

CHARLOTTE COUNTY PLANNING AND ZONING BOARD
Administration Center, 18500 Murdock Circle, Room 119,
Port Charlotte, Florida
Minutes of Regular Meeting
April 8, 2013, 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
Steve Vieira
John Mahshie
Paul Bigness

ABSENT

ATTENDING

Ty Harris, Assistant County Attorney
Gayle Moore, Recording Secretary

APPROVAL OF MINUTES

The minutes of March 11, 2012 were approved as circulated.

ANNOUNCEMENTS

There were no announcements. The oath was administered to those desiring to speak, whereupon the meeting commenced.

PETITIONS

Z-13-02-02

Quasi-Judicial

Commission District III

An Ordinance pursuant to Section 125.66, Florida Statutes, amending the Charlotte County Zoning Atlas from Commercial General (CG) to Commercial Intensive (CI); for property located northeast of S. McCall Road, and south of E. Bay Heights Avenue, in the Englewood area, containing 0.67± acres; Commission District III; Petition No. Z-13-02-02; applicant: Gratia D. Schroeder, as Trustee of the Gratia D. Schroeder Revocable Trust; 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 March 22, 2013.

Questions for Staff

None.

Applicant's Presentation

Robert H. Berntsson, Esq., applicant's agent, gave a brief history of the matter, which he described as being simple and straightforward. He noted that his firm also represents a neighboring property owner, Englewood Bank, and that he had contacted that client to ensure

they did not have an objection to his representation of Ms. Schroeder before proceeding with his representation on this matter.

Public Input

None.

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

Discussion

Chair Hess said she thinks that the transition area available between the subject property and the nearby residential was adequate, noting that other CI exists nearby, and said she favored approval.

Recommendation

Mr. Bigness moved that application **Z-13-02-02** be sent to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated March 22, 2013, along with the evidence presented at today's meeting, second by **Mr. Mahshie** and carried by a unanimous vote.

Chair Hess commented in advance of the hearing on the following petitions regarding the need to balance care for the environment and the need not to discourage commerce in the County, and she asked that her fellow Board members proceed with that balance in mind.

Earthmoving Code

Legislative

Countywide

An ordinance amending Part III Land Development and Growth Management, Chapter 3-5 of the Code of Laws and Ordinances of Charlotte County, Florida, by removing Article XXI Excavations and Article XXIII Excavation and Earthmoving, and by creating new Article XXIII Earthmoving; providing for conflict with other ordinances, providing for severability, and providing an effective date. Applicant: Charlotte County Board of County Commissioners.

Staff Presentation

Inga Williams, Principal Planner, and Joanne Vernon, Excavation Administrator and Assistant County Engineer, and Josh Moye, Assistant County Attorney were present to speak to the changes to the Code, and **Ms. Williams** started by addressing the absence of a strikethrough/underline version of the Code. She then stated that her plan would be to review the Code section by section, unless the Board had another preference; she invited questions.

Questions for Staff

Chair Hess asked about whether the staff had compared their proposed code with those of neighboring counties, and whether she knew how they compared in terms of stringency. **Ms. Williams** indicated that neighboring code were variable in every regard; she indicate that sections of the proposed Code dealing with groundwater and environmental restrictions were fairly equal across the board; with regard to size, depth, distance from adjacent structures, other Codes are not consistent in approach. **Chair Hess** clarified that her concern was costs becoming higher in Charlotte County and how that would affect future development.

The Chair's next question concerned whether there had been the opportunity for public comment via workshops or the like, and also how staff had communicated with citizen groups like the Sierra Club; **Ms. Williams** noted that there had been workshops and one-on-one meetings with the Commission and that the prior version of the Code had been available online

for public comment for a year. She described the primary difference between the current version and that online-comment version was the inclusion of changes where necessary in other sections of the overall Code (e.g., Landscaping, Tree Requirements and the like.) However, large parts of the language has not changed between what was available for review online and what is included in the final draft before the Board today. During the year that the Code was available online, many comments had been received and were used in the revisions. **Ms. Williams** also noted that the latest version is now available online and available for comments.

Chair Hess then referenced the most recent comments received which came in so late in the process and asked if they had been considered also. **Ms. Williams** said that staff had a list of items that were of continuing concern, but that the most recently-received comments did come in too late to be addressed in this final draft. She also noted that there had been a meeting of the Agricultural and Natural Resources Committee (ANRAC) recently and that a few of the comments given in that meeting by the membership were incorporated in this final draft.

The next question from the Chair was why the mine operator is given *any notice at all* of pending inspections. **Ms. Joanne Vernon** responded that the notice provision only applied to annual inspections; otherwise, there was an inspector in the field every day, who can and does drop in on operations without notice.

The Chair's next question was, who is the Hearing Examiner. **Ms. Williams** noted that they most often employ Attorney Kevin Russell, but sometimes have to use others. **Chair Hess** asked if the Commission was made aware of his findings, and the answer is that they do not, unless they choose to listen to the recording which is available for those hearings.

Chair Hess then deferred to the other Board members for any questions they might have. **Mr. Vieira** wanted to know if the two new Commissioners knew about the changes and **Ms. Williams** confirmed that they were aware of the revision.

Mr. Gravesen asked about the basis, under the Exemptions section. for the 32 cubic yards per lot that can be brought in for gardening; what is the basis for the numbers. **Ms. Williams** responded that while the number itself was somewhat "random", it equates to two dump truck loads, which is a substantial amount of fill dirt. **Mr. Gravesen** pressed the point, asking why the County would care? **Ms. Williams** responded that it impacts on stormwater management because raising one lot substantially can affect the neighboring lots in a storm situation.

Mr. Gravesen next stated another objection to the exemptions; noting that grave digging and wells are exempted, he felt that having such obviously appropriate activities listed as exemptions means the underlying ordinance is too aggressive. **Chair Hess** asked Assistant County Attorney Ty Harris to comment on that viewpoint. **Mr. Harris** responded that as this is meant to be a comprehensive rework, it is easier to take out material that is deemed unnecessary than it would be to add things in later; so all comments of this nature are welcome. He also stated that, as a general matter, he did not feel that trying to be all-inclusive was over-reaching, since it affords extra protection to those activities that are specifically named. **Mr. Harris** responded to a comment from the Chair by noting that one more workshop with the Commissioners is being considered to take into account comments given during this meeting from this body and any continuing public comments, in order to decide whether yet further revisions will be required before adoption.

The Chair asked **Mr. Gravesen** whether he objected to the exemption for someone who already has a construction permit, and he said he did not, but he felt some of the exemptions

were unnecessary because, as with a cemetery, it's understood that graves would be dug as part of the underlying purpose of the cemetery. He indicated this level of detail suggested to him that the Code was overreaching in its entirety.

Mr. Mahshie commented on the prior citizen input and the concerns that were raised in this process, and the fact that there's going to be another round of commenting in the form of a workshop and asked why it is being brought forward now since the substance could change again. He also commented that he felt the ordinance was too long.

Chair Hess said that she agreed that the Planning and Zoning Board should be advising on the final draft. **Ms. Williams** said that this is the final draft, and to the Chair's comment that there were likely to be changes before it went to the Commission, **Ms. Williams** noted that it was often the case that material was updated in response to comments given at the P&Z hearing, whether from Board members or from the public, which was one of the intended outcomes of having this public hearing. In addition, she noted, the matter was being brought forward at the express instruction of the Commission. Assistant County Attorney Josh Moye concurred, noting that this version is staff's final draft which is presented in order to get comments from this Board, in order to be able to present the draft and the comments together at the Commission workshop and work that into an updated draft which would go to the Commission for their discussion and approval.

Mr. Mahshie commented that he, as someone who works six days a week, he felt he had not had adequate time to read over and assimilate all the material. He felt that the review time should be long enough for Board members to consult with staff or stakeholders or those citizens in opposition. **Mr. Moye** clarified that the draft in peoples' hands today was not the draft that had been online for public comment over the past year, it was an updated draft based on the accumulation of comments over that time, including those from the ANRAC meeting.

Mr. Bigness asked about whether there has been input from the industry as well as from the Conservancy? **Ms. Williams** noted that the online comments are anonymous unless the commenter chooses to identify themselves, so it would be hard to be sure; within the ANRAC membership, there are landowners, farmers and one operates an excavation. **Mr. Bigness** also expressed concern over an operator using the regulation to disguise some other type of operation, and asked whether staff had ideas about how to prevent or minimize that. **Ms. Williams** noted that if people feel the incentive to try hard enough, they can probably beat the system; this updated Code seeks to minimize the incentives to cheat. One example was allowing people to remove dirt from their property, even though that may blur the line between a farm and a mining operation, because otherwise the farmer will be confronted with unnecessary difficulties trying to store excavated dirt in a limited area. On the other hand, **Ms. Williams** noted, it would be impossible to write the Code in a way to prevent every attempt to circumvent the Code. **Mr. Moye** pointed out that one reason the draft is as long as it is now, is due to just that attempt to anticipate the ways in which people may try to get around the requirements; exemptions are one of the available tools staff has to balance the broadness required to catch cheaters.

Mr. Bigness next inquired about the varieties of impacts to ground water from digging a pond; **Ms. Williams** spoke about concerns regarding the drawdown of surrounding waters, whether it applies to wetlands drying out or to wells running dry.

Chair Hess asked Ms. Williams regarding her comment that this draft "replaced the former Code completely" was the former Code about the same size and scope? **Ms. Williams** stated

that it was, and the Chair concurred that it was also her recollection that this Code has always been a fairly lengthy document.

Public Input

Ms. Deborah Highsmith, resident of Charlotte County and member of the Greater Charlotte Sierra Club, began by saying her working relations over the past couple of years with County staff has been very good, and she noted that whenever she and staff disagreed on any point, staff would urge her to bring that specific point to the attention of the P&Z Board. With regard to the ordinance overall and especially the Resolution, Ms. Highsmith said she felt some things such as the cost recovery system had been strengthened, but that she feels the Resolution has nothing that parallels the Comp Plan. **Chair Hess** asked Ms. Williams to respond to that point; **Ms. Williams** noted that the "WHEREAS" language had not yet been added.

Ms. Highsmith next addressed the part of the Resolution dealing with the groundwater analysis review but this question was withdrawn as being about an aspect of the material not yet reached on the agenda.

Ms. Highsmith next addressed the idea that citizen involvement is pushed too far down in the process, to the Hearing Examiner level, when it should be at this level.

Turning to the material covered in her spreadsheet, **Ms. Highsmith** spoke about the need to prevent a situation where development masquerades as a commercial excavation. Further discussion ensued on the data presented in the spreadsheet, to address a question from the Chair about determining when a development could be said to be masquerading as a commercial earthmoving operation. The analysis essentially revolves around the volume of material excavated, the revenue from the material and the number of truck trips to transport the material, and it looks at these values for exempt and non-exempt operations, especially in the context of whether or not the activity would lead to a PARM or not, to cover the presumed damage to the roads. **Chair Hess** said that she understood that the County Engineer was in charge of the decision whether or not a PARM was required; **Ms. Highsmith** pointed out that if the operation is exempt, the County Engineer would never review it.

Chair Hess suggested that the spreadsheet be entered into the record (and a copy of it be attached to these minutes) so that the presentation could be kept within the bounds of the time normally allotted for citizen comments. **Ms. Highsmith** agreed, noting that she simply intends to point out how big these excavations really are and how unrestricted these operations might be.

Ms. Percy Angelo, resident of Placida, and provider of written comments that were submitted last week. She said that she had met with the Commissioners, trying to understand what they were trying to accomplish; the Commissioners she spoke to said that they thought the fees structure was too low, not that the ordinance needed to be more lenient. She said that all thought that a 50-year permit for commercial excavations was too long (and some didn't know it was that long already). **Ms. Angelo** urged that the Board members read the chart supplied by DH because it provides vital information; it shows that the proposed ordinance would be much more lenient than before, which is not what the BCC indicated they wanted a year ago.

Ms. Angelo next referred to the issues that might arise from ambiguous or unclear language, recalling the recent meetings on the prime aquifer recharge area. She next referred to the time several years ago, when earthmoving restrictions had been called for, with the result that many businesses submitted applications prior to changes going into effect, and the BCC was

dismayed with the result, since nothing can now be done about those permitted mines. She argued that the newly proposed language is yet more lenient, including the possibility of variances from the standards without the need for any review by the BCC; there is no point at which BCC is ever informed about variances granted. **Ms. Angelo** urged bringing the BCC into this process to be sure what they want is what is being crafted, not just with respect to higher fees, but also concerning the regulations and exemptions. **Chair Hess** asked if the language doesn't provide for a period of "up to 50 years" with the agreement of the BCC ; **Ms. Williams** responded that it's negotiated between the applicant and the Earthmoving Administrator, and then is taken to the Hearing Examiner. She confirmed that the BCC has no involvement; **Chair Hess** said she agreed that the Commission should be involved in anything that has a term of 50 years.

Mr. Steve Swan, a water resources engineer appearing on behalf of Lady Moon Farms, spoke about how his clients want to expand here in Charlotte County. He noted that the part of the county where the farm is located is within the Southern Water Use Caution Area, where groundwater use should be reduced; the Water Management District works with the FARMS program to emphasize use of surface water irrigation to reduce groundwater usage. **Mr. Swan** said that he had provided comments on the earthmoving code draft online and that his group agrees with the Ordinance, that it is the right step. He asked about the exemption for AG (under 3.5.463) regarding removal of material requiring a PARM bond, and he noted that Lady Moon would anticipate keeping excavated material onsite. He also noted that lots of these are FARMS projects which require very quick turnaround times – they have no interest in 50 year mining projects. **Chair Hess** said she had a question about issue of removal of excavated materials; **Mr. Mahshie** said he had indicated that Lady Moon does not want to remove their excavated material, and **Mr. Swan** concurred, saying they would have to get a PARM if they did want to remove it. **Chair Hess** pointed out that whether their operation would require a PARM would be a decision of the Engineer and wasn't a foregone conclusion.

Mr. Gary Bayne, Southwest Engineering and Design, representing a number of local businesses, began by noting he has done a lot of excavations, regarding section 3.5.465, the PARM, and stated that it's too vague. He pointed out that state road use is covered by state road taxes, and it depends on where the entrance to the operation is, on a county or a state road, since the PARM is limited to the actual county road miles impacted, not state road miles. However, he noted that while an operation may have its entrance on a state road (and be exempt) its trucks may still travel on and impact county roads at some point, and that is not considered.

The next item **Mr. Bayne** addressed was 3.5.466, about the number of trucks coming off a site to move a specific amount of dirt, he offered a different set of revenue figures than Ms. Highsmith. He was concerned that there is no predictability for someone seeking to plan an operation. **Chair Hess** asked what his alternative would be; **Mr. Bayne** referred to the previous method of charging per cubic yard or per truck, not per distance, pointing out that the trucks are already subject to registration fees and gas taxes. **Mr. Bayne** also noted that nobody but excavation pays these penalties, although many other commercial enterprises such as batch plant or Cheney Bros. cause similar wear and tear on the roads, and the Chair noted this was a good point.

Mr. Bayne then asked about the move to restrictions on depth, rather than referring to the confining layer; **Ms. Williams** noted that those restrictions are in the current code, and it was carried forward. **Mr. Bayne** said that the current code refers to the confining layer regarding Group II and III projects and he is questioning why not also Group I projects. He also

questioned the limitation of 100 acres, asking why we limit the size, noting that it would prevent creation of a regional reservoir. He also questioned by there would be a 50-year permit to do a 100 acres which can be done in 10 years, or why there is a 100-acre limit but no limit on the number of 100-acre excavations? He suggested that there could be a cell or phase that's limited in size, as mentioned during the ANRAC meeting. **Mr. Bayne** also requested a technical change to NAVD, and offered a few more suggested improvements.

Ms. Ruth Bromberg, Vice Chair of the local Sierra Club, read comments prepared by Special Projects Chair Sue Reske on changes of concern on the matter of vegetative removal; upon noting that the agenda item had not yet been reached, Ms. Bromberg yielded her spot to the next commenter.

Mr. Andy Dodd, Chair of ANRAC, discussed the comments made at the ANRAC meeting, noting that the present draft did not include all the suggestions made at the meeting. He said he felt that there had not been an adequate out-reach, and that the current draft should be completely rejected. He also said that Lady Moon should be allowed to go forward, rather than to have to wait until new ordinance language could be approved. **Chair Hess** asked if his comments also applied to the other agenda items; he said his concerns were primarily with this agenda item. **Mr. Dodd** also stated that he doesn't like the web commenting function and would prefer face-to-face meetings, such as were had with the TDU workshops, as preferable for consensus-building.

Geri Waksler, Esq., representing Bermont Rd. partnership, among others, first spoke generally about the necessity of excavations, giving a snapshot of numbers of truckloads of dirt needed for road-building and house building. These changes to the ordinance mean that such projects could get really expensive in the long run and will ultimately impact the taxpayers. **Ms. Waksler** also noted that the property owner is the basis for any ordinance and the property owner can do anything they want on their property, after accommodating all laws speaking to the issues of health, safety and welfare. She stated that some of the restrictions being presented here were not apparently based on any scientific evidence. For instance, she noted the limitation of a subdivision stormwater pond size to 35% of the site and asks, where did that number come from? There is a practical aspect to this question, where excavated material provides the fill for building of the houses, and whatever amount of excavation is appropriate for that is what should be allowed. The same question applies to the 100 acre limit on excavation size; limitations should not be arbitrary.

Mike Witt, Esq., representing Coral Rock, commented that while there had been lots of discussion of dirt mines, there's also rock which is the aggregate for roads, and which exists only in limited places. He also mentioned having an issue with the private property rights aspects of the ordinance as well as the over-reach of calling out gravedigging and other similar activities which cover virtually all dirt moving you can imagine. He was not present at the ANRAC meeting but had heard that none of the members' comments were incorporated in the present draft. His opinion is that staff needs to have more meetings, more workshops and more stakeholders involved, and he objects to the matter being 'shoved through the system' to accommodate the needs of an enterprise.

Robert H. Berntsson, Esq., echoed many of the comments from the industry side, and suggested that even if a workshop was scheduled, it would only amount to just moving the matter through the system. He also stated that online comments aren't the same as workshops, and that people don't have the time to keep checking online to see what happened to their comment. **Mr. Berntsson** said that the two-hour ANRAC meeting and line-by-line

review produced suggested changes but that none of the requested changes were made. He suggested that an unrecognized outcome of this ordinance would be that no new lakefront properties, which are highly valued, would be created in the county. He also questioned the limits on large-scale excavation size as being a 'random' number; the bond for repair of state roads since county funds do not pay for such repair; and the idea that truck destination can be adequately tracked. **Mr. Berntsson** next noted that the excavation size limit is the same no matter how big your property is, which is clearly unfair; he also discussed the options for variance versus waiver, an option that no longer exists. Noting that the ordinance is primarily based on concerns about drawdown, **Mr. Berntsson** stated that there's substantial hearing testimony which says that's not a valid concern, but staff ignores this. He also spoke about the fact that other industries such as citrus have trucks on the road that outnumber excavation trucks by at least a factor of ten, but there is no impulse to regulate them, nor should there be. Now, specifically with regard to Babcock Ranch, he noted that the DRI which created it spells out that excavations are permitted; this ordinance, however, would not permit those excavations. In closing, he stated his opinion that the ordinance is not yet ready; he agrees that the County should let the Lady Moon Farms project go forward, and then finish this up properly after the necessary workshops and public hearings.

Chair Hess spoke to the commenters, thanking them for their input and expertise.

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

Discussion

Chair Hess said that she favors rejecting this ordinance; the Board had anticipated something final that had received workshop input. The present ordinance over-reaches; it's too stringent in order to be 'open for business'. It needs to be re-done after a meeting with stakeholders and those with environmental concerns. The building industry is essential here, the businesses need predictability. Each of the other Board members also spoke: **Mr. Vieira** said he echoed the points made by the Chair, and the commenters who spoke against it. **Mr. Gravesen** concurred. **Mr. Mahshie** noted there had been input given by experts but that information wasn't put into ordinance and stated that as long as the mining activity isn't impacting the taxpayers by moving the cost of the damage to the taxpayer, the businesses should be allowed to do business. He also spoke about the impact on the farm that needed an irrigation pond. He felt that he didn't have enough time to go over the material, and believed others had the same issue. **Mr. Bigness** first thanks staff for their time and effort, and also thanked the Conservancy for their points, and the equally important points made by the stakeholders, especially that trucks from other businesses do not receive the same sort of regulation. He stated that he wants a time constraint or a target date for completion; **Chair Hess** wondered if that would be possible, since the sentiment seems to be for convening further meetings in order to take public comment, and it would be difficult to say at this point when such meetings would be held, and then that material has to be incorporated into the code. She noted that the failure to include the suggestions from ANRAC she saw as a great fault.

Recommendation

Mr. Gravesen moved that the amendment of the Earthmoving and Excavation Code not be sent to the Board of County Commissioners or sent with a recommendation of *Denial*, based on the need to have further focus groups or workshops with stakeholders, environmental landowners, and attorneys, and to be brought back after it has gone through the draft process for review and final comment before going to the Commissioners, second by **Mr. Mahshie** and carried by a unanimous vote.

The Board prepared to move on to the next agenda item, concerning the fees; **Mr. Moye** asked for a five minute break. The meeting reconvened at the conclusion of that break.

Chair Hess asked Ms. Williams to comment regarding the ANRAC input; **Ms. Williams** stated that she was surprised to hear both Mr. Dodd and Mr. Berntsson say that changes suggested in the ANRAC meeting were ignored, since all of their recommendations were incorporated into the Code, except two – the depth limits which are a large enough issue that the Commissioners should decide it, and the size of the commercial excavations, for the same reason. **Mr. Mahshie** stated that since staff did not object when the comments were being made, he had no way of knowing there was an issue, and he believes staff should have spoken up at the time. **Ms. Joanne Vernon** further stated that the items which were suggested but not changed have been brought to the attention of the Commissioners so that they would be aware of the controversial points that would need their final decision. **Mr. Mahshie** stated that he had a problem with this also, that information is going to the Commissioners who aren't making the first decision, which is the job of the Planning and Zoning Board; regardless of what decision the Commission makes afterward, the P&Z Board makes the first decision and should hear all the information. **Ms. Williams** noted that staff had that information available for discussion, as she mentioned at the beginning of the meeting. Chair Hess commented about the necessity of workshops rather than relying on taking comments online, and the necessity of getting the material in its final form. **Mr. Mahshie** referenced the situation with Lady Moon Farms, pointing out that if their position was not the whole story, then the Board needs to know that as well; **Ms. Vernon** clarified their situation and noted that the Farm is aware of their options.

Mr. Moye provided comments on the idea of a stakeholder meeting noting that such a meeting has not been requested prior but that one could have arranged for had it been requested. Further discussion on this point ensued between Mr. Moye and the Chair. **Mr. Mahshie** said that in terms of what might be allowable on private property, he saw a difference between mining to haul away the material, and excavating to create a development in itself. **Chair Hess** concluded by saying that she felt being "open for business" meant doing away with unnecessary restrictions, and a lot of the proposed ordinance was unnecessary.

Earthmoving Fees

Legislative

Countywide

A resolution of the Board of County Commissioners of Charlotte County, Florida amending Resolution 07-096 to change the amounts of administrative fees for earthmoving activities; incorporating the Performance Assurance for Land Reclamation adopted in Resolution 2010-036; and providing an effective date. Applicant: Charlotte County Board of County Commissioners.

Staff Presentation

Joanne Vernon, Assistant County Engineer, presented the findings and analysis behind the proposed Earthmoving Fees Resolution, based on the direction of the Commission to recover all costs, and to provide predictability; she explained the basis for the figures used. **Chair Hess** asked if she's received any input from stakeholders that the proposed language was unreasonable, and **Ms. Vernon** noted she had spoken to some in the industry and had heard no objections. **Ms. Vernon** also spoke about the Performance Assurance for the land reclamation, noting that it used to be \$1 per truckload, but that there was evidence of some dishonesty in the reporting, so the change was made to bonds.

Mr. Bigness noted that stakeholders apparently didn't feel the bond was fair because of the issue of the state roads; but as to the issue of the "problems" people have in counting trust, he suggested having a log required to be maintained and our one staff member be at an operation, selected at random, each day and count trucks and then quarterly or annually review the logs and impose fines where appropriate. **Mr. Mahshie** suggested just installing a counter at the site that registers the traffic. He also indicated that he didn't think a cap was appropriate because it was necessary to be able to capture extraordinary costs; taxpayer dollars should never be paying for a business making money. **Mr. Gravesen** suggested a variable schedule that was reflective of economic conditions.

Ms. Vernon indicated that staff feels the fees are high enough that they would capture the costs. **Mr. Gravesen** asked if the new fees would work with the existing ordinance and **Ms. Vernon** clarified that the new fees can't go into effect until someone needs a new permit. **Mr. Gravesen** suggested it should be possible, if the desire was there to raise the fees now, to use the new fee schedule with the existing ordinance. **Ms. Vernon** and **Mr. Moyer** pointed out that the new fee resolution would not go forward on its own, but together with the new earthmoving ordinance. **Mr. Moyer** further clarified that once this new fee schedule does get adopted, it would only apply to new permits *at that point*. It's not going to retroactively apply to people who have already had the permits.

Public Input

Ms. Deborah Highsmith, regarding the fee Resolution, she asked that the Board and staff to consider adding a WHEREAS clause that parallels the Charlotte County Comp Plan, specifically in the Natural Resources section, EVN Objective 2.5, which specifically states: "To minimize the detrimental effect of mineral extraction on groundwater, surface water, wildlife and wildlife habitats, surrounding land uses and values, and the health, safety and welfare of the general public." **Mr. Moyer** said they would look into it.

Ms. Highsmith's next point was regarding the resolution that was online for this ordinance, on page two, number 3: "Groundwater analysis review" regarding pass-through costs. She related some of the history regarding rock mining in Miami Dade County in 2007 which was stopped based on the evidence of a red dye that made it from lakes on the excavation property, through the treatment plant to the water taps of the homes in the area in 8 hours. So, she pointed out, it matters how this is done, since that could as easily have been cyanobacteria.

Ms. Highsmith continued, offering other a comparison to other ordinances, e.g., those from Lee County concerning their Density Reduction Groundwater Review area, which is 56 pages, highly detailed and with rigorous requirements; so it is not correct to say that our proposed ordinance matches those of other counties. She noted that the wealthier counties have technical staff, including hydrologists, to help in protecting their environment, but even they occasionally hire consultants, which costs money but is important to do. Referring next to Quality Mine, she noted that they had a groundwater analysis done for their mine; there was some concern over the accuracy, so staff contracted a second study, a cost which was borne by the taxpayers. She quoted from staff report done on this project, pointing out that the applicant's original water study covered none of the important required points. Responding to a question from the Chair, **Ms. Highsmith** agree that the cost often exceeds the \$20,000 limit written into the resolution.

Ms. Percy Angelo, speaking about the Fees Resolution, also pointed out the difficulty of limiting the possible costs of a necessary study. As an example, she cited the Boca Royale Club when their work drained the pond of a neighboring property. So, yes, property owners should feel they can do what that want on their property, but remember water drawdown is always

about the impact outside your boundaries. **Ms. Angelo** also said that she recognizes the time issues involved here, but the Commissioners have indicated that they feel the costs currently being recovered are not appropriate; she suggested that, in order to satisfy each concern, perhaps an interim fee resolution is appropriate.

Chair Hess noted that the Board has no copy of the current fee schedule and asked how different the original is from the proposed. **Ms. Vernon** gave as one example, that the annual reporting fee is now about \$1,250 per year, and the proposed amount is \$4,016. However, she noted, even if staff were to change the application fees to match the current ordinance, the County still could not charge the annual report and inspection fee until the matter has been adopted due to changes in the intent and title. **The Chair** asked about the possibility of an interim fee schedule; **Ms. Vernon** said that was definitely a possibility but the only fee that could be raised at this time would be the permit application fee.

Mr. Berntsson spoke again, first on fees, noting that the big change will be the fees for new applications; however, there aren't any plans out there for many of these, so there is little urgency for doing it now. He went on to complain about lack of a red-line version of the changes; however, the red-line he wanted to see was the difference between what went before ANRAC and what was presented today. He felt that the changes that were made after ANRAC were the minor ones, but the big issues didn't change. He also drew the group's attention to the changes regarding if and how hours of operation may be changed.

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

Discussion

Chair Hess suggested that since this is tied to the preceding item, it should get the same result. **Mr. Bigness** said he thought having a bond posted would be one approach if there was any question of the fee not being high enough.

Recommendation

Mr. Gravesen moved that the Resolution for Fees for the Earthmoving and Excavation Code not be sent to the Board of County Commissioners or sent with a recommendation of *Denial*, as it is a companion resolution to the proposed ordinance which was previously rejected, second by **Mr. Mahshie** and carried by a unanimous vote.

Vegetative Removal Code

Legislative

An ordinance amending Part III Land Development and Growth Management, Chapter 3-5 of the Code of Laws and Ordinances of Charlotte County, Florida, by revising Article IV Clearing, Filling and Soil Conservation Requirements; providing for Intent and Purpose, Applicability, Application Requirement, Definitions, Prohibited Activity, Approval of Permit, Standards, Enforcement, violations and penalties, and Reserved; providing for conflict with other ordinances, providing for severability, and providing an effective date. Applicant: Charlotte County Board of County Commissioners.

Staff Presentation

Inga Williams, Principal Planner, noted that there were sections of the Code that were impacted by new Earthmoving language, so that she needed to adjust the language in those other sections to account for the changes in the proposed ordinance. First to be addressed was Vegetative Removal, and she also reviewed the Tree Requirements language, which gave the

opportunity to update the way the County defines "heritage tree". **Ms. Williams** gave details about the changes, which included new information plus changing the presentation order for improved clarity. It was realized that the agenda items were being discussed out of order and the presentation was steered back to the subject of Vegetative Removal. **Ms. Williams** noted there had been a lot of earthmoving language in this section, so the original was drastically cut. She commented particularly on the subject of the mulching permit, which concerns the removal of exotics and understory species. A tree removal permit would still be required for trees of a certain size, but a mulching permit could be obtained separately.

Questions for Staff

Mr. Mahshie asked if the mulching permit would apply to someone hiring a guy to clear underbrush off an unoccupied lot; **Mr. Gravesen** said that the property owner himself cannot go in and clear without a permit. **Mr. Mahshie** said he understood that he could do it himself without a permit if the work was limited to hand tools; **Ms. Williams** confirmed that it is allowed to work on your own lot, doing maintenance, saying that the permit contemplates work done on a vacant lot where there is no structure. The permit is required for lots where no development has already taken place. She introduced Jamie Scudera, who she said could discuss the purpose for the permit, which was to ensure no listed species were on the property; Ms. Scudera surveys the site as part of the permit.

Chair Hess asked why earth can't be moved during vegetative removal; Ms. Williams noted that the mulcher doesn't move earth. **Mr. Mahshie** noted that if you can't remove all of the tree, it will grow back. **Ms. Williams** noted there would be the possibility to combine the review processes.

Public Input

Mr. Bertsson returned to the podium, and commented that since all these agenda items are so intertwined, it doesn't really make sense to continue; for these currently being discussed, so much is stricken and moved to the earthmoving draft, if that doesn't get adopted simultaneously, then the stricken language is lost. He questioned why this is being done now, and suggests that the whole thing should wait for the complete Zoning Code rewrite.

Mr. Moye and **Ms. Williams** both agreed that the entire package of earthmoving-related changes should move forward together.

Ms. Ruth Bromberg came to the podium to deliver Sue Reske's comments, as she started to do before; she noted that she had read over the material and agrees with the statements. The changes to the vegetative removal language removes virtually all the protections formerly afforded to surrounding properties and waterbodies, a removal of guidance and oversight which has the potential to open the County to lawsuits from these neighboring property owners which clearing done under the new, looser guidelines causes drainage problems. **Ms. Bromberg** continued with detailed references to the environmental protections lost along with the removed language and the possible impact of these changes; she also raised the point that, while she agreed with the need to remove invasive non-native species, she questioned whether it was appropriate to categorize all non-native species as "invasive". **Ms. Bromberg** also stated that she agreed with those who have called for a stakeholders meeting.

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

Discussion

Ms. Williams noted that about 90% of the struck-through items just covered by Ms. Bromberg in her comments was now in the earthmoving code.

Mr. Mahshie expressed confusion at how all the various elements are coming together, stating that in one section, it is mining operations that are being discussed which involve moving some dirt from a lot 80 x 125 that has certain requirements by Code anyway ... why is it all meshed together, it's too much.

Chair Hess stated that the decision in this fourth agenda item is that it also is a part of the whole, and should go with it.

Recommendation

Mr. Gravesen moved that the Vegetative Removal portion of the Earthmoving and Excavation Code not be sent to the Board of County Commissioners or sent with a recommendation of *Denial*, based on the fact that it is part and parcel of the whole earthmoving ordinance change, second by **Mr. Mahshie** and carried by a unanimous vote.

Mr. Mahshie asked the Chair, is it wrong that if all of these are not going to go, then instead of this time talking about something, we just go past them. The Chair deferred to Mr. Harris on this point of law; **Mr. Harris** said that since Ms. Williams had already presented the material on the Tree section it would be acceptable to go ahead and open the public comment on that section without a re-presentation of the material.

Tree Requirements Code Legislative

Countywide

An ordinance amending Part III Land Development and Growth Management, Chapter 3-2 of the Code of Laws and Ordinances of Charlotte County, Florida, by revising Article IX Tree Requirements; providing for conflict with other ordinances, providing for severability, and providing an effective date. Applicant: Charlotte County Board of County Commissioners.

Questions for Staff

The Chair next addressed Ms. Williams with the comment that bottlebrush is shown in the material as now being "prohibited" and yet it is included to be recommended under light poles and the like, so that is contradictory.

Public Input

Ms. Percy Angelo related an overheard series of conversations where staff advised various members of the public asking about the tree ordinance; in each case, the staff member explained the ordinance and then advised that it would be cheaper to pay the tree replacement fund fee rather than preserve or replace the trees. **Ms. Angelo** stated she felt this was contrary to purpose of the ordinance and the spirit of the ordinance, which is to preserve or to replace trees on the property affected. She pointed out the good economics of retaining the tree canopy which adds to property values.

Deborah Highsmith provided a hand-out to the Board. She read the Sarasota ordinance first, and her hand out which was from the Sarasota County website, dealing with the economic, social and environmental benefit of trees. She noted that the Charlotte County ordinance has none of these findings of fact or values that would explain what the County is trying to accomplish with the ordinance and how it fits the vision of the Charlotte Assembly. She also had a question for Ms. Williams about the tree points chart, and whether it has been stricken.

Ms. Williams clarified that the County still uses a tree points calculation and that it's the

material is about how to calculate heritage trees that has been removed. **Ms. Highsmith** used this information to comment on the difference between the requirements of Sarasota County for residential lots versus the Charlotte County requirements. **Chair Hess** commented that the economic benefits of trees in the landscape were well understood, and she thanked Ms. Highsmith again for the amount of time and study she had contributed to the matter which she stated would not be ignored.

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

Discussion

None.

Recommendation

Mr. Gravesen moved that the Tree Requirements Code not be sent to the Board of County Commissioners or sent with a recommendation of *Denial*, based on the fact that it is part and parcel of the whole earthmoving ordinance change, second by **Mr. Mahshie** and carried by a unanimous vote.

Chair Hess noted there was just one item left, and that she felt it was appropriate to hear the presentation of each agenda item, open the floor for public comment and move forward in that manner.

Landscaping and Buffers Code Legislative

Countywide

An ordinance amending Part III Land Development and Growth Management, Chapter 3-5 of the Code of Laws and Ordinances of Charlotte County, Florida, by revising Article XVIII Landscaping and Buffers; revising Section 3-5-397 Planting Standards; providing for conflict with other ordinances, providing for severability, and providing an effective date. Applicant: Charlotte County Board of County Commissioners.

Questions for Staff

Ms. Williams agreed with the observation made by **Mr. Gravesen** that since there were only two small changes in the language, it seemed this one could go forward on its own without the Earthmoving Code going forward.

Staff Presentation

Inga Williams commented briefly on this section which had very limited changes.

Public Input

Ms. Percy Angelo questioned whether this section can actually go forward alone, pointed out that the language which comes out of here needs to be *somewhere* until the complete earthmoving code comes along. **Mr. Harris** agreed that it would be better to keep them all together, and **the Chair** agreed with that conclusion.

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

Discussion

None.

Recommendation

Mr. Gravesen moved that the Landscaping and Buffering Code not be sent to the Board of County Commissioners or sent with a recommendation of *Denial*, based on the fact that it is part and parcel of the whole earthmoving ordinance change, second by **Mr. Mahshie** and carried by a unanimous vote.

Flood Damage Prevention Code Legislative

Countywide

An ordinance amending Part III Land Development and Growth Management, Chapter 3-2 of the Code of Laws and Ordinances of Charlotte County, Florida, by revising Article VIII Flood Damage Prevention; revising Section 3-2-157 Purpose and Section 3-2-159 Methods of reducing flood losses; providing for conflict with other ordinances, providing for severability, and providing an effective date. Applicant: Charlotte County Board of County Commissioners.

Staff Presentation

Ms. Williams noted she had covered this earlier.

Questions for Staff

None.

Public Input

Ms. Angelo stated she agreed that this should move through with the other sections.

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

Discussion

None.

Recommendation

Mr. Gravesen moved that the Flood Damage Prevention Code not be sent to the Board of County Commissioners or sent with a recommendation of *Denial*, based on the fact that it is part and parcel of the whole earthmoving ordinance change, second by **Mr. Mahshie** and carried by a unanimous vote.

The Chair indicated that she would be interested in attending the stakeholders meeting, and asked Ms. Williams to inform them when it was scheduled.

There being no further business to come before the Board, meeting was adjourned at 4:20 p.m.