

**CHARLOTTE COUNTY PLANNING AND ZONING BOARD**  
**Administration Center, 18500 Murdock Circle, Room 119, Port Charlotte, Florida**  
**Minutes of Regular Meeting**  
**July 13, 2009 @ 1:30 p.m.**

**Call to Order**

***Vice-Chair Gravesen*** called the meeting to order at 1:31 p.m. and it was noted a quorum was present.

**Roll Call**

**PRESENT**

Audrey Seay  
Michael Gravesen  
James Marshall

**ABSENT**

Paula Hess

Brenda Bossman

**ATTENDING**

Richard Browne, Assistant County Attorney  
Gayle Moore, Recording Secretary  
Jerry Olivo, School Board

**APPROVAL OF MINUTES**

The minutes of June 8, 2009 were approved as circulated.

**ANNOUNCEMENTS**

***Planner III Jie Shao*** informed the Board that in the public notice for this meeting, the Commission District for agenda items 1 and 2 had been misstated; the correct Commission District is District III. Upon the oath being administered, the meeting commenced. Ex parte matters (site visits) were acknowledged by Ms. Seay.

**PETITIONS**

**PA-09-05-07**

**Legislative**

**Commission District II**

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 Medium Density Residential to Commercial Corridor, for property located north of S McCall Road (SR 776), south of E 1<sup>st</sup> Street, east of Pine Street and west of Hickory Drive, in the Englewood area, containing 0.90± acres; Commission District III; Petition No. PA-09-05-07; applicant: Peninsula Ground Services, LLC.

**Z-09-05-08**

**Quasi-Judicial**

**Commission District II**

An Ordinance pursuant to Section 125.66, Florida Statutes, amending the Charlotte County Zoning Atlas from Residential Multi-family 10 (RMF-10) and Commercial General (CG) to Planned Development (PD), for property located north of S McCall Road (SR 776), south of E 1<sup>st</sup> Street, east of Pine Street and west of Hickory Drive, in the Englewood area, containing 2.76± acres; Commission District II; Petition No. Z-09-05-08; applicant: Peninsula Ground Services, LLC.

**Staff Presentation**

***Jie Shao, Planner III***, presented the findings and analysis of the unified petition with a recommendation of *Approval with conditions "a" through "p" pertaining to the PD rezoning request*, based on the reasons stated in the staff report dated June 26, 2009. ***Ms. Shao***

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also discussed the basis for staff's approval of the request for modification of the set-back area by allowing parking in that area.

**Questions for Staff***None.***Applicant's Presentation**

**Robert H. Berntsson, Esq.**, applicant's agent, spoke in support of the project, noting the applicant had worked closely with staff to achieve the best site development via the Planned Development process. Regarding the inclusion of the residential property to the rear or northern edge on Pine Street, he noted that this allows the project driveway to line up properly with the intersection across the street, providing more safety for traffic. This led to the decision to make the whole area commercial which also reduces residential density on the Cape Haze peninsula. He noted that Walgreen's has also agreed to some additional "green" architectural features, and that they accept all the conditions in the staff report.

**Ms. Seay** asked whether there were any actual plans for the parcel at the rear of the property; **Mr. Berntsson** said that although a structure was indicated in that area on the initial site plan, this is now considered Phase II and there are no specific plans for it now, but its eventual development covered by conditions of the PD.

**Public Input***None.*

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

**Discussion**

**Vice-Chair Gravesen** asked staff about Condition M, concerning the required green features, which he noted was basically a philosophical question, e.g., where does this item which essentially concerns building code issues, enter into the Zoning Code. **Ms. Shao** said this comes from the Building Construction Services Green Building initiative. **Mr. Gravesen** disputed that this belongs as part of a PD which speaks to the zoning codes. **Mr. Berntsson** responded with remarks regarding the PD mandate for innovative zoning -- something over and above the straight zoning. **Mr. Gravesen** continued to object on personal / philosophical grounds, and because he felt any large development would be undertaking these things as a matter of course to protect its bottom line.

**Recommendation**

**Mr. Marshall** moved that application **PA-09-05-07** be forwarded to the Board of County Commissioners with a recommendation of *Approval with conditions "a" through "p" pertaining to the PD rezoning request*, based on the findings and analysis in the staff report dated June 26, 2009, along with the evidence presented at today's meeting, second by **Ms. Seay** with a unanimous vote.

**Mr. Marshall** moved that application **Z-09-05-08** be forwarded to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated June 26, 2009, along with the evidence presented at today's meeting, second by **Ms. Seay** with a unanimous vote.

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**NOPC-09-04-03****Legislative****Commission District I**

A Resolution pursuant to Section 380.06, Florida Statutes, amending the Development Order and Map H for the Sandhill Development of Regional Impact (DRI) to remove 17.18± acres of residential land from the DRI, reassign the residential development rights associated with the 17.18± acres within the remainder of the DRI, and correct numerous scrivener's errors; for property located south of the DeSoto County Line, north of Rampart Boulevard, east of Loveland Boulevard and west of the Deep Creek area; Section 7, Township 40 South, and Range 23 East in Port Charlotte, currently containing a total of 730± acres; Commission District I; Petition No. NOPC-09-04-03; Applicant: Post Falls Management Associates, LLC.

**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 June 26, 2009. He spoke briefly regarding the historic circumstances of the application.

**Questions for Staff**

**Ms. Seay** asked about the many changes that have taken place for this particular DRI and wondered why it couldn't have been better organized; **Mr. Smith** referred to the numerous scrivener's errors, acknowledging it ranks among the most changed DRIs in the state of Florida; he noted that changing market conditions have also influenced the numerous changes.

**Applicant's Presentation**

**Geri Waksler, Esq.**, applicant's agent, spoke in support of the project, and specifically to the question raised by Ms. Seay. Unlike most DRIs, she noted, this one from its inception was owned by a great variety of people, who undertook a DRI for its perceived benefits; the multi-ownership has contributed to the number of changes; however, they have not had a "substantial deviation" since 1991. The changes have been primarily to move uses from one place to another within the DRI footprint. **Ms. Waksler** noted that her presentation would focus mostly on the companion NOPC for the Victoria Estates DRI, but stated that essentially, the idea is to move 17 acres of office space from Victoria Estates to Sandhill; all that is happening is the movement of intended uses around within the acreage owned by Benderson Development. There is no increase in overall acreage or any other impact, and the Regional Planning Council has reviewed the proposed changes and recommends approval, as does the Charlotte County Growth Management staff.

**Mr. Marshall** asked about the retained dwelling units on reduced acreage, asking if that wouldn't lead to an increased concentration for the residences that were to be developed.

**Ms. Waksler** agreed that was a possible outcome. **Mr. Marshall** asked if there was enough space to accommodate this; **Ms. Waksler** responded that would depend on things like the ultimate height of any project, but she suggested that there could be additional future changes to more office space as well. If unused, the density would just go away, but the applicant would like to use it, having already done the associated mitigation.

**Public Input**

*None.*

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

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**Discussion**

**Ms. Seay** asked for clarification on what she heard earlier about which part was being moved.

**Recommendation**

**Ms. Seay** moved that the proposed **NOPC-09-04-03** be forwarded to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated June 26, 2009, along with the evidence presented at today's meeting, second by **Mr. Marshall** with a unanimous vote.

**NOPC-09-04-04**

**Legislative**

**Commission District I**

A Resolution pursuant to Section 380.06, Florida Statutes, amending the Development Order and Map H for the Victoria Estates Development of Regional Impact (DRI) to require the extension of Rampart Boulevard from Kings Highway to Loveland Boulevard by the developer, add 17.18± acres to the DRI, apply existing commercial/office development rights to the 17.18± acres, and extend the buildout date by three years to May 31, 2013. The DRI currently contains 365± acres in two non-contiguous parcels in the Port Charlotte area. The first consists of 293± acres located south of Village Drive, north of Rampart Boulevard, east of Kings Highway and west of I-75, known as Kingsgate. The second consists of 72± acres located south of Suncoast Boulevard, north of Old Landfill Road, east of Loveland Boulevard and west of Minneola Avenue, known as Suncoast Lakes. Petition No. NOPC-09-04-04; Applicant: Kingsgate Associates II, Ltd., WR-1 Associates, Ltd., and NB/85 Associates c/o Benderson Development Company, LLC.

**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 June 26, 2009. He spoke briefly regarding the relation of the changes in Victoria Estates which are occurring in tandem with those of the previous NOPC; he also spoke about the changes to Rampart Blvd. and effects of new law. The Rampart Blvd. extension was agreed to between the applicant and the Department of Public Works, and the change will help the circulation in the area. The extension of the build-out date is mandated by Florida law.

**Questions for Staff**

**Ms. Seay** expressed concern that the Rampart Blvd. extension would be running through a school district, noting that there's a small religious school there.

**Applicant's Presentation**

**Ms. Waksler** responded noting the extension will go on Benderson property, running behind where the school is. In response to Mr. Marshall's question, **Ms. Waksler** confirmed Benderson would be paying for the road upgrade. It was also noted that the Regional Planning Council recommended approval of this companion NOPC request.

**Public Input**

*None.*

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

**Discussion**

*None.*

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**Recommendation**

**Ms. Seay** moved that the proposed **NOPC-09-04-04** be forwarded to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated June 26, 2009, along with the evidence presented at today's meeting, second by **Mr. Marshall** with a unanimous vote.

**PP-07-02-04****Quasi-Judicial****Commission District II**

Banks Engineering, on behalf of their client, PG Holdings, LLC has applied for a transfer of ownership and a one (1) year extension for a Preliminary Plat for Burnt Store 80 Acres, a subdivision consisting of 108 single family lots (a Planned Development) located in Sections 29 and 32, Township 32, Range 23. The site, consisting of 80.15 acres, more or less, is located east of Burnt Store Road, (off Harbor Side Boulevard), southeast of Harborside Woods Subdivision and south of Punta Gorda Isles Section 16 subdivision, located in Commission District II. The original Preliminary Plat was approved on May 15, 2007, in the name of Home Dynamics Corporation.

**Staff Presentation**

**Steven Ellis, Planner II**, presented the findings and analysis with a recommendation of *Approval*, based on the reasons stated in the staff report dated May 28, 2009. He spoke briefly regarding history behind the extension request, and noting that there has been one letter and one call against the extension from neighbors, due to concerns over drainage issues.

**Questions for Staff**

**Ms. Seay** asked about the complaints concerning drainage issues, whether these complaints were about current conditions or future drainage problems **Mr. Ellis** said the letter spoke about current drainage problems. **Ms. Seay** confirmed there had been no work on the property, based on her site visit. She also asked how many extensions are allowed, total; **Mr. Ellis** said the Code does not speak to a maximum number of extensions and noted that the Board has been quite generous to applicants in the current economic circumstances. **Ms. Seay** expressed her concern that progress would be possible during the extension period, given these circumstances.

**Mr. Marshall** also asked about the drainage complaints, specifically whether the applicant had done anything to control it; **Mr. Ellis** confirmed there had been no construction and **Ms. Seay** noted the area is still in its natural state.

**Applicant's Presentation**

**Mr. Todd Rebol, Banks Engineering**, applicant's agent, spoke in support of the extension request, noting that SWFWMD approval has been granted. He stated that it is difficult to explain the complaints about drainage being laid at the applicant's door, inasmuch as the application has yet to do anything on the property; this is evidently an existing drainage pattern based on activities on the developed properties in this area.

As to when this project might get off the ground, he noted while it isn't possible to predict that with any accuracy, but to keep the financing in place, it was necessary to be ready when the opportunity arrived.

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**Mr. Marshall** asked about the original approval and whether there were and conditions related to the drainage problems at that time; **Mr. Rebol** stated there were not, noting that the only related requirement was to get SWFWMD permit, which they did.

**Public Input**

**Ms. Nancy Femrite, Director, Burnt Store Village (BSV) POA**, spoke regarding the drainage ditch that separates the Village development from the subject site. She stated it is illegal for any other entity to drain into this privately-owned ditch. She noted that 650 acres adjoining the subject parcel are deemed natural wetlands, and in the rainy season, there is sheet flow through this property; in recent rains, water from the subject parcel broke through and damaged the ditch. The POA has incurred a great expense to correct the damage. **Ms. Femrite** handed out pictures to the Board members, showing the damage, and provided more information about the flooding. She says the owners of the subject site are responsible for fixing the breaks in the BSV ditch and for containing the run-off from their property, and she stated that the POA feels the extension should be denied.

**Ms. Seay** pointed out the project hasn't broken ground; **Ms. Femrite** disputed that, saying the ground has been moved on the parcel.

**Ms. Dawn Carrier**, resident of Burnt Store Village and also an employee of the POA, spoke on a number of subjects, including run-off patterns of water in Charlotte County, quoting from the Charlotte County Emergency Flooding Program Guidelines publication; an extension of Dorado Rd., built by Charlotte County as access to a lift station on vacant land south of the BSV private drainage ditch; and about the wetlands in the area and the difficulty of developing the subject parcel. Additionally she spoke about a fire on the land which she felt had rendered the most recent species assessment meaningless, and asked if an updated assessment had been made since that time. She objected to access to the property being limited to access thru another development and using their private ditch bridge which had been paid for with MSBU funds. She stated that the extension should not be granted, noting that the conditions on the land have changed since the original approval. **Ms. Seay** thanked her for her presentation.

**Mr. Marshall** observed that the original two years time frame for the preliminary plat has elapsed already, since the original approval date was May 15<sup>th</sup> which is well past. **Mr. Browne** noted that while the extension request was made after the expiration, that was not an issue; he also noted that under the new law (SB 360) the developer only has to request an extension in writing and he's entitled to two years without question. **Ms. Seay** expressed reservations regarding what can be accomplished at this point given the state of the economy; she also wanted to know who would deal with the questions concerning the drainage ditch. **Mr. Browne** said SWFWMD is in charge of those determinations, but **Ms. Seay** wanted to know if the applicant would be doing any actual work needed.

**Mr. Rebol** responded, addressing the concept of "historic drainage rights" which covers the issue of existing drainage interacting with a newly-created private drainage ditch. He conjectured that when the Village was originally developed, the ditch may not have been designed properly to handle all the sheet flow that might come to it from the Charlotte Harbor Flatwoods, but he noted that even if it had been, creating that ditch did not create any rights to impede the historic drainage in the area. **Mr. Rebol** disputed the idea that the fire would have changed the nature of the natural sheet flow from the Flatwoods into the BSV ditch. As for access, the streets in question are public streets and provide legal access; if the new development uses those streets, as they are allowed to do, they will also be

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required to pay into the MSBU to help maintain them in the future, just as the current residents of the neighborhood do.

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

*Mr. Marshall* asked what it would take to correct the drainage problem; *Mr. Rebol* said they need an engineer to evaluate their current ditch and see why it is flooding and if they find it was designed improperly, consider having it re-engineered to work properly.

*Mr. Rebol* noted that their ditch forms what is called a “bypass swale” which is intended to collect the water coming to it and to make sure that water goes around the property where development has blocked the natural sheet flow from moving across the land to Charlotte Harbor, as it has historically done. He also observed that most such ditch designs are not to the ultimate worst case scenario, so in years of higher rainfall, it may be inadequate; if it has been breached then it needs to be repaired. He emphasized the fact that drainage is coming from all directions, not just from the 80 Acres parcel.

*Ms. Seay* noted for the record that the transfer of ownership portion of the applicant’s request was not a matter that would be before this Board; *Mr. Ellis* confirmed that the transfer had already been effected and was simply mentioned to include that fact in the record.

**Discussion**

*Mr. Marshall* returned to the timing of the request; *Mr. Browne* responded that the Board could deny this request which was made under Charlotte County Code, and if they did so, the applicant could re-request under the new rules created by SB 360, which would automatically give the applicant two year extension.

**Recommendation**

*Ms. Seay* moved that **PP-07-02-04** be approved based on the findings and analysis in the staff report dated April 17, 2009, along with the evidence presented at today’s meeting, second by *Mr. Marshall* with a unanimous vote.

**PP-07-05-09**

**Quasi-Judicial**

**Commission District IV**

Banks Engineering, on behalf of their client, Quality Homes of Port Charlotte, Inc., has applied for a one (1) year extension of a Preliminary Plat approval for Gramercy Street Development subdivision, a subdivision consisting of fourteen (14) lots for cluster housing in Section 15, Township 40, Range 21. The site, consisting of 4.66 acres, more or less, is located on the east side of Gramercy Street, west of the Crestwood Waterway and north of El Jobean Road in Commission District IV. The original Preliminary Plat was approved on August 21, 2007.

**Staff Presentation**

*Steven Ellis, Planner II*, presented the findings and analysis with a recommendation of *Approval with conditions*, based on the reasons stated in the staff report dated May 28, 2009.

**Questions for Staff**

*None.*

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**Applicant's Presentation**

**Mr. Todd Rebol**, applicant's agent, spoke in support of the project, noting the request was basically the same as the previous, and was made based on current economic conditions.

**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-07-05-09** be approved, based on the findings and analysis in the staff report dated May 28, 2009, along with the evidence presented at today's meeting, second by **Ms. Seay** with a unanimous vote.

**Amendment of Ordinance**

**Legislative Countywide**

An Ordinance of the Board of County Commissioners of Charlotte County, Florida, amending Chapter 3-5, Article XXIII, Excavation and Earthmoving; providing for revised exemptions; providing for other necessary clarifications; providing for conflict with other ordinances; providing for severability; and providing for an effective date.

**Staff Presentation**

**Mr. Jeff Ruggieri, Growth Management Director**, presented the findings and analysis with a recommendation of *Approval*, based on the reasons stated by Mr. Ruggieri in his short address to the Board, noting that the changes were in the nature of general housekeeping. He read the primary change into the record:

An additional exemption for excavation or earthmoving incidental to public roadway construction, provided that all required permits, including storm water, are obtained and all excavated material remains on-site.

He noted that the amendment was in response to the requirements of the Department of Public Works for public projects; they had not been able to qualify under the existing exemptions because they were too large. Now all material will remain on site and will enable those public projects to go through a little quicker. The remaining changes are relatively minor, such as changing references to "Community Development" to "Growth Management" and the like.

**Questions for Staff**

**Mr. Marshall** asked about the elimination of the reference to the Development Review Committee, asking if by that action the County was doing away with the DRC; **Mr. Ruggieri** clarified that the "Development Review Committee" had been changed to the "Site Plan Review Committee" some time ago, and this is another updating similar to the changes of "Community Development" to "Growth Management".

**Public Input**

None.

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

**Discussion**

*None.*

**Recommendation**

*Ms. Seay* moved that the proposed amendments to Chapter 3-5, Article XXIII, Excavation and Earthmoving be forwarded to the Board of County Commissioners with a recommendation of *Approval*, based on the evidence presented at today's meeting, second by *Mr. Marshall* with a unanimous vote.

*Ms. Seay* thanked the staff for accommodating her temporary limited movement condition and noted she would be back to normal next month.

There being no further business to come before the Board, meeting was adjourned at 2:39 p.m.