

CHARLOTTE COUNTY PLANNING AND ZONING BOARD
REGULAR MEETING
Administration Center, 18500 Murdock Circle, Room 119, Port Charlotte, Florida

Board Members

Michael Gravesen, Chair
Paul Bigness, Vice-Chair
Stephen Vieira, Secretary
Don McCormick
Clint Baker



District

District V
District III
District I
District II
District IV

MINUTES
REGULAR MEETING

February 13th, 2023, at 1:30 P.M.

Call to Order

Chair Gravesen called the meeting to order at 1:30 pm

Roll Call

Upon the roll being called it was determined a quorum was present. Steve Vieira was absent

Approval of Minutes – January 9th, 2023, Regular Meeting

The January 9th, 2023, minutes were approved as circulated.

Announcements

None offered.

PETITIONS

1.) PP-22-10-24

Quasi-judicial

Commission District I

Babcock Property Holdings, L.L.C. is requesting Preliminary Plat approval for a subdivision to be named, Curry Preserve Commercial at Babcock Ranch, being a replat of part of Tract E-35 and Tract I-73, and a partial replat of Tract E-36 of Babcock Ranch Community Spine Road EE5 & GG5, as recorded in Plat Book 26, Page 2-A through 2-I. The subdivision is to consist of seven tracts for commercial development, roadway, drainage, and open space. The site contains 31.69± acres and is generally located north of the County line with Lee County, south of Cypress Parkway, west of Muhly Grass Road, and east of SR 31, in the boundary of the Babcock Ranch Community Development of Regional Impact (DRI) Increment 1, within the East County area, and in Commission District I.

Jenny Shao, Project Coordinator, provided the findings and analysis for Petition **PP-22-10-24** with a recommendation of approval based on the reasons stated in the staff report.

Questions for Staff

None offered.

Applicant's Presentation

Robert Berntsson, Big W. Law Firm, representing the applicant, states he joins in with the staff report and notes that there was a note from the school board saying a School Concurrency Availability Determination Letter (SCADAL) was needed, however this is commercial subdivision. There will be no residential development within this development.

Public Input

None offered.

- **Mr. Bigness** moved to close the public comment, second by **Mr. Baker**, with a unanimous vote.

Discussion

None offered.

Recommendation

Mr. Vieira moved that **PP-22-10-24** be sent to the Board of County Commissioners with a recommendation of Approval, based on the findings and analysis in the staff memo dated January 17, 2023, Charlotte County Comprehensive Plan along with the evidence presented at today's meeting, second by **Mr. McCormick**; and carried by a unanimous vote.

2.) TCP-22-04

Legislative

Commission District I

Pursuant to Section 163.3184(3), Florida Statutes, transmit a Large Scale Plan Amendment to the Department of Economic Opportunity (DEO) and other State agencies for review and comment; this request is to revise Future Land Use (FLU) Appendix VI: Developments of Regional Impact by removing permitted "Public Marina" land use/developer right, and increasing the total acreage of "Open Space, Preservation and Recreational Uses" to 169 acres, from the Harborview Development of Regional Impact (DRI); Petition No. TCP-22-04; Applicants: RDL Associates, LLC; Peace River Associates, LLC; Peace River East II, LLC; Post Falls Management Associates, LLC; providing an effective date. The Harborview DRI is located within Commission District I.

Jie Shao, Principal Planner, provided the findings and analysis for Petition **TCP-22-04** with a recommendation of approval, based on the reasons stated in the staff report.

Questions for Staff

Mr. Vieira asked because of this action are any residential units being decreased in the DRI? **Ms. Shao** replied at this time, no. **Mr. Vieira** commented no changes to the residential using, they are just taking away the public marina and recreation portion of it. **Ms. Shao** replied that is the only changes requested for this type of amendment.

Mr. Gravesen mentioned on the report and the table shown, 20 single family boat slips were crossed out and this is here under the public marina, is that 20 going to exist or not? **Ms. Shao** replied the will keep the single-family boat slip and are only removing the public marina. **Mr. Gravesen** clarified these 20 are on the single-family units that are on the water within this DRI? **Ms. Shao** answered yes.

Shaun Cullinan, Planning and Zoning official, mentioned the marina is a big portion of this and is one of the reasons this has never been developed, also this is within the smalltooth sawfish consultation area. The removal of the marina does no damage and probably has a better chance for this development to move forward. **Mr. Vieira** asked if the marina a requirement of the DRI to off set the residential homes in the remainder of the DRI? **Mr. Cullinan** commented it was never to his knowledge intended to be any type of offset.

Applicant's Presentation

Jeremy Frantz, representative for the applicant, comments that in terms to this Comp Plan Amendment it is a simple request, they will be coming back with DRI and PD changes as well. The removal of the marina does benefit the area. Not just from an environmental perspective, removing the impacts to the Peace River and having boats on the water there, also the traffic impacts that would be associated with a public marina. To answer the questions about the 20 marina slips that remain, he believes that the conditions in the DRI PD limit those too along the DeSoto Canal. He mentions that where the public marina was previously purposed, there won't be any slips nor access to the river from that area. He agrees with Staff's analysis and do not have any changes to her presentation.

Questions for Applicant

Mr. Vieira clarifies that this parcel is west of I-75, the DeSoto canal is a waterway that leads to the Peace River. The 20 slips that we are discussing will remain for the future development of that parcel, correct? **Mr. Frantz** replied that the text amendment that we are discussing today applies to the Harbor View DRI generally. Which

encompasses those three quadrants of I-75 and Harborview. The public marina would be on the east side of I-75, those slips would be limited to DeSoto canal.

Public Input

None offered.

- **Mr. Baker** moved to close the public comment, second by **Mr. McCormick** with a unanimous vote

Discussion

None offered.

Recommendation

Mr. Vieira moved that TCP-22-04 be sent to the Board of County Commissioners with a recommendation of approval, of transmittal of TCP-22-04 to the Department of Economic Opportunity (DEO) and other State review agencies for review and comment based on the findings and analysis in the staff report dated January 18, 2023, and the evidence and testimony presented at the public hearing before the Planning and Zoning Board, second by **Mr. McCormick**; and carried by a unanimous vote.

3.) PAS-22-0007

Legislative

Commission District IV

Pursuant to Section 163.3187, Florida Statutes, adopt a Small Scale Plan Amendment to change Charlotte County FLUM Series Map #1: 2030 Future Land Use, from Commercial (COM) to U.S. 41 Mixed Use (US41MU); for property located at 100 Tamiami Trail, in the Port Charlotte area, containing 29.76± acres; Commission District IV; Petition No. PAS-22-00007; Applicant: JBCC Development, LLC; providing an effective date.

4.) PD-22-00009

Quasi-Judicial

Commission District IV

An Ordinance pursuant to Section 125.66, Florida Statutes, amending the Charlotte County Zoning Atlas from Planned Development (PD) to PD. This is a major modification to the existing PD, Ordinance Number 2014-007 and Ordinance Number 2019-011, to allow for a mixture of residential and commercial development on a portion of the property specifically located at 100 Tamiami Trail and containing 29.76± acres; the proposed residential development up to 340 units, requiring a transfer of 340 density units to reach the maximum of 340 units; and to adopt a "General PD Concept Plan" for this proposed development, for property subject to the approved PD located at 100, 150, 202, and 250 Tamiami Trail, containing 77± acres; Commission District IV; Petition No. PD-22-00009; Applicant: JBCC Development, LLC; providing an effective date.

Jie Shao, Principal Planner, provided the findings and analysis for Petition **PAS-22-0007** with a recommendation of approval, based on the reasons stated in the staff report.

Jie Shao, Principal Planner, provided the findings and analysis for Petition **PD-22-00009** with a recommendation of approval, with conditions "a" through "s", based on the reasons stated in the staff report.

Questions for Staff

Mr. Baker asked if they were able to transfer all TDU's and they have done a traffic study? Ms. Shao replied yes and they have done a traffic study.

Applicant's Presentation

Robert Berntsson, Big W. Law Firm, representing the applicant, comments that a few years ago this property went in front of board for the development of the Kia site, which has since been developed. Currently P1-2 under construction as a standalone emergency room medical facility. We are purposing to come in and modify the PD to allow for a mixed use for both residential and commercial development on site. We have worked closely with staff coming up with the conditions. Which many conditions have been carried over from the original PD. The only changes that are shown and are underlined and crossed out. They agree with all of the revised conditions and respectfully request for an approval. He is here to answer any questions. He accepts Ms. Shao credentials.

Mr. Baker asked where are the buffers going to be and what type? **Mr. Bertsson** replied the buffers are along Hillsborough Blvd and Huge Blvd, they will have a Type D buffer.

Mr. Baker asked **Mr. Bertsson** if there is a traffic light at the intersection of US-41 and Cranberry Blvd? **Mr. Bertsson** replied yes there is. The City of North Port is looking to put a roundabout at that intersection of Cranberry Blvd and Hillsborough Blvd.

Mr. Baker inquired if the City of North Port will be responsible for the roundabout? **Mr. Bertsson** replied correct. **Mr. Cullinan** commented that the roundabout is a joint effort between Charlotte County and City of North Port. That is currently in design phase, and we have seen some pulmonary designs. This has been discussed for many years now and that will be completed during the year 2024-2025 before it gets finished.

Public Input

Joseph Horvath, lives at 180 Camillia Ln, comments that he is concerned about the type of rentals that will be here. Will it be for elderly, low income? **Mr. Gravesen** responded we don't usually answer questions but will state that these will be at market rate, since **Ms. Shao** stated that. It will not be targeted towards any type of individuals; it will be just marketed for what ever they can build and sell them for. **Mr. Horvath** also expressed concerns for the traffic and is wondering if they will be widening the road.

Bill Chapman, lives at 55 Bamboo Dr., expresses that he is concerned for the traffic at Hillsborough Blvd. and Cranberry Blvd. which is currently already a nightmare. He believes by placing these units at this location it will increase current traffic heavily and is concerned that they will cut through Bamboo to get to US-41. He also inquired what type of view will he now have in his back yard that currently has a canal, will there be a buffer to keep that portion of the canal with vegetation? **Ms. Shao** responded with stating that we are talking about the Mixed Use of Proposed Changes is parcel P1-3, the car dealership already exists. The purposed changes is away from dealership and Bamboo Dr.

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

Rebuttal

Mr. Bertsson, explains that a traffic study was done and reviewed and accepted by the county with regard to the traffic. This site was originally approved as an overall Kia dealership for extensive commercial. That would've been allowed without this amendment. With this being residential it's actually lowering the traffic counts based on the original approval. Bamboo Dr. is not adjacent to what is being discussed. There will be a Type D buffer in parcel P1-3. With that we join with the staff report and respectfully request recommendation of approval.

Discussion

Mr. Bigness asked the access off of Hillsborough Blvd will there be a left turn? **Mr. Bertsson** replies that will be both a left and right turn.

Recommendation

Mr. Baker moved that **PAS-22-0007**, be sent to the Board of County Commissioners with a recommendation of approval, based on the findings and analysis in the staff report dated January 18, 2023, Charlotte County's Comprehensive Plan, and the evidence and testimony presented at the public hearing before the Planning and Zoning Board, second by **Mr. Vieira**; and carried by a unanimous vote.

Recommendation

Mr. Baker moved that **PD-22-00009**, with conditions "a" through "s", be sent to the Board of County Commissioners with a recommendation of approval, based on the findings and analysis in the Board memo dated January 18, 2023, and the evidence and testimony presented at the public hearing before the Planning and Zoning Board, second by **Mr. Vieira**; and carried by a unanimous vote.

5.) PD-22-00014

Quasi-Judicial

Commission District I

An Ordinance pursuant to Section 125.66, Florida Statutes, amending the Charlotte County Zoning Atlas from Agriculture (AG) to Planned Development (PD) and adopting a General PD Concept Plan in order to only allow for an existing grove to be restored to a preserve with native vegetation; for property generally located north of Bermont Road (CR 74), south of Washington Loop Road, east of Duncan Road (US 17) and west of CR 31, in the East County area, containing 740± acres; Commission District I; Petition No. PD-22-00004; Applicants: Bermont Road Partnership and TMV Inc.; providing an effective date.

Jie Shao, Principal Planner, provided the findings and analysis for Petition **PD-22-00014** with a recommendation of approval, based on the reasons stated in the staff report.

Questions for Staff

Mr. McCormick asked will this be used as a venue for ATVs? **Mr. Cullinan** replied no this will not be used for that. Rural Community Mixed Use is residential.

Mr. Vieira inquired on the 10-year time frame? **Ms. Shao** responded it is per applicant request. They need the time to restore the site. It's only for the restoration, no residential. This specific project only limit to Phase 1, 317 acers, not the whole 740 acres of the site. Mr. Vieira expressed that he has been contacted by local residents and they are concerned, for the excavation going on the site that's already happening. They described those burns were being built, pits dug for mulch to be buried; are there any open excavation or mining permits or anything like that on the property? **Ms. Shao** responded there currently is one for active mining because the applicant owns the 740 acres that has part Agriculture (AG) there's active mining on the site but not for the area of this Rural Community Mixed Use project.

Applicant's Presentation

Geri Waksler, McCory Law Firm, representing the applicant, accepts Ms. Shao as an expert and has been sworn. Explains that the applicant is requesting an approval of a rezoning from AG to Planned Development (PD). The property has a Rural Community Mixed Use (RCMU) land use designation within an approve land use Concept Plan (CP). The RCMU land use requires a rezoning from AG to PD. Bermont Road Partnership owns the 740 acres site, which is this RCMU together with a 148.91-acre excavation site, which is not part of the RCMU community. Minor Yard waste processing facility (mulching operation) is also operating as part of the excavation. There are berms that had to be built part of the reclamation plan for the excavation required berm, they are using that mulch for that. They have also been a recipient site from the contractor that is taking the yard waste debris in Charlotte County, that is being mulched off site. She believes that's what people have been seeing. They have also seen some digging of trenches, that's occurring on this PD site to access the reservoir. There is an existing water use permit for that reservoir, with a separate excavation permit from the county. They want to bring water from reservoir into sod that's going to cover the berms that have been built and those need to be irrigated which will be coming from the reservoir. That's some of the activity seen on the site now but has nothing to do with the restoration project that is being purposed. The PD rezoning requested today is intended to eliminate the Orange Grove and return the 63.7 acres of the grove to native habitat. The restoration project eliminates the homes sites and the roads that are seen in the middle of the site and replaces it with a meadow and native canopy trees and understory vegetation. To accomplish this the orange trees will be removed, and a native tree container nursery will be established adjacent to the existing reservoir to provide trees and plants for the restoration area. Sod will be grown on site to cover berm that will buffer the site from adjacent owners. All main irrigation pipelines, drainage structures and soil will need to be excavated to eliminate the soil that degraded by farming, fertilizer and insecticide application for the grove. The center of the site will be excavated to about 20 feet, which will provide dirt to help create compost, whole rows, and berms.

Ms. Waksler went into her PowerPoint presentation.

Public Input

Jane Hayes, lives at 36486 Washington Loop Rd., states she has a letter for the board from four landowners who live adjacent and north of the subject property. She expressed they are concerned for the purposed nature preserved with the details given in the report as into how they are going to extract the soil and how far they are going to dig. She asked if there was a federal requirement for the dirt to be removed? Is it considered contaminated? What are the environmental implications of releasing this dirt into the air if it is contaminated? The mulching that has already begun in the excavation mining zoned site is creating foul orders and stench along with bringing bugs. She is worried that what they are purposing of the nature preserve will not happen and is concerned if the dirt they are digging up is contaminated. If so, what will it do to the water quality.

Desire Rebost, lives at 36456 Washington Loop Rd., shares that her concerns are that they are digging up pesticide laden soil. She has terrible allergies and has been coughing along as her goats. She expresses that brown dust storms are coming over her house that have a awful smell to it. She is very concerned for what it could do to the water when it starts to rain, they are on well water. They would like more answers to a lot more questions that they have.

Charles Thompson, lives at 5051 Rustic Dr., expressed his concern for the 1,000 ft buffer that he is located in. Does that mean that his house will be affected by this buffer? Asst. County Attorney David responded that the buffer map is 1,000 feet where the notice was sent of this hearing. It has no impact on your property, it's just for notice purposes. The county is required to send notice of this hearing to everyone inside the 1,000-foot buffer map.

Glenn Moss, lives in the area and is here Frank and Camelia Moss, was sworn in, explains that Frank and Camelia are mentioned because they are the co-managers and original founding members of the shell creek airport. He is here today to stress how critical it is for Charlotte County to be proactive in protecting it's public airports from conflicts with surrounding development. He expressed that the zone change needs to include a binding commitment from the applicant to grant the public use airport a navigation easement. For arriving and departing aircraft to overfly the development and ensure future residents are made fully aware the property they are purchasing is subject to low flying aircraft. The navigation easement needs to be secured as a condition for granting the applicant the requested zoning change and land use.

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

Rebuttal

Ms. Waksler expressed that this is a little difficult because you are getting comments based on the excavation that's going on the property and impacts that are different from what is being proposed on this property. She is going to have Mr. Bayne, the project engineer, to speak about the excavation and how its handled to have no drainage or flooding.

Gary Bayne, SW Engineering, explains that they came up with the natural preserve area about a year ago. They started to implement different phases of the project. The first phase right now is, looking at planting sod. They are currently digging where the future berms are going to be. They have been dealing with problems that are appearing within the project, as of right now they are currently dealing with a drainage problem in the north/northeast of the project. They are working on retaining all the water on the site and are currently trying to fix it. They are trying to be good neighbors and will handle any issues that come. He then explains their plan on how they will use a hydraulic barrier.

Mr. Vieira asked is the reservoir, is it going to be used for future? Mr. Bayne responded yes, we will be keeping it and improving it.

Mr. Baker inquired about the 2.8 million cubic yards; you have a 10-year plan and you're going up to 30 ft deep, it sounds like that could be used for commercial selling? **Ms. Waksler** explained there will be an excavation that

will be deeper than the 10 ft, that is necessary, but they need some of that additional soil for site and will be selling some of the additional soil off site at a rate less than the large pond on the adjacent property.

Mr. McCormick asked could you differentiate the product of what you have from a normal gravel mining operation, which is used to raise lots; the dirt you're talking about is that suitable for that? **Ms. Waksler** answered it would be suitable. The difference is you typically see when a commercial excavation is done, they restore, in terms of leveling the banks, but it's left as a large lake. However, this is not being left as a large lake because we are refilling it with a mixture of some of the cleaner soil to be able to mix with a composed to put back into the hole.

There was discussion as into what type of process they are going to use to refill their holes on the site.

Mr. Baker suggested for a stipulation to be in place for watering to be done during excavation to help keep the dust down. **Ms. Waksler** stated they would have no objection if you would like to purpose that as a condition.

Mr. Vieira commented about the testimony that was mentioning flyovers for the airport; is there any restriction on that? **Ms. Waksler** replied I think their concern is because this a RCMU and at some point in the future, probably a decade from now, the owners will be coming back to do a phase 2. Which has some commercial use, some residential use of both single-family and multi-family. At that time the issues of the airport would be taken into consideration.

Comments

Mr. Gravesen expressed his concern for this being to far into a rural area, a farming community, with urban practices for regulation. It's happening all over the country where the urban areas are encroaching on the agricultural areas. Reading further into the report is that their activity starts to become some commercial activity. His other concern is they are out in the rural area that now is looking at a PD which is a urban regulation of a farming area. He has some caution as into what is being pushed into this area.

Recommendation

Mr. Vieira moved that **PD-22-00014, with conditions "a" though "j**, adding condition to a 20ft maximum depth excavation and watering provision for ongoing operations within the development, be sent to the Board of County Commissioners with a recommendation of approval, based on the findings and analysis in the staff memo dated January 24th, 2023, with and the evidence presented at the public hearing before the Planning and Zoning Board, second by **Mr. Baker**; motion passed with a 4-1 recommendation. (4 members voted yes to approve – **Mr. Bigness** voted no against the approval)

6.) PAL-22-00005

Legislative

Commission District I

Pursuant to Section 163.3184(3), Florida Statutes, transmit a Large Scale Plan Amendment to the Department of Economic Opportunity (DEO) and other State agencies for review and comment; the amendment request is to change Charlotte County FLUM Series Map #1: 2030 Future Land Use, from Agriculture (AG) to Mineral Resource Extraction (MRE) with an annotation requiring a conservation easement in a form acceptable to the County Attorney's Office and the Board of County Commissioners prior to issuance a commercial excavation permit; for property located at 43521 Neal Road, in the Punta Gorda area and within the East County area, containing 159.50± acres; Commission District I; Petition No. PAL-22-00005; Applicants: Kye and Deborah Bishop; providing an effective date.

7.) Z-22-48-18

Quasi-Judicial

Commission District I

An Ordinance pursuant to Section 125.66, Florida Statutes, amending the Charlotte County Zoning Atlas from Agriculture (AG) to Excavation and Mining (EM); for property located at 43521 Neal Road, in the Punta Gorda area and within the East County area, containing 159.50± acres; Commission District I; Petition No. Z-22-48-18; Applicants: Kye and Deborah Bishop; providing an effective date.

Jie Shao, Principal Planner, provided the findings and analysis for Petition **PAL-22-00005** with a recommendation of approval, based on the reasons stated in the staff report.

Jie Shao, Principal Planner, provided the findings and analysis for Petition **Z-22-48-18** with a recommendation of approval, based on the reasons stated in the staff report.

Questions for Staff

None offered.

Applicant

Derek Rooney, Grey-Robinson Law firm on behalf of the applicant, he accepts Ms. Shao as an expert witness and joins in the staff report and recommendation. He is here to answer any questions and would like to reserve time for a rebuttal if need be.

Public Input

Paul Collins, lives in area, expressed his concerns for the traffic that will approach Neal Rd. which was not mentioned in the traffic study report. He points out the road condition (gave pictures of potholes to the board members) of Neal Rd is very bad and also no law enforcement is out there. He asked is it necessary to have another mined, he expressed there are plenty.

Nigel Morris, expressed there are plenty of shell mines in the county and we only have a limited amount of AG. He would like to see this land stay a productive land of AG. Both of these petitions are required to have a wildlife corridor, because they fall into the critical linkages of wildlife corridor to put Wildlife corridors in. The corridor on the map is overlaying the mine. A wildlife corridor needs to be vegetated and provide passage for wildlife. He is a qualified biologist and believes that it can not exist as pits and recharge trenches. On that basis he suggests for the board to object and for them to not send this for an approval to the commission.

Jeffery Hill, Lives at 44210 Neal Rd., explained they own 20 acres and are tropical fruit farmers, they make wine and have livestock. Their major concern is the particulate matter that will be generated out there. He passed out folders to the board members. He expresses that they are the first line of exposure to the particulate matter and diesel fuel. There are people who live out there and some of his neighbors asked him to represent them as well on their behalf. Things do not grow when there has been diesel fuel contamination. He encourages the board to reconsider and to not take away an AG piece of land.

Mannie Hermina, has property at 44850 Neal Rd, He is concerned for if this mining project gets approved that it will decrease his property value and also the dewatering that comes along with mining. He found out while looking into mining that it decreases your property value by 30%. He then went into detail of the surrounding mines and expresses we do not need another one. The amount of traffic this will create is also concerning.

David Shutz, member of Heal our Harbor, presented a Power point talking about the water treatment and studies that Heal our Harbor group has done. He expressed that almost half the time the water in the harbor is not safe for bathing because of high bacteria levels. If the current regulations that we had in place were adequate, we would not have these problems. He expresses that the current protection for our environment is not adequate and urges the board not to allow anymore mining in Charlotte County.

Stacy Hermina, has property at 44850 Neal Rd, expressed that as a respiratory therapist for over 28 years, the impacts of health to the residents in the community, which she believes will be fatal. She is looking to build on her property within a year or two but is now reconsidering it. No one wants to live across the street from a mine, not just because of the safety of road, but also the health impacts. This will bring air, dust, dirt and chemical pollution in the air, which can cause lung cancer. She also passed out some information about respiratory diseases.

Sue Hill, lives on Neal Rd, explained that her and her husband has always wanted to farm and give back to the community. She showed a picture of active mines in the surrounding area, and their property is close to most of them. She points the board members to the packet her husband handed them earlier and explained that there is a wind rose. Which show which direction the wind is most of the time blowing, which it's going to be blowing directly from the mine towards their property. She encourages the board to reconsider and to decline this proposal.

Ann Baker, she was sworn in, expresses she stands here today to bring to the board's attention to the devastating health effects of a rezoning from AG to mining. It is essential to take this seriously. When AG land is rezoned for Mining purposes it does lead to serious problems for local communities. Particularly due to the release of harmful chemicals into the air and pollution of water sources. These toxic chemicals do cause serious respiratory problems. Exposure to heavy metals such as lead, and mercury can cause a lot of health problems. She has only seen negative health effects on vulnerable populations when a mining operation begins. This is a clear indication that the health and wellbeing of our communities depends on wise use and decision making of the land.

- **Mr. Baker** moved to close the public comment, second by **Mr. Bigness**, with a unanimous vote

Rebuttal

Mr. Rooney comments that some of the comments today from the residents and future residents may actually be related to the next petition, but he will address both right now. As Ms. Waksler pointed out in the prior petition, the AG district is designed to accommodate for noise dust, pesticides, etc. He understands that this area is becoming more residential, but he would submit that the excavation uses are more in line with the general standard of agricultural practices than residents. This is not a residential district or does it hold to residential standards. In the late 2000's Charlotte County had commercial excavations that were allowed county wide. After hearing concerns about water quality, traffic, and objections from neighbors; the county developed the watershed protection overlay that specifically removed commercial excavations from the AG district as a permitted use by right with a conditional permit. The county then moved this use to an area of highest intensity agricultural use in the county in the area of the lowest population density. With respect to the roads, his client understands that when they come in for their excavation permits, and their traffic is reviewed more fully; that they will probably be required to make improvements to Neal Rd to address the issues spoken today.

Mr. Vieira asked **Mr. Cullinan** to explain the process of this application if it's approved or denied. **Mr. Cullinan** explained this board is a recommending body which you will recommended either for or against this petition, which would then be transmitted to the Board of County Commissioners (BCC), the Large-Scale plan amendments will be transmitted up the state and numerous state agencies for their review and comment. It will then go through the adoption hearing, if it's approved through all those steps, they would be able to apply for their earth moving permits. That's when they would then need to get their SWIFT MUD permits, DEP permits and any other state or federal permits necessary. They would need to engineer all of their hydraulic barriers that would be reviewed by the engineering staff who oversee the earthmoving permits. **Mr. Vieira** touched more on the adoption hearing; the adoption hearing is here locally after the state has approved the application? **Mr. Cullinan** replied that is correct. They will give comments/concerns and we would bring it back to the board if there's things that any of the state agencies need address, we would then have the applicant address them, however it is necessary. Then the adoption hearing by the board is once the state is finished their review it then goes back before the BCC for the ultimate approval or denial. **Mr. Vieira** once approved they would then go into state and federal regulators? Timeline? **Mr. Cullinan** answered that is correct, and timeline would be better directed towards the applicant or applicant engineer.

Mr. Vieira wanted further addressing towards dewatering. **Mr. Bayne** explained that there is hole in the ground, they then around the perimeter of the property have ditches 143 ft wide and 15 ft deep. The water from the excavation gets pumped into this hydraulic barrier that surrounds the pit so it can simulate what the ground water is already doing. We try to have no impact on the wetlands or people's wells. There will be no well water droppage

during this process. This will be a 2/2.5 year process, with a reclamation phase that's monitored. We monitor it twice a month and we do annual reports to water management district, DEP and Charlotte County. Then all the agencies inspect the site either annual or some agencies do it monthly.

Mr. Bigness the difference between this one and the last one, is that the other one wasn't being proposed as a mine operation, which he is familiar to what is involved. He likes that this one is being managed as a mine.

Comments

Mr. McCormick commented that he doesn't think it's his business to convert AG land into a lake, he is not persuaded.

Mr. Baker agreed with **Mr. McCormick**. He also expresses he understands that the county has pushed the mines out to the east, but the residents their doing their organic farming in the AG land as it disappears it's also an impact to their environment. It goes both ways as for the rights of the owners.

Mr. Bigness expressed since he's been here that a lot of people do not want a massive amount of development. There is a need for fill, and he would like to see the environment to stay static, but that's difficult when too many people want to live here. He hopes we can do is have thoughtful planning and view of it and try to be careful with the resources we have. He also thanks the residents for coming in and commenting. It's a difficult balance to sit up their and wave property rights and existing owners' rights and those types of things to make a decision.

Mr. Gravesen would agree with some of the comments that the property owners have their rights to come forward to make this application and the process is there for rezoning and they have a chance to go and try to get a permit and deal with all the permitting agencies.

Mr. Vieira agrees with all the comments that he has heard today. He most certainly agrees on private property rights. Where the applicant has the right to come here and do this. He's also confidant in the oversight, not only here at the county level but the fact that it has to be taken through various of state and federal agencies. The timeline stretches out far enough that economically speaking things change, where it could or could not happen. He's confidant that if they approve this, it then gets sent to agency and a federal agency that will vet it properly in the manor that it's supposed to be.

Mr. Gravesen thanks the residents that came today for coming and encourages them to take today's meeting as perpetration for if they want to make comments for the BCC meeting coming up.

Recommendation

Mr. Vieira moved that **PAL-22-00005** be sent to the Board of County Commissioners with a recommendation of approval, of transmittal of application **PAL-22-00005** to the Department of Economic Opportunity (DEO) and other State review agencies for review and comment, based on the findings and analysis in the staff report dated January 17, 2023, Charlotte County's Comprehensive Plan, and the evidence and testimony presented at the public hearing before the Planning and Zoning Board, second by **Mr. Bigness**; motion passed with a 3-2 recommendation. (3 members voted yes to approve – Mr. Baker and Mr. McCormick voted no against the approval)

Recommendation

Mr. Vieira moved that **Z-22-48-18** be sent to the Board of County Commissioners with a recommendation of approval, based on the findings and analysis in the staff memo dated January 17,2023, Charlotte County's Comprehensive Plan, and the evidence and testimony presented at the public hearing before the Planning and Zoning Board, second by **Mr. Bigness**; motion passed with a 3-2 recommendation. (3 members voted yes to approve – Mr. Baker and Mr. McCormick voted no against the approval).

8.) PAL-22-00006

Quasi-Judicial

Commission District I

Pursuant to Section 163.3184(3), Florida Statutes, transmit a Large Scale Plan Amendment to the Department of Economic Opportunity (DEO) and other State agencies for review and comment; the amendment request is to change Charlotte County FLUM Series Map #1: 2030 Future Land Use, from Agriculture (AG) to Mineral Resource Extraction (MRE) with an annotation requiring a conservation easement in a form acceptable to the County Attorney's Office and the Board of County Commissioners prior to issuance a commercial excavation permit; for property located at 43761 and 44511 Neal Road, in the Punta Gorda area and within the East County area, containing 478.32± acres; Commission District I; Petition No. PAL-22-00006; Applicant: Harborview Properties Neal Road, LLC; providing an effective date.

9.) Z-22-22-19

Quasi-Judicial

Commission District I

An Ordinance pursuant to Section 125.66, Florida Statutes, amending the Charlotte County Zoning Atlas from Agriculture (AG) to Excavation and Mining (EM); for property located at 43761 and 44511 Neal Road, in the Punta Gorda area and within the East County area, containing 478.32± acres; Commission District I; Petition No. Z-22-22-19; Applicant: Harborview Properties Neal Road, LLC; providing an effective date.

Jie Shao, Principal Planner, provided the findings and analysis for Petition **PAL-22-00006** with a recommendation of approval, based on the reasons stated in the staff report.

Jie Shao, Principal Planner, provided the findings and analysis for Petition **Z-22-22-19** with a recommendation of approval, based on the reasons stated in the staff report.

Ms. Shao pointed out that the acreage is over 478 acres in petition PAL-22-00006 and it has residents within the 500 ft buffer.

Applicant

Derek Rooney, Grey-Robinson Law firm on behalf of the applicant, he accepts Ms. Shao as an expert witness and joins in the staff report and recommendation. He acknowledges that they would be responsible for mitigation on Neal Rd. when the stage of permitting is reached. Only a portion of this property is within the critical wildlife linkage, that amounts about 8% of the property that would have been required to be given up for a conservation easement. After many discussions with staff over the last several months and because of the existing resource conservation district and wetlands in the area; we have agreed to have up to 36% of the property will be within the conservation easement. What's provided in the conservation easement is that after the excavation their will be a reclamation plan and the area shown will be back filled to create littoral zones with planting of thousands wetland plants. To create an enhanced conservation area.

Public Input

Nigel Morris comments that in the staff report there is no detail that makes sense to him that is relative to the wildlife corridor. He states there are no comments in the staff report about the back filling of lakes, it only shows on a map a designated area with a road and lakes. He would like to know if this will be addressed in future permitting with the county.

Stacy Hermina, commented for the record that there are a dozen more families that could not be here today, that have all purchased their 10 acre parcel within the last 1 or 2 years. She inquired for the best way for her neighbors to reach out who can't be here. She also commented on **Mr. Gravesen'** comment about a coal mine, she believes that would be better because it is consolidated. This is going to have us in a dust bowl, they bought and purchased in a AG zone.

Asst. County Attorney, Thomas David advised for anyone who would like to contact the county commissioners they are more than welcome to provide commentary via email to the county commissioners. They are on the website, or they could write them a letter.

Jeff Hill spoke upon the conservation easement and how this one in particular may be up to some environmental challenges. He's reviewed the easement and his understanding is that they not only serve the community whole for the better good, but they also have federal tax perks. It doesn't seem like a conservation easement is created; they happen via the nature of the area that is being conserved. They turn into a conservation easement; they are not made into one.

David Shutz expressed that he would like to restate the point of his previous presentation. That if the restrictions in the law were sufficient, we wouldn't be losing so many species and the harbor wouldn't be in the condition that it is. He urges the board to use their discretion to make up the difference the letter of the law and what is necessary for the health of the people in Charlotte County.

Sue Hill comments that we are going to have a problem with the number of trucks going in and out of Neal Rd. There is no left turn lane from Neal Rd. to State RD 31. Also, this could create a lot of danger for children in the area. She then went into detail as into how the truck traffic will be a great issue for the speed limit in that area and the air quality. We are doing this for the quality of life for us and we got out of the urban area to have a better quality of life and to serve our community. Please reconsider this for our health and the future health of the residents, please do not agree with this proposal.

- **Mr. Baker** moved to close the public comment, second by **Mr. Bigness**, with a unanimous vote

Rebuttal

Mr. Rooney comments to Mr. Morris because we are at this stage and the way that the county is set up for the commercial excavations require a future land use and a straight zoning to EM. There isn't a process for the general site review in conditions that you may see in a planned unit development. At this stage the conservation easement is conceptual because it would be inappropriate for the protection of the public interest to put details into the conservation plan that has not been reviewed by the county engineer during the mining process. That process will drive what the actual details of the reclamation would be and review of the roads, etc. while the outline of the territory to be set out in the Comprehensive Plan (CP) has been identified at this stage. He also addressed to Ms. Hill that if there is an access easement issue on roads other than Neal Rd. that will become a barrier to permitting and we will have to address that.

Mr. Vieira asked for **Mr. Rooney** to elaborate on the traffic study numbers mentioned. **Mr. Rooney** replied there was a traffic study submitted by Protean chose that a maximum possible traffic of 300 trucks per day. During this excavation it will be in phases, the entire mine will not be excavated simultaneously resulting in the high levels of truck traffic. The AG uses will continue to be phased out during that process. **Mr. Baynes** stated that the traffic report states it is 376 trucks per day is the maximum. **Mr. Vieira** asked who is responsible for road access ingress and egress? **Mr. Rooney** explained that has to be permitted through the county, and any damage caused by applicant will be required to be mitigated.

Discussion

Mr. McCormick commented the discussion has produced evidence that Charlotte County allowed gravel mining anywhere you wanted to do it. It became evident in west county that gravel mining was not good for the further development of the homeowners, so they found a place somewhere in Charlotte County; his point is people move undesirable things far away without looking at the big picture. We are taking AG land out of service and in his mind, there is so much land that is not suitable for AG, that could provide the gravel needs that are needed here in Florida. He comments that the county should find out what their assets are, and they should protect them. AG land is not the norm for a lot of the USA.

There was some discussion back in forth about property rights.

Recommendation

Mr. Vieira moved that **PAL-22-00006** be sent to the Board of County Commissioners with a recommendation of approval, of transmittal of application PAL-22-00006 to the Department of Economic Opportunity (DEO) and other State review agencies for review and comment, based on the findings and analysis in the staff report dated January 17, 2023, Charlotte County's Comprehensive Plan, and the evidence and testimony presented at the public hearing before the Planning and Zoning Board., second by **Mr. Bigness**; motion passed with a 3-2 recommendation. (3 members voted yes to approve – Mr. Baker and Mr. McCormick voted no against the approval)

Recommendation

Mr. Vieira moved that **Z-22-22-19** be sent to the Board of County Commissioners with a recommendation of approval, based on the findings and analysis in the staff memo dated January 17th, 2023, Charlotte County's Comprehensive Plan with and the evidence presented at the public hearing before the Planning and Zoning Board, second by **Mr. Bigness**; motion passed with a 3-2 recommendation. (3 members voted yes to approve – Mr. Baker and Mr. McCormick voted no against the approval)

ADJOURNMENT

The meeting was adjourned at 4:45 p.m.

Accepted on behalf of the Charlotte County
Planning and Zoning Board



Michael Gravesen, Chair