

**CHARLOTTE COUNTY PLANNING AND ZONING BOARD**  
**Administration Center, 18500 Murdock Circle, Room 119, Port Charlotte, Florida**  
**Minutes of Regular Meeting**  
**April 13, 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 March 9, 2009 were approved as circulated.

**ANNOUNCEMENTS**

Discussion and acceptance of the County mandate regarding digital document delivery of packets and agendas.

Upon the oath being administered, the meeting commenced. Ex parte matters were acknowledged by members Hess and Seay.

**PETITIONS**

**PP-09-02-02**

**Quasi Judicial**

**Commission District II**

Punta Gorda of Charlotte County, LLC. has applied for a Preliminary Plat for a commercial subdivision called Punta Gorda Crossings, consisting of ten (10) commercial/industrial lots in Sections 3 & 4, Township 41 South, Range 23 East, in Charlotte County, Florida. The site (the former Punta Gorda Golf Club), consisting of 99.2604 acres, more or less, is located within the ECAP, on Duncan Road between I-75 and Golf Course Boulevard in Punta Gorda in Commission District II.

**Staff Presentation**

**Barbara Jefferies, Land Development Supervisor**, presented the findings and analysis with a recommendation of *Approval with conditions*, based on the reasons stated in the staff report dated March 18, 2009.

**Ms. Jefferies** noted that the 14 conditions given in the Land Development Division staff report have changed based on a conference with the applicant which took place preceding this meeting; she updated the conditions in question, noting for instance that the applicant has provided a letter from the City of Punta Gorda indicating that all water and sewer would be handled, and so condition 1 has been modified to read: "Applicant must agree to conditions of letter and ensure all properties are connected to both water and sewer."

Some questions arose out of the manner in which access from the adjacent properties is to be created and the effect of the ECAP zoning overlay on this property. **Ms. Jefferies** noted that the applicant was not satisfied with the wording of condition 5 which addresses this issue, and Land Development has agreed that the access issues will be worked out between now and the presentation of this matter to the Board of County Commissioners; she read the condition which applicant objects to into the record: "Applicant will provide two ingress/egress easements, one on the east side and one on the west side of the development on the drawings. The easement must specifically state that the developer or owner whose property connects has the right to properly construct a roadway and sidewalk within the easement and is not required to drive on a dirt driveway. This condition shall be written in the dedication on the plat." **Chair Hess** stated that she thought it was a requirement of the ECAP overlay that such access was given; **Growth Management Director Jeff Ruggieri** indicated that it was, in fact, a requirement. **Chair Hess** asked to have the nature of the applicant's objection clarified; **Ms. Jefferies** stated that the applicant indicated that the owner of the property had sold their access on the adjacent property to FDOT and therefore they don't have access because they sold it, and want to use someone else's. **Chair Hess** stated that she remembered the matter at the time but noted that the ECAP Overlay was put into place subsequent to the sale of that access, and so she thought perhaps the Overlay was now the governing matter.

Condition number 12 also raised questions, which **Ms. Jefferies** noted refer to the seven conditions noted in the Environmental Specialist's report; the Specialist, Jamie Scudera, had indicated to **Ms. Jefferies** that she was not prepared to make changes to those comments without further discussion about them. **Chair Hess** clarified whether, despite these objections, the Land Development recommendation was still approval, which **Ms. Jefferies** indicated it was, noting that the only questions surrounded conditions 2, 5 and 12, and that condition 5 was expected to be fixed after this meeting. **Chair Hess** asked for a clarification of how it would be "fixed", indicating the Board may not approve the application if applicant does not want to abide by the overlay rules.

The total number of conditions (45) were clarified as being those from Land Dev (14) plus those from DRC (26) and the Environmental Specialist (7). **Ms. Jefferies** noted that a developers agreement coming before the Board tomorrow might change the scope of the DRC conditions. **Chair Hess** stated that she felt this matter had come before the Board prematurely.

**Questions for Staff**

**Chair Hess** asked County Attorney Rich Browne for his opinion on the issue of the ECAP Overlay mandate regarding provision of sidewalk and street access to adjacent east and west properties to ensure future connectivity; that is, would that requirement be open to interpretation. **Mr. Browne** stated that without a specific waiver provision, it did not sound as though it was optional. **Mr. Ruggieri** addressed the Board, noting the question might be better stated not "whether" they provide the access, but "how" to reach an agreement that meets the intent of the ordinance: he noted that Land Development had proposed a compromise which the applicant had rejected and stated that if the applicant continued to resist providing the mandated access, then the department would recommend denial of the project at the final stage.

**Ms. Seay** asked a question about the street shown in the middle of the plat graphics – Piper Rd. – which she said looked as though it ran right into a housing development. **Ms.**

**Jefferies** responded that the plan was eventually for Piper Road to be a through road that would ultimately connect to the overall ECAP project.

**Applicant's Presentation**

**Ms. Amie Boulet, P.E., with Avid Group**, applicant's agent, spoke in support of the project, referring to the various conditions that are under discussion. With regard to the utility service, she noted that the applicant is working with City of Punta Gorda. Regarding the stormwater pond, she stated that the applicant will provide easements over and around the pond.

**Ms. Boulet** concurred that applicant would meet with staff regarding the access question with the goal that the issue will be settled prior to presentation to the Commission; she referred to the issue in a very provisional way (e.g., stating that agreement might be reached if the applicant decided to provide access) which caused the Chair to question whether the applicant accepts that access is required by ordinance. **Ms. Boulet** declined to agree that the applicant agreed with that premise. **Chair Hess** asked that the applicant state for the record that the condition is accepted and that access would be provided, and **Ms. Boulet** declined to do so, stating that there were reasons why the applicant was not so inclined.

Ms. Seay called the presentation of this application premature, and Chair Hess agreed. **Ms. Dale Johnson**, representing the applicant and acting as Project Manager, addressed the Board, noting that the Land Development conditions were not received until Friday and the applicant really hadn't had a chance to reflect on what they needed to do. **Chair Hess** suggested that the petition be continued until applicant is truly ready to proceed, noting that the Board can't approve a matter presented in such an unsettled fashion. **Ms. Johnson** stated that because of lenders' involvement they would prefer there be no continuance, so that they can show forward movement on the project to the interested parties.

**Ms. Boulet** returned to podium to say only that condition 5 is in dispute and that all the other conditions are amenable; there is no disagreement with the DRC conditions and the expectation is that some of those will be rendered moot after passage of the developers agreement. **Ms. Jefferies** agreed with applicant's agent's summary.

**Mr. Marshall** asked what would happen if an agreement on condition 5 cannot be reached; Ms. Jefferies stated in that case, a recommendation of denial would go forward to the BCC. **Chair Hess** stated that the Planning and Zoning Board can recommend approval of the petition with specific reference to condition 5 being an outstanding issue.

**Public Input**

**Mr. Jim Sanders**, representing the property owners west of the applicant's property who are concerned with condition 5, addressed the Board about the previous negotiations with the applicant, and said it's been a long-standing issue; just wants to know where their access is going to be. **Kathy Sanders** came to the podium to show where their property is; they are concerned about "little pods" developing rather than a unified development, and want to keep to an open plan with guaranteed access. **Ms. Sanders** discussed the historical background, and why they can't continue to use Copley Rd. for their access but are being told to use Regent's / Piper Rd. instead. Further discussion ensued on the technical issues involved. Ms. Seay asked where Ms. Sanders suggests the access would be to meet the purposes envisioned; Ms. Sanders replied that options were constrained by

FDOT because of the limited-access nature of Rt. 17, and noted that they would be glad to tie into an available road leading to Piper Road, and thus have access to the highway at a stoplight. Further discussion ensued on the location of roads and other features in the area.

**Mr. Chris Olson**, neighborhood resident, spoke about traffic and in particular the number of small children in the area along with an elementary school. He was generally against the project, feeling it is inappropriate to site a hotel or truck stop in a neighborhood with a large population of children. **Chair Hess** asked staff if the zoning here was mixed use, and what would be allowed under that zoning. **Mr. Ruggieri** said the ECAP uses were light industrial uses, not heavy industrial. **Ms. Seay** noted there is already a cement mixing plant there, which would qualify as a heavy industrial use; it was noted that use would have been grandfathered in as an existing use. Further discussion ensued about uses allowed on the property, and also planned uses for a parcel on the other side of US 17 that might involve the uses that concerned Mr. Olson. **Ms. Jefferies** was also directed to talk to this gentleman about the extension of Piper Rd. which concerns him also.

**Ms. Bossman** asked if the Piper Road extension was being planned and further discussion ensued on the ECAP area plan. **Mr. Olson** also asked what sort of buffering will be between Tract C and the neighborhood; **Ms. Jefferies** said the tract won't be developed with buildings but will be stormwater conveyance instead and will be earthen in nature. **Ms. Boulet** provided further detail in answer to this question. She also addressed the eagle's nest issue Mr. Olson had raised earlier, noting the planned road swings away from the established nest.

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

**Discussion**

**Chair Hess** agreed that the matter would be passed on with approval, but compliance with the ECAP overlay regulations has to be achieved or it would be recommended for denial.

**Recommendation**

**Mr. Gravesen** moved that application **PP-09-02-02** be forwarded to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated March 18, 2009, along with the evidence presented at today's meeting, *and with special attention to condition five being met through compliance with the ECAP Overlay*, second by **Ms. Seay** with a unanimous vote.

**PP-09-02-03**

**Quasi Judicial**

**Commission District IV**

South Harbor Development, LLC. has applied for a Preliminary Plat for a commercial subdivision called Harbor Square Plaza, consisting of five (5) commercial lots in Section 8, Township 40, Range 22, in Charlotte County, Florida. The site (currently has existing Kohl's and Pet Smart), consisting of 15.44 acres, more or less, is located on the north side of Cochran Boulevard between Veteran's Boulevard and U. S. 41 in Commission District IV.

**Staff Presentation**

**Barbara Jefferies, Land Development Supervisor**, presented the findings and analysis with a recommendation of *Approval with conditions*, based on the reasons stated in the staff report dated March 17, 2009. She spoke briefly regarding the conditions.

## Questions for Staff

None.

## Applicant's Presentation

**Robert H. Bertsson, Esq.**, applicant's agent, spoke in support of the project, joining in the recommendation of staff report. He noted that a reciprocal easement agreement already exists, providing for cross-drainage and access. **Mr. Bertsson** questioned the need to provide a utility drainage easement which he thought was supposed to be an access easement; **Ms. Jefferies** clarified the matter as being properly about drainage.

## 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 the proposed **PP-09-02-03** be forwarded to the Board of County Commissioners with a recommendation of *Approval with four conditions*, based on the findings and analysis in the staff report dated March 17, 2009, along with the evidence presented at today's meeting, second by **Ms. Seay** with a unanimous vote.

## **Revision of Article XVIII.**

### **Landscaping and Buffers Code**

### **Legislative**

### **Countywide**

An ordinance amending Chapter 3-5 of the Code of Laws and Ordinances of Charlotte County, Florida, by amending Article XVIII, Landscaping and Buffers Code; providing for conflict with other ordinances; providing for severability; and, providing an effective date. Applicant: Charlotte County Board of County Commissioners.

## Staff Presentation

**Jeff Ruggieri, Growth Management Department Director**, presented the findings and analysis with a recommendation of *Approval*, based on the reasons stated in the staff report dated March 23, 2009, noting the following changes especially:

- ❖ Florida Friendly landscaping is now a requirement rather than a suggestion;
- ❖ Landscaping can be installed under a flexible planting time schedule, allowing postponement to the rainy season in order to conserve water. **Chair Hess** asked what follow-up will be in place to ensure that the landscaping eventually gets done; **Mr. Ruggieri** responded that there will be regular inspections based on the date that the applicant agrees to. Further questions were posed about the process for checking on stabilization issues.

**Ms. Seay** had a question about verbiage on page 12: what is the difference between "must" and "shall"? **Mr. Browne** noted that "shall" is more of a legal language option.

**Mr. Marshall** asked if the changes applied to single-family homes; **Mr. Ruggieri** responded that it was reserved for commercial and multi-family residential properties.

**Mr. Ruggieri** then noted one more small change, that the ordinance exempts public safety buildings from landscaping and buffering requirements.

**Questions for Staff**

**Chair Hess** asked if that meant completely exempted, so that nothing would be around the buildings; **Mr. Ruggieri** responded that there would be nothing required, not even stabilizations. Further discussion ensued on this particular aspect of the ordinance, which it was pointed out was a result of the Commissioners' opinion that it constituted a waste of taxpayer money to landscape public safety buildings. **Chair Hess** asked for clarification, that the law was intended to apply to everybody except the County; **Ms. Bossman** asked about the neighboring properties. **Chair Hess** stated that she found this approach highly disagreeable.

**Public Input**

No members of the public were present to comment; **Chair Hess** noted that her statement of dislike for this aspect of the ordinance was made in her capacity as a member of the public.

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

**Discussion**

**Chair Hess** repeated that she strongly disagreed with the idea that regulations applying to public don't equally apply to the County. **Ms. Bossman** added her feeling that a minimum buffering should also be required; **Chair Hess** added that such public buildings need buffering more than most other buildings. **Mr. Marshall** agreed, stating that he thought it would prove to be politically unwise to exempt the County from what is required of everyone else. **Ms. Bossman** agreed, stating that just because the County wants to save money, well, everyone wants to save money, every business and every resident.

**Chair Hess** expressed the hope that the Planning and Zoning Board's unanimous objection to this aspect of the ordinance language would prove persuasive to the Commissioners, and that they would see that it would be a politically unsound thing to do as well as a morally unsound thing to do: it would be immoral to create laws that everyone had to abide by except those creating the law, just to save some money.

**Mr. Gravesen** pointed out that taxpayers who live near these buildings aren't being protected in any way from the effects of having these facilities in their midst; he noted that just last month he had proclaimed that County Codes exist to protect the public, and then this comes up. He also noted that given the millions it would cost to complete the new jail – whether it might turn out to be \$30 million or even just \$20 million – a \$200,000 landscaping cost is something like one-tenth of one percent. Yet the County requires any commercial activity, which is equally strapped for cash to do the same or more; it is not fair and not equitable.

The members of the Board were unanimous in their very strong objection to this proposal, and **Chair Hess** called for a motion that included their strong objections to the County being excluded from ordinances placed on the private sector.

## **Recommendation**

**Mr. Gravesen** moved that the proposed revision of the Landscape/buffer code be forwarded to the Board of County Commissioners with a recommendation of *Approval with the following changes: any exemption for the County's public safety, law enforcement and EMS buildings should be eliminated, being the same as for all other commercial activities, therefore striking the language at Page 14, paragraph 3-5-402(e)(3), and at page 17, paragraph 3-5-405(c)(2), and any other language in the proposed ordinance having the same effect likewise be stricken*, and conveying the strong objection of the Planning and Zoning Board to the County Commission exempting the County from mandates to the private sector, based on the findings and analysis in the staff report dated March 23, 2009, along with the evidence presented at today's meeting, second by **Ms. Bossman** with a unanimous vote.

Next, **Ms. Shao** spoke on the ECAP zoning regulations; she noted that truck stops are not permitted, but there is some language permitting mass transit terminals and yards. Mr. Gravesen felt that permitted railroad spurs to come in, as well as trucking. Mr. Ruggieri felt that was open to interpretation, but that a truck stop is not a supported use in the ECAP.

**Mr. Gravesen** offered some thoughts on going paperless, and further discussion ensued on the various options for keeping track of last-minute changes occurring between staff and applicants.

There followed some further discussion on current and proposed Piper Rd. development.

There being no further business to come before the Board, meeting was adjourned at 2:31 p.m.