

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida
October 16, 2014

LET IT BE REMEMBERED, that the Collier County Planning Commission, in and for the County of Collier, having conducted business herein, met on this date at 5:05 p.m. in SPECIAL SESSION in Building "F" of the Government Complex, East Naples, Florida, with the following members present:

Mark Strain, Chairman
Stan Chrzanowski
Brian Doyle
Diane Ebert
Karen Homiak
Charlette Roman (Absent)
Mike Rosen

ALSO PRESENT:

Scott Stone, Assistant County Attorney
Ray Bellows, Zoning Manager

CHAIRMAN STRAIN: Good morning -- good evening, everyone. Welcome to the Thursday, October 16th of the Collier County Planning Commission. This is a special Land Development Code hearing, and that's why we're starting at 5:05.

If everybody will please rise for Pledge of Allegiance.

(Pledge of Allegiance was recited in unison.)

THE WITNESS: Thank you. If the secretary will please do the roll call.

COMMISSIONER EBERT: Yes, good evening.

Mr. Eastman is absent.

Mr. Chrzanowski?

COMMISSIONER CHRZANOWSKI: Here.

COMMISSIONER EBERT: Mr. Rosen?

COMMISSIONER ROSEN: Here.

COMMISSIONER EBERT: Ms. Ebert is here.

Mr. Strain?

CHAIRMAN STRAIN: Here.

COMMISSIONER EBERT: Ms. Homiak?

COMMISSIONER HOMIAK: Here.

COMMISSIONER EBERT: Mr. Doyle?

COMMISSIONER DOYLE: Here.

COMMISSIONER EBERT: And Ms. Roman is absent.

CHAIRMAN STRAIN: Okay, now Ms. Roman told us about her absence last time so it's an excused absence.

As far as the addenda to the agenda, there are none.

The Planning Commission absences. November 6th is our next regular meeting.

Ray, do we have anything scheduled for the 6th?

MR. BELLOWS: Yes, we do.

CHAIRMAN STRAIN: Okay. Does anybody know if they're not going to make it to the 6th?

(No response.)

CHAIRMAN STRAIN: Good, we have a quorum.

And approval of minutes. We were all sent electronically the minutes from September 18th. Is there either any changes or --

COMMISSIONER HOMIAK: Motion to approve.

CHAIRMAN STRAIN: -- motion to approve?

Ms. Homiak made a motion to approve. Seconded by?

COMMISSIONER EBERT: I'll second.

CHAIRMAN STRAIN: Diane.

Discussion?

(No response.)

THE WITNESS: All in favor, signify by saying aye.

COMMISSIONER DOYLE: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER ROSEN: Aye.

COMMISSIONER CHRZANOWSKI: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

Ray, BCC report? You don't have to go into length about Ave Maria.

MR. BELLOWS: Yes, Ave Maria was approved 5-0, subject to CCPC recommendations.

I won't go on how long it went on some of those things. But the DRI associated with that was

approved on the summary agenda, as well as the amendment for the Mirasol was approved on the summary agenda.

CHAIRMAN STRAIN: Thank you. And after all the time we spent on Ave Maria, I was hoping that it would go faster and the Board wouldn't have to rehear everything, but unfortunately it took a lot longer than expected.

Chairman's report. There isn't anything at this time.

There's no consent agenda.

So we'll move right into our first and only advertised public hearing. And this is for amendments to our Land Development Code Ordinance No. 04-41.

We're amending several sections, quite a few sections in fact, involving the additional growing of crops in Golden Gate Estates, the raising of hogs through the 4-H program in the Estates area, and finally the automobile service station distance discussion that has been provided or proposed for the amendment to the Land Development Code.

And with that we'll turn it over to Caroline who has patiently written all this stuff and reviewed it with the public and so we'll let you go forward with your presentation.

MS. CILEK: Thank you. Caroline Cilek for the record.

I have three board directed amendments before you today. They all were drafted earlier this year and they've all gone through the public vetting process, beginning with a PIM, public information meeting, with the public for two of the amendments. Both of those dealing with the agricultural and Estates districts.

And then following that they went through the vetting process with the DSAC, LDR sub-committee, that's Development Services Advisory Council. And then the full DSAC as well. And their recommendations are provided on each of the amendments.

I can go into a bit of a description about each, if you'd prefer, but I'd kind to like to know which one you would like to go over first.

CHAIRMAN STRAIN: Let's take them in order that they're in -- well, we have one member of the public here from 4-H, and the gentleman on the right is here for gas stations, automobile service stations.

And Gary, are you here for any particular item?

MR. BEYRENT: Actually, I was going to submit one right now, but it probably isn't legal, right?

CHAIRMAN STRAIN: No, we can't do that. We have three we can discuss. And I wanted to make sure that we address them in the order of the quantity of the members of the public. So if you say you're here for 4-H, she gets to go first. If you say you're here for automobile service stations, he gets to go first. What would you prefer?

MR. BEYRENT: Whatever you'd like. It's okay.

CHAIRMAN STRAIN: Neutral, okay. Well, let's do ladies before gentlemen.

MR. BEYRENT: That's a better idea.

CHAIRMAN STRAIN: Let's do the 4-H part of it first.

MS. CILEK: Okay, great. So that is the second amendment in your binder.

And what this does is this amendment removes a provision within the temporary event section that outlined a process for --

CHAIRMAN STRAIN: Can you give us the page?

MS. CILEK: Yeah, the -- well, I'm just describing it generally. But the actual removal of the text in the LDC in the temporary event section is on Page 6. It kind of goes backwards.

CHAIRMAN STRAIN: Okay.

MS. CILEK: So this is the existing language in the LDC. We are proposing to delete it, following the Board's direction.

And what we did is we streamlined this process. Currently as you can see the process is to take the ability to raise a hog with the 4-H Youth Development Program. It's through a public hearing process. And the Board is directed to streamline this into more of an administrative process.

And we worked with the 4-H program, and they are going to administer the raising of hogs, Youth Development Program, for those who wish to raise hogs with the 4-H program.

So I will try to speak a little slower.

What we are doing here is allowing for those that are participating to go through the training with 4-H so they will be listed. They will be listed so that if there are any issues, all the families that are involved will be on record as going through the program. And then they will go through this language as well, what is allowed in the LDC for how to raise the hogs, where to place the premise, the fencing, all of that, what the setback requirements are. And so it will be completely administered by the 4-H program. Growth Management Division, this public process will not be relevant any longer.

And what we did is we took this to the Estates community. We had a public information meeting back I believe in August, and we received feedback from them at that time. It was a short presentation on this amendment as well as the other one. And those comments are included in this binder as well.

And then we also attended the Golden Gate Civic -- Golden Gate Estate Area Civic Association meeting and presented this amendment and got feedback from that group as well.

At the -- DSAC has also identified their recommendations on the amendment.

That's it for this amendment.

CHAIRMAN STRAIN: Okay. Does anybody on the Planning Commission have any questions?

Go ahead, Diane.

COMMISSIONER EBERT: No.

CHAIRMAN STRAIN: Mike?

COMMISSIONER ROSEN: Quickly, if you could, a very fast synopsis, what is the difference between this amendment and what we have currently on the books regarding residential property next to where these facilities might or might not go?

MS. CILEK: Well, currently what it was was the public hearing process, right, and that allowed just for raising hogs in the Estates district. So we maintained that. That's still the same. And you have to abide by the same setbacks.

We did expand it to include agricultural areas, because it wasn't noted under there, but children living in agricultural areas under 20 acres can certainly go through the 4-H program as well. So we added that. But there are no changes to the setbacks from what was previously identified. Just the process.

CHAIRMAN STRAIN: Well, I think to put it clearer, the process previously required a temporary use permit and that had a fee arranged with it where it had to go -- it could have been done by the County Manager's designee, I believe.

MS. CILEK: I don't even know if there was a fee assigned to it, to be honest. So I don't think it was a utilized process.

CHAIRMAN STRAIN: Right.

COMMISSIONER ROSEN: So it's a process change but not a physical change?

MS. CILEK: Right. It's a process change in the way that they will register with 4-H program, go through the training of 4-H, and the site standards for raising the hogs isn't changing.

COMMISSIONER ROSEN: Okay, thank you.

CHAIRMAN STRAIN: Anybody else?

(No response.)

CHAIRMAN STRAIN: I got a couple suggestions.

If we turn to the staff report section, that also has the LDC language attached to it.

And Caroline, I know I've looked this over before and I should have recognized some of these at that time, but I just got a couple.

On Page 5, it's item B -- it's under the Estates district, B.1.B.4.I.A. And it says one hog per child enrolled in 4-H development program is permitted on lots in parcels of 1.25 acres or greater and in no case shall be more than two hogs per acre.

The DSAC was correct in that there are some odd sized lots out there, 1.14, for example.

MS. CILEK: Right.

CHAIRMAN STRAIN: So why don't we just say one hog per child enrolled in 4-H Youth Development Program is permitted, period, and not reference the size of lots. Because if it's in Estates zoning, it's allowed.

MS. CILEK: Yes, we could go that route. Just so it's on the record, we maintain the 1.25 because

that was in the existing language.

CHAIRMAN STRAIN: I know. But I think the point is, and I know at the public meeting we had people come up and suggest that gee, these smaller lots, we've got to consider them as well. So I'd suggest we just drop the reference to the size because we don't need it, unless you see a reason why we do.

MS. CILEK: Ray? Okay.

MR. BELLOWS: For the record, Ray Bellows.

I don't see a problem eliminating the acreage size. There are a lot of nonconforming lots in the Estates that are perfectly suitable for these uses and it doesn't seem to me to make much sense to put a size limit.

CHAIRMAN STRAIN: I like that.

COMMISSIONER HOMIAK: There's nothing below an acre anyway, is there? 1.4 is the smallest.

CHAIRMAN STRAIN: Yeah, 1.14.

COMMISSIONER HOMIAK: 1.14.

COMMISSIONER CHRZANOWSKI: Could I ask something?

CHAIRMAN STRAIN: Go ahead.

COMMISSIONER CHRZANOWSKI: I know an engineer that at last count I think he had eight kids. Does that mean they could put eight hogs on an acre and a quarter lot?

CHAIRMAN STRAIN: No more than two per acre.

COMMISSIONER CHRZANOWSKI: No more than two per acre.

CHAIRMAN STRAIN: So eight kids, only two of them get to raise a hog.

MS. CILEK: And Stan brings up a really good point. I do want to point out that language, which was introduced by the Board's direction, is new to this section, the limit of one hog per child enrolled in the 4-H Development Program.

COMMISSIONER CHRZANOWSKI: So we're doing away with the 1.14.

MS. CILEK: Well, 1.24.

CHAIRMAN STRAIN: 1.25 is what it was.

MS. CILEK: 25, thank you.

CHAIRMAN STRAIN: Then Item C, it says premises or roofed structure used for sheltering. This is talking about the standards and how they'll apply.

What do we care if it's roofed or not? Could we just say premises or structures used for sheltering? That covers everything, whether -- because somebody will get creative and not put a roof on it and say, ah, it doesn't fall under the code.

MS. CILEK: I don't see any issues with that.

CHAIRMAN STRAIN: Those are the only two suggestions I have.

I've attended all the public meetings in the Estates where these was presented. And there were some people that were concerned, but the overwhelming majority were in favor of this, so I don't have a problem with it.

I think the 4-H program being involved is the key to making it work right, and I'm real appreciative that they're willing to take on the task of tracking it. It's hard to track so I give you guys a lot of credit for that, thank you.

Anybody else?

(No response.)

CHAIRMAN STRAIN: Any members of the public wish to speak on this?

(No response.)

CHAIRMAN STRAIN: Okay, is there a motion from the board?

COMMISSIONER HOMIAK: Make a motion to approve.

COMMISSIONER CHRZANOWSKI: I'll second.

CHAIRMAN STRAIN: Is the motion maker and second subject to the two changes that were recommended?

COMMISSIONER HOMIAK: Yes.

COMMISSIONER CHRZANOWSKI: (Nods head affirmatively.)

CHAIRMAN STRAIN: Both of you, okay.

All those in favor, signify by saying aye.

COMMISSIONER DOYLE: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER ROSEN: Aye.

COMMISSIONER CHRZANOWSKI: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER ROMAN: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

***The next one up is -- while we're in the Estates, this one will go fast, let's just finish up the Estates, since I see another gentleman here who lives in the Estates, and I know another guy that does. It will only take a minute, I hope, and it's the -- Caroline, it's the one on the crops. You want to just dive into that one, please?

MS. CILEK: Sure. Just note that this one went through the same public process as the other two. Had the two different meetings with the public and those comments are included in the back as well.

And this amendment was brought forward by the Board at the same time actually as the hog amendment was. And at that time they recommended that fruits and vegetables could be sold -- could be grown and then sold off-site on Estates property. Currently the LDC allows for field crops which have been over time construed to be, which makes sense in Southwest Florida, fruits and vegetables, to be grown for personal consumption on ones property in the Estates district.

So this is a change to allow for them to grow them and then sell them off-site. It's identified as a limited accessory use to the principal use of the property, which is a single-family home.

And let's see here, there are other communities and counties in the state that have similar zoning districts. They usually mention farm as a part of their introduction to the zoning district.

And then what we did is we identified two different criteria for those people who choose to grow fruits, vegetables and over time nursery plants was added to the section, added to the accessory use, grow those, and that would be that they obtain a home occupational license, which is common for a commercial practice at one's home. And also would abide by site standards.

And the site standards came up during the public meetings that we had with community members out in the Estates district and at the Golden Gate Estate Area Civic Association meeting.

And that's an overview of the amendment.

And then there were also recommendations by DSAC and those were to move forward with the proposed language.

CHAIRMAN STRAIN: Okay, does anybody have any questions about this one?

(No response.)

CHAIRMAN STRAIN: And I don't either. I just want to make a comment.

I'm pleased to see that the county is allowing more self-sustainability for people that want to do that in Collier County. This country is suffering from lack of people being able to do them things themselves, and this definitely helps. And so living out there I'm not necessarily going to take advantage of either one of these, but I admire people that want to. So --

COMMISSIONER EBERT: You don't have the time.

CHAIRMAN STRAIN: You're right, I don't have the time.

So with that, is there a --

COMMISSIONER HOMIAK: Motion to approve.

CHAIRMAN STRAIN: Motion made by Ms. Homiak. Seconded by?

COMMISSIONER EBERT: Second.

CHAIRMAN STRAIN: Diane.

Discussion?

(No response.)

CHAIRMAN STRAIN: All in favor, signify by saying aye.

COMMISSIONER DOYLE: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER ROSEN: Aye.

COMMISSIONER CHRZANOWSKI: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

Well, Caroline, we are moving fast and furious. That pizza did everybody good up here.

MS. CILEK: Lots of energy.

CHAIRMAN STRAIN: Now we're into the automobile service station.

MS. CILEK: Right-o. Okay, so we'll do an overview of the amendment. This amendment was board directed on July 8th. There was an add-on item in the executive summary that, one, I guess put a moratorium on the application of new site plans coming forward, but more importantly and relevant for this amendment was it directed staff to come back with an LDC amendment that would look at regulating automobile service stations, including gas stations, of eight or more -- I believe, is it eight or more?

MR. BELLOWS: Yes.

MS. CILEK: Eight or more -- thank you, second-guessing myself -- fuel pumps adjacent at that time. And it has been since clarified to be abutting residential property.

And that was our direction. And that came during the mid summer. And since then we've been publicly vetting this with the community and there's been a lot of community input and suggestions.

And what we've done is identified two main considerations that support the amendment: One being the comprehensive impacts of a large gas station being eight or more fuel pumps, as well as the benzenes, and we talk about that in the amendment itself.

CHAIRMAN STRAIN: Before we get into the discussion, because there's been so much -- I've seen a lot of different input. A lot of it reflects items that the Board never asked us to open up and look at.

MS. CILEK: That is very true.

CHAIRMAN STRAIN: Would you mind putting that on record very clearly and detailed right now so that -- benefit of the gentlemen in the audience and those of us up here. Those comments that were provided involving the lighting and landscaping and the branding and all the other stuff is irrelevant. The Board's not opening that portion of it up, as far as I know.

MS. CILEK: Right. When this was going through the public process, I identified at every point when there were comments on other sections that the Board directed us to look at this specific issue, and so we limited the changes, proposed amendment changes, to this issue. We identified that other sections can be reviewed at a later time. However, all changes are relevant to this new section C regarding the eight fuel pumps or more abutting residential.

CHAIRMAN STRAIN: Okay, so the -- I know that I attended some of the other meetings and people got up and spoke about the signage, the -- how the distance was measured, things like that. Only the aspects of the distance are what we're talking about.

MS. CILEK: Correct. That's the only proposed changes.

CHAIRMAN STRAIN: Okay. And with that, I guess I'll open it up to questions from the Board. Anybody?

COMMISSIONER EBERT: We're changing it from a zoned C-5 to a --

CHAIRMAN STRAIN: No, we're not changing any of the zoning.

COMMISSIONER EBERT: -- conditional use? I thought we were going to change it.

MS. CILEK: Let's walk through the language and identify what it establishes.

CHAIRMAN STRAIN: Conditional uses aren't changing in zoning, Conditional Use is standards that have to be applied if you want to use that use that's already allowed or that allowed but that's not

permitted by right.

COMMISSIONER EBERT: Correct.

MS. CILEK: So on Page 4 of the amendment, we can take a look at the new language. And what it identifies is location and number of fuel pumps. And here we identify that automobile service stations shall be limited to eight fuel pumps when located within 300 feet of residential property. So we took the Board's direction and we identified a distance, 300 feet.

CHAIRMAN STRAIN: And while you're at it, why did you choose that distance? Tell us the stuff as you go through it so we can --

MS. CILEK: Sure, that makes more sense, yeah.

The 300 is based both on the compatibility of a large gas station as well as the distance that was identified and research regarding benzenes and their impacts within 300 feet. So at 300 feet the impacts go drastically down. So that is the number we use in here to establish a safe level of presence of the benzene.

CHAIRMAN STRAIN: The benzene data was acquired from California's EPA standards that they used to -- in how they placed it.

MS. CILEK: Yes.

CHAIRMAN STRAIN: What does Lee County have for distance measurement or Conditional Use processes?

MS. CILEK: Well, Lee County does it a little bit differently. Any gas station over eight pumps goes through a Conditional Use process, regardless of where it's located in the county.

CHAIRMAN STRAIN: So they're more restrictive than we are.

MS. CILEK: Correct.

CHAIRMAN STRAIN: Or than we're proposing.

MS. CILEK: Correct.

COMMISSIONER CHRZANOWSKI: Caroline?

MS. CILEK: Than what we are currently today do.

COMMISSIONER CHRZANOWSKI: How did you identify residential property? Is it the property boundary? What if there's a residential golf --

MS. CILEK: That's the next sentence. That's a great one and it's a really important one.

So as it reads, for the purposes of this section residential property shall be any lot which is developed or intended for residential use. And that residential use is very important.

So you have a PUD. The PUD is residential, there's no commercial in there. But we're talking about a residential lot line. And so if the -- you're not going to measure it to the preserve if that's the nearest -- you're going to measure it to the actual residential lot line because it's going to be used for residential purposes. So preserve line doesn't count.

COMMISSIONER CHRZANOWSKI: What if the whole property is multi-family and it's not platted lots, it's all one big parcel and the nearest residential unit is 500 feet from the property line?

MS. CILEK: Well, I think that's also why intended for residential use is so important, because it does capture the multi-family or the townhouse developments.

COMMISSIONER CHRZANOWSKI: Yeah, but then you're saying that it's actually the property. It doesn't -- like on one property the house could be very near the property line, the other property the multi-family unit could be 500 feet from the property line and both treated the same.

MS. CILEK: I'd have to probably I guess see that on paper, but there would be a tract established. I mean, they have to be on a platted something.

COMMISSIONER CHRZANOWSKI: Not for multi-family. It's not a subdivision.

CHAIRMAN STRAIN: But Stan, if it was a multi-family and the developer was building on the tract that was parceled as residential, why would he leave a 500-foot setback? I mean, that would be cost prohibitive.

COMMISSIONER CHRZANOWSKI: Sometimes it's for stormwater management. Sometimes he puts his road around, you know, stormwater management and then the road. I can think of a couple of parcels where it's a couple hundred feet from the nearest residential to the road.

MS. CILEK: Well, Stan, I also share that this just says that the standard is like the umbrella, and

then if that is the case then the Conditional Use process would apply. So you can get -- as the language relates, you can go over eight pumps near residential, it's just the conditional use process would then come into play.

COMMISSIONER CHRZANOWSKI: Okay. And the reason I'm asking is you guys know I'm on DSAC, and one of the questions DSAC asks is why don't you just go to the corner of the nearest building? And I guess you decided not to, you went to the property line.

MS. CILEK: Right. And --

CHAIRMAN STRAIN: Yeah, we talked about that. And the problem is the basis -- the VOCs, Volatile Organic Compounds, of which benzene is a highly concerning carcinogenic, the standards and graphics used and the analysis done by the EPA in California showed a substantial dropoff after 300 feet. And it wasn't to the building, it was to people who would be outside say exercising or moving around and breathing in the air.

So we were more concerned that if someone was in a backyard and the kids were playing, that they were exposed just because they're outside their house, not inside. And a lot of times families spend more time outside than they do inside, or quite a bit of their time outside and so that was probably why.

COMMISSIONER CHRZANOWSKI: Maybe we shouldn't put sidewalks in front of gas stations. I'm joking.

CHAIRMAN STRAIN: It's okay with me, you can argue with Stacy on that one.

COMMISSIONER DOYLE: Along those lines, does this pertain to the actual storage tanks, which may be a lot closer if not figured in? If it's figured in from the pump and then the tank happens to be here where deliveries go on, is there a standard distance as well?

MS. CILEK: Sure. The way it's measured is from -- the measurement shall be the shortest distance between the nearest fuel pump to the residential property. So in this case we are doing the fuel pump. That is where the most benzenes are released.

COMMISSIONER ROSEN: So it's the actual dispenser, what you're saying.

MS. CILEK: Yeah, the fuel pump.

COMMISSIONER DOYLE: Well, I would think deliveries would have an opportunity to create that air with benzene as well, you know, or possible spillage.

MS. CILEK: I think it's a relevant discussion. But for the purposes of this amendment we had to pick and we decided to go with fuel pump, because that is where a lot of benzene action does occur.

CHAIRMAN STRAIN: I think that's what the studies said was the highest contaminate area.

MS. CILEK: That's what I remember too.

CHAIRMAN STRAIN: The tanks and stuff, they're still going to be within the property that the station's on, and so you might pick up 30 feet or so. But I can't imagine being too far from the pumps. I'm not sure trying to regulate it to that description gives us much. So, I mean, that's why everybody was satisfied with the fuel pumps, at least at this point.

COMMISSIONER EBERT: Aren't they normally buried?

CHAIRMAN STRAIN: Yes.

MS. CILEK: Let's keep going with this section so that we go through the whole language -- or go through all the language.

So a greater number of fuel pumps may be approved as part of a PUD or Conditional Use subject to the following section, right below this. Existing fuel pumps as of effective date of the ordinance may be modernized, replaced or relocated on the same premise, but additional fuel pumps shall be subject to this section.

So then we proceed into the Conditional Use process, if that is needed for the project.

So C-2, new language, automobile service station Conditional Use request. Automobile service station seeking more than eight fuel pumps within 300 feet of residential property may be approved through a Conditional Use request. In addition to the findings established in 10.08.00, which is the Conditional Use section, the following shall be considered when evaluating compatibility and adverse impacts of the request.

And then we have several considerations to be evaluated.

CHAIRMAN STRAIN: Anybody have any questions at this point?

(No response.)

CHAIRMAN STRAIN: Caroline, on 2.B you mentioned proximity and mitigation of impact to residential properties.

The word compatibility is a word that we use a lot for how we set standards in the LDC. Is there some way that we could work the proximity of mitigation to evolve around the compatibility to the surrounding residential or to the --

MS. CILEK: Well, I think the standards that are -- excuse me, the considerations that are identified in A through G get to that point. Because little b is proximity and mitigation of impacts.

CHAIRMAN STRAIN: Right. I think one of the premises for the ASW standard to begin with, I didn't -- I should have looked earlier to find it -- was that the purpose was to make sure that they were compatible with the neighborhood. There was a high concern over closeness to residential, and that's why the ASW process -- and that's the automobile service station waiver process of 500 feet was established.

MS. CILEK: Right.

CHAIRMAN STRAIN: And I just want to make sure that we don't lose the idea of compatibility. Because that would bring in the ability for a property owner who wants a gas station to meet the standards by putting up a higher wall or a berm or creating more of a buffer with trees and doing things like that. As long as that's not lost, that's my concern. And I wasn't reading it here like it was that clear that the compatibility nature of the standards was what we were after.

MS. CILEK: Well, please keep in mind that in the findings in the Conditional Use section, one of the findings is compatibility with adjacent land uses. So you're also going to review compatibility through the actual Conditional Use process. Number four.

CHAIRMAN STRAIN: Okay. Well, I mean, if it's covered -- it was a lot stronger in the other language, but that's -- we'll see what the Board thinks of it when they get it.

COMMISSIONER HOMIAK: The word mitigation doesn't bring me much comfort.

CHAIRMAN STRAIN: Well, mitigation could be something that doesn't enhance the compatibility, it could just be one more tree. I think that's what you're trying to say.

COMMISSIONER HOMIAK: Yeah, doesn't mean it's compatible, just --

MS. CILEK: And yeah, I think the findings, because number four, I'll read it out of the Conditional Use section, is: Compatibility with adjacent properties and other property in the district.

So it is pretty broad. So if you do have residential neighboring this proposed project, then you could capture it in your review using the four findings in the Conditional Use section.

CHAIRMAN STRAIN: Anybody else have any questions?

(No response.)

CHAIRMAN STRAIN: I'm not done with this one yet, but I thought if you all want to move into it.

MS. CILEK: I can go through the A through G so they're on the record, if you'd like.

CHAIRMAN STRAIN: Yes, that would be a good idea.

MS. CILEK: Okay. So the considerations that have been identified for evaluating compatibility and adverse impacts of the request include A, number of fuel pumps; B, proximity and mitigation of impact to residential property; C, hours of operation; D, architectural design, lighting, landscape buffers and other site features as described in a previous section in this 5.05.05 section; E, location of fuel pumps, parking, loading and refueling areas; F, existing buildings or features as described in that same section that references site features in 5.05.05 that are located between residential property and the proposed automobile service station. So this is to capture the large buildings that may be between residential and the proposed project or a large six-way arterial or collector road.

And then G, additional uses and accessory uses of the automobile service station.

So those are the considerations being added to the Conditional Use process for review.

CHAIRMAN STRAIN: Okay. And I -- while you were talking I did find one of the comments I was concerned about. In the prior reference, the conditions the BZA would have to review by, it says the BZA shall have the right to add additional conditions or requirements to its approval of a distance waiver request in order to ensure compatibility of the automobile service station with the surrounding area and the goals and objectives of the GMP.

I would like to make sure that somehow compatibility is factored in here. I understand your argument about the Conditional Use, but it was stronger before because it was actually in the automobile service station section. So someone looking to do this wouldn't have to go read the findings under the Conditional Use section to understand that they have to be compatible and that there are standards for compatibility.

But I'm one. If the rest of you are comfortable with it --

COMMISSIONER EBERT: I agree. Absolutely agree.

MS. CILEK: So you're talk -- I mean, I actually have the whole 5.05.05 in front of me. So if you want to point out what section you're talking about that is in the ASW?

CHAIRMAN STRAIN: Well, it's the last paragraph in the ASW section. And I don't have the whole section with me, so it's the last paragraph of the piece of it that I've got copied.

MS. CILEK: Is it starting with additional conditions? Yes --

CHAIRMAN STRAIN: 9.04.07.C.

MS. CILEK: 9.04.07?

CHAIRMAN STRAIN: That's in the specific requirements for waiver of automobile service station distance requirements.

MS. CILEK: Okay. Got it.

CHAIRMAN STRAIN: Anyway, the suggestion is to use the word compatibility somewhere in the standards section of the standards you've created. And that's the point I'm trying to make. And if you can, it would be helpful.

MS. CILEK: Proposed changes?

CHAIRMAN STRAIN: Huh?

MS. CILEK: Do you have a proposed language change?

CHAIRMAN STRAIN: I can certainly come up with them.

Proximity of mitigation of impacts to ensure compatibility to residential properties.

MS. CILEK: Okay.

CHAIRMAN STRAIN: That does it.

Then the purpose of the proximity and mitigation and all of it is to reach compatibility. I think that's the intent of the whole standards to begin with.

Does that work?

COMMISSIONER EBERT: Yes, compatibility is very important.

CHAIRMAN STRAIN: You can dress it up if you'd like, but --

MS. CILEK: Well, for the purposes of moving forward, why don't you read it one more time, I'm going to write it down quickly and then we'll keep it at that.

CHAIRMAN STRAIN: Okay. Scott Stone was looking at you or you were looking at him. She needs help or you need help, which is it?

MR. STONE: I think we both missed what you said.

CHAIRMAN STRAIN: Oh, okay. Proximity of mitigation of impacts to ensure compatibility to residential properties.

MS. CILEK: I got it that time.

COMMISSIONER EBERT: We had to do that for Cherie' too.

CHAIRMAN STRAIN: You like that, don't you?

COMMISSIONER EBERT: Yeah, I like poking you.

MS. CILEK: Okay, done.

CHAIRMAN STRAIN: Okay, anybody else have any questions on automobile service stations? (No response.)

CHAIRMAN STRAIN: Those are the only sections of that you want to go over with us?

MS. CILEK: We also amended the definition section.

CHAIRMAN STRAIN: Which -- yeah, we're going to have some questions on that too.

MS. CILEK: Okay. So within the 5.05.05 section we just updated the subsection A, B, C, and that's it, no other changes.

CHAIRMAN STRAIN: Well, one of the updates to the definition section was the definition of fuel pump. Is there any advantage -- and this was one of the questions posed by a member of the public -- of instead of defining pump, we used fueling position; does that make a difference?

MS. CILEK: We have thought a lot about this. A lot of groups have brought it up for discussion. And the reason why staff proposes using fuel pump is that it's a very recognizable term. It's a common term that anyone reading the LDC would understand. And that's why we would like to stay with fuel pump. It's also a term that's utilized by other municipalities and jurisdictions.

CHAIRMAN STRAIN: And I don't have a problem staying with it, but I wanted to make sure we addressed the question, and I think you have. And I expected that as the answer so I'll move on unless -- if one of you want to jump in, just feel free to do so.

There's a question on 5.05.05.A, what is the definition of daytime hours. Is that relevant to this discussion?

MS. CILEK: For the daytime hours, I believe that is in a section that we are not proposing changes to.

CHAIRMAN STRAIN: What about 5.05.A.iv, same?

MS. CILEK: Right. So this is actually -- I'm going to clarify the subsection reference, so that we need -- it needs to go back, so it's actually 5.05.05.B.2.A.iv. And again, this is not a section we're proposing changes to.

CHAIRMAN STRAIN: Okay. Then one of the attachments that you attached had referenced sections 5.05.A and it was ii, iv.C, C-1, C-2, D.2.B, D.2.B again, E.1, A through C, 5.05.L, 5.05.N.8, and 5.05.N.12. You're saying all those sections are sections outside the relevant sections directed by the Board?

MS. CILEK: I don't know if I heard every section perfectly, but generally speaking if it's not within the proposed language of the new C, we are not touching it, per direction of the Board.

CHAIRMAN STRAIN: I know. A gentleman came in to talk to me, I wanted to let him know I believed that was the case, but I mentioned to you earlier today I wanted you to verify it on the record if that was true.

MS. CILEK: I can walk through the sections that are not being touched, but --

CHAIRMAN STRAIN: No, I was trying to respond off his written format that he provided, so -- and it's not the gentleman in the audience, it's somebody else.

And with that, I don't have any other issues to bring up at this time, but I certainly want to hear what the speaker from the public has to say.

Sir, come on up and let's hear what you -- I know you passed a hand-out out. It's not something we can sit here and read that quickly, but we'll -- I'm sure you'll walk us through it.

MS. CILEK: Mr. O'Berski attended our public information meeting last week and he provided comments at that time. And because the binders had already gone out to you, it's one of your handouts for today, and it is the one that looks like the full amendment with the little yellow sticky on it.

CHAIRMAN STRAIN: And I know you've probably heard the discussion, what parts of this amendment are opened up for discussion for this board. And I saw you -- you addressed quite a few different things, so maybe some of those now wouldn't be necessarily relevant.

MR. O'BERSKI: That's fine. I think I've commented in the past. I come with many different hats on.

We were under contract as of August of 2013 to purchase a C-4 zoned property with the understanding and knowledge of what the different uses were approved to be. We subsequently closed on that property, we had nonrefundable money, before any of this conversation started.

The limitation of what these put could inhibit what we do on that property.

So I come as a property owner now. I also represent a gas station company looking to locate sites here in the market. And so I want to clearly state that we have every intention and desire to protect the public. We want to continue to enhance the product and offer delivery mechanisms for the public as we can.

One of my frustrations in this was a 2005 study for -- done in California which substantially, the standards under which gas station fueling industry is required to deliver fuel have substantially changed since then. So a lot of my questions, when we come to the primary component here as far as danger to the public

of a large fueling station, being qualified based off of something that I understand to be a danger, many things have been done to prohibit or hinder the release of those benzenes, simple things that you see in a lot of gas stations that block the fumes that leave as you pump. But also in every facet of a fueling station for convenience, accessibility, the tanks that are in the ground. There was a 2010 standard. Most of the industry has shifted to a double wall and membrane system for penetration.

So to reiterate, I'm concerned about the mechanism that we're using to judge whether or not 300 feet is the right distance. I'm concerned about just the overall perspective on what is going to be happening because of this limitation. I'm concerned as a property owner to what we can do on the property. And so -- let me see.

CHAIRMAN STRAIN: By the way, could you state your name for the record?

MR. O'BERSKI: Yes. I'm sorry. Dan O'Berski.

CHAIRMAN STRAIN: How do you spell that last name?

MR. O'BERSKI: O-B-E-R-S-K-I.

CHAIRMAN STRAIN: Thank you. Sorry I didn't ask that in the beginning.

MR. O'BERSKI: No, I apologize for not mentioning that.

We have opened several gas stations in Lee County, and though it does have a Conditional Use in much of the county, the process to get that Conditional Use is not always through a public hearing. Public hearings, though I appreciate them, the cost and -- the process is just much more substantial and hinders property owners, valuation and cost to deliver and develop.

Those are my main comments and concerns. Large gas stations require much more substantial accessibility. There's things that actually happen in a positive manner in my opinion from large fueling companies versus small ones that can pop up anywhere. So to make a limitation based on a small versus a large fueling station is a little confusing and concerning if ultimately the issue is benzenes.

CHAIRMAN STRAIN: Well, I think -- I mean, from the research that I worked on with Caroline, part of it was also the fact that other municipalities, especially our neighboring county, Lee County, uses eight as a standard. It seemed like a strong basis as to why that may be a good point to start. That's four pumps, that's eight stations. And with that report to support that -- and I'm wondering if you've got a newer report, is there is some way you could provide that to us that shows there's been a reduction or a change in the analysis that --

MR. O'BERSKI: I don't know that there's been any reports done. What I am saying is since 2005 there have been instituted protections against the fumes, essentially.

CHAIRMAN STRAIN: Well, if you're working in Lee County, you've got experience up there, is their system that they've got, is there some improvements in their system that we could look at here? Because I thought by using a standard, a nexus like the benzene and saying 300 feet was better than saying all stations regardless of where they are over eight pumps have to be -- go through a Conditional use.

So in actuality I thought that was helping the industry in a way, still protecting the residential products that were closest. But you seem to be concerned about that. And I'm just trying to understand why this is worse than what you're dealing with in Lee County.

MR. O'BERSKI: Yeah, as I read this, I understood Conditional Use to require public hearings. And so the process of appeal versus fixed in and specific scientific validation for a way of getting something approved is frustrating. It's time-consuming. It's based off of emotion and not necessarily or specifically a science. So there is some frustration to that.

CHAIRMAN STRAIN: Ray, I'm not familiar with Lee County. Their conditional uses don't have to go through a public hearing? I don't know how you --

MR. BELLOWS: I'm not familiar with their process either, but --

MS. CILEK: I'm sure they do.

COMMISSIONER EBERT: Yeah, I think they do.

CHAIRMAN STRAIN: I mean, I don't know how you would do a Conditional Use and not have it -- the whole purpose of that is so you have a public hearing on it. And the conditions are discussed and the public that is concerned can attend the public meetings and express themselves. That's why if they don't have that in Lee County, I don't --

MR. O'BERSKI: We have two locations opening that did not have public hearings.

CHAIRMAN STRAIN: Are they greater than eight pumps?

MR. O'BERSKI: Yeah. They're 16 pumps.

MR. BELLOWS: And they're called conditional uses there?

MR. O'BERSKI: Well, the statement that Lee County required conditional uses was made in this --

MS. CILEK: Yes.

MR. BESWICK: -- that anything over was required. So I'm saying we have 16 pumps as defined by this document that we didn't have public hearings.

MS. CILEK: No, 18 or 19 in Lee County. I mean, the LDC that I looked at, I can review it again.

CHAIRMAN STRAIN: Well, I think that -- you know, we're looking a lot to the standard of eight as being something that's used elsewhere. I think we need to make sure that is a true statement.

MS. CILEK: I agree with you. However, that's not the only community that looked at eight or around that number. So --

CHAIRMAN STRAIN: Yeah, I know that.

MS. CILEK: -- we're not solely relying on Lee County.

CHAIRMAN STRAIN: Okay. But if that statement's in error, we definitely --

MS. CILEK: Yeah, I will correct --

CHAIRMAN STRAIN: -- need to correct it before we get to the Board of County Commissioners.

Thank you for that input.

COMMISSIONER EBERT: I have a question. Where you have the 16 pumps, is this closer to the freeway?

MR. O'BERSKI: A freeway being --

COMMISSIONER EBERT: I-75.

MR. O'BERSKI: No, it's at 41 and College. So it's not near I-75. It doesn't have an interchange type zoning, if that's the question.

And to the best of my knowledge, all C-4, C-5 and much of C-3 zoned property that this will qualify for, just like the rest, is also on major interchanges or arteries. And so the distance and the proximity of a resident based on the zoning that I understood was put in place in '91, or '92, is a little confusing why we're going to go in and put conditional uses on a property that somebody purchased with a high likelihood knowing that that zoning had approvals in place.

CHAIRMAN STRAIN: Well, that's -- no, that's a good valid point. I'm certainly sure you're not wrong in making that point. And that's something we've tried to balance and we thought we've tried to establish something that was at least defensible, but --

COMMISSIONER HOMIAK: Is this a brand new station or something --

MR. O'BERSKI: The property that --

COMMISSIONER HOMIAK: That you're talking about in Lee County with the 16, 18 pumps.

MR. O'BERSKI: Yes, it's in for permitting as we speak. Actually, I think we've received permits on it.

MS. CILEK: May I ask a question? So the language that we have coming from Lee County, and I will 100 percent check this, is that limit to eight pumps unless a greater number is approved as part of a special exception or specifically approved in a master concept plan.

Were either of them approved through a master concept plan?

MR. O'BERSKI: I don't know the answer to that.

MS. CILEK: Okay. So there's not one route. Similar to ours, there's two routes, which is -- ours is like a PUD. They have a similar process, I believe, master concept plan. So that could answer the question.

MR. O'BERSKI: That could have been obtained through another -- through a PUD.

MS. CILEK: Yes. Because both are -- well, our PUD process is a public hearing process. I'm not sure what their master concept plan process is.

CHAIRMAN STRAIN: Yeah, they could have zoned that through the PUD, their form of PUD process, and it would have been allowed.

COMMISSIONER ROSEN: I think Lee doesn't have a PUD, they have a DO, development order,

and the MCP is part of that.

MS. CILEK: Got it.

CHAIRMAN STRAIN: Okay.

COMMISSIONER EBERT: In this one that you put the 16 pumps on, College and 41, did you say?

MR. O'BERSKI: Yes, ma'am.

COMMISSIONER EBERT: Isn't that commercial in there?

MR. O'BERSKI: It is.

COMMISSIONER EBERT: Okay. So it's not residential.

MR. O'BERSKI: Residential neighborhood directly abuts the property behind it.

CHAIRMAN STRAIN: Okay. Well, anybody else? Stan?

COMMISSIONER CHRZANOWSKI: Curious about something.

I've been at gas stations where I'm at one pump and the person pulls in to the other side of that same pump. And I notice when they start gassing, my velocity that turns around goes down. Is that one pump serving two stations?

MR. O'BERSKI: It is.

COMMISSIONER CHRZANOWSKI: Okay. So what we're approving is eight pumps and 16 fueling stations.

MR. O'BERSKI: No, the inverse of that.

You're approving eight fueling stations, four --

COMMISSIONER CHRZANOWSKI: Okay, I'm sorry, I misread this. I thought we were approving fuel pumps.

MR. O'BERSKI: You are, but --

COMMISSIONER CHRZANOWSKI: Eight fuel pumps.

MR. O'BERSKI: -- the definition associated to it defines that it's by each of the locations that --

COMMISSIONER ROSEN: The part it serves.

MR. O'BERSKI: -- somebody can fill their car.

COMMISSIONER CHRZANOWSKI: Okay, I read something wrong then, thank you.

MR. O'BERSKI: Thank you very much.

CHAIRMAN STRAIN: Thank you for your input. Appreciate it.

If you do find that -- any new language involving the VOC's or benzene, would you send that to Caroline or someone --

MR. O'BERSKI: We'll do some research on that tomorrow.

CHAIRMAN STRAIN: I'd sure like that. That would help with the decision. And it can be modified as it gets to the Board and the Board would probably benefit from that as well. So thank you.

Okay, anything else? Anybody else in the public with wish to speak on this item?

Gary?

MR. BEYRENT: For the record, I'm Garrett FX Beyrent. I'm a developer.

I just thought I'd add that because it's interesting, gas stations are fascinating to me. I did five of them. I put together five PUDs with gas stations in them; three of them were Mobil stations, one was a Super America, one was a Shell, and last but not least was a Hess. I can tell you that four of them were built and they have subsequently been torn down, all four of them. My Hess Gas Station was the toughest one to get approved, even though it was in a commercial activity center at I-75 and Pine Ridge Road, it's actually designated as an overlay for a gas station in an area that in a 1980 study by the county showed the need for 12 gas stations at one interchange. And of course the county commission at the time said we don't want that to be gasoline alley. That's the area that's Hooters and the Harley Davidson place.

But long story short, that gas station never got built and the other ones all were essentially shut down because it dawned on the fuel companies that you would actually use a lot more gas if they didn't put the gas stations so close together. So the three mobile stations all closed down because they were a half a mile away from each other. It was ridiculous. And they were making more money, I was told by Amerada Hess. John Hess actually said that we make more money on a bag of peanuts in our convenience store than we make on a gallon of gas.

So right now there are, let me see, two gas stations at Pine Ridge Road/I-75. There's a -- it's an Apache or a gas station, it's changed with Chevron. Long story short, there's a need apparently for 12 and there's three there now. So I have no idea what's going to happen, time will tell. And that's my experience. Gas stations are going to be bigger with larger convenience areas, but there will be fewer and far between than we're used to presently. Thank you.

CHAIRMAN STRAIN: Thank you. And that area was the area that triggered the automobile service station waiver request by the Board of County Commissioners back in '98, '99. So yeah.

Okay, anybody else have any discussion on this that they'd like?

(No response.)

CHAIRMAN STRAIN: The only suggested change, and I don't know if the rest of you feel it was useful or not, was to use the word compatibility in regards to the mitigation to impact on -- for the impact on residential property. There's been some other suggestions, and I don't know if anybody wants to make anymore changes to it. If not --

COMMISSIONER HOMIAK: I'll make a motion to approve with the one change that you mentioned of compatibility.

CHAIRMAN STRAIN: Is there a second?

COMMISSIONER CHRZANOWSKI: I'll second.

CHAIRMAN STRAIN: Is there any discussion?

(No response.)

CHAIRMAN STRAIN: The only thing I'd hope that happens is if there's any flaw in the rational nexus of using VOC's or benzene in which to position gas stations, that any newer information, if there is any available, that proves that a less distance would work, that that gets to go to the Board by the time the Board hears this.

Because right now, based on the information we have, it seems most logical to continue like we have suggested as a recommendation. So I certainly support it.

Having heard that, all those in favor, signify by saying aye.

COMMISSIONER DOYLE: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER ROSEN: Aye.

COMMISSIONER CHRZANOWSKI: Aye.

CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

CHAIRMAN STRAIN: Anybody opposed?

(No response.)

CHAIRMAN STRAIN: Motion carries 6-0.

So those are the recommendations going forward, Caroline.

Is there anything else that we have to clean up? We're all done, right?

MS. CILEK: I don't believe so.

CHAIRMAN STRAIN: Okay, is there a motion to adjourn?

COMMISSIONER EBERT: I make a motion to adjourn.

CHAIRMAN STRAIN: Seconded by Stan.

Are you full, Stan?

COMMISSIONER HOMIAK: Tired and sleepy.

CHAIRMAN STRAIN: All those in favor, signify by saying aye.

COMMISSIONER DOYLE: Aye.

COMMISSIONER EBERT: Aye.

COMMISSIONER ROSEN: Aye.

COMMISSIONER CHRZANOWSKI: Aye.

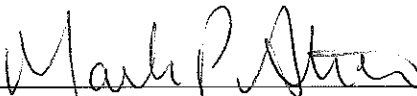
CHAIRMAN STRAIN: Aye.

COMMISSIONER HOMIAK: Aye.

CHAIRMAN STRAIN: We're adjourned, thank you.

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 5:57 p.m.

COLLIER COUNTY PLANNING COMMISSION


MARK STRAIN, Chairman

These minutes approved by the board on 12-4-2014 as presented or as corrected .

Transcript prepared on behalf of Gregory Reporting Service, Inc.,
by Cherie' R. Nottingham.