

## FLOOD HAZARD AREA/WETLAND WORKING GROUP – MEETING 2

JULY 26, 2010

**These minutes reflect a semi-verbatim, semi-summary, representation of the remarks made by the participants.**

The meeting was called to order by the Facilitator, Cheryl Gitlin, at 3:04 p.m.

Staff members present were Darcie McGee, Office of Natural Resources Management; Amanda Elmore, Office of Natural Resources Management; Robbyn Spratt, Office of Natural Resources Management; Virginia Barker, Office of Natural Resources Management; Frank Skarvelis, Brevard County Floodplain Administrator; Rich Szpyrka, Public Works Development Review & Inspection; Robin Sobrino, Director, Planning & Development Department; and Candy Hanselman, Planning & Development Department.

Working group members present were Bob Massarelli, District 1; Don Simms, District III; Jon Shepherd, District IV; Billy Kempfer, District V; Bob Shaw; American Society of Civil Engineers; Drew Powshok, local Florida Surveying & Mapping Society; Mike Moehle, Home Builders & Contractor's Association; Tom Schuller, Brevard County Farm Bureau; James Payne, Florida Cattleman's Association; Jim Williams, Florida Floodplain Manager's Association; Dave Millard, Brevard County Soil & Water Conservation District; Lisa Frazier, American Planning Association; Mary Sphar, Turtle Coast Sierra Club; Beth McMillen, Marine Resources Council; Shari Blissett Clark, Partnership for a Sustainable Future; and Bob Day, Brevard Nature Alliance.

Darcie McGee summarized the materials that had been made available to each group member, as follows: The agenda that had been handed out contains some answers to questions asked at the last meeting. A lot of good information had been posted on the web, which she encouraged the group to view. The Power Point slides that were handed out contain the policy that was proposed prior to the public forum, and it was the first information that went to the Board. The full presentation is on the web, but what had been handed out to the group is what they are reviewing. Copies of the floodplain ordinance and wetlands ordinance were handed out. Jim Williams printed out floodplain maps for every member, with a large one in the front of the room. Mr. Williams also provided a handout on the community rating system. John Juilianna printed out a chart with the levees in the area around the St. Johns River. Mary Sphar provided proposed language for Policy 4.2. There was a vegetation and habitat map on the wall. All written public comment from the public forums was posted on the web, along with the minutes from those meetings.

Cheryl Gitlin – For this meeting, you need to determine what it is that you would like to accomplish.

Billy Kempfer – Are we supposed to address the policy, like 4.2, or are we just supposed to address the floodplain density?

Darcie McGee – I think they are one and the same. You can come up with specific language, if you'd like, or you could just make recommendation to the Board as to your intent, and let staff do the language.

Billy Kempfer – If we're trying to get density, I don't think I have a problem with the language in Policy 4. Does anybody have a specific ax to grind, or does somebody have an idea of what the density needs to be, what we need to do with the floodplain? I know Bob was pulling up some of the stuff out of Osceola, and I've spent quite a bit of time visiting with one of the guys that was very instrumental in hacking out the stuff in Osceola. Maybe we can save a lot of time if we can get right to the point. It seemed like, last week, we spent a lot of time and didn't really say or do a whole lot.

Bob Massarelli – Last week, we made a motion that today we would focus strictly on the floodplain and the policies of that. Next meeting, we'll have a discussion on wetlands and focus on that. We have material that was passed out this afternoon, and I sent recommended changes to be posted on the website. Those are two starting points for discussing how we want to proceed.

Mike Moehle – It seems to me like we should establish guidance in this section of the Comp Plan for density requirements, and the actual densities are something that need to be determined in the Future Land Use Element of the Comp Plan. And we should avoid the use of the word “shall”.

Mary Sphar – Five weeks is a very short amount of time, and we have to be practical. We have to get 12 votes for whatever proposal. We have to get three votes of the Commission, and we have to get the DCA. What we want to do is come up with a policy that offers some new creative options for the floodplain that is clear to everyone and does not raise any taking issues. Once you raise taking issues, it will never fly.

Cheryl Gitlin – We’re going to go to public comment. Remember, three minutes per speaker.

Shirley Beasley – My name is Shirley Beasley, and I live at 3051 Ohio Street. And that is in the Police Foundation West, which is a community of about 250 homes, just west of I-95 and south of 192. To the west of us are several thousand acres of land; some very large farms, woods, floodplains, wetlands and finally the St. Johns River. Most of the homes are on lots of an acre, and some are two and three acres. The reason I’m here is to speak to you about some of the concerns that I have, as well as many of our homeowners. We know that you have been assigned an important job of trying to decide how to deal best with the commercial and industrial development in the floodplains and wetlands, and hazard flooding near the homes and businesses. You’re studying the feasibility of lifting density restrictions in the floodplains, the wetlands, and investigating the affects of such actions on the surrounding neighborhood. The floodplains and wetlands are very sensitive. Our drinking water can be affected by the changes, and reducing restrictions can damage our recharge areas. The drinking water is rapidly dwindling. The St. Johns River and Indian River Lagoon are vital to the current and future residents of Brevard County. The floodplains act as natural sponges to absorb excess water and help keep water out of homes, neighborhoods and businesses. Your ideas of cluster building would take up less room for the houses. But what about the parking lots and roads leading to and from the developments and the businesses that would be springing up? I would like to talk with you about the water drainage, which is a vital part of our problem. We have ditches in front of our homes that drain into the canals that are managed by the Melbourne Tillman Water Control District. I do not know if you are aware of the fact that the Tillman Canals are the only drainage system that several of our municipalities have for draining water. These canals drain from the south in the area of Valkaria and Grant Road, Palm Bay Road, and also drain from Melbourne and West Melbourne. Police Foundation West is just four miles from the St. Johns River, but we drain about 18 miles out to the Turkey Creek area and the Indian River. Along with other municipalities, it’s about an area of 210 miles. The floodwaters from the St. Johns River have not affected us due to the SJRWMD levee system separating us from the St. Johns River. The levee starts at SR 60 in Indian River County, on the east side of the river, and continues north to Hwy. 192 in Melbourne. Our area has to compete with hundreds of miles of canal waters trying to reach the main canal, C, and empty into the Indian River Lagoon. The canals do not have stoplights for the water. As a result, our community sits with water backed up, waiting for others to empty out into the Indian River Lagoon. In addition, I’ve heard that the elevation of holding water will be raised three more feet. The Tillman Canals were adequate until the ‘80’s. As areas grew, displacing watersheds with buildings, pavement and streets, we began to flood. More building brought more flooding. In the ‘80’s, my area could handle an inch of water. It would put water over the streets, and in some yards, for a few hours. Now that same rain will put water over the streets, over the yards, and now into some of the homes. Why are we continuously having new codes required for raising homes? New homes are required to raise their houses three times the height of mine. We have homes that were built in the ‘70’s, ‘80’s and ‘90’s and 2000+, all at different elevation levels. At the time the homes were built, they met all the codes in regard to elevation. The canal systems are not handling the water we have now. How are the canals going to handle more building added to the floodplains? I suppose adding more canal. But the existing canals are overtaxed, already. If plans go according to how some want it, our community will be sandwiched in between I-95 and the proposed St. Johns Parkway. And I-95 was recently widened in our area, which is causing more runoff, already. The proposed St. Johns Parkway is within sight of where I live, on the 4,000 acres belonging to the Platt family.

The parkway has three exits planned for the proposed Platt family mixed development, which plans to build over 3,000 residences, and shopping. The canal down the street from me overflows as of right now. The pipes leading from the ditches cannot drain into the canal, if the canal is over the ditches. Please think very carefully as you're working to see what will happen if there are lessening restrictions on the floodplains and wetlands. Existing communities are already seeing results of more building that's causing flooding. (Ms. Beasley passed out photographs of her street, depicting flooded areas and a height comparison of houses. She also presented a map of the canals in the area.)

Carol Noble – Regarding the mean-annual, 10-year, 25-year and 100-year floodplains, the reference is dated March, 1981, by Dr. Rao. And even the title says that that's the upper St. Johns River under the existing conditions. Dr. Rao explains, in his abstract and introduction, that that information is for current basin conditions only. He has looked at a synthetic stream flow data in his model for a period of 35 years, from 1949 to 1983. And he also comments that there are seven stream gauging stations that were used, and the length is from Florida Turnpike to Lake Harney. I wanted to point out that that publication has its place for data and use, but it's 25 years old. So when you're trying to differentiate between the 10-year floodplain and a 25-year floodplain on a site for some of these regulations, we have very limited data to try to make those kinds of distinguishments. And I'm sure Dr. Rao never envisioned his study being used for something like this. I spent probably six hours going through a lot of this data, and I am still not completely clear, because regulations are complex, and they tend to cite other regulations. Unless you've got the whole picture, it's hard to put together regulations that don't overlap other agency regulations, and even other County regulations. We were given a very narrow tasking, but I think that it's important that we take a broad enough perspective to try to understand the policy, but not duplicate other agency requirements, or even change them a little bit, so staffing is required to look at things in a little bit different way. From a regulatory standpoint, we want to try to list the policies, but keep them straightforward enough and avoid those kinds of overlaps. The fact that we have that aged study is shameful. Since this is a regional type issue, hopefully the County and the Water Management District can work together and come up with some kind of a good basis for decision-making.

Mike Moehle – Do you think that water levels within the basin have increased since Dr. Rao did his work?

Carol Noble – There have been a lot of projects. I think the Water Management District could better answer that, and it's probably going to be regional. Again, those flood maps have their applications, but if you are trying to have a site-specific application of it, it's very difficult. A very good example is a church site in Port St. John that ended up having floodplain compensatory requirements, based on the FIRM maps. And the FIRM maps didn't show this huge ditch that was dug through the property, connecting it to the St. Johns floodplain. And it didn't show this huge borrow pit that had the same thing. So it was very obvious that the floodplain wasn't accurately mapped on those 1984 flood maps. The church had to jump through hoops to do these compensatory calculations. Does it have value?

Mike Moehle – Do you think that the Water Management's policies of acquiring private property and then restoring it by taking down levees and ditches has any adverse effects on flood control by increasing water levels so that at the start of a storm event, we have higher water levels now than we would have?

Carol Noble – I think it's their determination to be made, because they have the regional view. For the County to have a very strict requirement, and then our neighbor to the south or across the river not to have it, or for us to have a very loose one, has implications. Our directive should be floodplain management in accordance with what the Water Management District is enveloping for us. And they do have some directives for counties.

Darcie McGee – As far as the Dr. Rao report, when we review riverine floodplain development, we do accept best available data. We have excepted County stormwater studies. We have had engineering-specific studies done for an area. We don't use just Dr. Rao. We use the best available data.

Carol Noble – That was not available for the church, so they had either a huge financial task of having to do a regional basin-wide study to be able to demonstrate that that elevation wasn't accurate, or they had to just do what the rigid rule said. And that's what they ended up doing. They were only a five-acre parcel, and that basin is hundreds of acres.

There was no further public comment.

Cheryl Gitlin read two emails, as follows: The first one is from Gwen Woodling. "The purpose of this correspondence is to alert the floodplain working group as to the situation that exists in my neighborhood regarding flooding. My family and I have lived in the National Police Foundation West neighborhood for 32 years. In recent years, we have observed increased flooding during rain events. During Fay, the Tillman Canal bordering our property overflowed into our yard and into our garage. In fact, the water in the canal and our garage was continuous. I feel that the meeting of this working group to study the feasibility of lifting density restrictions in floodplains and wetlands is the appropriate and necessary time to investigate the effects of such actions on our, and surrounding, neighborhoods. Hopefully, the expert from the Tillman Drainage District will explain how they recently rebuilt locks on Turkey Creek, allowing drainage water to grow two additional feet before emptying into canals to flow into the Indian River. These canals are the same ones that our neighborhood, as well as our neighboring towns of Melbourne and West Melbourne, drain into. Because the water from Palm Bay will be two feet higher than the rest, it will flow first, thus causing ours to back up, or at least stall, causing flooding. Again, hopefully, the County transportation and drainage experts will explain how the recent widening and heightening of I-95, which adjoins our property to the east, will increase our neighborhood's competition for runoff. This is because the runoff from this larger interstate is now being diverted into our already overtaxed existing canals. This new presently-existing situation will certainly increase flooding during our next rain event. Please note that these two new changes to our drainage situation have not been tested by any rain event. We still don't know the immensity of their effects on the flooding in our neighborhood. The flooding our neighborhood experienced during Fay occurred before these two changes were made. Maybe the experts can predict exactly how much they will increase the flooding problem. I believe that they will significantly increase the flooding. If the density restrictions are lessened on our floodplains and wetlands, the increase in development is inevitable, if not the causative factor. Specific to our neighborhood, the immense development that is already planned for land surrounding the Heritage Parkway to our west and south will certainly be increased. Even with the already-planned development, our flooding situation is dire, as the flow of water will once again be thwarted. Anything else competing for outflow between our neighborhood and the Tillman canals will certainly elevate our flooding problems. Not only will this shed water back to us because of County codes for increased elevations for new buildings, but groundwater percolation will be significantly lessened. To say that I am disheartened and discouraged by the lack of regard for existing homes and citizens by these developers, and those facilitating them, is an understatement. I implore this working group to investigate the flooding situation that presently exists in our neighborhood and the effect that lessening the density restrictions will have on it. At present, I don't feel that many are aware of even how the water flows out of our neighborhood, or the flooding problems we have already experienced. I implore you to do the responsible thing and stop any further threat to our neighborhood's survival. Lessening the density restrictions would be catastrophic. Trusting in your abilities and your motives, Gwen Woodling."

Ms. Gitlin read the second letter as follows: This one is from Vivian Coggins. "The proposed change to the Comprehensive Land Use Plan regarding increasing the density restrictions on the floodplains would be very detrimental to Brevard County's environment. We have already encroached on these areas. Billions of taxpayer dollars have been spent to reclaim land and reconstruct the floodplains in riverine areas of the St. Johns River and Indian River Lagoon. I have resided on the Melbourne Tillman C52 Canal for almost 20 years, and have witnessed the canal overflowing onto Pennsylvania Street, Ohio Street and Ranch Road at least four times during storm events. This overflow caused roads, yards and driveways to be covered with four to six inches of water, and even collapsed a wooden fence with the force of the water flowing from the south to north around my home, and then west toward Ranch Road. Reducing the restrictions currently in place would increase flooding and damage recharge areas. This could very well cause more insurance companies to pull

out of this area. We need to protect and improve what we already have. Our current economic condition is not going to improve in the near future. It will take years and years. The St. Johns River and Indian River Lagoon are vital to the tourism industry, and part of the reason our area remains attractive to the current and future residents of Brevard County. We need a county-wide floodplain ordinance so the County and cities all have the same flood protection policies. Brevard County also needs the development restrictions and compensatory requirements. I urge you to work towards the goals that will enhance our environment and protect our citizens. Please save our floodplains. Sincerely, Vivian Coggins.”

The group began their discussion.

Lisa Frazier – I want to make sure that we’re back to center. This working group is not here to reestablish how the floodplain elevations are established. We are not here to discuss the 100, the 25 or the 10 flood elevations. We are here to consider the different density and compensatory storage policies within this document. So I want to begin there so that we can get this within the four hours that we have. And I do not believe that any of us are looking to reduce the density requirements within our floodplains. If we are considering differences in density, I believe staff was going to let us know what has been the problem with these.

Darcie McGee – The problems that we’ve had is that there are some certain areas in the County where people wanted to put development, or even redevelopment, and they haven’t been able to because of the density restrictions. And there was one real small subdivision on the northeast corner of I-95 and 192 – I think it was called Brookville – they actually annexed into the City of Palm Bay because of the density requirements there. They’re very low right there at 95. That’s the only one I’m aware of, right now. There’s a commercial property that’s on the northwest corner of 192 and I-95, that old Texaco that’s been sitting there abandoned. They are in the 10-year floodplain, towards the back. They are really in a bad spot there. The only thing they have that’s developable now, according to our current regulations, is what is actually filled. Redevelopment is another issue that I’ve seen since I’ve been here.

Lisa Frazier – The second question, which was rather mandatory towards our discussion, is where did these numbers come from?

Darcie McGee – I think Mr. Massarelli addressed that last week in that it was negotiated in the late ‘70’s.

James Payne – Just to be specific, was it the residential density that was the problem, or was it the commercial and industrial? I got the idea that it was the commercial and industrial that they were talking about changing, not the residential.

Darcie McGee – On the east side of 95, in that one little subdivision - which actually never got built, even after they annexed - that was residential. And then the ex Texaco on the west side of 95 was a commercial filled footprint restriction.

James Payne – Is it county-wide, or is it just right there on 192?

Darcie McGee – Those two sites are the only ones that I have been involved with, where we’ve actually had a specific problem where someone said they couldn’t do what they want. That doesn’t mean there’s not more of them out there. I know we worked with a developer on a subdivision out by Salt Lake, and they were able to work within the densities to come up with a subdivision. Again, it never got built. But we moved some stuff out of the 10 and 25, and gave the density credits, and they were able to come up with a viable plan. I haven’t been here that long, so I don’t want you to think that I’m the end all on these issues.

James Payne – In reading the materials, I wondered if we really are just talking about commercial and industrial, and trying to tweak that a little bit so that the County Commission has a little bit more discretion in what could or couldn't be done in the commercial and industrial, or did it really involve the residential. I didn't see much about residential.

Darcie McGee – My understanding was that there was no specific direction. Wetlands was specific to commercial and industrial, but the floodplain was for you to discuss and come up with what recommendations you felt were appropriate.

Mary Sphar – I've reviewed the latest three largest proposals for DRI-scale developments with parts in floodplain, the first being West Viera. West Viera has no problem with our floodplain language. They complied. Farmton has a lot of floodplain, yet in their response to DCA, they have configured their site so that Mr. Storch, their attorney, claims that the floodplain Policy 4.2 will not be a problem for him. The Platts state point blank that 4.2 is okay with them. I do see there's problems with redevelopment.

Darcie McGee – Mary is right. Platt and Viera have mapped their floodplain, but Farmton has not actually done theirs.

Mary Sphar – But they did supply maps to the State.

Darcie McGee – Correct.

Mary Sphar – Maybe we should move on to what the problem is.

James Payne – That's what I was trying to define. It seemed to me that the problem was that there was some commercial and industrial that were precluded from coming up with some innovative plans, just because of the ordinances, the objectives.

Bob Massarelli – Other than the intersection of 192 and I-95, are there other redevelopment areas that need to be addressed?

Mary Sphar – That's the one I know, because that's the one that's on everybody's radar screen.

Billy Kempfer – These are redevelopment that she's referring to. These are all new, aren't they? Platt would be totally new. I don't know what Viera's doing.

Mary Sphar – Those are the new ones. They're okay with it. But here's what isn't okay. Redevelopment. There's new regulations. So the Texaco station can't comply, because now they've got to satisfy new regulations. So what we need to do is give them a little maneuvering room.

Mike Moehle – So far, all of the proposals I've seen add new requirements. And the homebuilders and contractors that are already flat on their backs and gasping for air aren't interested in hearing about new requirements for development.

Mary Sphar – My proposal adds absolutely no new requirements.

Mike Moehle – It requires no loss of storage within the 100-year floodplain, right?

Lisa Frazier – That's existing.

Mike Moehle – I don't think so. Well, it does, except there's these exemptions.

Bob Massarelli – There's no exemptions. 4.2 is really confusing in many ways. The Future Land Use Element, and the Future Land Use Map, assign the land use for every parcel. And most of the property within the floodplain, to the best of my knowledge, is either agriculture, public conservation or private conservation. That's most of the floodplain. You do not get additional dwelling units density because of this policy. This policy is more of a guidance of if the County was to change the underlying Future Land Use Map, these are the densities that would be acceptable. Your property rights that you've been given is under the Future Land Use Map. My idea is, let's get rid of 4.2, altogether, because it's very confusing, and let the underlying Future Land Use Map guide. I'm not taking anybody's rights away. If you happen to have property that is outside the 100-year floodplain, and is in one of those categories, public or private conservation, or agriculture, and you want to go to the County Commission and have it changed to something else, go ahead and change it.

Mike Moehle – But your proposal is where if property lies in the 100-year floodplain, and isn't presently designated as commercial, industrial, I think residential, then it can't be used.

Bob Massarelli – No. I'm saying there's no reason for commercial and industrial use in the 100-year floodplain. What I've heard this afternoon is maybe that one exception around U.S 192 and I-95. And I'm willing to say anything within a quarter mile, half mile distance...

Mike Moehle – I don't think you can make that blank statement. There's intersection property located in Viera. That's something to be addressed in the Future Land Use Map, which takes into account all the elements of the Comp Plan. Also, we have elected representatives that need to be left with some discretion.

Bob Massarelli – The purpose of the Comprehensive Plan is for the elected officials to give guidance and set policy. And if future Commissions want to change it, they have the right to change it. I'm not taking anything away from future Commissioners. The Water Management District, 30+ years ago, made a determination that the best way to manage the 100-year floodplain north of U.S. 192 is non-structural. Don't put in a lot of dikes. Don't put in a lot of structures. It's bad for the environment. There's an annual maintenance cost. There are risks associated with that. You put people in the floodplain, with the structural approach. And so the District made an excellent decision and went non-structural, and they started acquiring significant portions of the floodplain. I don't see anything that has changed. There's been no information given to me, in our two meetings, that says that that decision was the wrong decision. It just makes a lot of sense.

Mike Moehle – I think that rather than talking about the 100-year, and the 25-year, and the one-year floodplain - and then the County has to have more bureaucracy, and staff do all this mapping, and it requires all this permitting - why aren't we talking about things in the same terms that the Federal Government uses? The flood zone maps, Zone A, Zone X. Areas that are within Zone X – I'll read it for you. "Areas of 500-year flood, areas of 100-year flood, with average depths of less than one foot, or with drainage areas less than one square mile in areas protected by levees from 100-year flood..." It seems like those Zone X areas should be exempted, whether they're within the 100-year floodplain or not.

Lisa Frazier – They're above the 100-year.

Mike Moehle – It says they're within the 100, but that their base flood depths are less than one foot. So this would include those areas.

Bob Massarelli – Again, the sandbox we're playing in is the riverine floodplain as defined as the 100-year floodplain of the St. Johns River, using the best information available, and that's been determined to be the 1985 St. Johns Study, unless they do a specific engineering study for it.

Mike Moehle – Does Zone X include portions of the 100-year floodplain?

Jim Williams – No, not on that map.

Mike Moehle – It says it does.

Jim Williams – Zone X doesn't have any 100-year floodplain in it. It might have depths of up to one foot...

Mike Moehle – I'll read it again. It says, "Areas of the 100-year flood, with average depths of less than one foot." And that's a lot. So we're talking about areas that are on the edge of this 100-year floodplain that have varying topography, some of which might be below that number...

Jim Williams – If they flood less than 100 feet, then they're not included in that X zone. If it floods more than 100 feet, then it is included.

Mike Moehle – So why don't we use the nomenclature on the FEMA maps in doing this? And, that way, it's a whole lot less mapmaking for everybody.

Bob Massarelli – I don't want to do any project based on the FEMA maps.

Mike Moehle – But they're revising them with LiDar data, right?

Bob Massarelli – Let's wait and see.

Mike Moehle – The County doesn't have the money to do all this stuff. That's the reason why we're here, too, is because we're supposed to reduce this environmental bureaucracy, and all this permitting, that is already done by other agencies. My quality of life includes having reasonable government at a reasonable cost. We're talking about floodplain issues. And floodplain zones, as defined by the Feds – we're talking about doing it to comply with their regulations for flood insurance.

Lisa Frazier – Then everything below the 100 is going to be in this.

Bob Massarelli – And the area south of 192 that's behind the St. Johns levee will be included, then. I have specific language that I'm recommending, that if you're behind the levee, the underlying Future Land Use Map dictates what you can do. I'm being very flexible in that area. If you want to go that direction, fine, but it will give nobody any flexibility, because then you're going to be stuck with the FEMA maps.

Mike Moehle – My direction would be to skip this floodplain stuff and get to the hard part, the wetlands. Nobody's having a problem with the floodplain issues right now. Nobody's developing anything right now. Let's move on.

James Payne – One of the problems with the floodplain, south of 192, is that the Army Corps of Engineers has not finished their work. There's still uncertainty as to what they will or won't do down there. Just to break it at 192 causes me a little discomfort.

Don Simms – I go along with that. I think we're picking out just a few areas that people speak of. If the new maps are coming out, and they're going to be more detailed with the new technologies, and the idea of going ahead and saying we're going to do this and that – we all talk about doing everything, but nobody ever thinks about the market. The market should drive some of this. Who are we to say that we can't have a commercial or an industrial project in an area today, when ten years from now, we might come along and say it should definitely be there, as it's needed there. I think that this will lead us into some rough territory in the future.

Lisa Frazier – Whoa. Let's get back to the environmental considerations. What is a floodplain for? Are we supposed to develop in floodplains? And maybe someday in the future we should have a hospital in the middle of the 10-year floodplain? Do you really think that makes sense? And where do the floodwaters then go? We cannot have the market dictate our plans. We have to be forerunners in determining how we want this community to be developed. That is what comprehensive plans are all about. Let's back up and really think about where we're proposing to put these developments.

Billy Kempfer – I don't know what the data is for FEMA flood maps in this area. But I spent quite a bit of time speaking with one of the planners in Osceola County, and the way he explained it to me is that the FEMA maps show the 100-year floodplain. And maybe the newer maps do this, and the older ones don't. But he says what FEMA does is done on a computer program, and they build a wall, and they just squeeze that floodplain in until the elevation somewhere in that area increases a foot. And they call that the floodway. He says there's a difference between the fringe, and the floodplain map and the floodway map. Am I right there?

Jim Williams – The floodway is actually what you would call the river, the normal flow. And then the fringe, or the floodplain, is where it will annually flood.

Billy Kempfer – The way I understood it from him was that they do this on a computer, and they take from the outside and they just build an electronic wall and squeeze it in, until the computer says the water comes up a foot, at some point in time. And the way that Osceola County has handled it, according to him, is anything within that floodway, there's no development, zero density. And then everything that's above that line, the density is the same as it is everywhere else. I've always felt like density is what determines property value. I always thought that I didn't like all the houses clustered, and ten houses to the acre, and such as that. And then we don't want this to turn into a south Florida. At the time we were doing this in Osceola County, Osceola County was developing at a rate of 1.04 dwelling units per acre. And had that continued at that rate until 2020 or 2025, which is what the County Commission at that time kind of wanted to stay with, it would have been a mile long, mile wide, swath from St. Cloud all the way to Yeehaw. But, in infill, they've gone to one dwelling unit per three acres, and then for any new development, it's one to five. For the land that you develop above that floodway, you can't do anything that will restrict the flow of water. And anything above that, in the fringe, you develop and manage for the flood with compensatory storage, and then whatever you do to make sure that you don't retard the flow. I don't know if there's a map available here to determine where that floodway line is, where you stay out of.

James Payne – There's a lot of Florida that is built by building on fill. I don't know what the percentage of that is, but almost anywhere you put your house, you have to raise it up some. In 4.2.B, it talks about industrial land uses shall be prohibited. And I got the sense from the Commission that maybe they wanted to combine 3 with 2 to say that industrial and commercial will be limited, but that it wouldn't necessarily be prohibited, within that 25-year flood elevation. Within the 100-year floodplain, the question was should there be as stringent a limitation if you have compensating storage somewhere else? If you can configure it in some way, should you have that same limitation on commercial and industrial?

Billy Kempfer – I also asked Larry about the commercial and industrial, and he says as long as it's not heavy industry, because you don't want to do anything that would possibly contaminate. But for just normal commercial and industrial, he said that they should be handled no different than anything else.

Bob Massarelli – I have a question for Mike. If you were to go with the definition of the FIRM maps, what uses do you see that would be allowed within that special hazard zone?

Mike Moehle – For one, infill. The Comp Plan is a balancing act of all the elements. To the extent that one element precludes the objectives of another one, that's a problem. We have intersections, areas that have roads, sewer, water, infrastructure. The fact that they require some fill – and I'm talking about the edge of the

100-year floodplain. I'm not talking about the 25- or 10-year floodplains, although if those objectives are met, and those areas can be compensated for, then they should be able to be used.

Bob Massarelli – I want to limit our discussion. And as I understand our sandbox, it's just the St. Johns River floodplain. So if we took the various A zones along just the St. Johns River, what types of uses would you see that would be desirable, or permissible?

Mike Moehle – The A zone (unintelligible).

Bob Massarelli – AE, AH, AO, A99. I'm going through all the different A zones. Just lump those all together as one.

James Payne – Maybe I can answer that by saying I don't know exactly, but as long as there's compensating storage, and as long as it's not causing flooding somewhere, then maybe there is a use that could be put in a lot of this A area that would not be detrimental to other people. You could possibly configure it and possibly do compensating storage some other way within that area.

Bob Massarelli – Let's go back to the example we have of Police Home Foundation, and areas like that. Bob and I drove that area the afternoon of Hurricane David. And the flooding that they're showing there is the same flooding that we saw back in the late '70's. That area has always been a problem. But what's happened in the last 25 or 30 years is that it's grown. More people are impacted. The property values have gone up, so the impact on government – flood relief, (unintelligible) insurance costs, have all gone up, because we've done more uses in there. What I'm thinking is that in the 100-year floodplain, except for maybe the 192 and I-95 interchange, most of it is not platted. Most of it does not have water and sewer. Most if it is in public ownership. So why not just leave it as agriculture or conservation, as the Future Land Use Map predominantly states? There are exceptions, and I'll let those exceptions continue. Just keep it the way it is. Don't change anything. We're not taking anybody's rights away.

Mary Sphar – You're saying leave it as it is. That's the future land use. We're talking about the map. Not only does an applicant have to comply with the future land use designation - which he or she is free to try to change, through a comprehensive plan amendment - but in addition to that, they have to comply with the Conservation Element, and that's where we're at. There's two things they've got to do. They've got to comply with the regulations for their designations, and then the conservation policies to protect the environmental features.

Bob Massarelli – But our charge is strictly land use density and footprint.

Mary Sphar – But what we're doing is the Conservation Element land use policies, not the Future Land Use Element land use policies.

Bob Massarelli – But as Mike correctly pointed out, we can't just look at the Conservation Element in a vacuum. We have to consider the other elements. And the Future Land Use Element, and the map, says that overall, it's agriculture or conservation.

Mary Sphar – I don't think we're tasked to do anything to the Future Land Use Element, unless we do something to tweak the transfer of densities.

Bob Massarelli – And I agree with you. Our charge is not to look at the Future Land Use Element. Our charge is only to look at the Conservation Element. But, as Mike correctly points out, we cannot look at the Conservation Element in a vacuum. We have to consider the rest of the Comprehensive Plan.

Mary Spahr – Right. We consider the rest of it. I've got to have a little bit of qualification to what you're saying. I live in the 100-year floodplain. So every time I think about this, I think of a lot on the next street. There's a lot of lots in the neighborhood. And then I think of specific examples. I think of Farmton, what's happening up there. And I think of proposed subdivisions basically in the 25-year floodplain in municipalities. Is that appropriate or not? I think we need to get practical.

Bob Massarelli – I agree with you. I think I'm trying to be practical.

Lisa Frazier – Hold on. Correct me, if I'm wrong. What you are proposing is that we remove the density restrictions in this policy in the conservation policy and flood hazard areas and simply rely on the Future Land Use Map to dictate what happens in a conservation area.

Bob Massarelli – Right.

Lisa Frazier – The Future Land Use Map can be changed. Correct?

Bob Massarelli – Correct.

Lisa Frazier – In a conservation area, our policies dictate that there has to be another layer of protection. We do that with our wetlands. We have to do that with our floodplains. And we do that in order to protect the health, safety and welfare of this community. In addition, if you really read and understand your National Flood Insurance Program, if we actually reduce the criteria that we use and go below their system of guidance, it costs us money. It's just like for your Fire and your Police in your community. You get an insurance rating that is high, because you have a lot of protection within your community, and your insurance goes down. Jim, this is correct, right?

Jim Williams – Yes.

Lisa Frazier – So we want to be very careful that we're not going below their standards. Supposedly, we do have a high rating now. Correct.

Jim Williams – Yes.

Lisa Frazier – So I would be very nervous in relying on the Future Land Use Map to dictate what is done within sensitive environmental areas of the community.

Bob Massarelli – Let me correct that. For example, in C, when we're talking about the area south of 192 not protected by project levees, the land use is limited to agriculture, public conservation or private conservation.

Lisa Frazier – It could be changed.

Bob Massarelli – No. That's the only three land uses that are allowed in the 100-year floodplain.

Lisa Frazier – By the FLUM.

Bob Massarelli – By the policy in the Conservation Element that I'm suggesting.

Mary Spahr – You shouldn't be putting that in the Conservation Element, though.

Lisa Frazier – I don't believe that we should be looking at, and pulling out, specific areas in the County. It is not our duty to determine where this line is. This line will be dictated by the site-specific water table and

elevations. And you can also back areas out of the 100-year, or 10-year, or 25-year floodplain, if there are levees and dikes, and you have a good engineer, because we've done it. So I would be very nervous about specifying different pieces of the County for different policies.

Bob Massarelli – I'm willing to accept that. We'll just make it anywhere in the County within the riverine St. Johns floodplain. But the policies that we currently have encourage sprawl. I'm not picking on Deseret, but let's take a look at their property. You have a huge amount of area within the 100-year floodplain. It's saying that you'll get more units per acre if you jump over the St. Johns River and develop their property than floodplain on the east side of the river.

Lisa Frazier – Why are you saying that?

Bob Massarelli – Property that is outside of the 100-year floodplain, but a Future Land Use Map designation of agriculture, there's an incentive for you to go into the floodplain, rather than staying in the uplands, to get the change.

Lisa Frazier – And why is this?

Bob Massarelli – Because the way it's worded here, you get two units an acre by going into the floodplain. You can ask the County Commission for a Future Land Use Map designation change to allow you two units per acre; whereas, agriculture land upland doesn't get that bonus.

Lisa Frazier – If you wanted to develop an agricultural piece, you're going to have to change the Land Use Map, and then you get your increased density.

Bob Massarelli – Right now, the policy says you get two units an acre.

Billy Kempfer – But if it's zoned ag, you still have one to five. If you change the zoning, then you're going to change the uplands above the 100-year to whatever the density is for the County.

Lisa Frazier – It all depends on the zoning and the FLUM. Exactly what you had said earlier is exactly what's happening here. We have that already in place.

Mike Moehle – I don't want to get off on the Future Land Use Element, but I want to read Policy 7 of that element, which says, "Proposed uses shall not cause or substantially aggravate any /a/ substantial drainage problem on surrounding properties, or /b/ significant adverse and unmitigatable impact on significant natural wetlands, water bodies or habitat for listed species."

Billy Kempfer – That basically says you manage for your flow.

Lisa Frazier – It supports what happens in other elements.

James Payne – I'm still wrestling with the question of is there a problem with the residential in what the County presently has adopted.

Billy Kempfer – It's too low, and it creates urban sprawl.

James Payne – I don't know that it creates, or destroys, or does anything to urban sprawl.

Billy Kempfer – It encourages, I think, is the proper word.

Mary Sphar – There is a lot of things in our present Comprehensive Plan that attempt to discourage urban sprawl. And one of the things that is important to me is that our Comprehensive Plan, right now, states that Brevard County values agricultural land. Before we start thinking about develop, develop, develop, we need to start thinking in terms of these lands are really valuable to us for a variety of reasons. Right now, there's a 25-percent density for transferring some development rights out of agriculture. So that's an incentive to keep the agricultural lands. Another thing we could do is, if an applicant wanted to change part of his agricultural lands to a different designation with more density, or intensity, and part of that land was within a floodplain, then we could add policies that transfer development rights. Sometimes, you're given little perks. There's existing policies, that we should make sure the Commission understands, about transferring development rights out of the more sensitive areas and floodplains.

Mike Moehle – I don't see where the current Comp Plan language precludes them from creating an ordinance allowing the density transfer.

Mary Sphar – Part of it is already in there. I would propose we add something additional, because what we want to do is stop the sprawl. And we need to preserve and protect our agricultural lands. I set a high value on them.

The group took a break at 4:20 p.m. and reconvened at 4:35 p.m.

Mary Sphar presented a draft proposal for changes to Policy 4.2. A copy of the draft is attached to these minutes.

Mary Sphar – (In response to a question from Mr. Moehle) Let's say you're in the 100-year floodplain, and you're part of a platted subdivision that was platted before March 4, 2002. Each lot there will get a third of an acre allowance for the fill. That's their property rights.

Lisa Frazier – How are you coming up with this date?

Mary Sphar – Because that is the date the language went into effect.

Lisa Frazier – For the Comprehensive Plan?

Mary Sphar – This is language from the ordinance.

Lisa Frazier – But I don't see anything in the ordinance that states that.

Mary Sphar – Let's put it this way. It doesn't say much before 2002. I am saying how I think it's applied. Is that correct, Darcie? If it's a lot within a platted subdivision that was platted before 2002, then each lots gets a third of an acre, right, that they don't have to provide fill for?

Darcie McGee – Correct, unless we're looking at a full subdivision project. Lisa, the date came from Ordinance 02-08. This is where Mary got the date from, and that's when the initial language for compensating storage was added.

Lisa Frazier – That's when the ordinance was adopted. I understand. But the real ordinance just says created after the effective date of this ordinance.

Mary Sphar – I think I should have put something in, if it wasn't part of a platted subdivision.

Darcie McGee – Did you want clarification on what we do now?

Mary Sphar – Yes.

Darcie McGee – What we do know is, if you're an individual lot, and you're one of the older lots, you get one-third of an acre for your house, and your driveway, and your septic, and all that stuff. And it's meant to allow the older lots that were platted before the codes to enjoy the use of their property, without have to do excess compensating storage. If they want to do more than a third of an acre, they would have to compensate for it. If you are a new lot, or if you are a new subdivision, then you would get a third of an acre for the lot. Or the subdivision, we give a third of an acre for the project. So when you're master planning the subdivision, we allow a third of an acre, and then they do compensating storage at the subdivision level, so when those lots come in, they don't have to worry about it, as it's already been dealt with.

Lisa Frazier – And it's one-third acre per lot.

Darcie McGee – No, for the project. That is the way we've been applying that, but we don't see very many of them.

James Payne – So for a 1,000-acre project, they get a third of an acre.

Darcie McGee – Yes. You think of 1,000 acres, times a third of an acre per lot, you're talking a lot of fill with no compensation.

Tom Schuller – But a one-acre homeowner can get the same amount as somebody with 1,000 acres.

Darcie McGee – The older lots that were established prior to the codes would be able to so they can enjoy the use of their property, without being penalized for something that came in after their lot was established.

Lisa Frazier – You have 1,000 acres. I want to put in 100 lots. How much compensatory storage do I need to come up with?

Darcie McGee – You need to compensate for all of it but a third of an acre. You get a third of an acre for free, and then you compensate for the rest of it. You get a third of an acre for fill, with no compensation for the project. And then after that, you compensate.

Lisa Frazier – It's cup for cup.

Darcie McGee – Yes.

Billy Kempfer – That would create an increase in the level of flood elevation.

Lisa Frazier – Only by a third of an acre.

James Payne – I guess you could put a high-rise.

Darcie McGee – That's another point about density that's been made in the past. Density doesn't have to be this. Density can be this way.

Mary Sphar – Basically, what I'm trying to do is not change anything, just saying what's happening.

Mike Moehle – But you're trying to move the code or ordinances into the Comp Plan.

Mary Sphar – The thing about it is, they both apply.

Mike Moehle – It's a plan. It's not supposed to be the code of ordinances. As it is now, in the code, the Commissioners are free to use their judgment to make changes, as long as it doesn't conflict with the Comp Plan. When you put it in the Comp Plan, then it's really written in stone, especially if Amendment 4 is enacted in November. If that happens, then it will require a vote of all the voters to change any of this stuff, if it proves to be a problem. And I count the word "shall" in here nine times.

Lisa Frazier – "Shall" and "will" are always in the Comp Plan.

Mike Moehle – It's a planning document. I know it's in there more than it should be.

Mary Sphar – Last week, I was thinking maybe we should put in there that there shall be no loss of compensatory storage within the 100-year floodplain. But then I thought maybe that would alarm someone trying to buy property on the next street, who wouldn't realize that they would get a third of an acre for free. But the fact of the matter is that this hasn't deterred Farmton, Platt, Viera. These people know how to handle it.

Mike Moehle – I know. I was at the County Commission meeting where this work group was formed, and the audience was filled with people who showed up to complain about the changes to the floodplain provision of the Comp Plan. It seems to be the most controversial area, as far as the public's concerned. You're not really changing anything that we have now. You're just moving the code of ordinances into the Comp Plan.

Mary Sphar – I'm giving some clarity, and I'm giving a little more wiggle room, which is what they want. They want the redevelopment and the transfer of development rights. But I am extremely sensitive to property rights and taking considerations, because that means litigation. And it's not pleasant for anyone to go into litigation.

Mike Moehle – My reading of the current Policy 4, Objective 4, doesn't preclude the Commissioners from adding provisions to this ordinance themselves, which allow for transfer of density, if that's what they decide is in the public interest. When you start putting the code of ordinances in the Comp Plan, it becomes unchangeable.

Mary Sphar – The transfer of development rights is a perk to the landowners, to the applicants.

Mike Moehle – But you agree with me that that's a perk that the County Commission could decide to give now, under the current language of the Comp Plan.

Lisa Frazier – They already provide density transfer within the ordinance.

Mike Moehle – For wetlands.

Lisa Frazier – "Density may be transferred from areas within the 25-year to 100-year riverine floodplain to areas above the riverine floodplain at a density count consistent with the service sector." So it's already provided.

Mary Sphar – But not for off-site transfers. That's the new perk.

Lisa Frazier – It doesn't say on-site or off-site. Am I missing something?

Beth McMillen – Darcie, didn't you mention that you do some of these off-site transfers, and you're using compensatory storage already?

Darcie McGee – I'm not aware of off-site transfers. Within the one project, we moved stuff out into the 100-year. But it was the same project. It wasn't off-site. And, yes, compensatory storage is used. The ordinance that requires compensating storage in the 100-year, in the policy now, it doesn't. It does for the 25 and the 10.

Lisa Frazier – Mary, I understand what you're saying about it doesn't allow off-site, but then you have to be very careful about where that off-site is, because if it's not within the same basin, or if it's not within the same area...

Mary Sphar – That's why all this has to be approved. There's approved receiving districts. They're listed in Future Land Use Element Policy 10.2. And it has to be part of a PUD or a binding development plan. They're trying to get language for a DRI to do this. Is that right, Robin?

Robin Sobrino – I'm not sure where the confusion is, because the TDR program does allow for either internal, within the property transfers, or off-site transfers, provided you're transferring from a sending district to a receiving district.

Lisa Frazier – But is that for floodplain, or is that for agricultural?

Robin Sobrino – No. The way that the Comp Plan has been developed, it is based upon the future land use designation. There's only one exception to that, and that is we do have a sending district known as the Coastal High Hazard Area, which would not be something that is necessarily mapped as a static map. It depends on the definition of coastal high hazard, which also changes, depending upon the State Statutes. But, typically, it has been based upon the future land use designations. So the sending areas are those that are designated agricultural, conservation or coastal high hazard. And the receiving land use areas are residential 30, res 15, res 10, res 6, res 4, neighborhood commercial and community commercial. And that was really based upon that's how the land use is very clear on the map. There's, more or less, truth in advertising. You see the color you have assigned to you on the map, you know whether you're in an eligible sending area or a receiving area, and it doesn't have to come down to your elevation to know your eligibility.

Lisa Frazier – Exactly. What you're stating is that it's the transfer of a land use, and not a volume. And we need to be careful here, when we're talking about compensatory storage, that we're actually talking about a volume. And when you take it from one bathtub and move it into some shower over here, that bathtub's still going to overflowing over here.

Mary Sphar – I wasn't referring to transferring of the compensatory storage. I'm referring to the transfer of development rights for them to add a fourth category in Future Land Use Element Policy 4.3 as a sending area beyond the coastal high hazard, the agricultural and conservation, to add areas in the 100-year floodplain. If you'll notice, I said on a note in A.3 on the first page, "We would probably have to modify Future Land Use Element policies under FLUE Objective 10 to allow transfer of residential densities or commercial land uses from areas within the 100-year floodplain." And I put commercial in there, because the projects that are really in vogue right now are all these mixed use and new urbanism types. And so it might be a good idea to transfer some of the commercial...

Bob Massarelli – What are you transferring when you talk about transferring commercial? Commercial zoning gives you a whole series of uses. It gives you so many square feet that's allowed. Are you transferring all the uses?

Mary Sphar – Neighborhood commercial and community commercial are allowed to be receiving zones. So I think that Robin could answer that best.

Robin Sobrino – One thing that the TDR program does not contemplate right now is anything above and beyond residential, because residential is something very tangible. You know exactly how many units per acre is the bundle rights with a piece of property. As far as non-residential, you raise an important point here, and that is, it's hard to quantify what non-residential bundle of rights could be transferred.

Mary Sphar – But it is in there.

Robin Sobrino – As a receiving district. The only thing that is sending right now is really residential uses.

Bob Massarelli – You state you would send as residential.

Robin Sobrino – Right.

Mary Sphar – That's something I didn't know. That would have to be corrected.

Robin Sobrino – So that would make it more challenging. I think you'd end up having to go down this whole other thing of trying to figure out how to equate it to non-residential use.

Mary Sphar – Right. If we did that, we'd probably want to not do it, and then wait until an applicant tried to development their transportation matrix, and let them figure it out, if they were doing a mixed-use project.

James Payne – Is there a market for development rights? And how many have actually transferred?

Robin Sobrino – I've been with the County 12 years, and I only know of one project that has availed itself of the TDR's.

James Payne – How many transferred?

Robin Sobrino – I think it was probably under 100 units, at the time.

James Payne – Is there a market for...

Robin Sobrino – Or a demand?

James Payne – Or a demand. You know, usually, when you look at development rights, you have to figure out how you would create a market, or something that you want to try to transfer. That's been a real problem.

Bob Day left the meeting at 5:00 p.m.

Robin Sobrino – This has been underutilized, at this time. And perhaps it could be because the first areas to develop have been the higher, drier areas. So now that we're getting into less of that being available, there may be an increased demand in the future. But when you look backwards, there hasn't been that large a demand for it.

James Payne – Sometimes, you look at these programs, and you have to look at your underlying policies and what you're trying to do. For example, Osceola County said they should have a transfer of development rights program, and then they said that maybe they were approaching it the wrong way, and maybe they should have a minimum density of so much, and the only time someone would have to buy density credits is if they're going to develop it less than that. You have to look at your policies. Do you create markets? It's one thing to have a right that you can transfer, but it doesn't do you any good if there's nobody that is willing to buy it. It's fine, if the County wants to have a program, but does it really mean anything?

Robin Sobrino – It's always valuable to have that tool available for the circumstance where it may be of interest to somebody. And, in my opinion as a planner, I think that transfer of development rights would be something that would discourage urban sprawl, because it would give people incentive to not develop in the hinterlands, the transitional lands, and instead to take that density and move it some place that's high and dry.

James Payne – I'm just saying that so far, in Florida, it doesn't seem to have worked, for whatever reason.

Lisa Frazier – But I think that it's important to point out, in the existing ordinance, it allows density transfer from a 25-year to a 100-year because, at this moment, the policy does not require compensatory storage for 100-year. So it would actually be an incentive. If I was developing a piece of property, that's what I would look to do.

James Payne – That may be true incentive, as opposed to just transfer of development rights.

Massarelli – Is that in the Comprehensive Plan, or is that in...

Lisa Frazier – This is the ordinance.

Mike Moehle – Which we're talking about moving it from the code of ordinances and putting it in the Comprehensive Plan.

Lisa Frazier – Mary, I actually like what you've done. I think you gave us a nice basis to start from. And Bob did, too. It's like I want to take pieces of them and put them together, because it's down to crunch time.

Tom Schuller – What about the write-up that staff did? They simplified it. It's one paragraph. Why doesn't everybody look at 4.2, and does anybody have any heartburn with this?

Lisa Frazier – I do. If you're looking at the proposed policy, they're going back to using the Future Land Use Map for density calculations within the riverine system.

Tom Schuller – And what is wrong with that? Look at the map here, and look at how much of this property is already set aside in perpetuity. Along the river, you're probably closer to 80 percent of the land along this river – it's only a small piece of the pie we're talking about, because everything else has already been bought up by the District or the County.

Lisa Frazier – Not within the 100.

Tom Schuller – Yes.

Lisa Frazier – The 100 is always built up.

Tom Schuller – No. It's marked out on the map. And it's already owned by the government. It's set aside. If they want to hold all the water in the world on their property, God bless them.

Lisa Frazier – So then what's the rest of it? Then it's subject to just the Future Land Use...

Tom Schuller – And that's why I kind of like what the staff has done here.

Mike Moehle – Except that what the staff has done, the existing objective, if I'm an owner of lands within the 100-year floodplain, or on the edge of the floodplain, and have maybe some spots on them, and some that are

above that threshold number, I'm allowed to put two houses on it, or 15,000 square feet of commercial/industrial use, without having to provide this compensatory storage. So this would change that. I would not have what I consider to be de minimis uses of my property.

Tom Schuller – You're talking about 4.1?

Billy Kempfer – What is 44CFR60.3 (d) in the National Flood Insurance Floodway Standard? Is that a law?

Bob Massarelli – There is no floodway in the St. Johns River. So that doesn't apply to our discussion.

James Payne – The CFR is the Code of Federal Regulations.

Billy Kempfer – It says to restrict new development and construction in flow of water increasing flood heights.

Tom Massarelli – When you look at FIRM map, the floodway is a specific area in the floodplain. There is no floodway designated in the St. Johns River. In our sandbox, that's irrelevant.

Jim Williams – Turkey Creek, Eau Gallie River, would be floodways.

Billy Kempfer – So this language here for the riverine is irrelevant for the St. Johns river. I don't know if that is in this stuff that Darcie handed out. I downloaded this from what the public workshop did beforehand, and that goes back to Policy 4.1. Is 4.1 in any of this, Darcie?

Darcie McGee – Yes. You can look at the summary tables for each of the floodplains.

Billy Kempfer – I'm under the justification for Policy 4.1, which I don't think justification is up there.

Darcie McGee – I culled out all the other stuff from there. I have that available on-line.

Beth McMillen – But we're talking about a workshop that we had, based on stuff that everybody decided they hated, which is why we got here.

Billy Kempfer – You said everybody decided they hated it?

Beth McMillen – Which received the most negative feedback from the public.

James Payne – They hated that it was too restrictive or not restrictive enough?

Tom Schuller – I don't think they hated it. My consensus was that they needed a few tweaks to it.

Darcie McGee – They hated it. I'm going to put all that public comment on the website. I got 80+ emails not in favor, more passionate about the floodplains issue than the wetlands issue. But there was a lot of distress over the complete removal of densities. And I think that's why the Commissioners are wondering if we can get there with a compromise, which is what you are talking about.

Billy Kempfer – In other words, the public wants the complete removal of density?

Darcie McGee – No, they did not. They were against it. When we proposed it, based on discussions at the Comprehensive Plan workshop back in October, the Board said come back with stuff that's more flexible. So that's what we came back with, and the public...

Billy Kempfer – Did this language remove all density?

Darcie McGee – Yes. It removed all the density and then put the burden on your compensatory storage. So that would be your limiting factor. And that's where the outcry came. They believe it is a risk to public health and safety.

Billy Kempfer – As I read this, density is assigned as any other property, through zoning and the future land use.

Darcie McGee – I'm sorry, yes, there is a density. But it's the density that the property naturally has from its zoning and future land use, not the density that's in the ordinance. It's not the density in the Conservation Element. You get your regular density, if you were just a regular property in uplands.

Lisa Frazier – I guess what Bob was saying initially is kind of correct.

Billy Kempfer – And I don't see that we need to throw this language away, as he suggested. But the density would be designated in the Future Land Use Element. I don't know that the density needs to be in here.

Lisa Frazier – Right, because I think what we're saying is this density that's in the policy now is bogus. We don't where it came from. It's not based on any type of data facts.

Billy Kempfer – I think it was done kind of like what we're doing here. Everybody just kind of agrees we need at least that much.

Lisa Frazier – Exactly. Now it's putting the onerous on the Future Land Use Map for the density. I got it now.

Beth McMillen – Isn't that what staff did? And everybody said no.

Bob Massarelli – I agree with Tom. Let's use the basis of the Future Land Use Map. That's a given. That deals with property rights and things like that. The question is that 20 percent, or so, that is in private ownership within the 100-year floodplain, what are the reasonable uses that we should allow within that? Is there a general consensus among us that industry – not every specific case – there has to be some exception – but should industry be allowed in the remaining percent of the 100-year floodplain?

Lisa Frazier – No, I think you need to state this more clearly. Are we talking between the 25 and the 100?

Bob Massarelli – Hundred-year.

Billy Kempfer – What is mining?

Bob Massarelli – Unfortunately, when you read the Future Land Use Element, mining is addressed there, and there are specific regulations dealing with it in the 10-year floodplain, and in the 100-year floodplain of the Class I Waters. And that's outside our box.

Mike Moehle – So you're going to tell people who have property that has been zoned for commercial since prior to implementation of the Comp Plan, 20 years ago, that they can't use their property?

Billy Kempfer – But is it outside of our box? Because part of the language in the second part of our box is commercial/industrial uses in a wetland.

Bob Massarelli – But within the floodplain, the Future Land Use Element addresses mining activities. And the floodplain issue and mining, I think is outside our jurisdiction.

James Payne – But the Conservation Elements needs to at least comply with whatever else is there, doesn't it?

Bob Massarelli – And we have to be consistent with the Future Land Use Element.

Mary Sphar – I think this raises a very interesting question. By deleting the ability for commercial and industrial in the 100-year floodplain, are you raising the specter of litigation? You've got to think of it.

Bob Massarelli – I'd like to see, first, if there's a general agreement on a philosophy of how the 100-year floodplain and the St. Johns River should be managed. If the general agreement among us is that industry is an acceptable use, and there should be no restrictions on industry in the 100-year floodplain, then that goes one way. If, on the other hand, there's general agreement that no, industry does not make sense in the 100-year floodplain, then we need to address grandfather issues. Where somebody has either a current future land use designation or current zoning, there has to be an exception made for that. And I would put a date, as of the effective date of this ordinance, if you already have those rights, it's preserved.

James Payne – We can always think of things that would work fine in that area. There's always exceptions. I guess the question is, do you give the County Commission the power to look at those exemptions and make a reasonable judgment? I do have a problem with saying there should be no industrial or commercial within the 100-year floodplain, because that's too broad of a statement.

Mike Moehle – You could say there "should" not be any.

Bob Massarelli – What about the 10-year? Should industry be allowed in the 10-year?

Tom Schuller – Yes, if it has specific public need.

Mike Moehle – Is a road residential or commercial?

Tom Schuller – And I think they have addressed that in here.

Lisa Frazier – They have. You're absolutely correct.

James Payne – I think there might be some uses...

Bob Massarelli – For the annual, yes. In the current Comprehensive Plan, it says if there's a special reason or need, you're allowed to do it.

Lisa Frazier – In the 10-year, too.

Darcie McGee – If you look on your agenda, I put the information there on special need or reason, which had no definitions.

Mike Moehle – And that's as it should be. That's to be defined by our representative form of government.

Bob Massarelli – We should not be encouraging industrial and commercial development in the 100-year floodplain. There's no justification for the need. There is so much vacant industrial land in this County, there is no reason why we need to put more industrial. Existing, grandfathered in. Same with commercial. Existing,

grandfathered in. But there's no need for more commercial land. We're overbuilt and over-zoned on commercial in this County. The problem we're having with development is we have way too much commercial. And the areas where we may want to direct it is not in the 100-year floodplain. And the same with residential. What I think would be appropriate is that language that where there's a special need, or a special reason, as determined by the Board of County Commission, they can consider these uses in the 100-year floodplain. But, overall, no. What we're doing, if we use that kind of language, is saying someone come in and prove your case, convince the County Commission that it needs to be done.

James Payne – Are you saying, though, that if I can show that I'm not going to impact anybody off-site, and pre and post is the same, that even if there's not a special need, that I shouldn't be able to do anything?

Bob Massarelli – Yes, because there's a lot of other factors. And that's why I have, in my memo, the findings. The findings is that we have a corridor now that provides for a uniform zero-cost flood protection. We have corridor for wildlife movement and migration. We have corridor that creates an edge to our urban boundary. We have a corridor that can provide open space and recreational attributes to the area. The upper St. Johns River basin project is based on a non-structural approach. This furthers the approach of the Water Management District. When they develop the land development regulations, those are the types of criteria that need to be considered in making the determination that it's in the public interest, or there's a need and a purpose for it. Again, the amount of land area that we're talking about, except for the 192 and I-95 intersection – and Lake Poinsett's a unique and historical thing, and it's not going to happen again. When you look at the map, and you look at the areas, the other problem area is 520 and I-95. That has so many problems that that really requires a special study. There's all sorts of issues there. (Someone asked about Farmton) Farmton doesn't even apply to what I'm talking about, because that's not riverine, according to this map.

Mary Sphar – That is the flood zones. But, believe me...

Bob Massarelli – I understand. But we're defining it as the riverine floodplain, and on this, it's the green area. So it doesn't apply there. Some of the areas, like north of State Road 50 in Titusville, that's not shown, but that is Federal. That's the St. Johns River Wildlife Preserve. Some of the area along the Beeline is also Federal.

Lisa Frazier – Darcie, point of clarification. What the County proposed was taking Policy 4.1 and inserting this (she held up a piece of paper) and getting rid of 4.2 altogether. Is that correct?

Darcie McGee – Yes, and reordering everything.

Lisa Frazier – So that 4.3 would then be 4.2, and so forth.

Darcie McGee – Not really, because if you look at it, there's stuff that says annual, and then it goes 100, and then you've got some – it consolidates each floodplains policy within that number, and then rennumbers them. That's why I didn't do a strikethrough on this. It was way too confusing. So this is basically a complete reordering and packaging all the different policies for each floodplain into one.

Lisa Frazier – This isn't half bad. And I think it kind of addresses what we've all been saying for two days. Please take a moment to really read it.

Mike Moehle – But it eliminates the de minimis exemptions which currently exist.

Mary Sphar – It also adds compensatory storage requirements for the 100-year floodplain. And they're in all the other floodplains. I have to say I'm definitely against it, along with 80 some people who wrote their emails.

Lisa Frazier – Against what?

Mary Sphar – Against getting rid of the density restrictions. I think we should tweak them. I think that the density restrictions provide other functions besides compensatory storage. They provide open space so that the County will not look like Broward County. They provide for recreation, ecotourism, the biological integrity of the St. Johns River.

Lisa Frazier – But I think the challenge is that we don't know what's the appropriate density. And I would further state that as you get into the 10-year riverine, and into the 25-year riverine, most of those areas are going to be wetlands, anyway. And so your development, and your density, is going to be prohibited just by the nature of that beast.

Mary Sphar – Correct. But look at it this way. Who has really had a problem with the density requirements? And it's hard to find an applicant – I do know of one who's thinking of annexing to Palm Bay. But I think they've been having extreme problems with their project. But the biggies found no problem with this - Farmton, Viera, Platt. It protects the character of our County, and the beautiful qualities of Brevard County that makes this a special place. I live near the St. Johns River. I know the qualities, and the ambiance, that the floodplain provides. I highly value the agricultural land. I just think that to look at this in terms of compensatory storage itself just makes you not consider the other contributions of the St. Johns floodplain, an American Heritage River.

Billy Kempfer – So if Deseret and I apply for a DRI, you're going to fight us? Is that what you're saying?

Mary Sphar – I'm thinking that if you and Deseret apply for a DRI, you'll be able to live with this.

In answer to inquiries from some of the group members, Ms. McGee said she would provide a Future Land Use Map after the next break.

Tom Schuller – Mike, what density would you like to see?

Mike Moehle – I'd like to see the exemptions that are in the current plan maintained.

Billy Kempfer – You wouldn't increase them?

Mike Moehle – Yes, I would increase them. I don't want to eliminate them, though.

James Payne – You're talking about (unintelligible).

Mike Moehle – Two units above the 25, but within the 100 – two residential units per acre, or 15,000 square feet of commercial or industrial units.

Tom Schuller – But doesn't this address that?

Mike Moehle – This doesn't require that you figure out how to dig up some other piece of property in order to fill your 15,000 square feet for commercial use.

Lisa Frazier – In 25, it does.

Mike Moehle – You don't have to compensate.

Lisa Frazier – From the 25 flood, below, you have to do compensatory storage.

Mike Moehle – The difference between the 25 to 100 is a huge area. And I think most of it's owned by the government, anyway. Right now, if I own an acre of commercial/industrial land, and it's zoned that way, then I can use 15,000 square feet of it, without having to buy or dig up another piece of property and provide 15,000 square feet of...

Tom Schuller – But about the residential? Are you comfortable with that, what they talked about?

Mike Moehle – I'm not comfortable with any of it. I think if you exceed that, you should be able to compensate for it and exceed that. But, at a minimum, you should be able to do this with your property.

Lisa Frazier – So what would you propose is done? I mean, you understand a floodplain is like a bathtub?

Mike Moehle – Leave the exemptions in what you're talking about. And then, beyond the exemptions, you compensate.

Lisa Frazier – What exemptions?

Mike Moehle – These exemptions for the two residential units...

Bob Massarelli – That's not exemption. That is a guide to – if you change the Future Land Use Map, that's the maximum you can go to. It's not an exemption. You have no rights given under that.

Mike Moehle – It doesn't require compensatory storage.

Bob Massarelli – Yes, it does.

Lisa Frazier – Not for the 100.

Billy Kempfer – Not in Policy 4.2. I was violating the Sunshine Law a while ago when I asked Mike what he had a problem with, with this stuff that was sent out. And he said it requires compensatory storage within the 100, where the old language does not. I will tell everybody I was violating.

Lisa Frazier – We're getting down to the nitty-gritty then. You understand that most counties and a lot of municipalities, even Titusville, require compensatory storage? And do you understand the reasoning behind compensatory storage? Let's get off the property rights and...

Mike Moehle – Do you know what the word de minimis means? It means it's insignificant. So I don't think that these impacts are that significant. Can anybody prove to me that they are?

Bob Massarelli – Can you prove that they're not?

Lisa Frazier – Exactly. Can you prove that they're not? And I think, once you...

Mike Moehle – You're talking about eliminating them. I'm not talking about putting it in. You're talking about eliminating it, so the burden of proof is on you in that regard, as far as I'm concerned.

Lisa Frazier – That's what we're talking about here, because that's what the new policy proposal is proposing, is that we add compensatory storage for the 100 to the 25. Correct? And so the burden of proof is already there, that once you displace an amount of water, it has to go somewhere. Somebody has to compensate for it. We haven't had it in, and we're saying we're having problems. Is this group then saying we need to put it in, in order to mitigate some of those problems; however, then we don't restrict you to a certain bogus density and

square footage brought on years ago. We allow you to follow the Future Land Use Map, which allows you these certain densities, or flexibility given by the County Commission.

Beth McMillen – So where do the land use densities come from?

Lisa Frazier – The Future Land Use Map.

Beth McMillen – Which were designated by the County Commission. So you're saying those numbers are just as bogus as the other ones. What gives us the right to lift these, versus those? The Conservation Plan says that when the Future Land Use Map changes, it can't go beyond these limits. That's why I cannot, in any way, support removing those limits in some fashion.

Lisa Frazier – And I certainly understand that. And I was behind you about an hour or so ago. But now I'm going back to thinking about how does the Future Land Use Map get created. And Bob has pointed out again and again that the Future Land Use Map is not a dartboard exercise of planning. It can't even legally be approved by the DCA unless it meets so many different guidelines, as in is this the appropriate land use in this area. Certainly, along a very sensitive corridor, it will not be appropriate for the Future Land Use to show it's commercial, and industrial, and heavy density. So then I'm thinking it's appropriate now.

Beth McMillen – I'm also looking at situations that we have, not necessarily within the County. Municipalities within the County are changing their land use maps, sending them up to DCA, DCA is saying no, no, and the cities are saying they're going to adopt it anyway. So what exactly does that mean?

James Payne – It means you litigate with DCA.

Billy Kempfer – When the public objected to this because the numbers were not in here, did they want to make sure that it did not exceed what was in the old plan, or did they want to increase the number of density so as to help eliminate some of the infrastructure, and allow more density per acre?

Darcie McGee – In general, almost all of them were against removing the densities that are in...

Billy Kempfer – But did they give a reason? Because they did not want it to go any higher, or they...

Darcie McGee – They wanted them the same. No one, in particular, that I can recall, said that they thought they should be made stricter. But the concern was – if you go back to Fay and all the flooding that happened – the public hearing regarding that they might remove these densities that are in the Conservation Element scared people, and justifiably so. That's for you to...

Billy Kempfer – The problem with flooding of Fay is because of things that happened before any of this ever took effect.

Darcie McGee – And those are things you can discuss. If you look at this, and amongst all of your expertise, still want to recommend this with maybe adding more criteria, that's certainly within your rights. You just should consider that the County Commissioners were bombarded enough that they decided to send it to a working group instead of to DCA. So you take it with a grain of salt and do what you think is right.

Billy Kempfer – I don't know whether two units per acre is the right number, or 10 is the right number, or you allow for townhouses. I don't know if such as that is even allowable or smart. The smart growth is not something I know a lot about, but I do realize that supposedly the tighter the density is in an area leaves more open space. And you've got less sewer and water requirements, less streets, and all of that. I don't know why that would be a problem within the 25 to 100, as long as you don't restrict the flow or affect storage.

Mary Sphar – No, Farmton and Viera moved their clusters out of the floodplain.

Billy Kempfer – Platt shouldn't be in the 100-year floodplain, anyhow, because they're behind all those levees.

Mary Sphar – But they have some in the 100-year floodplain.

Billy Kempfer – None of Platt's land should be within the 100-year floodplain.

Mary Sphar – But all the clusters are around the Parkway. Viera has 1,500 acres in the floodplain. They moved their clusters out of the 100-year floodplain. And Farmton, they claimed...

Billy Kempfer – That's what they did. Like I say, I don't care where you put the number.

Mary Sphar – I think there's a real misconception that you don't have to have compensatory right now for commercial and industrial. You do, don't you. Isn't that what you told me?

Darcie McGee – Yes.

James Payne – The Water Management requires it.

Lisa Frazier – Only below the 10.

Mary Sphar – No, no. You need to look at the ordinance, Lisa.

Lisa Frazier – I have, and we've been talking about this. It's 25 to 100. You don't have to have...

Billy Kempfer – In the County. But does the District require it, John?

John Juilianna – Just the 10-year.

James Payne – Where does the water go when it rains on land that's above the 100-year floodplain? Do you have to have compensatory storage if you're above the 100-year floodplain?

Bob Massarelli – No, but you have to pre, post.

Mike Moehle – But that's not for the 100-year storm event.

Bob Massarelli – That's another whole issue that...

Lisa Frazier – Mary, you're right. That means the policy is contradictory to the ordinance.

Mary Sphar – My suggestion, once again, is to not remove any property rights, but to clarify the Comprehensive Plan policies, and that's what I tried to do. Because people don't get it. And it's interpreted that you have to have compensatory in the 100-year floodplain by a different policy within the Comprehensive Plan. Ernie interprets his ability to enforce the compensatory storage requirements of the 100-year floodplain – here it is. "Development within the 100-year riverine floodplain shall not adversely impact drainage of adjoining properties."

Mike Moehle – That's what I just read in the Future Land Use Element.

Mary Sphar – It's actually in the Conservation Element.

Mike Moehle – It's in the Future Land Use, too.

Mary Sphar – We have to have storage, but some people don't get what the heck's going on. So it might be a good idea to make it very clear, no surprises. People don't like to be surprised. We're supposed be one-stop permitting, getting more and more friendly to applicants.

Mike Moehle – Eliminating this exemption is not making things more friendly for anybody.

Billy Kempfer – What if we go with the suggested language from staff – and I know you're opposed to that because of the compensatory storage above the 25 – and leave the density as is, although nobody knows whether that's the right density, and allow and encourage transfer, allow a greater density if you transfer your density out.

Mike Moehle – The County Commission could draft an ordinance under the current policy, doing just what you're saying, allowing for transfer of density.

Billy Kempfer – But would we not put it in the policy and...

Tom Schuller – It's not broke. We already have the ability to do that under the current one.

Billy Kempfer – But it would not increase the density. I'm going to say increase your density units if you transfer them out.

Mary Sphar – Well, that's what you do.

Billy Kempfer – That's kind of what you recommended.

Mary Sphar – Exactly.

Billy Kempfer – You can do it at two to one, or if you'll transfer them out, you can do three to one, or four to one, or whatever.

Mary Sphar – The transfer of development rights program is old.

Tom Schuller – Like Mr. Payne says, nobody wants to do it, anyway.

Mary Sphar – But on their own property, you see them doing it.

Billy Kempfer – Like Mike said, if you've got property that some is below and some is above, then you can go and develop it at two units per acre. But if you leave the below as open space, then the density can be increased on what is above. And instead of two units per acre, maybe you could transfer another additional two units per acre out.

Mary Sphar – Let's say you have some in the 25. You get one unit per two and a half acres. You transfer that into the 100-year floodplain, and that particular unit, which was going to be spread over two and a half acres now you just have to have one acre. So that makes it more dense. So each time you transfer within your own property, you're getting more density. And that's what Viera did, and that's what Platt claims they may do. That's what Farmton wants to do.

Billy Kempfer – You're saying a 25 percent, and I'd like to double it.

Mary Sphar – That's an option. I'm just saying what is historically allowed.

The group took a break at 5:50 p.m. and reconvened at 6:10 p.m.

Darcie McGee – Robin wanted to make sure that everyone knew that this Future Land Use is informational. So read the disclaimer on the bottom.

Beth McMillen – When we were talking about the fact of listing these densities, this here is based on the fact that we have credits for these low densities. It may not drop it, but it certainly weakens our position on this. By lifting those, and doing away with them, it leaves the door open for the next things, and that does drop us.

Billy Kempfer – So what you're saying is that because of that, the public did not want the density to increase.

Beth McMillen – Correct.

Lisa Frazier – Are you also stating that if we drop the densities and just rely on the Future Land Use Map, it will also have an effect on this?

Beth McMillen – Yes. I was talking with a little bird that we did receive credit for having low land use densities in the Comp Plan.

James Payne – But is it because of the Conservation Element that you were given credit, or because of the future land use density, or some other part of the Comp Plan?

Beth McMillen – It was for the low density designation in the flood area.

Lisa Frazier – Of the Conservation Element.

Tom Schuller – Could that be because the County, State and Federal Government own 90 percent of that land in that area? So we will always get those credits?

Bob Massarelli – I disagree, because there's no building potential in those areas, and it's the areas outside the public ownership that FEMA is concerned about. So if we reduce or increase allowable densities, I think it would adversely affect the rating.

Tom Schuller – So you're saying in all that land they purchased, there was no densities?

Bob Massarelli – From FEMA's perspective, they're not going to be issuing insurance policies in those areas.

James Payne – How much private ownership is there outside of the floodplain?

Bob Massarelli – Unfortunately, we're not able to get that kind of information. It's available. I'm sure Jim Ford could push a couple buttons and spit it out relatively quickly, but we just don't have that information.

James Payne – Is this county-wide, or is there a separate (unintelligible) within each community?

Jim Williams – Palm Bay has their own CRS rating. Does Brevard County blanket any of the communities?

Frank Skarvelis – No. Each one of the NFI communities are in the CRS program voluntarily.

Mike Moehle – So this would not depict the public ownership conservation lands within municipalities?

The group members discussed the colors on the map and what they represent.

Dave Millard – It seems like we're sort of stuck between a couple of concepts. What I'd like to know is, where does everybody land in terms of – I always hate to fall back on the if it ain't broke, don't fix it kind of thing, because I know that there's always things that you can improve. We talked about some of the current densities, and the way it is now, and we've recognized that the way that was devised is – the term we used was "bogus". But what alternative do we have? We have the alternative that staff has proposed. That's met with some real nasty comments. How do you feel? I mean, what is your opinion? We've bantered back and forth a lot of different ideas, but how do you feel about the way things currently are? Can you live with that, or do we need to improve that? I haven't heard any real improvements, except what Mary's come up with. And I like a lot of what she's said. How do you feel about that? James, what's your feeling?

James Payne – I've struggled to try to find out what the problem is, and what our goals, objectives, are supposed to be for this group. And I guess I've struggled to see what the problem is. The only thing that I've seen, so far, is that maybe we ought to just leave it alone. The one thing I wondered about is making industrial the same as commercial. Or if nobody likes industrial/commercial differentiation, just leave it like it is. I haven't felt any big compelling reason to do a whole lot differently than what's already being done. But it seemed like the Commissioners wanted to make it perhaps a little bit looser, rather than more restrictive.

Billy Kempfer – Darcie, what was the reason for the re-write?

Darcie McGee – In October of '09, there was a workshop held on the Comprehensive Plan, and the Commissioners had a discussion about not just conservation, but all the different elements. Our staff direction was to provide more flexibility with floodplain densities and wetlands, and also to look at duplication of regulation. We came up with this stuff, and it went back to them, and they sort of backed off and went with the working group. If you go the Clerk's website, you can view that meeting on-line. We'll email you the date, and you can see the workshop and hear what the Commissioners said. From that meeting is where this whole process started.

Billy Kempfer – This was Commissioner-driven to redo it. And then the public flew up in arms against it, mainly because of the fact that the density was removed.

Darcie McGee – Correct. They were fearful that loosening restrictions of the riverine floodplain would cause a public risk of extra flooding. People were very nervous about that.

Billy Kempfer – Because it'd be an increase in density.

Darcie McGee – Because of the potential for increased development within the riverine floodplain.

Beth McMillen – Nobody's really upset, generally, about this. Like you said, Platt can work around this. Isn't it possible for us to take this and just – we had something with the redevelopment that we could probably tweak, because there was a problem there – and then maybe create some of the wiggle room, like Mary did, but maybe not to the extent of an ordinance, just adding some of that little bit of wiggle room into what we already have that would give a little flexibility and yet not really diminish what's already there?

Mike Moehle – We could leave it be and recommend to the Commissioners that they allow for the transfer of density in the ordinance, not in the Comp Plan.

Dave Millard – Mary, didn't you say that the provisions for these things are already there? Perhaps it might just be that they're not aware of it.

Mary Sphar – I am under the impression that part of the reason that the floodplain has been a problem to a small number of people is redevelopment. The transfer of density language for an off-site is not currently allowed in the Comprehensive Plan, and I added it. I added stuff for clarity about what you can do now. Notice that I put transfer of development program, which allows, if you wanted to have extra units beyond what it is now, you could do that by the ordinance. You could up your perks in the ordinance. I found that language in the Coastal Element, and I thought the ordinance is the place where they should decide what the exact perk should be. So I just let it be. I did put in the compensatory storage stuff, because I think it needs to be clarified. You can do what you what. I just don't think that there's a great problem with the floodplains, except for the redevelopment. Commissioner Anderson goes on and on about if there's duplication in the regulation. No, there's not, except for (unintelligible) requiring compensatory storage. Is a floodplain causing annexation? Not in general. It's the wetlands that are the problem. Wetlands, we've had controversy from the get go, but not this floodplain stuff.

Tom Schuller – But I think they're one and the same, because the wetlands fall within the floodplain.

Mary Sphar – Right. But they have their own regulations. This is for the floodplain stuff outside of the wetlands that we're concerned with here. Your density transfer is a little different there. But this is what I consider the floodplain not within jurisdictional boundaries of the wetland.

Dave Millard – What Mary has done is, she has provided some flexibility to what currently exists. Since we haven't had any compelling arguments for a great deal of change here, I would recommend that we adopt her changes.

Mike Moehle – Except that she's putting the code of ordinances into the Comp Plan. And we should recommend to the Commissioners that they change the ordinance, not incorporate it into the Comp Plan.

James Payne – I would leave the ordinance out of the Comp Plan.

Mary Sphar – The ordinance provisions that I did put in there are not for the transfer of development rights. What I put in there was – Michael, if you'll remember, the staff put compensatory storage language, which does not recognize the right to that third of an acre, in what was rejected by the Commission. I thought maybe that was misleading, and maybe it should be clarified that you do get that one third of an acre. So I put that in.

Mike Moehle – I'm just saying that it's too difficult to change, especially if we end up with Amendment 4, which will require a vote of the electorate.

Mary Sphar – It's nothing different.

Mike Moehle – The nitty-gritty should be dealt with in ordinances, not...

Mary Sphar – But the structure that is the basis of it is already in the Comprehensive Plan.

Bob Massarelli – Then there's no need for it here. If it's already in the plan, we don't need to add it.

Lisa Frazier – Point of order. Is that an official proposal, David?

Dave Millard – Yes.

Lisa Frazier – Do we have a second?

Drew Powshok – How about we go through what she suggested and maybe see what language we could strike out. Some of us don't want all the additional language, but some she added is good, like in number 2, "except for redevelopment".

Lisa Frazier – Then would you like to second that so we can discuss it?

Beth McMillen – I'll second it, and we can go to discussion.

James Payne – Would you restate your motion?

Dave Millard – That we adopt the policy proposal that Mary has made on 4.2, with those changes that she's made.

Billy Kempfer – I would second that, but not with all the changes. I think we need to make some changes within it.

Don Simms – Dave, are you saying that gets sent on to the Comp Plan, or just made as an ordinance?

Bob Massarelli – Under that motion, it's part of the Comp Plan.

Cheryl Gitlin asked Mr. Millard to restate his motion again.

Dave Millard – I move that we take Mary's revision of Policy 4.2 and adopt that as Comp Plan.

Mary Sphar – I'd like to make an amendment to that. I see a correction in A.3. After "residential density", we should cross out "and commercial land uses". Just residential density. Robin clues me in to that's incorrect. I need to cross that out. That would be an amendment. And then somebody could make an amendment, if they want.

Drew Powshok – Let's look at each line and discuss it, going down, and then say what we want to change.

Billy Kempfer – And then amend the motion to accept...

Drew Powshok – The whole piece at the end.

Cheryl Gitlin – A.1. Everybody good?

Bob Massarelli – No. The way this is worded, we can have half-acre lots throughout the 100-year floodplain, and whatever 20 percent is left could be full of half-acre lots. We're putting people in harm's way. Granted, their structure may be elevated, but the streets may be flooded. They may have standing waters in the swales or the drainage system. The streets may fail sooner because of high water table conditions as a result of the flooding. From a public policy point of view, and from trying to control our budgets, and the expensive government in the future, it makes no sense to have half-acre density throughout the floodplain. What makes much more sense is, if you're going to allow residential development – I'm opposed to residential development in the 100-year floodplain – but if you're going to allow it, it should be clustered. It should be high density in very small areas. I provided a study that shows that the cost, or the amount of runoff, per unit is less at higher density. There's all sorts of studies that support low-impact designs. So to just keep it at this is a severe injustice to the residents that are going to move there, as well as all the taxpayers who are going to pay for the damage that's going to be done as they're flooded.

Beth McMillen – So how do we incentivize this to make (unintelligible)?

Bob Massarelli – My recommendation is you do not allow residential development. I recommend a grandfather provision that where the existing land use map allows residential development, that first you try to buy it out. Second, you try to transfer the densities. And, finally, you require cluster development. And that would be handled through the land development regulations.

Billy Kempfer – Could you not say that residential density shall be limited to no more than two dwelling units per acre and require clustering? And then somebody come up with a number as to...

Bob Massarelli – And how to cluster is the regulations.

Don Simms – How many people on this panel live in a clustered house? How many people are, in the future, going to be looking at higher-density development because of your lifestyle changes? How many have children that live in cluster housing or higher-density development today?

Lisa Frazier – Yes, I live in an existing town. So that's a high-density development right there. And the real estate market actually backs you up on that, that...

Don Simms – I'm in the development business, and the greatest project I've seen is called Harmony – 11,000 acres. For the greatest five-year run in the history of Florida real estate, and I'm telling you half the houses in the community are vacant right now.

Bob Massarelli – Harmony has all sorts of other issues.

Don Simms – It's award-winning. It's beautiful.

Bob Massarelli – I can show you, up and down the coast, projects that are cluster development. Major developers that I work with are shifting toward cluster development. That is the market that they are seeing, with aging of our society, as well as the younger generation. Granted, most of us around this table are single-family tract houses, but that's not the direction the developers I work with are headed.

Don Simms – I've done developments for D.R. Horton, for Lennar Homes, for KB homes, out of Las Angeles, Centex Homes, out of Dallas, and I go along with you that there's a push in that direction; however, I think that – I know you guys don't want to hear about the market – but what's popular right now is – take a look at the foreclosed subdivisions right now. It's almost always the clustered housings that are hurting. I followed Harmony. I actually wanted to do something just like it, because I thought it was so neat. Here's a wife, she comes home at night, she's got to drive down an alley, she's got a baby in the car seat, six bags of groceries, two other little kids. She's got to get out in a driving rain, drive down the alley, pull in the garage, get out of the garage, go through the storm, unload the stuff. There's no back yard. Harmony's got some spectacular parks. Bob, drive through it. There's nobody in the parks.

Bob Massarelli – But Celebration is the exact same thing, and it's full, and they're building more.

Don Simms – Celebration is an incredible success based on having a tremendous influence from Disney.

Bob Massarelli – But location, location, location. So the alternative to clustering, then, is half-acre lots in the floodplain. From a government point of view, managing our expenses, it doesn't make sense for us to have lots scattered throughout the area. It's not if it occurs, it's when the flood occurs. When the 500-year storm occurs, and this is all under water, and we're kicking in emergency management, recovery, and FEMA is

coming in and putting in trailers to have houses for people, if we had kept them out of the 100-year floodplain, we would have avoided these costs.

Tom Schuller – Not a function of government.

Bob Massarelli – It is. Government goes in and rescues people. I was on the ground in Katrina 60 hours after the storm. Trust me, government kicks in and spends a hell of a lot of money when the floodplain gets flooded. Now, does it make sense for us to put people – actually, it's all the way down to the 25-year floodplain – and we know that it's even a greater chance than one percent. Now, if everybody around the table agrees that it makes sense to put people within the floodplain, in harm's way, great. I just disagree with that. I don't think that makes sense for government to encourage that.

Lisa Frazier – Are you stating that you don't want any density, at all, or you just want to...

Bob Massarelli – I would prefer none. But if we go with the two units an acre, then have it clustered. Limit the impact area as much as possible.

Jim Williams – Frank, this is under higher regulatory standards on the CRS, right? The two units per acre.

Frank Skarvelis – Low-density zoning in the floodplain, yes.

Jim Williams – This is what FEMA recommends. Is that not correct?

Frank Skarvelis – I don't believe FEMA has it.

Jim Williams – Isn't that the threshold to get the higher regulatory credit?

Frank Skarvelis – I don't believe FEMA has a recommendation, pre se, regarding what a recommended density is within a given floodplain.

Jim Williams – Under higher regulatory standards?

Frank Skarvelis – There's a threshold under higher regulatory standards, but that's in the CRS, and that's not a FEMA regulation.

Mary Sphar – I'd just like to say to Bob that the fact of the matter is that clustering is the in thing, the proposals that are going up to DCA. But what's happening is, they're clustering outside of the floodplain. Now, how are we going to make this work? By transfer of development rights. And my proposal says transfer of development rights program, and you can tailor the perks in the ordinance. The big developers are smart. They don't want to fill this land, and they get their development out of the floodplain. So the market takes care of itself.

Bob Shaw – What does this do to the small homeowner in the floodplain?

Bob Massarelli – And existing structure in the floodplain, this does nothing.

Bob Shaw – So they keep all their rights.

Mike Moehle – But not the owner of vacant land. You eliminate the exemptions, the no more than two units. Presently, you don't have to compensate for any flood storage loss, if you're going to have two residential units between the 100- and 25-year, or 15,000 square feet of commercial.

Lisa Frazier - But we were saying earlier that the ordinance actually contradicts that policy.

Mary Sphar – This particular policy has nothing to do with the compensatory storage.

Mike Moehle – Well, the ordinance can be changed, unless we put it into the Comp Plan. To the extent that it conflicts with the Comp Plan, the Comp Plan prevails.

Mary Sphar – Obviously, this part is controversial.

Mike Moehle – There's also no provision in here for any kind of consideration given to properties which currently have industrial and commercial use on the FLUM, but which might be within the 100-year floodplain.

Mary Sphar – What I tried to do is keep what we've got and add some perks. I'm not trying to take away any...

Mike Moehle – I'm still looking for the perks. I'm waiting for the perks.

Mary Sphar – The perks are the redevelopment and the transfer of development rights to an off-site, and then the restating of the transfer of development rights within a project.

Mike Moehle – You're taking the perks away. The perks are the exemptions.

Mary Sphar – It's obvious that the last, now numbered E, is controversial, because people don't like putting the ordinance stuff in the Comp Plan. That's what I think is controversial. That's the compensatory storage stuff taken out of the ordinance.

Lisa Frazier – Mary, what did you mean by “except for redevelopment”? What was your plan?

Mary Sphar – I'm planning on having redevelopment to allow the fill footprint to increase, if compensatory storage is provided.

Lisa Frazier – Increased to what?

Mary Sphar - I did not define that any further. I figured the ordinance was the place.

Billy Kempfer – Can we get back in order?

Bob Massarelli – I think we're supposed to be going line by line.

Lisa Frazier – But this is where we are, because as an environmental planner, I agree with you, Bob, that no, we shouldn't allow any kind of development within the floodplain, because it does increase my cost as a taxpayer when I have to help somebody who's developed in the floodplain.

Mike Moehle – Or when you have to pay me for my property, because I'm not allowed to use it.

Bob Massarelli – We're not taking any rights away from what you already have.

Mike Moehle – I'm sorry, but you're taking away my ability to develop my commercial property that's located in the floodplain, without having to provide compensatory flood storage.

Bob Massarelli – Once and for all...

Mike Moehle – Show me where I'm wrong about that, then.

Bob Massarelli – The Future Land Use Map sets your rights. Let's say you have agriculture.

Mike Moehle – It says commercial.

Bob Massarelli – No, let's say agriculture. Let me start there. You do not have the right to put two dwelling units in that area, based on this policy. This policy is just guidance to the County Commission that if someone comes in and says they want to put residential at four units per acre, and they say no, the most you can have is two. But you still have to go through the amendment process and get the Future Land Use Map amended to allow the residential use.

Mike Moehle – That's not true. Most of the ag lands right now are zoned GU. That's one in five. And then you can transfer the density around.

Bob Massarelli – But to change the Future Land Use Map, the most you can go to is two units per acre. If it's currently commercial on the Future Land Use Map, the only limitation you have is you cannot fill more than 15,000 square feet per acre. Nothing is changed. It doesn't give you an exemption to allow commercial on agricultural land. Only if you have that underlying commercial future land use designation does that kick in.

Mike Moehle – If you have agricultural use right now, with a one in five future land use designation, then under this, you can put a house on your five acres, without providing compensatory flood storage. My reading of this is that you'll no longer be able to do that.

Bob Massarelli – But in A, we don't talk about compensatory storage. Let's leave that off the table right now. All we're talking about is...

Mike Moehle – I know we don't talk about it in A, but then we got the catchall down here in E.

Several group members spoke at once.

Cheryl Gitlin – Excuse me, how many people would like to go line by line? (Ten people raised their hands) Go line by line.

Lisa Frazier – If we're going with A.1, A.2, where it provides you with the densities and the footprint of fill, we can add later on in the same A, and in each of B and C, incentives that will compel the landowner/developer to move them into clustering, move them even into compensatory storage, if we want to, by adding those incentives in every single section. And those incentives, obviously, are density bonuses or a reduction in compensatory storage. I think we need to keep the densities in, and they need to stay the way they are. And then we have to put in incentives in order for them to create that program, so that the developers actually move in the direction you want them to be. Because we cannot remove the densities, at this point. We can't.

Tom Schuller – Darcie, part of the drive was for duplication of regulations. So let's just start right at A. Leaving 1 out of it, if we're saying that the riverine floodplain is the area between the 100 and above the 25, what does the District say it is?

Billy Kempfer – They have no jurisdiction about the 10.

Tom Schuller – So why don't we come in line with what the District says?

Bob Massarelli – What is the design project flood for the upper basin project?

John Juilianna – The Corps levees it to 250 years.

Bob Massarelli – So maybe we should go to the 250-year to be consistent with the design project.

Tom Schuller – That's what staff did when they came in line and defined it as that, instead of up to the 25.

Darcie McGee – I don't think the definition is an implication. It's just a definition of what a floodplain is.

Tom Schuller – They defined it as the annual, correct?

Bob Massarelli – No. Annual is essentially the river itself, what stays wet the whole year.

Tom Schuller – But they switched the whole ordinance.

Bob Massarelli – When you read the Comprehensive Plan, there's a definition of riverine floodplain, which is the floodplain of the St. Johns River for a specific storm event. And what we're doing here is saying that the storm event is the 100-year storm event. Now, if we want to be consistent with the District, we should go with the 250-year design to be consistent with the Corps project.

John Juilianna – That's the elevation at the top of the levee.

Bob Massarelli – But that's the design event, is to handle the 250-year storm.

Billy Kempfer – Riverine floodplain means lands which have a surface water connection to a major fresh water, surface water (unintelligible) 100-year flood.

Bob Massarelli – Which language is that?

Billy Kempfer – That's in this Floodplain Protection, Chapter 62, Article X, Division 5, some of the stuff that's sitting here on the table.

Bob Massarelli – The problem with that, that's the definition for that ordinance. You have to read the definition for the Comprehensive Plan, which is different.

Darcie McGee – It's right here. It's just riverine floodplain. It's not 100, 25 or mean. "The areas susceptible to being inundated by waters from the St. Johns River, freshwater lakes, and freshwater tributaries to the Indian River Lagoon system from a given storm event."

Bob Massarelli – So the given storm event, what we're doing in this Conservation Element, is saying that given storm is the 100-year storm, also 50, 25, 10 and annual.

Mary Sphar – I think that some of this clustering stuff is an interesting topic, and it's not easy to resolve. For example, Robin, please correct me if I'm wrong, but it appears that DCA is now asking for meaningful and predictable standards for the open space ordinance in their critique of some of the future land use policies, and that language has been dropped. I believe that our Comprehensive Plan has tried to encourage clustered development and, on the other hand, to promote the preservation of agriculture. So the Future Land Use Element is where the basic drivers for this is. The Planned Unit Development language is all in the Future Land Use Element, not the Conservation Element.

Thomas Payne – I would leave the clustering out of here.

Mary Spahr – The clustering belongs somewhere else. The only thing that has been historically, since 1988, at least, is the transfer of development rights. And that's the only thing that I think is appropriate. And the market is going to drive this clustering, and it's going to be driven out of the floodplain. At least, that's what's happening. I've recently reviewed maybe eight or nine future land use amendments for municipalities and the County, and they're all using this new urbanism, and it's all clustered, and the market is driving it. The Comprehensive Plan, the Future Land Use Element, Brevard County is trying to stay abreast of the times. I just think that there's a limited amount that we can do in the Conservation Element floodplain policies to encourage it. And this is a very conservative approach, very conservative language.

Drew Powshok – It looks like there's been two ideas, so far, for A.1. And one of them was to go with no more than two dwelling units per acre, or base it on density per the future land use and zoning designation. So I think we're kind of looking in between those two windows of what we want to do. It's either one or the other, unless somebody has a third idea of a number to put in there. But maybe we should discuss for the 100-year portion, A.1, are we going to look at density as assigned by future land use, or is it going to be the two dwelling units per acre?

Bob Massarelli – Irregardless, the future land use is going to designate the density. That's the controlling part. What this is, is giving guidance to the County Commission in setting policy by the County Commission, that in the 100-year floodplain, they're willing to accept two units an acre. The question is, is that an appropriate thing to have half-acre lots in the 100-year floodplain, when we know the damage and risks associated with that? If we're willing to accept the risk, and the public cost of that, fine. I personally am not.

Beth McMillen – And I understand that point. But I'm also not comfortable with taking off some kind of limitation above the land use map. When somebody comes and says they have residential in a floodplain, and they want four units an acre, I don't want them to get that either.

Lisa Frazier – So then what would you suggest, Bob?

Bob Massarelli – You're bringing up an interesting one. Say, you have a future land use designation that allows four units an acres. The other zoning would allow four units an acre. Does this now say that you cannot build at four units an acre, that you can only go with two units an acre?

Darcie McGee – Correct. It's a maximum density.

Bob Massarelli – So instead of a bonus, it's actually a restriction on existing future land use.

Darcie McGee – Yes.

Bob Massarelli – And that's even more reason why I definitely don't want to take it out.

Mike Moehle – Providing compensatory fill is a big restriction.

Darcie McGee – That's a different issue.

Lisa Frazier – That's what we've said from the very beginning, is it adds an extra layer of protection, guidance, within a sensitive area.

Bob Massarelli – What I would recommend is that for properties that, after the effective date of this ordinance, are already agricultural or conservation, no residential. For anything else, yes, you could go two units an acre.

If you already have agricultural, which is one unit per five acres, we shouldn't be giving a bonus of building in the floodplain to two units an acre. We should keep it at one unit per five acres. If it's conservation, it's one unit per 10 acres. Again, we shouldn't be giving bonuses to go to two units an acre. So lock it in to where it is today.

James Payne – Are there any lands in that category?

Bob Massarelli – When you take a look at a map, the tricky part is in the Cocoa area. That's really where you start getting some overlap. In the southern part of the County, it's really not issue, as far as I can see.

Mary Sphar – I think what you're proposing is illegal.

James Payne – I think you ought to leave 1 like it is, leave 2 like it is, with the "except for redevelopment", as will be defined through the land development code. On number 3, residential density, maybe transfer to approve, strike (unintelligible)... Just say "receiving districts above the 100-year flood elevation". Number 4 is almost the same as number 3. The only difference is it talks about single ownership.

Mary Sphar – One's on-site, and one's off-site.

James Payne – I think you ought to be able to transfer it on-site.

Mary Sphar – Right. That's in 4.

Lisa Frazier – That's already allowed, per the ordinance.

Mary Sphar – But we're clarifying it.

Drew Powshok – So 3 and 4 is just adding the ordinance into Policy 4.2.

Mary Sphar – Three is new.

Drew Powshok – And 4 is new, as well, right?

Mary Sphar – No.

James Payne – I would take it out. Anything you can do by ordinance, rather than Comp Plan, at this point in time...

Mary Sphar – Well, it's something good.

Bob Massarelli – All 3 does is authorize the Commission to do it. It doesn't create that right. So that's not an ordinance, as where E is more of an ordinance type thing, I think. It's just authorizing them to do that.

Lisa Frazier – But it comes down to the fact that if you don't (unintelligible) compensatory storage for the 25- to 100-year floodplain, what's your incentive for transferring the densities off? It's not clear, and it's not in the policy. So that's my point. If we want to incentivize people to do certain things, and make it marketable for them to do such things, then we should put it in the policy. And it doesn't have to spell it out, but it just needs to be put in there that you get a density bonus if you transfer your densities, or if you cluster and say 80 percent contiguous, connected open space. You have to incentivize.

Mary Sphar – Every one of these is an incentive. Every transfer is to a higher density.

Don Simms – Lisa, I go along with your incentive idea, but I think it should be the option of the landowner.

Lisa Frazier – It would be. So you'd say here's your density that you're allowed. Here's your square footage that you're allowed. However, in order to avoid compensatory storage, if you transfer it out off-site, or within the site above the floodplain, you'll get density bonuses. And wouldn't that be cheaper than having to do compensatory storage? And if you keep 80 percent in a contiguous, connected open space, we're going to allow you to have some added density.

James Payne – That's assuming you're going to compensate for this storage between the 100- and the 25-year.

Lisa Frazier – And it's really not clear. I agree with Mary. The policy clearly states it, but then you read the ordinance, and it's not very clear. We need to clarify it.

Mary Sphar – I think what you're missing is the piece of information in Future Land Use Element, Objective 10. So you might want to take a look at that.

Darcie McGee – I'll put that up on the website and email it to everybody.

Mary Sphar – You'll see that every one of these TDR's is you get something better for density in the transfer.

Cheryl Gitlin – We're at a point I need to ask if there's anything that you need, or that anybody's going to be researching or doing homework on for the next meeting.

Don Simms – I'd like to compliment Darcie and the staff. I think you've done a great job in a very short period of time to get all this information to us. And especially you guys that did homework. That was great. Thank you.

Cheryl Gitlin – Then I guess you need nothing for next week?

Darcie McGee – The only thing I'll say is that for the next meeting, you need to have a long talk with yourselves about what you really want to see in here. If you think this is complicated, wetlands is going to take more time. So just keep that in mind for our next meeting. Really think about what's most important, the function of the floodplain, allowing property rights, so we can knock it out quickly.

Billy Kempfer – What I'd like to see Mary do is take the re-write that staff did and then add her language to the re-write.

Darcie McGee – If you want, I can draft something up, taken from your discussion, and then you can discuss that. Is that acceptable to you? (The group was in favor of that suggestion)

Bob Shaw – One issue that hasn't really been addressed, but I think we need to keep in the back of our minds, is the community rating system that we have for flood insurance is very bad. Anything we can do to bring that up would really help. But I don't know how they do it. But we do need to consider that.

Darcie McGee – I have just been informed I can't draft policy for you. If there's somebody that wants to volunteer to do that.

Tom Schuller – Why can't you do that? They've done it in the past.

Billy Kempfer – For this committee, staff is not supposed to be involved, at all.

Darcie McGee – We're really supposed to take a passive role. So if anyone would like to volunteer to do that, then you can send it to me, and I'll forward it to everybody.

Mary Sphar – I would volunteer to take the language that was submitted to the Commission and substitute my 4.2.A through D, with the redevelopment, and put that in there. There are distinct advantages to that language, and the way it is worded is much clearer.

Darcie McGee – You'll combine it?

Mary Sphar – I will combine it. I'll give you a couple options.

The meeting was adjourned at 7:03 p.m.