

CHARLOTTE COUNTY PLANNING AND ZONING BOARD
Administration Center, 18500 Murdock Circle, Room 119,
Port Charlotte, Florida
Minutes of Regular Meeting
October 8, 2012, 1:30 p.m.

Call to Order

Chair Hess called the meeting to order at 1:31 p.m. and upon the Secretary calling the roll, it was noted a quorum was present.

Roll Call

PRESENT

Paula Hess
Michael Gravesen
Brenda Bossman

John Mahshie

ABSENT

Steve Vieira

ATTENDING

Derek Rooney, Assistant County Attorney
Gayle Moore, Recording Secretary

APPROVAL OF MINUTES

The minutes of September 10, 2012 were approved as circulated.

ANNOUNCEMENTS

The oath was administered, whereupon the meeting commenced.

PETITIONS

Z-12-09-11

Quasi-Judicial

Commission District III

An Ordinance pursuant to Section 125.66, Florida Statutes, amending the Charlotte County Zoning Atlas from Planned Development (PD) to Commercial General (CG); for property located north of S McCall Road (SR 776), south of E 1st Street, east of Pine Street and west of Hickory Drive, in the Englewood area, containing 1± acres; Commission District III; Petition No. Z-12-09-11; applicant: Peninsula Property Holdings IV LLC; providing an effective date.

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 September 27, 2012. **Ms. Shao** gave details regarding the history of the subject parcel, which had been rezoned to Planned Development in 2009, for a proposed commercial development to include a Walgreens pharmacy, a plan which has since been abandoned by the principals.

Questions for Staff

None.

Applicant's Presentation:

Mr. John Swen, agent for the applicants, acknowledged that the Planned Development would not be pursued and the property owner wanted to make the property more developable for commercial uses.

Public Input

Mr. Travis Ward, resident of the E. 2nd St., near the site of the proposed rezoning, upon being sworn, indicated he had questions regarding the three lots abutting E. 1st and **the Chair** indicated those three lots would be considered in the next petition. Mr. Ward continued with his questions, asking about parking spaces, and access points related to E. 2nd St. Attempts were made to clarify his question; **the Chair** advised him that the sorts of details he was interested in would be covered as part of the Site Plan Review and not during this rezoning matter. She then deferred to Mr. Swen to respond.

Mr. Swen stepped in to try to clear up the matter, but noted that his client does not own the property abutting E 1st; he did give traffic counts from the prior occupant, a gas station, which were far higher than any commercial activity contemplated at this point.

Ms. Geri Waksler, who was in the audience, pointed out that County Code does not permit commercial access onto a residential street, in any event.

- **Mr. Gravesen** moved to close the public hearing, second by **Mr. Mahshie** with a unanimous vote.

Discussion

Chair Hess noted that there was no argument that the change would not produce detrimental effects in the neighborhood, particularly since the property was located at a major intersection.

Recommendation

Ms. Bossman moved that application **Z-12-09-11** be forwarded to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated September 27, 2012, along with the evidence presented at today's meeting, second by **Mr. Mahshie** and carried by a unanimous vote.

PA-12-09-09

Legislative

Commission District III

Pursuant to Section 163.3184(3), Florida Statutes, adopt a Small Scale Plan Amendment to change Charlotte County FLUM Series Map #1: 2030 Future Land Use, from Commercial (COM) to Office and Institutional (OI); for property located north of S

McCall Road (SR 776), south of E 1st Street, east of Pine Street and west of Hickory Drive, in the Englewood area, containing 0.85± acres; Commission District III; Petition No. PA-12-09-09; applicant: Charlotte County Board of County Commissioners; providing an effective date.

Z-12-09-10

Quasi-Judicial

Commission District III

An Ordinance pursuant to Section 125.66, Florida Statutes, amending the Charlotte County Zoning Atlas from Planned Development (PD) to Commercial General (CG) for 0.9± acres and Office, Medical, and Institutional (OMI) for 0.85± acres; for property located north of S. McCall Road (SR 776), south of E 1st Street, east of Pine Street and west of Hickory Drive, in the Englewood area, containing 1.75± acres; Commission District III; Petition No. Z-12-09-10; applicant: Charlotte County Board of County Commissioners; providing an effective date.

Staff Presentation

Jie Shao, Planner III, presented the findings and analysis of the petitions with a recommendation of *Approval*, based on the reasons stated in the staff report dated September 27, 2012. Her summary included a continued description of the former Planned Development and the need for rezoning based on the current decision not to develop the PD.

Questions for Staff

None.

Public Input

None.

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

Discussion

Chair Hess led a brief discussion of the Board-initiated nature of this part based on the requirements of the Planned Development expiration.

Recommendation

Ms. Bossman moved that application **PA-12-09-09** be forwarded to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated September 27, 2012, along with the evidence presented at today's meeting, second by **Mr. Gravesen** and carried by a unanimous vote.

Ms. Bossman moved that application **Z-12-09-10** be forwarded to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated September 27, 2012, along with the evidence

presented at today's meeting, second by **Mr. Gravesen** and carried by a unanimous vote.

SV-12-07-04

Legislative

Commission District III

John Pizzi and Arthur & Ethel Hatfield are requesting to vacate the portion of Manor Road that runs between East 3rd Street and Snook Bayou. The segment is 0.13 acres, more or less, and is located south of East 3rd Street, north of Snook Bayou, west of Rocky Creek, and east of Hickory Drive, in Rock Creek Park 2nd Addition, as recorded in Plat Book 4, Page 29, of the Official Records of Charlotte County, Florida, in Section 5, Township 41, Range 20, in Commission District III.

Staff Presentation

Steven Ellis, Planner II, presented the findings and analysis of the petition with a recommendation of *Denial*, based on the reasons stated in the staff report dated September 21, 2012. He described a staff site visit which confirmed that erosion is taking place on the site, and photos were presented to show conditions on the site.

Mr. Ellis then discussed the FLU policies governing access to waterbodies, focusing on public benefit. Applicants have offered to build a seawall at the eroded site; they have also gathered signatures on a petition circulated amongst their neighbors. **Mr. Ellis** also referred to proscriptions on the plat against docking, in the waterway; the restriction section seems to limit public accessibility on purpose. He also mentioned several current Code Violations which will not be pursued until the present matter is decided. He discussed staff comment which both recommended for and against the vacation, or suggesting approval with easements to ensure access for future drainage work. **Mr. Ellis** discussed an alternate solution from Environmental staff in the Zoning division, that rather than a standard seawall, a riprap seawall be used instead. In closing, **Mr. Ellis** reiterated staff's recommendation of denial of the request as being inconsistent with Smart Charlotte FLU Policy 2.1.5; he also offered two conditions as options in the event of a finding for approval, involving provision of drainage easement to Charlotte County, and construction of adjoining seawalls by the applicants, all as per the details as given in the staff report.

Questions for Staff

Chair Hess asked for some clarification on the conditions; **Ms. Bossman** asked for clarification on the seawall being proposed. She also expressed concerns that the improvements being offered by the applicants would not actually be benefits to the public, since the improvements would be made to land that would become owned by the applicants if the vacation request is approved. **Mr. Ellis** said that the public benefit would arise from the seawall preventing further erosion into the waterway, thus removing an impediment to navigation. **Mr. Mahshie** asked about public usage of the access, and whether it was apparent to the public that the access even existed; **Mr. Ellis** confirmed that to the casual passer-by, it would not necessarily appear to be a public right-of-way. **Chair Hess** stated that another public benefit is that the land

goes back on the tax rolls, and is removed from County responsibility for further maintenance.

Applicant's Presentation

Geri Waksler, Esq., agent for the applicant, spoke in support of the petition, beginning with a question to Mr. Ellis about standard County position on such requests – this is, in the absence of a showing of 'overwhelming public benefit', the default County position is to recommend denial of street vacations which provide water access and to leave the decision of whether or not there is sufficient benefit to the reviewing boards? **Mr. Ellis** confirmed this was customary. **Ms. Waksler** also asked to clarify if the staff recommendation includes only two conditions if the Board decides to approve, and **Mr. Ellis** confirmed that as well.

Ms. Waksler next presented some history and details about the property, how the neighbors have maintained it in the absence of County maintenance, and how there are other seawalls in the vicinity. She noted that the subject property provides drainage into the waterway which includes dirt, debris and vegetation, and creates impassable conditions. Regarding the need for a vacation request involving water access to demonstrate a public benefit, she noted that the County position is to leave the evaluation of sufficient public benefit to the review boards, further discussion focused on the proposal to install a seawall, improvements to navigation, and halting erosion. **Ms. Waksler** also contended that public access to the water does not trump the boating access, noting that there are still four other public access points along this canal, including one immediately across the canal, where the boat ramp is. She stated that the applicants accept both conditions that staff has recommended in the event of a decision to approve the petition.

Chair Hess requested clarification on the number of conditions, which was confirmed to be two. Ms. Bossman asked if anyone had determined exactly how much in new taxes would result from this property going onto the tax rolls; **Ms. Waksler** said she had not done an analysis but agreed that it would be just a matter of a few dollars.

Public Input

None.

- **Mr. Gravesen** moved to close the public hearing, second by **Mr. Mahshie** with a unanimous vote.

Discussion

The Board considered the conditions and benefits; **Chair Hess** stated that she could see the improvements; although one access is removed there is sufficient off-setting public benefit as required in the Comp Plan for approval. **Mr. Gravesen** commented on the maps, requesting a longer view map to determine where this access goes to, whether to the Gulf, Lemon Bay, or something other. He felt that should be part of the consideration, since not every water access point leads to anything worthwhile. He also commented that there is a boat ramp across the canal but that deed restrictions

limit its usability. **Mr. Mahshie** sees public benefit in the improved maintenance that would occur. **Ms. Bossman** stated that she lives in the area, which is one where many people fish, and considers this as yet one more limitation of access to water; she noted that the Comprehensive Plan doesn't require that access has to be a major water body. Balancing access against the perceived public good, **Ms. Bossman** stated that one alternative would be for the County to install the riprap seawall and maintain it.

Recommendation

Ms. Bossman moved that application **SV-12-07-04** be forwarded to the Board of County Commissioners with a recommendation of *Denial*, based on the findings and analysis in the staff report dated September 21, 2012, along with the evidence presented at today's meeting, with a second by **Mr. Gravesen** and discussion of the motion commenced. **Mr. Gravesen** stated that he agreed with Ms. Bossman's point that the Comprehensive Plan is against it and that there is not enough benefit to the public to approve it.

The vote was called and the results were as follows:

Mr. Gravesen - Aye
Ms. Bossman - Aye
Chair Hess - Nay
Mr. Mahshie - Nay

The Chair recognized the split vote; Assistant County Attorney Derek Rooney suggested restating the motion.

Mr. Mahshie moved that application **SV-12-07-04** be forwarded to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated September 21, 2012, along with the evidence presented at today's meeting including a finding of sufficient public benefit vacating the property, with a second by **Ms. Hess**.

Again the Chair called the vote, and again the vote was split along the same lines:

Ms. Hess - Aye
Mr. Mahshie - Aye
Ms. Bossman - Nay
Mr. Gravesen - Nay

Therefore the matter goes to the Commission with no recommendation from the Planning and Zoning Board.

PP-12-08-02

Quasi-Judicial

Commission District IV

Centex Homes has applied for Preliminary Plat for Myakka Pointe 2-A (1st Replat), being a replat of Myakka Pointe at Riverwood Unit 2, as recorded in Plat Book 19, Pages 17A-17E, of the official records of Charlotte County, Florida. The replat is a change from 24 multi-family units to 12 single-family lots on 12.68 acres, more or

less, located north of River Beach Road, east of the Myakka River, south of Columbia Avenue, and west of Gulf Pointe Drive, in Section 29, Township 40 South, Range 21 East, in Commission District IV.

Staff Presentation

Steven Ellis, Planner II, presented the findings and analysis of the petition with a recommendation of *Approval*, based on the reasons stated in the staff report dated September 21, 2012. The request is to modify the product from multifamily condominium units to two-family villa style units. Mr. Ellis noted that he received very little comment from staff upon distribution of the packet for review.

Questions for Staff

None. However, **Mr. Jerry Olivo** noted that while the staff report states that the public schools have reviewed the material, schools did not in fact do so; he stated he had discussed this with Mr. Ellis, who will provide him a copy of the material.

Applicant's Presentation

Mr. Mike Woolery for applicant Centex Homes, said that he was available to answer questions; he was accompanied by Engineer Dan Bond from WilsonMiller.

Public Input

Ms. Lenore Conenello, resident of Riverwood, stated that the proposal is to put twin villas in the midst of condos. She stated that each Riverwood neighborhood traditionally has all the same type of units. She stated her opinion that since Centex can't currently sell condos and because twin villas sell better, the company has decided to mix these two housing styles together in the same neighborhood. Ms. Conenello expressed her disapproval of this scheme, particularly since it is being proposed when many residents are still up north. She felt that the neighborhood should be restricted to the condo style building that is already established or that the land should be left undeveloped.

At the request of the Chair, **Mr. Woolery** responded to the issue of building styles, handing out pictures to show the difference. **Chair Hess** asked Mr. Rooney if the style of buildings the developer chooses is something that is an issue for the plat, and was told that it is not; the Chair noted that reductions in density are agreeable to the Board. Further discussion ensued.

Mr. Woolery responded further on the market conditions; he confirmed that condos are selling less well than the villas. He stated that the company did do public outreach through the condo association and the CDD and the HOA. He felt that it simply comes down to a difference of opinion on aesthetics. The company plans to have more meetings as people return to the area for the winter.

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

Discussion

Chair Hess stated that she was in favor of the matter; **Mr. Mahshie** felt that it seems to all be multifamily, nothing unattractive is planned. **Ms. Bossman** stated that she was pleased the replat was reducing density.

Recommendation

Mr. Mahshie moved that application **PP-12-08-02** be forwarded to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated September 21, 2012, along with the evidence presented at today's meeting and second by **Ms. Bossman** and carried by a unanimous vote.

There being no further business to come before the Board, meeting was adjourned at 2:28 p.m.