

NOVEMBER 3, 2011

The Board of County Commissioners, Manatee County, Florida, met in REGULAR SESSION in the Administrative Center, 1112 Manatee Avenue West, Bradenton, Florida, at 9:00 a.m.

Present were Commissioners:

Carol Whitmore, Chairman
John R. Chappie, First Vice-Chairman
Lawrence E. Bustle, Jr., Second Vice-Chairman
Michael Gallen, Third Vice-Chairman
Robin DiSabatino
Donna Hayes
Joe McClash

Also present were:

Sarah Schenk, Deputy County Attorney
Susan G. Romine, Board Records Director,
representing R. B. Shore, Clerk of Circuit Court

All witnesses and staff giving testimony were duly sworn.

AGENDA

Agenda of November 3, 2011, and agenda update memorandums.

[BC20111103DOC001](#)

COUNTY ATTORNEY SELECTION PROCESS

Tedd Williams, Jr., County Attorney, reviewed proposed procedure designed by the Screening Committee (Tedd Williams, Ed Hunzeker, County Administrator, and attorneys Caleb Grimes, Cliff Walters, and Chip Rice) for selection of a new County Attorney. Advertisements will be placed in the *Florida Bar News*, Manatee and Sarasota County Bar Associations, the Florida Association of County Attorneys, and the Manatee County Government websites. The Committee will receive applications until December 15, 2011, and Mr. Williams will screen the applications for basic qualifications. Remaining applications will be submitted to the Committee on January 4, 2012, for selection of the top ten. The Committee will meet with the top ten candidates and recommend three to five for the Board to interview. He recommended that Board members meet privately with each candidate in February. A public meeting would follow to interview the remaining applicants and vote for the candidate. Negotiations with the selected candidate would follow and include the Chairman and the County Attorney.

Discussion: In-house attorneys may apply; disagreement with the selected Screening Committee members; local attorneys who have been in opposition on past issues may appear as a conflict; perception of the public; etc.

Motion - Failed

Motion was made by Mr. McClash to accept the recommendation on the agenda memorandum with the exclusion of the three attorneys on the Committee and substitute R. B. Shore. The Committee would consist of Tedd Williams, Ed Hunzeker, and R. B. Shore. The motion was seconded by Mrs. DiSabatino.

Discussion: Opposed to local private attorneys deciding who would be the County Attorney; concern regarding the process and public perception; may be a conflict of interest; requested a larger pool of candidates for Board review; legality of the motion; etc.

Motion - Call the Question

Motion was made by Mr. Bustle and seconded by Mr. Gallen to Call the Question. The motion carried 4 to 3 with Mrs. DiSabatino, Mr. Gallen, and Mr. McClash voting nay.

Chairman Ruling

Ms. Whitmore ruled that Manatee County only goes under *Robert's Rules of Order* when Board policies do not address an issue.

Mr. Williams explained the Board can resort to *Robert's Rules of Order* at the Chairman's direction when Board procedures do not cover a situation. Board procedures do not cover the situation when there is a motion to Call the Question.

Mr. McClash disagreed with the Chairman's ruling and noted *Robert's Rules of Order* does not allow for the situation to prevent discussion.

The vote upholding the Chairman's ruling carried 4 to 3, with Mr. Bustle, Mrs. DiSabatino, and Mr. McClash voting nay.

Vote - Motion

The motion **failed** 3 to 4, with Mr. Bustle, Mr. Chappie, Mrs. Hayes, and Ms. Whitmore voting nay.

Motion was made by Mrs. DiSabatino to approve the agenda memorandum recommendation and include that the Board of County Commissioners receive information on all of the qualified candidates. The motion was seconded by Mr. Chappie.

Mr. McClash moved to amend the motion to recommend we have no committee and see all the applicants that are qualified. Motion was seconded by Mr. Gallen. The amended motion **failed** 3 to 4, with Mr. Bustle, Mr. Chappie, Mrs. Hayes, and Ms. Whitmore voting nay.

Mr. Gallen requested a friendly amendment to the motion to add R. B. Shore to the Committee and delete one of the attorneys (Chip Rice). Mrs. DiSabatino agreed.

Discussion: Committee to submit all qualified applicants and the recommended top five candidates; friendly amendment is incorrect; changing the composition of the Committee may change the process; community perception is important; legality of motion; etc.

Mr. Williams responded that the motions are legal and noted that any Board member can dispute the recommended process.

Following discussion, the amended motion carried 6 to 1, with Mr. Bustle voting nay.

[BC20111103DOC002](#)

CONSENT AGENDA

Motion was made by Mrs. DiSabatino, seconded by Mr. Chappie, and carried 7 to 0, to approve the Consent Agenda incorporating the language in the recommended motions in the agenda memoranda (as may have been amended in the supplemental agenda). Items APPROVED:

CLERK'S CONSENT CALENDAR

[BC20111103DOC003](#)

REFUNDS

LWR Commercial Realty LLC - Overpayment \$3,800.00

WARRANT LIST

October 25, 2011, through November 2, 2011 [BC20111103DOC004](#)

MINUTES

September 20, 2011 [BC20111103DOC006](#)

ACCEPT

Southwest Florida Water Management District - Five-year Water Resource Development Work Program. [BC20111103DOC007](#)

Contract Documents (Pursuant to Manatee County Code, Chapter 2-26):

1. **Satellite Lift Stations - 2010 Emergency Generators - Group 4 - Contract**

Adjustment 1 to Agreement with Zabatt, Inc.; increase of \$5,400, adjusted total \$330,748. [BC20111103DOC008](#)

2. **26th Avenue Fuel Island Rehabilitation** - Change Order 1 (final) to Contract with C&S Technical Resources, Inc.; decrease of \$13,880, adjusted total \$113,555; and an additional 30 calendar days for a final completion date of August 8, 2011. [BC20111103DOC009](#)

3. **Bradenton Convention and Visitors Bureau** - Addendum Five to Agreement with Hayworth Creative Public Relations extending the agreement three months (10/1/11-12/31/11). [BC20111103DOC010](#)

4. **Bradenton Convention and Visitors Bureau - Professional Website Services** - Addendum Six to Agreement with Miles Media Group, Inc., extending the agreement three months (10/1/11-12/31/11). [BC20111103DOC011](#)

5. **Employee Health Insurance Evaluations** - Addendum Three to Agreement with AON Hewitt expanding Professional Consulting Services (attachments "A" - Scope of Services, and "B" - Payment for Services) effective October 1, 2011 to September 30, 2012, and not to exceed \$80,000. [BC20111103DOC012](#)

6. **Geotechnical Engineering and Soil and Material Testing** - Addendum Four to Agreements with Ardaman and Associates, Inc., Driggers Engineering, Inc., Dunkelberger Engineering & Testing, Inc., HSA Engineers & Scientists, Inc., and Universal Engineering, Inc., extending the agreements one year (12/18/11-12/17/12). [BC20111103DOC013](#)

7. **Geotechnical Engineering and Soil Material Testing** - Addendum Five to Agreement with KCI Technologies, Inc., extending the agreement one year (12/18/11-12/17/12). [BC20111103DOC014](#)

(End Consent Agenda)

LOCAL DEVELOPMENT AGREEMENT

Public hearing (Notices published) was held to consider

LDA-11-01 - PDR-06-34(Z)(P) PADDOCKS LAND VENTURE/THE PADDOCKS

Request for approval of LDA-11-01 relating to the Paddocks project, approved as PDR-06-34(Z)(P); providing for the applicant's construction of improvements at the intersection of Ellenton-Gillette Road and Mendoza Road; providing for the approval of an extended Certificate of Level of Service Compliance for public facilities for the Project; and providing for the extension of the Preliminary Site Plan approved for the Project. The Project is located on an 82.04 acre parcel of property located in Manatee County, generally bounded by 37th Street East (aka Mendoza Road) on the north, Ellenton-Gillette Road on the east, 29th Street East on the south, and the Seaboard Coast Line Railroad on the west. Through prior approvals, the Project has been approved for a maximum of two hundred sixty-four (264) residential units, consisting of forty-eight (48) lots for single-family detached residences, one hundred four (104) single-family residences on a single parcel, and one hundred twelve (112) multifamily units with at least twenty-six (26) of the units designated as workforce housing. The Project is approved with a maximum height of thirty-five (35) feet for all uses.

Planning Commission recommended APPROVAL.

Based upon the evidence presented, comments made at the public hearing, the action of the Planning Commission, and finding the request to be CONSISTENT with the Manatee County Comprehensive Plan and the Manatee County Land Development Code, Mrs. DiSabatino moved to approve **LDA-11-01** for The Paddocks Subdivision, as recommended by staff. The motion was seconded by Mr. Bustle and carried 7 to 0. [BC20111103DOC015](#)

ZONING

Public hearing (Notices published) was held to consider

PDMU-05-19(G)(R4) - NORTHWEST SECTOR

An Ordinance of the Board of County Commissioners of Manatee County, Florida, amending and restating Ordinance PDMU-05-19(Z)(G)(R), PDMU-05-19(Z)(G)(R2) and PDMU-05-19(G)(R3) to amend the General Development Plan to:

BCC MB 48/4347

- Reallocate single-family units among parcels;
- Add residential support as a use;
- Modify dimensional criteria;
- Allow design flexibility by revising restrictions on land use and design criteria;
- Amend stipulations to facilitate these changes;
- Update the phasing table to reflect legislatively approved extensions;

subject to stipulations as conditions of approval; providing for definitions; providing for findings of fact; providing a legal description; and providing an effective date. The project is generally east of Lakewood Ranch Boulevard, south of 44th Avenue East extension, west of Lorraine Road, and north of S.R. 70. A 39.3 acre parcel is west of Lakewood Ranch Boulevard (1,518.9 acres).

Planning Commission recommended APPROVAL.

Based upon the staff report, evidence presented, comments made at the public hearing, the action of the Planning Commission, and finding the request to be CONSISTENT with the Manatee County Comprehensive Plan and the Manatee County Land Development Code, as conditioned herein, Mr. Bustle moved to APPROVE Manatee County Zoning Ordinance **PDMU-05-19(G)(R4)**; as recommended by the Planning Commission. The motion was seconded by Mrs. Hayes and carried 7 to 0. [BC20111103DOC016](#)

Public hearing (Notices published) was held to consider

PDMU-05-09(P)(R2) - CENTRAL PARK

An Ordinance of the Board of County Commissioners of Manatee County, Florida, approving an amended Zoning Ordinance and revised Preliminary Site Plan by amending the following:

- Increase the residential units from 800 to 826;
- Allow residential support uses;
- Modify commercial parcels boundaries;
- Reallocate commercial square footage;
- Modify dimensional criteria;
- Allow design flexibility by removing restrictions on land uses and design criteria;
- Amend the Ordinance definitions, conditions, and terminology to reflect the above changes;

subject to stipulations as conditions of approval; setting forth findings; providing a legal description; providing for severability, and providing an effective date. The site is generally located east of Lakewood Ranch Boulevard, south of 44th Avenue East, north of Malachite Drive and west of Pope Road, Bradenton (372 acres).

Planning Commission recommended APPROVAL.

Based upon the staff report, evidence presented, comments made at the public hearing, the action of the Planning Commission, and finding the request to be CONSISTENT with the Manatee County Comprehensive Plan and the Manatee County Land Development Code, as conditioned herein, Mrs. Hayes moved to ADOPT Manatee County Zoning Ordinance **PDMU-05-09(P)(R2)**; for a project that previously granted Special Approval for: 1) a mixed use project in the UF-3 Future Land Use Category; 2) exceeding 1 dwelling unit per acre in the UF-3 Future Land Use Category; 3) exceeding 30,000 square feet of non-residential uses; and 4) partially in the Evers Watershed, as recommended by the Planning Commission. The motion was seconded by Mrs. DiSabatino and carried 7 to 0. [BC20111103D0C017](#)

Public hearing (Notices published) was held to consider

PDR-04-01(P)(R) – RIVER’S REACH (fka WATER’S EDGE)

An Ordinance of the Board of County Commissioners of Manatee County, Florida, amending Ordinance PDR-04-01(P) and the Preliminary Site Plan for the River’s Reach Subdivision to:

1. Increase the number of single-family residential lots from 257 to 326 (69 additional lots),
2. Modify the overall gross density from 1.03 dwelling units per acre to 1.31 dwelling units per acre,
3. Modify Phase 1 lot sizes from 80 feet wide to a minimum of 52 feet and modify the front and side yard setbacks;
4. Relocate existing recreational amenities in Phase 2; and
5. Change existing stipulations to reflect the above, update departmental references, and reflect current standards.

The River’s Reach Subdivision (249.17 acres) is within the PDR/NCO (Planned Development Residential/North Central Overly) zoning district. The site is north of the Manatee River on the west side of North Rye Road, in Parrish; subject to stipulations as conditions of approval; setting forth findings; providing a legal description; providing for severability, and providing an effective date.

Planning Commission recommended APPROVAL with Stipulations.

Discussion: Outstanding tax deeds; property owners should pay tax; etc.

Lisa Barrett, Building and Development Services Department, stated the properties with outstanding Tax Deeds are in Phase II, which has been platted. The majority of the proposed changes are in Phase I.

Pat Neal, applicant, stated meetings have been held with bondholders to review lot configurations. The western phase included homes that sold from \$500,000-\$800,000 in 2004-2006, which is no longer feasible. This application is to reconfigure the eastern portion of the community with smaller, sellable homes.

Based upon the staff report, evidence presented, comments made at the public hearing, the action of the Planning Commission, and finding the request to be CONSISTENT with the Manatee County Comprehensive Plan and the Manatee County Land Development Code, as conditioned herein, Mrs. Hayes moved to ADOPT Manatee County Zoning Ordinance **PDR-04-01(P)(R)**, APPROVE the revised Preliminary Site Plan with Stipulations A.1-19, B.1-14, C.1-12, D.1-2, and E.1-3; GRANT Special Approval for a project: 1) within the Coastal Evacuation Area Overlay District; 2) adjacent to a perennial stream; 3) partially within the Coastal High Hazard Area; and 4) for a density exceeding 1 dwelling unit per acre in the UF-3 Future Land Use Category; ADOPT the findings for Specific Approval; and GRANT Specific Approval for an alternative to LDC Sections 712.2.8, 714.8.7, and 604.10.3.5 of the Land Development Code, as recommended by the Planning Commission. The motion was seconded by Mrs. DiSabatino and carried 7 to 0.

[BC20111103DOC018](#)

Public hearing (Notices published) was held to consider

EPMP-11-01 – UNGARELLI – ENVIRONMENTAL PRESERVE MANAGEMENT PLAN

Request: Approval of an Environmental Preserve Management Plan for a Passive Recreational Park in the RES-6 Future Land Use Category. The site is on the west side of Palma Sola Boulevard, approximately 363 feet north of Cortez Road West and 290 feet south of 37th Avenue Circle West, at 4000 Palma Sola Boulevard, Bradenton (35.0 acres).

and

R-11-233 A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, APPROVING AN ENVIRONMENTAL PRESERVE MANAGEMENT PLAN

FOR A PASSIVE RECREATIONAL PARK IN THE RES-6 FUTURE LAND USE CATEGORY. THE SITE IS ON THE WEST SIDE OF PALMA SOLA BOULEVARD, APPROXIMATELY 363 FEET NORTH OF CORTEZ ROAD WEST AND 290 FEET SOUTH OF 37TH AVENUE CIRCLE WEST, AT 4000 PALMA SOLA BOULEVARD, BRADENTON (35.0 ACRES).

Following discussion, Ms. Barrett noted that pursuant to Section 517 of the Land Development Code, an Environmental Preserve Management Plan approved by the Board is required.

Based upon the staff report, evidence presented, comments made at the public hearing, the action of the Planning Commission, and finding the request to be CONSISTENT with the Manatee County Comprehensive Plan and the Manatee County Land Development Code, as conditioned herein, Mr. Chappie moved to ADOPT EPMP-11-01 (Resolution R-11-233) and GRANT Special Approval for a project adjacent to a perennial stream, in the Coastal Evacuation Area and Coastal High Hazard Area, as recommended by staff. The motion was seconded by Mrs. Hayes and carried 7 to 0.

[BC20111103DOC019](#)

LAND DEVELOPMENT CODE

Public hearing (continued from 10/6/11) was held to consider

ORDINANCE 11-29

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA; REGARDING LAND DEVELOPMENT; AMENDING THE MANATEE COUNTY LAND DEVELOPMENT CODE (ORDINANCE 90-01, AS AMENDED); REGARDING CHAPTER 2, DEFINITIONS OF **REDEVELOPMENT AND VETERINARY CLINIC**; AMENDING SECTION 704.66 REGARDING **LOT DIMENSIONS OF SERVICE STATIONS AND OTHER GAS PUMP LOCATIONS**; AMENDING OTHER PROVISIONS AS NECESSARY FOR INTERNAL CONSISTENCY; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Planning Commission recommended ADOPTION.

Robert Schmitt, Building and Development Services Department, reviewed the definition of **redevelopment** of vacant buildings.

Discussion: Veterinarians agree with the changes; distance of driveways from an intersection; change in Comprehensive Plan for agriculture lands and barking dogs; Land Development Code (LDC) requirement regarding minimum distance from intersection; review road standards; etc.

Ms. Barrett noted Section 711 of the LDC provides the provision for the minimum distance from intersections for compliance. She read the requirements.

Tom Gerstenberger, Public Works Department, discussed revisions to the Public Works Standards. Since the LDC amendment may take longer than expected, Public Works will move forward with updating the Standards, which includes driveway access points and intersections. He will provide the conflicts between LDC and Public Works Standards in a memorandum to Board members.

Mr. Schmitt cautioned the Board not to confuse veterinary clinics with kennels, as there is no change with respect to kennels.

Dr. Wally Dabasinkas, veterinarian, supported the amendments to the LDC.

Based upon the staff report, evidence presented, comments made at the public hearing, the action of the Planning Commission, and finding the request to be CONSISTENT with the Manatee County Comprehensive Plan, Mr. Gallen moved to ADOPT Manatee County Ordinance **11-29**, amending the Manatee County Land Development Code (Ordinance 90-01, as amended) as recommended by the Planning Commission. The motion was seconded by Mrs. DiSabatino and carried 7 to 0.

[BC20111103DOC020](#)

ZONING

Public hearing (continued from 10/6/11) was opened to consider

PDR-11-03(Z)(P) SHUNN-SHION CHUNG/SPRINGFIELD SUBDIVISION

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, REGARDING LAND DEVELOPMENT, AMENDING THE OFFICIAL ZONING ATLAS (ORDINANCE 90-01, THE MANATEE COUNTY LAND DEVELOPMENT CODE), RELATING TO ZONING WITHIN THE UNINCORPORATED AREA; PROVIDING FOR A REZONE OF 11.91 ACRES ON THE NORTH SIDE OF 25TH STREET EAST (LYNTNOR ROAD), APPROXIMATELY 2,380 FEET EAST OF 80TH AVENUE EAST (ROYAL PALM WAY), PARRISH FROM THE A/NCO TO THE PDR/NCO ZONING DISTRICT, RETAINING THE NORTH CENTRAL OVERLAY DISTRICT; AND APPROVAL OF A PRELIMINARY SITE PLAN FOR 26 SINGLE-FAMILY DETACHED RESIDENCES; SUBJECT TO STIPULATIONS AS CONDITIONS OF APPROVAL; SETTING FORTH FINDINGS; PROVIDING A LEGAL DESCRIPTION; PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.

Planning Commission recommended APPROVAL with Stipulations.

Katie LaBarr, Building and Development Services Department, reviewed the rezone request with a preliminary site plan for 19 single-family homes, reduced from 26 single-family homes.

Patricia Petruff, representing the applicant, used visuals, site plans, and aerial maps to review the request for 19 units. The road network is substantially the same with a shortened cul-de-sac due to larger lots. The interneighborhood tie to Parkwood Lakes is included as it is an LDC requirement; however the Board has the authority to waive the tie. There is no objection to an emergency access only, or removal of same. The design places larger lots adjacent to 25th Street East, stormwater retention is next to the 11-acre parcel to provide a greater buffer, and dry retention is to the east, next to the vacant 5-acre site. The property will be in compliance at 19 units (1.6 dwelling units per acre), and no Special Approvals are required under the Comprehensive Plan. Surrounding land uses and zoning were reviewed, as well as development in the area, and comparisons to approved densities in similar locations.

Ms. Petruff stated the RES-3 Future Land Use (FLU) Category in the Comprehensive Plan, includes short-term agricultural uses and even though the property is zoned A, in her opinion the Comprehensive Plan does not allow the full range of permitted uses in the A zoning district. Short-term agricultural uses are projected to transition to urban and suburban development and will be subjected to standards to ensure there are no adverse impacts. The property is constrained and PDR zoning better conforms to the RES-3 FLU Category. Properties to the north and south are zoned RES-3 and have the UF-3 FLUC since 1989. The 1.6 dwelling units per acre in RES-3 is low density. Surrounding zoning, density, and approved development was reviewed, and the Springfield project was compatible. Infrastructure in the area includes Ft. Hamer Park and a proposed bridge over the Manatee River. The DaySpring Conference Center, with overnight accommodations, adds traffic. Roadway problems at U.S. 301 intersections need to be addressed by the Public Works Department for concurrency.

Ms. LaBarr referred to FLU and Zoning maps, as well as slides, to review the request. A neighborhood meeting was held on August 24, 2011, where the applicant presented a revised site plan, which was not well received. Residents of 25th Street East voiced concern regarding the proposed density and want it lowered. Review of the new site plan indicated: (1) reduced density from 23 to 19 [1.6 dwelling units per acre]; (2) dry retention shifted to the east for additional buffering; (3) the stormwater facility was located to the west to provide additional separation from the adjacent existing agricultural property; and (4) the roadway buffer along 25th Street East was reduced from 50 feet to 20 feet as 25th Street East is a local road, not a thoroughfare. Reduction of the roadway buffer allows for the larger lots, which preserves and enhances the recreational area.

Discussion: Eliminate neighborhood tie; 25th Street East residents requested .5 dwelling units per acre for the entire project; neighborhood connectivity is an LDC issue; preserve unique area and character of the community; Parkwood Lakes residents and fire district comments regarding tie in; DaySpring is not used as a hotel, it is in a tranquil setting with low impact to the neighborhood; staff was requested to review this unique area; most surrounding development was approved before the North Central Overlay (NCO); intent of the NCO was to provide for enhanced buffering to improve compatibility, not to resolve density issues; emergency only access; fire district prefers a paved, gated, emergency access; access would improve response time to Springfield residents; access onto Old Tampa Road; safety and traffic issues; this area is old Florida; if approved this will open the area for more change; closest fire station is North River; etc.

Dick Eckenrod, Ann Lyon (submitted aerial map), **Fred Waldman, Kerry Penta, Jan Bocchino** (submitted aerial map), **Richard Renner, Patrick O'Keefe, Elista Gerace, Geri Finch, Judy Katz, Bill Chilopecki, and Joe Gerace**, residents of Parkwood Lakes and 25th Street East, opposed the project citing: the proposed development is not consistent with purpose and intent of the NCO; currently the density on the north side of 25th Street East is .27 du/acre; residents walk/jog through the area; elimination of interneighborhood tie to Parkwood Lakes due to increased traffic; inconsistency and incompatibility; safety/traffic issues at 88th Avenue East and the "S" curve to U.S. 301; and property values.

Charles Haynes, representing Parkwood Lakes and 25th Street East homeowners, spoke of transitioning and noted the 25th Street East residents have made this neighborhood their home and community, as well as paid for paving the road. This is a rural, residential neighborhood, zoned Agricultural. Parkwood Lakes residents oppose the neighborhood tie, and 25th Street East is not designed for additional traffic or commercial use. This will set precedent for the area and the infrastructure. Considering the characteristics of this neighborhood the reality should be .27 dwelling units per acre. He requested maintaining the rural, residential nature of the area.

Ms. LaBarr referred to a letter dated September 28, 2011, from the North River Fire District indicating no objection to the project as proposed. The request complies with the Comprehensive Plan and the Land Development Code with no Specific or Special Approvals, and staff recommended approval.

Ms. Petruff reiterated agreement with eliminating the interneighborhood tie or providing an emergency access, and noted the concerns regarding density. Residents of 25th Street East request .5 dwelling units per acre based on the Bayou Point Estates property, which had development constraints and included a noncontiguous property on the Manatee River. She requested consideration of surrounding development along 25th Street East as well as past project approvals in similar areas with the same type of uniqueness. There are a variety of lot sizes along 25th Street East, and the entire area needs review with comparable areas. This project meets the purpose and standards of the NCO and will not interrupt the tranquil setting. DaySpring is a significant addition to the area, which has grown since 1982 and has an impact on the area. Old Tampa Road is a boundary. In 1982 the Board approved River Wilderness Phase I and numerous subdivisions and PDR projects between 80th Street and Old Tampa Road since that time. The Board has the authority to change the vision of this area; however, this project meets the current vision and would not set a precedence. She requested consideration and Board direction with regard to density and access.

Discussion: Fire station location; support emergency connection; community meeting; density; continuance; issues not resolved; continuous issue for the residents; etc.

Motion was made by Mr. McClash to deny Zoning Ordinance **PDR-11-03(Z)(P)**. The motion was seconded by Mrs. DiSabatino.

Discussion: Reach a compromise; emergency access only; landscaping to preserve the appearance of the community; defer sidewalks, density of one dwelling unit per acre as a compromise; preserve the rights of all concerned; etc.

Motion - Amended

Mr. Bustle moved to amend the motion for Zoning Ordinance **PDR-11-03(Z)(P)** to change the requested density from 1.6 to 1.0, to defer the sidewalks, to make the gate emergency only, and to take a hard look at the landscaping that would be installed along 25th Street so that it would, to the extent possible, preserve the appearance of 25th Street. Motion to amend was seconded by Mrs. Hayes.

(Gavel to Mr. Chappie, presiding)

Ms. Whitmore moved to continue **PDR-11-03(Z)(P)** to the next land use meeting (12/1/11). There being no second, the motion **died**.

(Gavel to Ms. Whitmore, presiding)

Ms. Schenk noted the first motion was to deny and therefore it cannot be amended. Staff should review the motion to amend to “fine tune” it (stipulations). She suggested voting on the motion to deny.

Discussion: Mr. McClash considered this a hostile motion; etc.

Ms. Schenk explained it would be acceptable to amend a motion if the first motion was to approve the plan with Stipulations and the amendment was to approve the plan with different Stipulations; however, it is difficult since the first motion was to deny the request.

Discussion: An amendment can change a motion completely; vote on the motion to deny; Chairman should rule on the motion on the floor; etc.

Chairman’s Ruling

Ms. Whitmore ruled the motion on the floor (amendment) was not appropriate.

Mr. Bustle indicated his amendment to the motion is appropriate.

Amended Motion - Clarified

Ms. Schenk read corrected language for the amended motion, as follows:

Based upon the staff report, evidence presented, comments made at the public hearing, the action of the Planning Commission, and finding the request, as amended, to be CONSISTENT with the Manatee County Comprehensive Plan and the Manatee County Land Development Code, as conditioned herein, Mr. Bustle moved to ADOPT Zoning Ordinance **PDR-11-03(Z)(P)** with the following modifications.....

Ms. Schenk requested staff to read the stipulations.

Ms. Barrett stated there would be additional stipulations.

Discussion: Point of order; the amended motion is not on the floor; recess meeting for legal counsel review; etc.

Recess/Reconvene. All members present.

Mr. Williams indicated there was a motion to deny the preliminary site plan proposed by the applicant, and a motion to amend that motion to approve the request with certain stipulations. The question is whether the motion to amend was a proper motion in that

context. Under the *Rules of Procedure*, Rule 5.2.1 “When a motion is presented and seconded it is under consideration and no other motion shall be received thereafter except to amend, to adjourn, to lay on the table, to continue, or defer to a date uncertain;” therefore, the motion to amend is proper. Under *Roberts Rule of Order* a motion to amend can be hostile to the main motion.

Ms. Schenk stated if the amended motion passed, the applicant would have to submit a new site plan showing 12 lots, and staff would have to prepare special Stipulations; therefore, she suggested continuance to December 1, 2011.

Chairman’s Ruling – Withdrawn

Ms. Whitmore withdrew her ruling that the amended motion was not appropriate.

Motion to Amend Withdrawn/Motion to Continue

In view of peculiarities of the land use process, Mr. Bustle **withdrew** his motion to amend and moved to continue Zoning Ordinance PDR-11-03(Z)(P) until the December 1, 2011, Board meeting for staff to review the alternate process. The motion was seconded by Mrs. Hayes.

Discussion: No direction to staff or the applicant; consider one unit or less per acre; deny the request and applicant can submit a new plan; disagreement on emergency access; protecting the community character; review width of 80th Street before adding traffic; safety issues; review entire 25th Street East area so there is no precedence and establish guidelines; etc.

Ms. Schenk suggested disposal of the quasi-judicial motion if this is continued to December 1, 2011, and requested the applicant be given clear direction regarding submittal of a new site plan with reduced density.

Discussion: Residents vision of solitude and quiet should be supported; delaying issue will not change the decision; traffic/safety concerns; efforts by the applicant; project will open the opportunity to other developers; one dwelling unit per acre would total 12 units; Ms. Petruff should meet with the residents in the neighborhood; etc.

(Gavel to Mr. Chappie, presiding)

Motion – Call the Question

Motion was made by Mrs. Whitmore to call the question. The motion was seconded by Mr. Bustle and carried 7 to 0.

(Gavel to Ms. Whitmore, presiding)

Motion – Carried

Following discussion, the motion to continue the public hearing on Zoning Ordinance **PDR-11-03(Z)(P)** to December 1, 2011, at 9:00 a.m. (time certain) carried 4 to 3, with Mrs. DiSabatino, Mr. Gallen, and Mr. McClash voting nay.

Mr. McClash recommended that the County Attorney and staff work with the 25th Street East community and bring something back to the Board. He requested direction on moving forward with an effort to maintain the community.

John Osborne, County Planning and Zoning Official, recommended a community planning effort; however, noted the lack of funded positions to conduct the work. He suggested working with the citizens to review a Future Land Use Map change. This could be accomplished by a county-initiated effort, but all citizens and individual parcel owners would have to sign affidavits as part of the application package.

Discussion: Overlay or blanket Future Land Use Map change to lower density; future of the area; decision will not affect this project; voluntary effort by citizens to participate; encourage community effort to engage resources and work with County staff; etc.

Mr. McClash moved to initiate a Comprehensive Plan change along 25th Street East to preserve the character of that community as described this date excluding the property before us this date. The motion was seconded by Mrs. DiSabatino and carried 7 to 0.

[BC20111103DOC021](#)

Recess/Reconvene. All members present.

BEARDED CLAM DISPUTE RESOLUTION

Ms. Schenk reviewed the statutory Dispute Resolution proceeding which followed the June 2nd public hearing to amend Zoning Ordinance PDMU-98-03(P)(R) regarding property known as The Bearded Clam. The Board declined the request to modify restrictions of amplified live outdoor music. Mark Bentley, representing The Bearded Clam, filed a request for a Dispute Resolution process, and the County engaged a mediator, Gary Larsen. The mediation session was held September 16, 2011. A representative for the hotel owner, 1187 Upper James of Florida LLC, also participated. A sound expert presented a sound control plan. The Board has a statutory deadline (near the end of this year) to take one of the following proposed mediation actions: (1) Accept the Mediated Settlement Agreement and set for public hearing an ordinance to amend Ordinance 98-03-(P)(R) regarding outdoor live amplified music for property located at 7150 North Tamiami Trail as set forth in the Mediated Settlement Agreement; or (2) Reject the Mediated Settlement Agreement and take no action to amend Ordinance 98-03(P)(R) [no change to stipulation in Zoning Ordinance regarding outdoor live amplified music at 7150 North Tamiami Trail].

Ms. Schenk noted if the Mediated Settlement Agreement is approved, that will trigger another public hearing to amend the Zoning Ordinance regarding the outdoor, live, amplified music in accordance with the applicant's sound control plan, which was based on the expert testimony of the applicant's sound consultant. The County Attorney's Office reviewed the legally enforceable actions and recommended acceptance of the Mediated Settlement Agreement in that it is not a certainty that a court would uphold the existing Stipulation. If invalidated by the Court, the County would be left with no regulation other than the Noise Ordinance.

Mark Bentley, attorney representing The Bearded Clam, indicated they invoked the dispute resolution process with the intent to determine if there is some compromise outside of a public hearing. This is a technical issue of whether the client has the ability to play amplified music outdoors while meeting the County's requirement (per the Noise Ordinance) for generating noise to a residential receiving property line, which is 60 dBA between 7:00 a.m. and 10:00 p.m. Siebein Associates, a highly regarded acoustical firm, conducted an analysis and submitted a sound control plan and report. Conclusion of the analysis indicated, with certain conditions or limitations imposed, the 60 dBA is achievable at on-site measurement locations R1 and R2 and would be less dBAs at several opposing property line locations (R3 and R4). Sound detected with vocalist, guitar and one speaker at The Bearded Clam ranged from 51 to 55 dBA, with higher noise levels from air compressors, U.S. 41 traffic, airplanes, boat draining, and crickets. A sound control plan includes certain technical requirements. The County would have access to the property at any time without notice to review readings.

Jim Minix, Deputy County Attorney, stated Siebein Associates was the consultant used when the Noise Ordinance was prepared and is one of the most respected noise consultants in the State. Upon query, Mr. Minix stated if the mediation settlement passes, this will be the most regulated establishment in the County with respect to noise.

Robert M. Likendey, Siebein Associates, used a slide presentation to review the analysis. He referred to a graph comparing sound levels measured every second at the on-site location and

residential receiver locations during music playing at The Bearded Clam which detected a dog barking and overhead airplane sound over 60 dBA, while the music remained below 60 dBA.

Discussion: Monitoring of sound should be shared; proximity between business and neighbors; residents bought homes knowing restrictions were placed on the establishment; business owners should have abided by Stipulations; monitoring crickets or planes is a snap shot in time; residents are expected to hear music ten hours a day; taking away property rights; business repeatedly violated the Noise Ordinance until an injunction was exercised; etc.

Mr. Likendey explained this is an outside dining area. Comparing location R1 (seating area by the bar) and R4 (residential receiver) at the same time, the R4 sound level was consistently below 55 dBA, and R1 ranged from high 70 to mid 80 dBA. A 70-80 dBA reading is higher than normal background music in a typical restaurant. Sound levels were consistent throughout the entire music period within a range of 50-60 dBA.

Discussion: Most people enjoy quiet in their homes; homeowners bought their homes for a quality of life; maintaining peaceful enjoyment of your property; breach of peace; cold, dry weather increases sound level; illegal structure built in the 1990s; business does not maintain a high quality community; changing rules is not fair, with music every day of the week; etc.

Patricia Petruff, attorney representing surrounding property owners, requested denial of the Mediated Settlement Agreement. There were Stipulations on this property which ran with the land, the owners were aware, and they must abide by those Stipulations. She express concern regarding the noise study and the stage location, which is next to a seawall. Beyond the seawall is property owned by others. Sound measurement is required to be at the property line or at the receiving land. Sound measurements at the R2 location near the seawall were above 60 dBA. She submitted an aerial map (from Property Appraiser's website) of the property showing the irregular boundary and noting the Noise Ordinance should be met at the closest property boundary. The definition of noise states: "...Sound which (a) is or may be harmful or injurious to the health and welfare of a person with normal sensitivities; or (b) significantly interferes with the enjoyment or normal conduct of life, property, or outdoor recreation; or (c) causes noise pollution...." The section on noise disturbance provides a list of 10 items that must be considered. Regarding the duration of ten hours a day, seven days a week, the receiving land is primarily residential, and this agreement would not be approved today in the manner suggested by the mediation settlement. Ms. Petruff indicated, if approved, the settlement is not complete, i.e., the sound control plan Items 1, 4, and 6 are not agreeable due to loopholes, which need clarification. With respect to monitoring, the settlement gives a lot to the business, and the County has limited staff/resources to monitor the sound level continuously. The mediation settlement is not fair to the residents.

Wade Yarchan, Robert Thomas, Tim Rocklein, Mike Holderness (submitted comparable photographs of a 300-foot distance), **Ron Getman**, and **Jim Carlino** voiced opposition stating: the Zoning Ordinance in 1999 provided protection from, at that time, the Holiday Inn; the tiki bar was built illegally in 1998; damaged property values; lack of communication with residents regarding mediation; employee parking; hours of operation for outdoor entertainment; will entertainment be allowed after 10:00 p.m. without amplification; distance from tiki bar to R4 location is 300 feet (15 car lengths); sound bounces off water; impacts to the neighborhood; impeding home values for marketability; Noise Ordinance protection does not allow outdoor amplified music or music after 7:00 p.m.; monitoring site is advantageous to the applicant, not the residents; computer programs are available that allow real time monitoring of up to six sites; no available buffering; and noise affects the quality of life.

Jim Kilroy, Tom Chase, and Charles Holtz spoke in support due to the business creating jobs and providing employment in the area.

Motion was made by Mrs. DiSabatino to reject the Mediated Settlement Agreement and to take no action to amend Ordinance 98-03(P)(R) [no change to stipulation in zoning ordinance regarding outdoor live amplified music at 7150 North Tamiami Trail]. The motion was seconded by Mr. Bustle.

Discussion: Noise restriction runs with the land and should stay in effect; sound magnified across water; nothing precluding this business from still operating; no experiment regarding a different location for the stage; etc.

Upon query regarding the lack of communication with residents, Ms. Schenk noted it took a month to negotiate the agreements at which time information was sent to residents. The citizens were not represented by an attorney; therefore, there was no contact person. Planning and Law Enforcement staffs mediated the hours of operation. Only staff or the applicant can monitor the noise level; therefore, the applicant assumed the expense for the monitoring. Staff can access the records at any time, as well as respond to complaints.

Ms. Schenk explained, if the mediation agreement was accepted, a public hearing would be set to amend the stipulation to adopt the sound plan, and citizens would be notified.

Mr. Likendey stated there is only one functional location for the stage in the confines of the restaurant and seating area. The sound is controlled by the knob and sound absorbing material on the wall could lower the amount of sound; however, a louder volume could be used and sound would meet the same levels at the receiving locations. He referred to an aerial of the restaurant site to display the limitations of relocating the stage. He explained 80 dBA is about four times louder than 60. A normal voice, at a distance of three feet, is about 60 dBA. Music at a 60 dBA level at the stage would never be heard in the seating area over normal voices. Sound levels over the water were 53-54 dBA mixed with distant ambient traffic sounds. Sound levels measured in the neighborhood were in the high 40 dBA range and most were cricket noise.

Discussion: Hours for outdoor music should be compromised as well as the number of days; consider an unbiased noise level monitoring method accurate and reflective of the truth; nothing prevents an offer of settlement by the applicant; the applicant is challenging the County; evaluation of the Noise Ordinance; do not support the hours; etc.

Following discussion, the motion carried 4 to 3, with Mr. Bustle, Mrs. Hayes and Ms. Whitmore voting nay.

[BC20111103DOC022](#)

COMMISSIONERS' COMMENTS

Impact Fees

Mr. McClash noted the value of impact fee credits for land should be based upon the predevelopment value.

Mr. Osborne indicated conversations have taken place with the Financial Management Department on preparing a Land Development Code amendment as well as Impact Fee Ordinance changes to manage the program.

Discussion: Checklist for LDC changes; important from a business perspective; request a report on the status via email; Financial Management Department will prepare a presentation; etc.

[BC20111103DOC023](#)

Housing

Mrs. DiSabatino provided an update on current real estate trends.

[BC20111103DOC023](#)

Port Executive Director Employment Agreement

Mr. Bustle noted he has been working with the Port Attorney and staff regarding an employment contract for the new Port Director. The contract mirrors that of the County Administrator and

the County Attorney. He recommended a thirty percent increase in the salary or \$175,000, and at the end of six months, with acceptable performance, a five percent increase or \$183,000.

Discussion: Discuss privately with applicant; authority to negotiate up to \$191,000; etc.

[BC20111103DOC023](#)

Red Light Running

Mr. Bustle mentioned an article in the *Sarasota Herald Tribune* this date, which noted many cities in surrounding areas that have successful red light running programs, including St. Petersburg. He requested review for the success of the County program.

[BC20111103DOC023](#)

Terra Ceia Overlay

Mr. Bustle discussed the amount of staff work involved on the Terra Ceia Overlay and noted only ten percent of the landowners responded. Some landowners were not aware of the Overlay. He suggested using the same Request for Legal Services guidelines for the 25th Street East overlay discussed earlier in the meeting.

Discussion: Terra Ceia Overlay should come back to the Board; Board should make the determination; protect character of the community; direction to staff; no closure on the issue; several residents want to develop and sell their land; residents were considering legal representation; this will come back to the Board; community agreement was reached with the North County Overlay; overlays provide predictability for developers; codes do not protect small areas with a quality of life issue; sidewalk issues present safety concerns; Future Land Use designation confuses people; etc.

[BC20111103DOC023](#)

Sidewalks/Neighborhood Tie-ins

Mr. Gallen requested sidewalks and neighborhood tie-ins to have administrative flexibility rather than wait for LDC amendments. The Historic Preservation Ordinance gives landowners the opportunity to join in the preservation of their home or property.

[BC20111103DOC023](#)

Ribbon Cuttings

Ms. Whitmore announced ribbon cuttings at Wares Creek, Bennett Park, and Rocky Bluff Library.

[BC20111103DOC023](#)

Holy Cross Church Area

Ms. Whitmore noted a meeting is scheduled with a Home Health Agency and Transit regarding safety issues due to closing Haben Boulevard and the elderly having to cross U.S. 41.

[BC20111103DOC023](#)

Lakewood Gettel Toyota

Ms. Whitmore noted Gettel hired only one local contractor. Staff is reviewing the issue.

[BC20111103DOC023](#)

Palmetto Community Redevelopment Agency

Ms. Whitmore discussed an Interlocal Agreement with the Palmetto Community Redevelopment Area (CRA) regarding the boat ramp. The CRA requested a County contribution of \$800,000 for design and construction.

Discussion: Staff directed to work on project; seek funding from West Coast Inland Navigation District or Florida Boating Improvement funds; County placed a priority on program; etc.

[BC20111103DOC023](#)

South County Community Center

Ms. Whitmore noted an email request for clarification on the RFP process for the South County Community Center to include funding. Mr. Hunzeker responded that staff will work with the CRA on options and bring back to the Board this year.

[BC20111103DOC023](#)

Chickens in Residential Areas

Mr. Chappie stated several constituents inquired about rules and guidelines regarding raising chickens in residential areas.

Discussion: No roosters; City of Holmes Beach voted against; neighbors may not appreciate; more staff required to enforce regulations; pet chickens are the same as a dog or cat; prove it is a health hazard; pit bulls and/or vicious dogs on chains are not illegal; permitted in cities of Sarasota and Palmetto; forbidden in deed restricted communities; decrease in property values; review procedure used by the Cities of Sarasota and Palmetto; etc. [BC20111103DOC023](#)

80th Avenue East (Wellon Ranch Road)

Mr. Chappie requested a staff report as to why the right turn lane was removed from the road plan for U.S. 301 onto 80th Avenue East (Wellon Ranch Road). [BC20111103DOC023](#)

Land Use Meetings

Mr. Chappie questioned the meeting procedure regarding land use items.

Discussion: Rules and procedures from legal counsel; opportunity to express concerns regarding a project to be addressed during the process and prior to rebuttal; something new should be brought up before applicant debates; review the opportunity for citizen to rebut; should not express how you intend to vote without hearing all testimony; follow all steps before calling the question, motion, or amendments; voicing opinions rather than asking questions; staff gives a recommendation, and the Board makes the decision; opinions and concerns are important; applicant and staff presentation drives the decision making process; citizens provide additional facts; public comment; viewing site, reviewing public input and asking staff questions prior to meeting aids in a decision; procedure is a checklist; do not change the procedure; etc.

(Depart Mrs. Hayes during discussion)

[BC20111103DOC023](#)

MEETING ADJOURNED

There being no further business, the meeting was adjourned.

Adj: 4:46 p.m.
/vj/njh

Minutes Approved: December 20, 2011