MINUTES
PLANNING & ZONING COMMISSION WORKSHOP
NOVEMBER 17, 2010
6:00 PM

PRESENT:	**ABSENT:**
Diane Sheffield, Chairperson	Willard Rudd
Larry Ganus, Vice-Chair	
Mari VanLandingham	
David Tranchand – New Member	
Judge B. Helms, School Board Rep	
Dr. Tony Arnold	
Catherine Robinson	
Dr. Gail Bridges-Bright (Late)	
Alonzo McBride	
Ed Allen	
Frank Rowan	

STAFF:

Deborah Minnis, County Attorney
David Weiss, Assistant Co. Attorney
Anthony Matheny, Growth Management Director
Jean Chesser, Deputy Clerk

CALL TO ORDER:

Chair Sheffield called the meeting to order at 6:00 PM with a quorum present. She then led in the Pledge of Allegiance to the US Flag.

Chair Sheffield introduced and welcomed the newest Planning Commissioner, Mr. David Tranchand. Each member then stated his/her name for the record.

Chair Sheffield turned the meeting over to Mr. Matheny at this time.

Mr. Matheny explained the County Attorney will be speaking on some of the land use laws and some cases which may be helpful to the Commission; that this is only a work shop, not a public hearing. He said the Commission does not have to take public comments but if they do that they may want to keep the public's comments very brief. He said "There will be a workshop on December 9, 2010, to discuss the Conservation and Future Land Use Elements in detail, but not tonight because they were not advertised for discussion tonight. So that is something we can't go into and if we start doing that either myself or the County Attorney will get your attention on that and hopefully pull everybody back because it was not advertised to be discussed tonight." He said the regular December public hearing meeting was changed to December 13th because of conflicts with the consultant's schedule. The P&Z Commission will consider the two elements (Conservation & Future Land Use Element) at the meeting on December 13th, as well as a special exception request for one of the local churches. He said "We will also talk a little bit about Planning Commission board make ups in other counties; the number of folks on those planning commissions, attendance – those types of things, and I will probably get with you Diane before that time to talk a little bit about that. So, that was brought up last night at the BOCC meeting about the number of absences of some of the Planning Commission members and was addressed by a County Commissioner as something to look at, but we had already had that in the works to discuss and we'll do that on the 13th."

Commissioner Ganus "So we're having meetings on the 9th and the 13th?"

Mr. Matheny "Correct. I thought everybody had already been informed of that. You have not? I thought you had, but anyway, the 9th – the workshop, Thursday December 9 at 6:00 -- all of these are at 6:00 – to workshop the two remaining elements, Future Land Use Element and Conservation Element. You've already work shopped six of the elements so you have two more to go and that'll be a change to work shop that in detail and then four nights later on Monday night the 13th is our regular meeting. We had to move that to a night we're not used to meeting because of

folks going out of town, the consultant's availability and that sort of thing. So that's the night that we'll actually have the regular December public hearing and you'll vote on this; then we'll have a church to discuss and I'll do, I'll just make some comments about Planning Commission make ups in other counties and talk about attendance and things like that. That's all I've got."

Commissioner Helms said he is hopeful the Planning Commission will try to keep Thursdays as their regular meeting times instead of flipping back and forth from one night to another; even for the workshops if that's at all possible. He said it seems like Thursdays are the Commission's best times.

Mr. Matheny "We are Commissioner Helms. The reason we're doing it this time is just because it's the December holiday time and our consultant didn't have any other time to do it and in the past we've had so many workshops and meetings – things that you normally wouldn't be having and we've had to put a few into days that you normally wouldn't be meeting. But Thursdays as we get into – and I can't tell you that we won't have to meet on some odd days as we go forward because we still have considerable work to do on our area plans and things; so I don't know but we'll try our best to keep them on Thursdays."

Commissioner VanLandingham "Mr. Matheny, If we could too, I would also like to get back to the regular schedule of meeting on the second Thursday or the third Thursday (whichever is correct) because that way it's easier for all of us to remember when we are supposed to be here." (Previous Schedule has been the second Thursday following the first regular monthly meeting of the BOCC.)

Mr. Matheny "Right, that's what I was just saying, but I can't guarantee they will all be like that because our consultant may have a conflict or something like that."

Commissioner VanLandingham said she was talking more specifically about their regular meetings, and not just the workshops.

Mr. Matheny said they will try to get pretty much back to normal meetings, but the December meeting was changed because the consultant had a conflict and was traveling out of the Country and that's why he changed it to the 13th.

At this time, County Attorney Minnis addressed the Commission stating her main point tonight would be to concentrate on discussing what happens to the comprehensive planning process once it leaves the P&Z Commission. She explained her reason for wanting to do this is because when they know what the end result is going to be, it gives them more information and allows them to make a more informed decision at the front end when they have to do their 'piece of the puzzle' so to speak. Ms. Minnis said she has been in the Florida Bar since 1985 and has been litigating cases in Court since that time. She said she started out as a litigator and later (approx 6 yrs)she became more involved in a consultant type or general counsel type work as she is doing now; however, she still does litigation in Court quite frequently. She said this will be a good avenue to start with so they have a good understanding that once the issue leaves them, there is a whole other realm of possibilities that occur so when they make their decision the information doesn't necessarily dictate their decision but it does help guide them to make the best decision they can on a particular issue. Ms. Minnis discussed several land use area cases, some of which challenge the Comp Plan, changes by amendment, some that will be in the Bert Harris area and a handful that are declaratory type cases and one that was a civil rights type case of 1983. She explained there are a variety of ways land use decisions can be challenged in Court.

Let the Record Reflect Commissioner Bridges-Bright arrived at this juncture of the meeting. (6:10 PM)

Ms. Minnis said while the Planning Commission is in the process of considering the recommendation they will make to the Board of County Commissioners on an amendment, etc., that they keep in mind 'the purpose of the legislation they are working with' because a lot of times that kind of dies when it gets to the Court or the Administrative Proceeding, and in this case once they get to the Department of Community Affairs level, DCA will

be looking at "what is the intent of the legislation the Board passed". She also said the State of Florida has one of the most Comprehensive Planning Statutes in the Country, and in most other states, cities, counties, individuals, the State doesn't get near as involved as they do in Florida with the planning process. She said there has been some indication that because of **Senate Bill 697** DCA may be promulgating some rules or amending some things; however Florida does have a different legislative makeup now which may not continue to be the case with a– lot of Statutes on the books now which may or may not be there over the next few months.

Ms. Minnis explained one of the most important things to try and remember throughout the whole Comprehensive Planning area is that the purpose is to try and balance a lot of conflicting rights, desires, wishes and obligations; and any time there is a Statute that is trying to balance several different competing interests, it will be very interesting to try and implement it because in trying to fit all of those pieces together, they don't always mesh very well. One example she referred to was Florida Statute 163.3.161 dealing with the intent of the Statute where sub-section 3 talks about it being necessary to do all of this so local governments can preserve and enhance, present advantages, encourage appropriate land use, water resources, be consistent with public interest, overcome handicaps, effectively deal with future problems and protect the health, safety and welfare, etc. so everyone thinks it is a very friendly environmentally kind of land use law, but then sub-section 9 reminds local governments that they still must recognize and respect judicially acknowledged or constitutionally protected private property rights where the intent of the Legislature is that all rules, ordinances, regulations and programs adopted under the Act must be developed, promulgated, implemented and applied with sensitivity of the private property rights and not to be unduly restricted. Also that property owners must be free from actions by others which would harm their property. Ms. Minnis said a lot of language had been put into this that is kind of hard to 'get your arms around' in most cases. She said unfortunately the standard of the use view is a very differential standard but there is an overlay that must be looked at when making a decision. She explained the Commission

needs to be mindful of the overlay, but as a local government or Planning Commission they do have a lot of discretion when dealing with Comprehensive Plan issues, Comprehensive Plan Amendments and land use issues. She explained with the Comprehensive Plan situation there is a requirement that any recommendation sent forward to DCA for their review and consideration must contain both data and analysis. The other thing is to be mindful that the recommendation is not inconsistent with other provisions of the Comprehensive Plan and that there are no inconsistencies with the policies and Statute, or any rules and laws that are out there. Even though they do have a lot of discretion there is all of these little esoteric pieces out there that the Commission must be mindful of when making their decision.

Ms. Minnis explained there are generally about three ways a Comprehensive Plan Amendment can get started; through the EAR process, through a plot compliance agreement or when the local government can decide there are some amendments that need to be made to the Comprehensive Plan. However, she said it can also get started by a private property owner whose property is being affected by a particular provision under the Comprehensive Plan and they can request a Comp Plan Amendment; this is allowed under the Statute and the property owner does have that right. She further explained once the amendment process is started, there is public participation, public hearings, all of the documentation is sent out so the public can fully participate by giving their thoughts and ideas about the Comprehensive Plan process and any amendments that will be made to the plan. She added one thing about a private property owner requesting an amendment to the Comprehensive Plan is that if the local government decides to deny the private property owner's request for a Comprehensive Plan Amendment that property owner has the right to request a mediation session before they go to court. The Statute says the property owner has that opportunity and it then tolls any litigation they want to file in court for 120 days or until the mediation is completed. She said that doesn't necessarily mean it is resolved or that it is going to settle, but they do have the opportunity to ask for that. The cost has to be borne equally by the local government and the private property owner. If it doesn't mediate, if it doesn't go away

then there are some options the property owner can file. Should the issue go to court, the Court considers the request on the Comprehensive Plan to be more legislative in nature because in their opinion the Comprehensive Plan is the umbrella and the zoning laws, ordinances and codes are the implementation piece of the whole land use area and those are treated differently when it gets into court. If a local government ends up in court on a land use issue or an ordinance implementing the Comp Plan, those types of things are treated differently and have a different standard; however, when local government is dealing with an amendment to the Comp Plan they are considered the legislative body at that point and the standard is different. She said they had discovered, based on a recent Supreme Court case that small scale amendments (even though they don't have to go through the DCA process) are considered amendments to the Comprehensive Plan and are legislative or quasi-judicial in nature because the standards that apply to all other comprehensive plan amendments will apply to the small scale amendments as well.

In response to Commissioner Ganus requesting an example of a standard that would be one way in one case and different in court, Ms. Minnis explained that in a major case, what they call the "Seminole Case" that sort of set up what the standard would be for the Comprehensive Plan Amendment in Florida was the Supreme Court case of 1997, Martin County vs. Yusem which basically said if it was a legislative function (what they consider Comprehensive Plan Adoption and Amendment to be)the standard is fairly debatable – was the entity action fairly debatable? She said all that basically means is if reasonable people can disagree as to the propriety of the act then the local government's action will be considered appropriate. However, if looking at changing a land code ordinance, land use code or something of that nature (not a Comprehensive Plan issue) then the standard for that is –

Mr. Weiss added there are different standards on the land development code based on whether an issue is considered legislative or quasi-judicial and it is considered legislative if it affects land as a whole, if you aren't targeting a specific property, but if targeting a specific property then it

is quasi-judicial and considered 'strict scrutiny' which means it has to strictly comply with the Comprehensive Plan essentially. Ms. Minnis said under the 'strict scrutiny' standard, the local government entity has a higher level of burden because they have to show a lot more evidence and reasonableness as to their action so they don't get quite as much deference under the land use code issues.

When dealing with the whole process, specifically the Comprehensive Plan Amendment area, remember these steps:

Once proposed amendment goes from Planning Commission to the Board of County Commissioners, when approved it is submitted to DCA for review. DCA doesn't have to review and they can be requested to review by a regional planning group and/or adversely affected property owners. At that point DCA will issue their ORC Report. Once the ORC Report (Objectives, Recommendations, Comments) is taken care of, it then goes back before the BOCC for their vote and once they vote and send their final decision up to DCA at that point DCA will review it and issue a Notice of Intent and they can do one of two things. They can notice the intent to be in full compliance with the law; or they can find it not in compliance with the law. At this point two things happen: (1) If DCA decides that it is not in compliance then it automatically goes over the Division of Administrative Hearings (DOA) to start the administrative hearing process which is under Chapter 120. DOA then takes over the case and they (just like all other State or Federal Courts) will want the parties to get together and see if they can work it out. Ms. Minnis explained once it goes over to DOA not only does DCA and the local government entities become a party to the issue, but so does any affected person that wishes to intervene or insert themselves into the hearing process so they can become named parties in what would arguably be an administrative litigation and they basically become a part of the whole negotiation and compliance agreement. What will happen, if the parties can agree, a compliance agreement will be generated, it will be sent to DCA and if DCA has no problems with it they will advise DOA that the parties have a compliance agreement. If that happens then it will be sent down and the amendment process will start all over again because the compliance agreement will

require a further amendment to the Comp Plan that was just sent up and you will have to go through the amendment process which means in going through the amendment process what you are amending is sent back up to DCA and if someone doesn't like it, then you are kind of back to having to send it back to DOA and DOA will hold the case open, so to speak, and potentially it will have to go through a full blown Administrative hearing process. Ms. Minnis said that is the vicious cycle she refers to because it's like it just keeps going. For example, each time it is sent back down you have to go through the public hearings, etc., and if someone new or an affected person that wasn't involved in the beginning comes in and challenges it when it is sent back to DOA, all of the parties are somewhat realigned – maybe the first time it could have been DCA vs. Local Government Entity & Joe's Garage. If the local government and Joe's Garage enters into a compliance agreement then when it goes back to DOA they will be the respondents and the newly affected people will be the petitioners.

Commissioner Allen asked if the developer or "Joe's Garage" could "Opt Out" of the government process and therefore have a stipulated settlement agreement and Ms. Minnis responded that she assumes if they don't want to participate any further they could; that she is not aware of any stipulation that would require they remain in the case. She further addressed Commissioner Allen's questions on citizens not being allowed to participate in the administrative hearing (example DCA tells Joe's Garage he can only have one pit in his garage instead of two and he elects to go along with DOA and thereby eliminating any citizens' input) by explaining that it is her understanding that whatever the amendment, it will still be in play and she doesn't know if that would really be eliminating citizens' input. It would only be eliminating citizens' input if that was the problem they had with the proposed amendment. If they had other issues with the amendment or if they felt one pit would not be enough, they could still voice their concerns in the DOA process. She said she did not believe that would totally knock them out as parties if they are interveners because in order to enter into the agreement, all of the parties would have to basically be engaged in the negotiations, and once that agreement comes down and if there is still an affected party who

disagrees with that (since the Comp Plan would have to be amended to allow the two pits)) it would probably go back up but the citizens would not be denied their input if they have intervened (even if Joe has settled) because there would still have to be some type of amendment to the Plan and when the agreement comes back down for DCA to notice the intent that the agreement with Joe and the other people are now in compliance then the whole process would probably have to start all over again. Ms. Minnis explained it is just a matter of being vigilant and staying aware of what's going on in the process.

One way an issue may end up in DOA is if DCA issues a notice of intent that they are going to find it in compliance. It doesn't necessarily go to DOA at that point, but an affected person can then petition the Department of Administrative Hearings and DCA to challenge the notice of intent to find it in compliance. When that happens, you drop back and basically go through the same process all over again. Ms. Minnis explained the Statute is not very clear as to when and where this vicious cycle ends because it does say affected persons have the right to join into that. She said "Affected Person" has a very broad definition. It can be a local government, it can be persons that own property and reside or own and operate a business within the boundaries of the local government whose plan is the subject of review, adjoining owners of real property abutting the subject of review or adjoining local governments that can show or demonstrate whatever this local government is going to do will impact them –

Ms. Minnis covered additional challenges (considered recent cases, less than 15-20 yrs old)that can possibly come up to a Circuit Court system and work itself up to the Appellate Court; a lot of which settle out before reaching the Appellate level. She explained when doing a search for such land use cases, a lot of the Circuit Court cases don't get reported so a search would mostly show Appellate Court cases. There have been at least 200 Bert Harris claims filed in the 14 years since it was enacted, but when searching they found that there are only 13 or 14 opinions listed which indicates at some point the property owner either dropped their case or it had been settled as part of the Bert Harris Act. Part of this process is a magistrate hearing and a lot of the cases get worked out during that process.

Commissioner Allen inquired as to whether or not the Bert J. Harris Act is basically more of an eminent domain and Ms. Minnis responded not really because it actually deals with any Ordinance, policy or procedure the local government enacts that substantially affects the property owner's ability to use their property. That's putting it very loosely but it really isn't eminent domain. She said a property owner would not have to meet the eminent domain standard to bring a Bert Harris claim. However, there are some Bert Harris claims – not all of them are successful – but it is an area that people are using for some of these types of cases.

Commissioner Allen asked how many cases have been won through the Bert Harris Act and if it is true that most attorneys use the Bert Harris Act to come in and try to intimidate Planning Agencies and they call it the 'Bert Harris Bat' or the 'Hick Stick'. Ms. Minnis responded she did not know; all she could say is that there are some Bert Harris claims out there. She responded maybe one or two have been won through the Harris Act while some have been settled out of Court, and Commissioner Allen responded none have been won in the State of Florida.

Mr. Weiss responded to Commissioner Allen that out of the reported Appellate decisions there aren't any, but there are many Circuit Court cases and settlements. However information on these cases is not as readily accessible through searches as many are settled prior to reaching the Appellate level.

Ms. Minnis said there are at two such local cases under the Bert J. Harris Act that she is aware of; they haven't gotten far into the process but some are being filed and the law is out there for them.

Another area that people file claims on is the declaratory relief issues and this particular type filing is not an easy standard to apply or an easy issue to grapple with for the Courts. They have found at least one case (Island,Inc. vs. City of Bradenton Beach) where the property owner was successful and the case was recorded. Another case discussed was "Martin County vs. Section 28 P'ship Ltd". Ms. Minnis reminded the Commission

they do have a lot of discretion and a lot of things that can be taken into account because the Courts and DCA is aware that they are not going to be the experts in this area and to just be mindful of everything. There is never a cut and dry situation; it is a case by case assessment of everything presented for the Commission to make a determination.

Ms. Minnis briefly discussed several settlements (from large cases) they found during their search; one being a 2004 Collier County case (Aquaport, L.C. vs. Collier County) one being a Sarasota County case (Sarasota Riverside Dev., LLC vs. Sarasota County) a 2003 Monroe County case (Shadek vs. Monroe County Board of County Commissioners).

Commissioner Allen asked (in reference to the above settlements) if this was where they had proven an inordinate burden and Ms. Minnis responded they were settlements and that they didn't really prove an inordinate burden, and because of whatever type information they had the entities decided it would be best to resolve it.

Commissioner Allen then asked if it would be correct (for example)for Gadsden County in trying to bring developments or whatever into compliance would not be an inordinate burden, and Ms. Minnis responded she could not answer that question as it would depend on what their position is. She said they would have to look at it and take whatever they had presented to them as to consistency, etc. to see if it presented an inordinate burden and depending on whatever else they may have going on. However, she said she could not make a blanket statement that that was correct.

Commissioner Ganus referred back to the Collier County case (Aquaport, L.C. vs. Collier County)and asked if in this particular case Collier County was in violation of their own Comp Plan and Land Development Code and if that is why the opposing parties were able to come in after the fact and win the case, and Ms. Minnis responded Collier County amended the Code after the fact, and for some reason the County decided to pull the permit after it had been issued and that is where the problem came in and they decided to try and resolve it without

having to fight it out in court. She explained that under the 'Sirsharara' jurisdiction the party is basically saying they are confused as to their rights and they want the court/judge to ferret them out. What the court will look at and consider under the 'Sirsharara' is whether or not the local government did comply or whether they did go outside the parameters of the law and a lot of cases deal with this type of jurisdiction.

Commissioner Ganus said he would assume the challengers would have had less of a chance to win the case if everything had been done in order and had the County amended their Code prior to the permit being issued or the development begun.

Ms. Minnis responded that was correct; they saw a case where that actually happened with a developer coming in after the fact and the court considered that the Comp Plan had already been changed prior to the time the developer got in there and started changing things and the developer was not successful with the case. She explained that again, looking at the end result gives the P&Z Commission guidance in making sure that the order of things is in the proper place so that when they make these decisions they are comfortable that everything is in order and they didn't get the cart before the horse, so to speak, so they wouldn't have to possibly defend their actions in court. She said both the P&Z Commission and the County Commission wants to make sure there is data and analysis to support what they want to do and to make certain it is consistent with the rest of the plan; that it isn't going to be inconsistent with any of the other policies, statutes or laws that would sort of overlay this. She said when doing land use code amendments, they also want to make sure they are consistent with the plan.

Commissioner Ganus said over the past few years the P&Z Commission has had cases come before them that was very lacking in data and analysis; some for land use changes – Comp Plan amendment changes – to allow more dense building situations, yet there was very little data and analysis to back the request up and he asked if Ms. Minnis could give the Commission a rough idea of how much data and analysis is needed to make a good decision.

Ms. Minnis said that is found in the Florida Administrative Code and the statutes dealing with it basically points to the Code stating that it will let DCA come up with that rule. She did state the Rule is found in 9J-5.005, sub-section 2 relating to data and analysis requirements(paragraphs a-g). She said it talks in length about data and analysis, all goals, objectives, policies, findings, standards and conclusions within the Comp Plan and supporting documents and within plan amendments and supporting documents and shall be based upon relevant and appropriate data and analysis applicable to each element. "To be based on data means to react to it in an appropriate way and to the extent necessary as indicated by the data available on a particular subject at the time of adoption of the planned amendment and issue." She said it goes on to say local government is not required to get original data collection, but the local government is encouraged to utilize any original data necessary to update or refine the local government Comp Plan data base so long as the methodologies are professionally accepted. Ms. Minnis said as far as what would be considered enough data, that she feels it is if the Commission can comfortably state, based on data and information they have reviewed and been presented with that their decision is believed to be in compliance with the Comp Plan and is an over-all consent of the Commission that it is in the best interest of the County and everyone involved. However, in her opinion if the Commission feels they haven't received enough analysis and data to make an informed decision that would certainly be just cause for the Commission to deny the amendment request.

Commissioner Ganus asked if data submitted indicated a planned amendment was not necessary (example – rural residential area (in yellow) shown on County zoning map) where there is already a lot of that on the books. The EAR Amendments includes an updated number of projected building lots that are needed or population growth and that sort of thing and if the County has already exceeded that yet the P&Z Commission still gets amendments coming before them requesting more and more and more of that type amendment, would that be a valid reason for the P&Z Commission to simply say the County doesn't need any more and to not approve any more? Ms. Minnis responded that since it is the P&Z Commission's responsibility to look at the entire County and

what's best for the entire County, the citizens and the property owners and based on the data and analysis the Commission has been given and considers to be valid and sufficient to indicate there is enough of that particular land use and if someone doesn't bring data showing the Commission should change it or that there is reason to change it, then the Commission would be within their authority to deny that particular change. Ms. Minnis did say if that happens and it goes up to DCA they may disagree or DOA may disagree. However, based on the broad nature of what the P&Z Commission does and decisions they must make, and what they are doing is in the best interest of the citizens, residents, property owners, and business owners of Gadsden County means they have to give good faith judgment about the different land use categories and what it entails. She explained that once the Comp Plan is done doesn't mean they are locked into it forever; they do have opportunities to re-look at things; the EAR process is just that as it requires they do a full scale review of the Comp Plan to see if it is consistent, compliant and is doing everything that it is supposed to do and is needed to do.

Commissioner Robinson said because of Florida having such a strict Plan if DCA or anyone would be giving training classes on any of this and Ms. Minnis responded she knows there are CLEs for attorneys and that there are a number of (inaudible)on the Comprehensive Plan process and the Land Use process on their web site. She said she could certainly check into possibilities and suggested Mr. Matheny may have some information on that.

Mr. Matheny said that is one of the things they will try to do next year; get some Commissioner APA training and updating on various issues.

Ms. Minnis said she has received information that DCA is looking at doing some rule amendments because of the new Statute, but with a new Legislature you just never know. She added that Mr. Weiss had told her that during his travels through the Comprehensive Plan Amendment world, apparently the Florida Statute is the most amendment statute there is; they do a lot of amendments to the Comprehensive Plan on a fairly regular basis.

Commissioner Arnold said he could certainly understand the situation where the developer (Aquaport, LC. Vs Collier Co)had the rule changed on him after the fact, but you get into a grey area when you have an application, say during such a process as they are going through right now and if the Commission was asked by the applicant to make a decision but the Commission wanted to defer that decision until the Commission had made their policy decisions combined in the EAR and the subsequent amendment, yet being in a grey area like that would not be comfortable in terms of a decision being made before the policy was put into place. He asked how much latitude the Commission would have in a situation like that and Ms. Minnis said that would be hard to tell because so much hinges on what ultimately happens with the amendment, or the plan or the zoning ordinance. She said they could ultimately have a challenge from the property owner and agreed it is definitely a grey area and it will depend on the particular issues involved and whether the change will be a substantive change where the applicant would have to be grandfathered in, or possibly just a minor change that will not affect what the person wants to do with their property.

Commissioner Arnold asked what the Court's attitude would be where an applicant specifically submitted his application because he knew a change might be made and wanted to be grandfathered in. Ms. Minnis explained everything is on such a case by case basis and a lot of it would depend on whether or not the applicant had knowledge that this is where it's going, and he is trying to get in before that happens; he is trying to do a detrimental reliance case. Commissioner Arnold said it is not just an issue of how much time delay there was.

Commissioner Allen asked if they could put a moratorium in place until the area plans are approved and Ms. Minnis responded moratoriums are scary; knows they won't do one for eight months and she doesn't believe they would want to refer to it as a moratorium because that envisions a much bigger halt to everything. Commissioner Allen said he is referring to just those districts that the area plans are involved in and Ms. Minnis said the only caution she would have is the lesson from (Shadek v. Monroe County Board of County Commissioners case) where an eight (8) year moratorium was imposed. Ms. Minnis said

she knows the area plans have been put off and she doesn't know if they will be coming up this year or not; that she hasn't talked to Mr. Matheny about when they will be coming back up, but it's a risk that is out there if you do that and she doesn't know where the breaking point would be – one year or two years because some of the facts that would have to come out in the case is how much the person relied on getting his property developed, what the window is as far as getting it developed or to sell it or what money could be earned on it while waiting to get the application processed.

Ms. Minnis further explained she could not give a straight out answer on that because it would depend on the issues involved in the case, and Commissioner Allen responded the Supreme Court had ruled a moratorium was not injuring the property owners so if it took eight months or a year on the area plans to be finished, then it wouldn't –

Ms. Minnis said it possibly could injure the property owner because the facts of an individual case are important and if the Supreme Court case doesn't necessarily marry up with the case in question, then that case could be persuasive but may not be binding and even though it is a Supreme Court case, most of them usually don't make a blanket statement that moratoriums can never be an adverse effect on property.

Commissioner Allen asked if Ms. Minnis had considered other language that could be used and she responded she had not, but said she could certainly do so. She said she was not saying it wasn't feasible, and Commissioner Allen asked if something like that could be done – say for example, that no more zoning changes could be done until the area plans are though, what would the process for doing that be. Would it be with the P&Z Board or the Board of County Commissioners? Ms. Minnis said even if the P&Z Board decided to do that, it would simply be a recommendation to the Board of County Commissioners.

Commissioner Ganus asked if he was correct that the P&Z Commission could recommend such a thing and Ms. Minnis responded it could be recommended to the BOCC and then they would have to consider it and review all issues involved to be certain it

would not inadvertently put the P&Z Commission in a position of not being able to defend their action.

Chair Sheffield said there was a case in Leon County where the Judge actually called for a moratorium in the Bradfordville area.

After further discussion, Ms. Minnis summed up her presentation by stating, long story short, the Planning & Zoning Commission has a lot of discretion in how they do what they do because even though there is a Comprehensive Plan in Florida the State does recognize the amount of knowledge the local boards have. She said to keep in mind there are outside parameters and make sure they are in the very best possible posture they can be in when making their decisions.

In response to Commissioner Robinson as to whether or not each member must have individual justification for which way they vote on an issue in the event it may go to Court, and Ms. Minnis responded they could possibly be called to testify as to what their individual reason was, but the decision they make is as a 'Body' so the discussions, data and information the Body has accumulated is what forms the Commission's decision in going forward; but the entity that is responsible is the 'Body" and not the individual Commissioners – it's the vote of the 'Body'.

Chair Sheffield asked why compatibility is not looked at as being reason for denying; that in her opinion so often something simply is not compatible but the Commission has been told in the past that is not a good enough reason to turn something down.

Ms. Minnis said that may be because the use of the term 'compatibility' is pretty vague and there could be some underlying objective reasons that could be given that would lead you to believe there's incompatibility but the way DCA looks at it is where is your data, or your basis for deciding that because just deciding it isn't compatible may be what the issue was and not so much that you didn't have the background data. You have to have a reason, you have to have data as a basis for deciding that it isn't a good use for that particular piece of

property. You need data to support your decision for non-compatibility.

Commissioner VanLandingham said it sounds like they need something in conjunction with, and not just that it's not compatible; not only is it not compatible, but also –

Commissioner Ganus explained the P&Z Commission gets a lot of public input from their public hearings from the surrounding areas about proposed changes and that, too, could sway them one way or the other.

Mr. Matheny said if good reasons are given – example - it's going to increase traffic in my neighborhood, it's going to make response time for emergency vehicles greater, it's going to cause an undue amount of noise/pollution – if the reasons are consistent with good planning principles that could be a reason, but not just I don't want it, I don't like it, etc.

Chair Sheffield said she had read that you couldn't just say it was going to impact traffic, that they must prove it is going to impact it and Ms. Minnis said that was correct and it would behoove them to have gotten studies from somewhere, have some objective data to back up their reasons.

Commissioner VanLandingham asked if the BOCC is required to have the same data and analysis as the P&Z Commission and Ms. Minnis responded it is her understanding the rule applies to every entity that is making a decision on it.

Chair Sheffield asked if the BOCC looks at the same packets the P&Z Commission looks at and Mr. Matheny responded "Yeah, they basically get the same information that you have gotten and we also let them know what ya'll debated and talked about and of course they have access to the minutes of the meeting so they know exactly what went on and then they have all the data, too. So, but you're right and they can make a different decision and sometimes they do, but as Deborah has said your role is as a recommending body to – generally a Planning Commission spends more time hearing the nitty gritty; hearing more people comment for longer periods of time during a public hearing, whereas they

will – usually that's a shorter process during the County Commission meeting. Doesn't necessarily have to be; if it's a passionate issue they could be there all night and they have been there all night. So, usually they come in here and that's where all the good stuff gets talked about. You know, they stand as long as they want and get it all out and then – In a perfect scenario the County Commission takes all of that information and says OK, we've had our team of Planning Commissioners who we appointed look at it and discuss it in depth and hear all the testimony and everything and now we're going to make a decision based on that and what we think is also best for the County. So there is a real role for the balance."

Commissioner Arnold said quite often when a citizen comes before the P&Z Commission with a compatibility issue that citizen is faced with a very difficult situation in finding data and analysis to support their position. For instance a property owner comes in and says I don't want a land fill next to my property and the developer will come in saying prove to me it will lower your property values. He asked how a citizen would go about doing that. Or say a developer wants to put an eight story building into a neighborhood where there is nothing higher than a two story, and the citizen says this will change the character of our neighborhood and devalue our property and the developer says prove it. Where would the citizen, or even the P&Z Commission turn to find information like that; even if the Commission intuitively agrees with one party or the other?

Ms. Minnis explained that even if the Commission intuitively agrees with one party or the other, it is still their obligation to remain neutral and not allow their personal desires to enter into the process, but to look at the data being presented. However, it does make it more difficult should both uses be acceptable in that area or if you have two different land use zones abutting each other and it just so happens that the property owner's house is right on the edge of an industrial zone. The property owner wanting to put a land fill on his property is within his rights to do so because his property rights meet what the Code requires and it just so happens that the way the zoning was done it abuts this person's house which makes it a very difficult choice for the Commission to have to

make. However, should that property owner come forward because a developer wants to put a land fill on the piece of property zoned industrial or whatever the correct zoning for land fill is, and because of the data and analysis the Commission has before them, then there is no reason for denying that use. Then, the property owner that is affected needs to stay in the process. When it gets to DCA or DOA then go into the process and try to challenge it there and try to show some inconsistency there. She said there is an avenue for the property owner to do that. However, there could be other reasons for not allowing the land fill. Even though it may be an acceptable land use overall; it may not be the right topography, the soil type may be wrong or there may not be room to do proper setbacks, etc. Ms. Minnis said the Planning Commission has a very difficult job and the choices they have to make are never easy. She recommended the Commission ask for data, ask for analysis, ask for reason and ask for justification; just work the process.

There was additional discussion concerning land use designations when the Comp Plan went into effect in 1991, and Mr. Matheny said (1) there was a chance for property owners to come in and be heard on how that land use designation was made at that time and (2)the burden is on the citizen to prove that what the County has in their Comp Plan is wrong(whether through research on similar situations or through new research where they have gone out and hired someone to do analysis or whatever) and to then come in and show they have good reasons. Generally if a use is allowed in a land use district they must have real good reasons to prove it otherwise.

Commissioner VanLandingham asked, hypothetically in the same situation, if the property was not properly zoned for the land fill and the property owner next door obtains an appraisal showing that it would devalue his property – would that be enough grounds, enough data and enough analysis for the Planning Commission to deny and Ms. Minnis said she doesn't know that simple devaluation of adjacent property in and of itself would be enough but it could certainly be part of it but there is a lengthy process by which anyone that could possibly be affected by any zoning change or any Comp Plan change to get involved in

that entire process. Ms. Minnis said there is a lot of great information available on the internet concerning these issues.

Commissioner Allen asked if the land fill was improperly zoned, would the County get involved, if it would become a code enforcement issue and Ms. Minnis said it should be a code enforcement issue if it isn't properly zoned and if the person is not compliant with the zoning ordinances and zoning code.

Chair Sheffield thanked Ms. Minnis for her presentation and the Commission was in full agreement with the Chair that the information was helpful, very fact-filled and very interesting.

Mr. Matheny made a brief closing statement.

Ms. Pennington addressed the Commission to make certain everyone has all of the information for the workshop scheduled for December 9, and recommended each Commissioner thoroughly review the information. She said they should have the Future Land Use Element and the Conservation Element and that they should have also received copies of the different proposals she has received after the draft was put together, revisions that have been coming in proposing changes such as adding, deleting or clarifying, as well as letters from outside parties, interested parties, affected parties commenting on the draft they (consultants/staff) have made and on the different proposals that are there. She said she doesn't envy the Commission because there is a lot of work that needs to be done before December 9. Ms. Pennington said she had copies all of the documents that need to be considered (referred to large stack of papers she was holding). She said that file includes what she has sent --the Future Land Use Element, the Conservation Element, the different emails that contain those proposals to revise and the different letters (3 or 4) that she has received commenting on all of that. Ms. Pennington said it would be very helpful if the Commission has reviewed all of that in depth so that when they get here on the 9th, they can keep moving. She said the draft could be put it in a power point presentation. It is the first proposal – add this, delete that –and then get input from the Commission so that when they come back on

December 13 they will be ready to vote. Ms. Pennington asked Mr. Matheny if the Commission had been given all of the copies.

Mr. Matheny responded "I'm not sure. You will. If you don't already have everything she just mentioned, you will have it. We just haven't sent it to you in your package yet, so."

Commissioner VanLandingham asked if there was a new one and Mr. Matheny said No, but there are additional e-mails and other things they (consultants/staff) have received that folks wanted them to consider and additional comments and things that the Commissioners need to see.

Chair Sheffield said she didn't think the members have received all of that information and Mr. Matheny said he would make sure they get it and the letters they have received from – "I will have to confirm that that's OK with legal counsel to send those letters out and everything, but I mean we have them and it's public record so when we send out your packages you'll get that information for the 9th."

Commissioner VanLandingham asked if their packages would be sent out the week prior to the 9th and Mr. Matheny responded "Well, as soon as we can do it. We're a little bit challenged right now because next week we are going to have virtually no one in the office all week but I'm going to go back tomorrow and look at what we need to do and look at our timelines – in fact I have to meet with staff about that tomorrow and advertising."

Commissioner VanLandingham asked if Mr. Matheny was going to send them another Future Lane Use Element package and he responded "October 21(upper left hand corner of page)is the latest one you should have, you should have already reviewed but you may want to review again and then I'll send you those e-mails -- I'll make sure that what I send you meshes with what Marina mentioned tonight where you'll have all the stuff you need. I think that's all we've got tonight."

Chair Sheffield asked if anyone had additional comments and Commissioner Allen asked if the Commission should discuss the area plans and the zoning change; maybe put out a letter to the

Board of County Commissioners -- if the members thought that was advisable.

Mr. Matheny “You really --The only thing that was advertised for tonight was the presentation --–“

Commissioner Allen “I’m not talking about that. I’m just wondering about the letter we mentioned earlier when we were talking about a moratorium and rather than a moratorium, to put a letter to the Board of County Commissioners for no zoning changes until the area plans have gone through.”

Commissioner Ganus “Well, since this is a workshop and you can’t make any motions and we can’t vote on anything I don’t think this would be an appropriate time to do it. It needs to be in a regular meeting.”

Mr. Matheny “You might want to do that on the 13th.”

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UPON A MOTION BY COMMISSIONER ROWAN AND A SECOND BY COMMISSIONER GANUS TO ADJOURN, AND WITH NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION AT THIS TIME, THE MEETING WAS ADJOURNED AT 7:40 PM.

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Chair Diane Sheffield

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Jean Chesser, Deputy Clerk