

**MANATEE COUNTY BOARD OF COUNTY COMMISSIONERS
REGULAR MEETING
COUNTY ADMINISTRATIVE CENTER
1112 Manatee Avenue West
Bradenton, Florida
March 7, 2019**

Meeting video link: <https://www.youtube.com/channel/UCUlgjuGhS-qV966RU2Z7AtA>

Present were:

Stephen R. Jonsson, Chairman
Betsy Benac, First Vice-Chairman
Misty Servia, Second Vice-Chairman
Carol Whitmore, Third Vice-Chairman (entered during the meeting)
Vanessa Baugh
Reggie Bellamy
Priscilla Whisenant Trace

Also present were:

John Barnott, Building and Development Services Director
Sarah Schenk, Assistant County Attorney
Quantana Acevedo, Deputy Clerk, Clerk of the Circuit Court

Chairman Jonsson called the meeting to order at 9:00 a.m.

INVOCATION AND PLEDGE OF ALLEGIANCE

1.  The Invocation was delivered by Reverend Sam Rainer, West Bradenton Baptist Church, followed by the Pledge of Allegiance.

AGENDA

BC20190307DOC001

Agenda Update Memorandum: 

BC20190307DOC002

- Item 7, Amended and Restated Settlement Agreement, Lake Lincoln LLC v. Manatee County, Cases 2012-CA-3483 and 2017-CA-3071 – Public comment emails presented
- Item 8, LDCT-17-05/Ordinance 19-03, Land Development Code Text Amendment, Process Improvements (County-Initiated) – Presented were: (a) Memorandum from Pat Tyjeski outlining changes to Chapters 2-5 and Ordinance 19-03 submitted; (b) Revised Chapters 2-5 as presented on e-agenda only; and (c) Background Discussion updated to include corrected information and public comment language from Ernest “Sandy” Marshall
- Item 10, PDMU-18-23(P), Morgan’s Glen/Moccasin Wallow Associates LLC – Action requested updated to continue the item to April 4, 2019
- Item 11, PDR-18-13(Z)(G), Prospect Road Subdivision/Gary Adams and Black Pearl Investment LLC Rezone/Belleair Capital Group – Action requested updated to continue the item to March 21, 2019
- Item 12, PDMU-18-18(P), Taco Bell – Bradenton – Action requested updated to continue the item to March 21, 2019

Time Certain:

2. Item 8, LDCT-17-05/Ordinance 19-03, Land Development Code Text Amendment, Process Improvements (County-Initiated) – 9:00 a.m.
3. Item 7, Amended and Restated Settlement Agreement, Lake Lincoln LLC v. Manatee County, Cases 2012-CA-3483 and 2017-CA-3071 – 1:30 p.m.

10. **ORDINANCE/ZONING**

A duly advertised public hearing was opened to consider adoption of proposed Zoning Ordinance PDMU-18-23(P), Morgan’s Glen/Moccasin Wallow Associates LLC. The Planning Commission recommended approval with stipulations (2/14/19).

A motion was made by Commissioner Baugh to continue the public hearing for PDMU-18-23(P) to April 4, 2019, at 9:00 a.m., or as soon thereafter as same may be heard at the Manatee County Government Administrative Building, first floor, Patricia M. Glass Chambers. The motion was seconded by Commissioner Trace.

There being no public comment, Chairman Jonsson closed public comment.

The motion carried 6-0, with Commissioner Whitmore absent.

BC20190307DOC003

11. **ORDINANCE/ZONING**

A duly advertised public hearing was opened to consider adoption of proposed Zoning Ordinance PDR-18-13(Z)(G), Prospect Road Subdivision/Gary Adams and Black Pearl Investment LLC Rezone/Belleair Capital Group. The Planning Commission recommended approval with stipulations (2/14/19).

A motion was made by Commissioner Servia to continue the public hearing for PDR-18-13(Z)(G) to March 21, 2019, at 1:30 p.m., or as soon thereafter as same may be heard at the Manatee County Government Administrative Building, first floor, Patricia M. Glass Chambers. The motion was seconded by Commissioner Baugh.

There being no public comment, Chairman Jonsson closed public comment.

The motion carried 6-0, with Commissioner Whitmore absent.

BC20190307DOC004

12. **ORDINANCE/ZONING**

A duly advertised public hearing was opened to consider adoption of proposed Zoning Ordinance PDMU-18-18(P), Taco Bell – Bradenton. The Planning Commission recommended approval with stipulations (2/14/19).

 A motion was made by Commissioner Baugh to continue the public hearing for PDMU-18-18(P) to March 21, 2019, at 1:30 p.m., or as soon thereafter as same may be heard at the Manatee County Government Administrative Building, first floor, Patricia M. Glass Chambers. The motion was seconded by Commissioner Trace.

There being no public comment, Chairman Jonsson closed public comment.

The motion carried 6-0, with Commissioner Whitmore absent.

BC20190307DOC005

COMMISSIONER REQUESTS

No items were pulled by Commissioners.

CITIZEN COMMENTS (Future Agenda Items)

There being no citizen comments, Chairman Jonsson closed citizen comments.

CONSENT AGENDA

Citizen Comments (Consent Agenda Items)

There being no citizen comments, Chairman Jonsson closed citizen comments.

- 5. **BUILDING AND DEVELOPMENT SERVICES/STREET WAIVER REQUEST**
Approved the street numbering waiver request by Stantec Consulting Services, Inc., allowing named streets to be utilized in the proposed Morgan’s Glen Subdivision, contingent upon approval of Zoning Ordinance PDMU-18-23(P) [Item 10 on the agenda] BC20190307DOC006

- 6. **BUILDING AND DEVELOPMENT SERVICES/FINAL RE-PLAT/ISLES AT LAKEWOOD RANCH, PHASE I-A**
Executed and authorized recording of Final Subdivision Re-plat BC20190307DOC007

MOTION – CONSENT AGENDA

A motion was made by Commissioner Baugh, seconded by Commissioner Trace and carried 6-0, with Commissioner Whitmore absent, to approve the Consent Agenda.

ADVERTISED PUBLIC HEARINGS

- 8. **ORDINANCE/LAND DEVELOPMENT CODE**
A duly advertised public hearing was held to consider adoption of proposed Land Development Code Text Amendment LDCT-17-05/Ordinance 19-03 (fka 18-03), Process Improvements (County-Initiated). The Planning Commission recommended adoption (9/23/18 and 2/28/19). and

- 15. **ORDINANCE/LAND DEVELOPMENT CODE**
A duly advertised public hearing was held to consider the request to hold a second public hearing prior to 5:00 p.m., for Land Development Code Text Amendment LDCT-17-05/Ordinance 19-03 (fka 18-03), Process Improvements (County-Initiated).

LDCT-17-05/Ordinance 19-03 (Item 8)

 Lisa Barrett, Planning Manager, acknowledged comments raised on February 5th by the County Commission and the Planning Commission on February 28th would be discussed by Pat Tyjeski, S&ME Consultants. No action is required, because this is the first of two required public hearings with the second public hearing scheduled for March 21, 2019, at 1:30 p.m.

 Ms. Tyjeski made use of a slide presentation to review the purpose of the hearing, changes requested by the County Commission, changes requested by the Planning Commission, and the public hearing schedule. BC20190307DOC008

 Discussion took place about front-yard setbacks, new provisions for septic tank (see slide presentation for Special Approval, Sewer Connection Waiver), should not have septic tanks in the Urban Service Area, the County standards are stricter than State standards for septic tanks, whether or not it is mandatory for a property located in a floodway to connect to sewer, whether an area that floods is the same as a floodway, language regarding mandatory sewer connection should be clarified, the definition of “development”, garages (see slide presentation for front-yard setback and parking), and a garage that has access from an alley is not a front-loaded garage.

 Margaret Tusing, Public Hearing Section Manager, elaborated the minimum front-yard setbacks have fluctuated between 23- 25 feet based on direction from the County Commission. Under certain circumstances an applicant has requested a 23-foot front-yard setback with two feet of grass to prevent the driveway from encroaching on the sidewalk. The minimum front-yard setbacks for a structure, including structures with side-loaded garages are 20 feet.

 Thomas Gerstenberger, Stormwater Engineering Division Manager, reported any designated area identified on the Flood Insurance Rate Maps would either be in the 100-year floodplain or the 100-year floodway.

 Sarah Schenk, Assistant County Attorney, explicated the only change the County Attorney's Office proffered for the definition of "development" pertained to the utility corridors to ensure consistency with Florida Statutes.

 Ernest "Sandy" Marshall, Federation of Manatee County Community Associations, Inc., commented on the importance of making sure the proposed language is clear, police powers, public mail notification process, and the R/O/R (Retail/Office/Residential) designation.

 Michael Gallen, Manatee Chamber of Commerce, supported Ordinance 19-03.

There being no additional public comment, Chairman Conerly closed public comment.

 There was discussion on whether the proposed changes would implement urban corridors (Ordinance 16-07, adopted 9/19/16), limitations on the number of Land Development Code (LDC) waivers that staff can grant, density and activity nodes, the proposed changes would not make it easier to development, the term special approval was placed in the Comprehensive Plan in 1989 as a place holder to create performance standards that an applicant would have to meet, any LDC requirement could be waived by the County Commission through specific approval, relevance of the Pinellas County case as mentioned by Mr. Marshall, and how many of the proposed changes would allow administrative approval.

Chairman Jonsson confirmed no action was required on this item.

BC20190307DOC009
Ordinance Updates BC20190307DOC010

LDCT-17-05/Ordinance 19-03, Second Public Hearing (Item 15)

 Ms. Schenk stated in order for the County Commission to hold the second public hearing prior to 5:00 p.m., five votes were needed in accordance with Section 125.66(4)(b)1., Florida Statutes.

Commissioners Benac and Servia were in support of holding the hearing at 5:00 p.m. in order to accommodate the working public.

Ms. Schenk noted if the County Commission does not take action, then the hearing would have to be heard at 5:00 p.m.

No action was taken on this item.

BC20190307DOC011

ADVERTISED PUBLIC HEARINGS

9. ORDINANCE/ZONING

 A duly advertised public hearing was held to consider adoption of proposed Zoning Ordinance Z-17-05, Davidson Rezone. The Planning Commission recommended approval (2/14/19).

 Commissioner Servia stated she sent staff an email about an advertising error for this item.

Sarah Schenk, Assistant County Attorney, explained the applicant would have to state on the record willingness to proceed at their own risk or ask for the item to be re-advertised.

No ex-parte communications were disclosed.

 Joel Freedman, planning consultant for Carl and Judith Davidson, stated the Davidsons are willing to proceed with the hearing despite the advertising error. The public hearing signs were posted on the property, and the public mailed notices were also sent out.

Commissioner Servia clarified she sent the email, because the project was advertised as being located west instead of east of U.S. 41.

 Mr. Freedman explained the rezone would correct a commercial non-conforming use (Code Enforcement violation) and the owners would live in one of the three proposed units. Rezoning the site from GC (General Commercial) to RMF-9 (Residential Multifamily, nine units per dwelling acre) is consistent with the R/O/R future land use designation. The site is consistent with the Comprehensive Plan, no exterior changes are proposed, and adequate parking is available. Once the rezone is approved, the owners would also have to address fire code requirements.

 Discussion took place on the applicants being aware that they will be located between two commercial lots, and LDC requirements for screening.

 Jamie Schindewolf, Planner I, utilized a slide presentation to review the site characteristics, future land use map, zoning map, positive and negative aspects. If the site was one parcel over the multifamily would be allowed, and to the north is a condominium complex (multifamily). She confirmed no exterior changes are being proposed.
(Depart Commissioner Baugh during the presentation)

Discussion proceeded about the importance of the multifamily transition from commercial to single-family.

There being no public comment, Chairman Jonsson closed public comment.

There were no staff or applicant closing remarks.

 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 LDC, Commissioner Servia moved to adopt Manatee County Zoning Ordinance Z-17-05, as recommended by the Planning Commission. The motion was seconded by Commissioner Trace and carried 5-0, with Commissioners Baugh and Whitmore absent.

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(Enter Commissioner Baugh)

13. **ORDINANCE/COMPREHENSIVE PLAN**

 A duly advertised public hearing was held to consider proposed Comprehensive Plan Amendment PA-18-14/Ordinance 19-07, Meals on Wheels PLUS of Manatee County (Small Scale Map Amendment). The Planning Commission recommended approval (2/14/19).

 John Foley, agent for the applicant, reported Meals on Wheels Plus has had significant growth due to increased demand for their services. Approval of the request would change the FLU designation from RES-9 (Residential, nine dwelling units per acre) to IL (Industrial Light). Mr. Foley concurred with the staff report.

 Commissioner Benac disclosed she met with Meals on Wheels PLUS staff.

 Based upon the evidence presented, comments made at the public hearing, the technical support documents, the action of the Planning Commission, and finding the request to be consistent with the Community Planning Act as codified in applicable portions of Chapter 163, Part II, Florida Statutes and the Manatee County Comprehensive Plan, Commissioner Baugh moved to approve Plan Amendment PA-18-14/Ordinance 19-07, as recommended by the Planning Commission. The motion was seconded by Commissioner Trace.

There being no public comment, Chairman Jonsson closed public comment.

Jamie Schindewolf, Planner I, did not have additional comments.

 The motion carried 6-0, with Commissioner Whitmore absent.

BC20190307DOC013

14. **ORDINANCE/ZONING**

 A duly advertised public hearing was held to consider adoption of proposed Zoning Ordinance PDC-91-07(G)(R), Lakeside Plaza Shopping Center/Home Depot USA, Inc. The Planning Commission recommended approval with stipulations (2/14/19).

No ex-parte communications were disclosed.

 Danielle Ellis, planner representing DST Ventures LLC, reported the subject site is located in a strip mall under the ownership of Home Depot USA, Inc. (Home Depot), Aarons Inc., and Benderson Development. DST Ventures LLC has plans to purchase 2.6 acres from Home Depot with a portion of the parking area (the on-site building on the 2.6 acres consists of 56,700 square feet). She utilized a slide presentation consisting of the project information and aerial map to discuss the request to revise the zoning ordinance to add mini-warehouse/self-storage to the previously approved uses. The building was constructed in the 1960s and previously operated as a retail furniture store. In 1992, the building was included in an overall rezone request to accommodate Home Depot. At the time, Home Depot labeled the site as retail on the site plan, but did not provide language in the zoning ordinance for any future use changes. A specific approval is sought for an alternative to LDC Section 531.31.F to allow that required landscape planting material would be located within existing parking islands and/or landscape buffer(s).
(Note: The 2.6 acres is included in the 13.44 acres owned by Home Depot USA, Inc.)

The building is vacant, which has led to Code Enforcement violations and the involvement of Law Enforcement. The mini-warehouse/self-storage use would have key codes for access and surveillance cameras inside and outside the building. There would be no structural changes to the exterior of the building, and adequate parking for customers would be provided.

 There was discussion on breaking up the asphalt to incorporate more green space, maintaining parking spaces for future retail, former furniture store, current access points to

the east would remain (owned by Home Depot), and the crime activities would be curbed once the site is developed.

 Rossina Leider, Principal Planner, explained the mini-warehouse/self-storage use is allowed in PDC (Planned Development Commercial), but was not included in the original approval. She commented on parking standards and how the building being vacant has contributed to criminal activities. Upon question, Ms. Leider reported Benderson Development has not submitted a formal application for their portion of the overall site.

 Beverley Comstock, area resident, expressed concern with conditions (i.e. noise pollution from the delivery trucks, vagrancy, and drug activity) being generated by the Lakeside Plaza Shopping Center (specifically the Home Depot area) because it affects the surrounding neighborhood. She displayed photographs depicting the current conditions of the area surrounding the site.

 Michael Monty Moreno, Bayshore on the Lake Homeowners Association (Phase I), expressed concern with flooding in the area, because Home Depot shares a swale with Bayshore on the Lake.

There being no additional public comment, Chairman Jonsson closed public comment.

Discussion took place about flooding, whether the concern regarding the semi-trucks would be addressed, whether Ms. Comstock feels the request would improve the area, and traffic circulation.

 Thomas Gerstenberger, Stormwater Engineering Division Manager, reported the drainage outfall from Bayshore on the Lake is predominantly in the south towards Cortez Road to Eagle Village and then 14th Street West (Wares Creek Watershed). This general area is flood prone, and the closet drainage system that the County maintains is near 30th Avenue West. The drainage is private for Bayshore on the Lake and Lakeside Plaza.

 Ms. Ellis stated some of the photographs displayed by Ms. Comstock were of the property owned by Benderson Development (eastern portion of the strip mall). The semi-truck parking would cease under the terms of the parking agreement with Home Depot.

 Ms. Comstock expressed concern with how the semi-trucks would traverse the site and the lack of action by Home Depot to correct issues.

 Ms. Ellis pointed out the plaza access points on the staff report aerial map: (1) Cortez Road (two); (2) 24th Street West (two); and (3) 20th Street West. Semi-trucks are generally not associated with mini-warehouse/self-storage.

Discussion continued on how certain commercial uses create compatibility issues, designating areas with excess parking as green space in areas prone to flooding, Commissioner Bellamy disclosed he met with Ms. Comstock and visited the site (two months ago) due to the Code Enforcement violations, drainage from Bayshore on the Lake, this project may jumpstart revitalization in this area, and mini-warehouse/self-storage does not typically generate a lot of traffic.

Mr. Gerstenberger explained there is a drainage outfall from Bayshore on the lake. The physical lake that drains south is not in association with Lakeside Plaza, but aligns itself where the storage facility on Cortez Road has a pipe drainage system that leads to Eagle Village. The County maintains the physical outfall into Eagle Village lake, because at this junction it outfalls into Wares Creek. He discussed converting impervious surfaces.

 Based upon the staff report, evidence presented, comments made at the public hearing, and finding the request to be consistent with the Manatee County Comprehensive Plan and the Manatee County LDC, as conditioned herein, Commissioner Bellamy moved to approve Manatee County Zoning Ordinance PDC-91-07(G)(R) retaining Stipulations 1-12; Approve the amendment to the General Development Plan; and Grant Specific Approval of an alternative to LDC Section: 531.31.F. (relocating the required foundation planting for mini-warehouse/self-storage to other landscape areas), as recommended by the Planning Commission. The motion was seconded by Commissioner Trace and carried 6-0, with Commissioner Whitmore absent.

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CODE ENFORCEMENT

 Commissioner Servia made a motion to have a future a work session to address Code Enforcement staffing and policy and procedures. The motion was seconded by Commissioner Bellamy.

There being no public comment, Chairman Jonsson closed public comment.

The motion carried 6-0, with Commissioner Whitmore absent.

COMMISSIONERS' COMMENTS

Commissioner Servia 

- Received noise complaints about Airbnb (Air-bed and breakfast) Rentals and their effect on neighborhoods

Discussion took place about the upcoming work session (3/19/19) to be held on taxation and legislative prohibitions on short-term rentals.

- Announced a District 4 town hall meeting has been scheduled for March 20th at the Bayshore Recreation Center at 6:00 p.m.

BC20190307DOC015

Commissioner Baugh 

- Reported a town hall meeting was held on March 6th regarding a library at the Premier Sports Campus
- Stated she would like address flooding and its effect on neighborhoods 

Commissioner Bellamy 

- Met with residents to discuss libraries, transportation, and school needs for the East Bradenton pool area

Discussion took place about libraries being regional, jointly sponsored efforts to help assist children in reading (United Way, Patterson Foundation, Kiwanis Club, Children’s Services, etc.), and Reading Room Program sponsored by United Way.

RECESS/RECONVENE: 11:22 a.m. – 1:32 p.m. All Commissioners were present.

7. **ATTORNEY/AMENDED AND RESTATED SETTLEMENT AGREEMENT/LAKE LINCOLN**

A duly advertised public hearing was opened to consider approving proposed Amended and Restated Settlement Agreement, Lake Lincoln LLC v. Manatee County, Cases 2012-CA-3483 and 2017-CA-3071.

BC20190307DOC016



William Clague, Chief Assistant County Attorney, reviewed:

- Development History - The case arises from a 2010 County Commission decision that denied an application for development at the corner of Tara Boulevard and S.R. 70. The overall parcel in question is 10.33 acres, with approximately 8 acres of medium quality wetlands. The applicant sought commercial, residential support, and residential entitlements for 3.32 acres (Subphase III-BB) of the overall parcel. The property is zoned PDR (Planned Development Residential), which means it is zoned for development. It is part of the Tara DRI, which has a substantial bank of entitlements that were established decades ago. As part of the DRI, the property has a Certificate of Level of Service for transportation, making it entitled to transportation impacts, and it also meets commercial locational criteria, because it is located at a commercial node. In 2010, staff recommended approval of the residential and residential support uses with denial of the commercial use. The County Attorney's office concurred with staff's recommendation, but cautioned against a complete denial and placement of a conservation easement over the property. The County Commission denied all requested uses due to traffic and environmental concerns, which is the reason for the litigation.
- History of the Lawsuit - In 2012, the developer sued the County claiming that the 2010 decision violated the developer's property rights under the "Bert Harris Act" and the Florida Constitution. Both allegations sought monetary damages from the County and the case was litigated for five years. The financial risks included the County being forced to pay a large award of monetary damages to the developer for the alleged violation of property rights, a large award of money for attorney fees, and the risk of losing a major case related to a County land use decision, thus creating a precedent in court that could be used against the County in other cases. On June 20, 2017, the County Attorney's office recommended a proposed Settlement Agreement that the County Commission approved.
- Settlement Agreement - The Settlement Agreement would provide: (a) Approval of commercial development on Subphase III-BB with an approximate one-acre wetland impact, and access points on Tara Boulevard and S.R. 70. The S.R. 70 access point would be subject to approval by the Florida Department of Transportation; (b) that the developer's pending claim attorney's fees would be resolved separately (negotiation, arbitration or a court hearing). The County has not agreed to any specific fee amount and certainly not the \$700,000 plus being claimed by the developer; and (c) for the parties to ask the court to approve the development orders for the uses as part of the Agreement under the "Bert Harris Act." A provision of the "Bert Harris Act" allows the decision to be made by the court instead of the County Commission.
- Outcome of the Court Proceedings - In 2018, the County and the developer went before the court in several hearings for consideration of the Settlement Agreement. Three neighborhood associations, the Tara Golf and Country Club, Inc., Tara Master Association, Inc., and Fairway Gardens II at Tara Condominium Association, Inc. (Intervenors) intervened in the case and hired Robert Lincoln as their attorney. The court decided to send the Settlement Agreement back to the County Commission to address to specific issues: (a) whether commercial development would be consistent with the Comprehensive Plan on Subphase III-BB since the County Commission concluded it was not in 2010; and (b) incorporation of recent changes to the Tara DRI related to a hotel, which was a housekeeping matter. The County Attorney's office is maintaining their recommendation to approve the Settlement Agreement with the

aforementioned changes, because it provides the best scenario for resolving the case with the least amount of financial risk. It is the County Attorney's office ethical responsibility to represent only the County as an organization and it would be a conflict of interest to represent the interest of third-party property owners in a County land use dispute. In briefings with individual Commissioners, analyses of the law on regulatory takings as it relates to this case were discussed. The legal analysis and litigation strategy regarding the issues should not be discussed in open forum, because it could affect the County's position in court. No matter the decision, this matter is most likely to return to court. The County Attorney's office has the responsibility to provide direct and forthright advice of options and legal risks. It is the decision of the County Commission to choose which option as they have been fully informed of the potential costs.

- Procedures for today's hearing - To avoid any concerns regarding due process, the County Attorney's office placed this matter on the agenda for a quasi-judicial proceeding similar to a land use decision, which was agreed upon by all parties, to avoid questions on how the decision was made. The public and Intervenors would have the same rights to participate that they would in any other land use proceeding including ex-parte disclosures. Staff and the County Attorney's office should not be put in a position where they have to state matters on the record that could be harmful to the County's position in court. Any questions should be directed to the developers and their representatives. He would recommend continuing the matter if he deems the discussion to be harmful to the County's position. If the developers and their representatives have concerns they should be brought to him off the record, which could mean a brief recess. The developer's attorney has requested an hour for presentation time and 30 minutes for rebuttal, and he advised Chairman Jonsson grant this request. The County Attorney's office has received a Settlement Agreement proposal from the attorney for the Intervenors for residential use of the Subphase III-BB with detailed stipulations (see staff report) in conjunction with a presentation request for 20 minutes. Mr. Clague recommended this request be a granted as well.



Patricia Petruff, representing Lake Lincoln and Tara-Manatee, Inc., introduced the presentation speakers (binder of presentation materials submitted).

BC20190307DOC017

Robert Lombardo, engineer representing Lake Lincoln and Tara-Manatee, Inc., discussed the history of the 10.33 acres with the following (included with binder):

- 2010 Conceptual Plan to point out the overall 10.33 acres owned by Lake Lincoln, which encompasses Subphase III-BB;
- 1980 Master Development Plan reflecting: 54,000 square feet of commercial area planned for the 10.33 acres, Subphase III-Y and Subphase III-BB (both often depicted without development designation, but Subphase III-Y was approved for development), and Parcel III-W (developed in 1996);
- Approved Phase I Preliminary Development Plan depicting approximately 30,000 square feet of commercial for the 10.33 acres;
- Approved 1987 Revised Conceptual Plan portraying Phase I and II commercial development for the 10.33 acres;
- Phase II Preliminary Development Plan designating Subphase III-S (located south of the 10.33 acres) and 10.33 acres as commercial;
- 1994 Final Site Plan for Subphase III-S indicating commercial on the 10.33 acres; and
- 1998 County Aerial to note how Fairways Garden, Phase I, was built before Parcel III-W was allowed to have commercial development.

Mr. Lombardo reported development of Subphase III-BB including the filling of a one-acre, isolated wetland would not create additional downstream flooding in or close to the Tara DRI. The State and County regulations for stormwater design do not permit projects to cause additional downstream flooding as the new development is not allowed to increase the predevelopment peak rate of runoff from a newly developed site during a 25-year, 24-hour storm. These regulations must be met by the design of the stormwater management system or the County would deny a proposed Final Site Plan for development. He displayed aerial map to point out the 10.33 acres, Subphase III-S (not developed), Fairway Gardens' golf course, residential units and Stone River Road. The stormwater management system that accepts runoff from the 10.33 acres and the golf course, the residential units, and Subphase III-S was designed to flow to an existing great inlet (located directly south of the 10.33 acres and adjacent to Subphase III-S and built in 1984-85 in conjunction with the construction of Stone River Road). The great inlet has a 34 by 53 inch elliptical pipe that runs across Stone River Road to a stormwater pond, which ultimately drains south to Nonsense Creek. A drainage system is in place to accept runoff from the 10.33 acres just as it is accepting runoff from Parcel III-S, residential units and the golf course. If Subphase III-BB is developed there would be a stormwater management system designed and permitted by the County and State for the 3.2 acres and properly designed outfall would also be permitted at the southern end of the 10.33 acre.

 Susan Joel, traffic engineer representing Lake Lincoln and Tara-Manatee, Inc., utilized a slide presentation (included with binder) to discuss crash history, safety and measures, and level of service for S.R. 70 at Tara Boulevard, access for S.R. 70 and Tara Boulevard driveway, and S.R. 70 at Stone River Road.

 Clayton Robertson, environmental scientist representing Lake Lincoln and Tara-Manatee, Inc., made use of a slide presentation (included with binder) to review the location of wetland III-BB (8.98 acres), personal service area wetland impact (5.2 acres of impact to the wetland with the original DRI), delineation aerial, upland area with Brazilian Pepper, upland buffer with debris, wetland edge with Brazilian Pepper, wetland interior and shrub zone, shrub zone of Primrose Willow, Melaleuca infestation, wetland interior hydrology, proposed wetland impact, Commercial Site Alternatives Exhibit A-C, and mitigation. The County requires a 30-foot buffer, but in this case the wetland is the buffer. He displayed a conceptual plan to point out the 30-foot buffer (dashed line) that would be retained around the wetland, how the buffer (skinny line) would need to be removed because of development, and the expanded buffer areas. He clarified that the entire wetland is 8.98 acres and includes 1.54 acres owned by Fairway Gardens.

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 David Depew, land planner representing Lake Lincoln and Tara-Manatee, Inc., stated he was tasked with analyzing the proposed development plan with regards to the Comprehensive Plan and the LDC, how it impacts the planning profession, and how it relates to past decisions. A slide presentation (included with binder) was used to focus on the subject property, surrounding property, conceptual elevation, similarly situated development, plan changes since 2010, Map H (various years), current request and Comprehensive Plan, current request and the LDC, and conclusions.

 Ms. Petruff pointed out the noise abatement conditions and Exhibit A have been a part of the DRI since its inception. The noise contour lines have not been re-evaluated and requested re-approval of the Settlement Agreement from 2017. She noted the differences between the 2017 version and the Amended and Restated Settlement Agreement consists of updating the development order and zoning ordinance to reflect the hotel approval and housekeeping matters.

 Robert Lincoln, attorney representing the Tara Masters Association, Inc., Tara Golf and Country Club, Inc., and Fairway Gardens II at Tara Condominium Association (Intervenors), relayed his professional qualifications and education. He noted Section 70.001, Florida Statutes, governs settlements under the “Bert Harris Act,” which allows the judge to approve a settlement even if it violates State law based on certain kinds of findings. The judge looked at the Settlement Agreement and decided to remand the matter back to the County Commission under the context of whether or not the development order and zoning ordinance were consistent with the Comprehensive Plan. He noted any commercial uses planned for Subphases III-BB and III-S were planned away from S.R. 70 to prevent highway commercial. In 1998, the developer assigned rights west of Tara Boulevard to the east of Tara Boulevard and slated Subphase III-S and the golf course for no development. He displayed Comprehensive Plan objectives that the planners used in 2010 to support why the commercial uses were not consistent with the Comprehensive Plan, which holds true today. Subphase III-BB is a separate, standalone commercial parcel that would destroy the integrity of the Tara gateway if integrated. There has always been open space at the corner of Tara Boulevard and S.R. 70 in order to preserve the natural open space for the entire project. The Intervenors are proposing a Settlement Offer that includes the County Commission adopting a policy of residential and residential support uses only, an explicit standard for the Transportation Department to use for U-turns, and a 60 trip peak hour gross trip maximum for any uses.

BC20190307DOC019

RECESS/RECONVENE: 3:18 p.m. – 3:28 p.m. All Commissioners were present.

 Discussion took place on whether to continue the matter to another date, designation for Subphase III-BB on an environmental map (the wetland designation evolved from isolated to jurisdictional), whether there was more than one on-site wetland prior to development, whether Subphase III-BB was designated as preservation area on maps, a sign easement is reflected on the conceptual plan at the northwest corner of Tara Boulevard and S.R. 70, residential was built within the noise contour line, the property was zoned from PUD (Planned Unit Development, R-80-21) to PDR in 1991, in 2010 staff recommended keeping the PDR zoning to allow residential development, significant internal trip capture is for the Tara DRI in its entirety, Ms. Petruff’s and Mr. Lincoln’s thoughts on why the judge sent this back to the County Commission, commercial versus residential on Subphase III-BB, Lake Lincoln’s reasoning for changing the use back to commercial for Subphase III-BB, transfer of land between Subphase III-S and Subphase III-Y, the intersection of Tara Boulevard and S.R. 70 was designed based on the results of a study, Tara Boulevard and Stone River Road, flooding concerns, U-turn traffic could cause congestion on Tara Boulevard, residential and/or personal service establishments are allowed in the PDR zoning district, personal services establishments are usually the uses surrounding the anchor use, Subphase III-BB is appropriate for a commercial node, the character of the area has changed, and Lake Lincoln’s willingness to restrict certain commercial uses.

 Mr. Clague submitted additional public comment letters. He elaborated that the judge remanded the matter back to the County Commission based on Florida Statute and case law because he felt he was being asked to make a decision that should be made by the County Commission. The County Commission has the following options: (a) Continue the public hearing in order for staff to provide supplemental information; (b) Recommend adoption of the Amended and Restated Settlement Agreement; (c) Reject or terminate the Settlement and revert back to the 2010 decision to deny all uses on the property, which is not recommended by the County Attorney’s office; or (d) Agree to the Settlement Option from Mr. Lincoln, which would require the County Commission to reject the Settlement Agreement. This action would terminate the Settlement Agreement and direct the County Attorney’s office and staff to

prepare County-Initiated amendments to come back in subsequent hearings to place uses on the property. BC20190307DOC020

Public Comment

BC20190307DOC021

 Joe McClash stated the proposed action would be inconsistent with the LDC for several reasons including violation of the wetland policy (documentation submitted). He suggested the County Commission reject the Settlement offer and stand behind the 2010 decision

BC20190307DOC022

 Albert Horrigan, Jr., Tara resident, stated the matter involves the whole intersection and not just the corner of Tara Boulevard and S.R. 70.

 Cathy Woolley submitted a binder of materials. While displaying documentation, she discussed her concerns with the Settlement Agreement and the history of intent for Subphase III-BB. She suggested the Board deny the Settlement Agreement and defend the decision from 2010.

Binder BC20190307DOC023
BC20190307DOC024

 Karen Clark opposed the Settlement Agreement due to safety and traffic concerns on S.R. 70 and the intersection of S.R. 70 and Tara Boulevard (support materials displayed). BC20190307DOC025

 David Woodhouse, hydrogeologist and Tara resident, stated Subphase III-BB currently functions as a wetland, and expressed concern with the hydrology of this parcel. BC20190307DOC026

 Mario Del Vicario, marine and wetland ecologist, discussed the area flooding and stormwater infrastructure, and suggested denial of the Settlement Agreement in order to preserve the wetland (documents presented). BC20190307DOC026

 John Leone, Fairways Gardens resident, expressed similar concerns as previous speakers and opposed the Settlement Agreement (documents presented). BC20190307DOC027

RECESS/RECONVENE: 5:27 p.m. -5:36 p.m. All Commissioners were present.

Discussion ensued about continuing the matter to another day, and allowing public comment and rebuttals.

 Joyce Leone, Tara resident, opposed the Settlement Agreement due to traffic safety concerns, flooding, and unfulfilled promises. BC20190307DOC027

 Janet Reardon, Fairway Gardens II resident, expressed concern with traffic circulation in the area, and suggested denial of the Settlement Agreement. BC20190307DOC027

Cindy Ferguson, John Lange, Jr., Billy Ray McCray, and Debbie Plume, waived their opportunities to speak and agreed with previous speakers.

 Marion Murdock, Tara Preserve resident, commented on the rain event that took place on August 26, 2017, which encompassed the flooding of Nonsense Creek, and how decreasing the wetlands would affect the drainage in the area. She suggested the land not be developed in any manner.

There being no further public comment, Chairman Jonsson closed public comment.

 Ms. Petruff requested a continuance in order to review the documents submitted during the hearing before presenting her rebuttal.

There was discussion about civility at the next meeting, this is a difficult situation for the Tara residents, the possibility of reopening the public comment at the next hearing, and a decision has to be made based on the Comprehensive Plan and LDC.

 Mr. Clague explained if new evidence is produced, then public comment could be reopened. The County Attorney's office and staff would brief each Commissioner prior to the next hearing.

Motion

A motion was made by Commissioner Trace to continue this matter to a date sooner than in May 2019. The motion was seconded by Commissioner Baugh.

Mr. Clague stated this matter has to be continued to a date and time certain for advertising reasons.

RECESS/RECONVENE: 6:04 p.m. – 6:06 p.m. All Commissioners were present.

 Mr. Clague suggested continuing the matter to April 4th at 9:00 a.m., or as soon thereafter as same may be heard.

Motion – Amended

Commissioner Trace moved to continue this matter to April 4th, at 9:00 a.m., or as soon thereafter as same may be heard. The motion was seconded by Commissioner Baugh.

Commissioner Whitmore suggested the item be for a 1:30 p.m. time certain.

Commissioners Trace and Baugh concurred and the motion carried 7-0.

ADJOURN

There being no further business, Chairman Trace adjourned the meeting at 6:07 p.m.

Minutes Approved: _____