

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

**Board Members**  
Michael Gravesen, Chair  
Vacant, Vice-Chair  
Stephen Vieira, Secretary  
Don McCormick  
Clint Baker



**District**  
District V  
District III  
District I  
District II  
District IV

**MINUTES  
REGULAR MEETING**

***July 8th, 2024, at 1:30 P.M.***

**Call to Order**

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

**Mr. Gravesen** welcomed **Doug Izzo** as our new District III member.

**Roll Call**

Upon the roll being called it was determined a quorum was present. **Don McCormick** and **Clint Baker** were absent.

**Approval of Minutes – May 13, 2024, Regular Meeting**

The May 13, 2024, minutes were approved as circulated.

**Announcements**

**Shaun Cullinan, Planning and Zoning official**, also welcomed **Mr. Izzo**.

**Mr. Gravesen** announced the Vice-Chair is now a vacant position that at the next meeting with a quorum we will be electing a Vice-Chair for the committee.

**PETITIONS**

**1.)**

**PFP-24-02**

**Quasi-judicial**

**Commission District I**

Babcock Property Holdings, L.L.C. is requesting Preliminary and Final Plat approval for a subdivision to be named Midtown at Babcock Ranch, being a replat of all of tracts A-60, I-74, I-75, I-76, D-94, D-95, E-37, and E-38, of Babcock Ranch Community Spine Road DD8-10, as recorded in Plat Book 26, Page 10A through 10J of the Public Records of Charlotte County, Florida, all of mitigation area MA-G1, as recorded in Official Records Book 5022, Page 873, of said Public Records and a portion of unplatted lands. There is no bond or Developer's Agreement associated with this plat. The proposed subdivision, consisting of 36 tracts for roadway, drainage, irrigation, open space, conservation, and future development. The property contains 809.75± acres and is generally located south of Bermont Road, north of the County line with Lee County, west of the County line with Glades County and east of Babcock Trail. The site is within the boundary of the Babcock Ranch Community Development of Regional Impact (DRI) Increment 2, the East County area, and in Commission District I.

**Jenny Shao, Zoning Coordinator**, provided the findings and analysis for Petition **PFP-24-02** 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,** said we accept Ms. Shao as an expert. This is further development in the development of the Babcock Ranch community. He's happy to answer any questions and respectfully request for the boards approval.

**Public Input**

None offered.

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

**Discussion**

None offered.

**Recommendation**

**Mr. Vieira** moved that **PFP-24-02** be sent to the Board of County Commissioners with a recommendation of Approval, based on the findings and analysis in the staff memo dated **May 24, 2024**, Charlotte County Comprehensive Plan along with the evidence presented at today's meeting, second by **Mr. Izzo**; and carried by a unanimous vote.

**2.) SV-24-01**

**Legislative**

**Commission District V**

The applicant, Bruce Schafer, is requesting to vacate a portion of the Haverhill Waterway Right-of-Way behind their property located at 21271 Cottonwood Avenue, to bring an existing shed into compliance with the required setbacks of the zoning district. The site contains 2,809.46± square feet, being an extension of lot 51 of Port Charlotte Subdivision Section 28, as shown on Plat Book 5, Pages 21A through 21B, of the Public Records of Charlotte County, Florida and generally located south of Cottonwood Avenue, west of Dewitt Street, north of Haverhill Waterway, east of Morningstar Waterway, within the Port Charlotte area, and located in Commission District V.

**Jenny Shao, Zoning Coordinator,** provided the findings and analysis for Petition **SV-24-01** with a recommendation of approval based on the reasons stated in the staff report.

**Questions for Staff**

**Mr. Vieira** commented that he remembers when this was heard back in January and there was a lot of discussion about the excess property for the granting of the variance. He believes a question arose asking what happens to the adjoining properties and how are they affected?

**Shaun Cullinan, Planning and Zoning official,** commented that there is no access that in being deprived in contravention of the standards of the Comprehensive Plan (CP). There is still some upland land between the edge of water and the new property line. Every petition stands on its own merits. This is based on the request at the public hearing by the Board of County Commissioners and the condition they placed on it. Unfortunately, as stated the applicant was not able to comply with before the expiration date. That is why he is back in here. It's essentially what was already approved by the board and the request they made. **Mr. Vieira** if by granting this that does not increase the ability to build additional structures on the property; it's just to allow for the existing non-conforming shed to remain in place, correct? **Mr. Cullinan** that is correct, there will be essentially a new property line. With the new property line where we would measure for setback purposes. Within those easements he doesn't believe any allowances are in the easements for construction of anything; except patio furniture things like that. This basically gives him the extra space in order to have his shed come into compliance. If denied, he would have to move the shed.

**Mr. Gravesen** asked is that shed in the easement if this is approved? **Mr. Cullinan** responded the shed would be outside the easement if this is approved.

**Applicant's Presentation**

**Bruce Schafer**, Commented that this is the second go around and hopes the boards approves it so we can all go on.

**Public Input**

**Louis Agosto**, lives at **21247 Cottonwood Ave**, commented that he can see **Mr. Schafer's** shed from his backyard. He's already been here once, and this has already been approved. He doesn't recall mentioning of 30 days at the first hearing. He had problems with the survey, and he hopes the board can understand that he's a good man the property is well kept and he's a Vietnam Veteran. Please take this into consideration and thank you for listening.

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

**Comments**

**Mr. Gravensen** commented that Planning and Zoning did not approve of this when it came through the first time. That he objects to the idea of it, because there are miles and miles of the same situation of 20-30 ft extension off the back of the lot line. It's going to be difficult for the county to keep up with these types of changes. This is not any comment about the owners character or anything to that effect, it's just the property. Which is the property lines that we are discussing.

**Mr. Vieira** asked **Mr. Cullinan** if he could explain the 30 days scenario comment? **Mr. Cullinan** responded in the resolution granting the vacation one of the conditions stated specifically "this vacation is subject to following condition; within 30 days of the approval of the street vacation the petitioner shall provide Charlotte County Public Works with two recorded easements acceptable to the county attorney. Then it list out what is accepted" that is what was signed and officially approved by the board of commissioners. **Mr. Vieira** is this just a case of the applicant wasn't able to get a surveyor in time to have the conditions met, and were a victim of the surveyors delay as appose to the applicant's delay? **Mr. Cullinan** commented yes, we did receive emails expressing the surveyor who did the original vacation survey the documents back out and taken care of quickly. Just for clarification this started out as a code violation for an unpermitted shed placed in the wrong location. There were two options, and he chose to go this route.

**Recommendation**

**Mr. Vieira** moved that **SV-24-01** be sent to the Board of County Commissioners with a recommendation of Approval, based on the findings and analysis in the staff memo dated **June 17, 2024**, Charlotte County Comprehensive Plan along with the evidence presented at today's meeting, second by **Mr. Izzo**; *motion passed with a 2-1 recommendation. (Mr. Vieira and Mr. Izzo voted yes to approve – Mr. Gravesen voted no against the approval).*

Stopped 1:52:01

**3.) PV-23-12-09**

**Legislative**

**Commission District II**

Seventeen and Seventy-Five, LLC is requesting to vacate a portion of Golf Club Estates consisting of lot 1-A, and lots 1 through 14, and lot 16 and lot 17, Block A, as recorded in Plat Book 1, Page 43, of the Public Records of Charlotte County, Florida, consisting of 3.276± acres and a portion of Rosemary Drive containing 0.455± acres. The total area to be vacated is 3.731± acres and is generally located north of Duncan Road (Rd), south of Riverside Drive (Dr), east of I-75, and west of Regent Rd, within the Punta Gorda area and located in Commission District II.

Jenny Shao, Zoning Coordinator, provided the findings and analysis for Petition **PV-23-12-09** with a recommendation of approval based on the reasons stated in the staff report.

#### **Applicant's Presentation**

Robert Berntson, Big W Law, representing the applicant, we accept Ms. Shao as an expert and has been sworn in. This is related to the next two hearings that you'll be having regarding a Comp Plan amendment and rezoning for an overall larger parcel. This area is being included as part of that overall PD and to clean up the plat and vacate the road that went to nowhere. We subbed the plat vacation to vacate the lots. As you can see the road has not been constructed and a condition of the PD will be constructing the remainder of the road to serve the overall project.

#### **Public Input**

Andrea Dirienzio, 3407 Island View Dr. Punta Gorda, commented that the area they are purposing floods because of the way the water runs. She's not sure what this is for and questioned what is this?

Mr. Gravesen addressed that this is for a plat vacation and that there are two other petitions coming after this and I think you want to address those.

Deborah Vancoughnett, 3000 Caribbean Dr., commented that she has an issue with the fact that they are voting on something now that is part of a much bigger project involving 300+ apartments turning our single family area into an apartment complex. It seems out of order and once this is approved this is now apart of the big project and it's impossible to go backwards. Broad creek which feeds into the Peace River will be negatively affected by this project. Think about the people living in the area and what it will do to the waterways and their property.

Bill Gruener, 2842 Shannon Dr., commented that he didn't get a notice for this just like the others. That he believes that there is a protocol with how the county handles this and that it was not met. He received a notice for the item that's next on the agenda. He thinks that needs to be looked at and tabled.

Wayne Prickett, 404 somerset, comments that he will be directly effected by this project. He's currently watching Eagles hatch and is concerned the red tail hawks and wants to know what about the wildlife? He's concerned that the wildlife will be affected by this project. The only info he could find was a traffic report which he doesn't think was correct. He feels a lot more information is needed before they proceed.

David Kalin, 6125 Alan Blvd., proposed a bigger question is not just to vacate this lot, but everything that comes entailed with it. This land is being taken from 18 housing units to 338. He feels for these folks and is seeing this happen in his neighborhood to. Where the land is getting taken up to build more houses. This board can make a stand and say it's already been zoned and already has the use. We need to take a stand and say enough is enough.

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

#### **Rebuttal**

Mr. Berntson commented that this is just a plat vacation returning the property to it's open state. It doesn't effect drainage and it doesn't affect anything else with the concerns that were raised. The overall project as we get into that, you will see that we have taken into account the environmental concerns and things of that nature.

#### **Comments**

**Mr. Gravesen** explains that this is just a straight plat vacation. There's nothing that they can't do, it's in the process. This is to return it to a point where it can be replated or anything else to that. All of these comments were to the other petitions.

**Mr. Vieira** asked for the notification zone to be brought up to the screen. He then asked Shaun Cullinan that is within 1,000 feet of the site, correct? Mr. Cullinan replied some people might have a confidentiality on their addresses, which we do not send out to any confidential addresses. That's why we post it on the site and as well in the newspaper. **Mr. Gravesen** some people could have their notices for the next petition, because they are a little further west of this petition. Mr. Cullinan explained we also send it to the property owner address, so if someone was renting. Which we pull from the property appraiser website.

#### **Recommendation**

**Mr. Izzo** moved that **PV-23-12-09** be sent to the Board of County Commissioners with a recommendation of Approval, based on the findings and analysis in the staff memo dated **May 31, 2024**, Charlotte County Comprehensive Plan along with the evidence presented at today's meeting, second by **Mr. Vieira**; and carried by a unanimous vote.

#### **4.) PAS-23-00005**

#### **Legislative**

#### **Commission District II**

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) (19.99± acres) and Low Density Residential (LDR) (2.13± acres) , and High Density Residential (HDR) (0.91± acres) to HDR with an annotation to the 2030 Future Land Use Map limiting the overall maximum density up to 338 units; increasing density from 18 units to 338 units; for property located at 6201 Duncan Road, 3300 and 3406 Rosemary Drive, in the Punta Gorda area, containing 23.03± acres; Commission District II; Petition No. PAS-23-00005; Applicant: Mivo Development Group; providing an effective date.

**Jie Shao, Principal Planner**, provided the findings and analysis for Petition **PAS-23-00005** with a recommendation of approval based on the reasons stated in the staff report.

#### **5.) PD-23-00008**

#### **Quasi-Judicial**

#### **Commission District II**

An Ordinance pursuant to Section 125.66, Florida Statutes, amending the Charlotte County Zoning Atlas from Planned Development (PD) (19.99 acres), Residential Multi-family-5 (RMF-5) (2.13± acres), and Residential Multi-family 10 (RMF-10) (0.91± acres) to PD, in order to have a residential development up to 338 units; requiring a transfer of 320 density units to reach the maximum of 338 units; and adopting a "General PD Concept Plan" for this proposed development; for property located at 6201 Duncan Road, 3300 and 3406 Rosemary Drive, in the Punta Gorda area, containing 23.03± acres; Commission District II; Petition No. PD-23-00008; Applicant: Mivo Development Group; providing an effective date.

**Jie Shao, Principal Planner**, provided the findings and analysis for Petition **PD-23-00008** with a recommendation of approval based on the reasons stated in the staff report.

#### **Questions for Staff**

**Mr. Vieira** commented that he was under the epression that there was a 600 ft barrier when theirs an Eagles nest observed, is that correct? **Ms. Shao** replied there is a 330 ft barrier and also a 660 ft barrier, there's two. They do have the Bald Eagle Monitoring plan in place to make sure they meet all the state requirements.

#### **Applicant's Presentation**

**Robert Berntson, Big W Law, representing the applicant**, we accept Ms. Shao as an expert and has been sworn in. The purposed residential will show less impact than what the commercial development of this property could on the surrounding properties. As Ms. Shao indicated with the 20 conditions that are apart of the approval for the PD; showing enhanced requirements over what the county code is with regard to landscaping. The buffering

has been taken into place, Natural Resource has been taken into account, and we meet all the criteria of the Comprehensive Plan (CP) amendment and the rezoning. He's happy to answer any questions and will save time for any rebuttal after the public hearing.

#### **Questions**

**Mr. Vieira** the vacated lots the 2.48 acers in the upper right-hand quadrant, that's future development? **Mr. Berntson** replied its open space. The overall CP amendment will limit the amount of density to the 338 units. That's what the project is, we will not come back asking for more later. The CP limitation will not allow this and it's not our intent.

#### **Public Input**

**Wayne Prickett, 404 somerset**, comments the open space for the Eaglets it's not enough. One acre of land is not enough for the wildlife. He is asking the board to use their authority to expand this. He's concerned if this gets granted that the wildlife will be wiped out. He's confused why this is acceptable when he applied for a mulching permit to remove two trees off of his property and was denied because he was within 600ft of the Eagles nest. He asks the board to consider the residents and the impact that this will have on them and the wildlife.

**Andrea Dirienzio, 3407 Island View Dr.**, commented that there is not enough area for wildlife. This is an old neighborhood and can't see building these units being beneficial for the area. She can't comprehend the fact that there is an Eagles nest and a lot of wildlife in this area and developing this would effect this. She would like the board to consider not allowing 300+ units being built.

**Bill Gruener, 2842 Shannon Dr.**, believes if this is built the Eagles and wildlife will be gone. This area also has a variety of rare birds, that no one talks about. His question is; where is all the septic going? Are they going to have their own sanitary station? Who is providing sewer, water and fire protection? He's aware that in some places there is a Comprehensive Plan where the people pay in advance to enlarge lift stations, water lines and sewer lines before they build. Is this being collected by this developer? When were looking at the buffer zones, Hurricane Charlie took out a lot of the trees for the buffer of I-75 and after the last Hurricane there isn't anything left. He feels if anything is being built here, he thinks it needs to have a traffic study that includes I-75 traffic. He encourages the state to be included in the traffic study to possibly help these developments receive help with buffers along I-75. He comments about the issues in their neighborhood with their storm drains and how there is no sidewalks and no buffer zones. He encourages the board to study and know the CP.

**Deborah Vancoughnett, 3000 Caribbean Dr.**, commented that the Broad Creek runs through this area and the runoff from these new purposed units will be excessive and overwhelming to that small creek. Us residents boat and fish in this creek and your not allowing us to protect this property. She encourages the developer to develop in a different area. In our canals there are sawfish which is a protected species. She expressed that the dump trucks and the tractor trailers are excessive in this area. Shed encourages the board to look at everything and how this can effect their little area.

**Michael Griffin, 3200 Caribbean Dr.**, commented he's been their since the 70s and expressed that he's concerned about Broad Creek with all of this coming in. He used to be able to take a little boat all the way to under I-75. However, he can't do that now. Since the storms a lot of the creek has been washed in from it and hasn't been maintained by the county. The county hasn't come out there to open it back up. He doesn't believe this is the right spot for this type of development.

**David Kalin, 6125 Alan Blvd.**, again we are giving up 18 dwelling units to 338. In our county we are starting to give up our commercial property for residential property. We're building out bedrooms faster than our industrial or our commercial properties. Commercial properties are what pay the taxes here, not bedrooms. Lets take a serious dive into this. 338 homes that is nearly 15 million gallons a year based on the national average of water on those homes. He explains the amount of traffic that this brings, and that this location is not the best for the

large amount. He encourages the board to exercise restraint with the amount of houses coming into the county. He is not antidevelopment, but there is a time where you have to say pump the breaks.

**David Kesselring, 22182 Felton Ave**, explains at the top of the administrative code is the citizens of Charlotte County. There's a CP that holds certain expectations of the county and this will change the whole area. He's not antidevelopment but when there's already a bunch of people living in an area that's expecting certain living arrangements to go in, a just change everything isn't right. The county has their experts, but how can those compete with the experts when they can't afford it. He asks the board to think about the current residents and citizens when you make your decision.

**Kevin Vancoughnett, 3000 Caribbean Dr.**, stated he has heard a lot of info about how this will do his community good. These apartments are not going to support our area at all. There saying there's a small impact on an isolated patch of wetlands, there will be a large impact with that large amount of units. He wants to know, why can't this property be used to the codes that are there right now. He expressed the difficulty of the current traffic situation and adding these units into that is not a good plan. The Eagle will not stay in that area with that amount of people there. He is against this for all of these reasons.

**David Foley, 3019 Shannon Dr**, he is against this for all of the same reasons that everyone has stood up there before him. If this has to be development he thinks a light industrial, or high tech or something close to what's out on Kings Highway. He sees different designations on some of the buildings and is wondering what do they mean? Is this going to be a section 8 housing or luxury apartments, what is being brought into his neighborhood.

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

#### **Rebuttal**

**Mr. Berntson** started by reminding the board that at the beginning of Ms. Shao's presentation she showed that this property is in the economic center. Which is intended for intense development in the county. We heard a lot about wildlife, we have an Eagle Management Plan we have studies that were done and permits that will be required through all the state agencies and local permitting. Traffic was discussed we submitted a traffic study that was reviewed by staff and accepted by staff. This property will be served by central water and central sewer. It will have all the stormwater permitting to ensure that run off does not increase as a result of development for the site. It will not have negative effect on the water ways. I submit to you if we were here today asking to change this from residential to commercial the same people would be here today, it's the change they are fight not what the change is. In this case there is a well thought out Plan Development (PD) that will have enhanced landscaping, enhanced environmental development that will also have open space. The current property has a commercial land use and it was commercial PD to allow intensive commercial. Based on the size of the property if that was developed commercial you would probably be looking at 100,000 sq ft of commercial development. Which at an interchange of I-75 and US-17 it would be restaurants, fast food restaurants and hotels, which generates a tremendous amount of traffic much more than this project. I submit to you the staff report went through all of the concerns that were raised here today, it's been found consistent with the comprehensive plan. We meet the criteria for the granting of a rezoning. He respectfully requests the board's approval for both the CP amendment and the rezoning.

#### **Discussion**

**Mr. Vieira** asked **Mr. Cullinan** if he can define what by-right use; what can that developer do specifically on that site today? **Mr. Cullinan** due to the determination that was made by the legal department after the seventeen-seventy-five went in 2020, right now they have a zoning of PD they have no real allowances for anything at this time. **Mr. Vieira** moving from no real allowances to this site plan development which follows under the PD ruling this is an allowable change under the zoning? **Mr. Cullinan** answered that's why they have to do the plan amendment as well. The future land use was commercial if you recall 4+ years ago now, when this came before you the first time. This has been a PD from mid 2000s, where it was supposed to be a light industrial

development the market tanked. They did start moving forward with that in 2019- 2020, the board of County Commissioners denied the PD extension in changes. Now they have a color on a map of PD and a title of it, but they have to come back with a final detail site plan exactly as the original approved Concept Plan (CP) was. Or they have to go through these processes in order to change it. They have chosen based on discussions a couple of years ago where folks at that time stated they'd rather see residential development. They have every right to apply and we have evaluated it as such. **Mr. Vieira** the multi-family component that exist with it already, the overlay, that heavily influences the remainder of the site, correct? **Mr. Cullinan** the multi-family area that was just recommended for vacation, they will be utilizing the density that's with those lots into the overall development. As **Ms. Shao** stated they will still need to transfer a number of density units onto the property. **Mr. Vieira** taking a step back for a second; the last item we heard relative to this application, they could have gone in and build multi-family houses same type of apartment style and put it in the upper right corner and that would have been by-right? **Mr. Cullinan** yes sir. Residential Multi-family (RMF) allows for apartment complexes, condos, multi-family development at whatever the density level is. **Mr. Vieira**, would they have to of had to come to this board in order to do that? By-right, they would've been able to do that by filing permits, site plans, etc., correct? **Mr. Cullinan** that is correct the lots that was just recommended for vacation, at the very top, they would have just had to go through site plan review and could construct a multi-family development. **Mr. Vieira** commented that he just wanted to correct the term "one acre for the Eagle nesting preserve". The map that he is seeing it shows 1.85 acres, it's nearly 2 acres not 1 acre of lands. Another thing he wanted to talk about was the infrastructure which was centralize sewer and water. The water component would come from the City of Punta Gorda, perhaps? **Ms. Shao** yes, both water and sewer are going to be with City of Punta Gorda. **Mr. Vieira** does that in anyway obligate the people in the surrounding area to attach to that water system once it's put in? **Mr. Cullinan** replied no statue and code require if a distribution line, not a transmission line, but a distribution line is run within 500 ft of your property then you would have to mandatorily connect but it all depends on where the lines are going. There are state requirements where if water and sewer is available, meaning the distribution lines are there, not just the transmission lines then they would have to connect within one calendar year. **Mr. Vieira**, we talked about buffers along existing residential areas, are those defined as Type A, B, D, what are we looking at? Are they heavy buffers that separate the existing residential from this purposed development? **Mr. Cullinan** there are buffers abutting the railroad tracks, that's a Type B buffer. Then a 120 ft of right-of-way of the actual railroad tracks. Then another of 43 ft of right away at Riverside Dr. So a good 160 ft away then you get into the landscaping buffer then the parking. There is the 25ft PD setback where no structers can go. We have some upland buffers abutting the other property. There's a Type B buffer along US-17. Which all types of buffers are defined in the county code.

**Mr. Izzo** commented that with them being connected to sewer will be great for the waterways. A lot of the wild life has been surveyed and brought fourth. A lot of his questions has been answered.

**Mr. Gravensen** commented the distance around the Eagles nest is regulated by FWC either state or federal. Stormwater retention anytime there's rain or anything like that the regulations that has to be retained on the property to filter through your retention ponds. There's a lot of federal and state regulations in addition to the county. The county is making sure they are adhering to those regulations. We are just an advisory board, the Commissioners will hear these again on July 23<sup>rd</sup> at the Board of County Commissioners meeting.

#### **Recommendation**

**Mr. Izzo** moved that **PAS-23-00005** be sent to the Board of County Commissioners with a recommendation of Approval, based on the findings and analysis in the staff memo dated **June 22, 2024**, Charlotte County Comprehensive Plan along with the evidence presented at today's meeting, second by **Mr. Vieira**; and carried by a unanimous vote.



**Recommendation**

**Mr. Izzo** moved that **PD-23-00008** be sent to the Board of County Commissioners with a recommendation of Approval, with conditions “a” through “t” based on the findings and analysis in the staff memo dated **June 22, 2024**, Charlotte County Comprehensive Plan along with the evidence presented at today’s meeting, second by **Mr. Vieira**; and carried by a unanimous vote.

**6.) PAS-23-00004**

**Legislative**

**Commission District II**

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 Burnt Store Limited Development (BSLD) to Commercial (COM), for property located at 17150 Burnt Store Road, in the Punta Gorda area and within the boundary of the Burnt Store Area Plan area, containing 41.31± acres; Commission District II; Petition No. PAS-23-00004; Applicant: Jaxon Fischer LLC; providing an effective date.

**Jie Shao, Principal Planner**, provided the findings and analysis for Petition **PAS-23-00004** with a recommendation of approval based on the reasons stated in the staff report.

**7.) Z-23-35-17**

**Quasi-Judicial**

**Commission District II**

An Ordinance pursuant to Section 125.66, Florida Statutes, amending the Charlotte County Zoning Atlas from Residential Estate 1 (RE-1) (the base density is one unit per ten acres) to Commercial General (CG), for property located at 17150 Burnt Store Road, in the Punta Gorda area and within the boundary of the Burnt Store Area Plan area, containing 41.31± acres; Commission District II; Petition No. Z-23-35-17; Applicant: Jaxon Fischer LLC; providing an effective date.

**Jie Shao, Principal Planner**, provided the findings and analysis for Petition **Z-23-35-17** with a recommendation of approval based on the reasons stated in the staff report.

**Applicant**

**Amy S. Thibaut, Roetzel and Andress, representing the applicant**, commented that she has been sworn. They are here today requesting amendment to the Future Land Use Map (FLUM). The property owner here is Jaxon Fischer LLC, the managers of the entity are Bill and Lura Fischer, who are residents of the Burnt Store Area. Our experts are **Jason Green, Civil Planner with Axis Companies** and **Jason Utley with Planning Analytics LLC**. We are requesting to take the subject property from Burnt Store Limited Development (BSLD) to Commercial (COM) on the FLUM. This request would provide much needed commercial neighborhood uses to an area that is predominantly residential. Staff has asserted that this request should be denied on basis; One population projection. As you will hear today, that is not sufficient basis to deny this request. Another reason for denial is for the transportation concurrency. The Florida Community Planning Act address’s this; and requires they be given an opportunity to mitigate these impacts, which comes at a later time. Finally, there’s concerns about the max Florida Area Ratio (FAR), that’s maximum and we don’t purpose to bring in almost 2 million square feet of commercial uses. It would be incompatible with the area and would not be consistent with the CP when read as a whole. When we come into to you today with this CP amendment request it must be supported by relevant data and studies. We have provided that, and we will respectfully rebut and object staff’s assertion that our traffic impact statement provided doesn’t conform to what is required. They conform to the requirements set forth in Chapter 163 and the transportation element of the transportation element of the CP. That’s the data and studies that need to be looked at now. We need to look at what’s relevant today, as much as we can focus on the Burnt Store Area plan its almost 20 years old. It’s irrelevant. Part of this CP vision that was updated in 2005, was intended to address transportation and utilities extensions that would be needed to support the changes. The commissioners anticipated commercial uses in this area, we still don’t have them. The plan was there and put in place to further those uses and to further the public facilities expansion that would be needed. While also restoring and conserving natural resources, which is important in this area. Current status of the Burnt Store area is a study that was required by the act to support the amendment that was made back in 2005. It’s not part of the plan, it’s not binding and the Board of County Commissioners has address the fact that it does need to be reevaluated in light of changing circumstances from where we are today vs where we were in 2004.

As you can see, we meet the criteria for approval for this amendment. There are four standards; first we need to address impacts to public facilities by looking at actual and anticipated demand. We have done so and have provided evidence. We also must consider the standards and guidelines associated with protecting the environment. The uniqueness of this parcel is that we have enough land to create a neighborhood shopping center but to also provide the types of wildlife corridors and stormwater management facilities and other things. To relief some of the burden on this area and really be consistent with the CP provisions related to the Burnt Store overlay. Also, will note that there are no wetlands on this property. The third standard is that we must be consistent with the CP. Though staff disagrees that this request is consistent with the CP, they have not pointed to any specific policy, objective or goal in the CP that would be contravene by approval of this request. Further this request is consistent with polices adopted for the Burnt Store area and the Urban Services district. Finally we must demonstrate that we will not exceed the level of service standards adopted for transportation facilities. Jason Utey traffic impact statements address this adequately. The community planning act does specifically require for them to be given an opportunity to mitigate these impacts. Specifically, through the proportionate share program. Pursuant to the article 14 chapter 3-5 of the Land Development code, we evaluate concurrency specific to proportionate share at the time of local development order. We're not there yet and were here today discussing planning. It would be in contravention of Chapter 163 to deny this on the basis that it's not concurrent with traffic without giving us the opportunity to address and mitigate any impacts through that proportionate share program at the time of development approval. With that you are going to hear from Jason Green and Jason Utey who will provide expert testimony that specifically addresses the standards for approval and how this request meets that.

**Jason Green, Civil Planner with Axis Companies**, with our application we submitted data analysis. He does a lot of data analysis around the state. He's currently working with Palm Coast with their data analysis for the CP, Saint Cloud and other communities. Talking with the staff he's heard them say they want more data. The county is going through that process with a consultant. Unfortunately, he doesn't believe their data analysis was evaluated as part of the application. There is no mention of it nor any questions about it. However, the data provided is consistent with Metro Forecasting. Unfortunately, the staff has presented a 2045 picture for you on the population projection. The data in that report has a 2050 category which aligns with your CP. When looking at the numbers the Burnt Store area specifically has a demand. Changing this land to Future Land Use category as commercial is consistent with that 2050 projection if your going to use population data. To go into further of what's there and what isn't there staff has mentioned 531,500 sq ft of entitlements and 150 hotel rooms and some offices. That gets you total even with the 55.88 acres vacant, and you maximize that acreage, you're still under a million square feet of commercial and office type uses. Based on the population projection for 2050 you need approximately 1.6 million sq ft of commercial and non-residential by uses in this area. That's based on the numbers provided by the Metro Forecasting in the staff report. He shows staff a few examples of how a developer can use various sites efficiently. In the staff report on page 9 it references 5 miles north of the parcel from other commercial sites. When you're looking at location spacing of those commercial areas are important to a development. As Charlotte County according to the Metro Forecasting report transitions into a more service-based retail rather than a goods retail. One that's going to increasing your square footage per capita but two making the area that you are serving a smaller area. A part of that is also we want to limit and reduce vehicle miles traveled. The distance you have to drive to get to these uses and get to these services, the goal in every community is to reduce that amount. If we are over 5 miles to the next, which he believes a Publix is 9+ miles away, the location of this site is ideally situated to service the surrounding 3-4 miles and also draw some retail from Lee County. The report from Metro Forecasting also talks about 21-acre sites are not the same as 20 acre sites, this consolidation of acreage having something to be developed appropriately provide the buffers and all the other requirements, you need a good size and good shaped parcels to do so. That's why this 40+ acres provides that opportunity. Its limited here in this area to be able to have that, and this is an ideal area for that. There are about 3,500 residential parcels within the four sections surrounding this that population alone will support the 40-acre development. From a planning perspective we do an exercise to look at what the maximum is and what the potential impacts could be. Additionally Metro Forecasting report staff's analysis it's far less when they are looking at the sites available it's around 7900-8200 sq ft per acre get developed as a commercial

use. The rest is parking and stormwater, etc.. The reality is this is probable closer to 450,000 at max once the development considerations are good. That fits in with the numbers given earlier that 1.6 million of square feet needed. It fits with the percentage that you see in Charlotte County being about 19-20% of the site gets developed as a commercial footprint. The location will provide access to those residents and shorter trips. From a Land Use perspective this is a type of area/location that you would try to pick for commercial node to service a local residents and population. We have to remember that this was plan that was adopted sometime in 1977 and then changed in 2005, it's outdated, the population spikes we've seen is more than what was originally thought of. The Commissioners amended the plan in 2010 to identify this parcel specifically as emerging. That speaks since 2010 that's been plan for and thought of as an area that was going to grow and develop, specifically this parcel and that's why with all of these factors we say it is consistent with the CP.

**Jason Utley, Planning Analytics LLC**, comments that transportation and land use are hand and hand. As Jie mentioned two projects that have received commercial entitlements there and those projects are approximately 6 miles north of the site. He goes into detail of the surrounding vacant residential parcels. There's already an enclave that as it builds out through population growth and migration to the county, these people are going to need some type of commercial area to grab their goods and services. He explains the current condition is for residents of south county, down by Burnt Store Marina and Burnt Store Lakes, to travel approximately 8 miles to the north to US-41, to Publix, which is the nearest grocery store. That's a 16 miles round trip. Alternatively, you can travel south on Burnt Store Road and go to Pine Island Road, which is approximately 20 miles round trip. What we are trying to demonstrate today is that there is a bona fide need for commercial development, and it's not being provided here. Another thing to remind you of is that Charlotte County for many years it's been a community of largely platted. The tax burden rest largely on the residents because it's similar to Cape Coral or North Port and that probably 90-92% parcels here are residential. This is a unique opportunity whereas a sizeable parcel and the applicant, from his understanding, is responding to the demands of the residents in the area. That they are trying to convert a parcel into commercial and provide for commercial uses to support this existing platted area. Areas in the future will become residential and, in the future, will bolster the tax base. Not only through property values but this is an opportunity to capture some of those sales tax revenue from Lee County. He would request to reconsider staff's denial when staff is not market research economists, they are land planners. This is a response to the residents bringing this for consideration so they could drive shorter distances. From the perspective of transportation, the statement was made regarding concurrency. That our report did not provide concurrency. Concurrency is not vested through a CP amendment. This is a legislative action, where we look at this from a worst-case scenario. This is a planning tool. Just for everyone to understand, a 1.0 Floor Area Ratio (FAR) indicates that on every square foot of this parcel there would be a structure. Or alternatively it might not be on every square foot of this parcel, but you could have a combination of two-stories, three-stories whatever the height limitations would allow. This area is going to support a single-story type of development. He comments that they did not come into an agreement with Charlotte County Staff, however, he totally respect staff and the transportation staff. We just have a disagreement regarding the facility. When you look at Burnt Store Rd, from the county line north to the intersection US-41 he would define that as an uninterrupted flow facility. The highway compacity manual would also define that as an uninterrupted flow facility. An uninterrupted flow facility is a facility that has no fixed causes of delay. Or internal to the traffic systems such as signals and stop signs. You're going to find this also in Lee County. Lee County has modified their approach to Burnt Store Road and is supporting this as an evacuation route and are providing directional movements only. He has heard in the report that Charlotte County is considering 6 signals on Burnt Store Road. He did a review of the capital improvements program, and he did not see reference to 6 signals on Burnt Store Road. The short-term component of the analysis typically follows the capital improvement program. He would say to the community that this not something to be encouraged. He believes this facility needs to remain as it is today and uninterrupted flow facility, to facilitate movement north and south along that corridor. When you consider a deviation from what Charlotte County has in their concurrency link sheet, to recognize the volume that can be accommodated on an uninterrupted flow facility. Even at the 1.8 million sq ft of development, which is not going to be developed at that intensity. This roadway can accommodate that load of traffic, based on the

worst-case scenario. We want to consider that there are certain things that Charlotte County has written in the staff report that's not exactly reflective of the real-world conditions out there today.

**Mr. Gravesen** informed **Mr. Utley** that the presentation has exceeded the 20 mins and would allow the attorney to wrap up the presentation. **Mr. Green** commented that their application included data analysis and what are findings of the CP consistency are. He wanted to make sure that was apart of the record, that it was also prepared by him whose a professional planner in his professional opinion.

**Ms. Thibaut** commented that the board has heard from experts that addressed specific data and polices set forth in the CP and you've heard that this request is consistent with that. You've heard that there's not issues with the public facilities, there is changed needs that would support this and that all standards for approval have been met here. As such we would respectfully request that you recommend approval of this request.

#### **Questions for Staff**

None offered.

#### **Public Input**

**John Flemming, 24094 Santa Inez Rd**, explains that he is the chairman of the Burnt Store Corridor Coalition. The coalition represents 13 communities situated along Burnt Store Road in Punta Gorda down to Pine Island Road. He's also on the board of the Burnt Store Lakes Property Owners Association. He's here to talk on both of those capacities. The Burnt Store Area Plan which is being discussed is currently being reevaluated. As per the result of the Charlotte County Board of Commissioners from their meeting in June. He expressed what the residents are going through right now. They currently have to travel 9 miles to go to the grocery store and during an emergency situation ie; a hurricane, it takes them 6 hrs+ to get the grocery store. Fire Station 5 is serviced by five fire fighters who are paramedics. There has been problems regard to residents having to call 911 for small minor issues, which are not priority one, which are cardiovascular. It's possible for a firefighter to be on a call through the 911 system where their dealing with someone who fell off their car where at the same time you have people having a cardo arrest in another area. Staff is aware because we have been bringing it up to them in the past two years. We went to the Fischer's and asked them to think of rezoning. He can't get food if there is a forced evacuation. If his family gets sick, they have to drive too far to get to a doctor. Staff responses within the area there is plenty of commercial available, but no one is building. This board has an opportunity to fix something; you can look at what staff says or you can listen to us with the issues that are going on right now. If this doesn't get considered, then someone could die. It's not an issue so much of food but it's an issue about doctors' offices.

**Dr. Mary Ellen Kiss, 16366 Perico Way**, she is also one of the co-founders of the Burnt Store Corridor Coalition she has also been in conversation with the Fischer's over the last couple of years. Understanding what the issues are in our neighborhood. The current need for neighborhood commercial- midway between Jones Loop and Pine Island Road is absolutely essential. The lack of the need of additional residential development should preclude any decision for substituting commercial for residential along the Burnt Store Corridor with the amount of current nodes being developed along Burnt Store Road. There's enough evidence of sufficient residential density within a 2-3 mile radius of the Fischer property. Another thing is the readiness of the property owner to begin the development process as soon as possible. Commitment by the property owners for the needs of the perspective users of the facilities with the focus on access to medical care, groceries and other typical neighborhood commercial amenities. She also believes this will help with early establishment of standards for visibly attractive and accessible commercial nodes along Jones Loop up to Pine Island Rd. This application the strong support of the Burnt Store Corridor Coalition.

**Philip Colletti, 24237 Buccaneer Blvd.**, expresses that he agrees with what the gentleman said. He agrees they do need a closer hospital and grocery store. What the applicant is trying to do is a good thing and his neighbors and him support them. Give this your consideration, it's a good thing and it will help out everyone.

**Craig Williams, 25100 Harborside Blvd.,** comments that he lives in Woodland Estates that is also a part of that community. He is the President of the Woodland Estates Homeowners Association, on the MSBU board for The Village water improvement and also was one of the originators of the Burnt Store Corridor Coalition. He explained that he is a veteran of the Army where he spent two years in combat as a support operations officer, which is all about logistics. He's been expressing for years that we are building a lot of residential in the Burnt Store area and there's no logistics to it. Commercial project building needs to happen now, not in 2045. The area is being built rapidly and needs the commercial to support the amount of development. The commissioners have looked at this and the Burnt Store Area Plan has been inundated from the past one. The CP is being rebuilt now and needs to change. He supports them bringing this to the community in order for us to have something like this in our area that we need desperately.

**Philip Smallwood, 24368 Treasure Island Blvd.,** comments that he attended a Board of County Commissioners meeting recently. Mr. Cullinan was questioned about the commercial property along the Burnt Store Road and his answer to one of the questions was a lot of the commercial property was purchased for the reasoning of retention ponds. Because commercial property is cheaper than residential. He wants to know why 70 acres of land along Burnt Store Road would be taken away of commercial property and 40 acres of land can't be given back. We need commercial property while looking at Burnt Store Road there are 25,000 residential homes. That's bigger than Babcock Ranch at build out. We want something now, please go against staff and recommend this to go to the Board of County Commissioners and let them decide.

**Romolo Mattesich, 24393 Lucas way,** explains that he is a local builder who has an office at the Turtle Crossing Plaza. He's been at the plaza for 20 years and the plaza has grown to full compacity. People keep asking for more space. One third of the property is Burnt Store Animal Hospital, were doing a great job taking care of dogs. Were not doing a great job taking care of people. We have all continually requested more space, we can not grow any more parking spaces. The Fischer property would be valuable for things for Medical and offices. He recommends approval of this property because it's needed now.

**Patrick Hurd, 25459 Estrada circle,** he lives in Burnt Store Village, and it is radially building out. When he moved there a couple of years ago there were about 300 houses which has doubled almost tripling that. A far number around him are rented and unoccupied for most of the year. While you see the houses being built no one is moving there and it could be because there's not shops nearby. He thinks the parcel that the Fischer's have available to put a modest commercial development in there can help meet the needs of the residents. This could also encourage other people to come this way.

**David Kalin, 6125 Alan Blvd.,** commented that he was asked by the locals to come and speak about this petition to help encourage things to be done differently. In the previous hearing we were so anxious to get rid of commercial property and build more houses. Now were so anxious to prevent people from commercial because we want more houses. Bedrooms don't pay the taxes, Commercial business does. You're going to generate a lot of revenue through tax incentives and sales tax. This is a real need in that area. Traffic and trips were mentioned earlier by staff, if you are servicing the community and no longer needing to run out of there, you're cutting your trips in half. The wear and tear of the Burnt Store Corridor is being lessened because the service will be provided for this area. There are no grocery stores or medical in this area. When this is provided in an area quickly suiters follow to be apart of that development. He sees all of the development being approved for more housing in the area; personally, he thinks there needs to be a break with housing and more commercial being developed. This is a large property willing to convert a property to commercial use that sets on Burnt Store that doesn't require a neighborhood to be driven through to have access too. This is an ideal location. As heard from everyone here today this is a very real need. Again, this board has the power to take a chance here today and recommend approving this, to make a better life for the people serviced in this area. Quit building houses and start building businesses.

**David Kesselring, 22182 Felton Ave**, commented that everyone here has been for this. These people need these services again the tax base would be beneficial. You have specific data consistent with the standards of approval. The arguments of the staff have been comprehensively taken out. They need these businesses and services if it especially deals with health and food. It's going to reduce the traffic on Burnt Store Road and he supports this.

**Roberta Colletti, 24237 Buccaneer Blvd**, comments that the Fischers are business owners in their neighborhood that alone they are trying to help our community. By putting in a commercial property that needs to be there. The miles we commute daily is costly. Everyone speaking today wants this, there hasn't been anyone to oppose this. The last thing we need is Burnt Store Road is homes and we can't service the area. This would eliminate the traffic on Burnt Store Road, help our residents and it would show our business owners they are supported. This could help with commercial being aesthetically pleasing and conforms to the code while helping the community. She hopes with everything you've heard today that there's an understanding of how badly this is needed and wanted. She explained this would benefit the elderly as well by them feeling safer to go to the grocery store if it was closer to their home.

**Andrea Dirienzio, 3407 Island View Dr.**, comments this is a necessity to have a good tax base for commercial. Driving Burnt Store Road all the way to Lee County only has one commercial property, this is very well needed. The medical offices and groceries stores are very far away from these communities. She expresses to the board that they have an opportunity to be able to accommodate the current residents in the Brunt Store area.

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

#### Comments

**Mr. Vieira** asked staff going along Burnt Store Corridor how many commercial development sites are there? How many are actually in a site planning mode at this point in time? **Mr. Cullinan** as of this time, I don't believe there are any in site plan. We have had one outside of Pirate Harbor that had come in for a Project Conference.

**Mr. Vieira** commented that Heritage Landing has some commercial right to it, there's no development on the Burnt Store side of that? **Mr. Cullinan** Heritage Landing does have allowances for up to 111,000 sq ft of retail.

**Mr. Cullinan** commented there's a few things he would like to dispel and some misinformation. He asked **Ms. Shao** to go to the applicants presentation the page from Metro Forecasting. He admits he's not an economist. Mr. Utley and Mr. Green are not also an economist. The county went through great lengths to hire an economist, Metro Forecasting in order to do this. Under their standards by 2035 were only 36% need for a neighborhood commercial, which is about 14 acres. We don't hit the numbers. He understands that need some commercial, he himself has to drive a good 15-20 minutes to go to the grocery store. There's no guarantee under the Commercial General (CG) zoning that any of the items that the citizens are looking for will come.

There was a discussion explaining about a variety of options that are in a CG zone, there could be a chance that the citizens don't get what they are hoping for.

**Mr. Viera** returned to his question and commented that it's been his experience after sitting on this board for a number of years; that many developers come in and ask for a change of zoning from one designation to another with the hopes of being able to develop something. He was leading up to wanting to know; how many commercial developments are planned on Burnt Store Road? Also, how many of those developers that has received permission to do so, have come and applied to put a commercial development in there to enhance the lives the residents on Burnt Store Road? **Mr. Cullinan** responded with currently the only developments are the Turtle Crossing Plaza and Twin Boys storage with both having the CG zoning. **Mr. Vieira** so nothing from a services point of view per se? **Mr. Cullinan** that is correct. He understands their objection, but they have opened up the fact that and stated on the record that we were not economist that we are planners. He agrees with that and that's why experts were hired and not just for this, they were hired for county wide. That's what we were going by. This plan, that everyone says needs changing, we have had instruction from the Board of County

Commissioners (BCC) to have a public meeting, which is currently being worked on to be held most likely January of next year during season when most residents are down. We will then present it to the BCC as well as to other elected officials of boards and groups. They will then direct us with the next step. He understands. The plan that was put into place in 2005 its building out, currently, exactly as planned. It just took 10 years to do it because of the recession that essentially shut everything down for a decade. Now as it's coming back, it's going as planned. He's had discussions with national developers of retail, and they say the same thing, they don't have the population. The businesses are not going to come until they have the population. If they propose this maybe we will build out but with the allowed uses this could 40 acres of Mini warehouse of self-storage or any other types of storage. Once it's zoned CG opens up the laundry list of he believes 46 potential uses, with no guarantees. That's one of the concerns staff has. The other concern is what was stated, we have our traffic engineer here; Robert Fakhri, if you have any direct questions. The concern is and they spoke about property rights and property rights element; if we don't require all the max entitlements to be looked at, then we may be sued for taking. If we were to say, they can't do that and build up to the maximum numbers we are then liable potentially for that. He gave a couple of examples of what CG would allow. We have those requirements and that need to look at the worst-case scenario. If we say that we're depriving any rights like they can only build 30% of that, then we may have potential claims. That's some of the reasons. You're right we don't make recommendations we look for consistency with our codes and comp plans. That is what we are looking for.

**Mr. Gravesen** asked it's a Planned Amendment and a Zoning, the Planned Amendment is because the plan is limited development. What can that go to allow some commercial development? **Ms. Shao** answered Burnt Store limited development does not allow. **Mr. Gravesen** asked what can you change the FLUM too? **Ms. Shao** it can be changed to Burnt Store Village residential that allows 10% of the land that is owned can have commercial uses. This needs to go through the Planned Development rezoning process. **Ms. Shao** stated she's missing one slide from her presentation; as of today they have over 3,300 acres of land that has been designated as Burnt Store Village residential. The property owner can come and doesn't need land use change just needs to rezone to Planned Development (PD) to allow for 10% of land could be commercial. So, we have inhouse PD rezoning with the potential of adding a commercial component for that project. **Mr. Gravesen** out of the 40 acres by changing the FLUM to Burnt Store Village Residential they can ask for 4 acres of commercial in it? That is our CP limitations. This is what your non-approval is, your using traffic, your using some other things. However, the CP is giving you limited development or Burnt Store Residential. Does that allow you to bring in something else? **Kimlyn Walker, Assistant County Attorney**, they can apply for the CG land use plan category. There's no policy in the CP that limits the Planned categories within the Burnt Store area. When they come in for a plan amendment to strictly the Burnt Store Limited development or the Burnt Store Village Residential, which allows the 10%. They have every legal right to apply for the CG, but unless they are consistent with the CP policies, - they can have a non-recommendation for the CG. **Mr. Gravesen** trying to advance it positively they can come in for a Commercial Land Use amendment, in the addition to that, their zoning would then for a PD. Where they could have their conditions and limited uses to help dovetail more with the Burnt Store plans. **Mr. Cullinan** with the PD we can limit the square footage of uses, limit the types of uses. There has been PDs in the past where it would be limited to whatever the uses, they were looking for and the board felt palatable. For instance, if they felt a night club wasn't allowed, which is allowed in CG, then they could not have a night club in there. If they felt it was appropriate, then they could leave it in. PD is unique and that it sets what the use is and what the developmental standards are for that property.

A discussion was had regarding of different scenarios of the 40 acres possibly being platted out in various of ways under various of zonings.

**Mr. Izzo** asked if this doesn't move forward are there other opportunities for commercial in that area? **Mr. Cullinan** answered yes. He explained of a map that shows of the other areas. He also explained to **Mr. Izzo** that the Planning and Zoning board makes a recommendation before the BCC. Regardless this is going forward to the BCC, sometimes they agree sometimes they don't. **Mr. Izzo** summed up his question to; so, they will get this if we do or do not support? **Mr. Gravesen** yes, it will continue forward, and they will hear this again.

**Rebuttal**

**Ms. Thibaut** comments there's no guarantee even with a PD that certain uses will be established. It's also important to show the general range of what can be done through the CP gets refined over time. Jason and Jason commented in that in-depth. We were pining about 1.8 million sq ft of commercial, yes, it's the worst-case scenario. However, the traffic impact statement provided meets all statutory and county requirements and demonstrates were not going to exceed the level of service. Even if what we were saying up here didn't come into fruition that we were going to limit this to market conditions and other provisions and comp plans that it would have to adhere to. We are not exceeding the level of service. We have met the standards of approval, we have demonstrated via our documentation that and heard it through the testimony of our experts. We would respectfully request a recommendation of approval of this prior to going in front of the BCC. There is a need. The market data shows it, the residents have spoken the BCC is aware that this is going on.

**Discussion**

**Mr. Gravesen** the Planned Amendment is Legislative which is open to discussion and opinion. The zoning is Quasi-Judicial if the Legislative was to be forwarded as not approved by our board can we rule on the zoning request? **Mr. Cullinan** if you were making a recommendation on the Legislative item, you most likely would not be able to. You would have to make a motion of recommendation of denial for the PD as well. It wouldn't be consistent with the purposed CP.

**Mr. Vieira** comments he doesn't deny there is need for commercial but in all the development that's going along there, we do have some commercial right there, no body has come to the table. My concern is that we will make these recommendations for approval and then the property gets flipped to someone else. All the hopes for a hospital or grocery store are not going to come to fruition. We've seen that time and again in the county. He's not saying this applicant will do so but he does have a lot of reservations about making an approval on this. He would like to move it along to the BCC and let them be the ultimate decision maker on it.

**Recommendation**

**Mr. Vieira** moved that **PAS-23-00004** be sent to the Board of County Commissioners with a recommendation of Approval, based on the findings and analysis in the staff memo dated **June 2, 2024**, Charlotte County Comprehensive Plan along with the evidence presented at today's meeting, second by **Mr. Izzo**; *motion passed with a 2-1 recommendation. (Mr. Vieira and Mr. Izzo voted yes to approve – Mr. Gravesen voted no against the approval).*

**Recommendation**

**Mr. Vieira** moved that **Z-23-35-17** be sent to the Board of County Commissioners with a recommendation of Approval, based on the findings and analysis in the staff memo dated **June 2, 2024**, Charlotte County Comprehensive Plan along with the evidence presented at today's meeting, second by **Mr. Izzo**; *motion passed with a 2-1 recommendation. (Mr. Vieira and Mr. Izzo voted yes to approve – Mr. Gravesen voted no against the approval).*

**Mr. Gravesen** asked **Ms. Shao** when will these both be heard by the BCC? **Ms. Shao** on September 10<sup>th</sup>. **Mr. Gravesen** for the audience to know this will go before the BCC on September 10<sup>th</sup>, 2024.

A five-minute break was called at 4:54 pm.

The meeting returned at 5:00pm.

**8.) PAL-24-02**

**Legislative**

**Commission District I**

Pursuant to Section 163.3184(3), Florida Statutes, transmit a Large Scale Plan Amendment to the Florida Department of Commerce and other State agencies for review and comment; the amendment request is to



amend Charlotte County FLUM Series Map #1: 2030 Future Land Use from Low Density Residential (LDR)(138.32± acres) and Commercial (COM)(1.56± acres) to Medium Density Residential (MDR) with an annotation to the 2030 Future Land Use Map limiting the overall maximum density up to 1,188 units; increasing density from 135 units to 1,188 units; for property located north of Turbak Drive, south of Peace River Shores Boulevard, east of Cobalt Boulevard and west of Duncan Road (US 17), in the Punta Gorda area, containing 139.88± acres; Commission District I; Petition No. PAL-24-02; Applicant: TAG Lakeside, LLC; providing an effective date.

**Jie Shao, Principal Planner**, provided the findings and analysis for Petition **PAL-24-02** with a recommendation of approval based on the reasons stated in the staff report.

**9.) PD-24-02**

**Quasi-Judicial**

**Commission District I**

An Ordinance pursuant to Section 125.66, Florida Statutes, amending the Charlotte County Zoning Atlas from Planned Development (PD) (138.32± acres) and Commercial General (CG)(1.56± acres) to PD, and adopting its associated General PD Concept Plan, in order to allow for a residential multi-family development up to 1,188 units; increasing density from 135 units to 1,188 units; requiring a transfer of 1,053 density units to reach the maximum of 1,188 units; for property located north of Turbak Drive, south of Peace River Shores Boulevard, east of Cobalt Boulevard, and west of Duncan Road (US 17), in the Punta Gorda area, containing 139.88± acres; Commission District I; Petition No. PD-24-02; Applicant: TAG Lakeside, LLC; providing an effective date.

**Jie Shao, Principal Planner**, provided the findings and analysis for Petition **PD-24-02** with a recommendation of approval based on the reasons stated in the staff report.

**Questions for Staff**

None offered.

**Applicant**

**Robert Berntson, Big W Law, representing the applicant**, we join in the staff report and accept Ms. Shao as an expert and has been sworn in. As Ms. Shao indicated one of the biggest benefits of this is from the previously approved PD. We are doubling the amount of preserved area that would provide for scrub jay preserve in the northern portion and also the creek. multi-family housing is needed in the community, and this will be an opportunity for additional multi-Family. He's happy to answer any questions.

**Public Input**

**Courtney Mason, 261 Summerset Dr**, comments she moved here in 2019 and her husband works with the Florida Forest Services, and she's here on behalf of the wildlife. Her grandfather was Walter Auffenberg, who has written many books and known for his research on Komodo Dragons and Alligators. She has recently learned about his studies on Gopher tortoises. She's voicing her concern about the plans to build a residential multi-family on 139 acres. This will adjacent to her neighborhood, Peace River Shores. A protected species assessment was completed in July 2023 and was surprised to read there was 254 potentially active Gopher tortoise's burros on the parcel. That was done a year ago, this survey, and that's not including the other animals. She feels 48 acres is not enough land for the Nature Preserve for the tortoises. She's astonished that the 254 Gopher tortoises will be disturbed. They need over 100 acres to forage for food, male territorial behavior, burrows, and protection from predators and human interaction dangers. She knows the FWC deals with the relocation. She wanted to speak for the tortoises today. She also asked where will the water and sewer come from? **Ms. Shao** responded it will come from CSWR Florida Utility operation company. There is a suggested PD condition to make sure if there's no water or sewer and need to use the public water and sewer, they must come back to make modifications to this plan. This proposal is for only 1,188 multi-family development, the previous as of today; they approved for 303 units that's for manufactured homes.

There was a discussion about how the amount of density and the process of it.

**Ms. Mason** expressed her concern for where the tortoise will go considering they are running out of recipient sites. They are requesting for the public to help with that. That's a big concern.

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

#### **Rebuttal**

**Mr. Berntson** commented under the currently approved PD there's 25.35 acres in preservation. Under this proposal there will be 60.67 acres of preservation for more than 43% of the total site. Her concerns on the tortoises will be impacted less than we could under the current approved plan. While the density is higher, there will be more land in preservation and not disturbed. We respectfully request your approval.

#### **Comments**

**Mr. Gravesen** commented to **Ms. Mason** that yes there's some increase in density but they have to transfer in that density from somewhere else in the county. The county is a closed system of density, with some exceptions. You can only move it around you can't increase the amount of density in the county.

#### **Recommendation**

**Mr. Vieira** moved that **PAL-24-02** be sent to the Board of County Commissioners with a recommendation of Approval, of transmittal of application of **PAL-24-02** to forward the department of commerce and other state review agencies for review and comment based on the findings and analysis in the staff memo dated **June 24, 2024**, Charlotte County Comprehensive Plan along with the evidence presented at today's meeting, second by **Mr. Izzo**; and carried by a unanimous vote.

#### **Recommendation**

**Mr. Vieira** moved that **PD-24-02** be sent to the Board of County Commissioners with a recommendation of Approval, with conditions "a" through "t", based on the findings and analysis in the staff memo dated **June 24, 2024**, Charlotte County Comprehensive Plan along with the evidence presented at today's meeting, second by **Mr. Izzo**; and carried by a unanimous vote.

#### **10.)TLDR-24-01 Revisions to Subdivision Regulations      Legislative**

#### **Countywide**

An Ordinance of the Board of County Commissioners of Charlotte County, Florida, amending Charlotte County Code Chapter 3-7: Subdivision Regulations, by 1) revising Article I: In General, Section (Sec.) 3-7-1: Purpose; Sec. 3-7-5: Definitions; and Article II: Procedure for Plat Approval, by revising Sec. 3-7-21: Steps to record final plat, now referred to as Detailed Platting Application Process, Sec. 3-7-21: General requirements; Sec. 3-7-23: Basic application process; Sec. 3-7-26: Preliminary plat procedure; Sec. 3-7-27: Agency review, now referred to as Preliminary Plat Review; Sec. 3-7-31: Construction plans procedure, Sec. 3-7-32: Authority granted by approval, Sec. 3-7-33: Limit of approval, Sec. 3-7-34: Amendments and changes, Sec. 3-7-35: Final plat procedure generally, now referred to as General Final Plat Procedure, Sec. 3-7-36: Review, now referred to as Final Plat Review, Sec. 3-7-37: Approval by the board of county commissioners, now referred to as Approval of the Final Plat, Sec. 3-7-38: Recording of the final plat; 2) creating new Sec. 3-7-26: Determination; 3) renumbering various sections; and 4) repealing Section 3-7-24: Zoning; Sec. 3-7-28: Planning director; Section 3-7-29: Planning and zoning board; and Section 3-7-30: Approval by the board of county commissioners to remove the requirements of public hearings. Additionally, 5) revising Article III: Standard Requirements for Subdivision, Sec. 3-7-65: Certification of improvements or performance guarantee; Sec. 3-7-66: Maintenance, materials, and workmanship warranty bond after construction is complete; Sec. 3-7-106: Suitability of land; Sec. 3-7-121: For infrastructure to be constructed prior to final plat; Sec. 3-7-122: For infrastructure to be bonded instead of built; 6) repealing Article VII: Procedure for Minor Subdivisions, and 7) revising Article VIII: Enforcement, Sec. 3-7-141: Building permits, now referred to as Building and other permits, repealing Sec. 3-7-142: Other permits, and 8)

repealing Chapter 3-5: Planning and Development, Article III: Plats, which was adopted in 1986, and providing for conflict with other ordinances; providing for severability; and providing for an effective date. This is the first phase of proposed changes to the County Code to streamline the platting process and align the regulations with Florida State Statutes. Application number: TLDR-24-01; Applicant: Charlotte County Board of County Commissioners.

**Jenny Shao, Planner**, provided the findings and analysis for Petition **TLDR-24-01** with a recommendation of approval based on the reasons stated in the staff report.

**Mr. Cullinan** gave a brief introduction while **Ms. Shao** arrived to the podium. He explains this Phase 1 of the changes to the subdivision regulations. Staff has been working diligently with stakeholders regarding this based on the directions from state statute. That has recently been implemented that Jenny will get into the details. He would like to thank the stakeholders that were willing to give up their time in order to work with us on this. He's workshopped this before the BCC. We did take this opportunity to look at removing some bureaucratic red tape type of things. We're happy to have this discussion with you and see what you would like to recommend to the board.

#### Questions for Staff

**Mr. Gravesen** asked where it says the applicant may withdraw and re-apply under current regulations does that allow them to roll over their application fees? Or have the application fees been addressed? **Mr. Cullinan** replied they would not be able to, because by that time we would've already been in the process of review it and spending staff time. If we haven't advertised yet for public hearings, we may be able to credit that amount. Typically, staff is already begun their reviews, once it is submitted, they are on the clock to start reviewing sufficiency and reviewing applications. **Mr. Gravesen** commented just a thought whether you want to consider that more or at least state that once the application is in, no money will be given back even if you want to change. **Mr. Cullinan**, we have also had those discussions with the stakeholders. **Ms. Shao** added that Charlotte count as we know it now a Preliminary Plat (PP) could be around 40% of the subdivision plans. The approval of the PP either needs to follow through with the standard process and apply for Final Plat (FP) or they may withdraw and come in and under the new regulations with complete subdivision plans for a PP application. So, the standards are different for what constitutes a PP, due to the senate bill. **Ms. Walker, Asst. County Attorney**, commented that this may only impact a few applications. As of October 1<sup>st</sup>, this new procedure has to be in place.

**Mr. Cullinan** gave an example; the Preliminary and Final Plat that you did today. Preliminary and Final Plat is essentially is what this new Preliminary Plat would be. They submitted this on March 14<sup>th</sup>, 2024 they were ready for P&Z for the June hearing. Two and half months. They have to go through you and BCC they are not getting approved to the end of July. That's a real life example of why we are trying to do this.

**Mr. Vieira** asked there's no public input at this point, so how does the public weigh in on that? **Mr. Cullinan** it's by-right. Just like if someone was building a 600-unit apartment complex on multi-family, there's no opportunity for the public to weigh in because it's by-right. Same thing here. How many times has people attended a Planning and Zoning meeting upset about it and having to reply that your hands are tied that this project is by-right and already approved through the public channels.

A discussion ensued regarding different scenarios.

**Mr. Vieira** remembers the reaction of when this was first heard and brought to the BCC. He understands there is a need to streamline the process because it is extended. For a lot of people it's a frustrating issue to go through. He's just trying to wrap his head around but sees the need. **Mr. Cullinan** they are trying to look at it as in if someone were to go and build a 600 unit apartment complex in your backyard, you don't get any notice of that. If it's already multi-family, it's by-right. If they go to build 600 of single-family detached, then he has to go

through the extra hoops. Where people feel they can stop the project, where they can't legally. There anticipation is that with the transparency things that we are looking to do. Such as when an application comes, we will have a page and petition layers. That way if someone wanted more information about it, they could have access to those pages.

#### **Public Input**

Rob Bertnson, Big W. Law, comments he is here to support of the changes to this condition. He commended the staff for all of the work that was put into this. He was able to attend 3 of 4 round table discussions, which were good discussions. Especially the engineering industry. They say a lot of positive changes. From his standpoint, it's been frustrating at times when they have to go through the Platting public hearings. It's ministerial duty at that point. You may recall where there was one out in South Golf Cove. There was a tip being subdivided and they were going to put docks around it. The whole community was up in arms because they didn't want the docks from a boating standpoint. However, there was nothing you could do or the BCC legally to deny that. Now there was a neighborhood riled up about something that can't really be changed. Even though the public has the opportunity to speak in those instances they are not going to really get the relief because you can't really give it to them. He thinks it creates more frustration. Kudos to the staff. This is Phase 1 of the changes, there will be other changes coming along. He requests that the definition of "subdivision" not change in the first round. Here's how it reads "the current definition of subdivision is division of land into 3 or more lots, parcels, tracks, tiers, blocks, sites, units, or anything other division of land and includes the establishment of new streets alleys, additions, and re-subdivisions. When appropriate to the context relates to the process of subdivided the lands or areas subdivided. Currently we have a lot of split process and in phase 2 they will be coming in the lot split process. He suggests leaving the current definition which is "the parcel of land whether improved or unimproved into 3 or more contiguous lots or parcels of land for the purpose of immediate or future of transfer of. Or if an establishment of a new street or private road is involved any division of such parcel. He thinks we need a little time to work out the lot split, large trac transfers. He thinks holding off on changing the word subdivision and everything else works fine. A lot of work has gone into this and supports it.

**Mr. Cullinan** as we understand his concerns, we come through the subdivision regulations within the state. There are no carveouts. The state statue specifically says the first part of it. It doesn't have those smaller carve outs. We can be more restrictive than statue, but we can't be less restrictive. Asst. County Attorney, Kimlyn Walker stated he is correct we are following Chapter 177 in the Florida Statues and it specifically states the 3 or more lots and we are trying to follow along as close as possible to the statues. We are going to address the lots splits in our second phase.

**Mr. Bertnson** it's been on the books since 1992 we haven't had a challenge and understands there is a concern with it. We should be back to you probably within the next year on the next phase. Lets just leave it the way it is for that extra year and see where we go. What we are doing now is saying a subdivision in Charlotte County is a division into two or more parcels, if we don't leave it the way it is.

**Mr. Vieira** asked about **Mr. Bertnson's** two scenarios: a lot split. Me and my neighbor want to split a lot, that is now a subdivision. **Mr. Cullinan** no that wouldn't be because it's not creating 3 or more. If you and your neighbor want to split the lot between you that's a vested lot that would be vested into two. That would be an allowable split. Right now, someone has a 15 acre parcel they did a deed split to make two. Now they want to come in and do a third deed split, unfortunately that under code and statue, that is a subdivision. Because it's a creation of 3 or more lots from an unplotted piece of land.

**Mr. Izzo** were here to update language, right? Do we have a choice to not adopt it? **Mr. Cullinan**, we have to adopt something to be consistent with Florida Statue.

**Mr. Vieira** asked do we have an option to readdress that at a later date? You said there's going to be another revision that comes along, and subdivisions can be a part of that. **Mr. Cullinan** replied yes. All the changes will

come back in front of you. If approved by BCC at the end of July, we plan to roll right into phase two. Into round table discussions. That's when construction standards and utilities cleaning up the rest of it. We don't have to get rid of the public hearings, that is something we felt is a good opportunity.

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

#### Discussion

**Mr. Vieira** expressed his concern about the lot splits and even the example about families breaking off pieces of land. He would hate to cut out the subdivision from the beginning and lose the ability to use it later on. **Mr. Gravesen** thinks that if you leave it in, it will give you an opportunity to change it or delete it later. **Mr. Vieira** would like to have that opportunity.

#### Recommendation

**Mr. Vieira** moved that **TLDR-24-01** be sent to the Board of County Commissioners with a recommendation of Approval, based on the findings and analysis in the staff memo dated **June 26, 2024**, Charlotte County Comprehensive Plan along with the evidence presented at today's meeting, with the definition of "subdivision" remains as it stands now, second by **Mr. Izzo**; and carried by a unanimous vote.

**Mr. Gravesen** announced the need of a vice-chair election is needed. Which will be on the next agenda.

#### ADJOURNMENT

The meeting was adjourned at 6:08 p.m.

Accepted on behalf of the Charlotte County  
Planning and Zoning Board



Michael Gravesen, Chair