

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

Call to Order

Chair Hess called the meeting to order at 1:31 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
Geraldo Olivo, School Board

APPROVAL OF MINUTES

The minutes of February 9, 2009 were approved as circulated.

ANNOUNCEMENTS

None.

Upon the oath being administered, the meeting commenced.

PETITIONS

PA-08-12-46

Legislative

Commission District III

An Ordinance pursuant to Section 163.3187(1)(C), Florida Statutes, for an amendment to the Future Land Use Map of the Charlotte County Comprehensive Plan from Commercial Corridor to Low Density Residential for property located north of South McCall Road, south of Haste Lane, east of Manor Road, and west of Ainger Creek; containing 3.04± acres; Commission District III; Petition No. PA-08-12-46; applicant: Charlotte County Board of County Commissioners.

Staff Presentation

Jie Shao, Planner III, presented the findings and analysis with a recommendation of *Approval*, based on the reasons stated in the staff report dated February 24, 2009. **Ms. Shao** gave a brief history of the petition and the circumstances leading to today's request.

Questions for Staff

Chair Hess asked whether the landowner had been advised that the land use would revert if he didn't complete the rezoning; **Ms. Shao** confirmed the department had contacted the landowner with that information. **Chair Hess** asked for some insight into the Department position that curing the inconsistency would best be done by reverting the FLUM rather than by changing the zoning to commercial, noting that the latter choice seemed suitable since the property was on a commercial corridor. **County Attorney Rich Browne** responded,

noting that direction was given by the Commissioners who felt that the applicant's original request for CG would be too broad, and asked to see a Planned Development (PD) instead.

Ms. Bossman indicated this was a sensitive area and that may account for the Board's desire for a PD. **Mr. Marshall** asked what the significance of a PD would be; **Chair Hess** explained that a PD offered more control over the development standards than would be available in the CG zoning district.

Public Input

Mr. James Christman, one of the landowners, addressed the Board with the assistance of a PowerPoint presentation he brought with him. **Mr. Christman** took the position that the issues with the property arose because of delays in the review and permitting process, which began with the hiatus imposed on large scale plan amendments due to the delay in submitting the EAR to the Department of Community Affairs in 2006. He played numerous audio and video clips which he said demonstrated problems with the lengthy process such as the length of time applicant was supposed to wait for the outcome of the corridor study. He noted that the prospective buyer/developer backed out of the sale agreement which **Mr. Christman** contends were the result of his not being able to meet the demands of the County's regulations.

This was a very lengthy presentation; the speaker did not provide a copy of his presentation for the record.

At the conclusion of the presentation, **Chair Hess** summed up the presenter's points: that the Board recommend acting on the original petition which was for rezoning to Commercial General, now that the adopted FLUM is in place. **Ms. Bossman** commented that the former petition is not before the Board, so how would the Board be able to act on it? **Chair Hess** responded that the staff-initiated petition for reversion to the original FLUM could be recommended for denial; she noted this was in line with her own question as to why the inconsistency would best be cured by reversion rather than changing the zoning to commercial. She objected to the portion of the staff report that characterized Mr. Christmas as having no desire to complete the rezoning, noting that he does indeed desire to see the change to commercial zoning.

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

Discussion

Chair Hess reviewed the issue of the delay occasioned by the wait for a corridor study to be completed, which she felt was unfair to the applicant and property owners. She also noted the changes in the make up of the Board of County Commissioners since the original BCC direction was given in this matter.

Ms. Seay stated she was confused as how best to act given the request from staff. She wondered why the property owner waited all this time to raise his objections. **Chair Hess** noted that the owner had the desired Future Land Use in place, so there was no need to spend more money on changing the zoning until there was a willing buyer once again; but before such a buyer could appear, staff moved to cure the inconsistency by a reversion of the FLUM.

Mr. Gravesen stated he felt the change of the FLUM to commercial was correct at the time and still is. He also took issue with staff's position on PDs stating that while the PD has

come to be a means of control on development of commercial properties, recent changes in the Code, mostly in terms of buffering and parking lot requirements, have taken over much of what PDs used to control. Therefore, **Mr. Gravesen** said, a PD shouldn't be required and it should be possible to just do the rezoning. He stated he would recommend denial on the application, and that commercial zoning on the parcel would be appropriate. **Mr. Marshall** agreed with Mr. Gravesen.

Ms. Bossman asks for staff rebuttal to Mr. Christman's presentation, specifically why the Department opposes CG; **Department Director Jeff Ruggieri** responded that consistency is best served by a rezoning to the least-intensive commercial use that implements the Comprehensive Plan, which is OMI; CG is not an option in this scenario. He noted that the owner who spoke today was not privy to the original petition or conversations with the applicant who agreed to the PD. Mr. Christman did not communicate with staff about the uses on this parcel or planning for the overall corridor. **Chair Hess** asked what was meant by the comment that "CG was never on the table", saying that this is what the owner meant when he said the buyer backed out due to too many requirements being placed on the matter by staff. **Mr. Ruggieri** stated that he knew the applicant well, and knew that Mr. McGuire would have raised the issue if he felt there had been staff obstruction that was causing a problem for the transaction. **Ms. Bossman** asked if he thought the deal failed due to economic issues and **Mr. Ruggieri** said he strongly believed that to be the case.

Chair Hess returned to the issue of whether the current FLUM designation isn't now the most suitable use for the property and asked why not stick with that. **Mr. Ruggieri** noted that staff was simply being reactive to the person who originally came in with the proposed change; once that failed to happen, staff moved to return things to the original status, as they could not take responsibility for making unrequested changes on an investor's speculative project that eventually fell through.

Ms. Bossman returns to her questions, specifically why go with OMI if it should go back to residential. **Mr. Ruggieri** responded that OMI was simply an option for the future that staff put forward, because Comp Plan policy requires implementing the least intensive zoning category that implements the Future Land Use.

Mr. Christman responded about the lengthy period of time (nine years) that the property has been for sale, noting that no one wants it as a residential property. Regardless of who paid the original application fee, **Mr. Christman** said he had CG in mind. **Mr. Christman** again took the position that the contract fell through due to the buyer's inability to meet the requirements of a PD. **Chair Hess** asked what was it about the PD that the buyer could not meet; **Mr. Christmas** said he can't give details because he wasn't at the meetings. As for the desire for the CG zoning, **Mr. Christman** stated it was due to the far greater range of ultimate uses compared to OMI.

Ms. Bossman returned to her questions, asking why the Board turned down CG? **Mr. Ruggieri** responded that the overarching issue was the Board's disinclination to permit strip development, which CG zoning does nothing to prohibit. He noted that under CG, there is no opportunity to limit uses, to manage the buffers along the waterway, and no input into the site design, including access into the site. **Chair Hess** asked if he disagreed with Mr. Gravesen that the new regulations have obviated the need for the PD, which is a long and costly process; **Mr. Ruggieri** responded that it is marginally more expensive and more time-consuming for the applicant in the preparation stage but once the process has begun, there's no difference.

Ms. Bossman asked what would happen if nothing is done regarding the reversion or the zoning; **Mr. Ruggieri** responded that there would need to be either a rezoning or a plan amendment request the next time the site came forward for development. He clarified that the primary concern was the concern over ending up with additional strip development. **Chair Hess** asked how demanding the requirements were for curing an inconsistency; **Mr. Ruggieri** responded that the Comp Plan sets a time frame of one year and this item is over the time limit.

Mr. Gravesen offered his reasoning on why Mr. Christman should consider accepting the OMI option, noting that it would give him the underlying commercial zoning and then the ultimate developer could pursue a PD; **Chair Hess** and **Ms. Bossman** both agreed with this approach.

Ms. Seay raised the question whether there a procedural option to “turn back the hands of time” and give the applicant the original request. **Mr. Browne** recommended denial of the present petition to be replaced with a request to staff to come back with an OMI or CG rezoning request.

Further discussion ensued on the impact of CG zoning on the tendency to end up with strip development, with **Mr. Gravesen** taking the position that what’s on the ground now reflects 30 years of development rather than the impact of current regulations. **Mr. Ruggieri** noted that the Department’s stance reflected the direction received from the Commissioners to address the problem of strip development.

Recommendation

Ms. Bossman moved that application **PA-08-12-46** be forwarded to the Board of County Commissioners with a recommendation of *Denial*, based on the findings and analysis in the staff report dated February 24, 2009, along with the evidence presented at today’s meeting, second by **Ms. Seay** with a unanimous vote.

Ms. Bossman made a further motion that the Board direct staff to resubmit the rezoning petition for OMI, which is alternate resolution number two of the staff report, second by **Mr. Gravesen** with discussion from Mr. Marshall and Ms. Seay.

The motion failed by a vote of three to two:

- Chair Hess – nay
- Mr. Gravesen – aye
- Ms. Seay – nay
- Ms. Bossman – aye
- Mr. Marshall - nay

Mr. Marshall made a further motion to recommend that the Board direct staff to return with a petition changing the zoning to CG; second by **Ms. Seay**.

The motion carried by a vote of four to one:

Chair Hess –aye
Mr. Gravesen – aye
Ms. Seay – aye
Ms. Bossman – nay
Mr. Marshall - aye

Ms. Seay asked County Attorney Rich Browne, what does the BCC see, the motion of the Planning and Zoning Board or the application as submitted? **Mr. Browne** said the Commissioners will see whatever comes with the application, along with the minutes. **Chair Hess** questioned whether the Board give adequate weight to the recommendations of the P&Z; she asked whether P&Z members have to go to the Commission meeting to ensure adequate representation of their recommendations. **Mr. Browne** discussed the typical briefing sessions with the Commissioners, noting that these meetings were not mandated but at the pleasure of the Commissioners; this is an appropriate venue to inform them what the P&Z recommends and he said that he would certainly bring it up.

PP 08-08-04

Quasi Judicial

Commission District III

Dale D. Arculus, owner of Jomida Properties, LLC. has applied for a Preliminary Plat for a residential subdivision, Santa Lucia Estates, consisting of six (6) residential lots in Section 20, Township 41 South, Range 21 East. The site, consisting of 1.84 acres, more or less, is located on Santa Lucia Drive, in South Gulf Cove, between Ingraham Boulevard and Keystone Boulevard in Commission District III.

Staff Presentation

Mary Webster, Land Development Department, presented the findings and analysis with a recommendation of *Approval*, based on the reasons stated in the staff report dated February 13, 2009.

Questions for Staff

None.

Applicant's Presentation

Mr. Gary Bayne, applicant's agent, spoke in support of the project, referring to the various studies performed with regard to protected species, and noting that water and sewer services would be provided by Charlotte County Utilities.

Chair Hess questioned the size of the lots, which **Mr. Bayne** said would be slightly larger than the typical quarter-acre residential lot size.

Public Input

Ms. Karen Price, resident of South Gulf Cove, president of the South Gulf Cove (SGC) Homeowners Assoc., spoke regarding the deed restrictions of SGC. These two tracts of land were deed restricted by General Development in OR 155, Pg 417 as parkland only. **Ms. Price** noted that property owners have been made aware of the deed restrictions, and stated that if the project continues forward, the HOA would have to address that situation.

She also pointed out that the deed restrictions are being replaced and that under the contemplated new document, the project would not be non-compliant. But at this time, the project would be non-compliant.

Mr. Kendall Leach, a member of the Board of Directors of SGC HOA, spoke more about the deed restrictions, referencing the 15,000 lot owners who have to vote to change the DRs, which he offered as a point of information as to why their process of rewriting the deed restrictions may take some time. He also pointed out that he was speaking to have the matter on the record, not because the Homeowners Association opposes the project.

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

Discussion

Ms. Seay asked Mr. Browne, understanding that the County doesn't deal with DRs, but if they don't get changed, can the HOA prevent the project from going forward? **Mr. Browne** said they would have to go to court in order to do that. **Chair Hess** noted, based on her experience with the deed restrictions in Punta Gorda Isles, that they expire in 30 years in any event.

Recommendation

Ms. Bossman moved that the proposed **PP-08-08-04** 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, including the four conditions as noted in the staff report, second by **Ms. Seay** with a unanimous vote.

PP-09-01-01

Quasi Judicial

Commission District III

Jimmy Philman and Handy Phil Inc., has applied for a Preliminary Plat for a residential subdivision, Winchester Lake, consisting of 169 residential lots in Section 16, Township 40 South, Range 20 East. The site, consisting of 176 acres, more or less, is located southeast of San Casa Drive, west of Sesame Road West, Rotonda Heights, south of Shulman's Commercial Park (Avenue of the Americas) in Commission District III.

Staff Presentation

Mary Webster, Land Development Division, presented the findings and analysis with a recommendation of *Approval*, based on the reasons stated in the staff report dated February 17, 2009 discussion of the general plat application. She stated that staff recommends approval of PP-09-01-01 with the following conditions (19 stipulations became 18 because items 3 and 17 are the same) mostly dealing with changes needed on the graphics:

1. The connection to San Casa must approach San Casa at close to a 90 degree angle, otherwise the connection cannot be permitted;
2. The access point to Winchester Boulevard needs to be relocated as far south as possible to provide for better coordination and access management;
3. All nine (9) conditions of the Environmental Specialist must be met prior to DRC final approval;
4. All Tracts must appear in the Dedication on page 1 of the drawings;
5. All Open Common Spaces and Wetland Areas must be designated as Tracts, and the usage indicated, and must also appear in the Dedication on Page 1, as well as all maintenance responsibilities; Tracts A, B, and F must have usage indicated on cover sheet and on the Drawings;

6. Tracts G & H must have easement dedication on cover sheet (41' wide easement to EWD, 36' wide easement to FPL and 25' wide ingress egress easement to Homeowner Association (and public);
7. Tract E needs easement dedication on cover sheet;
8. All "L" and "C" measurements must have dots indicating start and stop points for the measurements;
9. Exterior boundary of the plat must appear in bold black ink. Each lot boundary must appear as a solid black line, as well as each Tract boundary line. All easements shall appear as broken lines, as indicated; however, the 6' side lot easements and the 10' rear lot easements are not shown and must appear on each sheet;
10. Open Space 3 shows 998.30' and the lot measurements above do not add up to 998.30'. Define where 998.30' comes from;
11. Applicant must provide a copy of recorded easement that allows access to San Casa;
12. Change all references of adjacent property of Sherman's Subdivision to Shulman's Subdivision;
13. In the event Winchester Boulevard is extended southward past this development, no lot within the subdivision shall have direct access to Winchester Boulevard, and this shall be noted on the plat drawings;
14. Dedication of roadways, easements, etc. to the Homeowner's Association (not Property Owners), and must state maintenance responsibility;
15. Owner's name of Jimmy Philman must be added to Certificate of Ownership and Dedication on Cover Sheet.;
16. Applicant must meet all nine (9) conditions of the Zoning Environmental Specialist prior to final DRC approval of the plat;
17. Existing permitted excavation (Permit 05-EX-37) expiring November 2009 must be reclaimed, match the Preliminary Plat, and receive final site inspection approval by the Excavation Administrator prior to Final Plat, and
18. Must remove ingress/egress easement shown on east side of project – OR Bk 1035, Pg. 925 – it refers to property in Section 21, not Section 16.

Ms. Webster provided additional detail about some items on the list.

Questions for Staff

None

Applicant's Presentation

Robert H. Berntsson, Esq., representing the client, spoke about his years representing applicant Philman and the excavation and incinerator activities on this site up to this time. He gave historical background on the current application process.

Chair Hess asked what was in the middle of the parcel, noting that in the aerial it looked like a hole; Mr. Berntsson stated that was the excavation which will become a lake. There followed some discussion about how these mining pits become lakes which can be used as amenities, and some related subjects.

Public Input

Mr. Tim Mulligan, resident of the area south of the excavation, spoke of his concerns about information provided by Land Development regarding whether Winchester Blvd will be extended – if not, then eastern egress from the proposed development will be impossible.

Mr. Mulligan said he believed two access points are required for such a development. Ms. Webster agreed that two access points were required; she stated that the County has

already acquired all the property east of the development and the current plans are to build the highway. **Mr. Mulligan** said he understood that, but noted that not all the necessary land has been acquired, so that the work cannot start yet. He also expressed concern about other access issues, and said he wonders if substantial berms will be considered, noting this has already been done for the Oyster Creek development.

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

Applicant's Rebuttal

Mr. Berntsson responded to the access issue, saying that the number of exit points are not really an issue and that subdivisions do exist with just one main entrance. **Mr. Gravesen** asked about tracts H and G on the eastern side and where the corridor is in relation to those lots? **Mr. Berntsson** said there is some activity there now and there are already easements there, which the County may eventually acquire; none of this will affect the lots as they are platted today.

Discussion

None.

Recommendation

Ms. Bossman moved that PP-09-01-01 be forwarded to the Board of County Commissioners with a recommendation of *Approval with 18 conditions*, based on the findings and analysis in the staff report dated February 17, 2009, along with the evidence presented at today's meeting, second by **Ms. Seay** with a unanimous vote.

PV-09-01-01

Legislative

Commission District I

Charlotte County School Board has applied for a Plat Vacation, for all of the Suncoast Office Park Plat, namely Lots 1,2,3,4, and 5. This site, consisting of nine (9) acres more or less, is located east of Suncoast Blvd. and south of Loveland Blvd. in Section 18, Township 40 South, Range 23 East, Charlotte County, Florida, according to the Plat recorded at Plat Book 17, Pages 46A-46C, of Public Records of Charlotte County, Florida, in Commission District I.

Staff Presentation

Mary Webster, Land Development Division, presented the findings and analysis with a recommendation of *Approval*, based on the reasons stated in the staff report dated February 12, 2009, noting that staff recommends approval of petition with one revised condition:

1. Provide a metes and bounds survey of each property ownership prior to recording of the vacation in order to ensure compliance for the Property Appraiser's Records.

Delete that condition and add this condition in its place:

1. Provide an easement for the CCU lift station currently located on the property.

Questions for Staff

None.

Applicant's Presentation

Robert H. Berntsson, Esq., applicant's representative, in conjunction with Attorney Charles Heekin representing Dr. Brignoni, presented a brief review of the project which is intended to create a parcel to be merged with other School Board property in the area.

CHARLOTTE COUNTY PLANNING AND ZONING BOARD

04/13/2009 3:50 PM

Minutes of Regular Meeting Continued

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

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

Public Input

None.

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

Discussion

None

Recommendation

Ms. Seay moved that PV-09-01-01 be forwarded to the Board of County Commissioners with a recommendation of *Approval with one condition*, based on the findings and analysis in the staff report dated February 12, 2009, along with the evidence presented at today's meeting, second by *Mr. Marshall* with a unanimous vote.

Ms. Bossman had a question regarding the permitting for non-profit groups, which was a matter that they heard previously. Noting that this was the Temporary Uses matter which did not come back before this Board. *Chair Hess* requested a copy of the ordinance as approved by the Commissioners, to see if the suggestions of the Planning and Zoning Board were incorporated into the final document. *Mr. Browne* said that he would supply them with a copy.

There being no further business to come before the Board, meeting was adjourned at 3:07 p.m.