, resident of south Manasota Key, stated her issue was with regard to overhangs. She also spoke about violations of sunshine laws and talked about an email she received from the South Manasota Key Association, forwarding points from the Advisory Committee and directing people what to say. She also spoke about the possible lawsuits which would be wasting money. **Ms. Basham** stated she has done research with engineers and architects, and some of the points that had been promoted turned out to have the opposite outcome compared to how the option was presented – for example, the finished building constructed on a 50-foot lot could be much more "dense" and unattractive than expected. **Chair Hess** stated in response that these are the "unintended consequences" of the prohibitions that the Commission approved, and they also approved community plans which can supersede countywide ordinances. The Chair sees these plans as causing

problems because they undercut the countywide homogeneity of the county code. She questioned how many neighborhood groups there are now; apparently there are several. **Ms. Basham** went on to mention rumblings among 50-foot-lot owners to have a class action suit; also, the issue that this overlay code has currently no provision for exceptions. **Ms. Bossman** offered the clarification that exceptions are, in fact, allowed; she also complimented the work of the Advisory Committee and advised trying harder to work with them. **Ms. Basham** felt that many property owners felt shut out by the Committee.

Mr. Bill Stiver, resident of Manasota Key, stated he was familiar with the existing plan, that the current changes reflect the County's legal concerns, and that the Advisory Committee doesn't address these issues. The restrictions in the plan seem meant to just stop 3-story development; he noted that many of the Advisory Committee members have structures that got exceptions in their time and now they want to block others. **Mr. Stiver** also said there is no evidence of poor water pressure, with the possible exception of people living on the upper floor of a multi-story structure; this would not affect pressure on the ground where the hydrants are located. He noted that standards already exist for all the issues raised by the Committee. **Mr. Stiver** also faulted the committee for "locking out" opposing views and for not advertising their meetings properly; he claimed that the Committee was resistant to practical concerns which were raised about their changes leading to lawsuits. **Ms. Bossman** challenged him about the claimed failure of notice; he responded that the impression was left that the discussion would concern aesthetic issues only.

Chair Hess noted the need to rely on the County Attorney's opinion of whether or not something belongs in the Code, since the Attorney's office is charged with protecting all Charlotte County citizens from having to bear the cost of a lawsuit over such issues. There followed an exchange between **Ms. Bossman** and **Mr. Browne** about lawsuit possibilities; **Mr. Browne** said the main concern was over the density calculation, which has already cost County citizens over a half-million dollars in one suit.

Mr. Gerry LeFave, a developer who owns property on Sandpiper Key, spoke next. Regarding pile-driving, he stated that if it was allowed rather than required then the builder could offer options. Regarding set-backs, he felt this should be addressed through the waterfront ordinance, which mandates 20 feet. Finally, he had comments with regard to limitations on the number of driveways allowed; he wanted to know why he can't have more than one on a property with 900 feet of frontage and three structures on it. He said he was aware he could obtain a variance but felt that shouldn't be necessary.

Mr. Cliff Martinez, representing a client interested acquiring property on the Key. He sought to reiterate that a reduction in method of establishing density is a Bert Harris problem. He is also seeking an end to "grandfathering" stating that the code should apply equally to all people. **Chair Hess** pointed out that it wouldn't be possible to require that people tear down all old houses and put them on pilings.

Ms. Rebecca Dexter, property owner on south Manasota Key, expressed concern about the issue of the overhangs. Her house has a Key West style roof which she thinks should be fine; other people's concerns about drainage don't impress her, she thinks it also comes from properties raised with fill or pilings, blocking drainage. She also had complaints about how the Code causes the "Kleenex box houses" to be built and she made an appeal to Committee members to use some common sense. **Chair Hess** who noted staff had singled out language about overhangs as being contentious, agreed with Ms. Dexter.

Ms. Judy Miller, secretary of the Architectural Review Board of Manasota Key, stated that there is the possibility of "losing the vision" and all that has been accomplished thus far. She said the overlay code does need improvement but not major changes. She expressed confusion that the 2005 document which was already vetted by the County legal staff is not said to have legal problems. Making the same comment about the issue of pile driving, which she described as having "passed the legal test in 2005" she noted that it is now being deleted which is hard to understand. She argued that it is not only a noise issue, but as to possible structural and property damage, it is much more. **Ms. Miller** argued that pile driving can be prohibited, and said that prohibition information has been provided to staff; but she said that if pile driving does have to be an option, then there need to be safeguards for residents. Her suggestions included: adequate bonding; preconstruction inspection (of neighboring properties); measurement and recording for continuous seismic monitoring; notice provided to all residents within 300 feet of work, and a warning sign including a 24-hour telephone number. **Ms. Miller** stated that all this is in other countys' building codes; **Chair Hess** responded, asking Ms. Miller if she was therefore suggesting these matters properly belonged in the building code rather than the zoning code. Ms. Miller did not respond to the question except to say that if the pile driving language is taken out of the Code, the residents would have no protection.

Mr. David Bashem, property owner on south Manasota Key, stated that during implementation of the restrictive codes, the inconsistencies they produce become evident. **Mr. Bashem** then read a letter from Architect Elaine Miller regarding the original intent of the overlay code, in which she notes that there are numerous shortcomings in the overlay code that, by it's own directives, renders hundreds of residential lots unbuildable per zoning entitlements without first being granted variances. **Mr. Bashem** characterized this requirement as an undue burden on citizens and officials. He went on to remark that there is confusion about the relationship of the various groups such as the Advisory Committee and the South Manasota Key Homeowners Association; he also described being shouted down at the meetings. He stated that he completely endorses the staff initiative.

Ms. Mary Capecci, resident of Gulf Blvd., South Manasota Key, stated that she had no comments on pilings. She began by responding to Ms. Bossman's earlier inquiry by talking about lack of notice and being shouted down at the meetings and spoken to rudely, with the result that she no longer attends the meetings, and she is not the only one. **Ms. Capecci** stated that she thinks the zoning overlay district oversteps the original intent. In particular, she argued for overhangs, saying that they add to the charm of the structure. She also objected to the idea that the color of the house will be regulated and argued in support of wild color as being lovely, questioning how the code can prohibit any colors. **Chair Hess** asked staff if the language was obsolete or still in the Code, and upon being told it was still in the document, spoke against regulating aesthetics. **Ms. Capecci** continued to give examples of elements in the document which she felt were objectionable, such as regulations against specific trim colors and against wall art unless approved by the Architectural Review Committee.

Chair Hess asked Ms. Capecci if she had attended the Committee meetings, which Ms. Capecci said she had not, as a result of having been "extremely poorly received" at the Committee meetings she has attended in the past; she also pointed out that she would be questioning the Committee's authority to make such rules and felt that would not be well received either.

Chair Hess then asked Ms. Read about attendance at the Advisory Committee meetings; **Ms. Read** said that attendance seemed limited to people on the Committee. Because others don't attend as much, she hasn't seen any examples of bad behavior. **Ms. Bossman** clarified that community residents are invited to the meetings, though they may choose not to come.

Ms. Betty Sue Carroll, resident of Manasota Key, and member of Committee, began by acknowledging that she did not have time to give staff any of the line-by-line comments. **Chair Hess** agreed that it would have better enabled staff to be responsive to the group's concerns and said that's the reason to have the matter continued.

Ms. Carroll went on to talk about the make-up of the Advisory Committee; she then gave some history of the committee and the changes to the overlay code. She spoke next about the issue of the overhangs, the set-backs, and the issue of percolation. She stated that the intent was not to encourage "Kleenex box buildings" but to have green space, air circulation and water percolation; she suggested that the "boxes" result from people replacing a small beach cottage with a "McMansion" since people want to use every inch of space they own. With regard to the restrictions on pile driving, **Ms. Carroll** said they provide protection and should be left in the language until a better solution is arrived at.

She emphasized that all meetings have been properly publicized, but that it is hard to get the public involved. Acknowledging the objections voiced today, she asked that people make their objections known at the Advisory Committee meetings; she stated that she did not recall any antagonistic behavior at any of the meetings. Returning to the subject of the pile driving, **Ms. Carroll** acknowledged that the language was not enforceable but noted that some builders nonetheless believe that pile driving is illegal and so they choose other techniques, and that this is ultimately beneficial to the experience of tourists.

Mr. Phil Eason, a resident and member of the South Manasota Key Association and a builder who has driven piles, addressed the Board, discussing his experience with the Advisory Committee, and saying he had been to most meetings over a six-month period. He felt the Committee members are reasonable and will listen to other opinions; however, when people bring actual plans to the meeting, they find the Committee members opinions are "set in stone" and they will not listen to anything different. **Mr. Eason** felt the Committee officers may have a false sense of how many adherents they have since they meet during the day, appealing primarily to retirees; he said that they also use scare tactics to advertise their agendas. **Mr. Eason** stated that he has seen others "murmured down" (e.g., not *shouted* down.)

Mr. Eason went on to say that the problem with the architectural design committee is that they are lay people trying to make professional decisions; he used the set-backs issue as an example of what he felt were misunderstandings in what people are requesting.

On pile driving, **Mr. Eason** disputed that there are problems with other houses up to 300 feet, based on his own experience. He noted that there are other equally-difficult problems to be solved which may arise if you don't use pile driving. His suggestion was that pile-driving should be regulated but not eliminated.

Mr. Stiver spoke again, singling out former department staff member Jorge Perez as having been anti-development, and noting that current staff was not at all the same. He clarified that when he attends Advisory Committee meetings, the reception is cordial and he is

treated respectfully; it's just that no suggestions he might make are actually considered; at the public meetings is where the "booing and hissing" takes place. He went on to single out specific elements of the overlay code as being completely out of step with typical development code, and gave the opinion that the code was written specifically to prevent a specific type of development from occurring.

Chair Hess stated that it was time to send the matter back and let staff work with the Committee to produce a draft that meets some of the concerns of the property owners on the Key. She advised that it was necessary to let go of the issues that don't belong in this code such as pile driving and return to the issues which are appropriate for the zoning code, such as how the space is being used and restricted which results in unintended consequences such as unattractive buildings.

- **Ms. Seay** moved to close the public hearing, second by **Mr. Marshall** with a unanimous vote.

Discussion

Mr. Gravesen had specific issues and questions for the staff. He asked if "landscaping" included "sod"; **Ms. Read** referred to the reference to "buffer strips" in the current code and other synonyms for landscaping, noting that the language change was meant to make the various references consistent. There was agreement that further refinement of the language was advisable. **Mr. Gravesen** then asked about the references to easements and parking and the fact they are not included in open space calculations; he noted that easements often include utility easements, which are effectively green space and so the restriction seems excessive. There were a number of other "housekeeping items" raised in this same vein, including whether or not a PD reverts back to prior zoning if not developed; **Ms. Read** noted that this new language was suggested by the Committee. **Mr. Gravesen** noted this was not in the rest of the County Code and he didn't like to see this non-standard language added elsewhere; he reminded that the PD process is extensive and expensive and if market conditions force delay in the intended start of the project, it would not be fair for the applicant to lose all of that time and cost. **Chair Hess** agreed with that point. **Mr. Gravesen** also objected to the lack of specific measurement provided for in the section regarding pervious surfaces.

Ms. Bossman stated that she doesn't agree with eliminating the language concerning undeveloped PDs, noting that the time frame could be extended and that change is also being considered for the rest of the County. Residents on the Key have real concerns about unfinished projects.

Chair Hess agreed that language extending the time might be a better compromise; she also stated that she felt language concerning the fire hydrants doesn't belong in this code and that residents need to work with the Englewood Fire District to resolve that issue.

There then ensued more discussion on the nature of the continuation while staff and the stakeholders work to eliminate the points of difference and finalize the language – whether the matter should be expected to come back before the Planning and Zoning Board or go directly to the Commissioners. **Mr. Browne** recommended not continuing to a day and time certain, but just have staff bring it back whenever it is actually ready; keeping in mind that if the Commission directs it be brought back to them directly, it can go without a recommendation from the present Board.

Mr. Rooney addressed the Board, stating he had looked at the suggested alternatives to pile driving as proposed by members of the public who had addressed the Board, specifically those from Bradenton Beach, Broward County and the City of Palm Beach; he noted that two of those locales had enacted local amendments to the Florida Building Code, while a third had enacted a noise ordinance. He pointed out that those actions were within the same set of options that he had described earlier in the meeting; there had been nothing suggested at this point that qualified as an innovative approach.

Recommendation

Ms. Bossman moved that the proposed **Revision of Manasota and Sandpiper Key Zoning District Overlay Code** be continued to give staff and the Committee additional time to resolve the outstanding issues, and that the matter can, if necessary, go directly to the Board of County Commissioners without coming back before the Planning and Zoning Board, depending on time constraints, second by **Mr. Marshall** with a unanimous vote.

A five minutes recess was called; the meeting resumed at 4:02 p.m. Dr. Widemeyer left the meeting during the recess.

Concurrency

Land Development Regulations

Legislative

Countywide

An ordinance amending Chapter 3-5, Article XIV, Concurrency Management, of the Code of Laws and Ordinances of Charlotte County, Florida; deleting Section 3-5-331 to and including 3-5-335; creating a new Section 3-5-330 to and including Section 3-5-341; providing for Definitions; providing for a Purpose; providing for Vested Rights; providing for Levels of Service; providing for Concurrency Management Responsibility; providing for Minimum Requirements for Concurrency; providing for Concurrency Certification; providing for Concurrency Determination and Tracking; providing for Capacity Reservation/Expiration; providing for a Fee; providing a procedure for Appeals; providing for Proportionate Share; providing for severability; and providing an effective date. Applicant: Charlotte County Board of County Commissioners. This revision includes School Concurrency.

Staff Presentation

Jim Fendrick, Concurrency Manager, presented the findings and analysis with a recommendation of *Approval*, based on the reasons stated in the staff report dated January 15, 2009. He discussed the impact of Senate Bill 360 on local concurrency regulations and the time lines for meeting those requirements with regard to school concurrency in particular.

Questions for Staff

None

Public Input

Ms. Percy Angelo, read from a statement she provided to Board members, suggesting the amendment as presented does not properly protect the citizens because it is defined as a condition of the certificate of completion, meaning that it is considered too late in the process to be effective with regard to the adequacy of sewers, water or roads. She specifically referred to the use of "condition" and its legal implication, citing online statute language that contradicts the amendment language.

Ms. Angelo next referred to the transportation section and made reference to the Wildflower project which had come before the Board in the past, and which she stated

demonstrated the problems of over-estimating capacity available to serve new developments. **Ms. Angelo** also spoke about the issue of records management and the effect of records availability; she also noted the language on appeals which limits the appeals to the applicant. Ms. Angelo then made reference to the economic downturn and effects this difficulty will have on the County's ability to increase sewer, water and transportation capacity in the future. She made the point that the County may be subject to lawsuits by developers who find their projects fail due to reliance on inappropriate concurrency data.

Chair Hess stated that she would defer to Jim Fendrick, to whom she forwarded the Angelo email, to respond.

Mr. Fendrick responded that Ms. Angelo's first item concerns a difference in language; he believes the same thing is meant, but he doesn't have a stake in which way it is said. Regarding her second point, he stated there was an error in draft document which will be corrected. On the subject of keeping concurrency records, **Mr. Fendrick** noted that Charlotte County is in process of updating its Concurrency Management System; he stated that CCU uses Excel spreadsheets, and pointed out that the County has no authority over how private utilities keep their records as long as they provide the required reports. **Mr. Fendrick** also discussed the new building permit software package coming online for Charlotte County which will track some concurrency matters (e.g. traffic) though not all; he noted that budget constraints affect efforts to expand the functionality of that software.

As for Ms. Angelo's fourth point, **Mr. Fendrick** stated he would have to review that further; some data is available online already. He noted that the County had decentralized because the centralized system didn't work effectively, and also because the County will have to eliminate the Concurrency Manager position eventually. He recommended using the period of time between now and the presentation before the Commissioners to work on incorporating the unopposed items.

Ms. Seay asked about appeals of concurrency being limited to the applicant, saying that it doesn't seem right. **Mr. Fendrick** explained that if the County tells an applicant he's failed concurrency, this is a way to assist him to respond. These are public hearings and the public can come and argue about capacity if they like. If a citizen just "doesn't like" a project, that goes against the applicant's right to develop, and Charlotte County would not support the objection as long as the concurrency issues have been properly met. **County Attorney Rich Browne** supplied the reference from the Florida Statutes that provides the right to citizens to challenge projects they feel are inconsistent with the Comprehensive Plan.

Mr. Marshall asked about Ms. Angelo's item 4, asking if it could be included. **Mr. Fendrick** responded that the preferred goal would be to have a central website, with each agency responsible for its own information; he noted that the ultimate goal is to have all such information available to the public via the internet, but at present it is really a matter of the cost to accomplish that vision.

Mr. Fendrick next referred to the discussion about water pressure that took place during the previous agenda item, noting that water pressure is a Comp Plan issue, not LDR issue. The levels of service for all infrastructure and facilities is set within the Comprehensive Plan, and that will be a discussion coming soon as part of the Smart Charlotte 2050 process.

Chair Hess asked Ms. Angelo if she was satisfied with the answers so far. Ms. Angelo emphasized her point about the language of review at the beginning of a process, not at the end as conditions, saying the present language doesn't support "beginning of process" intent.

Mr. Tom Smith, resident of Gasparilla Island, offered a few questions and comments: Under water and sewer standards, the term given is "maximum" and he wanted to know if that is as intended? **Mr. Fendrick** repeated that water and sewer are each a comp plan issue; what is there is what the Commissioners have adopted.

On transportation concurrency, **Mr. Smith** noted there were a number of ways to consider concurrency: one is that, at the time of the CO, facilities needed will be under construction within three years; therefore, there may be something out of concurrency for 6 years. **Mr. Fendrick** noted that this reflects Florida statute language which allows more congestion for a period of time. **Mr. Smith** focused on the methods of measurement of concurrency, noting he felt the County's approach was ineffective because cumulative measurement is not done. He stated that Placida Rd. became the "poster child" for this shortcoming, because all the units permitted but not yet inhabited are not figured into concurrency ... there's just a traffic count one day; he asked if a cumulative measurement approach could be considered. **Mr. Fendrick** responded affirmatively, saying that the new software package builds in committed trips plus existing trips, and this will provide the cumulative number.

Finally, **Mr. Smith** turned to the appeals process, stating that an appeal could take place without the public ever knowing there had been an appeal, but thinking project had been turned down; he asked about the notification or involvement of the public. **Mr. Fendrick** responded that the appeal is a public hearing process, with notice given in the usual way. Further discussion ensued on this point.

Ms. BJ Galberaith, of Manasota Key, spoke about Englewood Water District (EWD), and a recent condominium being built and the fact that the water line was not required to be increased. She stated that EWD responded that they only have to provide water. **Chair Hess** asked what the Comp Plan determines, which is just capacity, not adequacy (e.g., of pressure.) **Mr. Fendrick** also responded that water pressure could be added as another LOS item. **Chair Hess** asked for this to be pursued.

- **Ms. Seay** moved to close the public hearing, second by **Mr. Marshall** with a unanimous vote.

Discussion

Chair Hess asked Mr. Fendrick to take the comments under advisement but stated she sees no need for changes to his document.

Recommendation

Mr. Gravesen moved that the proposed **Concurrency Land Development Regulations** be forwarded to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated January 15, 2009, along with the evidence presented at today's meeting, second by **Ms. Seay** with a unanimous vote.

There being no further business to come before the Board, meeting was adjourned at 4:39 p.m.