

Gadsden County Board of County Commissioners
Planning Commission
Minutes
Thursday, January 24, 2013
6:00p.m.
Board of County Commissioners Meeting Room
7 East Jefferson Street
Quincy, Florida

Present: Commissioner Diane Sheffield, Chair
Commissioner Larry Ganus, Vice – Chair
Commissioner Dr. Gail Bridges – Bright
Commissioner Edward Allen
Commissioner Mari VanLandingham
Commissioner Regina Davis, At - Large Member
Commissioner David Tranchand
Commissioner Frank Rowan
Commissioner William Chukes
Commissioner Ed Dixon
Commissioner Isaac Simmons, School Board Representative
Anthony Matheny, Planning & Community Development Director
Willie Brown, Gadsden County Planning Principal Planner
Beryl H. Wood, Deputy Clerk

Absent:
Commissioner Catherine Robinson

1. PLEDGE OF ALLEGIANCE

Chair Sheffield called the meeting to order at 6:00p.m. with a quorum and led in the Pledge of Allegiance to the U.S. Flag.

2. INTRODUCTION OF MEMBERS/ROLL CALL

Each member present stated his or her name and district for the record.

3. APPROVAL OF MINUTES – DECEMBER 13, 2012 – passed until next meeting.

4. DISCLOSURES AND DECLARATIONS OF CONFLICT - None

5. ELECTION OF OFFICERS

Larry Ganus - Chair

The Commission accepted nominations for Officers. Commissioner VanLandingham nominated Commissioner Larry Ganus for Chair. He **declined** the nomination.

Mari Vanlandingham - Chair

Commissioner Allen nominated Commissioner VanLandingham for Chair. She **declined** the nomination.

Edward J. Dixon - Chair

Commissioner Dr. Gail Bridges-Bright nominated Commissioner Ed Dixon for Chairman and it was seconded by Commissioner Regina Davis, with a 5 - 6 voice vote. Commissioners Allen, VanLandingham, Rowan, Ganus, Tranchand and Sheffield opposed the nomination. The nomination **failed**.

Regina Davis - Chair

Commissioner Dr. Gail Bridges-Bright nominated Commissioner Regina Davis for Chairman and it was seconded by Commissioner Larry Ganus, it **passed unanimously**.

Isaac Simmons – Vice Chair

Commissioner Dr. Bridges –Bright nominated Commissioner Isaac Simmons for Vice – Chair. He **declined** the nomination.

Ed Allen – Vice-Chair

Commissioner Vanlandingham nominated Commissioner Ed Allen as Vice-Chairman and it was seconded by Commissioner Larry Ganus, with a 9 – 2 voice vote. Commissioner’s Bridges-Bright and Davis opposed the motion. The motion **passed**.

At this juncture of the meeting the new Chair Regina Davis took over.

General Business

6. Amendment to Agenda - Policy 1.5.1

The agenda was amended to include the discussion of Policy 1.5.1 at the request of Commissioner Allen.

7. PUBLIC HEARING – UNITED NEW JERUSALEM CHURCH OF JESUS CHRIST – PROPOSED VARIANCE (VE-2013-01) FOR PID# 2-11-3N-5W-3123-20000-0020.

Mr. Matheny presented the United New Jerusalem Church of Jesus Christ in a Public Hearing to consider a variance to allow access to U.S. 90 as opposed to Orchard Road. The variance is proposed for property located on the south side of U.S. 90, approximately 1.76 miles east of Atwater Rd. and 1.29 miles west of Hazel Green Rd. The variance will allow Lot #2 to access solely onto U.S. 90, as opposed to Orchard Road. He said the property owner United New Jerusalem Church of Jesus Christ, represented by Carmen Bourgeois Green, P.E. He pointed this would be an increase in the permitted number of access points to two (2) for the Orchards at Mt. Pleasant Minor Subdivision (Orchards). This action is considered a quasi-judicial action in conjunction with the advertised public hearing as a Type III action per Subsection 7203 and 7301 of the LDC.

Commissioner Ganus referenced page 2 where it discussed making an amendment to the covenants and restrictions to the minor subdivisions requirement. To deny access to a lot

within a subdivision is in violation of the Gadsden County Land Development Code, specifically subsection 6002, Prohibited Acts.

He asked the proper procedure to be used to do what they did with their covenants and restrictions after the subdivision is approved.

Mr. Matheny commented since we don't enforce after subdivision has been approved, that's a legal matter. The main point is they have been told by the president of HOA and the developer, they don't have access anymore. They are seeking access through Hwy 90 using alternative versus going through the courts.

Commissioner Ganus stated there must be something binding on the restrictions and covenants because they are seeking this route. He said it looks like the Department of Transportation would govern the access to Hwy 90.

Mr. Matheny noted the Department of Transportation has given them preliminary approval.

Commissioner Ganus asked was DOT approval not enough to gain them access to their property.

Mr. Matheny iterated no, they need a variance to the Land Development Code. They have agreed to relinquish the old access. They would only use Hwy 90.

Commissioner Simmons said the only sensible entrance access point is Hwy 90.

Carmen Green, P. E. of Magnolia Engineering LLC, commented the Code provides for one access off a major road for the smaller subdivisions. She stated in essence they would give the subdivision two access points and hence the need for the variance, because of the Code.

Commissioner Dr. Gail Bridges-Bright noted her point of understanding is that because this is being severed from the subdivision then you aren't truly getting two access points, it's only one access for the church.

Mr. Matheny said they would not use the other access point.

Chair Davis asked whether or not the Homeowners Association residents could come through there.

Mr. Matheny said they would have to use Orchard Road.

Commissioner Sheffield mentioned on the plat there is a storm water pond right in front of the driveway point.

Ms. Green replied they are developing alternatives and would severe access. She said the stormwater pond would be moved.

UPON MOTION BY COMMISSIONER SIMMONS AND SECOND BY COMMISSIONER GANUS, THE BOARD VOTED 11-0, BY VOICE VOTE, TO APPROVE OPTION 1: APPROVE THE VARIANCE REQUEST FOR THE SUBJECT PROPERTY (TAX PARCEL #2-11-3n-5w-3123-20000-0020) ALLOWING LOT #2 TO INGRESS/EGRESS SOLELY ON TO US 90. NO ACCESS IS TO BE ALLOWED TO ORCHARD ROAD BASED ON THE FINDINGS IN THIS APPLICATION.

8. PUBLIC HEARING – Proposed Ordinance to add a new Subsection 7003 to the Gadsden County Land Development Code adding language to allow the Planning and Community Development Department Director additional flexibility and discretion regarding development and to revise Subsections 1203 and 1206 of the Gadsden County Land Development Code (LDC) as indicated in the Ordinance title.

Mr. Matheny discussed the Planning and Community Development Department (P&CD) is requesting approval of an Ordinance to add a new Subsection 7003 to the Land Development Code (LDC) to allow the P&CD Director increased flexibility and discretion in applying development standards. The Ordinance also proposes amending Subsections 1203 and 1206 to reflect the current P&CD Department name.

He reminded the Council this item was brought to the Commission back in December and it was requested they bring it back. He said it dealt with bringing relief to any applicant that applied. He said mostly they want a setback variance and they are off by a couple of feet. He commented instead of charging all the money to go through the Public Hearing Process, it would be a lot easier to say that you're within 2 feet of the required setback and the Director could grant that.

Chair Davis called for comments from the Commission.

Commissioner Tranchand commented he struggled with this particular issue. He listed his concerns; by saying "they have nothing objective in front of us to judge on, like a 30% or 10% or 25%, nothing. I'm not suggesting that's the best way, but the first time you put 25% in, somebody is going to come in with 26% and you are back in the same situation." He said the other thing he worried about was protection for the Director and making sure your decisions are consistent in each case and you are not held to trial because a decision you make.

Mr. Matheny conveyed while he appreciated the concern, there were a number of things that if somebody wanted to go after the building official or public works director they could legally on the tiniest of things. "You can sue on almost anything or try", but 99.9% of the time people realize you are doing the right thing in trying to help somebody and it's very minor. He expounded on those examples they found, discretion, sometimes you have a board of adjustments and that's a separate board and a lot of communities have that. He added that was the only data he had and they could go with some percentage if they felt it was a good idea or they would take to Board of County Commissioner's with no recommendation.

Commissioner Tranchand added his tendency was to go with the issues he presented.

Commissioner Allen asked who determined the major adjustments versus the minor

adjustments.

Mr. Matheny replied a minor would fall within the percentage. If you gave me 25% discretion and I use the driveway separation, you would have to have 100ft. It would be 25% of what is required. He gave another example, we require a 100ft separation on driveway/roads, and 100ft would be your starting point. You would be able to go down to 75ft and would use that discretion if there was no danger. I probably would consult with the Public Works Director and make sure that would not be a problem with those ingress and egress points being too close together and creating a hazard. He said he would do his best for that not to occur. He also said some is like every day, "I just have to do my judgment on it." He said if it looks like there could be a problem he probably would discuss with the County Administrator like he does with many issues every week.

Commissioner Allen asked if there was a building code issue would that come back before the Board.

Mr. Matheny said he does not get into building code, that would be Mr. Clyde Collins, Building Official. He said if they were required 35ft setback from the property line and they only had 15ft they would be way off. He said he wouldn't be able to help them in that circumstance. They would need a variance and would have to come before the Commission. He said they were in the 25% if that's what the Commission approved, and then I could go ahead and help them out. He gave for example if someone was off a foot; I'm not going to stop them from building a house over a foot.

Commissioner Dixon asked if we approved the 25%, "would you have any objection to submitting to the Commission for ratification, for just a standard of, here is what I've done this month."

Mr. Matheny responded, Commissioner Ganus asked a similar question. "I think coming back with my day to day; I have so many day to day decisions like that. I think coming back for ratification; I think that's counterproductive."

Commissioner Dixon stated he may have used the wrong word. He corrected his wording by saying he "wouldn't like to reapprove, I would just like a review, for our own edification."

Commissioner Ganus commented, "more reporting."

Mr. Matheny said the problem with that and he pointed out he was not trying to be disrespectful at all. "I don't point my day to day activity to this Board, I report to one person, that's the County Administrator."

Commissioner Dixon responded, but you're asking the body to give up its authority.

Mr. Matheny stated it was two different issues, not similar at all. "I'm not trying to be disrespectful to you, but my day to day, the decisions I make and consultations with other department heads or the County Administrator; I only prepare a report for the County Administrator."

Commissioner Ganus asked Mr. Matheny a question that had been previously asked back in December. He asked about the number of items that could be out of compliance, would it be 25% for the entire project or 25% on each dimension of whatever you're working on.

Mr. Matheny said it would be 25% of each issue. He commented suppose someone came before him and could not meet there 35ft front setback from the property line to their house and they needed a couple of feet on the variance that would be one issue. The other issue he gave for example was their driveway, where there wouldn't be a 100ft separation from the next driveway only 92ft that would be another issue. Generally that doesn't happen it's usually just one issue per person that comes in.

Commissioner Ganus asked what percentages have you been encountering lately. He said the 25% was a pretty good bit, that's a fourth of what you are dealing with. He said it was his opinion that 10% was enough to take care of the minor issues that come up. He asked for percentages that he has allowed.

Mr. Matheny said only small percentages.

Commissioner Ganus referenced page 3 of the Ordinance at the top of the page under item (B) Locally Economical Emergency required by the commission, the requirements for Section 7003.C, Application Process, for deviations to development standards are waived for public entities constructing capital projects, and any deviations to development standards may be approved by the Director. This paragraph does not waive the criteria for granting a deviation. He stated that it sounded pretty big and assuming because in Gadsden County you can pick your time for a local economic emergency.

Mr. Matheny responded he could not.

Commissioner Ganus stated he knew, but added it could be done and if you allow deviations from the development standards by public utilities in my opinion they are asking for more trouble there. Public Utilities pretty much get there way anyway and if they know they have a waiver on the requirements, I'd be afraid to imagine what would occur in situations like that, he said that was why he didn't like that section.

Chair Davis commented she was confused, it says public entity, but the last sentence says this paragraph does not waive the criteria for granting a deviation. She asked did that answer Commissioner Ganus' concern.

Commissioner Ganus replied not really. He noted it was contradictory to him.

Mr. Matheny said he understood Commissioner Ganus' concern, but this would be such a rare occurrence it would be declared by the Board of the County Commissioner's to be a local economical emergency like a hurricane, flood, something waiving.

Commissioner Ganus confirmed it would be a temporary period, not general like the economy is right now. "You could say that was a local economic emergency."

Mr. Matheny stated he couldn't speak for the County Commission, but if they decided to do that, they could. He said he hadn't seen anything like that happen.

Commissioner Ganus asked from where did this come. He said "it seemed far-fetched from what you do on a day to day basis, because public utilities and other public entities don't have to come through you necessarily anyway, they have a whole lot of other regulatory agencies that deal with them. Where did this come from?"

Mr. Matheny said they probably pulled it from another county or city and we used it as an example.

Commissioner Ganus said he would like it better if section (B) was struck. He added he wasn't comfortable with it at all.

Commissioner Simmons commented from his experience, "if I was in the Director's position I wouldn't want this added responsibility and work with the Commission and let us make the decision." He said based on what he has before him, it's not enough concrete information that will allow me to support it simply because it creates another area of liability for the Commission. It gives subjective authority to the Director based on different scenarios. In one point you can say have a 1ft variance on this piece of property but, next week it might not be ok, to deal with a 1ft variance, then somebody is going to be arguing back in forth . He added when you have the minds of 12 people sitting down arguing and discussing you will get a better resolution. . He said from his standpoint he would like to continue business as it is. He stated he was also in agreement with the director's day to day job moving a whole lot smoother. "I think this is too vague and opens up too many doors for conflict." He said he couldn't support this at this time.

Chair Davis asked what was the filing fee for a variance.

Mr. Matheny said if he could recall correctly it was \$750.

Commissioner Dixon stated while he agrees with Mr. Simmons, he has already told us it's in action now.

Commissioner Simmons said we didn't make that decision.

Commissioner Dixon added he is making those decisions right now.

Commissioner Simmons commented without our total support.

Commissioner Dixon stated that means he would be out there.

Commissioner Simmons concurred, "On his own."

Commissioner Dixon said his problem is he doesn't support ratification by the Board. "If you are going to be out there you need some coverage from the Board, to say hey we approved this and then some type of reporting that says ok this fits, so the Board can

know. So when he does step outside of vein, we know when he has given something to somebody and not to somebody else and the circumstances seem to be the similar, you would know. I don't agree with this non-reporting in essence you are making up the law as you go. That's uncomfortable."

Mr. Matheny replied, "He does not make up the law as he goes, be clear on that Commissioner."

Commissioner Dixon responded, "If you are exercising a policy the Board has not approved, you are making up the law."

Mr. Matheny commented when they give a few inches, "I explained that before, technically, but that is the same as the County.

Commissioner Dixon, added you vary variance, that's not authorized by this Board.

Mr. Matheny replied that is of the County Commission, not this Board, this is a recommended body.

Commissioner Dixon replied he is aware of that. He said he would like to give Mr. Matheny the variance, the ability to create. "People are spending way too much money to get a foot of property approved, but under the current circumstances it doesn't work for me."

Commissioner Ganus said 10% would be better than 25%, he is doing it with 10% now and that would cover him with what he is currently doing.

Commissioner Dixon commented he would agree with it, but I'd like to know he is doing it.

Chair Davis asked Commissioner Dixon about ratification statement he made. She said, "If he is already given the approval and then we found out that he has given the approval, is the expectation that we just know or is the expectation we have the ability to change what he has done."

Commissioner Dixon responded, "I don't want to undo what he has been doing, but if you give him 10%, 25% or whatever the Board chooses and he operates within that 10%, I'd like to know for one: If somebody comes in and says why didn't I get 3%, the foot and we understand what he's been doing and the policy he has been operating by. We know exactly what he has been doing. It's our policy. Under this policy you get 3ft, according to the 25%, you're at 3 ½ft, it doesn't work for him and they have to come to the body. I understand that, but right now he is giving 2ft in the interest of the community, but if somebody comes now and says he did it for Joe Blow and he didn't do it for me."

Chair Davis said the only way they would know is if they come before us, and then we would ask the question, why are they coming before us if it's in that 10% or 15%.

Mr. Matheny clarified, "it's very rare they end up giving anybody anything. Occasionally, I

will use the example again, it's more like a foot or inches, it's so close that it would be ridiculous to require the person to come and go through the entire process and expense for another few inches. That is subjective on my part, but its how every department head everywhere operates and it is supported by most city or county commissioners. There is no pushback on that at all."

Chair Davis stated she would pole the Commission to find out, first of all what number are you comfortable with. I'm hearing 25 in some instances you feel is too much in other instances I'm hearing anything is too much, so if I can have some feedback so we all know where everyone stands.

Commissioner Dr. Gail Bridges – Bright informed the Chair that she would like something similar to Collier County, where they have it broken down to specifics and where they have the No Fault where they have 25%, we could possibly do 15%. Looking at the chart the manager provided it shows 5% - After building permit, 10% - After the fact yard and she reiterated the 15% -No fault property owners. She concurred he does need to have some discretion, but there needs to be a check.

Commissioner Ganus said he didn't understand the statement in that sentence referring: *If no building permit can be found by the Building Department where in the case of multiple ownership of a property.* He said if the building was built why did they not have a building permit? He stated this would be a new building he assumed, for which they are working on a variance for.

Mr. Matheny stated if the Commission would decide to go with that, he would clarify and make it clear and it could stay with the same amount as mentioned by Commissioner Dr. Gail Bridges – Bright.

Commissioner Sheffield referenced an older house that didn't have a building permit or you couldn't find one and they want to add on to the house. That's where the variances would come in.

Chair Davis asked for other suggestions.

Commissioner Sheffield clarified they are speaking from the Collier County, FL plan, with 5, 10 and 15%.

Commissioner Chukes commented if Mr. Matheny is allowed to do the waiver at whatever percent. He mentioned Commissioner Dixon's comment of wanting a report. He stated his question is would he report every time he gave a waiver.

Commissioner Dixon replied no, He said the deal was simply that the Commission is notified on a regular basis, no matter what that is. "Here are the variances I've given of my own discretion, simple as that."

Commissioner Chukes said that, "we are simply making a decision on what percentage to give him and then he can give whatever waiver he wants to give as long as he reports back to the Board in person or through a letter."

Mr. Matheny responded he didn't feel that would be the appropriate way to go about it. He said he could however, include in his Annual Report to the Board of County Commissioners and it would be available for your review as well. He said if the Commission wanted to make changes based on how many were given it could be put in the Annual Report. He said it wouldn't be appropriate to report every time. This is day to day administrative functions and it's not proper to report outside of the County Administrator.

Commissioner Chukes gave an example, "if you give a waiver to one person and you come to the same problem with someone else. How would you decide not to give variance to this person? How would you go about being fair?"

Mr. Matheny replied, "He would give every time as long as there is no obvious health and safety hazard. It would have to be something I could defend, because if I gave it to this person and didn't give it to this person and they proved there was health and safety hazard, no reason for me to turn them down then they would have a case against us, me and the County." He said he is going to give it every time, if there is no health or safety issue involved.

Chair Davis asked the Commission how they felt about Annual Reports.

Commissioner Sheffield voiced she felt fine, with Annual Reports.

Chair Davis asked about the last section regarding local economic emergencies.

Commissioner Dr. Gail Bridges – Bright concurred with Commissioner Ganus to remove the language. "She said if the County Commission wants to do, they will do it anyway."

Consensus of the Commission was to remove (B) Local Economic Emergency.

Commissioner Ganus asked they revisit the Collier County issue. He said it appeared to him everything was after the fact. "My assumption was what you are asking for, permission to deviate prior to any construction starting before a building permit is put out or whatever. All of this seems to be after the fact."

Commissioner Sheffield commented it's called after the fact yard encroachments.

Mr. Matheny said, "since there is so much disagreement about the other, if we could start with this I think it would be a move in the right direction if ya'll agree to start with this. Then we will just see how this works."

Commissioner Ganus asked would it be after the project, not while you're planning the project.

Mr. Matheny said he was not sure they would come to a consensus on the other from what I have seen from the meeting in December and the one tonight.

Commissioner Dr. Gail Bridges-Bright stated "if the concern is about the after the fact

language then they could be before or after the fact, because what I'm understanding is allow him this percentage lee way, whether it's before, after or during what's going on with the site."

Commissioner Ganus asked for the percentages to be restated.

Commissioner Dr. Gail Bridges – Bright replied they are 5%, 10% or 15% before, during or after the fact.

Chair Davis asked for more questions from the Commission and there was none, then she asked for public comment.

Public Comment

- Marion Lasley, 5 Dante Court – I'm not real sure that the Cities and the Counties listed here are comparable to our County. She said Gadsden County is much more rural and not built out and we don't have a plan for the whole County. She voiced she was pretty sure the other places are probably all plated out, have zoning areas and they know what's going on. There in the Ordinance and in the Write Up it list non-residential uses and I'm real concerned about that. All of the examples are dealing with residential variances of a foot or two, but in the Ordinance and in the Write Up, non residential uses are mentioned and I'm real concerned that means business. She referenced "page 2 – under the prevailing economy, the majority of development proposals reviewed by P&CD is for residential infill and non-residential developments that are minor in nature. I think all those type of projects need to be run through the Board. If it was just going to be related to a residential application then possibly those numbers mentioned could be used. I think if you're going to be looking at businesses and churches and various things like that. I think the public needs to be able to have input on this and this Board needs to have input on this. Historically, the perspective of the County and the projects within the County come from this Board, because you all have been there the longest consistently for the things that have gone on in the County. I'm not for the vague, the unsupervised and unaccountable that this would give the Director. I think all the County positions are accountable to someone and I feel like he needs to be accountable too on these types of issues. I think rewriting the Codes for specific projects is always a bad idea, when you rewrite things it needs to be able to benefit everybody in the County and you need to not look at one person and say, well if I write this like this, then he will be able to get his project. That's not how you rewrite or amend the Land Development Code, there has to be a reason. The Land Development Code and the Comprehensive Plan do not get changed easily, so it's not a matter if it doesn't work we will just change it back. We all know that doesn't happen. I would suggest, he is discussing this with the County Manager already and giving variances, if they are both comfortable with being liable for those 1 and 2ft variances, I think that's fine. I don't think this Ordinance needs to be approved. It's too vague and represents too many grey areas. I would suggest they change the fee schedule they set up, some sort of fee for minor variation for something that is \$10.00 or zero dollars. The paperwork needs to be done. It should be easy to say we will fill out this form and have it on

record and anyone can view it and we have given you a variance of 15ft for your driveway. The other thing is the Ordinance states in the very first line the reason it's being done is because of the economic hardship of property owners and yet his statement is that he would be doing this for whoever asked for it, so economic hardship is not really the focus. I would like for you to not approve this, I feel that this could be dealt with another way not in the form of an Ordinance. Thank you."

Commissioner Allen asked Mr. Matheny when you give a variance say 2ft, 4ft or whatever it happens to be. Do you have anything in writing on that or do you just give it and there's nothing in writing. .

Mr. Matheny responded there are notes made on the application for the site plan, but there is no formal documentation. He said it does happen, but often its rare occasion.

Commissioner Allen said he understood, but he was thinking down the road if somebody comes back and says he got a 2ft variance there and the 2ft variance is interrupting my driveway or something. I'm just thinking if it's not in writing.

Mr. Matheny stated they would refer to the site plan or with what I signed on the application. We have notes on the application.

Commissioner Dr. Gail Bridges – Bright asked was it a matter of public record.

Mr. Matheny responded anything they do is a matter of public record.

Commissioner Dr. Gail Bridges –Bright said therefore it would be a means to seeing what you have.

Mr. Matheny replied absolutely.

Commissioner Vanlandingham poised if this is a rare, why do they need a new Ordinance.

Mr. Matheny said to make it more of a standard practice, we're trying to make improvements in our Land Development and Comprehensive Plan and this is one of the improvements we have been asked to do by several members of the public over the years. If we have it corrected in our Land Development Code then we don't have to guess about it anymore, we know what our parameters are.

Commissioner Vanlandingham inquired about Mrs. Lasley suggestion of relooking at the fee schedule.

Mr. Matheny implied he didn't agree with that at all, the fee schedule has been set by the Board of County Commissioners after existence research. I'm not going to second guess them. .

Commissioner Vanlandingham asked do we really think the Board of County Commissioners would charge somebody \$750 to get a 6 inch variance, would that be

reasonable.

Mr. Matheny said if it comes through this process and it is advertised, prepared by staff and could take just as long as a 120ft variance. He said the whole point in doing this is to make sure you try to help in the very minor small cases. Our department determines no health or safety hazards. This is all about trying to help these people without making them go through the process. To recommend start adjusting the fees on the perceived severity of what we are asking them to go through or the amount, I'm not sure that would work.

Commissioner Ganus referenced Mrs. Lasley's comment on non-residential as opposed to residential, in this Ordinance was it written with that in mind or is it written to cover both.

Mr. Matheny said it was written to cover everything. If there was a store that couldn't meet a 15ft setback and they could only go 14ft, it would apply.

Commissioner Ganus asked would it cover parking spaces.

Mr. Matheny said it would, "If they wanted to develop on this small lot but they couldn't meet all the required parking spaces, after meeting we judge it is not a health and safety hazard. Or their peak demand would not require spaces our Code requires and they needed just a slight deviation, no more than these percentages allow, and then we would be able to help them."

Commissioner Sheffield stated these instances primarily happen with the development approvals that you handle in house, such as minor developments. She said having the option of having to save a tree and avoid a parking spot is perfectly ok.

Chair Davis asked for further comment and there was none.

UPON MOTION BY COMMISSIONER SHEFFIELD AND SECOND BY COMMISSIONER DR. GAIL BRIDGES-BRIGHT, THE COMMISSION VOTED 6 – 5, BY VOICE VOTE, FOR APPROVAL OF THE COLLIER COUNTY MODEL WITH 5, 10 AND 15% BEFORE, AFTER OR DURING AND REMOVE SECTION B – LOCAL ECONOMIC EMERGENCY OF THE ORDINANCE. (Commissioner's Dixon, Allen, Ganus, Vanlandingham and Simmons opposed the motion. Motion carries.)

Commissioner Sheffield pointed out a typographical error on page 1: Whereas, the provisions of this ordinance are in ***no way are intended***, should read ***no way intended***.

Mr. Matheny said there was no attorney present at the meeting and to be safe he read the draft Ordinance language into record: **AN ORDINANCE AMENDING CHAPTER 1, AUTHORITY FOR THE CODE, SUBSECTION 1203, DEVELOPMENT REVIEW COMMITTEE; AMENDING SUBSECTION 1206 PLANNING DIRECTOR; AMENDING CHAPTER 7, DEVELOPMENT STANDARD, SECTION 7000 DEVELOPMENT ORDERS, SUBSECTION 7002 DEVELOPMENT ORDERS REQUIRED BY ADDING NEW SUBSECTION 7003, PLANNING AND COMMUNITY DEVELOPMENT DIRECTOR DISCRETION; PROVIDING FOR SEVERABILITY;**

PROVIDING AN EFFECTIVE DATE.

Commissioner Ganus pointed out it should read Draft Ordinance 2013, not 2012 as printed.

9. **PUBLIC HEARING – Proposed Ordinance to amend Section 6600, Immediate Family Exceptions, Section 6600.A Deeds of Gift or Inheritance, Section 6600.C Deed of Gift or Inheritance, Section 6600.C Deed Restrictions to allow immediate family properties to be sold outside of the immediate family after an adopted period of time. Five (5) years is proposed.**

Mr. Matheny explained the Planning and Community Development (P&CD) is requesting approval of an Ordinance amending Section 660 Immediate Family Exceptions (IFE) of the Land Development Code (LDC) to allow relief under certain circumstances for IFE property owners to sell their residence outside of the immediate family five (5) years after issuance of a certificate of occupancy. He said this is cleaning this up.

Background:

Policy 1.1.6 of the Gadsden County Comprehensive Plan allows the passing of land as a gift to an immediate family member as permitted by Chapter 163.3179, Florida Statutes (Family homesteads) (Attachment #3). The provisions for allowing immediate family exceptions subdivision are located in Section 6600 IFE of the LDC. Both Leon and Gadsden Counties have sunsetted their family homestead provisions for multiple reasons. Gadsden County allowed immediate family exceptions until September 2, 2008.

Even though sunsetted, the County is still handling issues resulting from IFE's. Section 660 does not allow the transfer of property outside of the immediate family. This is to meet the intent of the Florida Statutes and to avoid creating parcels nonconforming from the requirements of the Comp Plan and LDC. However, P&CD and the Board have continually been asked by IFE owners to allow the transfer of ownership of their residences outside of the IFE.

Commissioner Sheffield clarified there would not be any new immediate family exceptions granted. "This only applies to the ones that have already been granted."

Mr. Matheny said that was correct and only if the BCC decides to bring it back.

Commissioner Ganus commented "what is written down in 6600, section 6600(a) it says that each parcel created by immediate family exemption shall be homesteaded with the State of Florida by an immediate family member within one year and that family member shall occupy the residence for at least five years from the date a certificate of occupancy is issued for the residence, and provide an affidavit acknowledging that the homestead shall not be transferable within a five-year period and require that the standards found in Section 6600 have been met. You're talking about them having a lot cut out, never developed and now coming back five years later in developing that piece of property. What happens to the one year that they were supposed to have occupied it and file for homestead exemption?"

Mr. Matheny replied the majority did. "There is a few examples that we might be able to find of somebody carving one out, back in 2005 or pick a year and they never did homestead it."

Commissioner Ganus asked are you going to go ahead and let them build on a lot like that rather than absorb it back into the parcel.

Mr. Matheny stated that was a legal question and he was not sure if that came up tomorrow and someone said, we carved this out in 05 and it's been sitting here, this 1 acre lot. He said the attorney may disagree.

Commissioner Ganus inquired how many cases were in existence in Gadsden County.

Mr. Matheny said he didn't have that number and there was no master list. They would physically have to go back all the years it was in effect and I'm not sure how many years it was in effect and we would have to pull every application.

Commissioner Ganus referenced 3 existences on Frank Smith Road where he lives, "2 of which the parcel was never surveyed out separately, there are mobile homes on it. They wouldn't be eligible to do anything like this would they?" There is no record of it being surveyed out separately and deed issued.

Mr. Matheny indicated a couple of criteria they would have to meet, "one is depending on the density allowed on that land use district, if it's Ag 1-20. If they are violating and they did not go through this process to carve out that other parcel, then they are in violation and subject to code enforcement."

Commissioner Ganus asked was this dealing with site built homes.

Mr. Matheny said it implied to site built and mobile homes. "This is referring to the parcel that was created under this provision and then the Board did away with it. What we are trying to do is clean it up and use 5 years, we purposely use 5 years because we would be able to correct everything this year and there would no longer be the hardship on these families who want to sell that parcel outside of the family."

Commissioner Simmons asked from this day forward if somebody made the application now, they still would have to comply with the five years.

Mr. Matheny said it's not in effect and it ended in 2008. "You can no longer apply for immediate family exception. This has been gone a long time, what's happening is instead of keeping it in the family forever, they are wanting to sell that parcel to just whomever. I did for my family and let's say you come up and want to buy it and I want to sell outside my family to you. You're not supposed to be able too. It creates a lot of problems where we have to look at each case. I have to confer with the Attorney, that's Attorney's fees. I have to work with the County Administrator; we are trying to clean it up."

Commissioner Ganus inquired about renting the property. He asked would that fall under this criterion.

Mr. Matheny said they would not get into a lease of the land.

Commissioner Sheffield pointed out, “this only applies to people who went through the immediate family exception process and part of that process was the land had to be deeded to that person. You would have it on record, there is a deed, it’s a deeded piece of land to a person, so if something happens in their life and they want to sell, then that’s what this is correcting. At this point they cannot sell it legally. This corrects that, but if they are a lot of insurances out there where there are multiple homes on one piece of property that didn’t go through the process, this doesn’t apply to them.”

Chair Davis called for public comment.

Commissioner Ganus stated he felt they needed to tighten the language up to make sure they are specific about what we are dealing with. He said it should be a piece of property that has been deeded properly, gone through the proper process and that it has been in the family for the last five years. He also stated the deed should be proper for the piece of property, not allow any vacant land to apply either. Because they had one year to develop the property into something, if it wasn’t done, then other means need to be used to deal with it.

Commissioner Sheffield said with the point it brings up a question. If a piece of property has been divided and grandma wants to give parcels to her grandchildren and yet they never wanted to live there, does this give them the ability to sell the piece of property.

Mr. Matheny responded yes it would. He said to Commissioner Ganus respectfully, “if you have master parcels and you cut off that for grandma and grandma has been dead for a long time and nobody wants the parcel and they aren’t going to keep inside of the immediate family. You want to sell that parcel to someone, you can sell it and they can build on it, its non-conforming allowable parcel.”

Commissioner Sheffield stated in the ordinance it states the piece of property shall be homestead. She said you can’t homestead unless you live in it. She suggested taking that wording out.

Mr. Matheny replied she was correct, if it says homestead it would have to be someone living there before you can sell outside that immediate family.

Commissioner Allen asked at a later date could it be possible for them to come back and put a mobile home on there.

Commissioner Ganus replied you would have to go back 5 years with the records, before you would be eligible for what you are talking about.

Mr. Matheny said he believed it actually had to have a structure on it.

Commissioner Dixon said the language should come out, because it doesn’t allow an empty parcel.

Mr. Matheny stated if it is the Commissions wish the language could come out. He said removing the homestead requirements it what is being suggested.

Commissioner Sheffield said yes, because otherwise you aren't solving the problem for people who didn't want to live there.

Chair Davis asked if the Attorney reviewed the Ordinance.

Mr. Matheny said no. He said the use of the Attorney is strictly controlled by the County Administrator.

Commissioner Simmons asked on the Ordinance was it the first reading and wouldn't it have to come back for second reading.

Mr. Matheny said that was only with the County Commission.

Chair Davis called for public comment.

- Marion Lasley, 5 Dante Court, the County Commission has received money to redo the Comprehensive Plan and the Land Development Code in the very near future. She asked why both of the ordinances have been created now and not in the context of review and revision of the Land Development Code and the Comprehensive Plan all at the same time. She asked why this has been selected out.

Mr. Matheny responded that statement is not entirely accurate, it is partially accurate. We have been notified that we have a grant to basically create an existing Land Use Map which we do not have, update and correct if it needs to be corrected. We are going to get public input on the Future Land Use Map and then we are going to develop an Economic Development Plan for our interchanges along I-10. We hope to get additional monies after July, then to work on major revisions to our Land Development Code, these are some of the minor revisions that we have been instructed by the County Administrator to start making in hopes of providing relief to our citizens as quick as we can. Everything we are bringing to you, some of it is overt, most of it is, but everything we are bringing hopefully provides some type of relief if we could get it approved, to some of our citizens who need the relief, that's why we are here.

UPON MOTION BY COMMISSIONER DR. GAIL BRIDGES-BRIGHT AND SECOND BY COMMISSIONER GANUS, THE COMMISSION VOTED 10 – 1, BY VOICE VOTE TO RECOMMEND APPROVAL BY ORDINANCE FOR A TEXT AMENDMENT AMENDING SECTION 6600 OF THE GADSDEN COUNTY LAND DEVELOPMENT CODE TO ALLOW THE SALE OF IMMEDIATE FAMILY EXCEPTIONS FIVE (5) YEARS AFTER ISSUANCE OF A RESIDENTIAL CERTIFICATE OF OCCUPANCY AS PROPOSED OR WITH ADMENDMENTS, WITH THE CHANGES OF REMOVING HOMESTEAD LANGUAGE. (COMMISSIONER GANUS OPPOSED THE MOTION.) MOTION CARRIES.

10. PUBLIC COMMENT

There was no public comment.

10. A Policy 1.5.1 regarding Comp Plan

Commissioner Allen commented on the Ear Based Amendments. He said he had “wrote a letter to Mr. Matheny and carbon copy to Ron Soule regarding policy 1.5.1 it says I would suggest adding non conforming land uses, shall not be grandfathered beyond term of existing ownership. That’s what was in the policy in the past and we added with the exception of arenas, fish camps and restaurants and in addition this would be consistent with the Land Development Code, Chapter 5, subsection 5003 (b)5. This Board brought it up during the Ear Based Amendments, we agreed to put that back into Policy 1.5.1, then at the last meeting, last month we turned around and took it out of the Land Development Code. So we agree to put in back in the Comp Plan and then we turned right around and took out of the Land Development Code, which doesn’t make since. We either put in the Land Development Code and the Comp Plan by leaving it in both of them or take them out of both. We turned right around at the last meeting and took it out, so I don’t know whether we need to bring that back up or what.”

Commissioner Ganus recommended it be brought as an agenda item for the next meeting so it can be discussed with the background.

Chair Davis concurred with Commissioner Ganus and asked Commissioner Allen did he have any objection. His response was he didn’t have an objection.

Mr. Matheny informed the Commission he would, “have to talk to the County Administrator, but it is already scheduled to be on the February 5, 2013 BCC Agenda. He said what happens during the Ear Based Amendments is that Commissioner Allen is saying the Board agreed to do away with all other non conforming uses as far as grandfathering those uses to other owners except for those kind of uses the Commissioner listed. What we did on Ear Based Amendments because we don’t know whether they are moving forward that is both the County Administrator and County Commission decision on what happens with those. We were trying to clean up our Land Development Code, which the Comprehensive Plan in 09 was changed to allow non conforming uses to be grandfathered and to pass to another owner even if that use was dormant for a year, so that was changed in 09. I have reaffirmed, I looked at that again today where that was changed. I was sent with a bunch of amendments to the State, a lot of the other amendments nothing happened. This was acted upon by the Planning Commission and the Board. All we were doing was changing the Land Development Code to be consistent with the Comprehensive Plan. That’s what y’all voted on in December to allow that to go forward. The descending votes were Commissioner Allen and Commissioner Ganus.”

Chair Davis asked had they received the letter from the State and would they be responding accordingly.

Mr. Matheny asked what correspondence they were referring to.

Commissioner Allen said this relates to the email that was sent on September 14, 2012. He said “it was brought up at the next meeting and this Board agreed to this, to put back into the Comp Plan.”

Mr. Matheny suggested next week for Commissioner Allen and himself to meet with the County Administrator and have a meeting to talk about to see what he wants to do regarding this issue going forward with County Board on the 5th. Whether or not he wants it to go forward and we will bring up your issue and bring up the letter.

Commissioner Allen pointed out what he was trying to say was on the Ordinance number it says where as the County wishes to retain non conforming provisions as they pertain to non residential structures and uses. “We don’t need to throw the baby out with the bath water. We need to go ahead and keep this and adjust a little bit.”

Mr. Matheny commented it was approved in December that’s why it is moving forward.

Chair Davis recommended “since it was already moving forward to the Board, I think it would be best if ya’ll meet and discussed the letter as opposed to it coming back to us in the next agenda, if the Commission is in agreement.”

There was consensus from the Commission for Commissioner Allen and Mr. Matheny to meet with Mr. Lawson to discuss Commissioner Allen’s concerns.

Introduction of New Commissioners

Mr. Matheny welcomed the new Planning Commissioners and read the biography for Commissioner Chukes and allowed Commissioner Dixon to introduce himself, since he had not provided a biography.

He also mentioned that “Commissioner Morgan was not at the last meeting when his appointments were up for consideration, so by default they were approved and Commissioner Morgan has not instructed us to do anything else otherwise, so his current appointments are good for another 4 years. The same with Commissioner Taylor’s district and the same with Commissioner Hinson. There was a mistake in the paper about Commissioner Tranchand and they stated he was replaced. He is not replaced, that was Commissioner Butler.” Willie will contact the papers tomorrow to make a formal correction. Everything is set; we have our Commissioners in place, ready to go.”

Commissioner Morgan’s appointees are as follows: Commissioner Mari VanLandingham and Commissioner Frank Rowan.

Per email received by Deputy Clerk Wood it was requested that a correction be made to Mr. Matheny’s comments that Commissioner Morgan asked and reappointed his appointees to the Planning Commission. Because he was absent at the BOCC meeting when the 2013 Planning Commission appointments were confirmed does not mean that his prior appointments were reaffirmed by default.

Commissioner Simmons recognized Pastor Ray of United New Jerusalem Church of Jesus

Christ and thanked him and his congregation for coming out representing the church and the agenda item that was before the Commission.

11. SET NEXT MEETING DATE

- **Feb. 21, 2013**

12. ADJOURNMENT

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE CHAIR DECLARED THE MEETING ADJOURNED AT 7:30 P.M.

**REGINA DAVIS, CHAIR
PLANNING COMMISSION**

ATTEST:

**BERYL H. WOOD, DEPUTY CLERK
FOR NICHOLAS THOMAS, CLERK OF COURT**

