MINUTES FOR
THE SEMINOLE COUNTY LAND PLANNING AGENCY
PLANNING AND ZONING COMMISSION
JULY 11, 2007

Members present: Matthew Brown, Dudley Bates, Ben Tucker, Melanie Chase, Walt Eismann, Kim Day, and Rob Wolf.

Also present: Tina Williamson, Acting Planning Manager; Dori DeBord, Director of Planning and Development; Herman Wright, Principal Planner; Austin Watkins, Planner; Amy Stevenson, Planner; Brian Walker, Senior Planner; Kathleen Furey Tran, Assistant County Attorney; Jim Potter, Senior Engineer; and Candace Lindlaw-Hudson, Clerk to the Commission.

The Chairman called the meeting to order at 7:00 P.M. He introduced the members of the commission to the audience and reviewed the manner in which the meeting was to be conducted, including public participation and rules for voting.

ACCEPTANCE OF PROOF OF PUBLICATION

Commissioner Bates made a motion to accept the proof of publication.

Commissioner Eismann seconded the motion.

The motion passed unanimously (7 – 0),

APPROVAL OF MINUTES

Commissioner Eismann made a motion to approve the minutes of the June 5, 2007 meeting as submitted.

Commissioner Bates seconded the motion.

The motion was passed unanimously.

Chairman Brown announced that Item H is being requested for continuance to the August 1 meeting.

Commissioner Tucker made a motion to continue Item H to the August 1, 2007 meeting.

Commissioner Bates seconded the motion.

The motion passed unanimously (7 – 0).

NEW BUSINESS

TECHNICAL REVIEW ITEMS:

A. Alaqua Country Club Clubhouse Tract Subdivision PSP; Alaqua Group, LLP, applicant; approximately 14.03 acres; Preliminary Subdivision approval for an 8 Lot Single Family Residence Subdivision zoned A-1 (Agriculture District) on Alaqua Drive west of Markham Woods Road.

Commissioner Carey – District 5
Brian M. Walker, Senior Planner

Brian Walker introduced the application for 8 single family homes. The interior road will be private. Houses will be on septic systems with water service from Seminole County. Staff recommendation is for approval of the plan.

Commissioner Eismann made a motion to approve the Preliminary Subdivision Plan.

Commissioner Bates seconded the motion.

The motion passed unanimously (7 – 0).

PUBLIC HEARING ITEMS:

B. Proposed Changes to School Impact Fees; George Kosmac, Seminole County School Board, applicant.

County Wide Item

George Kosmac presented the School Board's request for an increase in the school impact fees. He introduced the Chairman of the School Board, Barry Gainer; John Pavelchak, Chief Financial Officer of the School Board; Mike Rigby, Senior Planner for the School Board; and Carleton Bise, consultant who did the impact fee study for the School Board.

School Board Chairman Barry Gainer gave some background on the impact fee situation. In 1992 an impact fee ordinance was passed. This year an advisory committee was formed to study relevant data; the committee recommended that an consultant be hired to conduct an impact fee study. Mr. Gainer said that six firms were evaluated and Tischler Bise was chosen. The impact fee study examined the student generation rates of various housing types obtained from census data and also cost data related to land, buildings, furniture and

equipment. The study examined the availability and adequacy of revenue sources for improvements and additions to the County Educational System.

Following review and input to the study, the committee recommended to the School Board that impact fees be updated in accordance with the study. The School Board approved a resolution to that effect and forwarded it to the County.

The study results were reviewed at a Joint Work Session of the School Board and the Board of County Commissioners on January 23, 2007 and further discussed at a presentation to the BCC at their meeting of May 22, 2007.
Mr. Gainer said that resolutions of support have been obtained from various entities including the City of Altamonte, City of Oviedo, City of Lake Mary, City of Winter Springs, City of Sanford, and the Business Advisory Board of Seminole County Public Schools.

On July 10, 2007 the School Board approved the Study and the revised rate request contained in the presentation made tonight to the board.

Carson Bise said that his firm specialized in studies such as impact fees, cost of growth, and fiscal analysis. The study has been underway for a year and a half. Mr. Bise then read through a series of slides contained in the presentation book distributed to the commissioners prior to the meeting.

Mr. Bise said that impact fees were new development's pro rata share of infrastructure costs. They were not to be a revenue raising mechanism and cannot be used for operations or maintenance.

Impact fees must meet the rational nexus test. There must be a need for the facility; development must benefit from the facility; and lastly, the fees must be proportionate to the impact or demand.

A demographic analysis looked at where the schools are today and where they would likely go in the future in terms of demand. Secondly, there was a need to determine capital costs.

There was an evaluation on the use of credits. Care was taken to be sure that new development was not paying twice.

Impact fee methodology was prepared and the elected officials are moving to adoption.

Four projected methodologies were prepared, which came out to within 1.5% of each other – with the exception of the Building Permit History method. The most important projection to use was the State Department of Education projection, because that is the one that must be used in terms of capital improvement planning.

The second part of the study was generator of demand: the number of public school students by types of housing units. Prior to this study the pupil generation rates were from 1992 and very outdated. New generation rates have been calculated using information from the census and calibrated to the enrollment.

Mr. Bise continued reviewing the information on the Pupil Generation Rate page and the changes in generation rate from 1992 to the 2007 rate. There are now 4 different types of housing units considered, adding single-family attached or townhouse.

Mr. Bise then discussed the components of the school impact fees: generator of demand: student generation rates; level of service standards including land, building and improvements, enrollment, capacity and value of fleet.

In reviewing elementary school standards, Mr. Bise stated that Seminole County is over capacity on the elementary school level. Middle schools are slightly under capacity at this time. High schools are currently 2,200 seats below capacity at this time.

Building costs in this study were based on published data from the State Department of Education. The local share of construction costs is now 93.9%.

A net capital cost per student was determined through a series of calculations shown in "Summary of LOS (Level of Service) & Cost Factors."

In summary, Mr. Bise said that the study brings forth: new pupil generation rates, uses 4 categories of housing, rather than 3, includes credit for future sales tax, and reflects the increase in local share of funding.

Commissioner Wolf asked about the projection alternative page. Do the projections reflect the flattening out of new housing starts seen today?

Mr. Bise said that the fees are based on the State Department of Education projections.

Commissioner Wolf asked if the curve is steeper than things end up being, how does that affect the bottom line for schools?

Mr. Bise said that it would not affect the bottom line, because the fees are not based on future costs and a future projection of students.

Commissioner Wolf said that some schools are greatly over capacity. How does that work?

Mr. Bise said that each type of school is being made into a category.

Commissioner Tucker asked if the housing generation rates were derived from the census information.

Mr. Bise said they were. Data came only from Seminole County data.
Commissioner Brown asked for the actual enrollment in 2006 and in 2007.

Mr. Bise did not have the figures.

Commissioner Brown asked if capacity was based on permanent capacity or did it include temporary structures.

Mr. Bise said that it was only permanent capacity.

Commissioner Brown questioned the lot sizes. He pointed out the various lot sizes of schools in the same category; for instance, middle schools – ranging from 60+ acres to 26 acres. Adding in one large site brings the calculations for all of the others up by almost 2 acres. The average site is 26 acres, but the 60+ acre site impacts the calculations.

George Kosmac said that the 65-acre site was Jackson Heights Middle School. There is a significant amount of wetlands there. It is an older site.

Commissioner Brown said that the valuation of such acreage cannot be put at $110,000.00 per acre. Look at reconsidering such costs. Commissioner Brown pointed out that the Homebuilder's Association also pointed to the half-penny sales tax as a source.

Mr. Kosmac said that he was aware that the HBA has requested that not all of the burden of cost should fall on impact fees. Mr. Bise has also done a Capital Funding Study that identifies other needs that cannot be funded by impact fees. There is a concern for another sales tax. An existing one-penny sales tax, of which the School Board gets 25%, is sunsetting in 2010 - 2011. At that point the School Board will ask that the tax be increased and extended.

Mr. Gainer said that the study is based on very conservative estimates. The School Board cannot go out and purchase property at $110,000.00 per acre today. This will be a two-pronged approach – sales tax and impact fees.

Mr. Kosmac addressed the Commissioners' remarks. He said that 20 of the County's 39 elementary schools are above permanent capacity. Enrollment varies on a daily basis. Twice yearly – in October and February the official counts are taken. As of last year, we had 65,227 students. 4 of the 12 middle schools and 3 of the 10 high schools are over capacity.

There are construction projects to address overcapacity are starting this summer. Lake Mary Elementary will get a new wing; Forest City Elementary is being renovated and adding capacity; Sabal Point Elementary is adding a wing; and Lake Orienta is adding a wing. Seminole High School and Oviedo High School are undergoing major renovation. Due to limitation of funds, the two high school projects are being stretched out over 4 years.

Mr. Kosmac showed a slide that demonstrated the impact fees of the surrounding counties. Seminole's fees were lower than nearby Osceola, Orange, Lake and Volusia counties.

Mr. Kosmac said that the impact fees are separately accounted for in the accounting system, according to the 1992 ordinance.

Commissioner Wolf asked how our impact fees are so much lower than other counties.

Mr. Kosmac said that the fees have not been addressed since 1992. The other counties have been more aggressive in updating their impact fees. The current ordinance recommends that the impact fees be updated every two years.

Commissioner Tucker said that Seminole County has rebonded for construction costs quite frequently.

Mr. Kosmac said that there was a 1986 bond issue for $105 million. That was paid out last year.

Commissioner Tucker asked about the current trend of a decrease in students. What direction will our student population go?

Mr. Kosmac said that we have to adhere to the DOE mandates after the audits. We must build to the DOE projections. As for enrollment, we declined by about 1,000 students. Right now we are down 2,600 students. Last year we picked up about 4,000 students in the first two weeks of school. October will be a better time to predict. Mr. Kosmac projects a slight decrease in students.

Commissioner Tucker asked what impacts the new tax changes will have in the schools.

Mr. Pavelchak said that the schools were not affected at all this year. There was some kind of increase. If the constitutional amendment passes, then there will be an educational shortfall of $1.6 billion statewide. We may be "save – harmless" on this. The class size amendment will provide us with additional revenue. We do not know more than that.

Mr. Gainer said that Seminole County's portion of the education shortfall would be 42 million dollars, or 10% of the operating budget. This could devastate our schools. We could issue more revenue bonds. That would reduce our credit rating. We hope the legislature will restore funds. We do not know the source either.

Commissioner Tucker asked about the relation between our rate and our cap. Mr. Pavelchak said there was a 10 mil cap on property taxes. Right now we are at approximately 7.584. We are 2.4 under the cap. The problem is that school districts do not set the cap. Most of the millage is set by the legislature each year. The county levies the maximum in discretionary millages.

Mr. Kosmac said that one of the elements of the proposal is an escalation clause. Studies take time. Construction costs increase. We are proposing an escalator. The cities and Business Advisory Board all have approved of the proposal before the board.

Blaine Darrah of the Heathrow Homeowner's Association spoke in favor of the request for raised fees.

No one else spoke from the floor.

Commissioner Brown restated that the Homebuilder's Association was pleased with this proposal.

Commissioner Tucker asked Tina Williamson how an increase in impact fees would affect affordable housing.

Ms. Williamson said that no analysis was done on that issue.

Commissioner Tucker said that he would like to know how many people are excluded from homeownership per $1,000.00 of home cost increase. He asked Mr. Kosmac if the fees were decreased with a decrease in student population.

Mr. Kosmac said that the fee would say as it is. To review the fees is time consuming and expensive. He wants to keep the impact fees in line with construction.

Commissioner Chase asked if the automatic escalation has been tested in the courts.

Ms. Furey-Tran was not aware of any cases.

Mr. Bise said that he did not know of any cases, but escalation clauses are standard today in impact fees.

Mr. Tucker said that he did not approve of the 3% automatic escalation clause. This should be brought back before the people.

Commissioner Wolf said that the escalation clause keeps pace with development.

Commissioner Brown asked Ms. Furey-Tran if the language of the request could be changed.

Ms. Furey-Tran said that the language could be changed.

Commissioner Eismann asked about this item being consistent with the County Comprehensive Plan.

Tina Williamson said that the process being followed to implement this is consistent with what is in the County Comprehensive Plan.

Commissioner Wolf said that he would not support the 3% escalation fee as annual increase.

Commissioner Day said that it was the lower of the two – the rise in construction costs or the 3%.

The commissioners wondered about the decrease in population.

Commissioner Chase said that this should be visited more frequently. There are too many variables.

Commissioner Brown said that neighboring counties are raising fees more aggressively. The projected $5,000. fees are not the same as other counties.

Commissioner Wolf asked about the cost of the study and time it took.

Commissioner Kosmac said that it took 8 months to 1.5 years and cost $60,000. He noted that tax money would be used if impact fees were not used. The escalation clause covers that.

Commissioner Brown pointed out that the word "SHALL" means things will go up.

Commissioner Bates asked about the nature of the motion to be made. The commissioners reviewed various phrasings.

Commissioner Brown said that to be consistent means that the process was being adhered to.

Tina Williamson said that the motion would be to find it consistent or inconsistent with the Comprehensive Plan.

Commissioner Bates made a motion to find the proposed revisions to the School Impact Fees are consistent with the Comprehensive Plan and to recommend approval of the attached ordinance.

Commissioner Day seconded the motion.

Dori DeBord said that this action is incorporating the impact fees into the Land Development Code and finding consistency with the Comprehensive Plan.

Commissioner Tucker said that he wanted to divide the question and amend the second part.

Commissioner Bates withdrew the motion with Commissioner Day's approval.

Commissioner Wolf made a motion to find that the proposed revision to the School Impact Fees is consistent with the Comprehensive Plan.

Commissioner Chase seconded the motion.

The motion passed 7 – 0.

Commissioner Tucker made a motion to recommend approval of the ordinance, without the escalation clause. (Page 3, strike escalation clause.)

Commissioner Eismann seconded the motion.

Commissioner Bates said that if the cost did not increase, the escalator does not go up. For that reason, he will not be voting for the motion.

Commissioner Tucker said that the ad valorum has the same language. We are looking at automatic escalation on the tax paying public.

Commissioner Brown said that he sees Mr. Bates' view on the escalator.

Commissioner Chase said that her concern was that the increase was automatic.

Commissioner Wolf asked if the School Board could come back every year for approval.

Commissioner Brown said that that is impractical.

The vote was 4 "no" and 3 "yes." The motion was voted down.

Commissioner Bates made a motion to recommend approval of the attached ordinance.

Commissioner Day seconded the motion.

The motion passed 4 – 3. Commissioners Tucker, Eismann, and Chase were opposed.

C. Celery Avenue at Lake Monroe Large Scale Land Use Amendment and Rezone; Hugh Harling, P.E., applicant; 16.34± acres; Large Scale Land Use Amendment from SE (Suburban Estates) to LDR (Low Density Residential) and Rezone from A-1 (Agriculture) to R-1 (Single-family Dwelling District) and R-1A (Single-family Dwelling District); located on the south side of Celery Avenue, approximately 600 feet east of Beardall Avenue. (Z2007-20 / 07-07LS.01)

Commissioner Carey – District 5
Austin M. Watkins, Planner

Austin Watkins stated that the requested Large Scale Land Use Amendment from Suburban Estates (SE) to Low Density Residential (LDR) will increase the maximum allowable density of the property from one dwelling unit per net buildable acre to a maximum of 4 dwelling units per net buildable acre. Currently, Celery Avenue has predominate Future Land Use of Suburban Estates along its corridor. The subject property is located in an area that is transitioning to a trend of development that is consistent with the Low Density Residential Future Land Use density. South of the subject property is Industrial Future Land Use and the Cameron Heights PUD which is approved for primarily single-family homes at a density of 2.5 to 4.0 dwelling units per net buildable acre. West of the subject property several developments consistent with the LDR density have been granted approval. East of the subject property is the River's Edge Preserve PUD and the River Run PUD. Staff has determined that the requested future land use is an appropriate transitional use and compatible with the surrounding area.

Mr. Watkins stated that the applicant has requested that the northern half of the property be rezoned to R-1A and the southern half of the property be rezoned to R-1. The northern half of the property is adjacent to more properties assigned the A-1 zoning classification than the southern half, therefore requiring larger lot sizes for an appropriate transition land use. Mr. Watkins said that the lot size compatibility analysis completed by staff does support the rezoning to R-1 and R-1A.

Staff recommendation is for transmittal of the requested Large Scale Land Use Amendment from Suburban Estates to Low Density Residential and approval of the rezoning request from A-1 (Agriculture) to R-1 and R-1A (Single-Family

Dwelling) for 16.34 ± acres, located on the south side of Celery Avenue, approximately 600 feet east of Beardall Avenue, based on staff findings.

Hugh Harling said that he concurred with staff. He showed a lot layout that will be similar to the Preliminary Subdivision Plan that he will present in the future.

No one spoke from the floor.

Commissioner Eismann made a motion to recommend transmittal of the requested Large Scale Future Land Use Amendment from SE (Suburban Estates) to LDR (Low Density Residential) and rezone from A-1 (Agriculture) to R-1 (Single-family Dwelling) and R-1A (Single-family Dwelling) for 16.34 ± acres, located on the south side of Celery Avenue, approximately 600 feet east of Beardall Avenue, based on staff findings.

Commissioner Bates seconded the motion.

Commissioner Wolf asked about the lot sizes.

Mr. Watkins said that the R-1 lots will be a minimum of 8,400 square feet and the R-1A lots will be 9,000 square feet.

Mr. Harling stated that the project will be built at a density of 3.2 units per acre.

The motion passed unanimously (7 – 0).

D. Bright Horizons Day Care Small Scale Land Use Amendment and Rezone; Bright Horizons Family Solutions / Robert Rossi, applicant; 1.58± acres; Small Scale Land Use Amendment (SSLUA) from SE (Suburban Estates) and PUB (Public) to OFF (Office) and Rezone from A-1 (Agriculture) to Planned Unit Development (PUD); located on the southeast corner of Banana Lake Road and CR 46A. (Z2007-33 / 08-07SS.01)

Commissioner Carey – District 5
Austin Watkins, Planner

Austin Watkins introduced the application stating that this is an infill parcel between three large PUDs. The applicant is proposing a daycare center for approximately 150 children in a 24,570 square foot facility. According to the Seminole County Comprehensive Plan, the requested land is a compatible one.

The property contains the historic Paola Cemetary which was part of the Presbyterian Church which burned down in the late 1800s.

Conditions of the development order include: The project shall have a maximum allowable building square footage of 24,570 square feet; Daycare and professional offices shall be the only permitted uses.

All activities shall occur in accordance with Florida Statutes for the removal or relocation of human remains or associated items. The applicant must complete a cultural resource assessment survey and ground-penetrating radar to determine if human remains are present within this property consistent with the Florida Department of State, Division of Historical Resources.

A. The existing Paola Cemetery shall not be reduced in size.
B. Pedestrian ingress-egress shall be provided from Banana Lake Road to the Paola Cemetery with a mulch path or sidewalk located within the buffer and a sidewalk or mulch path shall be provided connecting the parking area to the sidewalk or mulch path to the Paola Cemetery.

The applicant shall provide one parking space for every full-time employee and at least one parking space for every 20 children. Lighting shall not exceed 16 feet in height and shall be in the shoe-box cut-off style with no more than 0.25 footcandles of spillage on adjacent properties.

The setbacks shall be as follows:

North: 25'
South: 25'
East: 10'
West: 10'

The buffers shall be as follows: North: 10 foot landscaped buffer with 4 canopy trees every 100 feet; South: 10 foot landscaped buffer with 8 canopy trees per 100 feet and a 6 foot masonry wall to the west edge of the Paola Cemetery then a 5 foot landscaped buffer with 4 canopy trees every 100 feet for the duration of Paola Cemetery and then a 10 foot landscaped buffer east of Paola Cemetery with 4 canopy trees every 100 feet. To the East: 10 foot landscaped buffer with 4 canopy trees every 100 feet. On the West: 10 foot landscaped buffer with 4 canopy trees every 100 feet.

Parking areas shall comply with the Lake Mary Boulevard Gateway Corridor Overlay District standards.

Mr. Watkins said that staff recommends approval of a Small Scale Land Use Amendment from PUB (Public) and SE (Suburban Estates) to OFF (Office) and a Rezone from A-1 (Agriculture) to PUD (Planned Unit Development), for 1.61 ± acres located at the southeast corner of the intersection of Banana Lake Road and CR 46A, and recommend approval of the attached Preliminary Master Plan and Development Order, based on staff findings

Jay Saxena represented Bright Horizons. He said that he is proposing a child learning and development center.

Teresa Illich made a short presentation on the role of Bright Horizons. She stated that 166 children are projected for this site, ranging in age from 12 months to Pre-K. The center will use 12,000 square feet of the proposed facility. She said that Lake Mary has a gap of 3,000 child care spaces. There are currently 1922 homes under development and over 300 being built in Lake Mary.

Jay Saxena stated that he has approached the state with thermal imaging as to what was found on the site. His consultant, Pan American Archeological Consultants, is working with the State Division of Historical Resources.

Herbert Zischkau spoke on behalf of the Banana Lake owners. He put a diagram of the graveyard on the overhead projector. The diagram indicated the location of burial markers as of June 29, 1998. He stated that there were above ground vaults and vertical burial markers within the center of the property. Mr. Zischkau said that timing was important. Zoning should wait until the property is no longer a cemetery. Part of the due diligence is ground truthing. The reports on the ground truthing do not mention the weathered human bones laying on the ground near the broken tombstones. Anyone doing the ground surveys should have mentioned the bones. The developer has not identified the location of the human remains. Mr. Zischkau urged that the identification of the human remains be done prior to the rezoning, not after. He stated that the present owner, Ms. Frolich, has permitted desecration of the graves during her ownership. During the period of 1998 to 2000, her husband desecrated the gravesite with a backhoe. Bright Horizons design shows buildings 1, 2, 5, and 3 as well as the dry retention area, are to be located where many of the grave markers previously observed by neighbors were located. He showed a comparison of the current proposed site plan covering the areas of the old site survey that he made in 1998. County staff has expressed concern that many of the graves may be located within the proposed dry retention area. The current site plan reflects a fake burial location. It is an arrangement of tombstones moved from the grave sites to a small area in the southeast corner and fenced in. These tombstones had previously been located on the graves in the center of the graveyard. By granting the rezoning tonight, Seminole County is giving up the power to protect the graves until they can be respectfully and accurately relocated. Seminole County has the statutory power to protect the graves. By denying the request without prejudice the board will assure that the Seminole County Planning Staff will be able be sure that the graves are identified and relocated properly. Also, Mr. Zischkau stated that the traffic study of the area was inadequate. There should be a traffic light at the intersection. The current blinker is not adequate for the task. The developer should put in the light and turning lanes for the traffic.

Cindy Crane said that she has watched the cemetery deteriorate. Ownership was unclear at times. Part of the cemetery was taken for the development of CR 46A.

Prior to the road project, Ms. Crane said that she had seen 2 large above ground vaults located in the middle of the property. These graves disappeared. To remove them would have been a difficult task. Also, thermal imaging will not show old remains, in the ground for 100 years. There are statutes which spell out the steps that must be taken for site analysis and location of the graves. Such an undertaking is approximately $21,000. Cost for removal and reburial is $140,000. Time required to complete all of the mandated activities could be up to three years. She read a letter from her daughter which described the grave yard's condition and layout many years ago. It had a circular feature in the middle with a statue or fountain, with paths radiating out from the center like a wagon wheel, with graves arranged along the radiating paths. There were several headstones, probably 15 in all. She opposed the project and requested denial of the application.

Janice Springfield has lived in the neighborhood since 1964. She stated that the tombstones were moved over to the southeast corner almost overnight. The graves are still in their original location, even though someone has moved the markers to the current location.

Paul Andrews stated that he lives 300 feet from the cemetery and he is a certified forensic specialist. He stated that the site was bulldozed. The markers were moved to the site they are in now to appease the local people. Mr. Frolich wanted to sell the property. He read from the Land Development Code parts of the Planned Unit Development regulations. He stated that there is no commercial use in the area. There are lots of other sites already zoned for this use.

Michael Dale read a letter from Florida author and historian Charlie Carlson who has family buried in the cemetery. Mr. Carlson was unable to attend tonight's meeting and sent a letter by e-mail to be read at the meeting. Mr. Carlson said that the cemetery began as the Wiser Family Cemetery and was later called the Paola Churchyard Cemetery. In more recent times it has been called the Banana Lake Cemetery. Mr. Carlson has written about the cemetery in several of his books. Mr. Carlson said that he has discussed the false graveyard on this site on his radio show. He noted the moving of the markers to create the false cemetery. Only about half the graves had stone or metal markers. The rest had unreadable wooden markers or were simple depressions in the ground. Mr. Carlson noted in his letter that he maternal great - great grandparents, Ebenizer and Rebecca Metz are buried there. Their graves were marked with a single headstone and were located near the center of the cemetery. Mr. Carlson stated that he suspects that the marker was deliberately removed. Their son, Elias Metz, is also buried there. His great - grandmother Maraquita Victoria Metz and her husband William Charles Hawkins also rest there in well-marked graves. These relatives are shown on census records as residing in Paola prior to 1900. Mr. Carlson wanted it on record that he has personal knowledge of his ancestors being buried in the cemetery.

Janis Ferrell said that she works in the title research. She quoted from Florida Statutes which required provision of ingress and egress to the grave for visitation and read provision for maintenance of the cemetery by the owner, or if abandoned, the descendents of those buried there may provide maintenance. Ms. Ferrell said that with such title encumbrances, an owner would never be able to get insurance on the property. She also said that there was a fake cemetery there. The remains were never moved when the stone were moved. Back in 1999 Mr. Frolich hired a firm to do a thermal imaging on the site. Only 3 graves were found by the thermal imaging. Ms. Ferrell talked to a thermal specialist. He stated that graves that old (over 100 years) would not give off any heat and would not show up on such a study. Ms. Ferrell said that the markers were moved. She observed earth moving equipment in the graveyard. No remains were moved. She has had estimates of up to 80 people buried there. She said that she has lived in the area of 30 years. Commercial zoning in the area will spoil the area.

Mark Herrmann of 834 Banana Lake Road read a list of 19 names of people buried in the Paola Cemetery that can be validated: Edna Gray Buchanan, William B. Buchanan, Corinne Doggart, Caroline Durigo, R. Sullen, Mary Ann Johnson, Charles W. Johnson, Frederick Randolph Moonson, Myra B. Boonson, (first name unknown) Moonson, Sarah Robertson, George Seltzer, Marie Seymour, Loman Tenny, Matilda M. Patton, Finjin, George Scott, Ebenezer Metz, and Rebecca Metz. He said that the dead should be honored.

Elissa Mackintosh was opposed to the request.

Blaine Darrah said that he hopes the applicant has heard enough tonight to withdraw the application. Practically, he noted the requested 21,000 square feet of buildings and that the applicant is going to use 12,000 square feet for the learning center. Mr. Darrah also pointed to the 166 students that would go there and the traffic generated by drop off and pick up of each student. The application cited 105 trips. He cited the setback and buffer situation with adjacent developments. This application will have no wall, with a 10-foot buffer. The parking lot will be apparent from the road. It should at least have a 6-foot brick wall around the parking lot, as was done in the other developments, with canopy trees and a sidewalk. He requests that the developer withdraw the application and that the graveyard be left in peace.

Jay Saxena stated that no one has addressed how to restore dignity to the site. The only way to do that is to do ground penetrating radar and then work with the state to restore dignity. If relocating the graves to the site indicated on the plan would be an answer, he will do it. The remains will continue to be disrespected without development. Traffic concerns will be addressed at the time of development. The design process will follow the development order which requires certain things be done with the graves. Mr. Saxena said that he has

begun to work with the state of Florida by submitting the thermal imaging report to the state. Florida said to do ground proofing, which has been done. The next step, according to the State, is ground proofing and records research. He is not familiar with what happened in 1999 with the 1999 7-11 application. He has submitted a concept plan. His proposal is a service to the community.

Commissioner Bates asked if there was enough room on the site to serve the relocation of up to 60 graves, or would there be room for only a few, perhaps 10 or 12.

Mr. Saxena said Bright Horizons does not own the property. The room would be provided in the final design plan.

Commissioner Tucker asked what has to be relocated.

James Ambersino of Pan American Consultants, Inc. is a senior archeologist. He will move bones, coffins, and other remains in consultation with the state archeologist. Unidentified graves may be moved as a group and remains interred in a mass grave.

Commissioner Tucker asked how large a piece of land would be needed for 80 graves to be moved.

Mr. Ambersino did not know the answer to that.

Commissioner Brown asked Austin Watkins about the current dimensions of the cemetery as depicted on the site plan submitted.

Mr. Watkins stated that the current fenced-in cemetery, whether fake or not, was approximately 7 feet long by 5 feet wide, with the fence.

Commissioner Tucker asked if the church that burned down was within the 1.5-acre site.

Mr. Watkins said it was there, but no remains are apparent today.

Commissioner Brown commented on the fact that some older cemeteries have been adopted by groups and restored.

Commissioner Tucker asked what uses can be done under the current zoning.

Mr. Watkins said that currently, agricultural and single family residential use is allowed, as well as special exception uses. A daycare is allowed on the property with a special exception, but a small scale land use amendment would be required because of the public land use on the property now.

Tina Williamson said that the public future land use applies to the southern end of the property. A single-family house could be put on the portion that does not have the PUB (Public Lands) future land use. One would need a minimum of one acre of net-buildable land.

Commissioner Tucker asked if one acre could be used without the relocation process.

Ms. Williamson said that the survey would have to be conducted first, in all cases.

Commissioner Tucker said that there seems to be no allowable use as the property is today except a cemetery. He asked Ms. Furey-Tran if this is equivalent to a taking?

Ms. Furey-Tran said that she would not call it a taking since it has a use right now and that the owner knew the use when the property was purchased.

Commissioner Brown said that one may look at this as an opportunity to restore dignity to the grave site.

Commissioner Day said that 1.6 acres does not provide enough space to develop a 12,000 square foot building and to move the graves onto reallocated ground. They will have to purchase off-site property to move the graves. They are a profit-making company and that would not pay.

Commissioner Wolf said that the applicant could do the study with ground penetrating radar and find out that there are too many issues there and just abandon it at that point.

Commissioner Brown asked rhetorically who would want to spend $20,000. to investigate a piece of property that they don't own.

Commissioner Bates said that this, if approved, would provide an opportunity to study the gravesites. If there are a lot of graves, there will not be enough room to relocate and therefore the project would not be pursued. Everything would have to be according to the law and be monitored.

Commissioner Wolf agreed that it would take care of an inventory of the graves to act as a baseline. Would we then leave the land alone as it is?

Commissioner Eismann said that he was torn on this issue. It is a matter of trust. The residents have been lied to in the past. Is this going to be above board?

Commissioner Tucker said that this current applicant is not a fault for the past.

What are the developable alternatives? It is not the role of the county residents to take over the care of the graveyard.

Commissioner Wolf asked if the County would be given a copy of the finalized survey of the property once the study is finished.

Mr. Watkins said that the copy would be given to the County at the time of Final Master Plan approval.

Commissioner Brown said that is far down the road. He asked the applicant if anything further would be done about the ground penetrating radar study between now and the time of the BCC hearing.

Jay Saxena said that he is seeking proposals from the consultant to get cost estimates for ground penetrating radar and records research. He will do it as fast as possible.

Commissioner Eismann asked if a state representative is present at the time of the ground penetrating radar test.

Mr. Ambersino said that there would not be a representative of the state; it could be requested.

Commissioner Wolf asked how accuracy could be assured. It is more than a matter of trust.

Mr. Ambersino said that would be an ethics violation for him as a professional archeologist.

Commissioner Brown asked if the 19 certified graves were moved and properly treated, would the neighbors find that acceptable?

Ms. Williamson said that in this instance the site uses are limited to daycare and professional office use only.

The neighbors complained about the traffic.

Commissioner Wolf asked if the study could be submitted to the County upon completion.

Mr. Watkins said that he could make that a condition of the development order.

Commissioner Tucker made a motion to recommend approval as per staff recommendations.

Commissioner Bates seconded the motion.

Commissioner Day asked if the office use could be removed from the permitted uses list.

Commissioners Tucker and Bates accepted the limited use to be only a daycare.

Commissioner Wolf wanted the submission of the completed ground survey to Seminole County to be part of the Development Order.

Commissioners Tucker and Bates accepted that as a condition of the approval also.

The vote was 7 – 0 to pass the motion and its amendments.

E. Obeda Property Small Scale Land Use Amendment and Rezone; Mike Dowd, Charter One Realty, applicant; 1.46 ± acres; Small Scale Land Use Amendment (SSLUA) from LDR (Low Density Residential) to PD (Planned Development) and Rezone from A-1 (Agriculture) to PUD (Planned Unit Development); located on the southeast corner of SR 426 and E Red Bug Road. (Z2007-28 / 07-07SS.01)

Commissioner Dallari - District 1
Austin Watkins, Planner

Prior to the beginning of his presentation Mr. Watkins noted the receipt of an e-mail of objection to the application which was received after the printing of the agenda books. Each Commissioner was given a copy of the e-mail prior to the meeting.

Mr. Watkins presented the Obeda Property Small Scale Land Use Amendment from LDR to PD and a rezone from A-1 to PUD for approximately 1.46 acres located at the southeast corner of State Road 426 and East Red Bug Road. The applicant is proposing a commercial development with OP (Office) and CN (Restricted Neighborhood Commercial) uses plus amusement and recreation with an enclosed building, bakeries, kindergartens, furniture stores, hardware stores, pet stores, quick print shop, restaurants without drive-ins, and above-office/retail flats uses. The Board of Adjustment may consider the following special exception for approval: public utility structures, quarters in conjunction with a commercial use to be occupied by the owner or operator of the business, hospitals, nursing homes, and all communication towers upon a separate application for a special exception by the applicant. The applicant is proposing a maximum building square footage of 15,000 square feet.

Mr. Watkins stated that the proposed Future Land Use designation on the property is PD (Planned Development). Planned Development FLU limits the

subject property to the uses approved at the time of approval. Any additional uses require a land use amendment. The applicant is proposing a use that adheres to the definition of Neighborhood Commercial, as defined by the Seminole County Comprehensive Plan. Neighborhood Commercial may be a compatible FLU designation adjacent to Low Density residential if sensitive site design standards are utilized. Staff finds that the applicant's proposal provides buffering and uses that create a sensitive site design.

The applicant is proposing the following buffer standards: a) North: 15 foot buffer containing a 3-foot hedge, 8 canopy and 4 sub-canopy trees per 100 feet, and b) South and East: 15-foot buffer containing a 6-foot masonry wall, 8 canopy and 4 sub-canopy trees per 100 feet, and West: 15-foot buffer containing 4 canopy trees per 100 feet.

Mr. Watkins said that the staff recommendation was for approval of a Small Scale Land Use Amendment from LDR (Low Density Residential) to PD (Planned Development) and a rezone from A-1 (Agriculture) to PUD (Planned Unit Development) for 1.46 acres located at the southeast corner of State Road 426 and East Red Bug Road, and recommends approval of the submitted Preliminary Master Plan and Development Order, based on conditions contained with the Development Order.

Mike Dowd stated that he has done thorough historical and environmental study of the site. He worked with the Oviedo Historical Society also.

No one spoke from the audience on this application.

Commissioner Brown asked about Item G of the Development Order. Is the Lake Mary Blvd. Corridor Overlay in this area?

Mr. Watkins stated that the overlay district was not technically there, however the standards of the overlay have been applied to similar projects in the past and are being used here.

Commissioner Eismann made a motion to recommend approval of a Small Scale Land Use Amendment from LDR (Low Density Residential) to PD (Planned Development) and a Rezone from A-1 (Agriculture) to PUD (Planned Unit Development), for 1.46 ± acres located at the southeast corner of State Road 426 and East Red Bug Road, and recommend approval of the attached Preliminary Master Plan and Development Order, based on staff findings.

Commissioner Bates seconded the motion.

The motion passed 7 – 0.

F. Culbreth Subdivision Rezone; **Darryl Culbreth**, applicant; 2.2± acres; Rezone from A-1 (Agriculture) to RC-1 (Rural County Homes); located on the west side of Carter Road, 300 feet south of Markham Woods Road. (Z2007-34)

Commissioner Carey – District 5
Amy Stevenson, Planner

Ms. Stevenson introduced the application for a rezone of 2.2 acres from A-1 to RC-1, stating that the applicant wants to construct 2 homes on the site. The 150-foot width at building line of A-1 zoning cannot be met, but the RC-1 zoning will allow for a 120 foot width at building line. Both lots will be a minimum of one acre in size. The site has a Suburban Estates future land use designation. Staff recommendation is for approval of the request for a rezone from A-1 to RC-1.

No one spoke from the floor on the item.

Commissioner Chase made a motion to recommend approval of the request for a rezone from A-1 (Agriculture) to RC-1 (Country Homes) on 2.2 ± acres, located on Carter Road, based on staff findings.

Commissioner Wolf seconded the motion.

The motion passed unanimously (7 – 0).

G. CR 427 / SR 417 Rezone; CPH Engineers, applicant; 0.37± acres; Rezone from A-1 (Agriculture) to C-2 (Retail Commercial); located on the east side of CR 427 approximately 215 ft north of the intersection at CR 427 and N SR 417. (Z2007-26)

Commissioner Carey – District 5
Amy Stevenson, Planner

Ms. Stevenson explained that the requested zoning change will allow the owner to combine this parcel with an abutting piece of property already zoned C-2 in order to build a 100 room hotel. The subject site has an Industrial future land use designation that allows C-2 (Commercial) zoning district. Staff recommendation is for approval of the request.

Larry Poliner (CPH Engineers, applicant) was present to answer questions. He stated that following Board approval this project will be annexed into the City of Sanford due to utility service requirements.

Commissioner Bates made a motion to recommend approval of the request for a rezone from A-1 (Agriculture) to C-2 (Retail Commercial) on 0.37 ± acres, located on the southeast corner of North County Road 427 and North State Road 417 , based on staff findings.

Commissioner Wolf seconded the motion.

The motion passed unanimously (7 – 0).

The following item was continued to the August 1, 2007 meeting at staff request:

BRIEFING:

H. PROPOSED TEXT AMENDMENT TO THE VISION 2020 COMPREHENSIVE PLAN

Transmittal of a Public School Facilities Element into the Comprehensive Plan as required by Section 163.3180(13)(a) and 163.3177(12), Florida Statutes, and Amendments to the Capital Improvements Element of the Comprehensive Plan to include the financially feasible Public School Capital Facilities Program from the Seminole County School Board as well as Amendments to the Implementation and Intergovernmental Coordination Elements.

County Wide Item

CLOSING BUSINESS

Tina Williamson introduced Herman Wright, the new Principal Planner in the Planning Division.

There being no further business, the meeting adjourned at 10:35 P.M.

Respectfully submitted,

Candace Lindlaw-Hudson
Clerk to the Commission