

CHARLOTTE COUNTY PLANNING AND ZONING BOARD
Administration Center, 18500 Murdock Circle, Room 119, Port Charlotte, Florida
Minutes of Regular Meeting
December 14, 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

ABSENT

Brenda Bossman

ATTENDING

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

APPROVAL OF MINUTES

The minutes of November 9, 2009 were approved as corrected.

ANNOUNCEMENTS

None.

PETITIONS

Z-09-10-18

Quasi-Judicial

Commission District III

An Ordinance pursuant to Section 125.66, Florida Statutes, amending the Charlotte County Zoning Atlas from Agriculture Estates (AE) to Residential Multi-family 5 (RMF-5), for property located southeast of San Casa Boulevard and east of Tenth Street, in the Grove City area, containing 41.15± acres; Commission District III; Petition No. Z-09-10-18; Applicant: Charlotte County Board of County Commissioners.

Staff Presentation

Jie Shao, Planner III, presented the findings and analysis of the petition with a recommendation of *Approval*, based on the reasons stated in the staff report dated November 20, 2009. A history of the matter was provided, including a review of the original legal description error that caused the current petition to be submitted; it was established, however, that the request for rezoning would meet the standards for consideration even had there been no error needing correction.

Questions for Staff

None.

Public Input

Ms. Lu Anne Knight whose property abuts the subject property, stated that a complex series of mistakes involving this property has occurred. She gave her understanding of the matter, which involved a transfer of density units to the triangle-shaped portion of land on the subject property in order to have an RV park there. She stated that the residents of this

Minutes of Regular Meeting ContinuedDecember 14, 2009 @ 1:30 P.M.

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area had been advised that the property was greenbelt that would never be developed (she later stated that it was her real estate agent that made this representation.) She spoke about how part of the value of her property depended on this assertion being true. **Chair Hess** reminded her of the competent substantial evidence rule that applies to a quasi-judicial hearing, which **County Attorney Rich Browne** also explained. **Ms. Knight** read from the ordinance referencing the TDU issue, noting that the required density was never transferred; she also made the argument that multi-family residential would not be appropriate zoning there when everything else adjacent is single-family residential. Further discussion ensued between Chair Hess and Ms. Knight, including an explanation by the Chair that multi-family residential zoning is compatible with single-family residential zoning, because both are residential zoning, and Ms. Knight asserting that the error correction will decrease adjacent property values. **Chair Hess** suggested to Ms. Knight that the involvement of an attorney would be appropriate so that her arguments could be made in a legally-permissible way; she cautioned Ms. Knight against relying on an argument that she had been told that the property would never be developed.

Mr. Jeff Smith, owner of Lot 12, signed in and argued that the owner never asked for the rezoning (because it was rezoned in error before they bought it.)

Further discussion ensued between **Chair Hess** and **Ms. Shao**, establishing how the error occurred and was discovered, the history of the site's FLUM and zoning designations, the density transfer requirements, and the like. **Principal Planner Inga William** also came to the podium to address the issue about the historical errors in detail and explaining how the current resolution was arrived at in concert with the current property owner. **Mr. Browne** added more details, suggesting that the original rezoning probably "never happened" because it wasn't properly noticed.

Mr. Gravesen noted that the current property owner has incurred extensive costs in engineering, permitting, and asked about the environmental survey that would have had to exist in order for them to go through the permitting process; he asked if they also have a site plan with the wetlands defined on it, noting that the permitting requirements would work to minimize the impact development on the neighbors. **Chair Hess** objected that it wasn't known what those permits cover or require. She also noted that the owner would still need TDUs; **Ms. Williams** responded that would be true unless the Commissioners grant their request for a variance from the TDU ordinance.

Mr. Smith said he had seen the site plan which proposes filling-in the lake on the property, which he says feeds into Oyster Creek.

Chair Hess stated that the gentleman had raised good points, but they are not presented to the standard of a quasi-judicial hearing.

Ms. Geri Waksler, applicant's agent, reviewed the history of the matter for the Board, seeking to clarify the details. Referencing the original owner, who did the original PD, she noted that they never transferred in the required density, so they then came back before the Board to request that the property be restored back to Low Density Residential FLUM and RMF-5 zoning. This request was approved, but the legal description attached to the ordinance was not just for the property that needed the restoration but also included the adjacent property that is being considered today – that was the error, made by the agent for the original property owner and compounded when County staff failed to catch the agent's mistake, that has caused the present request to be necessary.

Minutes of Regular Meeting ContinuedDecember 14, 2009 @ 1:30 P.M.

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Ms. Waksler continued her review of the matter, detailing the present owner's reliance on the public records and publicly-available information on the Charlotte County Tax Assessor's website during the course of purchasing the two properties (the correctly-rezoned one and the one rezoned in error,) and the fact that he paid taxes based on the erroneous zoning and assessment for over three years. She noted that the wetlands on the property are and would be preserved under the permit issued by the Army Corps of Engineers, but that it is the upland area, where development can take place, that is adjacent to the homes of the existing residents; development in that area could take place even if the zoning on the property was still Agriculture Estates. **Ms. Waksler** noted that the original error was compounded when the County, discovering the mistake, sought to correct it by Resolution and then did not notify the current property owner of the process or its outcome.

Ms. Waksler closed by pointing out that there is a strong argument that this rezoning would meet all the relevant criteria (adjacent uses, development in the infill area, and outside of the Coastal High Hazard Area) even if there had never been any mistakes made by anyone. Additionally, all the affected adjacent property owners have been properly notified of today's hearing on the rezoning. **Chair Hess** commented on the windfall for the original owner who sold high based on the mistakes made by his agent. Further discussion ensued.

Chair Hess stated that she was sorry for the neighbors in this situation, but if this matter had come before the Board today without the history of errors, it would in fact be considered as reasonable.

Mr. Marshall questioned how the original mistake was discovered, and contended that the County's response was based on research which he felt should have been discovered by the buyer. **Mr. Gravesen** objected to that concept as being not at all the way things happen; he noted that there is no due diligence duty to do other than check the public records, not to reconstruct the entire process or to verify its correctness.

Ms. Bette Ittersagen spoke regarding her feelings on the matter. She asked that the Board take the current residents into account and consider the potential damage to their property values.

Ms. Knight returned to the podium to discuss another mistake that was made by the Army Corps of Engineers; she asserted that her husband, who is from the area, knows that the existing water feature is a natural lake, though the Corps had said that it was man-made and then later admitted having made a mistake about the matter. **Chair Hess** asked what difference that would make; **Ms. Knight** said that filling in the lake is one of the owner's plans for the site, and that the Corps' report had already been submitted when their staff person admitted his error. Further discussion ensued and the Chair recommended that Ms. Knight present her concerns to the Commissioners.

Ms. Audrey Shinske representing the Grove City Community Advisory Committee stated that the group supports approval of the matter.

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

Discussion

Mr. Marshall notes that the neighbors didn't get proper notice in the beginning (e.g., there was a mistake) and implied the County was attempting to cover up their mistake with this change. **Chair Hess** disputed this logic, pointing out that in fact the County has freely

admitted that the errors took place, and has been working with the affected party to resolve the issue. **Mr. Gravesen** notes that the Board needs to look at the application simply as a rezoning application, which has been properly noticed to all concerned parties, and just decide it on that basis. Looked at that way, it meets the criteria, once the density issue is resolved. **Ms. Seay** stated that she supported Mr. Gravesen’s comments.

Recommendation

Mr. Gravesen moved that application **Z-09-10-18** be forwarded to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated November 20, 2009, along with the evidence presented at today’s meeting, second by **Ms. Seay** and carried by a vote of three to one:

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

Ms. Knight expressed some confusion about the future meeting dates, which Mr. Browne cleared up for her.

NOPC-09-09-12

Quasi-Judicial

Commission District I

Pursuant to Section 380.06, Florida Statutes, the Charlotte County Board of County Commissioners is holding a public hearing to consider a request for approval of changes to the transportation section of the master development order for the Babcock Ranch Community; for property located east of State Road 31, south of State Road 74, west of the Glades County line, and north of the Lee County line, containing 13,630± acres, in the East County Planning area; Commission District I, Petition No. NOPC-09-09-12; applicant Babcock Property Holdings, 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 November 25, 2009. He noted that new materials had been passed out to the Board members before the beginning of the meeting and would be addressed by the applicant’s agent.

Questions for Staff

Chair Hess asked whether the matter was quasi-judicial or legislative, noting a discrepancy between the information online and that given on the agenda. The recording secretary responded that the matter should be indicated as legislative.

Applicant’s Presentation

Robert H. Berntsson, Esq., applicant’s agent, first gave some history on the Development Order, the subsequent appeal and the beginning of work on increment one. Partly this change being presented revolves around the transportation review, specifically timing issues based on studies having been completed sooner than expected; he described the process needed to get all this in order, which turned out to be quite lengthy. **Mr. Berntsson** complimented County staff on their role in the process. The changes are concerned primarily with the technical language laying out how things are going to be done going forward. There are also updates to map H reflecting where increment one is going to be located, and other

Minutes of Regular Meeting Continued

December 14, 2009 @ 1:30 P.M.

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matters of that nature. He spoke in further detail with reference to a bullet-list provided to the Board members earlier.

Ms. Seay clarified that this is just about setting the order of the process and **Mr. Bertsson** agreed that was correct.

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 application **NOPC-09-09-12** be forwarded to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated November 25, 2009, along with the evidence presented at today's meeting, second by **Mr. Gravesen** with a unanimous vote.

DO-09-02-01

Quasi-Judicial

Commission District I

Pursuant to Section 380.06, Florida Statutes, the Charlotte County Board of County Commissioners is holding a public hearing to consider a request for approval of an incremental development order for the Babcock Ranch Community; for property located east of State Road 31, south of County Road 74 (Bermont Road), west of the Glades County line, and north of the Lee County line, containing 3,035.75± acres, in the East County Planning District; Commission District I, Petition No. DO-09-02-01; applicant Babcock Property Holdings, 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 November 25, 2009. He noted that, due to the size and complexity of the first increment, it will contain two phases, which will allow for a second review of transportation impacts before the second phase proceeds.

Questions for Staff

None.

Applicant's Presentation

Robert H. Bertsson, Esq., applicant's agent, introduced the first increment and noted the high expectations for the project, especially with the up-coming FPL photovoltaic project. Again, he noted, the focus of the most recent work has been the transportation part of the project, and much has been added as last-minute changes. He provided detail on the nature of these changes, with focus on traffic issues.

Chair Hess asked if Lee County is on-board with regard to the traffic issues; **Mr. Bertsson** said he hoped so but couldn't be definitive at this point, noting that they seem to be but have challenged just about everything regarding this project in the past.

Minutes of Regular Meeting ContinuedDecember 14, 2009 @ 1:30 P.M.

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Mr. Berntsson covered some additional details, such as improvements associated with increment one to be made; the County has requested that the project look into an intersection improvement at CR 31 and 74, which Kitson has agreed to. He also noted that the effective date of this incremental development order is not until the Master Development Order becomes effective; this allows for the possibility of future challenges to the Development Order.

Public Input

Mr. Lance Collins, asked when the phase will take place. **Mr. Berntsson** responded that it would be as quickly as possible but challenges from Lee Co. and others to the environmental resource permit have to be addressed first. The hope was that the FPL project could get started late next year.

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

Discussion

None.

Recommendation

Ms. Seay moved that application **DO-09-02-01** be forwarded to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated November 25, 2009, along with the evidence presented at today's meeting, second by **Mr. Marshall** with a unanimous vote.

There being no further business to come before the Board, meeting was adjourned at 2:58 p.m.