

**MANATEE COUNTY BOARD OF COUNTY COMMISSIONERS
REGULAR MEETING
COUNTY ADMINISTRATIVE CENTER
1112 Manatee Avenue West
Bradenton, Florida
November 2, 2017**

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

Present were:

Betsy Benac, Chairman
Robin DiSabatino, First Vice-Chairman (via telephone)
Charles B. Smith, Second Vice-Chairman
Stephen R. Jonsson, Third Vice-Chairman
Vanessa Baugh
Carol Whitmore
Priscilla Whisenant Trace

Also present were:

Nicole Knapp, Planning Section Manager
Sarah Schenk, Assistant County Attorney
Quantana Acevedo, Deputy Clerk, Clerk of the Circuit Court

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

INVOCATION AND PLEDGE OF ALLEGIANCE 

1. The Invocation was delivered by Pastor Mark Childers, Bayside Community Church, followed by the Pledge of Allegiance.

ANNOUNCEMENT

Chairman Benac announced the Board will recess at 11:15 a.m., for a previously scheduled engagement.

BUILDING AND DEVELOPMENT SERVICES/STAFF INTRODUCTION

 John Barnott, Building and Development Services Director, introduced Robert Knable, Planning Section Manager, Environmental Services.

AGENDA

BC20171102DOC001

2. Time Certain: Item 16, PA-17-06/Ordinance 17-33, City of Bradenton/Evers Reservoir - 9:00 a.m.

16. **ORDINANCE/COMPREHENSIVE PLAN**

 A duly advertised public hearing was held to consider transmittal of proposed Comprehensive Plan Amendment PA-17-06/Ordinance 17-33, City of Bradenton/Evers Reservoir. The Planning Commission recommended transmittal. This item was continued from October 5, 2017.

 Caleb Grimes, attorney representing the City of Bradenton (the City), reported at the last hearing there was discussion regarding Natalie Way, and he read language from the Exchange Agreement between the County and the City (paragraph 5, additional consideration). The City is proposing to go back to the previous RES-6 designation, which is consistent with the surrounding area. The site is owned by the City, located in the County, and there are no annexation plans. The City has submitted an application [PDR-17-18(Z)(G)] for a rezone of the

eastern portion of the site (42.3 acres) and a general development plan for the entire site (200.68 acres).

(Note: PDR-17-18(Z)(G) is scheduled to be considered by the County Commission on 5/3/18)

 Discussion took place about the City's plans to expand the water treatment plant, location of the right-of-way pertaining to Natalie Way, is there another agreement that supersedes the Exchange Agreement, the Natalie Way connection is needed due to traffic congestion, buffering between communities will be addressed during the rezone request, what can be built in uplands, wetlands, and designated surface waters, connectivity and median requirements (figure 1 on page 2, of the traffic impact statement).

 Carl Callahan, City Administrator for the City of Bradenton, reported north of the site is the City's only water treatment plant, and it is sized to take care of the City's needs in the immediate future. Land has been acquired over the years as part of long-range expansion plans and the Aquifer Storage and Recovery (ASR) system well fields are included. Upon question, he elucidated on the benefits of the ASR system wells and confirmed arsenic has been eliminated with the use of the ASR system.

Mr. Grimes displayed an aerial map to point out the location of right-of-way for Natalie Way, and noted the L-shaped portion is what the County vacated in 2005 in exchange for land for Honore Avenue. The County public right-of-way starts above the ASR system wells and extends north to S.R. 70.

Sarah Schenk, Assistant County Attorney, pointed out Natalie Way is not on the County's thoroughfare plan.

Mr. Grimes explained the Exchange Agreement was for the protection of the water treatment plant.

 Dorothy Rainey, Senior Planner, stated the 2.22 acres of wetlands could be eligible for impact (to be filled in and developed) as long as the criteria in the Land Development (LDC) is met and it can be demonstrated that the wetlands are non-viable or low quality. The 2.22 acres of wetlands are in the middle of the western portion of the property and in the top northwest corner.

 Mr. Grimes stated the traffic impact statement, which includes Figure 1 (site location and preliminary concept plan), is a requirement of the Comprehensive Plan in order to determine expected traffic that could be generated from this project to ensure the adequacy of the roadways. In regards to wetlands, the applicant cannot impact wetlands without avoidance and minimization. The area in the northwest corner separated by the stream is not an area that would be developed but preserved. The 178.5 acres of disturbed lands are uplands, which will be developed.

There was discussion about residents being concerned with traffic in the area, the purpose of the request and transmittal process, the number of units, was a connection ever proposed from S.R. 70 to Honore Avenue, and where does County right-of-way extend onto Natalie Way.

Mr. Grimes reported with the adoption of the 1989 Comprehensive Plan, the area was designated as RES-6, but in 2010, the designation was changed to P/SP 1 (Public/Semi-Public 1). The City has determined the original intent (offline water reservoir) for the P/SP 1 designation is no longer necessary, which is the reason for the Comprehensive Plan Amendment. He further

elaborated on the process for transmitting and adopting a Comprehensive Plan Amendment. Pursuant to the purchase agreement between the City (owner) and Taylor Morrison Homes (purchaser), 350-400 units are proposed to be built for the accompanying rezone [PDR-17-18(Z)(G)].

 Clarke Davis, Transportation Planning Division Manager, explained that over the years, the County has contemplated adding Natalie Way as a thoroughfare road. During review of the thoroughfare plan records from 1989 to date, and during the time of the Exchange Agreement, Natalie Way was not listed on the thoroughfare plan. The exchange agreement was written in such a way, that if it were necessary to remove Natalie Way from the thoroughfare plan, it could be accomplished. While utilizing an aerial map (previously shown by Mr. Grimes), He pointed out S.R. 70, Natalie Way, the City's water treatment plant and the vacant land (L-shaped property). Pursuant to the exchange agreement, the County exchanged previous right-of-way for Honore Avenue right-of-way and the L-shaped land was retained as City property (described as a right-of-way easement). The County public right-of-way is north of the right-of-way easement to S.R. 70 and is maintained by the City.

Commissioner Benac questioned if a Comprehensive Plan amendment would be required if the City wanted to expand the water treatment plant by developing the RES-6 property adjacent to the water treatment plant and north of the site.

Rossina Leider, Principal Planner, explained RES-6 does allow for public and semi-public uses.

Commissioner DiSabatino inquired about the possibility of a stub out, from the subject property to the vacant RES-6 property to the north, to accommodate any future development.

Public Comment

 Richard DeGennaro, Mote Ranch resident, read a letter (11/11/17) highlighting his concerns.

 Eileen Pari, Mote Ranch resident, expressed concern with traffic in the area and the possible extension of Natalie Way through Rattlesnake Slough, which is part of drainage system for Mote Ranch.

 John Swart, Mote Ranch resident, expressed concern with traffic in the area and how in the long-term the County would inherit liabilities such as protecting the water supply from runoff. He suggested tabling the request and completing a study.

 James Smith, Mote Ranch resident, expressed concern with protecting endangered species and wildlife in the area (submitted page 15 of PA-17-06/Ordinance 17-33) and asked the Board to consider the effect of development on wildlife. He submitted affidavits from Stephen Bolander, Allan Zuckerman, and himself attesting to seeing a Florida Panther in the area.

 Susan Sweeney, Mote Ranch resident, submitted petitions in opposition and expressed concern with traffic and development.

 Craig Hullinger, Palm Aire resident, stated Natalie Way should be extended for public safety reasons. Ward Lake (Evers Reservoir) is a great amenity, and he suggested a small park on the southwestern boundary of Ward Lake from Honore Avenue (see submitted handout).

 Francis Kenny, Mote Ranch resident, expressed concern that Honore Avenue is a funnel for traffic, which is dangerous for area residents.

 Ruth Slotnick, Mote Ranch resident, relayed her experience of being hit by a vehicle while walking along Honore Avenue. She expressed concern with the effects of development on Evers Reservoir and the area.

 Brooke Adler, Arbor Reserves resident, echoed previous comments and spoke against the request due to species endangerment and safety.

Rockford Woods did not speak but concurred with previous speakers.

 Katherine Edwards commented on surface waters and how the proposed property should be preserved.

 Judy Libby, Mote Ranch resident, expressed concern with traffic on Honore Avenue and noted the Tara Bridge should be revisited in order to alleviate traffic in the area.

 Patrick Roff, City of Bradenton Councilman, stated the sale of the subject property would assist the City in replacing aging sidewalks.

 Mayor Wayne Poston, City of Bradenton, announced Councilman Roff is speaking for himself and not on the behalf of the City.

 Howard Hammerman, Mote Ranch resident, expressed concern with flooding, traffic and bicycle safety.

 Steven Bolander, Mote Ranch resident, met with Sage Kamiya, Deputy Director of Traffic Management, regarding traffic, speed and safety on Honore Avenue. An engineering study was conducted during last summer. He requested pedestrian crosswalks.

 Richard Ranieri, Mote Ranch resident, expressed concern with development near Evers Reservoir without proper buffering, developmental effects on the bird rookery at the Reservoir, and pollutants in the Reservoir.

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

 Discussion proceeded about the exchange agreement being a legally binding agreement, buffering requirements along Evers Reservoir, the property is in the watershed for the Evers Reservoir, what is the City's goal for the Evers Reservoir, and docks.

Sarah Schenk, Assistant County Attorney, confirmed the exchange agreement is a legally binding agreement and stated she reviewed the agenda materials from September 20, 2005. The negotiations for the Exchange Agreement were complex and the memorandum from Rodney Wade, former Assistant County Attorney, made it clear that Natalie Way was not on the thoroughfare plan, but it should be removed if it was. As a legislative body, the Board can add a road to the thoroughfare plan at their discretion, and this authority has not been waived because of the exchange agreement. Due to the complexities of the Exchange Agreement, changes could create contractual litigation risk.

Dorothy Rainey, Senior Planner, reported the City does not own any property that is being sold and abuts Evers Reservoir. There is a strip of land from the east property line of the subject site to the water's edge. A minimum 15-foot greenbelt buffer is necessary for a planned development residential subdivision, and there is no access to Evers Reservoir because the City does not own waterfront property directly on Evers Reservoir. If a bird rookery exists, it does not exist on the west portion near the subject site.

Carl Callahan, City Administrator for the City of Bradenton, acknowledged the buffer in question is subcutaneous and in some instances wider than 15 feet, and the subject site is in the Evers Watershed. The City wants to ensure that proper practices are maintained, and the County has done a great job in making sure developments do all that is necessary for maintenance. The City deliberated on what would be the best use for the property and only low density projects were considered. The intent does not include boat docks, which would encourage water skis and motorized boats.

Discussion occurred about the length of Honore Avenue, is there a way to place a full intersection heading south from the property, traffic signals may need to be considered along Honore Avenue as this area develops, was the maximum allowable density looked at for this amendment, and does the exchange agreement bind the County in regards to future development.



Mr. Davis displayed a thoroughfare plan and noted existing and/or planned thoroughfares are depicted in yellow. He pointed out the subject site and Honore Avenue, which is a major thoroughfare extending from west Manatee County as 63rd Avenue East, eastward, and then southward through Sarasota County. Honore Avenue is a two-lane divided road from University Parkway northward, a two-lane road west of Mote Ranch Subdivision, and a four-lane divided road past Evers Reservoir to Lockwood Ridge Road. Mote Ranch residents have to consider traffic from both directions before they turn, because Honore Avenue is a two-lane road in this area. Staff addresses traffic requests from residents, but the process is not always fast. There are no opportunities for full intersections on Honore Avenue, and the closest opportunity is east of the site (may become a T intersection). Median openings will become the responsibility of the developer and determined at a later stage. The traffic impact statement reviewed the project for three dwelling units per acre versus six dwelling units per acre.

Ms. Schenk explained that adding Natalie Way to the thoroughfare plan in contravention of the exchange agreement would require legal review. The Board does not contract away their police power rights, and if the Board would like to revisit the exchange agreement, it may require substantive agreements be negotiated. The Exchange Agreement and corresponding backup was emailed from the Clerk's office and due to time constraints, Ms. Schenk was unable to review all the materials. The Exchange Agreement was approved by the Board and is legally binding.

Quantana Acevedo, Deputy Clerk, reported the exchange agreement was emailed to Darena Marvin, representing the applicant on November 1, 2017, and Ms. Marvin forwarded the agreement (BC20050920DOC042) to the County Attorney's office and staff.

Motion – Continuance

A motion was by Commissioner Baugh and seconded by Commissioner Smith to delay voting on this item.

Chairman Benac informed the Board that the public hearing process had not concluded.

Commissioner Baugh stated she would like all information pertaining to this request and asked for a complete traffic study.

Mr. Davis stated that at the Comprehensive Plan stage, staff looks at whether or not there is enough existing and programmed capacity to deal with assumed impacts and if there will be enough road capacity once everything is built. The traffic impact statement has been structured to address needs and make positive recommendations for a Comprehensive Plan amendment. A detailed traffic study will occur with the site plan process.

Chairman Benac asked for the motion to continue to be withdrawn in order to conclude the public hearing process. Commissioner Baugh declined to withdraw her motion.

Ms. Schenk advised selecting a date to continue the item, and the next land use hearing is scheduled December 7, 2017. She recommended public comment remain open.

 There was discussion about the property being environmentally sensitive, connectivity and future area development, fencing around Evers Reservoir, and 89 percent of the residents are not in favor of the Tara Bridge because it would dump traffic in the area.

Chairman Benac clarified the Tara Bridge is not being considered by the Board at this time.

Mr. Callahan reported fencing does encompass the entire lake and around most of the western border the proposed site is fenced. He stated the City is concerned with Evers Reservoir because it is their drinking source.

 Mr. Grimes displayed an aerial map (wetlands and waterbodies) to point out the western edge of the property and rebutted on the traffic impact statement. He reviewed reasons for amending the Comprehensive Plan and requested the item be transmitted and not continued.

Motion – Failed

 The motion for continuance failed 3-4, with Commissioners Baugh, DiSabatino and Smith voting in favor and Commissioners Benac, Jonsson, Trace and Whitmore voting nay.

Motion – Transmittal

 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 Trace moved to transmit Plan Amendment PA-17-06/Ordinance 17-33, as recommended by the Planning Commission. The motion was seconded by Commissioner Jonsson and carried 4-3, with Commissioners Baugh, DiSabatino, and Smith voting nay.

Chairman Benac explained the process herein and discussion ensued about making decisions without having the proper information.

BC20171102DOC002

RECESS/RECONVENE: 11:23 a.m. – 1:33 p.m. All Commissioners were present with Commissioner DiSabatino via telephone and Commissioners Trace and Whitmore absent.

3. **CITIZEN COMMENTS** (Future Agenda Items)
There being no citizen comments, Chairman Benac closed citizen comments.

(Enter Commissioners Trace and Whitmore)

COMMISSIONER REQUESTS

Commissioner Smith requested a brief explanation on Item 5, Proposal for Settlement (addressed later in the meeting).

CONSENT AGENDA

4. **Citizen Comments** (Consent Agenda Items)
There being no citizen comments, Chairman Benac closed citizen comments.
6. **BUILDING AND DEVELOPMENT SERVICES/FINAL PLAT/ARTISAN LAKES, EAVES BEND, PH I, SUBPHASES A-K**
- Executed and authorized recording of Final Subdivision Plat;
 - Authorized recording of Community Declaration of Covenants, Conditions, Restrictions and Easements for Eaves Bend at Artisan Lakes;
 - Authorized recording of Supplemental Declaration to the Master Declaration of Covenants, Conditions, Restrictions and Easements for Artisan Lakes;
 - Accepted, executed, and authorized recording of Consent to Subdivision Plat and Dedications and Reservations Thereon from Artisan Lakes Community Development District;
 - Accepted, executed, and authorized recording of Maintenance Agreement for Right-Of-Way Improvements;
 - Authorized the County Administrator to accept, execute, and record Agreement for Private Subdivision with Public Improvements Artisan Lakes Eaves Bend, Phase I, Subphases A-K from Taylor Woodrow Communities at Artisan Lakes, LLC;
 - Authorized the County Administrator to accept, execute, and record Agreement for Private Subdivision Improvements Artisan Lakes Eaves Bend, Phase I, Subphases A-K from Taylor Woodrow Communities at Artisan Lakes, LLC;
 - Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Public Improvements, Subphase A, Bond SU1145943 from Arch Insurance Company for \$78,285.36;
 - Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Public Improvements, Subphase C, Bond SU1145942 from Arch Insurance Company for \$142,542.11;
 - Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Public Improvements, Subphase D, Bond SU1145941 from Arch Insurance Company for \$109,251.60;
 - Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Public Improvements, Subphase E, Bond SU1145110 from Arch Insurance Company for \$45,446.61;
 - Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Public Improvements, Subphase F, Bond SU1145944 from Arch Insurance Company for \$315,963.27;
 - Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Public Improvements, Subphase H, Bond SU1145115 from Arch Insurance Company for \$101,400.00;
 - Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Public Improvements, Subphase I, Bond SU1145113 from Arch Insurance Company for \$239,455.62;

- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Public Improvements, Subphase J, Bond SU1145123 from Arch Insurance Company for \$195,809.68;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Public Improvements, Artisan Lakes Parkway, Bond SU1145103 from Arch Insurance Company for \$278,984.55;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Public Improvements, Artisan Lakes Parkway, Bond SU1145104 from Arch Insurance Company for \$133,252.60;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Subphase A, Bond SU1145109 from Arch Insurance Company for \$137,813.73;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Subphase B, Bond SU1145950 from Arch Insurance Company for \$28,174.90;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Subphase C, Bond SU1145106 from Arch Insurance Company for \$224,716.62;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Subphase D, Bond SU1145102 from Arch Insurance Company for \$327,353.83;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements - Subphase E, Bond SU1145120 from Arch Insurance Company for \$151,437;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Subphase F, Bond SU1145117 from Arch Insurance Company for \$610,740.42;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Subphase G, Bond SU1145121 from Arch Insurance Company for \$19,399.71;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Subphase H, Bond SU1145122 from Arch Insurance Company for \$47,879;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Subphase I, Bond SU1145100 from Arch Insurance Company for \$298,451.47;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Subphase J, Bond SU1145101 from Arch Insurance Company for \$220,095.64;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Subphase K, Bond SU1145107 from Arch Insurance Company for \$32,021.28;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Phase I, Off-Site, Bond SU1145099 from Arch Insurance Company for \$99,766.55;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Subphase A, Bond SU1145111 from Arch Insurance Company for \$11,617.45;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Subphase B, Bond SU1145112 from Arch Insurance Company for \$27,933.10;

- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Subphase C, Bond SU1145114 from Arch Insurance Company for \$22,673.95;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Subphase D, Bond SU1145116 from Arch Insurance Company for \$16,004.95;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Subphase E, Bond SU1145945 from Arch Insurance Company for \$45,728.80;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Subphase F, Bond SU1145118 from Arch Insurance Company for \$48,314.50;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Subphase H, Bond SU1145124 from Arch Insurance Company for \$29,214.25;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Subphase I, Bond SU1145125 from Arch Insurance Company for \$29,091.40;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Subphase J, Bond SU1145108 from Arch Insurance Company for \$19,046.95;
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Subphase K, Bond SU1145105 from Arch Insurance Company for \$7,592.65; and
- Authorized the County Administrator to accept and execute Surety Bond for Performance of Required Private Improvements, Phase I and Artisan Lakes Parkway, Bond SU1145978 from Arch Insurance Company for \$742,306.50 BC20171102DOC003

MOTION - CONSENT AGENDA

A motion was made by Commissioner DiSabatino, seconded by Commissioner Baugh, and carried 7-0, to approve the Consent Agenda with deletion of Item 5, Proposal for Settlement (separate action).

(End Consent Agenda)

5. ATTORNEY/PROPOSAL FOR SETTLEMENT

 Sarah Schenk, Assistant County Attorney, highlighted the background discussion on this matter and staff recommended the Board reject the plaintiff's proposal.

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

A motion was made by Commissioner Trace, seconded by Commissioner Baugh and carried 7-0, to consider and reject Plaintiff's \$125,000 Proposal for Settlement to Manatee in the matter of Johnny Smalls, Sr. v. Manatee County, Case 2016-CA-4640. BC20171102DOC004

ADVISORY BOARD APPOINTMENTS

7. BUILDING AND DEVELOPMENT SERVICES/CONSTRUCTION TRADES BOARD

 A motion was made by Commissioner Trace, seconded by Commissioner Baugh, and carried 7-0, to appoint Howard Jensen to Seat 1 and William Humphreys to Seat 5 on the Construction Trades Board. BC20171102DOC005

8. **BUILDING AND DEVELOPMENT SERVICES/PLANNING COMMISSION**

Chairman Benac opened the floor for nominations to appoint two people to the Planning Commission: 

- Matthew Bower was nominated by Commissioner DiSabatino
- Steven W. Dennis was nominated by Commissioner Trace
- Albert E. Horrigan, Jr. was nominated by Commissioner Whitmore
- Kenneth L. Piper was nominated by Commissioner Whitmore
- H. David Roth was nominated by Commissioner Baugh

A motion was made by Commissioner Baugh, seconded by Commissioner Trace, and carried 7-0, to close nominations.

By majority vote, Albert E. Horrigan, Jr. was reappointed and H. David Roth was appointed to the Planning Commission.

There was discussion on acknowledging Matthew Bower for his service on the Planning Commission, thanking those who applied, and those interested should apply again in the future.

BC20171102DOC006

9. **BUILDING AND DEVELOPMENT SERVICES/HISTORIC PRESERVATION BOARD**

Chairman Benac opened the floor for nominations to appoint two people to the Historic Preservation Board: 

- Sandra Jo Forney was nominated by Commissioner Trace
- Carl S. Meyer was nominated by Commissioner Baugh
- Douglas S. Scott was nominated by Commissioners DiSabatino and Trace

A motion was made by Commissioner Trace, seconded by Commissioner Baugh, and carried 7-0, to close nominations.

By majority vote, Sandra Jo Forney was reappointed and Carl S. Meyer was appointed to the Historic Preservation Board.

Chairman Benac thanked everyone for applying.

BC20171102DOC007

ADVERTISED PUBLIC HEARINGS (Presentations Upon Request)

10. **ORDINANCE/LAND DEVELOPMENT CODE**

 A duly advertised public hearing was opened to consider adoption of proposed LDCT-17-02/Ordinance 17-22, Land Development Code Text Amendment, Airport Zoning. The Planning Commission recommended approval. This item was continued from October 5, 2017, and to be continued to December 7, 2017.

There being no public comment, Chairman Benac left public comment open.

 Commissioner Trace moved to continue the public hearing for LDCT-17-02/Ordinance 17-22 to December 7, 2017, at 9:00 a.m., or as soon thereafter as same may be heard at the Manatee County Government Administrative Building, first floor chambers. The motion was seconded by Commissioner Baugh and carried 7-0.

BC20171102DOC008

11. **ORDINANCE/COMPREHENSIVE PLAN**

 A duly advertised public hearing was held to consider adoption of proposed Comprehensive Plan Amendment PA-17-05/Ordinance 17-34, Schroeder-Manatee Ranch, Inc. This item was previously recommended for transmittal by the Planning Commission and the Board of County Commissioners.

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

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 in compliance with the provisions of Chapter 163, Part II, Florida Statutes, and consistent with the Manatee County Comprehensive Plan, Commissioner Baugh moved to adopt Plan Amendment PA-17-05/Ordinance 17-34, as recommended by the Planning Commission. The motion was seconded by Commissioner Trace and carried 7-0. BC20171102DOC009

12. **ORDINANCE/DRI**

 A duly advertised public hearing was held to consider adoption of proposed Ordinance 17-32, Northwest Sector DRI 26. The Planning Commission recommended approval.

No ex-parte communications were disclosed.

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

 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, the Manatee County LDC, and Section 380.06, Florida Statutes, subject to the conditions of approval established in the Development Order, Commissioner Baugh moved to approve Ordinance 17-32, as recommended by the Planning Commission. The motion was seconded by Commissioner Jonsson and carried 7-0. BC20171102DOC010

13. **ORDINANCE/ZONING**

 A duly advertised public hearing was held to consider adoption of proposed Zoning Ordinance PDMU-05-19(G)(R8), Northwest Sector. The Planning Commission recommended approval.

No ex-parte communications were disclosed.

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

 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, as conditioned herein, Commissioner Baugh moved to approve Manatee County Zoning Ordinance PDMU-05-19(G)(R8); for a project that was previously granted Special Approval for: (1) a mixed-use project in the UF-3 and RES-1 Future Land Use Categories; (2) exceeding a gross density of one dwelling unit per acre in the UF-3 Future Land Use Category; (3) exceeding a net density of one gross dwelling unit per acre in the RES-1 Future Land Use Category; (4) exceeding 30,000 square feet of non-residential uses; and (5) partially in the Evers Reservoir Watershed, as recommended by the Planning Commission. The motion was seconded by Commissioner Trace and carried 7-0. BC20171102DOC011

(Depart Sarah Schenk, Assistant County Attorney; enter William Clague, Assistant County Attorney)
ADVERTISED PUBLIC HEARINGS (Presentations Scheduled)

14. **ORDINANCE/LAND DEVELOPMENT CODE**

 A duly advertised public hearing was held to consider adoption of proposed Ordinance 17-24, Land Development Code, Chapter 2 (Definitions related to Impact Fees), and Chapter 11 (Impact Fees). The Planning Commission recommended approval. BC20171102DOC012
and

15. **RESOLUTION/LAND DEVELOPMENT CODE**

A duly advertised public hearing was held to consider adoption of proposed Resolution R-17-107, Impact Fee Administrative Procedures Manual (dated 9/20/17). The Planning Commission recommended approval. BC20171102DOC013

No action necessary; these are the first of two required public hearings. The second public hearings are scheduled for December 7, 2017.

 Dwayne Guthrie, Impact Fee Manager, utilized a slide presentation to review the impact fee meetings, proposed changes, Chapter 11 (impact fees), Chapter 2 (definitions), procedures manual, credits for system improvements, transportation credits, impact fee administrator, and impact fee revenue.

 Discussion proceeded about audit changes suggested by the Clerk of the Circuit Court, and the appeals process (Section 1107, Appeals).

Mr. Guthrie explained currently, the Appeals process is before the Board. Staff is proposing to change the process to go before a hearing officer.

Commissioner Smith expressed concern about the lack of information on hearing officers (qualifications and if a hearing officer is a paid position).

 William Clague, Assistant County Attorney, explained that the hearing officers are appointed pursuant to a provision of the LDC. The proposed change to the Appeals process is recommended due to its technical and legalistic nature.

Mr. Guthrie noted the appeals process before a hearing officer is considered to be best practice.

 Discussion continued about the appeals process and not delegating the Board's authority to one person, the process for issuing credits, how often do appeals take place, making a decision on credits is difficult, assessed land values, appeals could be based on a certain amount, appraisals are part of the appeals process (similar to eminent domain), public input on this subject, do other counties charge administrative fees such as the proposed \$2,000 fee paid to Public Works, and the amount of fees charged by Building and Development Services Department.

 John Osborne, Planning Official, reported other jurisdictions collect a fee based upon the land development review process in order to recoup the expenses of staff time. Fees are not broken down by department but by the average amount of time spent by staff during the review process.

Mr. Guthrie stated the proposed \$2,000 fee to be paid to Public Works is in addition to the administrative fees.

Chairman Benac clarified the proposed \$2,000 fee to be paid to Public Works is for an impact fee credit agreement, which requires Board approval.

Upon question, Mr. Guthrie confirmed the proposed \$2,000 fee to be paid to Public Works covers staff review of impact fee credit applications.

Commissioner Baugh inquired if Public works staff was doing the land development review process for free and the developer is not being charged in any way for the review process.

Mr. Osborne noted the proposed \$2,000 fee to be paid to Public Works will ensure that staff is paid consistently, since funding is acquired through the land development review process.

Discussion continued about Manatee County leads in impact fees, the hearing officer phase of the Appeals process, what is the next step for a resident dissatisfied with the hearing officer's determination, following the same process as the special magistrate for code enforcement cases, staff is proposing that a hearing officer make a determination, and spending impact fees in cities where impact fees are not collected.

Mr. Clague explained the appeals process being proposed is for administrative decisions, and not setting policy on impact fees. It is the Board's discretion on whether or not to approve the changes as recommended by staff. If a resident is unhappy with the decision from the hearing officer, they can appeal to the Circuit Court, and the Board can appeal a decision of the hearing officer.

Commissioner Whitmore stated she does not support the proposed \$2,000 fee, but is in favor of the change to the appeals process due to the hearing officer being an expert.

Commissioner Trace stated no action is necessary on this item and inquired how the Board should proceed with issues of concern.

Mr. Clague elucidated that staff has been working on this portion of the LDC for a long time. He suggested extracting the controversial items (proposed \$2,000 fee and the Appeals process) from the ordinance for separate consideration at a later date.

Chairman Benac requested individual opinions regarding the proposed \$2,000 fee and the appeals process.

Commissioner Smith stated he is not in favor of either change, because more information is needed.

 Commissioner Baugh explained she is not in favor of the change to the appeals process and does not have enough information to make a decision on the proposed \$2,000 fee. She expressed concern with discussing how old impact fee funds can be spent and would like to hear from the public on the proposed impact fee changes.

 Commissioner Whitmore reported she has been approached by developers about the County not spending impact fees in their zones where fees are generated. The Board does not have to accept the hearing officer's recommendation.

 Chairman Benac noted that allowing the expenditure of “old money” within cities is being proposed as a housekeeping update to the LDC. She has heard from people who have paid impact fees that will not be spent in their neighborhoods where they were collected.

Discussion ensued about public comment.

Public Comment

 Edward Vogler, attorney, reported his comments made at the Planning Commission hearing (10/12/17) are being considered by staff. Developers are entitled to impact fee credits and pay \$15,000 for local development agreements. He requested that the Board encourage some flexibility in the development process and inquired why developers do not receive impact fee credits for the reservation of right-of-way.

Mr. Clague stated the County litigated this and there is a ruling from the Circuit Court on this matter. When the County needs the right-of-way, it will have to be condemned by eminent domain, and it will cost more money than it does to get it with impact fee credits because under the eminent domain law it will be valued in accordance with the zoning on the parent tract. The right-of-way is valued based on the residential zoning or whatever the surrounding land use is at the time the County takes the property through eminent domain.

Mr. Vogler responded to questions regarding the application process for impact fees in Sarasota County, whether or not he provided information to staff, whether or not he knows the type of fee that he paid to apply for an impact fee credit, and whether or not Sarasota County charges for staff time.

Chairman Benac stated the Board needs more information on the calculations of impact fees and why Public Works is not receiving its fair share.

Mr. Vogler acknowledged developers are paying to get the credit for which they are entitled.

Mr. Clague stated Florida Statutes mandate local development agreements to be consistent with the LDC. In order to create flexibility, it has to be done with the LDC, and is difficult to do with impact fees, because they are driven by impact fee studies.

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

 Commissioner Baugh requested supplemental information on what surrounding counties charge for impact fees, breakdown on the fees, how the proposed \$2,000 fee will be utilized, public opinion, and mobility fees.

Chairman Benac agreed that credits are due to a developer that has dedicated their land and infrastructure is paid for with impact fees, which is needed because of new growth.

 Mr. Guthrie stated the proposed changes are recommended by staff. Staff will discuss the concerns and present a revised staff report prior to the hearing on December 7, 2017.

 Commissioner DiSabatino sought more information on past conversations with Mr. Vogler.

Mr. Guthrie noted Mr. Vogler’s concerns were presented at the Planning Commission meeting, and this information will be provided to the Board.

Mr. Clague pointed out Mr. Vogler's comments were made during an advertised public hearing and are public information.

RECESS/RECONVENE: 3:24 p.m. – 3:32 p.m. All Commissioners were present with Commissioner DiSabatino via telephone.

17. **RESOLUTION/PDMU-16-02(P), GULFSIDE HOMES/BOWLEES CREEK LLP/BLU HARBOR**

 A duly advertised public hearing was held to consider adoption of proposed Resolution R-17-077, to deny Preliminary Site Plan Application PDMU-16-02(P), Gulfside Homes/Bowlees Creek LLP/Blu Harbor.

No ex-parte communications were disclosed.

 Sarah Schenk, Assistant County Attorney, stated with the agenda memorandum, there is a follow up to the June 1, 2017, public hearing on the site plan known as Bowlees Creek LLP/Blu Harbor [PDMU-16-02(P)]. Public comment was closed at that hearing and deliberations were continued, due to pending litigation, to bring back the resolution. Florida Statutes requires findings to support denial, and it is important to note that the motion made on June 1, 2017, specifically was to deny Zoning Ordinance PDMU-16-02(P) and to direct the preparation of findings for denial. Meanwhile the applicant challenged the amendments to the Comprehensive Plan regarding the airport impact overlay zone (Ordinance 17-03), and because this case was involved, bringing back the resolution was delayed. That case has been disposed of and a final order was issued by the Florida Department of Economic Opportunity. What has transpired procedurally is that the applicant has submitted what they claim is new documentary evidence or testimony pertaining to the preliminary site plan application that they feel the Board has overlooked, but was not available at the time of the June hearing, which brings forth a request to reconsider the denial. Procedurally, the Board has options to: (a) consider the motion outlined on the agenda memorandum (adopting Resolution R-17-077 and its findings); or (b) agree to hear the additional testimony. However, two procedural motions would be required for the second option (she read and submitted the motions). The County does not want to deny the applicant due process by not allowing them to present the new testimony but procedurally, public comment has been closed, and the Board voted to deny. New evidence cannot be heard unless the public hearing has been advertised. If the public hearing is not reopened, the County could face the challenge of not allowing due process and lose the challenge.

Upon question, Ms. Schenk reported for the motion to deny and bring back findings to support, Commissioners Benac, DiSabatino, Smith, Trace and Whitmore were on the prevailing side.

(Chairman Benac passed the gavel to Second Vice-Chairman Smith)

Motion – Reconsider

 Chairman Benac moved to reconsider the motion made on June 1, 2017, to direct the County Attorney and Staff to prepare findings to support the denial of Zoning Ordinance PDMU-16-02(P). The motion was seconded by Commissioner Whitmore.

Discussion took place as to legal ramifications for not hearing all of the information.

The motion carried 7-0.

Motion – Rescind

 Commissioner Benac moved to rescind the motion to deny Zoning Ordinance PDMU-16-02(P) made on June 1, 2017, and to set Zoning Ordinance PDMU-16-02(P) for a duly noticed public hearing to be heard by the Board of County Commissioners on a future date to be determined. The motion was seconded by Commissioner DiSabatino.

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

The motion carried 7-0.

(Gavel passed to Chairman Benac, presiding)

Commissioner Jonsson suggested this item be a time certain when it comes back before the Board.

Upon question, Ms. Schenk informed the Board that the application is considered to be pending.

BC20171102DOC014

WORK SESSION – SEAGRASS SIGNAGE

 Commissioner Whitmore moved for a future work session to discuss signage for seagrass areas throughout the County. The motion was seconded by Commissioner DiSabatino.

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

The motion carried 7-0.

COMMISSIONERS' COMMENTS

Commissioner Jonsson 

- Requested a report on the vacant Deputy County Administrator position
(Note: Further comments took place later in the meeting)

(Depart Commissioner Whitmore)

SPECIAL EVENTS

 Commissioner Baugh reported she has received emails regarding a special event in Lakewood Ranch. She requested a system be put in place to address concerns or issues in the future and sought guidance from the Board.

BC20171102DOC015

Discussion ensued about procedures for which roads can be closed for events (current procedures involve numerous parties approving the requests).

 Mitchell O. Palmer, County Attorney, stated special events procedures are deficient and the County is in need of a comprehensive special events ordinance to address types of special events. He pointed out the previous work session (8/25/16) on this matter did not go well, and the County Attorney's office continues to work on the special events ordinance.

Commissioner Baugh stated John Barnott, Building Development Services (BADs) Director, explained via email that the Building Department does not sign off on special events.

Mr. Palmer sought clarification on the existence of a section in the LDC that addresses special events. He noted there is section in the Code of Laws that deals with special events in parks but not roadways.

Discussion ensued about the past suggestion of discontinuing 5k runs in Lakewood Ranch, the LDC requires a permit, but the concern is the process for obtaining a permit, and organizers should have insurance policies in place.

Chairman Benac suggested staff bring back a report.

 Commissioner Baugh moved to have a work session to discuss special events in unincorporated Manatee County. The motion was seconded by Commissioner Trace.

 Mr. Barnott stated BADS processes the application, but does not sign off on them. He noted Katharine Zamboni, Assistant County Attorney, is working on the special events procedures and ordinance.

Motion - Amended

Commissioner Baugh amended the motion for the work session to be within 45 days. Commissioner Trace agreed to the amendment.

Mr. Palmer stated he cannot guarantee this without speaking with Ms. Zamboni.

Commissioner Trace further amended the motion for the work session to be within 45 to 60 days. Commissioner Baugh agreed.

Brief discussion ensued.

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

The motion carried 6-0, with Commissioner Whitmore absent, for a work session to be held within 60 days.

 Mr. Palmer stated the City of Bradenton does not have a special events ordinance. (Note: Work session regarding the special events ordinance is scheduled for January 16, 2018)

COMMISSIONERS' COMMENTS (Continued)

Commissioner DiSabatino 

- Asked that the copies of letters from the Florida Department of Economic Opportunity (DEO) for Comprehensive Plan amendments include the project name for informational purposes

Commissioner Trace 

- Relayed her experiences with special events in Parrish including the run on the Fort Hamer Bridge

Commissioner Smith 

- Announced the Florida Association of Counties Legislative Conference will be held November 15-17, 2017, at the Hyatt Regency, Sarasota. He stated he will be forwarding information to the Board regarding bills that could affect the County.
- Informed the Board that several counties are pursuing class action lawsuits against drug companies in order to recoup funds from increasing healthcare costs related to the opioid epidemic

Chairman Benac 

- Reported the Florida DEO extended the deadline until November 14, 2017, to apply for disaster unemployment assistance
- Announced a press conference is scheduled for November 3rd at 9:30 a.m., at the Public Safety Center
- Stated the Board is following the legislative session closely and Senator Bill Galvano has been nominated to be President for the 2019-2020 legislative session
- Congratulated Cari Roth, legislative liaison, for being nominated as the 2018 Land Use and Zoning Attorney of the Year by Florida Trend Magazine

ADJOURN

There being no further business, Chairman Benac adjourned the meeting at 4:20 p.m.

Minutes Approved: _____