

**CHARLOTTE COUNTY PLANNING AND ZONING BOARD**  
**Administration Center, 18500 Murdock Circle, Room 119,**  
**Port Charlotte, Florida**  
**Minutes of Regular Meeting**  
**November 30, 2015 @ 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**

Ken Chandler

**ATTENDING**

Joshua Moye, Assistant County Attorney  
Gayle Moore, Recording Secretary

**APPROVAL OF MINUTES**

The minutes of October 12, 2015 were approved as circulated.

**ANNOUNCEMENTS**

Chair Hess noted that this is the regular meeting of the Board which had been postponed from November 9<sup>th</sup>. Mr. Cullinan asked if agenda item one, the rezoning, could be held to last place because the applicant's agent is still in transit. The Board concurred and the agenda commenced with item 2.

PETITIONS:

**Unified Land Development  
Code Revisions, Phase II.3**

**Legislative**

**Countywide**

**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 October 27, 2015. Ms. Shao gave brief reminder on the schedule of presentation of these items to the Board, and then reviewed the primary purpose of the changes for each of the following individual sections of the code:

**Sec. 3-9-62: Assisted Living  
Facility (ALF)**

**Legislative**

**Countywide**

An Ordinance amending Charlotte County Code Chapter 3-9, Zoning, by revising Section 3-9-62, Assisted Living Facility (ALF) to correct scrivener's errors; providing for conflict with other ordinances; providing for severability; and providing for an effective date. Applicant: Charlotte County Board of County Commissioners.

**Ms. Shao** noted that the scrivener’s error in question is that an ALF or daycare center for seven or more adults is one of the conditional uses under the Residential Multi-Family zoning district – not permitted by Special Exception.

**Revisions to Section 3-9-33: Residential Single-family (RSF), Section 3-9-34: Residential Multi-family (RMF), Section 3-9-35: Residential Multi-Family Tourist (RMF-T), and Section 3-9-37: Manufactured**

**Home Conventional (MHC)**

**Legislative**

**Countywide**

An Ordinance amending Charlotte County Code Chapter 3-9, Zoning, by adding 4H, FFA and similar uses and activities as conditional uses and structures to Residential Single-family (RSF), Residential Multi-family (RMF), Residential Multi-Family Tourist (RMF-T), and Manufactured Home Conventional (MHC) zoning districts; providing for conflict with other ordinances; providing for severability; and providing for an effective date. Applicant: Charlotte County Board of County Commissioners.

**Ms. Shao** noted that this allows 4H, FFA and similar uses within the residential areas while minimizing any potential visual impacts on adjacent residential uses; staff worked with the Charlotte County School Board and the 4H program to set appropriate conditions that would allow this type of use.

**Revisions to Section 3-9-69, Conditional Uses and Structures**

**Legislative**

**Countywide**

An Ordinance amending Charlotte County Code Chapter 3-9, Zoning, by revising Section 3-9-69, Conditional Uses and Structures; providing for conditions for 4H, FFA and similar uses and activities under Residential Single-family (RSF), Residential Multi-family (RMF), Residential Multi-Family Tourist (RMF-T), and Manufactured Home Conventional (MHC) zoning districts; and correcting scrivener’s errors; providing for conflict with other ordinances; providing for severability; and providing for an effective date. Applicant: Charlotte County Board of County Commissioners.

**Ms. Shao** noted that this adds the same uses as in the prior item; the scrivener’s error is to add “RMF” which had been inadvertently omitted in the prior Code version.

**Revisions to Buffers, Landscaping, and Tree Requirements**

**Legislative**

**Countywide**

An Ordinance of the Board of County Commissioners of Charlotte County, Florida, amending Charlotte County Code Chapter 3-9, Zoning, by amending Section 3-9-100, Buffers, Landscaping, and Tree Requirements; providing for revised definitions, providing for revised applicability; providing for revised landscape plan; providing for revised planting standards; providing for revised maintenance requirements; and providing for Florida-Friendly landscaping; amending Section 3-9-100.1, Buffers; providing for revised installation standards; amending Section 3-9-100.2, Landscaping; providing for revised parking lot screening; providing for revised interior parking lot landscaping; amending Section 3-9-110.3, Tree Requirements; providing for revised Exhibit 6: Tree Points for Development Types; providing for revised tree removal requirements; providing for revised heritage trees requirements; providing for revised criteria for issuance of tree removal authorization; providing for revised tree removal authorization and exemptions; providing for revised prohibited trees requirements; providing for a requirement of the planting of banyan trees; providing for revised Exhibit 8: List of Approved Tree Species; providing for deletion of Exhibit 9: Prohibited Plants;

providing for conflict with other ordinances; providing for severability; and providing an effective date. Applicant: Charlotte County Board of County Commissioners.

**Ms. Shao** noted that this amendment provides clarification and correction to changes which had been adopted by the Board on April 28, 2015; staff noticed some inconsistencies subsequent to adoption which are now being amended, as well as items being clarified. The major changes are as follows:

- Adding two new definitions (mulching and site improvements)
- Clarifying the requirement regarding tree points in MHP zoning, and tree survey requirements for single-family properties.
- Adding an exemption under heritage trees,
- Deleting Exhibit 9 Prohibited Plants, replacing this with a reference to the State requirements at Sec. 3-9-100.3.(m),
- Adding language allowing the planting of Banyan trees but specifying restrictions on placement of the plants.

#### **Staff Presentation**

**Jie Shao, Principal Planner**, requested Board's approval, noting that staff was ready to answer any questions the Board may have. **Chair Hess** indicated the Board would discuss and ask questions where needed; she confirmed with Ms. Shao that the first item was essentially addressing scrivener's errors.

#### **Questions for Staff**

*None.*

#### **Public Input**

*None.*

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

#### **Discussion**

*None.*

#### **Recommendation**

**Mr. Gravesen** moved that revisions to **Sec. 3-9-62: Assisted Living Facility (ALF)** of the Land Development Regulations be sent to the Board of County Commissioners with a recommendation of *Approval* based on the findings and analysis in the staff report dated October 27, 2015, along with the evidence presented at today's meeting, second by **Mr. Viera** and carried by a unanimous vote.

#### **Questions for Staff**

Regarding the next two items described by Ms. Shao, **Chair Hess** indicated what she found the substance of the amendment to be, and she asked if there was other input from the Board; there being none offered, the floor was opened to public input.

#### **Public Input**

*None.*

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

**Discussion**

None. **The Chair** requested Mr. Gravesen to motion items three and four separately.

**Recommendation**

**Mr. Gravesen** moved that **Revisions to Section 3-9-69, Conditional Uses and Structures**, be sent to the Board of County Commissioners with a recommendation of *Approval* based on the findings and analysis in the staff report dated October 27, 2015, along with the evidence presented at today's meeting, second by **Mr. Viera** and carried by a unanimous vote.

**Recommendation**

**Mr. Gravesen** moved that **Revisions to Section 3-9-33: Residential Single-family (RSF), Section 3-9-34: Residential Multi-family (RMF), Section 3-9-35: Residential Multi-Family Tourist (RMF-T), and Section 3-9-37: Manufactured Home Conventional (MHC)**, be sent to the Board of County Commissioners with a recommendation of *Approval* based on the findings and analysis in the staff report dated October 27, 2015, along with the evidence presented at today's meeting, second by **Mr. Viera** and carried by a unanimous vote.

**Chair Hess** next moved the discussion on to agenda item five, which addresses the revisions to the Buffers, Landscape and Tree Requirements section of the Code.

**Public Input**

None.

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

**Discussion**

**Mr. Gravesen** indicated that he had questions about this item; specifically, he asked what event or events led up to having a problem that caused the mulching definition to be added.

**Mr. Cullinan** responded with examples of clearing that had overstepped the limits of what constituted mulching and the Department considered that setting forth the new definition might help address those instances where people were taking liberties with the process. **Mr. Gravesen** asked why that was a problem; **Mr. Cullinan** responded that this concerns instances of people speculatively clearing lots completely, and the issue is that the County would prefer not to look like Cape Coral, which had its vegetation wiped out. The aim is to maintain a more natural state as well as the tree canopy, while still permitting residents to clear out "garbage" vegetation. He noted that very large machines were being improperly employed for "mulching" and not getting permits for clearing.

**Mr. Gravesen** asked how extensive this activity was; **Mr. Cullinan** indicated that this sort of activity was pervasive, and gives rise to a couple of phone calls per week reporting such activity.

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**Mr. Gravesen** continued his objections, asking if this activity was on single lots or on acreage; **Mr. Cullinan** indicated it was on all types of land, including single lots. **Mr. Bigness** indicated

he was aware of some Florida statutes in the past, regarding mangroves, regarding "returning to an existing condition" and asked if that was the same thing Mr. Gravesen was concerned about.

**Mr. Gravesen** indicated that his concern was the overall invasive nature of County requirements for permits to simply do property maintenance, whether or not that was defined as "mulching". He said that classifying this as "development activity" that required a permit had a "Big Brother" aspect to it; he also raised the issue that the government owns a third of the County, and asked what we are trying to preserve. He stated this is tantamount to regulating private property activities. He said that no one had mentioned a concern about animals, gopher tortoises; **Mr. Cullinan** responded that such concerns are essentially the reason for the permitting requirements. **Mr. Gravesen** countered that those are protected species and there is a penalty for taking those; **Mr. Cullinan** responded by noting the difficulty of the State pursuing every single violation. He pointed out that if the property is already mulched down, it's difficult to find the evidence of the taking. The permitting process exists because habitat is being wiped out and penalties not being fully assessed due to lack of manpower.

**Mr. Gravesen** indicated he remained unpersuaded. **Chair Hess** asked specifically what language he feels is so prohibitive; and asked where to find it; she was referred to the definition of "mulching" in the text. **Mr. Gravesen** said he didn't mind including a definition of mulching, but suggested that mulching should not be defined as a development activity; he felt mulching should be unregulated, noting such property maintenance helps to reduce fire hazards. He suggested again that the permitting requirement had a "Big Brother" aspect to it. **Mr. Cullinan** noted that this permit has been a requirement in the County for a very long time; **Chair Hess** asked Mr. Gravesen what he was proposing as an alternative; he replied that mulching should be removed from the definition of development activity, and to be allowed as an unregulated activity. **Mr. Cullinan** sought to explain why this isn't a good solution with regard to species protection, and how permitting is a tool to help the County to avoid liability.

**Mr. Bigness** asked whether removal of plants like Brazilian pepper is required; **Mr. Cullinan** noted that is true when property is being developed, but not on undeveloped lots. He also noted that you clear using hand tools all day long; this permitting is focused on mechanized removal, which tears plants up by the roots, and which disturbs the soil, and is often done by people who also neglect to employ silt fencing and other recommended techniques which, in turn, can lead to illicit discharge issues, in a sort of domino effect.

**Chair Hess** asked **Mr. Viera** if he had an opinion to add; **Mr. Vieira** indicated he was sympathetic with Mr. Gravesen's opinion on normal maintenance needing to be permitted. He then referenced a separate issue with vacant lots next to occupied houses, where neighbors "expand their boundaries" which takes them across someone else's property, which he realized was not entirely proper, but he still felt "normal maintenance" should be OK without a permit. Chair Hess observed that it can be hard to define "normal maintenance" and that people will always go too far.

**Mr. Cullinan** responded that is the basis of many regulations; they are responsive to those folks who go too far. He noted that the County has experienced people trying to submit permits on other people's property without that owner's consent.

Chair Hess clarifies that this normal "hand" maintenance doesn't require a permit – only mechanized clearing; she asked if "**mechanized** cutting, grinding, bushhogging, chipping and mowing" could be added to the language in order to clarify. She suggested this could be the way forward; Mr. Cullinan agreed, and said that staff would address that suggestion. Mr. Gravesen indicated he would reluctantly accept that compromise, but remains concerned about government intrusion. Further discussion ensued.

**Chair Hess** asked how people are discovered having done this, and about penalties; Mr. Cullinan indicated neighbors usually report such activity, and the result could be either getting an "after the fact" permit at quadruple the normal fee, or it becomes a Code Enforcement matter.

The public comment opportunity was re-opened based on the foregoing discussion.

### **Public Input**

**Mr. Todd Rebol** noted that such regulations do elicit both kinds of response, favorable and unfavorable, but said that he understands staff's position here. He spoke out of his professional experience about how this clearing stuff goes wrong. He spoke about even the single-family residential lot can have wetlands or protected species on them; regular people don't understand the issues connected with these occurrences and can make mistakes in developing their lot. **Mr. Rebol** also pointed out that most places in southwest Florida require this type of permitting, which he said he views as a protection for the property owner; he said that, knowing what he does about the issues, he would hire a biologist ahead of clearing a lot so that there would be a record of "no protected species or wetlands" on the property. The County provides this service as part of the permit, **Mr. Rebol** said, and pointed out that the permit process is quick and easy. He closed by pointing out that regulations come into existence for a reason; he indicated to Mr. Gravesen that he could provide 30 cases over lunch to help him understand why this is not the problem he feels it is. **Chair Hess** said that his comments had helped her understand the issues, even though she continued to feel that this long-standing regulation did not need to be changed.

**Ms. Geri Waksler** also spoke to provide her personal permit experience, which was a simple, no-problem process. She also gave an example of a property owner who did it wrong, mulching in a wetland; she represented that person in dealing with the violation and penalties afterward. She pointed out that even if Charlotte County did not require a permit here, property owners are not exempt from the State or federal requirements, and this permitting process helps them avoid mistakes where penalties are much higher than the permit fee.

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

Further discussion continued, mostly on details already covered. **Mr. Gravesen** also commented on the value of landscape architects, such as those who may have approved the Elkcam Blvd. sidewalk construction which included planting trees within one-two feet of the sidewalk. He noted that in future, roots from those trees will cause problems, heaving up pavement and cracking it. **Mr. Cullinan** pointed out that the tree planting was a Parkside Committee choice, in an area where they have limited right-of-way, and this was what they

wanted. He indicated he would pass Mr. Gravesen's comments along to the Public Works Department and their RLA.

**Mr. Bigness** had a question about plantings in the buffer zones; specifically, he asked what is being done to ensure that the required installed landscaping doesn't die? Mr. Cullinan responded that the requirement is "in perpetuity", therefore if required landscaping dies, it becomes a Code Enforcement issue; further discussion ensued on this point.

**Chair Hess** called for the motion; **Mr. Gravesen** commented further regarding his opposition to the changes before moving that Section 3-9-100, **Revisions to Buffers, Landscaping, and Tree Requirements** be sent to the Board of County Commissioners with a recommendation of *Approval, with suggested additions to the language as it pertains to mulching with large machine equipment*, based on the findings and analysis in the staff report dated October 27, 2015, along with the evidence presented at today's meeting, second by **Mr. Vieira** and carried by a unanimous vote.

Upon the oath being administered, the presentation continued with item 1 on the agenda.

**Z-15-09-09**

**Quasi-Judicial**

**Commission District V**

An Ordinance pursuant to Section 125.66, Florida Statutes, amending the Charlotte County Zoning Atlas from Planned Development (PD) to Planned Development (PD), for property located at 3358 and 3362 Tamiami Trail, in the Port Charlotte area, containing 1.32± acres; Commission District V; Petition No. Z-15-09-09; Applicant: Creighton Construction and Management, LLC; providing an effective date.

**Staff Presentation**

**Shaun Cullinan, Planning and Zoning Official**, presented the findings and analysis of the petition with a recommendation of *Approval with conditions*, based on the reasons stated in the staff report dated October 8, 2015. He noted that this property has been before the Board in the past for changes intended to support interim uses arising before this new plan. He noted staff worked closely with both the applicant and the Parkside Committee; the Parkside Committee has approved the current plan. **Mr. Cullinan**, referencing the aerial, noted that the retail structure that occupies part of the applicant's property will remain in its current use; only that part of the property formerly occupied by the used car dealer will be developed according to the new Planned Development specs.

**Questions for Staff**

**Chair Hess** noted that the actual set of conditions should be A-F; **Mr. Cullinan** agreed the seemed to be a typo in that regard, and he also commented on the gas island canopy color which will match the building color, although the color appears different on the elevations, and that this will be condition "G".

**Applicant's Presentation**

**Geri Waksler, applicant's agent**, appeared on behalf of the applicant and spoke briefly on the matter with special mention of the "360 degree" nature of the architectural design, given that the "back" of the Building will face the intersection. She spoke about the signage, which would include Parkside identification signs, right on the corner. **Ms. Waksler** also indicated that the applicant accepted all the conditions.

**Public Input**

*None.*

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

**Discussion**

**Chair Hess** stated that the PD as presented is consistent with the Comprehensive Plan and the US 41 Mixed Use section, as well as the Parkside Plan; it is supported by the Committee and it has conditions for control of the site. She said that she saw it as a great improvement for this location and she agreed with staff's recommendation of approval.

**Recommendation**

**Mr. Gravesen** moved that **Z-15-09-09** be sent to the Board of County Commissioners with a recommendation of *Approval with conditions A through G*, based on the findings and analysis in the staff report dated October 8, 2015, along with the evidence presented at today's meeting, second by **Mr. Vieira** and carried by a unanimous vote.

**Ms. Waksler** thanked the Board for accommodating the request for the meeting today.

There being no further business to come before the Board, the meeting was adjourned at 2:22 p.m.