

**CHARLOTTE COUNTY PLANNING AND ZONING BOARD**  
**Administration Center, 18500 Murdock Circle, Room 119,**  
**Port Charlotte, Florida**  
**Minutes of Regular Meeting**  
**January 13, 2014 @ 1:30 p.m.**

**Call to Order**

**Chair Hess** called the meeting to order at 1:30 p.m. and upon the Secretary calling the roll, it was noted a quorum was present.

**Roll Call**

**PRESENT**

Paula Hess  
Michael Gravesen  
Stephen Vieira  
Paul Bigness

**ABSENT**

**ATTENDING**

Ty Harris, Assistant County Attorney  
Gayle Moore, Recording Secretary

**APPROVAL OF MINUTES**

The minutes of December 9, 2013 were approved as circulated.

**ANNOUNCEMENTS**

Item number two on the agenda will not be heard during today's meeting; **Mr. Cullinan** briefly discussed the details which held up the matter from going forward. There were no quasi-judicial items on the agenda so no oath was administered.

**PETITIONS**

**PV-12-09-05**

**Legislative**

**Commission District II**

Burnt Store Presbyterian Church, Inc. is requesting a Plat Vacation for Parcel C of the plat of Burnt Store Park Subdivision as recorded in Plat Book 7, Page 3, of the Official Records of Charlotte County, Florida. Also included in the vacation are undeveloped portions of Ann Road, Brooks Road, Highland Pine Avenue, Johns Street, Trafalgar Street, and Orangewood Street. The property is 13.96 acres, more or less, and is located east of Burnt Store Road, north of Cuneo Road, west of Pampas Street, and south of Royal Poinciana, in Section 33, Township 41S, Range 23E, in Commission District II.

**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 December 23, 2013, giving brief details of the request, noting that there had been some difficulties at the time the petition was originally proposed, but it seemed in good shape to go forward now. The purpose of the petition is merely to consolidate the property owned by applicant (part of which is within City of Punta Gorda boundaries), and there are not currently any plans for development; the applicant contemplates submitting a restrictive covenant limiting the developable density to that which existed at the time of the application. Issues regarding the GIS representations of the land, which do not align with the survey, were also discussed; the solution was to vacate the county portion of the property first, and then pursue vacating the remainder with the City.

**Questions for Staff**

*None.*

**Applicant's Presentation**

**Mr. Jason Green**, of *Weiler Engineering*, applicant's agent, indicated there was not much to add; he spoke to the 'abnormalities' of the case, including the jurisdictional line issues, and those concerning the platting vs. the section lines. He mentioned that annexing this property into the city was not a possibility at this time, as it would create an enclave. Apparently, the property owner to the north is incommunicative with regard to their own plans, and that has an impact on the timing of any of applicant's intentions for their own property. All six objections raised by staff have been addressed; the option for vacating of roads vs. vacating of the plat was also discussed. The applicant agrees with the conditions imposed by staff; the required covenant concerning density will be available by the time the matter goes to the Board. In response to a statement by the Chair, **Mr. Green** confirmed that the applicant had accepted the conditions, in particular the waiver of the density.

**Public Input**

*None.*

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

**Discussion**

**Chair Hess** stated that this implements the County goal of reducing platted lots and outdated subdivisions, and consolidates the property as applicant wishes; she also noted the problems being cleared up and the benefit to having the density waived.

**Recommendation**

**Mr. Gravesen** moved that application PV-12-09-05 be sent to the Board of County Commissioners with a recommendation of *Approval with two conditions*, based on the findings and analysis in the staff report dated December 23, 2013, along with the evidence presented at today's meeting, second by **Mr. Vieira** and carried by a unanimous vote.

**PA-13-12-14**

**Legislative**

**Countywide**

Pursuant to Section 163.3177(3)(b), 163.3187(4), and 163.3180(6)(g), Florida Statutes, adopt an ordinance to amend the Capital Improvements Element; this amendment will update the Capital Improvements Plan and the School Board 5 Year Working Plan; Petition No. PA-13-12-14; Applicant: Charlotte County Board of County Commissioners; providing an effective date.

*THIS ITEM WAS NOT HEARD AND WAS DEFERRED TO A LATER MEETING.*

**Revision of Sea Turtle Protection Code** **Legislative** **Countywide**

An ordinance amending Chapter 3-5, Article XII, Sea Turtle Protection, of the Code of Laws and Ordinances of Charlotte County, Florida; revising Definitions section; revising Unlawful to Kill, Molest, or Injure Sea Turtles section; revising Coastal Construction Conducted Within the Nesting Zone During the Nesting Season section; revising Beachfront Lighting section; revising Prohibition of Activities Disruptive to Marine Turtles section; revising Penalties for Violation; Resort to Other Remedies section; revising Management Coordination section; revising Design of Vehicular Circulation and Parking Areas section; creating a new Section 3-5-299 Permitting and thereby revising all section numbering subsequent to the new section; 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**, presented the findings and analysis of the revision to the County's Sea Turtle Protection ordinance (Part III, Chapter 3-5, Article XII), noting the Code was being brought up to the minimum state standards, a goal which has been expressed by the Board. The revision includes incorporating new guidelines on lighting that have been administered by the State as well as policy developed by the University of Florida. She noted that the prohibition against dogs on the beach is already part of our current County Code, which limits them to 'dog-friendly' beaches, which do not exist in Charlotte County; also no fireworks on the beach, which is already prohibited by the State. She also discussed a new section which describes the process used by the County to administer the Code; application by a property owner for any type of Charlotte County permit includes a review of their sea turtle lighting.

### **Questions for Staff**

**Chair Hess** asked if there had been much feedback on the issues from environmentalists in the area; **Ms. Williams** indicated there had not been which the Chair concluded was a sign that people were happy with the work.

**Mr. Bigness** asked to have clarified that any application for permits, even those that don't include lighting work, would trigger this Sea Turtle inspection; **Ms. Williams** further described the review process. **Mr. Bigness** stated that he felt that this was too stringent because it would affect even those people doing merely building maintenance which has nothing to do with lighting; he said it was unreasonable that someone merely doing maintenance-level work would have to 'bring the whole house up to Code'.

**Ms. Williams** noted that compliance with the original law was supposed to have been done by everyone at the time it was adopted, but that the County did not investigate each home to ensure it was done; imposing the review on those coming in for permits is taking advantage of an opportunity to encourage compliance. **Mr. Bigness** reiterated his point that the review should only be required for a permit that affects lighting, and spoke about undue burdens. The distinction between what the State requires, and what the State encourages local authorities to implement was also discussed. **Chair Hess** explained the nature of the opportunity to gain compliance on an existing law that has been lightly enforced. **Mr. Gravesen** wanted to know if this review is required **every** time you get a permit (e.g., more than once for each property); Ms. Williams agreed that the language could be improved to clarify that this is a one-time event if compliance is achieved.

### **Public Input**

None.

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

### **Discussion**

**Chair Hess** asked Mr. Bigness to continue with his comments; he raised an issue about dead hatchlings having been placed at construction sites and asked if there are any penalties for this? **Andy Stevens** of Community Services/Natural Resources responded to this, noting that County staff alerts law enforcement and they determine the penalty for such activity.

**Chair Hess** asked Mr. Bigness to clarify his objection and indicate what other avenue exists for getting compliance; **Mr. Bigness** asked why we need compliance. Further discussion ensued on what amount of lighting that can be seen from the beach would be an issue under this ordinance; **Mr. Stevens** spoke to this issue, noting it depends on the severity of the lighting, noting that lighting technology is changing away from incandescent lighting.

**Chair Hess** asked about the level of financial burden that would be involved in bringing a couple of lights (front porch, side door) into compliance. **Mr. Stevens** noted, again, it would depend on the specific details of the structure, but that the primary effort was the educational aspect about easy and convenient ways of shielding interior lighting (e.g., by shutting the drapes or blinds) during the nesting season. **Mr. Bigness** agreed that the educational aspect was good.

**Chair Hess** recognized **Assistant County Attorney Ty Harris** who commented that the issue is more complex than may be recognized; in particular, the State is looking at an even more stringent set of rules concerning ambient light impacting the beach; he noted that we have not updated in a decade although there have been several recommended updates from the State during that time, and if we continue to wait, we could get caught later when those more stringent rules go into effect.

**Mr. Gravesen** asked if the state guidelines are that the County has to do it, or is enforcement done by state agencies; **Mr. Stevens** replied that the new regulations will be delegated back to the counties for enforcement and yes, we are trying to get ahead of the curve, as Mr. Harris noted.

**Mr. Vieira** raised an issue for clarification that the intent is not to 'declare open season' on those applying for a permit; it's not the entire building that has to be brought up to Code. He asked Mr. Bigness if he understood correctly that this was his concern; **Mr. Bigness** said that as he understood things, if someone applies for a permit, this is the opportunity to bring them up to Code. **Mr. Vieira** responded, asking if he meant in all facets? **Chair Hess** clarified that it would pertain to just the sea turtle protection code, but she asked Mr. Stevens to clarify whether, if a building code deficiency was noted during this inspection by Community Services staff, if that would become an issue. **Mr. Stevens** responded on what his group will do, which concerns education on the sea turtle protection requirements; this doesn't have anything to do with the Building Code. In response to a query from the Chair, Mr. Stevens clarified that his staff is Natural Resources staff, and their inspections only affect beach properties, not east county. Further discussion ensued.

**Chair Hess** put the question to the Board, whether it is unfair for someone who pulls a permit to fix something on their structure to have to come into compliance with the sea turtle protection code, confirming with Mr. Bigness whether this was his basic issue. Mr. Vieira said he did not think it was unfair. **Mr. Gravesen** said no, but that he had other issues, primarily with the fact that the Code deals with internal lights, not just external lights. Also, he indicated that it's not just about education, it's creating misdemeanors that result in criminal prosecution. The Code requires people to have drapes to shield the internal lighting. **Chair Hess** asked how the language could be modified to limit this just to exterior lighting? **Mr. Gravesen** also raised an issue about the prior definition of the nesting zone, concerned that previous specific distance references had been removed to make it much wider, so that anywhere the turtle might want to lay its eggs is now the definition of the nesting zone. He is worried that a more adventuresome turtle might come further inland to lay eggs, making this inland area now a nesting zone also, impacting more light sources as being problematic He did not have alternate language in mind to change this.

**Chair Hess** noted that no one had come to the meeting to protest; **Mr. Stevens** noted that in his 12 years with the County, no one had been cited for interior lights in this regard. He stated that, once educated to the issues, most people just come into compliance without issue.

**Mr. Gravesen** remarked on the increase in animal protections, noting that protected species may eventually rebound to the point where they become nuisances; he also felt that the turtles were very resilient animals. **Chair Hess** noted that hatchlings headed away from the water out of confusion due to the lights was not so much an issue of species resilience. Further discussion ensued on these points. **Mr. Gravesen** said he felt the matter should be left to state enforcement.

**Chair Hess** next asked Mr. Bigness for his specific suggestions; he referred to property rights, issues of regulation, and increased permitting time, and was concerned that the County be open for business. He said he is looking for a way to have these appropriate protections without intruding into property rights. **The Chair** asked if he leaned toward sending this to the Board with a list of proposed changes, or recommending denial completely and let the state do their job; **Mr. Bigness** said his preference would be to send it to the Board with changes. **Mr. Vieira** agreed with him.

**Ms. Williams** offered some suggestions regarding the penalties section which she noted had not been changed much; because the penalties for violation are administered by state they can come out of the Charlotte County Code. **Chair Hess** asked if the regulation could be limited to exterior lights; **Ms. Williams** noted that the interior lights restriction are in state statute and are in our existing statute; no expansion has occurred with regard to that regulation. With regard to the permitting language, that is an inspection that would only occur once, and this has been part of the process since 1998. **Ms. Williams** asked for a recap of other objections; Mr. Gravesen reminded about his concern over the change in the nesting zone which has expanded and where the points of light might be visible from. He asked to bring back the distance definitions. **Ms. Williams** noted that the prior language was fairly arbitrary; the point is to see what light is visible from the beach, since that is the light the turtles would see which would cause the problem. Further discussion ensued on this point.

**Chair Hess** recapped the suggestions of Board members: Remove the penalties; first permit inspection is the only one; define the limits of the nesting and lighting zones. Discussion continued on these points.

**Chair Hess** stated that she doesn't mind the intent regarding use of the permit application as the opportunity for education on the issues; also that she appreciated Mr. Harris's comment regarding our need to get ahead of the curve. **Mr. Harris** also pointed out that the state of our ordinance could impact our request for a permit for dredging of Stump Pass; if we are not meeting the bare minimum sea turtle protections set forth by the same, FDEP looks at that when considering the dredging permit request – it could become a reason to deny the dredging permit. Further discussion ensued on this point, as well as the point that prohibition of dogs on the beach was already part of our ordinances, just in a different section of the Code. Likewise for the prohibition on fireworks, which is already a state law. Pulling all these beach-activity regulations together helps simplify matters.

**Mr. Bigness** emphasized his objection to the interior lighting requirement; **Mr. Harris** explained again that it is a state standard.

**Chair Hess** recapped the Board member requests again, which pointed toward an approval with the two changes; she also suggested that Mr. Bigness bring all the folks who are against the matter to the Commission for their hearing. **Mr. Gravesen** suggested keeping records of permit applications and outcomes of inspections for compliance; staff indicated how such records were being kept currently. **Mr. Gravesen** objected to language in the ordinance that says the permit can be withheld, despite staff intention not to hold anyone up on the needed work.

After a number of comments recapping points made previously, Chair Hess asked for a motion and final discussion.

### **Recommendation**

**Mr. Vieira** moved that the Revised Sea Turtle Protection Code be sent to the Board of County Commissioners with a recommendation of *Approval with modifications as discussed (removal of penalties language and specifying that the first permit application to trigger an inspection will be the only permit application to trigger such an inspection)*, based on the findings and analysis in the

staff report dated December 20, 2013, along with the evidence presented at today's meeting, second by **Mr. Gravesen** and carried by a unanimous vote.

**Ms. Williams** further addressed Mr. Gravesen's concerns by suggesting that the Natural Resource staff database be merged with the Building Construction Services database (Acela) to further ensure that only one permit application would trigger an inspection.

There being no further business to come before the Board, meeting was adjourned at 2:42 p.m.

**Mr. Harris** made an official announcement of his appointment as the Director of Community Development, taking over from Danny Quick; he said that Josh Moye will replace him on this Board.