

# **Brevard County Board of County Commissioners**

*2725 Judge Fran Jamieson Way  
Viera, FL 32940*



## **Minutes**

**Thursday, February 4, 2021**

**5:00 PM**

**Zoning**

**Commission Chambers**

## **A. CALL TO ORDER 5:00 PM**

**Present:** Commissioner District 1 Rita Pritchett, Commissioner District 2 Bryan Lober, Commissioner District 3 John Tobia, Commissioner District 4 Curt Smith, and Commissioner District 5 Kristine Zonka

### **Zoning Statement**

The Board of County Commissioners acts as a Quasi-Judicial body when it hears requests for rezoning and Conditional Use Permits. Applicants must provide competent substantial evidence establishing facts, or expert witness opinion testimony showing that the request meets the Zoning Code and Comprehensive Plan criteria. Opponents must also testify as to facts, or provide expert testimony; whether they like, or dislike, a request is not competent evidence. The Board must then decide whether the evidence demonstrates consistency and compatibility with the Comprehensive Plan and the existing rules in the Zoning Ordinance, property adjacent to the property to be rezoned, and the actual development of the surrounding area. The Board cannot consider speculation, non-expert opinion testimony, or poll the audience by asking those in favor or opposed to stand up or raise their hands. If a Commissioner has had communications regarding a rezoning or Conditional Use Permit request before the Board, the Commissioner must disclose the subject of the communication and the identity of the person, group, or entity, with whom the communication took place before the Board takes action on the request. Likewise, if a Commissioner has made a site visit, inspection, or investigation, the Commissioner must disclose that fact before the Board takes action on the request. Each applicant is allowed a total of 15 minutes to present their request unless the time is extended by a majority vote of the Board. The applicant may reserve any portion of the 15 minutes for rebuttal. Other speakers are allowed five minutes to speak. Speakers may not pass their time to someone else in order to give that person more time to speak.

## **B. PLEDGE OF ALLEGIANCE**

Commissioner Zonka led the assembly in the Pledge of Allegiance.

### **F.1. Brevard County v. Altman - Approval of Stipulated Final Judgment for Attorney's Fees and Costs at Trial for BRP Parcel 29 John M. Pinter and Jane E. Pinter, as Trustees of the John M. Pinter and Jane E. Pinter U/A/D 5/12/08**

The Board approved settling Defendant's attorney fees and costs at Brevard County v. Altman trial for \$23,053.91; and authorized the County Attorney and the County Manager, or designee, to sign or file any necessary documents for BRP Parcel 29 John M. Pinter and Jane E. Pinter, as Trustees of the John M. Pinter and Jane E. Pinter U/A/D/ 5/12/08.

**Result:** APPROVED

**Mover:** Bryan Lober

**Secunder:** John Tobia

**Ayes:** Pritchett, Lober, Tobia, Smith, Zonka

**H.5. Marker 24 Marina, LLC (Peter Black) Requests a CUP for Alcoholic Beverages (Full Liquor) for On-Premises Consumption in Conjunction with a Private Club, in a BU-2 Zoning Classification. (20Z00010) (Tax Account 3018251)**

Jeffrey Ball, Planning and Zoning Manager, stated he is an American Institute of Certified Planners (AICP) certified planner; and he read aloud Item H.5., Marker 24 Marina, LLC (Peter Black) requests a CUP for alcoholic beverages (full liquor) for on-premises consumption in conjunction with a private club, in a BU-2 zoning classification.

John Dismore of Cocoa Beach, stated he came before the Board, because the owner, Peter Black, is out of town and asked him to answer any questions the Board may have.

Commissioner Lober stated at the Planning and Zoning Board meeting, the only concern that was expressed, that he made note of, was the concern of there being exterior speakers and things turning into a raucous party; he noted from his recollection of the meeting, neither the applicant or the applicant's representative indicated that they had an objection to not having the speakers; he invited Mr. Dismore to speak before the Board if he misunderstood; and he moved to approve it on the condition on that no speakers or other devices designed primarily to produce audible sounds, such as instruments and things of that nature, producing more than 55 decibels, are allowed at the subject property line. He went on to say that he is not certain whether the Board should determine if there are no speakers whatsoever, but he thinks it was nice that the applicant offered no speakers on the exterior; if it is really the volume of a normal conversation at the property line he is fine with that too; and he motioned to approve on the condition that there be no speakers or other devices designed primarily to produce audible sound, producing more than 55 decibels at the subject property line.

Commissioner Smith seconded the motion; and he mentioned that was a good idea.

Chair Pritchett asked Mr. Dismore if the applicant was in agreement with that.

Mr. Dismore replied yes.

There being no further comments or objections, the Board approved a CUP for alcoholic beverages (full liquor) for on-premises consumption in conjunction with a private club, in a BU-2 zoning classification, with condition of there being no speakers or other devices designed primarily to produce audible sounds with more than 55 decibels at the subject property line.

**Result:** APPROVED

**Mover:** Bryan Lober

**Secunder:** Curt Smith

**Ayes:** Pritchett, Lober, Tobia, Smith, and Zonka

**H.6. Tammy McCoy Requests a Change of Zoning Classification from AU to EU-1. (20Z00035) (Tax Account 2103412)**

Jeffrey Ball read aloud Item H.6., Tammy McCoy requests a change in zoning classification from AU to EU-1 into the record.

There being no further comments or objections, the Board approved changing zoning classification from AU to EU-1 as recommended.

**Result:** APPROVED

**Mover:** Bryan Lober

**Second:** John Tobia

**Ayes:** Pritchett, Lober, Tobia, Smith, and Zonka

**H.7. Thomas R. and Rachel Darnell (Kendall Moore) Requests a Change of Zoning Classification from SEU to AU. (20Z00037) (Tax Account 2700779)**

Jeffrey Ball read aloud Item H.7., Thomas R. and Rachel Darnell (Kendall Moore) requests a change of zoning classification from SEU to AU. (20Z00037) (Tax Account 2700779) into the record; and he stated the applicant also submitted a Binding Development Plan (BDP) which limits that no agricultural or tourism uses or the processing of meat.

Commissioner Zonka stated she was satisfied that this request is compatible; she likes the idea of limiting agricultural and tourism; and she motioned to approved including the BDP.

There being no further comments or objections, the Board approved changing zoning classification from SEU to AU, with a Binding Development Plan limiting no agritourism uses and the processing of meat.

**Result:** APPROVED

**Mover:** Kristine Zonka

**Second:** Curt Smith

**Ayes:** Pritchett, Lober, Tobia, Smith, and Zonka

**H.8. Harold Kurz (Harry Perrette) Requests a Small Scale Comprehensive Plan Amendment to Change the Future Land Use Designation from CC to PI. (20PZ00107) (Tax Account 2316254)**

This request has been withdrawn by the applicant. Letter received 01/11/21.

**H.9. Harold Kurz (Harry Perrette) Requests a Change of Zoning Classification from BU-1 to PIP. (20Z00038) (Tax Account 2316254)**

This item has been withdrawn by the applicant. Letter received 01/11/21.

**H.10. 5971 Cedar Lake Drive Revocable Land Trust and U.S. Highway No. 1 Commercial Land Trust (Kim Rezanka) Requests a Change of Classification from RU-1-11, TR-2, and BU-1, with a BDP, to TR-1 with a BDP Limited to 200 units. (20Z00036) (Tax Accounts 2310971, 2310861, and 2316173)**

Chair Pritchett stated she would like to table this one if she could get a motion to table to the next zoning meeting on March 4, 2021.

There being no further comments or objections, the Board approved to table the item, H.10., 5871 Cedar lake Drive Revocable Land Trust and U.S. Highway No. 1 Commercial Land Trust (Kim Rezanka) request to change classification from RU-1-11, TR-2, and BU-1, with a BDP to TR-1 with a BDP limited to 200 units. (20Z00036) (Tax Accounts 2310971, 2310861, and 2316173) to the next zoning meeting, March 4, 2021.

**Result:** APPROVED

**Mover:** Bryan Lober

**Secunder:** Kristine Zonka

**Ayes:** Pritchett, Lober, Tobia, Smith, and Zonka

#### **H.1. Lazy River Investments (Laura Young) Requests a Change of Zoning Classification from RU-1-13 to AU(L). (20Z00030) (Tax Account 3008729)**

Commissioner Lober stated he had disclosures that are over and above the disclosures he had when this Item was previously before the Board; on November 20, 2020, Anne Briggs and Henry Beck sent an email expressing some concern about the proposal; on the November 21, 2020, Chelle Woods, Micco Home Owners' Association's (HOA) President, in favor of the Binding Development Plan (BDP); on November 27, 2020, Linda McLain of Micco sent an email expressing support for the proposal; on November 30, 2020, Linda Behret of Viera sent an email about environmental factors concerning it; on December 1, 2020, Julie Turner sent an email addressing a BDP or request for BDP; December 1, 2020, Leslie Maloney of Melbourne Beach, sent an email requesting or expressing support for a BDP; on December 1, 2020, Bill Debusk of West Melbourne, sent an email objecting to building on the Coastal High Hazard Area; on December 2, 2020, Mary Sphar of Cocoa, sent an email expressing support of BDP; and on December 2, 2020, David Botto of Marine Resources Council (MRC), sent an email expressing a need for a BDP.

Commissioner Zonka stated Commissioner Lober covered all of the Board's disclosures; she expressed she believed they were all copied on those emails; she informed the Board she had a meeting in her office regarding proposal for Lazy River with Laura Young; and she believes Ms. Young is a representative.

Jeffrey Ball, Planning and Zoning Manager, read aloud Item H.1., Lazy river Investments (Laura Young) requests a change of zoning classification from RU-1-13 to AU(L). (20Z00030) (Tax Account 3008729) into the record; and he informed the Board that staff has prepared an addendum to clarify the acreage and some additional information about the regulations that pertain to the Comprehensive Plan and the land of Micco.

Mary Sphar stated she is representing the Sierra Club; she informed the Board that it looked at this property several times in the past; currently there is a request for an AU(L) zoning, which would be a reasonable choice if, but only if, there was a guarantee that homes would be kept out of the Coastal High Hazard Area, which basically overlaps the AE Flood Zone; the only way to guarantee this is with a BDP; and right now there is no BDP. She requested the Board direct the applicant to submit a BDP stating no homes will be sited in the Coastal High Hazard Area;

she stated the BDP needs to be submitted before approving any zoning requests; her club realizes the applicants wants the zoning first but approving that throws away all leverage the County has to have homes sited outside the Coastal High Hazard Area; once the applicant has the zoning he can build homes in the Coastal High Hazard Area by the river and bring a large amount of fill to raise the house pads to 6.3 feet; and he might not get eight homes without a BDP, but he sure could get a number of homes in a very flood-prone location, a location that is very vulnerable during hurricanes. She asserted the subject property is the most vulnerable, or at least one of the most vulnerable, to storm surge with associated flooding between the area of Fleming Grant Road and the river; the Coastal High Hazard Area, which is the area of storm surge from a Category 1 hurricane is about five acres in size; this property has more serious constraints than almost all the properties in the area; to complicate matters, any clear cutting or fill that is added will allow more storm water run-off, carry pollutants to reach the Saint Sebastian River, and the Indian River Lagoon; and in order to raise house pads in the Coastal High Hazard Area, 6.3 feet North American Vertical Datum (NADV), a huge amount of fill would have to be brought in. She stated that putting several feet of fill on the roots of trees would kill them, losing their service of absorbing storm water and run off; the fact is there is no good way to develop, clear cut, fill in the Coastal High Hazard Area, and protect the Indian River Lagoon at the same time; Sierra Club's recommendation is for a BDP, guaranteeing that no homes are built in the Coastal High Hazard Area, which matches the request from Micco Homeowner's Association; and this is not some outrageous demand. She mentioned Palm Bay considers it to be so reasonable, they put their requirement in Coastal Management Element of their Comprehensive Plan; Palm Bay's Comprehensive Plan Policy, CCM-1.6C, states, "the city shall not permit any new septic tanks to locate within High Hazard Area of the Coastal Zone nor permit habitable structures in any High Hazard zone,"; the County is spending millions of tax dollars on Public Safety related to storms; it is investing nearly \$500 million in Lagoon clean-up over a 10-year period; Sierra Club urges the Board to make a responsible decision that is not counter-productive to the County's huge investments; she request that the Board require the applicant to provide an adequate BDP to protect the health of the precious Indian River Lagoon; and to defer the decision on the zoning until the Board sees such a BDP.

David Monty Montgomery stated he resides in District 3; he wanted to discuss the Micco property; it has been up for discussion before; he objects to the approval of the zoning change without some sort of BDP; and he has a lot of material on this, because he has been following the request and the Planning and Zoning meetings concerning it. He displayed a survey by William Suitor and stated it is known that there is an ability to build two homes on this property, but now there is a request to build eight homes on this property; the property is unique, because it is at the bottom of Brevard, which is called the Atlantic Ridge; a bar of sand from previous ice ages has come through which is revealed in his picture; and it is very sandy soil. He informed the Board, even with an improved septic system, there will be pollution from three to four septic tanks despite the advanced technology; he wants a BDP that prevents structures being built in the Coastal High Hazard Area; he displayed a map that shows the area flooded by a 4-foot storm surge and another map showing a third of the property covered in water in a 9-foot storm surge; and he noted that is what could have happened if Hurricane Dorian would have hit the area in 2019. He went on to say there was a lot of discussion last time about this request; he recalled Commissioner Pritchett discussing a filter in the Coastal High Hazard Area; he stated Commissioner Smith, at the time, provided a topographic map of the area; the lower portion is about four feet above sea level; and when one thinks about that, all it takes is a storm surge to wash that area out, which is basically the lower third of that property. He noted that the County's regulations address building in the Coastal High Hazard Area; a filter is not going to solve the problem; a pollutant will get washed away during severe weather events; there are also issues with how water will be retained on the property, and other things that could be addressed in an BDP; he assumed there would be a BDP before the request came to the Commissioners, and he was surprised there was not something brought forward; he thought there would be a BDP to explain how eight homes could be put on the property, which

is up from two homes; and until something is provided that will explain that, he suggests that the request not be approved.

Terry LaPlante of Melbourne read aloud a letter that was written by Chelle Woods, the President of the Master Homeowner's Association of Micco; she read aloud, "Micco's Homeowner's Association is in favor of the proposed AU(L) zoning change to 1:2.6 with a maximum of eight homes on this 20 acre property. We do, however, have the same strong issues we had in 2019, due to the fact there is no current BDP for this development located directly on the Saint Sebastian River, which flows directly into the Indian River Lagoon. Our focus is the continued need to protect the health of the Indian River Lagoon by limiting contaminants flowing into the Saint Sebastian River. Therefore, we request you consider, 1) No homes within the Coastal High Hazard Area. Development within this 5-acre area is a direct threat to the river and the Indian River Lagoon, due to homeowner contaminants, pesticides, drain fields, septic leaks, and excess storm water runoff flowing directly into the river. Comments in 2019 from the Department of Economic Opportunity (DEO) and East Central Florida Regional Planning Council (ECFRPC) also support this need. 2) Please require all eight homes to be located outside the Coastal High Hazard Area. The stormwater needs to be captured outside the Coastal High Hazard, which is also an AA flood zone. The new BDP needs to designate where and how storm water will be captured within this development. 3) Advanced septic must be required for all new homes near the Coastal High Hazard Area, which is also an AA flood zone. Drain fields need to be kept out of this area. In 2019, the St. John's Water Management District Department of Environmental Protection (DEP), DEO recognized the importance of removing 65 percent nitrogen with advanced septic on this property. 4) No filter within the AA flood zone. Federal Emergency Management Agency's (FEMA) base flood elevation is 5.3 NAVD for this flood zone. This means a lot of fill dirt is required to elevate or flood proof each home within this area. What happens to the floodwaters? How does the existing specimen trees survive the fill dirt? And to preserve the health of the Indian River Lagoon, please require a current BDP for this development with a maximum of eight homes located outside the Coastal High Hazard Area. Sincerely, Shelley Woods."

Lorraine deMontigny of Micco stated that in the year 1999 or 2000 she came before the Board for a rezoning of her own property, which is about a mile away from the subject property; at that time it was a 52-acre parcel; there was not nearly as much paperwork involved in her process as there is now; and she stated this is a robust packet. She went on to say she was there to support the applicants' request; she advised that it is important to protect the environment; she knows one of the applicants resides very close to this property; and she is sure the applicant has the same concerns in protecting the environment. She continued to say that all these items are going to be addressed by the restrictions already in place for the development in her area; by looking at all the hoops the applicants had to go through and the paperwork that is involved in the packet, she can see there are lot of agencies already involved with this process; she asserted the applicants should be able to move ahead; there are plenty of agencies willing to work with them and accomplish the goals and objectives that everybody wants to meet in protecting the Lagoon; and she thinks that all Florida residents assume an inherent risk along with adverse weather events. She asserted that all residents are potentially subject to flooding; that is just part of living in Florida; it could really happen anywhere in the United States; the constitutional protection of residents' God given rights are being a little trampled on; and that should be kept in mind. She noted that one person should not be punished for the mistakes or the crimes of another person; no one can predict what is going to happen in the future; it is going to be a great project; she looks forward to seeing it happen; if it needs to have a BDP, then that is something she thinks can be worked out; and she said it should be supported and hopes the Board votes that way.

Anna Long, an attorney with the Dean Mead Law Firm, stated she represents the property owners, Lazy River Investments; she respectfully requests that the Board accept the

recommendations transmitted by the Planning and Zoning Board to approve the AU(L) zoning for the designation of the property; in preparation for this hearing, her team reviewed County staff's comments, supporting documentation, the recommendation to approve the requested rezoning from the Planning and Zoning Board, and the addendum to staff's comments, which was received yesterday at 8:50 a.m.; her clients have been working with the rezoning process; and they have had ongoing and regular communication with County staff since August of 2019. She went on to say, while the addendum to County staff's comments states there is no need to rezone the property, in order for her clients to develop it or sell it for future development, her clients respectfully disagree; the staff's addendum provides that, because the property's current RU-1-13 zoning became incompatible with the underlying land use when the County adopted its Comprehensive Plan in 1988, the County allows for the property, in this case, to be treated as two non-conforming lots; therefore, per the addendum, compatible zoning is not necessary, because the owners can simply accept a diminished use for the property and construct up to one home on each of these lots; and the reality is that treating the 20 plus acres as two non-conforming lots to provide for the future development of one residential unit, on each of the lots, does not meet the investment backed expectations of the owner. She asserted it does not make any sense, based on the addendum; the County could take the same position regarding a 30-acre lot or a 50-acre lot; there is no limit; the addendum provides that the County expects the property owner, regardless of the size of the residential property, to settle for utilizing their property as one non-conforming lot, allowing for one house to be built, when the non-conforming use result, is not because of something the individual property owner did, but rather strictly as the result of the County's action; and this is not an example of down-zoning, but of a taking. She continued to say that the property owners are not asking for special treatment; they have been moving forward and have been working with County staff for over 17 months to obtain compatible zoning for their property; compatible zoning, per State Law, should have been addressed by the County within a year of adopting its Comprehensive Plan in 1988; and the owners are ready to do what they are required to do. She informed the Board that the property owners have submitted the rezoning application; the application was reviewed by staff; it was deemed complete and transmitted to the Planning and Zoning Board; the Planning and Zoning Board, after reviewing the application as submitted, along with staff's comments, recommended approval for the rezoning; and, per the County Code, nothing additional is required. She reiterated that nothing additional should be expected; she noted future development or future permitting issues are future issues; the only thing the owners are requesting at this time is an AU(L) zoning; even the neighbors, many of whom opposed the previous owners' efforts to pursue development approvals at a significantly higher intensity, recognized that the current owners should not be punished during this process, but rather fairness should be applied; and the current owners are requesting a compatible zoning designation. She stated that the same neighbors support the AU(L) zoning designation; she reviewed all the of the written public comments submitted to the County last November and December; they were the ones Commissioner Lober read into the record; and there were nine letters or emails. She informed the Board that of the nine, one writer did not provide an address; five of them were written by residents who live a minimum of 17.2 miles away; one lived as far as 47.3 miles away; and of the remaining letters, one person lived about a mile away, another .1 mile away, and the other lived across the street. She asserted she has already quoted from the email sent by the closest neighbor in support of the rezoning, who spoke this evening; amending the Comprehensive Plan is not the goal of the current owners; and their goal is to have compatible zoning. She informed the Board that the writers of the other two submittals, one who is also represented by someone here this evening, voiced opposition to the future development of any kind in the Coastal High Hazard Area (CHHA) area; this would include the development of the two non-conforming lots of single homes, which County staff advised in the addendum would be permissible without rezoning; and so those two people will never be satisfied, because their stance is that nothing should be developed in the CHHA. She further stated that the two writers also noted concerns about potential nitrogen loading, uncontrolled storm water runoff, and the placement of any fill material; one of the



writers and speakers this evening referenced previous comments submitted to the County from several agencies, in regards to this property, including the Water Management District, Department of Environmental Protection (DEP), and Department of Economic Opportunity (DEO); all of those agency comments had to do with the previous owners' request of a Comprehensive Plan Amendment, the issue that was before the Board in May 2019; and none of those comments have anything to do with the requested rezoning this evening. She noted that there have been no negative, positive, or indifferent comments asked or received from any of the other environmental agencies; she has requested copies of the information that the County staff received, and there has been no additional public comments since December; while the agencies may have comments during the actual permitting process, the development process, and the approval process, those comments would be premature right now, because there is nothing to give them or to comment on; and there is nothing to give the Board or for the Board to comment on. She asserted it is simply a straight request for a rezoning; it does not mean, however, the comments by some of the people this evening do not warrant the Board's concern and attention; they do, but they are just not timely; and she mentioned that Commissioner Tobia asked the applicants to look into the Slosh Model. She noted that she had not heard of the Slosh Model; she did her due diligence and spoke directly to the National Hurricane Center; she was informed the Slosh Model is updated every three to six years; it was just updated in January 2020; and the County's code requires that future development in the CHHA comply with the County's code, as well as any implications set forth in the Slosh Model. She went on to say that regardless of whether it is rezoned, not rezoned, not conforming lot, AU(L), or RU-1-13, anything placed in the County's CHHA is covered by the County; on top of what the County has covered, the DEP gets to weigh in; on top of the DEP, the Water Management District gets to weigh in, on top of the Water Management District, because of the location along the Coastal Way, the Army Corp of Engineers also gets to weigh in; and they do not weigh in now, because weighing in is premature. She also informed the Board that Storm Water Management has a permitting process, not only through the County, as it is set forth in the County code, but also if it is a single lot; the Florida Department of Environmental Protection (FDEP) regulates it if it is a single lot; if it is multiple lots being developed at the same time, the Water Management District regulates it; they require no net flow; and that means that the engineer must supply pre- and post- construction calculations to the Water Management District. She advised that anything above what is currently coming off the vacant property today must be captured on-site, treated on-site, and retained on-site, which is accomplished by the use of retention and detention ponds, swales, and other engineering controls; with respect to the septic system, in addition to the County's code that regulates septic systems, the Water Management District regulates the same, as does the DEP; and in areas of high environmental concern, such as waterways and coastal areas, setbacks are taken into consideration that are longer and larger than what would be considered elsewhere. She stated the owners have said before, and she will state it for the record, their intent is to place advanced treatment systems anywhere it is applicable and makes the most sense, including those areas not in the Coastal High Hazard Area; fill dirt is the same issue; one cannot place fill dirt without a permit; it cannot be placed without a County permit, without a Water Management District Permit, or in critical areas, without the Army Corps approval; and all require permits. She asserted that each and every agency has the opportunity for the public to interject themselves to offer comments, concerns, spoken presentations, written presentations, and communications along each and every step; everyone that is present this evening, and those that could not make it, can request from each of those agencies that they be copied directly on any communication or any permits that may be issued for future developments of this property; and that goes for any property. She informed the Board, a BDP, per the County's Code, is something that an applicant may voluntarily submit when requesting a rezoning for a property; a BDP is not something that the applicant must request; she reiterated that rezoning is being required by the County and not truly requested by the applicant; and the owner acquiesced, because without it, as noted above, the property value is nearly worthless and certainly falling short of the investment backed expectations. She

continued to say the current property owners are seeking the request for rezoning, but they may not be the ones to develop the property; that is part of the problem; they may want to sell it as a vacant lot; and it is very difficult to do right now, because when somebody does their due diligence they recognize that the zoning does not match the underlying land use provisions. She mentioned the new owners would be best suited to explore development options and constraints, not the current owners, unless they become the developers; it is during that process that the developers and the regulators work to discuss specific items and conditions of approval; and often times it is a result of a compromise, coming from a clear understanding of what the developers are looking to build and what the regulations can provide as approval and what may not be allowed. She noted the requested AU(L) zoning will allow for eight homes; this is a decrease of 97 percent of the development density permitted under the current non-compatible zoning district; if forced to settle for the non-conforming option provided in the addendum, then it is a decrease of 99.5 percent; another way to state it is, the County would like to force the owner to settle for five percent of the current development rights; and eight homes being developed, if the Board approves, down to two, would be 75 percent removal of their development rights. She added that the owners have spent thousands of dollars to fix a problem they did not create; they have listened to County staff, they have listened to the property owners around them, and they submitted everything necessary to support the AU(L) zoning; they completed everything required of them, and the zoning is compatible; and she respectfully requests that the Board confirm the recommendation of the Planning and Zoning Board and approve the AU zoning. She said anything less than that would result in a taking, punishing the current owners for a situation that resulted through no fault of their own; it is her understanding that the owners have complied with all the applicable County codes; they provided the County with all the information and documentation necessary to meet the requirements to allow for the AU(L) zoning; her position is substantiated by the fact that staff's comments in Planning and Zoning (P and Z) have asked for nothing more; the unanimous decision by P and Z recommends approval; and therefore, should the Board deny the request to rezone to the property to AU(L), for the record, she respectfully requests that the reasons for that denial be clearly stated so the owners have a clear understanding as to what they were required to do that they did not.

Commissioner Lober stated he would like to make a motion to give the applicant an extra three minutes to speak if she would like to do so.

Commissioner Tobia stated that on November 25, he spoke with Ms. Laura Young, who at the time and may still be, the attorney for the applicant; he informed them he did not think it would be appropriate to approve the request absent of a BDP agreement that would restrict elevations changes in the Coastal High Hazard zone; he discussed four primary concerns; and he advised that Ms. Young referenced that conversation he had with her. He noted that he met with staff about this project; he was informed that if the Board approves the application as proposed, absent the BDP, development could occur in the Coastal High Hazard zone and within the boundaries of an AE flood zone; and he mentioned to Chair Pritchett that he had a few questions to ask Mr. Denninghoff, and seeing that this is a quasi-judicial process, he would like to qualify him.

Chair Pritchett approved.

Commissioner Tobia inquired of Mr. Denninghoff what institution of higher learning did he attend that is currently ranked 28 spots above that of Florida State University.

Mr. John Denninghoff, Assistant County Manager, stated he graduated from the University of Florida, College of Engineering.

Commissioner Tobia inquired of Mr. Denninghoff how long and what capacity has he worked

for the County.

Mr. Denninghoff stated he worked for the County for an excess of 24 years; he started as a Director of Construction Management, became the Director of Transportation and Engineering, then the Director of the Public Works Department, and now he is an Assistant County Manager.

Commissioner Tobia asked Mr. Denninghoff who is his sensei.

Mr. Denninghoff laughed and said he would suppose it was Wally Cornell, a professional engineer; and he was the man who mentored him.

Commissioner Tobia inquired from Mr. Denninghoff if changes in elevation within Coastal High Hazard Zone have a direct and adverse impact on the neighboring properties during a storm surge.

Mr. Denninghoff replied yes, they can, particularly as a result of the placement of fill.

Commissioner Tobia stated the Coastal High Hazard Zone considers storm surges from just a Category 1 storm, which winds are only in between 74-95 mph, and he asked if Mr. Denninghoff would consider this an unreasonable standard.

Mr. Denninghoff replied no.

Commissioner Tobia inquired of Ms. Long what is her clients' response to concerns of fill displacing water during storms and adversely impacting the neighbors.

Ms. Long replied that the clients' engineer would be working with the County, as well as the Water Management District and/or DEP, to ensure that any fill, if fill were to be brought on the site, would be appropriately handled; she stated, to be clear, her clients have no plans at this time to develop this property, they cannot; and they cannot look at the entire parcel with development in mind either, in the CHHA or outside of it, without having a clear understanding about what the maximum density would be. She continued to say the AU(L) designation allows for up to eight homes; it does not mean that is going to be possible; it simply means that is the maximum the County is going to allow with compatible zoning; then it is up to her clients to bring to County staff, the professionals, as well as State and Federal agencies, what they would like to do, whether it is her clients or future owners, and then for all those agencies to say a person checked a box and it is good to go or that it needs some work; and she reiterated that she cannot answer the question in the manner Commissioner Tobia might want her to, because it is premature.

Commissioner Tobia stated if Ms. Long said she had not given any impact it would have been sufficient; he went on to say that objective seven of the Coastal Management Element of the County's Comprehensive Plan specifically states the County should, and he quotes, "limit densities within the Coastal High Hazard Zone and direct development outside of this area,"; and he inquired what Ms. Long would have to say about the Comprehensive Plan clearly and specifically directing the Board to make sure this type of development does not happen in that area.

Ms. Long replied that the Comprehensive Plan requires that zoning be compatible with the underlying land use; AU(L) zoning is compatible with the underlying land use; and the other provisions of the Comprehensive Plan are dealt with as the development process moves along, and is applied accordingly.

Commissioner Tobia read the quote again, "limit densities in the Coastal High Hazard Zone,"; and he asserted if the Board grants the request, it would not be following the Coastal High Hazard Zone, because the client or whoever they decide to sell it to, could directly develop inside this area, and it would not come back to the Board.

Ms. Long stated they could easily develop outside of it; she asserted the Board is giving it a compatible zoning to allow up to eight units; whether or not those units are located in or outside the Coastal High Hazard Area, is not the point of the discussion; and if the Board does nothing, two homes get to be built there, and it is a taking.

Commissioner Tobia stated the Slosh Model was mentioned by Ms. Long; he mentioned he had a conversation on the phone with Ms. Young about it; while these are traditionally done on larger scales, they can be done on smaller scales; and he inquired if Ms. Long did a Slosh Study.

Ms. Long replied she did not; she informed Commissioner Tobia that when she asked the National Hurricane Center how many Slosh Models are performed by the private sector or private individuals, she was transferred several times, because the Center did not understand why she was asking; she would be more than happy after the rezoning to discuss how that might occur; and as it was explained to her by the people that currently produce the model, it is a model done by the National Hurricane Center in cooperation with FEMA, National Oceanic and Atmospheric Administration (NOAA), and the Army Corp of Engineers.

Commissioner Tobia inquired from Mr. Denninghoff in his opinion, would the health of the Indian River Lagoon be adversely impacted if homes are built in the Coastal High Hazard Zone.

Mr. Denninghoff stated that given the discussion concerns of new development, while the development standards are, in some cases, high they do not reach the level necessary to preclude a negative impact to the Lagoon; and the answer is it would be an impact to the Lagoon.

Commissioner Tobia inquired if Ms. Long would agree if it would be legally appropriate for the Board to consider adverse impacts on the Indian River Lagoon when making decisions such as this.

Ms. Long stated she believes it would be appropriate for the Board to determine whether or not the request meets the current criteria of the County Code; if she heard the Assistant Manager say the current County Code is inadequate to allow new development, then that is an entirely different issue; and the Board would be punishing this applicant for something the County should be addressing on a consistent basis.

Commissioner Tobia stated that the Board has heard a couple things from the applicants' attorney; he said he heard the phrase, "no fault of their own," which is questionable when the property was purchased under the current zoning; if due diligence was done it should have been apparent; he mentioned the applicants' attorney also said, "nothing is required or expected"; that makes it really simple for the Board, in his opinion; his favorite portion was, "taking"; and although he is not an attorney he can look up legal definitions, and according to Black's Law Dictionary, "is a constitutional provision of man's property (probably should be person's nowadays) should not be taken for public use without compensation. He noted that he does not think Brevard County is taking any of this property to the best of his knowledge; it is certainly not what he read in the packet; he had a conversation on November 25; he expressed the concerns about potentially building in the Coastal High Hazard Zone; and he discussed ways in which it could be mitigated with a BDP. He informed the Board that the applicant called late yesterday; he did not have the opportunity to return the call, but even if a

BDP was received at that time, it would not have given him, staff, or the Board ample time, given the applicants had 60 days to come up with something that was very simple, which was building within the Coastal High Hazard Zone; he really was excited about the project; he thought there were many opportunities; and certainly right now it appears there is a blatant disregard of actions of the Board and a disregard for neighbors. He asserted that right now he does not see how he could vote in favor of this; he advised he is actually on the fence right now of whether or not it should be denied or tabled again; if it is tabled again, it would give the applicant 30 or 60 days to come back before the Board; if the request is denied, the applicant, as to his understanding, could come back before the Board, but there would be a six-month moratorium on it; given the fact there was no communication with his office up until yesterday he is probably leaning toward the former than the latter; and he would like to hear from the rest of the Board.

Commissioner Lober said that whatever Commissioner Tobia's motion is, which he has a pretty clear idea of which way it is going to go, he will second it; that said, he asked that Commissioner Tobia to consider in his motion if Eden Bentley, County Attorney, would produce findings consistent with the conversation of discussion the Board has had; and he also suggests that Commissioner Tobia include that direction to her in whatever motion he may make.

Commissioner Smith stated he tends to agree with Commissioner Tobia; he and him were simpatico last time the Board heard this; he has not heard anything that has changed his mind; he is very concerned, being a water guy himself and an environmentalist to some degree; and he does not want to see anything built in that High Hazard Zone either. He suggested if something can be done that is legally available to the Board to prevent that while at the same time giving the owner an opportunity to build the number of houses that can be adequately provided on the rest of that property, he thinks that is the way the Board should go; and he will be supporting Commissioner Tobia as well.

Commissioner Pritchett asked Ms. Long if a tabling would be a good suit for her at this point instead of a denial; and she questioned if that would be a good path to help her.

Ms. Long replied she needs to understand why it is being denied; she really needs to understand that before she can answer Commissioner Pritchett's question; she questioned if the Board is denying it, because there is not a BDP submitted; and she corrected herself and asked if the Board is offering to table it so that a BDP could be prepared and submitted, because without a BDP, the Board's motion will be to deny, because it was not presented.

Chair Pritchett stated that unless Ms. Long can address the concern about the Coastal High Hazard Area that is in line with Comprehensive Plan Agreement, she thinks a BDP would do that; she advised she did not think it would be that hard for the applicants to come back with; and she asked Commissioner Tobia if she was correct in saying that.

Commissioner Tobia stated he did not want to give a straight answer, because quite frankly, he has not received any at this point; in all honesty, he does not think he received one; he retracted his statement and mentioned Mr. Denninghoff had certainly...; the concerns he had justified were the impact on neighbors, the issues with the Comprehensive Plan, potential alternative paths, and the health of the Indian River Lagoon; he also mentioned Commissioner Lober's suggestion of producing Findings; past what was said at this discussion, he does not know if that puts the Board in a position; and in all honesty, he is surprised Ms. Long does not have a court reporter here.

Ms. Long stated her clients do have a court reporter there.

Commissioner Tobia stated she clearly decided to strike first, strike hard, no mercy; and he made a motion to deny and asked staff to produce Findings.

Commissioner Lober seconded.

Chair Pritchett inquired from Attorney Bentley if that was sufficient.

Eden Bentley, County Attorney, replied yes and she will bring it back to the Board for confirmation.

Commissioner Lober stated his issue was not with respect to the BDP; he advised that a BDP would cover some of the concerns that were raised; from his perspective, as one out of five, a BDP is not necessarily the only issue; with or without a BDP, there are other ways to make this go forward; but the concerns were simply not addressed to his satisfaction.

There being no further comments or objections, the Board denied the request by Lazy River Investments (Laura Young) to change zoning classification from RU-1-13 to AU(L) and requested County staff to produce Findings of Facts and provide them to the Board for confirmation.

**Result:** DENIED

**Mover:** John Tobia

**Seconded:** Bryan Lober

**Nay:** Pritchett, Lober, Tobia, Smith, and Zonka

**H.2. Brevard Tower Communications, Inc., Requests Adoption of the 2020-2.1 Large Scale Plan Amendment to Change the Future Land Use Designation from RES 2 and NC to CC. (20PZ00072)**

There being no further comments or objections, the Board adopted Ordinance No. 21-02, approving the 2021-2.1 Large Scale Comprehensive Plan Amendment changing the Future Land Use from RES 2 and NC to CC as recommended.

**Result:** ADOPTED

**Mover:** Kristine Zonka

**Seconded:** Curt Smith

**Ayes:** Pritchett, Lober, Tobia, Smith, and Zonka

**H.3. Brevard Tower Communications, Inc. (Bruce Moia) Requests a Change of Zoning Classification from GU to BU-2. (20Z00015) (Tax Accounts 2802674 and 2802676)**

Commissioner Lober stated he had a disclosure for this item; on January 19, 2021, he had a discussion with West Melbourne's City Council Member, Stephen Frampas; he had another discussion with him today about this; and after the January 19, 2021 discussion, Commissioner Lober informed the Board he drove by the site to look at it.

Commissioner Zonka stated she received multiple emails to her office for items H.2. and H.3.; her staff did their best to keep track, but she advised she may have been the only one copied on many of these, because they were both addressed to herself and Jennifer Jones; her office received 12 total, initially in opposition, who are Marilyn and Deon Harckey, Elbert Schaefer, Daniella Faris, Crystal Reeves, Kelley Ferrian, Yasmyn sent two, Elizabeth Schneider, Kelly and Ryan Maynard, Stephen and Christina Brightwell, and new one from Beth Schrader today; Commissioner Zonka stated she also had a meeting with Mr. Phrampas on January 27, 2021 after a text message requesting that meeting; and she also met with Bruce Moia, who is an engineer on the project, on December 1, 2020, to talk about the project.

Jeffrey Ball, Planning and Zoning Manager, stated he would read aloud Items H2 and H3 together into the record since they are companion applications; and he informed the Board that staff has provided the Board with an addendum to the draft Binding Development Plan (BDP) that was provided by the applicant with some clarifications on that.

Bruce Moia, president of MBV Engineering, stated he is representing the applicant on this project; he asked for a rezoning and a Land Use Amendment for a piece of property that has a lot of history on it; he went before the Board a little while ago and received permission to forward it to the State for input on the Land Use change; the State made their comments, and there were no comments to prohibit them from moving forward; and he is before the Board to get a second reading and get approval for the Land Use amendment and the rezoning classification. He went on to say the property was existing as an illegal construction debris landfill; it had been occurring for the duration of approximately 30 years; it created quite a mountain in that area; the applicant wants to do a boat and recreational vehicle (RV) storage facility, which he feels is the best and least intensive use for the property, based on the location and surrounding area; and he thinks it is ideal. He informed the Board that there is a BDP; there has been discussion on some issues during meetings with neighbors; he is proposing to provide a 50-foot buffer where the property butts up to residential property and to maintain the existing vegetative buffer; and he provided the Board with a document of images. He went on to say that he feels the first condition in the BDP is important, because the land to the west abuts to a very large, existing small-lot subdivision, called Sawgrass Lakes; there is a very dense, tall vegetative buffer; the applicant will maintain 50 feet of it; and it is very thick. He added that the second page of images shows the land as being very high; he stated he included reference elevations on the document; the elevation on the property line is about 25, the grade at top of the hill where the building is elevation 51, the top of the building is elevation 80, and that is approximately 55 feet from the grade of the property line to the top of the building; the top of the building cannot be seen if one looks at the picture looking from the subdivision towards the east; that is why the applicant wants to maintain that; and it is very critical. He informed the Board that his client is going to limit the number of spaces, define the access, limit it to a boat/RV storage and ancillary services; since there is no sewer available now, even though there is sewer in the area, the applicant is committed to not have a dump station there unless he can obtain sewer; and he is going to limit the height of any lighting. He further stated his client will obtain a traffic study to make certain there will be no adverse affects on the roadway; he will also restrict the storage facility to no overnight stays in the park and comply with applicable Department of Environmental Protection (DEP) requirements for building on a landfill; he thinks that covers most, if not all, of the bases; he will reserve the rest of his time to let the public speak; and he will come back to reply to those comments.

Commissioner Lober inquired if Mr. Moia was familiar with the recommendations from the engineering firm with respect to an aluminum canopy being installed.

Mr. Moia replied no, not really; he is aware that his client proposed covered parking; there would be a canopy for that; his client is looking at that right now; there is a structural engineer involved; and another geotechnical firm will be brought in to do additional studies to ensure

there will be no adverse affects on any type of structure that would be built on the property.

Commissioner Lober inquired if that was something his client, to the best of his understanding, intends to do.

Mr. Moia answered affirmatively.

Commissioner Lober inquired if the Mr. Moia could explain the specific extent of the canopy that is intended to go up at this point, in terms of what it is going to cover, and more importantly, what it is not going to cover.

Mr. Moia explained that it would cover a number of spaces; whatever vehicles there are, there would be the option of covered and uncovered storage; covered spaces will be a premium, but not everybody wants covered storage; the applicant would look at how many people want covered or uncovered and build the structure accordingly; those structures would be fairly low, especially compared to that existing structure that is currently on the property that is over 30 feet tall; and these will be approximately 17 feet high.

Commissioner Lober questioned Mr. Moia if, based on the elevations, he could assume the canopies cannot be seen from the subdivision adjacent to it, based on the height of the trees versus the height of the canopy he is referencing.

Mr. Moia replied Commissioner Lober is correct.

Christel Reaves, of West Melbourne, stated she is a resident of Sawgrass Lakes subdivision; her property overlooks the site; she came before the Board as a concerned mother; she has a ten-year-old and a three-year-old; her husband's family has lived here for numerous generations; and her father-in-law is a pastor at a local church. She added that he has shared with her, personally, stories of people dumping chemicals on that property, because it was an illegal dump site; her concern is what type of Pandora's box would be opened if the property is disturbed; how will her and her neighbors' children's lives be affected; and what will happen to the property value as a result of it. She mentioned her husband went to the community meeting with Mr. Moia, and Mr. Moia said that the property would not be disturbed; it would be built upon the ground where it is at; if one looks at the KSM engineering report, which she attached in her emails that she sent it to Commissioner Zonka and Ms. Jones, it reveals that the State's recommendation is to excavate it, because it cannot hold the structure that they want the way that it is standing right now; and that also means they are opening Pandora's box. She suggested that if a Commissioner is a parent, he or she should think about what types of chemicals and materials will be exposed; it would not affect the community's health right away; it is something that would happen long down the road from now; she inquired who would even be around to tell what happened; she asked who would take care of those expenses; and she requested the Board to deny the rezoning classification, because this property needs to stay undisturbed, because it is a Pandora's box. She added that she is concerned about the honesty of the company; the company looked her husband straight in the face and stated the company did not plan to excavate; the site recommendation says that they do; can the company be trusted; her opinion is no, and it is her children's lives that she is concerned about. She went on to say that there are other neighbors that are concerned about lighting and aesthetics; she mentioned that she did not really care about that; she cares about the lives of the children in that community; and she hopes that the Board consider this a real concernth by deciding to vote no on the rezoning classification.

Steve Dutra, of West Melbourne, stated he is a resident of Sawgrass Lakes subdivision; he has six concerns; when he purchased the property he liked, the subdivision was somewhat secluded; now there is a discussion on a potential development that may have an



environmental impact; he mentioned he agreed with the previous speaker about disturbing the ground and what could lie underneath; he is also concerned about the leaked chemicals from the parked vehicles; and there are a lot of lakes and retention ponds there. He went on to say that the environment is a huge concern; traffic is another concern; he mentioned he was relieved to hear there would be a traffic study; however, like everything statistical, until one experiences it on a day to day basis, one does not have an appreciation; and it will only be a sampling with some sort of analysis. He further explained that he lived there two and a half years and has seen a vehicle flipped over at the entrance; there is a 35 miles per hour (MPH) speed limit, but people usually do 45 or more; and the thought of having a constrained space, which he mentioned Commissioner Lober stated he visited, that is elevated with limited visibility, with large vehicles coming in or out, and a 900 unit neighborhood with one way in or out, if something happens at that road and people cannot get out, then there will be bigger concerns. He noted that there is a school at the end of the road, which is supposed to get up to eighth grade; there will be a greater number of students and an increase in traffic on school days; he reiterated there is the environmental concern, the traffic concern, and the potential for an increase in crime; now there will be interesting things there; and people who were not aware of the neighborhood might come there because of the RV and boating parking and suddenly realize there are even more interesting things. He stated the property values are a concern; the neighbors bought there thinking it was residential and it was not going to change; this is a concern for the County, as well, if the value of the properties go down and the taxes change; if this gets rezoned to something other than residential, and if the project does not go through, for whatever reason, now there is a residential zoned area that could be potentially used for something else; these are his concerns, they are summary of concerns from other residents when they met; and he requests that the Board consider to deny the request to rezone.

Don Curry stated he is a resident of Sawgrass Lakes subdivision; he understands that County staff has already given a recommendation on this; he pointed out that Mr. Moia is an active member of the Planning and Zoning Board and did not seat himself at the Planning and Zoning Board meeting that Mr. Curry attended; and it was not disclosed that Mr. Moia was a member of that Board nor did the chairman disclose it. He went on to say that it was eventually disclosed when he asked the question; he mentioned that unless he is mistaken, the Vice Chair, Mr. Filiberto, and Mr. Moia's children are married; and that was not disclosed at the meeting either. He expressed that Mr. Moia would do his best to represent his client, whether he is representing the County or the developer; he noted that tonight Mr. Moia is representing the developer; he wanted to bring attention to the fact that Mr. Moia created a perceived conflict of interest when he did not disclose his relationship with the Board; he does not like that to exist within the County; and he believes the Commission should work to establish rules where such disclosures are made at the beginning of the meeting or prior to someone speaking to the public, if that does not already exist. He informed the Board that the developer chose not to purchase the property that would have given him required access under the current plans; instead the developer purchased property whose only access, without the purchase of additional property, would be onto Norfolk Parkway; his question for Mr. Moia is what are the developer's plans for large rigs; in the proposed plans, the developer has sites that would accommodate a 50-foot RV or a 50-foot boat; and he can assume that it would be pulled by some sort of vehicle. He said that when the vehicles exit the property, they would have to turn left; when going into the property, they would turn right; he explained that he has missed his turn before when towing his boat; he had to turn around and come back; there is no turn around if someone misses that turn into the property; a right turn can be made into the Sawgrass Lakes community, but it has gates; and his concern is how will a 50-foot rig being towed by a 25-foot truck turn around on a 20-foot road or a two lane highway. He informed the Board that on the proposed plan, several of the sites, including some of the 50-foot sites, will have a canopy; a canopy that large, if the applicant moves forward with it, would require some sort of pilings going into the ground or into the fill area, which could possibly expose the toxins or other things like asbestos; and he noted that his son also has been exposed while in the

service and is being monitored. He believes that the best possible use of the property, which is filled with unknown, but possible toxins, is to leave it alone; and he thanked the Board for listening to the residents and hopes the Board will rule in their favor.

Stephen Phrampus stated he is a resident of the Sawgrass Lakes subdivision; he provided the Board with the site plan; he is not sure where the developer is not putting in spaces; he heard the developer was limiting spaces, but it looks like there are 308 spaces that are 45-feet; he noted that this is his fourth time speaking publicly to oppose this project; and he has represented Sawgrass residents and pointed out facts that do not support the project. He went on to say the facts remain; the Comprehensive Plan Amendment does not recommend community commercial clustering closer than five miles apart when exceeding 40-acres; this property is 17.5 acres, along with the 30 acres that it would be adjoining with the commercial community would be 47 acres, which above the 40 acre limit; there is a community cluster currently 2.5 miles away, which is within the five-mile radius; and a commercial node is located within three-quarters of a mile from the site as well. He continued that the Comprehensive Plan also states that clusters must be located at principal arterial and principal arterial intersections; this developer has chosen not to purchase property giving the required access, which Mr. Curry has discussed and is available for sale; and instead the developer will use a blind driveway at the top of a hill on a dead end urban road. He further explained that the City of West Melbourne has denied access to water and sewer to avoid potential risks from disturbing the landfill area; in 2018, the bond held by the city for Norfolk Parkway needed to be utilized, because they needed to put an injection filler under the roadway when part of the road shoulder caved in near the top of the overpass in question; the intersection at Norfolk and Minton is currently rated an F during morning traffic according to the Minton Road Feasibility Study; and the level of service metrics are A through F. He added that the engineering that Mr. Moia stated he did not have are in the two reports that Mr. Moia included in the packet to the County; so he is unsure why Mr. Moia didn't reference them; the plans are quite extensive on what the developer should have to do with the land; and he noted that the engineer claims he will not disturb the landfill. He went on to say that 60-80 percent of the mature trees will be removed; if one looks at the plan, the developer is recommending 201 covered with aluminum canopy, which is two-thirds of the total spaces needed; they will need appropriate ground support; and he expressed that he does not understand how one could not disturb the landfill material which is buried three to five feet below the ground. He further commented that the Keller, Schleicher, and MacWilliam (KSM) Engineering and Testing report states that it is recommended to either remove the debris below the ground or use adjacent sites to set the high season elevations, and to avoid any damaging structural distress due to settlements, a more appropriate foundation system would need to be engineered; he stressed that 30 years ago, the Board spent \$500,000 in tax dollars to close this illegal landfill and create what exists there today; and the best use of this land and those tax dollars is to leave the current zoning, where only a maximum of four homes could be built or a community park or a few other limited projects. He continued to mention that to do nothing is doing something; it is not disturbing the land, not adding to traffic, not reducing the sound barrier, not contributing to environmental concerns, not disturbing the roosting snow egrets, and not wasting the tax dollars spent to create what exists there now; the most important fact of all, despite what the developer wants the Board to believe, hundreds of surrounding residents do not want the zoning reclassification and do not feel it is in the best interest of the property, which has been supported by the petition that was submitted to the Board; that petition was done after the meeting with residents; he has heard long discussions on new landfill projects on 192; and he requests the Board give some consideration to what happens to these landfills after the fact.

Mr. Moia stated he took a lot of notes; he explained that there is a lot of history on this property and the area, in general; if there was no building over that landfill, Sawgrass Lakes subdivision would not exist today; the road coming into Sawgrass, coming off of Minton Road, is built over top of the landfill, because the landfill extended south of this property border; the stormwater

lakes that were dug are probably 12 feet below the water level on both sides of this property and were excavated by the Sawgrass development, adjacent to this landfill; and so he does not see the concern of that compared to not excavating and building on top of it. He expressed if that was really something that was looked at when that development was done, he does not think one would have built a lake right next to this landfill; he mentioned there was discussion about vehicle chemicals; the units will be stored there, and not every vehicle is going to be gas powered; he owns a fifth wheel, and his fifth wheel has no fluids whatsoever, and neither does a travel trailer; most of the 50-foot RVs that are being discussed cost over a million dollars; he does not think these very expensive vehicles are going to contaminate the property; and campers are very responsible people. He noted that traffic was a concern; he said he was not sure how familiar the Board is with that area, but it is the best use of the property if traffic is really an issue, because it generates the minimum amount of traffic of any use in the Institute of Transportation Engineers (ITE) manual; to put residential on there would add to the problem, because those trips happen at the same time as all the other residences; that street and intersection fails at peak times; the traffic at this development for a boat and a RV storage happens off-peak; boaters get up early, come get their boats, and leave before the peak hour; and they usually only do it on the weekends. He continued that there is a very limited amount of trips that would be generated from this property; the line of sight just happens to be, in his opinion, ideal, because it is at the top of the hill; he does not know how many times the Board members go over the causeway, but he goes over it every day; if somebody is at the top of the bridge, he can see him them just fine; it is the vehicle that is 20-30 yards on the other side of the peak that he does not see stop until he gets to the top of the bridge; and he can surely see somebody up there with a car, especially a boat or even an RV would be clear as day. He informed the Board that he went out to the property and stood at the entrance that is there now, which is the one that he would be using; he could see people coming and going just fine; when the other person that was with him came in his/her vehicle, he or she could see him at the top of the hill just fine; and so he does not think that is an issue as far as safety. He advised that he does not even know what to say about crime; he does not know if there are any crime experts in the audience; since this is a quasi-judicial meeting, he does not see any proof that was provided of how crime and property value is an issue because of this development; there was discussion if this was sold; there is a BDP; the applicant is telling the Board it can only be an RV storage facility; and even if it was sold, the new owner would have to come back before the Board to do something different. He mentioned the fact that he is a Planning and Zoning Board member is not the first time it has been brought up; a long time ago he made the mistake of actually sitting on the dias and then stepping down to present an item; he has never done that again, because it does look very inappropriate; he does not discuss any matters with his fellow Planning and Zoning members; the fact that one of the other members is related to his son in some way has no bearing on the Item; it was disclosed at the meeting; and there was no inappropriateness there. He went on to say that this is a 17.5 acre property; the applicant wants to build on about eight acres of that; he is keeping the perimeter buffer intact; the KSM report is a preliminary report; and he will be doing additional reports. He noted that this is the third property that his company has actually built on a landfill of this type; his company has an office in Vero that has recently done two projects, including Habitat for Humanity which was built partially on a landfill similar to this; so his company is very knowledgeable on how to build structures over these types of facilities; he will be doing additional Geotechnical work; his structural engineer will be involved in how it will happen; and he is licensed in the State of Florida and has been doing this for over 30 years. He addressed the Board about the petition that no one in the Sawgrass Community wants the development; he has learned a lot of things about petitions when he was doing a project in the City of Melbourne; it is pretty easy to get someone to agree to a petition; the petition he saw was not even signed; and it was just typed names and addresses. He expressed he had a project that was going into another neighborhood, and there were a lot signatures stating the residents did not want the development; he does not know what was said to get the residents to sign it, but once he met with those same people and explained to them what he was building, they removed their names

from the petition; he does not give those petitions a whole lot of credit; that was all the items he heard were being discussed; and he hopes that he addressed those appropriately and clearly.

Commissioner Zonka advised that Mr. Moia answered most of her questions when they had a meeting; she met with people, who lived in the neighborhood, and Mr. Moia regarding this; Mr. Phrampus is also a City Council member and the HOA president of Sawgrass so maybe that should have been disclosed; she is not saying that Mr. Moia discussed special interest, but another resident mentioned his relationship; and she thinks it is important that everyone mentions their relations.

Commissioner Pritchett stated no the Board does not talk about that.

Commissioner Zonka stated in reviewing the petition, she received a copy two or three times by email; she asked for the language of the petition; she first wanted to talk about the people who signed the petition; there were several hundred; 105 were outside the United States; and 128 were out of Brevard. She continued that she knows that anyone can sign a change.org petition, but she is concerned that this petition makes a lot of assumptions; and the petition language reads as follows, "The petition to oppose rezoning of the parcel and land immediately east of Sawgrass Lakes: We the residents of Sawgrass Lakes community, a 900-plus houses development directly west of the property that is seeking rezoning, as well as affected West Melbourne, Palm Bay, and unincorporated County residents are strongly opposed to the requested rezoning. We oppose the building of a commercial Recreational Vehicle (RV) and boat storage facility for many reasons, including but not limited to, landfill disturbance; the disturbance of unknown and possibly toxic content of the former illegal landfill that make up the parcel." She stated that would cause her to sign the petition if she read that; she continued to read aloud, "traffic: adding undue pressure to the already strained traffic situation on Norfolk Parkway, which is where the only ingress/egress point of the storage facility will be; lake pollution: likely pollution of the lakes by runoff from the storage facility; light pollution: the creation of light pollution is an issue that the developers were unwilling to address in a binding development plan; wildlife: destroying an active wildlife environment amongst which is an important roosting place of habitat for birds and other wildlife; crime: the almost certain attraction of crime, break-ins, and the homeless seeking shelter; and property values: the likely devaluation of property values of adjacent communities due to the above mentioned grievances." She noted that if these were all facts or if these were all presented to everybody in this room, she bets that every person would sign this petition; petitions to her, unless they are very fact-based, very direct, very clear with numerous disclosures and are signed by people who actually live in the neighborhood, she usually just tosses them; that is why the Board looks into what they are; one of the emails that Commissioner Zonka found interesting stated there was a lot of crime; and she noted that the writer of the email came up and spoke before the Board. She read aloud the email, "Sawgrass Lakes consisted of numerous, educated professionals and business owners that have invested in homes, well above the median home value of this County. If their home prices go down, or even worse, if there is physical injury or death, as result of this facility, then the County would be held responsible."; she mentioned that an educated individual would not make a comment like that, in her opinion; she stated that all residents matter no matter how much their income is or how much their home value is worth; and she has not seen any evidence that it would devalue the property. She indicated that Mr. Moia brings up a good point, the facility would generate less traffic than a residential; she is going to support this item as it stands; she thinks the BDP was done in good faith; she appreciates the 50-foot buffer; her first question to Mr. Moia was if the residents would be able to see the storage unit from her neighborhood; the answer was no, and she believes his answer given all the foliage out there; and she made a motion to approve the Item with the existing BDP.

Commissioner Lober stated in Mr. Phrampus' defense, he did, in fact, reference that he does serve on the West Melbourne City Council during the time he made his disclosures at the start of the meeting; to his credit, he thinks it would have been repetitive to mention it again a few minutes later; he is not horribly thrilled with this project, which are the reasons the Board has already heard from the citizens at public comment; and that said, he knows it has been pointed out by others, such as Commissioner Tobia, for projects that solely impact individual Commission District, other than his own, it is an incredible rarity for him to vote differently than that of the individual Commissioner whose district the project falls. He continued to say that in the two plus years that he has been on the Board, there have only been a couple of times that he voted differently than Commissioner Tobia, because he said to not worry how he was voting, but to vote how each one determines to do so; he advised that he tries to give the Board a great degree of deference with respect to their individual Commission Districts, because they have a far greater level of knowledge and familiarity with them than he does; and he does intend to support this, although it is not because he is in love with the plan, but because he thinks it is appropriate, given it is the Commissioner whose district the project is in, is supporting it.

Commissioner Smith stated he is going to support this issue, because he looked at this when his constituents presented it to him in his chambers; he thought it was a good use for this property; he does not know too many people who will want to build on an old land fill; if they did, then the soil would really be turned up and who knows what else; and if there are items there to cause some kind of damage it would certainly do so at that point. He continued that if it stays empty, the County does not get a whole lot of taxes; he advised that this project is ideal, because it is not going to increase traffic in the residents' area by much; it probably will not even be measurable; it will increase taxes for the County, which benefits everybody; it benefits the person selling, because he or she found a buyer to use it for something; it will benefit the residents of Sawgrass Lakes, because they will not have more houses or more people living in their neighborhood; and he advised that it will be a good fit.

Chair Pritchett stated she typically listens to the Commissioners as well; she does not think they are crazy, and if they were they probably would not get her vote; she mentioned that they are really good about studying their own districts very well; she mentioned that the Board cannot make emotional votes; and the Board has to do its best to make its decisions based on facts and its best assumptions. She advised that many of the things that were brought up were a little emotional; she understands that once a person gets something in their head like that, it is hard to get around, but there is no proof on it; she informed Mr. Moia that he will have to do environmental, so those things will come to light; as far as what could go on the property, seeing what it has been in the past, she advised that what Mr. Moia plans to put on it is a good thing to put there; she advised there could have been a lot worse things to put there; and she will support this as well.

Commissioner Tobia stated Chair Pritchett should trust the quality of what she knows and not the quantities; he indicated that Commissioner Zonka mentioned the petition earlier; he said it was interesting looking at the people that cared about this particular project; there is New Caledonia, which he had to look up; there was an individual from New Caledonia; and he warned not for anyone to look it up on Wikipedia, because there is a picture of people wearing a penis gourd. He continued to say there is Greece, Burundi; he does not know how this sparked this much controversy worldwide; he is going to go with Commissioner Zonka other than the two warriors...Australia and Austria; he noted that Commissioner Zonka did well on this one; and he stated he will support her.

There being no further comments or objections, the Board approved changing zoning classification from GU to BU-2 as recommended; and approved including a Binding Development Plan to provide a 50-foot buffer of abutting residential property and maintaining the existing vegetative buffer, limiting the number of spaces and defining the access to boat and RV storage and ancillary services, committed to not having a dump station unless sewer is obtained, limiting the height of any lighting, providing a traffic study to ensure no adverse effect on the roadway, restricting for no overnight stays, and complying with applicable Florida Department of Environmental Protection requirements for building on a landfill.

**Result:** APPROVED

**Mover:** Kristine Zonka

**Secunder:** Bryan Lober

**Ayes:** Pritchett, Lober, Tobia, Smith, and Zonka

**H.4. AG Ventures (Chad Genoni) Requests a BDP Limiting Density to 4 Units Per Acre for Consistency with the Residential 4 Future Land Use Designation in an RU-1-7 Zoning classification. (20PZ00101) (Tax Accounts 2102924, 2102925, and 2112294)**

Commissioner Lober stated he had a disclosure for this item; on February 1, 2021, Gabriel Quintas of Mims, sent an email expressing concerns and urged the Board to deny the proposal; on February 4, 2021, Kim Rezanka called the office and spoke with some of his staff members about the project on behalf of the developer; and there was also an email sent with a proposed revision to the Binding Development Plan (BDP) on the same date, which he looked at.

Commissioner Zonka stated she had a disclosure, she had a telephone conversation with Kim Rezanka regarding item H.4.

Commissioner Smith advised he had a disclosure, he spoke with Kim Rezanka on the phone this morning regarding item H.4.

Jeffrey Ball, Planning and Development Manager, read aloud Item H.4. AG Ventures (Chad Genoni) requests a BDP limiting density to 4 units per acre for consistency with the Residential 4 Future Land Use designation in an RU-1-7 zoning classification. (20PZ00101) (Tax Accounts 2102924, 2102925, and 2112294)

Chair Pritchett stated that this is in her district; and she requested Ms. Rezanka to open the discussion.

Ms. Rezanka, of Lacey Lyons Rezanka, stated she is representing AG Ventures, LLC; the developer's representative that was before the Planning and Zoning Board is Chad Genoni; she indicated that she has spoken with each Commissioner; this was something that happened in 2014; and there was somewhat of an error. She mentioned that staff brought it to her client's attention; he submitted a BDP to fix it; she has worked with staff to come up with a BDP that has a little more conditions than what previously went before the Planning and Zoning Board; she is not certain if the Board Members have it or not or if she needs to give them a copy; and she advised she submitted it at approximately 3:30 p.m. today.

Mr. Calkins, Planning and Development Director, stated he believed he passed out copies of the new BDP to the Board; he indicated that Mr. Genoni and Ms. Rezanka agreed to limiting the density to 4 units per acre, preserving the wetlands at the northeast corner; connecting to

both water and sewer; and having a minimum of a 10-acre area that would include wetlands, buffer tracts, and stormwater tracts for this development.

Ms. Rezanka stated she could give a very long presentation; she is prepared to do so; she is satisfied with what has happened; and she is prepared to answer any questions or respond to any public comments.

Chair Pritchett requested Mr. Calkins read the new BDP, because she knows there are public commenters on this item.

Mr. Calkins stated the new BDP, that was submitted today, limits the density of development to 4 units per acre, preserves the wetlands in the northeast corner, requires the applicant to connect to water and sewer, there will be a minimum of an almost 10 acre area, which includes wetlands, buffer tracts, stormwater, which may include a portion of the BU-1 for the proposed subdivision, and the stormwater tracts could be wet and dry or a combination thereof.

Ms. Wilcox passed out documents to the Board; she stated she received a courtesy notice from the Board of County Commissioners informing her that the developer of the property, owned by AG Ventures, located on the northside of Wiley Avenue of Mims, Florida, wants to build on it; as a citizen and a property owner, she brought her concerns to the Board to find out how the development would affect her property and others north of Wiley Avenue of Mims; she noted that the East Mims community is predominately a blight community; and it holds a lot of blight history. She went on to say through the hard work, sweat, and blood of the community's parents, grandparents, and ancestors, they dreamt of possessing property and businesses of their own and sought equality and civil rights; they wanted to leave an inheritance for their children so that the children would carry on the legacy of their names and honor their ancestors; it was their hard work that accomplished great things; and her property and many others are on a program funded by the Federal Government that helps to benefit low-income families. She asserted that County Housing and Human Services wrote and designed policies, guidelines, and terms and conditions for the program; as of this day, residents are in a battle with the County, hoping not to lose their property; some property owners have already lost the battle; to lose one property or one home to the County is one too many; she does not want it to go unspoken that the residents' ancestors purchased land and put up wooden frame buildings; and some were able to build brick or concrete block construction homes and businesses. She stated the ancestors have sacrificed too much of their lives and dignity for the blight property owners in the East Mims community to walk away from this program empty handed; she does not want any of their accomplishments forgotten; the County used their land to replace wooden framed houses with concrete block houses or to do renovation; she asks the question, who stands to gain when the County puts their property in default; the County knows there are devastating consequences to default; and yet time after time it puts residents' property in default. She went on to say that the way the program is designed, it sets them up to fail; especially when the death clause comes into play; she has personally experienced the County finding ways of wrongfully putting their property in default; she does not know how this company, AG Venture, would affect their property; and she prays it would not cause any more pain than what they are already going through with the County. She referred to a website in which the Brevard County Legal Aid office informed her the Florida Bar Foundation set up a website that covers every County in the State of Florida, and she read it aloud, "Elderly woman's home wrongfully defaulted. Brevard County Housing Assistance Program for low-income families has wrongfully put property in default, thereby requiring repayment of the mortgage balance. Client seeks assistance with getting the property out of default."

Chair Pritchett informed Ms. Wilcox that her time was up; she asked Ms. Wilcox to give Nathan Smith some information; and she will call her tomorrow to see if she could help her with specific things.

Ms. Wilcox stated she had been in touch with her before about this.

Chair Pritchett replied she will see what she can do.

Barry Gamble, Pastor of Great About Calvary Church of God and Christ, stated he came to serve and give to the community; he received word that AG Ventures is trying to rezone the property adjacent to his building; his church sits on 1.5 acres; he was concerned what the property would be used for; he knows that it is zoned for single-family units right now, which is not a problem; and if it becomes zoned for other uses, such as rental, he is concerned about the impact it would have on the church's property value and also for the residents' homes that live in the community. He noted that he is concerned about crime against the church building and also for the residents; he is concerned about loud music noise; he mentioned that renters could play loud music; he advised that the property is only .67 of an acre; he was not aware there is a group of properties; and maybe someone could slide it in as a group of properties.

Chair Pritchett inquired if the property was being rezoned.

Mr. Calkins replied no; he is trying to get consistency with the Comprehensive Plan so it can be developed with 4 units to the acre; it would be a residential development is what the applicant is proposing; the zoning on the property has already been established; and he advised that is a 110-acre piece of property.

Pastor Gamble inquired if other properties have been conglomerated; the one property shown on the postcard he received...

Mr. Calkins replied off the microphone.

Chair Pritchett informed Pastor Gamble that the Board is considering giving the builder a binding development, so he will have a little more restrictions.

Pastor Gamble explained that his concern is what the developer is doing with the property; he does not want it to take away from his...

Chair Pritchett responded she agrees.

Pastor Gamble stated he wanted to make sure that the community is not going to be impacted in any negative way; everybody else could not show up, but he wanted to at least try to make his way...

Chair Pritchett stated she shared his concerns.

Pastor Gamble reiterated that he came to serve, and that is all; and he thanked the Board.

Terry LaPlante, representative of Trees for Life Brevard, stated her organization calls upon Brevard County to take responsibility for the health of its drinking water and waterways like the Indian River Lagoon by protecting the tree canopy; she advised that her comments have at this opportune time so that the Board will consider them in all future decisions for developing residential neighborhoods, as well as other things; she informed the Board a study was done recently in 2019 by the University of Florida, titled, The Florida's Urban Forest: A Valuation of Benefits; and this study found that Brevard County's tree canopy is currently 37 percent, give or take 2 deviations. She noted that this places Brevard County in the lower half of the State, where Okeechobee places last with a tree canopy of 20 percent; St. Lucie County, which she hopes the Board is familiar with the water crisis going on there currently has a tree canopy of 30 percent; as a County, she advised it is fair to say that it is united in its mission, to save the



Lagoon; she is in despair of the degradation of Melbourne's tap water; and she is disgusted with the air pollution.

Chair Pritchett inquired if Ms. LaPlante is commenting on this Item.

Ms. LaPlante replied she hopes the Board will consider Brevard's tree canopy in any decision the Board makes tonight.

Chair Pritchett stated she understood Ms. LaPlante now.

Ms. LaPlante asserted she is, personally, experiencing air pollution when she sits in her car at traffic lights along US Highway 1 and Wickham Road; she stated she is not alone in her opinion; there are many citizens who share the need for clean air and water; residents need urban forests with trees and wetlands to have clean air and water, and thus a sustainable future; so what difference does it make eliminating a few acres of trees to increase density; can the County move to less restrictive zonings; and why not amend the Comprehensive Plan to be more friendly to developers. She stated that she empathizes with the Board's desire to support developers and their missions; however, the County has less than 40 percent of a tree canopy; the study was done in 2019; she is aware that there has been a considerable loss in the last year alone; and she urged the Board, when considering the requests for the zoning change, that the Board consider what it will do to the tree canopy in the community.

Chair Pritchett clarified to the assembly that the Board is not changing any zoning tonight; Mr. Genoni was going to give a Binding Development Plan; the zoning was changed in 2014; she thanked Mr. Genoni; and he was always sympathetic to when she had staff call him and ask for a BDP, because she thought that would better serve the Mims community. She mentioned she is glad that water and sewer is being brought back in; it is going to continue the path up there to areas that do not have water; she is comfortable with this Item and supports it; and she thanked staff for working towards putting this in.

Commissioner Lober stated he intends to support this Item, as well, so he will make the motion for Chair Pritchett; first, he wanted to briefly add that when looking at the documents Ms. Wilcox handed out, of the item she referenced from the Florida Bar Foundation, he has done a ton of pro bono work over the past decade plus, and what this appears to be is a description of what was put in place by someone who called in either to a hotline or typed into the referral service to complain about whatever it is he or she is alleging; it is not that the Florida Bar Foundation said that this is what did or did not take place; and he pointed it out, because he does not want Mr. Golden's department to get flack for something, that in all likelihood, may not have happened the way it was alleged. He also noted that the page is time stamped three calendar years ago; he does not know how germane it is to where the Board is now, but he would like to say in Mr. Golden's defense, he has dealt with him for a period of years at this point, and he can easily say that he would never intentionally set anyone up to fail; Mr. Golden believes in the mission of his department; and if something did or did not happen years ago that was unsavory or negative, he cannot attribute that to Mr. Golden or his department at this point. He stated he made that known so someone does not get the wrong impression that this somehow is a reflection of Mr. Golden or his department; certainly the County, himself, and the departments are not perfect and things do happen; but as far as having any intent to cause harm to any group of people it is certainly not coming from Mr. Golden.

Chair Pritchett mentioned she thought it was wonderful that Pastor Gamble showed up to ask questions; sometimes when the postcards go out, they are hard to understand; it is good for someone to come in and find out what is going on in his or her community; she will reach out to Ms. Wilcox tomorrow to see if there is anything she can do to help her, as well; and she observed that Ms. Wilcox may have concerns about something she may not have been able to

Speak about tonight.

There being no further comments or objections, the Board approved a Binding Development Plan, limiting the density to four units per acre, preserving the wetlands in the northeast corner, connecting to water and sewer, and having a minimum of 10-acre area including wetland, buffer tracts, and stormwater tracts for consistency with the Res 4 Future Land Use designation in an RU-1-7 zoning classification.

**Result:** APPROVED

**Mover:** Bryan Lober

**Secunder:** Curt Smith

**Ayes:** Pritchett, Lober, Tobia, Smith, and Zonka

## **K. PUBLIC COMMENTS**

Laurilee Thompson, of Mims, stated she wanted to talk about aquatic vegetation management on the shorelines of the County's stormwater ponds; there are outstanding areas in the County where the stormwater ponds have turned into tremendous bird habitats; the Chain of Lakes in Titusville is one of them; and last year there was an issue when the County came in and did mechanical vegetation removal, and sprayed the shoreline with herbicide. She continued to say that the County created a situation where the nesting water birds were suddenly opened to attack by hawks; Limpkins hang out there; they are really sought after; birders from all over the world come to the Chain of Lakes park to see Limpkins and Black Belly Whisting Ducks; and birders that are disabled in wheelchairs can navigate trails at the Chain of Lakes to see Limpkins and Black Belly Whistling Ducks. She mentioned that three babies of the first pair of nesting Limpkins that ever nested at Chain of Lakes park were eaten by hawks; they were eaten almost immediately after the parents brought them out of the woods and tried to get them to the water; the same thing is happening again, because the County is cutting down the plants; when the plants are sprayed with herbicide, they rot and tip over into the water, nutrients are being added to the stormwater ponds; and nutrients are being added to the Lagoon when the County does that kind of management. She would like the Board to talk with the Stormwater Department about ceasing to remove the vegetation around the shoreline of the ponds during water bird nesting season, which is starting right now, and come up with a different way to manage the plants, other than spraying them with herbicides so they do not tip over and fall in the water, rot, and add to the muck problem at the bottom of the ponds.

## **L.4. BRYAN LOBER, COMMISSIONER DISTRICT 2**

Chair Lober stated he was not certain if the Board wanted to make a motion, but he would be happy to...

Chair Pritchett stated she needs to follow up later; this topic has come up before; she talked to Ms. Donner and Jeff Davis; and she advised him that it is more extensive than this; and she will get back with Ms. Donner again, if Commissioner Lober does not mind.

Commissioner Lober stated he was thinking in the terms of what the motion would be; and if the Board wants to have the Environmentally Endangered Lands Program give a report so the public can hear to.

Chair Pritchett asserted that if he does not mind, and if she is still mad at her afterward she can rat her out one more time.

Commissioner Lober replied fair enough. Commissioner Lober noted the only other item he wanted to bring to the attention to the Board is in response to the letter the Commission authorized him to send to Titusville-Cocoa Airport (TICO); a response was sent out today by TICO's legal counsel by email; he has not had a chance to read it, though, since it arrived in little less than an hour before the Commission meeting began; he advised that all the Commissioners were carbon copied on the message; and he thinks there are at least two or three attachments that were included with it. He stated he is not, at this juncture, going to ask to have authority or authorization to send a follow-up letter to them on behalf of the Board; he is hoping it is not necessary, based upon them having done the right thing; for now he just wanted to bring it to the Board's attention that the response went out today; and he does want to inform the Board he may respond, just in his individual capacity, as one Commissioner. He mentioned that a letter ought to come from the Board; it is his intention, at the next meeting, to ask for authorization to send a response; without having had a chance to review their response, he just does not know if what was done was adequate or inadequate; and that is all he has for Board reports.

Chair Pritchett requested the Board give her the ability, since she is going to the meetings; she is in contact with all the Boards; she is in touch with the lawyers; and if the Board does not mind trusting her with this to see if it can be figured out how to get to an acceptable end.

Commissioner Lober stated he will see if someone wants to make a motion on it.

Commissioner Zonka suggested she realizes that the Board does not have authority like it does with Mr. Borowski's operation; but she advises that when taking a look at TICO Airport to look at the performance and the monies it has brought in; and regardless whether the Board loves the management of the airport or not, or whether the personalities need to change, or the board members need to change, she advises that is the most unbiased way to look at it is by its performance.

Chair Pritchett stated she had the financials sent to her; and she agrees with Commissioner Zonka.

Commissioner Zonka explained to not look at some hypothetical area of this is what the vision is; but she wants to see what the airport has actually done.

Chair Pritchett said she was on that.

Commissioner Zonka stated that Steve Borowski is a model for how someone should manage.

Chair Pritchett reiterated that she understands Commissioner Zonka; she stated she has been in touch with him; she has been looking through that; she noted that the Board does not have authority with it...

Commissioner Zonka asserted that of course not, but the Board of County Commissioners is in control of the TICO's Board of Directors; and she rephrased by saying who is appointed to the Board.

Commissioner Lober stated he did not want to get into a play-by-play, because it is a sensitive subject, but he thought it would be better if the Board could resolve this offline; he continued to say whether TICO is doing everything perfect from a financial standpoint, some of the items that were alleged by its fire chief are so unacceptable; he does not care if it is the most

profitable airport in the history of mankind, if there is even an element of truth to what was alleged it needs to be dealt with swiftly and severely; the fact of what was alleged to have taken place happened in 2019, really troubles him; and even the fact that there could have been something still being investigated from that long ago is definitely a concern. He pointed out that after speaking with Attorney Bentley, he advised that the intention is for the Commission Chair to attend every other meeting of TICO, with him attending the off meetings, unless Attorney Bentley notice it such that both of them can attend.

Chair Pritchett stated if the Board gives this an opportunity; most of TICO's Board of Directors has been in touch with her; they are getting ready to have a meeting; she advised that they are going to resolve this; and she noted that it would be the best case scenario if they allowed the airport's board to do its work. She advised that they are all really intelligent people, and the Board should watch this process; if it gets squirrely the Board needs to jump in; the Board may want to study it out as well, but she wanted to let the Board know she is on it; and if Commissioner Lober wants to be on it, as well, but she advised that the Board of Directors are on it also.

#### **L.5. JOHN TOBIA, COMMISSIONER DISTRICT 3**

Commissioner Tobia thanked Chair Pritchett and Commissioner Lober; the letter was disconcerting, to say the least; certainly if things come up, his suggestion is to sweep the leg; that being said, he thanked Billy Prasad for the team building; and Mr. Prasad and him are basically, karate cousins.

Chair Pritchett mentioned she heard he lost a bet.

Commissioner Tobia responded that he lost many bets tonight.

#### **L.3. RITA PRITCHETT, COMMISSIONER DISTRICT 1, CHAIR**

Chair Pritchett stated her report was that the TICO Board of Directors were getting on the situation; not all its Board of Directors had received a letter; the last meeting they had was canceled on them; there is going to be a special meeting in two more weeks; they are all on it; and she wanted to give the Board a little bit of comfort after talking to all of those people.

Upon consensus of the Board, the meeting adjourned at 7:12 p.m.

ATTEST:

\_\_\_\_\_  
RACHEL M. SADOFF, CLERK

\_\_\_\_\_  
RITA PRITCHETT, CHAIR  
BOARD OF COUNTY COMMISSIONER  
BREVARD COUNTY, FLORIDA