

AGENDA ITEM 2

PLANNING COMMISSION

FEBRUARY 8, 2007

ORDINANCE 07-41



Office of the
**MANATEE COUNTY
ATTORNEY**

Tedd N. Williams, Jr., County Attorney

James A. Minix, Chief Assistant County Attorney
Patricia McVoy, Senior Assistant County Attorney*
Maureen S. Sikora, Senior Assistant County Attorney*
Robert M. Eschenfelder, Assistant County Attorney
Rodney C. Wade, Assistant County Attorney*
William E. Clague, Assistant County Attorney
James R. Cooney, Assistant County Attorney
Sarah A. Schenk, Assistant County Attorney*
Jason C. Henbest, Associate County Attorney

M E M O R A N D U M

DATE: January 31, 2007
TO: Planning Commissioners
THRU: Tedd N. Williams, Jr., County Attorney *TNW 1/31/07*
FROM: Jason C. Henbest, Associate County Attorney *JCH 1/31/07*
RE: **LDC AMENDMENT REGARDING PROCEDURES FOR SPECIAL APPROVAL;
PROPOSED ORDINANCE NO. 07-41**

On January 9, 2007, the Board of County Commissioners found that language in the Land Development Code's Special Approval Chart (Chart 605) was inconsistent with the County's Comprehensive Plan. Ordinance No. 07-41 is being brought forward by the County Attorney's Office to remove the inconsistency from the LDC and clarify the procedures required to obtain Special Approval when required by the Comp Plan.

Specifically, the Comp Plan requires that non-residential uses exceeding 30,000 square feet in certain future land use categories receive special approval. In its current form, Chart 605 repeats this requirement but calls out an exemption for "residential support uses," which includes uses such as schools, houses of worship, and day care centers. Ordinance No. 07-41 proposes (i) to remove the exemption language from Chart 605, and (ii) to revise Figure 6-1 as well as Sections 602.2 and 605.1.2 to clarify that the methods of approval provided in Figure 6-1 and the requirements for Special Approval in Chart 605 must be considered in concert with each other.

If you have any questions regarding this matter, please feel free to contact me at your convenience.

JCH
attachment

Cc: Board of County Commissioners
Ed Hunzeker, County Administrator
Carol B. Clarke, Director, Planning Department
Joaquin Servia, Plan Implementation Administrator, Planning Department
Bob Pederson, Community Planning Administrator, Planning Department
Bobbi Roy, Project Coordinator, Planning Department

* Board Certified City, County & Local Government Law

ORDINANCE 07-41

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, REGARDING LAND DEVELOPMENT; AMENDING SECTIONS 602.2 AND 605.1.2 AND AMENDING FIGURE 6-1 AND CHART 605 OF THE MANATEE COUNTY LAND DEVELOPMENT CODE (ORDINANCE 90-01, AS AMENDED) TO CLARIFY THE PROCEDURES FOR SPECIAL APPROVAL; AMENDING OTHER PROVISIONS AS NECESSARY FOR INTERNAL CONSISTENCY; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED by the Board of County Commissioners of Manatee County, Florida:

Section 1. Purpose and Intent. This ordinance is enacted to carry out the purpose and intent of and exercise the authority set out in the Local Government Comprehensive Planning and Land Development Regulation Act, Part II of Chapter 163, Florida Statutes, and Chapter 125, Florida Statutes, as amended.

Section 2. Amendment of the Land Development Code. This ordinance hereby amends Chapter 6 of the Manatee County Land Development Code, also known as Manatee County Ordinance 90-01, as amended, as follows:

A. Section 602.2. of the Land Development Code is amended to read as follows (underlined language to be added; struck-through language to be deleted):

602.2. Permitted, Administrative and Special Uses by District. Except as specifically provided in this Code, regulations governing the use of land, water and structures within the various districts in the unincorporated portion of Manatee County shall be as shown in the Schedule of Permitted, Administrative and Special Uses by District.

Uses of land or structures which are not expressly listed in this Schedule of Permitted, Administrative and Special Permit Uses, are prohibited uses and shall not be established in that district.

Uses listed as Special Permit Uses or Administrative Permit Uses may be established in that district only after approval of an application in accord with the procedures and requirements in Chapter 5.

Notwithstanding the development review procedures set forth in Figure 6-1 or any other provision of this Code, the development

review procedures required pursuant to Section 605 and Chart 605 shall control when the use being established requires Special Approval pursuant to any provision of the Comprehensive Plan.

The permitted, administrative and special uses in the various zoning districts are grouped by major headings. These major headings are:

- Agriculture Uses
- Commercial Uses
- Community Service Uses
- Industrial Uses
- Open Uses of Land--Light
- Open Uses of Land--Heavy
- Recreation Uses
- Residential Uses
- Residential Support Uses
- Transportation Facilities
- Warehousing
- Miscellaneous

Figure 6-1 indicates the permitted, administrative and special uses for the standard zoning districts and Planned Districts.

B. Section 605.1.2. of the Land Development Code is amended to read as follows (underlined language to be added; struck-through language to be deleted):

605.1.2. Special Approval is a process requiring an additional level of review that is required pursuant to the Comprehensive Plan. The Special Approval chart 605 is not intended to replace any development review procedures which are required pursuant to Figure 6-1 and Chapter 5 of this Code, but rather must be read in conjunction with those development review procedures. ~~is an additional level of approval that is required by the Comprehensive Plan.~~ To the maximum extent possible, Special Approval is to be granted with whatever development application is required elsewhere in this Code; however, in many cases Planned Development is the process required to obtain Special Approval. For example, if a use is permitted within a zoning category with the approval of a Final Site Plan, and Chart 605 shows an "X" under Final Site Plan, the Special Approval may be granted with the approval of the Final Site Plan. Special Approval needs only to be granted on a single development application. Multiple checks do not indicate that approvals need to be granted for each of the development applications listed, but rather that there are options as to what type of development review process may simultaneously

provide the review necessary to grant Special Approval. In many cases, Special Approval may be granted with administrative type approvals (Pre. Plan, Plat, FSP, etc.). Others require that only the Board or Hearing Officer may grant Special Approval (Rezone, GDP, Special Permit) to meet the Special Approval requirement. No development order administrative or otherwise, may be approved for projects which require special approval, without the granting of special approval. Therefore, special approval shall be granted with the earliest approval required.

C. Figure 6-1 of the Land Development Code (the schedule of permitted, administrative, and special permit uses) is amended to add the following notation after each major grouping in the matrix:

Note: Notwithstanding the development review procedures set forth in this Figure 6-1 or any other provision of this Code, the development review procedures required pursuant to Section 605 and Chart 605 shall control when the use being established requires Special Approval pursuant to any provision of the Comprehensive Plan.

D. Chart 605 of the Land Development Code (the special approval chart) is amended to delete the following sentence from Line C:

Residential support uses shall be exempt from this requirement.

Section 3. Codification. The publisher of the County's Land Development Code, the Municipal Code Corporation, is directed to incorporate the amendments in Section 2 of this ordinance into the Land Development Code.

Section 4. Severability. If any section, sentence, clause, or other provision of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such section, sentence, clause, or other provision shall be deemed severable, and such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, sentences, clauses, or provisions of this Ordinance.

Section 5. Effective Date. This Ordinance shall become effective immediately upon filing in the Office of the Secretary of State in Tallahassee, Florida.

[SIGNATURE PAGE FOLLOWS]

PASSED AND DULY ADOPTED, with a quorum present and voting, by the Board of County Commissioners of Manatee County, Florida, this the ____ day of _____, 200_.

**BOARD OF COUNTY COMMISSIONERS OF
MANATEE COUNTY, FLORIDA**

By: _____
Chairman

ATTEST: R.B. SHORE
Clerk of the Circuit Court

By: _____
Deputy Clerk

BRADENTON HERALD

WWW.HERALDTODAY.COM
P.O. Box 921
Bradenton, FL 34206-0921
102 Manatee Avenue West
Bradenton, FL 34205-8894
941/748-0411 ext. 7065

Bradenton Herald
Published Daily
Bradenton, Manatee County, Florida

STATE OF FLORIDA
COUNTY OF MANATEE;

Before the undersigned authority personally appeared Sandy Riley, who on oath says that she is a Legal Advertising Representative of the Bradenton Herald, a daily newspaper published at Bradenton in Manatee County, Florida; that the attached copy of the advertisement, being a Legal Advertisement in the matter of **NOTICE OF LAND DEVELOPMENT** in the Court, was published in said newspaper in the issues of, **1/26/07**

Affiant further says that the said publication is a newspaper published at Bradenton, in said Manatee County, Florida, and that the said newspaper has heretofore been continuously published in said Manatee County, Florida, each day and has been entered as second-class mail matter at the post office in Bradenton, in said Manatee County, Florida for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.


(Signature of Affiant)

Sworn to and subscribed before me this

30th Day of January 2007

DIANE S. BACRO
Notary Public
State of Florida
My comm. exp. 03-15-2007
Comm. No. DD 206531



SEAL & Notary Public

Personally Known OR Produced Identification
Type of Identification Produced _____

NOTICE OF LAND DEVELOPMENT CODE CHANGES IN UNINCORPORATED MANATEE COUNTY

The Manatee County Planning Commission will hold a public hearing to consider an amendment to certain provisions of the Manatee County Land Development Code (Ordinance 90-01, as amended) and make a recommendations to the Board of County Commissioners as to the consistency of the proposed Ordinance No. 07-41 with the Comprehensive Plan and as to whether the proposed ordinance should be adopted, adopted with modifications, or denied.

Date: Thursday, February 8, 2007
Time: 9:00 AM or soon thereafter
Place: Manatee County Government Administrative
Center
1112 Manatee Avenue West,
1st Floor Chambers

ORDINANCE 07-41

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, REGARDING LAND DEVELOPMENT; AMENDING SECTIONS 602.2 AND 605.1.2 AND AMENDING FIGURE 6-1 AND CHART 605 OF THE MANATEE COUNTY LAND DEVELOPMENT CODE (ORDINANCE 90-01, AS AMENDED) TO CLARIFY THE PROCEDURES FOR SPECIAL APPROVAL; AMENDING OTHER PROVISIONS AS NECESSARY FOR INTERNAL CONSISTENCY; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

The public is invited to speak at this hearing, subject to proper rules of conduct. The hearing may be continued from time to time to a date and time certain. The public may also provide written comments for the Planning Commission to consider.

Interested parties may examine the proposed Ordinance and related documents and may obtain assistance regarding these matters from the Manatee County Planning Department, 1112 Manatee Avenue West, 4th Floor, Bradenton, Florida; telephone number (941) 749-3070; e-mail to: planning.agenda@co.manatee.fl.us.

Rules of procedure for this public hearing are in effect pursuant to Resolution 05-239(PC). A copy of this Resolution is available for review or purchase from the Planning Department (see address below).

Please send comments to: Manatee County Planning Department
Attn: Agenda Coordinator
1112 Manatee Ave. West Suite 427
Bradenton, FL 34205

All written comments will be entered into the record.

For More Information: Copies of the proposed amendment will be available for review and copying at cost approximately ten (10) days prior to the public hearing. Information may also be obtained by calling 749-3070 x 6878, between 8:00 AM - 5:00 PM.

Americans With Disabilities: The Board of County Commissioners of Manatee County does not discriminate upon the basis of any individual's disability status. This non-discrimination policy involves every aspect of the Board's functions including one's access to and participation in public hearings. Anyone requiring reasonable accommodation for this meeting as provided for in the ADA, should contact Kaycee Ellis at 742-5800; TDD ONLY 742-5802 and wait 60 seconds, FAX 745-3790.

According to Section 286.0105, Florida Statutes, if a person decides to appeal any decision made with respect to any matters considered at such meetings or hearings, he/she will need a record of the proceedings, and for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record would include any testimony or evidence upon which the appeal is to be based.

SAID HEARING MAY BE CONTINUED FROM TIME TO TIME PENDING
ADJOURNMENTS.

MANATEE COUNTY PLANNING COMMISSION
Manatee County Planning Department
Manatee County, Florida

1/26/07

R38204

SARASOTA HERALD-TRIBUNE
PUBLISHED DAILY
SARASOTA, SARASOTA COUNTY, FLORIDA

MANATEE COUNTY GOVERNMENT
BOBBI ROY
1112 MANATEE AVENUE W, 4TH FLOOR
BRADENTON, FL 34206

STATE OF FLORIDA
COUNTY OF MANATEE

BEFORE THE UNDERSIGNED AUTHORITY PERSONALLY APPEARED SHARI BRICKLEY, WHO ON OATH SAYS SHE IS ADVERTISING MANAGER OF THE SARASOTA HERALD-TRIBUNE, A DAILY NEWSPAPER PUBLISHED AT SARASOTA, IN SARASOTA COUNTY FLORIDA; AND CIRCULATED IN MANATEE COUNTY DAILY; THAT THE ATTACHED COPY OF ADVERTISEMENT, BEING A NOTICE IN THE MATTER OF:

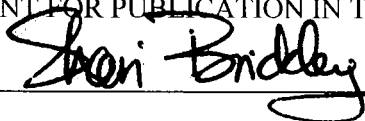
ORDINANCE 07-41

IN THE COURT WAS PUBLISHED IN MANATEE EDITION OF SAID NEWSPAPER IN THE ISSUES OF:

JANUARY 26, 2007

AFFIANT FURTHER SAYS THAT THE SAID SARASOTA HERALD-TRIBUNE IS A NEWSPAPER PUBLISHED AT SARASOTA, IN SAID SARASOTA COUNTY, FLORIDA, AND THAT THE SAID NEWSPAPER HAS THERETOFORE BEEN CONTINUOUSLY PUBLISHED IN SAID SARASOTA COUNTY, FLORIDA, EACH DAY, AND HAS BEEN ENTERED AS SECOND CLASS MAIL MATTER AT THE POST OFFICE IN BRADENTON, IN SAID MANATEE COUNTY, FLORIDA, FOR A PERIOD OF ONE YEAR NEXT PRECEDING THE FIRST PUBLICATION OF THE ATTACHED COPY OF ADVERTISEMENT; AND AFFIANT FURTHER SAYS THAT SHE HAS NEITHER PAID NOR PROMISED ANY PERSON, FIRM OR CORPORATION ANY DISCOUNT, REBATE, COMMISSION OR REFUND FOR THE PURPOSE OF SECURING THIS ADVERTISEMENT FOR PUBLICATION IN THE SAID NEWSPAPER.

SIGNED



SWORN TO AND SUBSCRIBED BEFORE ME THIS 26TH DAY OF JANUARY A.D., 2007 BY SHARI BRICKLEY WHO IS PERSONALLY KNOWN TO ME.

(SEAL)



NOTARY PUBLIC



Bobbie J Clark
My Commission DD347713
Expires October 11, 2008

NOTICE OF LAND DEVELOPMENT CODE CHANGES IN UNINCORPORATED MANATEE COUNTY

The Manatee County Planning Commission will hold a public hearing to consider an amendment to certain provisions of the Manatee County Land Development Code (Ordinance 90-01, as amended) and make a recommendations to the Board of County Commissioners as to the consistency of the proposed Ordinance No. 07-41 with the Comprehensive Plan and as to whether the proposed ordinance should be adopted, adopted with modifications, or denied.

Date: Thursday, February 8, 2007

Time: 9:00 AM or soon thereafter

Place: Manatee County Government
Administrative Center
1112 Manatee Avenue West,
1st Floor Chambers.

ORDINANCE 07-41

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, REGARDING LAND DEVELOPMENT; AMENDING SECTIONS 602.2 AND 605.1.2 AND AMENDING FIGURE 6-1 AND CHART 605 OF THE MANATEE COUNTY LAND DEVELOPMENT CODE (ORDINANCE 90-01, AS AMENDED) TO CLARIFY THE PROCEDURES FOR SPECIAL APPROVAL; AMENDING OTHER PROVISIONS AS NECESSARY FOR INTERNAL CONSISTENCY; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

The public is invited to speak at this hearing, subject to proper rules of conduct. The hearing may be continued from time to time to a date and time certain. The public may also provide written comments for the Planning Commission to consider.

Interested parties may examine the proposed Ordinance and related documents and may obtain assistance regarding these matters from the Manatee County Planning Department, 1112 Manatee Avenue West, 4th Floor, Bradenton, Florida; telephone number (941) 749-3070; e-mail to: planning.agenda@co.manatee.fl.us.

Rules of procedure for this public hearing are in effect pursuant to Resolution 05-239(PC). A copy of this Resolution is available for review or purchase from the Planning Department (see address below).

Please send comments to: Manatee County Planning
Department
Attn: Agenda Coordinator
1112 Manatee Ave. West Suite 427
Bradenton, FL 34205

All written comments will be entered into the record.

For More Information: Copies of the proposed amendment will be available for review and copying at cost approximately ten (10) days prior to the public hearing. Information may also be obtained by calling 749-3070 x 6878, between 8:00 AM - 5:00 PM.

Americans With Disabilities: The Board of County Commissioners of Manatee County does not discriminate upon the basis of any individual's disability status. This non-discrimination policy involves every aspect of the Board's functions including one's access to and participation in public hearings. Anyone requiring reasonable accommodation for this meeting as provided for in the ADA, should contact Kaycee Ellis at 742-5800; TDD ONLY 742-5802 and wait 60 seconds, FAX 745-3790.

According to Section 286.0105, Florida Statutes, if a person decides to appeal any decision made with respect to any matters considered at such meetings or hearings, he/she will need a record of the proceedings, and for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record would include any testimony or evidence upon which the appeal is based.

SAID HEARING MAY BE CONTINUED FROM TIME TO TIME PENDING ADJOURNMENTS.

MANATEE COUNTY PLANNING COMMISSION
Manatee County Planning Department
Manatee County, Florida

RECOMMENDED MOTION:

I move to recommend adoption of Ordinance No. 07-41 in the form entered into the record by the County Attorney's Office.



KIRK PINKERTON

A PROFESSIONAL ASSOCIATION

*Serving Our Community
Since 1926*

ATTORNEYS AT LAW JAMES E. KIRK, 1907-1991 JOHN C. PINKERTON, 1916-1996 DONALD C. AND GLENN L. TR., 1926-2005 WILLIAM C. STUMPF, 1918-1995

ROBERT J. CAHR
L. NORMAN VAGGHAN BIRCH **
TIMOTHY S. SHAW*
WILLIAM E. ROBERTSON, JR.
DAVID M. SILBERSTEIN ***
MARK P. BARNEBEY*
THOMAS D. SHULTS
JULIE A. HORSTKAMP*
JEFFREY N. STEINSNYDER*

SCOTT E. RUDACKLE
SUE A. JACOBSON *
SCOTT K. PETERSEN ***
DOUGLAS F. FEMORE
ZACHARY L. ROSS

OF COUNSEL
BRENDA L. PATTEN*

BOARD CERTIFIED IN WILL, TRUSTS
AND ESTATES
**BOARD CERTIFIED BUSINESS
LITIGATION LAW
BOARD CERTIFIED REAL ESTATE LAW LAWYER
BOARD CERTIFIED CIVIL TRIAL ATTORNEY
BOARD CERTIFIED TAX ATTORNEY
BOARD CERTIFIED IN CITY, COUNTY
AND LOCAL GOVERNMENT LAW
*ALSO ADMITTED IN NEW JERSEY
*ALSO ADMITTED IN CALIFORNIA
**ALSO ADMITTED IN NEW YORK
***ALSO ADMITTED IN MASSACHUSETTS
***ALSO ADMITTED IN CALIFORNIA

PLEASE RESPOND TO BRADENTON OFFICE

February 7, 2007

VIA HAND DELIVERY

Manatee County Planning Commission
c/o Richard Bedford, Chairman
Manatee County Administration Building
1112 Manatee Avenue West
4th Floor
P.O. Box 1000
Bradenton, FL 34206-1000

Re: Ordinance 07-41
School Approval Review Process

Dear Commissioners:

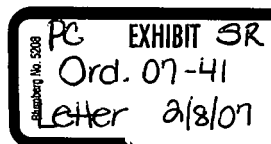
This firm acts as special counsel to the School District of Manatee County for land use-related issues. We are submitting this letter on behalf of the School District to object to any changes to the County's review process for approval of schools until all of the potential issues have been fully discussed at joint meetings between the two Boards. While Ordinance 07-41 is a response to concerns arising from a private school project, the proposed amendments would affect the approval process for all public schools of the District.

Despite the language on the face of Ordinance 07-41, the proposed amendments are not a clarification of procedure, but are in fact a change in the existing review process for schools which the County has followed since the adoption of the Comprehensive Plan in 1989. The existing process, as set forth in the Land Development Code, utilizes the administrative permit, special permit, and in some cases planned development process to determine consistency of proposed schools with the Comprehensive Plan.

SARASOTA MAILING ADDRESS
P.O. BOX 3798
SARASOTA, FLORIDA 34230
attorney@skpinkerton.com

120 SOUTH ORANGE AVENUE
SARASOTA, FLORIDA 34236
TELEPHONE 941-564-2400
FACSIMILE 941-564-2490

101 6TH AVE. W., SUITE 100
BRADENTON, FLORIDA 34205-1155
TELEPHONE 941-714-2228
FACSIMILE 941-714-9601



KIRK • PINKERTON

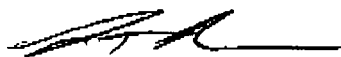
Manatee County Planning Commission
Re: 07-41, School Approval Review Process
February 7, 2007
Page 2 of 2

It is the School District's position that this long-standing process is consistent with Section 1013.33, Florida Statutes, and the Comprehensive Plan. The School District's position on this matter is echoed by Manatee County Planning Director, Carol Clarke, as evidenced by her memorandum to the Board of County Commissioners dated January 4, 2007, which is attached for your information.

The School Board and Board of County Commissioners are scheduled to discuss the entire school siting process as part of the updates to the Interlocal Agreement between the two parties. We think it would be appropriate to delay action on this matter until the two Boards have had an opportunity to discuss all of the issues, so we request that the Planning Commission continue this matter until those discussions have occurred. In the alternative, we would request that the Planning Commission recommend a clarification that the amendments are only applicable to private schools and do not disturb the long-standing County approval process for public schools.

Sincerely,

KIRK • PINKERTON, P.A.



Mark P. Barnebey *for*
For the Firm

MPB/dl

cc: The School Board of Manatee County
John Bowen, School Board Attorney
Dr. Roger Dearing, Superintendent
Mike Pendley, Executive School Planner
Tedd N. Williams, County Attorney
Sarah Schenk, Assistant County Attorney
Carol Clarke, Planning Director



MANATEE COUNTY GOVERNMENT
Planning Department
Interoffice Memorandum

DATE: January 3, 2007
TO: Board of County Commissioners
THRU: Ernie Padgett, County Administrator
FROM: Carol B. Clarke, AICP, Director, Planning Department
RE: Residential Support Uses
Agenda Item #11

Ernie Padgett 1/3

CBCL

Background

At the December 19, 2006 meeting of the County Commission there was discussion regarding issues raised by Patricia Petruff about the Comprehensive Plan consistency of a proposed Charter School in the Res-3 Future Land Use category.

The Commission asked for legal advice from the County Attorney's Office. Their agenda item and supporting memorandum are included in the agenda for Thursday January 4, 2007.

I have reviewed the memorandum prepared by Ms. Schenk regarding the proposed Imagine School. In light of that memorandum, I would like to reframe the question for the Board's consideration.

Discussion

At issue is whether a school exceeding 30,000 square feet in a Residential Future Land Use category requires Special Approval. As stated during the December 19, 2006 meeting, it is my opinion that schools (and other residential support uses) do not require Special Approval. Ms. Petruff has made the contrary argument.

As with most human endeavors, nothing is perfect. In this instance there are arguments and support that can be found on both sides of this question. Additionally, there are weaknesses to each position. I believe that it is imperative that the Board be fully aware of all of this information when making the interpretation of the Comprehensive Plan and Land Development Code.

I think that a good starting point is identification of the issues upon which there is agreement. These include the following:

1. There is no definition of "non-residential" in the Comprehensive Plan or Land Development Code.
2. Residential is defined in the Comprehensive Plan as: "Activities within areas used predominantly for housing."
3. Residential Support Uses are listed in the Land Development Code Figure 6-1. These uses include Schools, Houses of Worship, and Day Care facilities. (See Attachment 1)
4. The Special Approval chart in the Land Development Code provides that non-residential uses in residential future land use categories exceeding 30,000 square feet achieve Special Approval through a rezoning and general development plan approval. The chart further provides that "Residential Support Uses are exempt from this requirement." (See Attachment 2)

Given this set of circumstances, I believe there are two approaches which can be taken regarding Comprehensive Plan interpretation. I have summarized these approaches, along with the strengths and weaknesses of each argument, for the Board's consideration.

Schools are Non-Residential

Analytical Approach

- For purposes of the Comprehensive Plan, land uses can be characterized as Residential and Non-Residential.
- Schools are Non-Residential Uses.
- Schools located in residential future land use categories, which are greater than 30,000 square feet require Special Approval.
- Special Approval requires Planned Development.

Supporting Analysis

- This position is supported by the simple meaning of the words. Residential means homes, thus if it isn't a home – it is non-residential. If it is non-residential, then the 30,000 square foot limitation applies.
- Policy 2.6.2.1 references both "Residential" and "Residential Support Uses." (See Attachment 3). This could lead to the conclusion that those are separate uses, and that "Residential Support Uses should fall within the "Non-Residential" umbrella.
- The "exempt" language of the Special Approval chart can be read to imply that rather than explaining the provisions of the Comprehensive Plan, it was endeavoring to modify those requirements.

Approach Weakness

- Accepting this position means that the Board must accept the following:
 - All residential support uses (in residential land use categories) must meet the 30,000 square foot requirement or receive Special Approval via a general development plan.
 - Administrative processing of all elementary schools (and other residential support uses) in the past 15 years has been inconsistent with the Comprehensive Plan.
 - The adoption of the Land Development Code was inconsistent with the Comprehensive Plan pursuant to these provisions, notwithstanding the provisions of the Land Development Code which were specifically crafted to meet the Special Approval requirements of the Comprehensive Plan.

- Policy 2.6.2.1 falls under Objective 2.6.2 "Residential Compatibility/transition: Residential uses compatible with adjacent residential and non-residential uses." When read in this context, it appears that the residential support uses are being considered within the residential category.

Schools are Residential Uses for Purposes of the Comprehensive Plan

Analytical Approach

- For purposes of the Comprehensive Plan, land uses can be characterized as Residential and Non-Residential.
- Schools are Residential Uses; thus Special Approval is not required, regardless of square footage.
- The “exempt” language in the Special Approval chart is simply stating what is already provided for in the Comprehensive Plan, thus implementing the Plan.

Supporting Analysis

- The Comprehensive Plan definition of residential (“Activities within areas used predominantly for housing”) is intended to be broader than just residences.
- The Special Approval definition of the Comprehensive Plan references three types of uses: Residential; Commercial and Industrial.
- The Land Development Code was drafted with the Special Approval requirements of the Comprehensive Plan at the forefront. Specifically, the Professional and Neighborhood Commercial categories are limited to 30,000 square feet – to meet the Special Approval criteria.
- The Special Approval chart clearly states that Residential Support Uses are exempt from this particular Special Approval requirement. (Although, at issue is whether that is a statement meant to reiterate the Comprehensive Plan or modify it.)
- The Land Development Code permits (although sometimes requiring a conditional use permit) Residential Support Uses in residential zoning districts. Uses such as offices and commercial which can be permitted in residential future land use categories, require professional or commercial zoning.
- The Comprehensive Plan has specific provisions regarding school location. (Goal 2.13 and accompanying Objectives and Policies – Attachment 4) Special Approval criteria are not included in these provisions.

Approach Weakness

- This approach is one that builds on the language of the Comprehensive Plan, Land Development Code and past practice. There is no definitive statement in the Comprehensive Plan that enunciates that schools shall be considered residential uses.
- Language of Policy 2.6.2.1 which references "Residential" and "Residential Support Uses".

Summary

The issues presented with the characterization of residential support uses are complex. Obviously, I believe that the position I have taken with regard to this issue is the correct one, but I do certainly acknowledge that other interpretations are reasonable and can be supported by the circumstances surrounding this situation. The purpose of this memorandum has been to provide the Board with a fuller understanding of the staff position to date.

Given this background, direction from the Board is needed. The threshold question to be answered is whether schools are considered residential uses pursuant to the Comprehensive Plan. If the answer to that is "no", then additional action is needed. As recommended by the County Attorney's Office, the appropriate action would be to direct staff to:

- Begin processing appropriate amendments to the Comprehensive Plan and Land Development Code to eliminate the inconsistency; and,
- Require all pending (and future) applications for residential support uses exceeding 30,000 square feet in residential future land uses categories to be processed as planned developments.

If the determination by the Board of County Commissioners is that schools are considered residential uses pursuant to the Comprehensive Plan, then an appropriate discussion would be whether the Commission would like to change:

- These Comprehensive Plan provisions; and/or
- The Land Development Code requirements for processing school applications.

ZONING DISTRICTS

RESIDENTIAL SUPPORT USES

	CON	A	A-1	ESP	RESMH	RHD	RMP	FR	NC	OO	HQ	QRY	LM	EM	EX	FDR	FOO	FDC	FDPR	FDI	FDPA	FDW	FDMU	FDVY	FDMM	FDGO	VIL	FTA
Churches or Other Place of Worship	X	AP/SP	AP/SP	AP/SP	AP/SP	AP/SP	AP/SP	AP	AP	AP	AP	AP/SP	X	X	X	P*	P*	P*	X	X	X	X	X	X	X	X	AP	P*
Colleges/University (FD/SP)	X	SP	SP	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	AP
Day Care Centers, Large	X	SP	SP	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	AP
Day Care Centers, Medium	X	SP	SP	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	AP
Day Care Centers, Small	X	SP	SP	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	AP
Day Care Facilities (Accessory)	X	AP/SP	AP/SP	SP	SP	AP/SP	AP/SP	AP	AP	AP	AP	AP	AP	AP	X	X	X	X	X	X	X	X	X	X	X	X	X	AP
Day Care Homes	X	AP	AP	AP	AP	AP	AP	AP	AP	AP	AP	AP	AP	AP	X	X	X	X	X	X	X	X	X	X	X	X	X	AP
Environmental Education Facilities	AP	AP	AP	AP	AP	AP	AP	AP	AP	AP	AP	AP	AP	AP	X	X	X	X	X	X	X	X	X	X	X	X	X	AP
Schools, Elementary	X	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	X	X	X	X	X	X	X	X	X	X	X	X	X	SP
Schools, High School	X	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	X	X	X	X	X	X	X	X	X	X	X	X	X	SP
Schools, Middle	X	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	X	X	X	X	X	X	X	X	X	X	X	X	X	SP
Schools of Special Education	X	AP	AP	AP	AP	AP	AP	AP	AP	AP	AP	AP	AP	AP	X	X	X	X	X	X	X	X	X	X	X	X	X	SP

Note: Uses identified as "Permitted User" in all Planned Development Districts may be permitted with approval of a General Development Plan. PD zoning in itself does not constitute approval to develop.

Note: Uses may be further restricted or modified by the overlay district criteria in Section 604.

VIL Districts: All conditional uses within the VIL Districts shall meet the conditional use criteria for the VIL districts found in Section 704.

Development in the Certain Public Village Historical and Archeological Overlay Districts may be limited by and is subject to special standards as contained in Section 604.6.5.

AP = Administrative Permit

SP = Special Permit

P = Permitted

X = Not Permitted

AP/SP = Administrative Permit or Special Permit required as specified in Section 704 or elsewhere in this Code. AP/SP = Administrative Permit/Special Permit, see Section 704.

P* = With limitations, as specified in Section 704, Conditional Use Criteria, or elsewhere in this Code. Accessory users in the FDR district are allowed a maximum height of 180 feet.

*All day care centers shall meet the requirements of Section 704.18

ATTACHMENT 2

ZONING DISTRICTS

605.1.2

SPECIAL APPROVAL AS REQUIRED BY THE MANATEE COUNTY COMPREHENSIVE PLAN CHART 605

	REZONE AND OD PLAN	SPECIAL PERMIT	PREL. PLAN	PREL. PLAT	FINAL SITE	ADM. PERMIT	FINAL PLAT	BLDG. PERMIT	EARTH/ MOVING CO
A. Mixed and multi-use projects in residential, agricultural, urban fringe, low intensity office, and retail/office residential categories:	X	X	X		X				
B. Residential developments at or above a specified density in the Comprehensive Plan which require Special Approval(5)	X								
C. Non-residential developments exceeding 30,000 square feet of gross building area, located in residential (FLU) category. Residential support uses shall be exempt from this requirement. (5)	X								
D. All projects in the mixed use future land use categories (5)	X							X	
E. Any project which requires Preliminary Site Plan/plat approval which is at least partially located in the Manatee Watershed Reservoir Overlay category. (5)(7)	X								
F. Any project which requires Preliminary Site Plan/Plat Approval which is at least partially located in the Evers Watershed Reservoir Overlay category. (5)(7)	X								
G. Any project at least partially located in the Coastal High Hazard category which requires Preliminary Site Plan/Plat Approval except a project located on land owned, leased or operated by the Manatee County Port Authority: (1)(5)(6)(7)	X	X							
H. Any project involving noise-sensitive uses within the Sarasota-Bradenton Airport's Airport Impact Overlay category: See Section 604.5.2 and 604.5.3 of this Code									
I. Any project in which density is transferred from part of a wetland site to another part of the same project site (1)(2)	X	X	X	X	X	X	X		
J. Any project involving the siting of marina-type uses	X								
K. All new recreational vehicle parks. Must rezone to CRV.			X						

ATTACHMENT 3

Policy: 2.6.1.2 Require the use of planned unit development, in conjunction with the mitigation techniques described in policy 2.6.1.1, for projects where project size requires the submittal of a site development plan in conformance with the special approval process in order to achieve compatibility between these large projects and adjacent existing and future land uses.

Implementation Mechanism:

- (a) Land development regulations consistent with this policy.

Policy: 2.6.1.3 Require appropriate limits on net residential density to achieve compatibility between adjacent residential land uses. Limits on net density may reduce net density on a project, or part thereof, into less than the maximum net density associated with the future land use category or categories on the project site (see also policy 2.6.1.1).

Objective: 2.6.2 **Residential Compatibility/transition:** Residential uses compatible with adjacent residential and nonresidential uses.

Policy: 2.6.2.1 Limit location of new residential development and residential support uses adjacent to intensive and incompatible agricultural operations.

Implementation Mechanism(s):

- (a) Planning Department review of proposed rezones and appropriate site plans submitted for new residential development adjacent to existing agricultural operations or to Ag/R Future Land Use Category for consistency with this policy and with policy 2.6.1.1.
- (b) Planning Department review of residential support uses for consistency with policy 2.6.1.1. [See policy 2.13.2.1]

Policy: 2.6.2.2 Prohibit residential development in industrial future land use categories except for single family homes on lots of record in the IL Future Land Use Category.

Implementation Mechanism:

- (a) Land development regulations consistent with this policy.

Policy: 2.6.2.3 Require new residential development within the Airport Impact Overlay District to meet adopted noise attenuation requirements for any proposed residential uses which may be impacted by aircraft noise.

Implementation Mechanism:

- (a) Implementation of Policy 5.11.1.3 of the Transportation Element.

Policy: 2.6.2.4 Limit residential development in areas that are subject to excessive odor to those that meet the compatibility requirements of policy 2.6.1.1.

Policy: 2.6.2.5 Prohibit the development of attached dwelling units within existing neighborhoods consisting of detached dwelling units except upon a finding by the Board of County Commissioners that the development is consistent with the welfare of the community. Welfare of the community shall include provision of low- and moderate- income housing, and appropriately priced housing for the employees of nearby businesses.

Implementation Mechanism(s):

- (a) Planning Department review of all proposed attached residential dwellings for compliance with this policy.
- (b) Implementation of policy 2.6.1.1 to mitigate any potential incompatibilities.

ATTACHMENT 4

- Policy: 2.12.1.1 Consider establishment of a North County Gateway Future Land Use Overlay with appropriate boundaries, in 2004.
- Policy: 2.12.1.2 Conduct an evaluation of needed transportation corridors, with particular emphasis on access to and from Port Manatee to meet the needs of commerce and trade to maintain the time travel between Port Manatee and I-75.
- Policy: 2.12.1.3 Evaluate the existing future Land Use designations within the North County Gateway, to reduce the potential for nuisance complaints and incompatible uses.
- Policy: 2.12.1.4 Consider the establishment of a Port Manatee Overlay District in the Manatee County Land Development Code.
- GOAL: 2.13 **School Sites Consistent with Growth and Development Patterns and the Availability of Public Facilities.**
- Objective: 2.13.1 **Compatibility Requirements:** Provide for Compatibility of Adjacent Uses With Existing and Proposed Schools.
- Policy: 2.13.1.1 Prohibit the designation of new IH land adjacent to any existing or proposed school site unless such adjacency is interrupted by significant natural or manmade buffers such as waterbodies, wetland systems, or major arterial roadways.
- Implementation Mechanism:
- (a) School Board participation during the development review process.

Policy: 2.13.1.2

Prohibit new schools in the Recreation/Open Space (R/OS) Future Land Use Category unless approved in conjunction with adjacent public recreation facilities for which the school facilities are an integral part.

Implementation Mechanism:

- (a) Coordination among the Planning Department, Parks and Recreation Department and School Board.

Policy: 2.13.1.3

New and proposed school sites shall be compatible with existing or anticipated uses on adjacent properties based upon the type of school, i.e., elementary, middle, or high school or school of special education, and the type of school facilities proposed for the site.

Implementation Mechanism:

- (a) Ensure compatibility of the proposed school site with adjacent uses or anticipated uses through the development review process.

Policy: 2.13.1.4

Environmental concerns and traffic patterns shall be considered during school site selection to ensure compatibility with on site and adjacent natural features and the health and safety of students and local motorists.

Implementation Mechanism:

- (a) Ensure compliance with this policy through the development review process.

Policy: 2.13.1.5

Proposed development within the area adjacent to any school site shall be compatible with existing or proposed schools.

Implementation Mechanism:

- (a) Ensure compatibility of the proposed development with school sites through the development review process.

Objective: 2.13.2

School Locational Criteria: Locate schools concurrent with development and the provision of public facilities. (Refer to Objective 11.1.5 and associated policies.)

Policy: 2.13.2.1

Allow schools in the Urban Fringe-3 and Agricultural/Rural Future Land Use Categories only in areas where residential development has created demand or is projected to create demand within a reasonable planning timeframe. [See policies of Obj 2.6.1.]

Implementation Mechanism(s):

- (a) Planning Department review of the School Board General Educational Facilities Report on a yearly basis to ensure policy compliance.
- (b) Participation in site development pre-application meetings prior to School Board property acquisition.

Policy: 2.13.2.2

New and proposed schools shall locate in areas where adequate public facilities, e.g., roads; potable water and sanitary sewer, exist or where adequate facilities are budgeted for in the appropriate Capital Improvements Program, except in cases of overriding public interest, as determined by the Board of County Commissioners or where any entity installs or constructs the necessary public facilities in conjunction with the construction of the school.

Implementation Mechanism:

- (a) Ensure adequate public facilities for the proposed school site are in place at the time of use of the school through the development review process..

Policy: 2.13.2.3

Coordinate with the School Board on large residential project reviews to consider school site dedication to meet new and future educational demands.

Implementation Mechanism(s):

- (a) Planning Department coordination through the development review process.
- (b) Planning Department cooperation with the School Board in efforts to study and implement innovative methods to address the educational infrastructure needs.