

**CHARLOTTE COUNTY PLANNING AND ZONING BOARD**  
**Administration Center, 18500 Murdock Circle, Room 119,**  
**Port Charlotte, Florida**  
**Minutes of Regular Meeting**  
**December 10, 2012, 1:30 p.m.**

**Call to Order**

**Chair Hess** called the meeting to order at 1:29 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  
Steve Vieira

**ABSENT**

John Mahshie

**ATTENDING**

Joshua Moye, Assistant County Attorney  
Gayle Moore, Recording Secretary

**APPROVAL OF MINUTES**

The minutes of November 5, 2012 were approved as circulated.

**ANNOUNCEMENTS**

**The Chair** announced that for the citizen input for each agenda item, comment time is limited to five minutes; professional objectors may have the same 20 minutes as the applicant; **the Chair** directed those professional objectors to meet and register with Assistant County Attorney Joshua Moye while the remainder of the group goes on to hear the first agenda item.

[Ms. Bossman arrived.]

**PETITIONS**

**Enterprise Zone Development Plan**

**Legislative Commission Districts II, IV, V**

Review and recommendation that the Charlotte County Enterprise Zone Strategic Development Plan is in conformity with the comprehensive plan for the development of Charlotte County as a whole pursuant to Florida Enterprise Zone Act.

**Staff Presentation**

**Debrah Forester, Economic Development Office of Charlotte County**, presented the analysis of the Enterprise Zone Development plan with a request for a finding that the plan is in conformity with the comprehensive plan for the development of Charlotte

County as a whole pursuant to Florida Enterprise Zone Act, based on the reasons stated in the staff report dated November 28, 2012. This was primarily a PowerPoint presentation; the five target areas identified within the Plan are Enterprise Charlotte Airport Park; a portion of the Charlotte Harbor CRA; the Murdock Village CRA; a portion of the Parkside CRA; a portion of the Punta Gorda CRA.

The community goals which have been identified are improving long-term economic growth; increasing private investment; enhancing employment opportunities; and diversification of the economic base. Objectives identified are to promote a strong economy; increase skill capabilities of the employment base; enhance community development; and infrastructure enhancement.

**Ms. Forester** gave a brief summary of intended actions in support of the plan; she noted that one table had been changed since the original distribution of the plan to the P&Z Board members. There will be a state-required annual review to determine what improvements have been made. Economic Development staff will go next to the Commissioners for Plan adoption; then to the City of Punta Gorda for a similar presentation, and then submittal to the Department of Economic Opportunity. There will also be an Interlocal Agreement presented to the Commissioners in January and to the City of Punta Gorda as well.

### **Questions for Staff**

**Chair Hess** acknowledged that the goal of the presentation was to determine whether the plan was in conformance with the Comprehensive Plan, not to go over details of the plan itself, and she called for public comments on the subject of conformance.

### **Public Input**

*None.*

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

### **Discussion**

**Chair Hess** noted that she found the Enterprise Zone Development Plan to be in conformance with the Comp Plan, and she solicited opinions from the other Board member, who expressed agreement.

### **Recommendation**

**Mr. Gravesen** moved that the **Enterprise Zone Development Plan** be forwarded to the Board of County Commissioners with a finding that it is in conformity with the Smart Charlotte 2050 Comprehensive Plan for the development of Charlotte County as a whole pursuant to Florida Enterprise Zone Act, based on the findings and analysis in the staff report dated November 28, 2012, along with the evidence presented at today's meeting, second by **Ms. Bossman** and carried by a unanimous vote.

**Chair Hess** reviewed the time limits on public comment regarding agenda item two; she asked in particular that all commenters confine their discussion to the matter on the agenda, which is removal of the subject property from the Prime Aquifer Recharge area on Map #6. She said that she sympathized with what she understood would be the impulse to comment on the landfill, but that matter is not before the Board today.

**PA-12-10-14-LS**

**Legislative**

**Commission District I**

Pursuant to Section 163.3184, Florida Statutes, transmit to the Department of Economic Opportunity a Large Scale Plan Amendment to the Charlotte County FLUM Series Map #6: Prime Aquifer Recharge Area. The proposal is to remove property from the Prime Aquifer Recharge Area; Commission District I; Petition No. PA-12-10-14-LS; Applicant: Calusa Green LLC.; providing an effective date.

**Staff Presentation**

**Inga Williams, Principal Planner**, presented the findings and analysis of the petition with a recommendation of *Approval*, based on the reasons stated in the staff report dated November 28, 2012. She pointed out that there was a variation between how Charlotte County had originally defined the site (in 1988 and again in 1997) and what the data from the State now says. She referenced updated water district material and University of Florida material that shows the land is currently in a very low recharge area. She discussed how the Florida Administrative Code defines a "prime or high recharge area" and the State's response to the applicant's inquiry whether this was "prime"– the State says that it is not, based on the opinion of District hydrogeological staff. Based on that information, staff recommends the petition be transmitted to the State's Department of Economic Opportunity for comments; **Ms. Williams** noted it would also be reviewed by the Southwest Florida Regional Planning Council, the water management districts, and numerous other state agencies.

**Questions for Staff**

**Chair Hess** asked about the preparation of the maps which included this error; **Ms. Williams** pointed out the maps were adopted in 1988 and 1997, that she wasn't on staff at that time, and so does not know what staff's thoughts were on the subject at that time. She stated that, based on current data provided by the water districts, that map is not correct. **Chair Hess** asked, and **Ms. Williams** confirmed, that the Comprehensive Plan would need to be updated for the entire area, not just the applicant's parcel.

**Chair Hess** pointed out, and **Ms. Williams** concurred, that there was no deprivation of rights for agricultural interests in this area under the "Prime" designation; **Chair Hess** concluded that it would be a wiser approach to review the entire area again, removing the designation where it is inappropriate and providing whatever alternative protective designations belong there. **The Chair** also posed questions about the overlay area, and what might impact that.

**Mr. Vieira** asked who is the reviewing authority on the map; **Ms. Williams** clarified that the State would be if it was a significant state resource, but if this is not

considered significant because it is not a "Prime" recharge area, the State won't comment, and the County will be the authority.

**Ms. Bossman** asked for additional clarification, about whether it is within County purview to designate these areas; **Ms. Williams** confirmed that it is not County staff that awards the designation, but we use their data to create our map, which we titled "Prime Aquifer Recharge Area". Both **the Chair** and **Ms. Bossman** noted that, though the data apparently originated with SWFWMD at the time of its inclusion in the comp plan, that agency is now agreeing with the applicant. Further discussion ensued regarding the historical material that was included in our comp plan. **Chair Hess** confirmed with Ms. Williams that the appropriate action at this time would be to review the entire area as part of a new comp plan update.

**Ms. Bossman** asked whether an approval today would be tantamount to recommending the related request; **Ms. Williams** clarified that the only consideration today is the map change request.

### **Applicant's Presentation**

**Geri Waksler, Esq.**, applicant's agent, first addressed the implications of the subject property being included in this incorrect map designation which limit what can be done on the land, limitations which arise out of Comp Plan restrictions, such as those on impervious surfaces, density and intensity; these are different from use restrictions under the Zoning Code.

**Ms. Waksler** next addressed the point that today's issues are narrowly limited to the definition in Map 6, of the Floridan aquifer recharge pattern. She noted the District had submitted a letter to that effect. She next introduced David Brown, to explain why the subject property is not within a prime recharge area and how it came to be included in this restricted designation.

**Mr. David Brown** then made a PowerPoint presentation, defining and discussing the types of recharge, different aquifers and other technical aspects of the hydrogeology, establishing that the area is not a Prime Aquifer Recharge Area, under the governing definition of "prime" and also identifying the source of the data that the map was based on. At the conclusion of this presentation, **Ms. Waksler** noted that applicant reserved the remaining time for their rebuttal.

**Chair Hess** recalled Ms. Williams to the podium to clear up the questions of whether there are restrictions on the property on account of this specific map designation, and whether the Comp Plan allows for exceptions if there is hardship caused by the designation. **Ms. Williams** responded with reference to 2050 comp plan, noting that the limitation on impervious surfaces within the map area does not include limitations to agricultural uses. **Chair Hess** also referenced the material received from the Conservancy of Southwest Florida, which suggested that the Comp Plan did allow for exceptions in the case of hardships. **Ms. Williams** responded with reference to Policy 1.1.3, which states that uses prohibited otherwise may be allowed on a case-by-case

basis by the Commissioners upon demonstration by science-based analysis that the proposed use will have no negative impact on the quantity or quality of water entering the aquifer. **Chair Hess** stated that her point here was that since there would be no negative impact on the allowable uses, the necessary additional research can go forward without being rushed.

### **Public Input**

**Neil Montgomery, Esq. and Mr. Lonnie Howard, Johnson Engineering**, spoke in opposition to the applicant's petition. **Ms. Montgomery** took the position that, while she does not disagree with Mr. Brown's presentation with regard to the definition of Prime Recharge, she feels that it wasn't a mistake by the County which can be demonstrated by going back and looking at the Data and Analysis underlying the Comp Plan. She pointed out that while the recharge in this area is low, the rest of the County is a discharge area. She also mentioned administrative case law that rejects arguments similar to Mr. Brown's, that you need to rely only on the state maps and shouldn't have to consider groundwater recharge. In the present case, Charlotte County would be creating a 'hole' in the middle of its only recharge area. **Ms. Montgomery** next introduced Mr. Howard.

**Mr. Howard, President of Johnson Engineering**, gave his hydrogeologic credentials, noting that he has worked for the County before, in addition to Hall Ranch and Lykes Brothers. He provided additional technical information regarding the way in which rainfall drives recharge into unconfined aquifers, water which ultimately goes into the Floridan aquifer. Further technical material was presented, including a written summary handed out to the Board; summing up, **Mr. Howard** stated that this is a recharge area to all three aquifers and the requested change would be contrary to data and analysis. He also called for additional analysis on the matter, including a water budget analysis.

**Chair Hess** asked Mr. Howard if he was in disagreement with the District staff and their conclusion that it is not Prime. **Mr. Howard** responded that it is the highest recharge of the Floridan in Charlotte Co., but in comparison to other locations within the state, it's low. **Ms. Bossman** asked Mr. Howard who he is working for and he responded, Bryan Paul Properties.

**Russell Schropp, Esq. and Dr. David DePew, representing a number of clients**, beginning with remarks by **Mr. Schropp** who then introduced Mr. DePew.

**Dr. DePew** gave his credentials preparatory to his technical remarks. His points included observations that it is important to understand how the existing request fits in with the current Comp Plan, which requires continued protection of the water/groundwater in this area; that the request is not in compliance with either the Comprehensive Plan or 163, Part II, F.S.; that it will lead to internal inconsistencies; that there is a mandate in Statute and in the Comp Plan to protect these water resources, and that the applicant has failed to demonstrate that the outcome of

approval of their request will not include adverse effects on surrounding watershed from creating a "donut hole" in the aquifer protection.

**Dr. DePew** noted that issues with some of the definitions offered so far during the applicant's presentation, which are not as limited as they indicated; he says these areas are extremely significant for present and future groundwater uses; **Dr. DePew** noted, with regard to the definition of "significant" that it is a term which would vary geographically depending on the hydrologic characteristics of that aquifer, and that this need to look at definitions in context in clear within the Florida Administrative Code itself.

Summarizing, **Dr. DePew** spoke to the value of the surficial aquifer in Charlotte County, as well as it's susceptibility to contamination; he also spoke about the Watershed Overlay District and the need to consider that together with Map 6, to avoid an internal inconsistency being created. He stated that this application fails every test for an amendment to the Comp Plan, and closed by citing a number of instances in Statute that are also in opposition to such an amendment.

**Ms. Bossman** asked Dr. DePew whether he had talked with staff about any of the material in his report; he stated that he reviewed staff's materials but had not spoken to them.

**Stumpy Harris, Esq.** and **Mr. Kevin McHugh**. **Mr. Harris** stated that he was representing Fred Hill and acknowledged that the discussion is not supposed to be about the landfill, but he noted that the intended use of the applicant's property is for a landfill; he stated his opinion that avoiding that fact would not be good policy. He then introduced Mr. McHugh, to make his presentation on the dangers to the aquifers.

**Mr. McHugh**, a retired chemist, began his presentation, beginning with his credentials. **Assistant County Attorney Josh Moyer** asked Mr. McHugh to limit his presentation to comments on the aquifer; after some discussion, the decision was made not to make the presentation.

**Steve Blount of Blount Law Naples**, representing Fred Hill, was next to speak. He continued the argument advanced by Mr. Harris, that this application is being considered out of context, which he characterized as deceptive. **Mr. Blount** agreed with the Chair on general procedure; he contended that the other speakers were going to present context. He stated that he agreed with the Chair's suggestion that there needs to be a complete review of the science done within the context of the applicant's intention to site a landfill on the property.

**David Levin, Esq.** for Packers Gulf Citrus, Inc., and Edentown Company. Mr. Levin began by handing out document copies and oranges to the Board members, stating that the orange is for a magic trick, to illustrate "sleight of hand" by the applicants, e.g., that the focus on the aquifer dispute serves to distract from attention to the underlying landfill proposal. **Mr. Levin** next discussed their testimony as being

directed totally to the Floridan aquifer, making reference to the printed material he handed out. Referencing the Goals, Objectives and Policies (GOPs) of the Smart Charlotte 2050 comp plan, he noted the material in his handout which concerned the County's areas of prime aquifer recharge, and noted that this material is presented without any reference that it is limited to the Floridan aquifer; however, background documents make it plain that the area provides recharge which warrants protection. **Mr. Levin** discussed another provision of the Comp Plan FLU Policy 1.4.3 Agricultural Primacy which states that the County shall consider bona fide agricultural operations in existence for at least one year, among other criteria, as having primacy over other land uses that may be developed. "Primacy" means that when conflict arises between agricultural and non-agricultural uses, these conflicts will be resolved in favor of the agricultural interests provided those interests were established prior to the non-agricultural uses.

In conclusion, **Mr. Levin** proposed that a change to map 6 is needed which will indicate that it concerns all aquifers in the area. **Chair Hess** agreed and she asked Ms. Williams if the Comp Plan specifies which aquifer it is protecting, e.g. the Floridan in particular; **Ms. Williams** said that the reference is in the Data & Analysis. **Mr. Levin** and **the Chair** agreed that SWFWMD commented only on the Floridan aquifer, not the entire system. Further discussion ensued. **Ms. Bossman** questioned whether Mr. Levin had talked to staff about these concerns; he confirmed that he had not.

**Ms. Waksler** voiced objections to the length of time each of the Professional Objectors has been taking, and some discussion was held on this matter; it was determined that the Objectors were using an appropriate amount of time, and that Ms. Waksler would have adequate time to rebut.

**Ernest Sturgis, Esq.**, representing the Paradise Park Condominium Assoc., a residential condominium park located near the project site, stated that it's not all agriculture uses in that area; he represents residential interests, and knows that there are others, whose interests need to be considered.

**The Chair** indicated that Citizen Input would come next, and that each speaker will be limited to five minutes, should try not to duplicate information already presented, and should please stay on the subject.

**Mr. Fred Hill**, property owner in the area, after a discussion involving Mr. Harris (about whether he had already spoken for Mr. Hill), requested to show a brief video illustrating water flow patterns at Long Island Marsh. After resolving technical issues, the video was displayed, demonstrating the point that the water in that area goes into the Punta Gorda City reservoir and into the harbor.

**Mr. Clark Keller**, resident of the area, says no one in this area drinks from Floridan, because it's too salty; he noted that people drink from many aquifer sources other than the Floridan. **Mr. Keller** said that the subject of recharge concerns what is going into the ground and from there into the aquifers, and that he believes Kevin McHugh

should be allowed to present, because the liners are the only thing that would prevent pollution into the aquifer.

**Mr. Kevin McHugh**, resident, stated that his 80-foot well is in the surficial aquifer, 1.4 miles south and west of the corner of project property; he requests the Board please keep the map designation in place, to protect the drinking water.

**Ms. Percy Angelo**, first gave her environmental law credentials, noting that she had often dealt with landfills in her career, both opposing them and representing them. She noted that because it is a given in the landfill industry that such projects should not be located where they may cause damage that will be difficult and expensive to remediate, such as over important aquifers; this is what Charlotte County tried to ensure when adopting FLUM #6. As other speakers before her, she spoke to the issue that there's more than one aquifer there, and applicant fails to mention any of them except the one the District disavowed as being "Prime" Recharge. She calls this an example of a narrowly-asked question, with an example from the movie "Lincoln". She provided a packet of studies which she said demonstrate the importance of the area aquifers other than the Floridan.

**Ms. Julianne Thomas**, representing the Conservancy of Southwest Florida, provided a letter to the Board, and talked about the "donut hole" that approval of this map request would result in, likening it to spot zoning. This is not good planning, in the best interests of the County. She made the point also that there is no reason to ask for this map change absent the landfill project, so the mental gymnastics of not speaking about that landfill project makes it difficult to discuss the request logically.

**Ms. Tauna Bogel**, resident of Charlotte County, has questions, first to the applicant. Chair Hess explained the proper format for such questions in this type of meeting, and Ms. Bogel put her questions on the record instead. Her first question concerned what activities are imminent that can't be done under current zoning. She also asked whether it was true that Calusa Growers LC owns the property that Calusa Green LLC intends to use for the landfill, and also questioned what the "project site" which was part of Mr. Brown's presentation referred to, e.g., was it the landfill. **Ms. Bogel** stated her belief that the Board should consider all the aquifers not just the Floridan; she felt that staff had looked just at the letter which limited the question to the Floridan. **Chair Hess** noted that the purpose of this hearing is address these questions, some of which are already on the record.

**Mr. Lindsay Harrington**, property owner and local realtor, challenged the applicant's assertion made at the September Board hearing that no one would be affected. He suggests the Board look at all these people present today, who are concerned about agriculture and their personal water supplies. He stated that the first duty of this Board and of the Commissioners and other County staff is to protect the safety of citizens and the public welfare, which can best be done by rejecting this application.

**Mr. Douglas Tucker**, resident of the County, also spoke in opposition to the map changes.

**Mr. Patrick Hill**, family owns property near the site for years, where they drank water from a well on the property. He opposes the applicant's request.

**Mr. Bill Ora**, of Punta Gorda, also spoke in opposition to the petition.

Another gentleman whose name was not available spoke in opposition to the project with reference to a concern about hurricanes.

**Mr. John Bean**, resident of Charlotte Co, stated that as a certified financial planner, he understands numbers and wants to point out that a recharge rate of .163 inches per year, which is in fact a large amount of water when considered over the entire footprint of the project site.

**Mr. Bob Thompson** of Deep Creek, determined that the County Natural Resources Division is charged with protection of such lands, and asks what their position is on this petition. **Ms. Williams** responded that staff received no input from that Division.

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

A five-minute recess was called at 3:43 p.m. The meeting reconvened at 3:50 p.m.

### **Applicant's Rebuttal**

**Mr. David Brown** rebuts first, against the idea that his analysis focused on the Floridan to the exclusion of the other aquifers, and whether there was any misunderstanding about technical matters. He provided an extensive technical review, going into depth on the system structure and conditions of the various aquifers that exist in and serve the region, along with information about the techniques for tracking recharge. He also made the point that he refers to all his work as "projects" and that there is no intention to obscure anything by doing so. His conclusion was that, based on the information provided by the USGS, the Florida Geological Survey, Southwest Florida Water Management District, the USGA, the subject property is not located within a prime recharge area for the surficial aquifer; and based on all other technical information provided today, the subject property is not located in a prime recharge area for the surficial, intermediate and Floridan aquifers, and the map cannot be considered to exactly correspond to recharge areas for all these different aquifers.

**Ms. Waksler** then made her response dealing with the subject of the present petition; she stated that the question before the Board is whether to correct a map that has a clear error; the question is not whether this is a recharge area, but whether it is a PRIME recharge area. She concludes that it is not, based on Mr. Brown's data and analysis, not to the Floridan aquifer nor to the others; the map only deals with the Floridan, and thus applicant's testimony focused on that aquifer.

**Ms. Waksler** stated that how people feel regarding the landfill is not relevant; the only thing before the Board is the map change. Prime is defined in Florida Statutes, as "high" and recharge in this area is low, by everyone's estimates. She also pointed out that a review of the requirements in the Comp Plan GOPs shows that they only refer to an aquifer in the singular, not to plural aquifers. She emphasized that no one or agency in testimony, including County Staff, has said that the area provides prime recharge to the Floridan aquifer; therefore the property does not belong in FLU Map 6.

### **Discussion**

**Chair Hess** led off with comments from the Board members. **The Chair** stated that the staff and the Water Management District appear to concur that the area designation of Prime Recharge to the Upper Floridan aquifer is improper. However, she stated that she sees no urgency to act upon this petition to remove this one property. The designation does not preclude the owners of this property from using it in accordance with the zoning which is existing on the property, which is agriculture. Therefore, there is no denial of rights here, and no urgency to act quickly. Therefore, she stated, it was her opinion to recommend Denial to transmit, and to also recommend to the BCC in accordance with good planning principles, to direct the staff to take the time to review the entire area, and decide what protections are appropriate to replace Map 6, and begin the process to amend the Comprehensive Plan accordingly.

**Mr. Vieira** stated that he concurs with the Chair's statement and that he would recommend denial also.

**Mr. Gravesen** stated that he also concurs that the amendment should not go to the Office of Economic Development, based on the testimony given today.

**Ms. Bossman** stated she agrees concerning the primacy our duty to protect the water source. She also offered thanks to the citizens who were challenging this. She also agrees that the entire matter needs a close review.

### **Recommendation**

**Mr. Vieira** moved that application PA-12-10-14-LS be sent to the Board of County Commissioners with a recommendation of Denial of Transmittal to the Department of Economic Opportunity, further recommending that the Board of County Commissioners instruct staff to do a full review of the map area and correction as required, based on the findings and analysis in the staff report dated November 28, 2012, along with the evidence presented at today's meeting, second by **Mr. Gravesen** and carried by a unanimous vote.

There being no further business to come before the Board, meeting was adjourned at 4:19 p.m.