

MINUTES OF THE MEETING OF THE BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

5:00 PM

The Board of County Commissioners of Brevard County, Florida, met in regular session on August 2, 2012 at 5:00 PM in the Government Center Commission Room, Building C, 2725 Judge Fran Jamieson Way, Viera, Florida.

Call to Order

Attendee Name	Title	Status	Arrived
Robin Fisher	Commissioner District 1	Present	
Chuck Nelson	Chairman/Commissioner District 2	Present	
Trudie Infantini	Commissioner District 3	Present	
Mary Bolin Lewis	Commissioner District 4	Present	
Andy Anderson	Vice Chairman/Commissioner District 5	Present	

INTRODUCTION TO ZONING PROCEDURE

The Board of County Commissioners acts as a Quasi Judicial body when it hears requests for rezonings and Conditional Use Permits. Applicants must provide competent substantial evidence establishing facts, or expert witness testimony showing that the request meets the Zoning Code and the 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.

INVOCATION

The invocation was given by Reverend Dan Mix, Emmanuel Baptist Church, Merritt Island.

PLEDGE OF ALLEGIANCE

Commissioner Trudie Infantini led the assembly in the Pledge of Allegiance.

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ITEM II.D., COMMISSIONER TRUDIE INFANTINI, DISTRICT 3 REPORT

Commissioner Trudie Infantini appointed Mike Cunningham to the Library Board, with term expiring December 31, 2012.

ITEM II.G., CHAIRMAN CHUCK NELSON, DISTRICT 2 REPORTS

Commissioner Nelson commented on attending the ribbon cutting for the Phase I opening of the Pine Island stormwater project; and stated a significant amount of money was saved because the County worked with Exploration Park.

He further commented on the discussion the Board had on Tuesday regarding the budget; there was a motion made on the millages based on the 2009-2010 budget year, without any understanding of what those numbers meant in terms of reduction; and stated had that motion been approved, the Board would have been cutting \$41 million from the County budget, which would have meant the loss of approximately 50 deputies, firefighters.

Commissioner Infantini noted that the Board knew the number would be approximately \$40 million because that is how much it had to increase the tax rates to support the increase in the budget last year. She commented on the General Fund II, which is only unincorporated Brevard County dollars, and there is more than enough money in that fund to make up and pay for the shortfall in the Sheriff's budget and the Fire MSTU.

Discussion ensued on the upcoming budget.

PUBLIC HEARING, RE: PLANNING AND ZONING RECOMMENDATIONS OF JULY 9, 2012, AND NORTH MERRITT ISLAND SPECIAL DISTRICT BOARD RECOMMENDATION OF JULY 12, 2012

Chairman Nelson called for the public hearing to consider Planning and Zoning Board recommendations of July 9, 2012, and North Merritt Island Special District Board recommendation of July 12, 2012, as follows:

ITEM V.B.1., (12PZ-00032) - NILES E. RUBAR, JR - REQUESTS A CHANGE FROM GU TO AU ON 1.01 ACRES. LOCATED ON THE NORTH SIDE OF CHICA ST., APPROXIMATELY 500 FT. WEST OF KNOXVILLE AVENUE (3224 CHICA ST., COCOA)

The Board approved the request by Niles E. Rubar, Jr., with a Binding Development Plan stipulating no farm animals or fowl, or commercial activity.

RESULT:	ADOPTED AS AMENDED [UNANIMOUS]
MOVER:	Robin Fisher, Commissioner District 1
SECONDER:	Mary Bolin Lewis, Commissioner District 4
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

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ITEM V.B.2., (12PZ-00039) - CHARLES L. JONES, JR. - REQUESTS A CHANGE FROM BU-1 AND SR TO AU ON 3.81 ACRES. LOCATED ON THE NORTH SIDE OF HIGHWAY 520, APPROXIMATELY 0.4 MILE WEST OF SATELLITE BOULEVARD (IN THE CANAVERAL GROVES AREA)

The Board approved the request by Charles L. Jones, Jr., as recommended by the Planning and Zoning Board.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Robin Fisher, Commissioner District 1
SECONDER:	Andy Anderson, Vice Chairman/Commissioner District 5
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM V.B.3., (12PZ-00040) - AMMIE G. DANIEL, TRUSTEE - (MIKE AMMONS) - REQUESTS A SMALL SCALE PLAN AMENDMENT FROM NC TO CC; AND A CHANGE FROM AU TO BU-1 ON 1.14 ACRES. LOCATED ON THE NORTH SIDE OF KILMARNOC LANE, APPROXIMATELY 650 FT. WEST OF SOUTH STREET (PART OF 3436 KILMARNOC LANE, TITUSVILLE)

The Board approved the request by Ammie G. Daniel, Trustee, as recommended by the Planning and Zoning Board; and adopted Ordinance No. 12-21, setting forth the fifth Small Scale Plan Amendment of 2012, 12S.05.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Robin Fisher, Commissioner District 1
SECONDER:	Trudie Infantini, Commissioner District 3
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM V.B.4., (12PZ-00031) - VASTIANA BOATSWAIN AND DONOVAN SIMMS - REQUESTS A CHANGE FROM RU-2-10 TO IN(L) ON 0.25 ACRE. LOCATED ON THE EAST SIDE OF HIGH STREET, APPROXIMATELY 185 FT. SOUTH OF REID STREET (924 HIGH STREET, COCOA)

The Board approved the request by Vastiana Boatswain and Donovan Simms, as recommended by the Planning and Zoning Board.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Robin Fisher, Commissioner District 1
SECONDER:	Mary Bolin Lewis, Commissioner District 4
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

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ITEM V.B.6., (12PZ-00038) - CARL F. AND KATHLEEN R. UVARO, TRUSTEES; JASON CARMINE UVARO; STEVEN J. AND BETH M. HOSKINS; AND MICHAEL FRANCIS DUFFIELD - (CARL UVARO) - REQUEST A CHANGE FROM FU-2-12, WITH A BDP, TO BU-1, WITH REMOVAL OF EXISTING BDP ON 1.41 ACRES. LOCATED AND HAVING FRONTAGE ON, THE EAST SIDE OF S. ORLANDO AVENUE, THE NORTH SIDE OF SUMMER STREET, THE WEST SIDE OF S. ATALANTIC AVENUE, AND THE SOUTH SIDE OF 20TH STREET (IN THE COCOA BEACH AREA)

Cindy Fox, Planning and Development Office, noted that the applicants have revised their request from BU-1 to BU-1-A.

Carl Uvaro stated his reason for the request to BU-1-A to the Board, which is that the only interest they have had from the market is for commercial use.

Chairman Nelson expressed concern that the applicants cannot stipulate a specific commercial use for the property.

The following citizens spoke against the request: Ibraham Salejee, Jeanne Cook, Steve Romano, Courtney Yelle, Alan Dolenshek, Kevin Smithwick, Manuel Franco.

There being no further comments or objections, the Board denied the request by Carl F. & Kathleen Uvaro, Trustees; Jason Carmine Uvaro; Steven J. & Betyh M. Hoskins; and Michael Francis Duffield, as recommended by the Planning and Zoning Board. Commissioner Anderson voted nay.

RESULT:	DEFEATED [4 TO 1]
MOVER:	Trudie Infantini, Commissioner District 3
SECONDER:	Robin Fisher, Commissioner District 1
AYES:	Robin Fisher, Chuck Nelson, Trudie Infantini, Mary Bolin Lewis
NAYS:	Andy Anderson

ITEM V.B.7., (12PZ-00036) - ELIZABETH R. POSELL - (JORDAN D. POWELL) REQUESTS A SMALL SCALE PLAN FROM NC TO CC; AND A CHANGE FROM AU TO BU-1 ON 0.48 ACRE. LOCATED ON THE EAST SIDE OF N. COURTENAY PARKWAY, APPROXIMATELY 365 FT. SOUTH OF CRISAFULLI ROAD (5870 N. COURTENY PARKWAY, MERRITT ISLAND)

The Board tabled the request by Elizabeth R. Powell, as recommended by the North Merritt Special District Board and the Local Planning Agency, to the October 4, 2012, Board meeting.

RESULT:	TABLED [UNANIMOUS]
MOVER:	Mary Bolin Lewis, Commissioner District 4
SECONDER:	Robin Fisher, Commissioner District 1
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

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ITEM V.B.8., (12PZ-00042) - BARBARA SMITH ARTHUR, TRUSTEE, AND JOHN ROBERT SMITH, JR. - (H. LEE CHAPMAN, III) - REQUESTS A CUP FOR A TOWER AND ANTENNA IN AN AU ZONING CLASSIFICATION ON 0.055 ACRE, +/- LOCATED AT THE WEST END OF OLD FLORIDA TRAIL, APPROXIMATELY 0.6 MILE WEST OF HIGHWAY A1A (PART OF 750 OLD FLORIDA TRAIL, MELBOURNE BEACH)

The Board approved the request by Barbara Smith Arthur, Trustee, and John Robert Smith, Jr., as recommended by the Planning and Zoning Board.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Trudie Infantini, Commissioner District 3
SECONDER:	Andy Anderson, Vice Chairman/Commissioner District 5
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM V.B.9., (12PS-00037) - SHOREVIEW LIMITED PARTNERSHIP - (PHILIP F. NOHRR, ESQ.) - REQUESTS A CHANGE FROM RU-2-10 TO RU-2-30, WITH A BDP, ON 8.39 ACRES. LOCATED ON THE SOUTHWEST CORNER OF BERKELEY STREET AND HIGHWAY A1A (50 BERKELEY STREET, SATELLITE BEACH)

The Board approved the request by Shoreview Limited Partnership, as recommended by the Planning and Zoning Board.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Mary Bolin Lewis, Commissioner District 4
SECONDER:	Trudie Infantini, Commissioner District 3
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM V.B.10., (12PZ-00043) - THE VIERA COMPANY - (DAVID TRONE) - REQUESTS A CUP FOR ALCOHOLIC BEVERAGES ON-PREMISES CONSUMPTION IN A PUD ZONING CLASSIFICATION ON 3.36 ACRES, +/- LOCATED ON THE EAST SIDE OF LAKE ANDREW DRIVE, APPROXIMATELY 0.65 MILE NORTH OF WICKHAM ROAD (IN THE WEST VIERA AREA)

The Board approved the request by The Viera Company, as recommended by the Planning and Zoning Board.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Trudie Infantini, Commissioner District 3
SECONDER:	Andy Anderson, Vice Chairman/Commissioner District 5
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

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ITEM V.C., VARIANCE REQUEST BY SURFCASTER INN/DEANGELO'S BY THE SEA/UR HOSPITALITY, LLC, RE: CONSTRUCTION OF A DECK EAST OF THE BREVARD COUNTY COASTAL SETBACK LINE (CSL)

Chairman Nelson noted the applicant has requested a tabling of the item. Commissioner Infantini stated she would prefer to not table the item.

Clayton Bennett, representing the applicant, presented the request to the Board, and stated the owner would like to enter into a Binding Development Plan, and bring it back to the Board at a later date. He mentioned that the proposed deck has been designed to meet various requirements of the County Coastal Setback as related to elevating the deck a minimum of three feet above grade in order to provide protection to the vegetation.

Commissioner Bolin Lewis inquired what usage the deck will serve. Mr. Bennett responded, the usage would be for the residents to have a platform to be able to sunbathe. Commissioner Bolin Lewis inquired if there will be seating on the deck; with Mr. Bennett replying, yes, there will be chairs. Commissioner Bolin Lewis inquired if there were any restrictions on restaurant patrons taking food onto the deck. Mr. Bennett responded the BDP would prohibit food being served on the deck.

Commissioner Infantini noted that Mr. Bennett expressed to her staff and the neighbors that the applicant plans to extend the food and alcohol to the deck; and stated the applicant bought the property knowing the restrictions on the deck. Commissioner Fisher asked for clarification on the request.

The following individuals spoke against the request: Valerie Amneus and Shril Green.

Chairman Nelson noted the applicant has to provide the competent substantial evidence that it meets the criteria. Christine Lepore, Assistant County Attorney, noted it also has to be consistent with other applicable regulations. Chairman Nelson mentioned he does not see where the applicant has proven that the deck is integral to the business operations; and inquired if it is appropriate for the Board to stop the public comment and make a motion.

There being no further comments or objections, the Board denied the request by Surfcaster Inn/DeAngelo's by the Sea/UR Hospitality, LLC, for construction of a deck east of the Brevard County Coastal Setback Line (CSL).

RESULT:	DEFEATED [UNANIMOUS]
MOVER:	Trudie Infantini, Commissioner District 3
SECONDER:	Mary Bolin Lewis, Commissioner District 4
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

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ITEM V.B.11., (12PZ-00044) - COCOA EXPO SPORTS CENTER, LLC, AND UPLAND INVESTMENTS, LLC - (JEFFREY C. UNNERSTALL) - REQUEST A SMALL SCALE PLAN AMENDMENT TO CHANGE THE FLU MAP DESIGNATION FROM NC TO CC ON 3.76 ACRES; AND A CHANGE FROM BU-1, WITH A CUP FOR PERMANENT ENTERTAINMENT AND AMUSEMENT ENTERPRISES, AND A CUP FOR THE SALE OF ALCOHOLIC BEVERAGES, AND A BSP; GU; TR-1 AND TR-3 TO ALL BU-1, WITH A BDP, AND A CUP FOR OUTDOOR ENTERTAINMENT AND AMUSEMENT ENTERPRISES, AND A CUP FOR ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION ON 47.85 ACRES, LOCATED ON THE NORTHEAST CORNER OF S.R. 520 AND FRIDAY ROAD

Cliff McClelland Jr., representing the applicant, requested approvals from the Board pertaining to the rezoning on the existing dormitory, and for the Board to table the remainder of the request to the next Board meeting. He stated the applicant wants the small area land use change from Neighborhood Commercial to Community Commercial on a parcel that was left out of the original site plan; the dormitory was built on it; and the applicant is requesting that it be rezoned to BU-1. He noted the change to BU-1 would allow the applicant to be able to pull building permits for the dormitory renovation; and the applicant would agree not to obtain a Certificate of Occupancy until the BDP is finalized and approved. He explained the problems of the setback requirements because of the landscaping; and the applicant is requesting the Board authorize the County Attorney staff to prepare regulations that would allow waivers in terms of landscape regulations.

Hasan Kamal, representing the applicant, explained the history of the 2.75-acre parcel in question to be rezoned, and the existing dormitory.

Christine Lepore, Assistant County Attorney, stated staff needs to know which parcel has the dormitory on it, and the Board would need feedback from staff on whether it is possible that a building permit could be issued under the Code for that one property alone, in isolation of the whole project. Cindy Fox, Planning and Development Department, advised it is not a separate stand-alone parcel, as it is a portion of Parcel 502, and staff will need a legal description describing the area.

Mel Scott, Assistant County Manager, stated if the Board were to consider simply rezoning the GU portion, having received a legal description, and allow the applicants to make the improvements to the dormitory, staff could insure that the proposed work for the new dormitory meets building code and issue a permit; the applicant would have to be willing to agree that the dormitory's permit, absent its inclusion in the site plan as a whole, that the investments may be in jeopardy if the entire site plan itself does not move forward. Mr. McClelland stated the applicant agrees there will not be a Certificate of Occupancy until a Binding Site Plan is approved, and is willing to assume the loss in the event he is unsuccessful in obtaining a Binding Development Plan.

The Board recessed at 7:00 p.m. and reconvened at 7:10 p.m.

Ms. Lepore advised if the Board is interested in entertaining the first request, which is for a building permit to be issued for the dormitory, only, pending the other zoning request and site plan approval, it would be appropriate to request from the developer and the owner a notarized statement waving all rights to seek compensation or damages from the County in regard to the building permit in the event the rezoning and/or site plan application are not approved for any reason.

Jeff Unnerstall, owner, Cocoa Expo, agreed to a notarized statement drafted by the County Attorney's Office.

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Mr. Scott further advised that staff would like the applicant to stipulate that no Certificate of Occupancy would be issued on the dormitory until the Binding Development Plan is recorded and the site plan is approved. Mr. Unnerstall agreed to the stipulation. Mr. Scott advised the site plan would need to provide a detailed phasing/sketch plan. Mr. Unnerstall agreed to a detailed phasing/sketch plan.

Leroy Wright stated he would like the Board to table the request until all the issues are addressed, and that the neighbors would like a buffer.

Ernie Brown, Natural Resources Management Office, advised staff has been working with the applicant to develop a land alteration permit for one of the pits they are building for the stormwater; Natural Resources is not allowed to issue any permits on a site where violations exist; and stated the cure for that is to identify the restoration requirements for the wetland issues, the land clearing issues, and the land alteration issues on both the east and west side. He advised the developer is going to provide bonds for those restorations, which will satisfy the violation element, and once those bonds are issued and provided to the County, then that would allow them to move forward with the process, knowing that the restoration is funded should something go south; and stated in the event a site plan is not issued, the resources would be available to restore those sites to the pre-existing condition and rectify all the violations. Mr. Scott noted staff would like the bond to be in place before the dormitory permit is issued.

Blain Coghill spoke in opposition to the request; William Blanco spoke in favor of the request; Susan Young stated she would like the issues to be addressed before any decisions are made; and Michael Baird spoke in favor of the request.

The Board approved the request by Cocoa Expo Sports Center, LLC, and Upland Investments, LLC, in part, as follows:

- 1.) That portion of the Comprehensive Plan Amendment 12S.03a from Neighborhood Commercial to Community Commercial along with the rezoning request to BU-1 on the GU zoned portion of Parcel 502 only (legal description of that portion of GU Parcel 502 to be furnished by the applicant) that includes the existing dormitory building.
- 2.) Authorized staff to process and issue the building permit for renovating the existing dormitory building once in compliance with applicable building related codes, contingent upon receiving a notarized statement from the applicant waiving all rights to seek compensation or damages from the County in regard to the dormitory permit in the event the rezoning and/or site plan application are not approved for any reason and contingent upon the applicant posting the bond for the remediation of the wetlands impacts.
- 3.) Stipulated that a Certificate of Occupancy will not be issued on the renovated dormitory until the Binding Development Plan is recorded and the Site Plan is approved.
- 4.) Stipulated that no ball fields can be used until the Certificate of Occupancy for the renovated dormitory is issued.
- 5.) Stipulated that the Site Plan include a detailed phasing plan sketch to replace the current narrative.
- 6.) Stipulated that the above described property being rezoned from GU to BU-1 also be included in the Binding Development Plan that will encumber the entire project; and tabled the remainder of the request to the August 21, 2012, Board meeting.

Fisher/Bolin, directed Natural Resources Management Office Director to develop a waiver process for the landscaping buffer, and to bring it back to the Board in a timely manner.

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RESULT: ADOPTED [UNANIMOUS]
MOVER: Trudie Infantini, Commissioner District 3
SECONDER: Robin Fisher, Commissioner District 1
AYES: Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM V.B.12., (12PZ-0045) - COCOA EXPO SPORTS CENTER, LLC, AND UPLAND INVESTMENTS, LLC - JEFFREY UNNERSTALL) - REQUEST A SMALL SCALE PLAN AMENDMENT (12S.04) TO CHANGE THE FLU MAP DESIGNATION FROM NC TO CC; AND A CHANGE FROM TR-1 & AU TO BU-1 ON 9.99 ACRES, MORE OR LESS. LOCATED ON THE NORTH SIDE OF S.R. 520 APPROXIMATELY 180 FT. WEST SIDE FRIDAY ROAD, AND ALSO HAVING FRONTAGE ON THE WEST SIDE OF FRIDAY, NORTH OF S.R. 520 (NO ASSIGNED ADDRESS)

The Board tabled the request by Cocoa Expo Sports Center, LLC, and Upland Investments, LLC, to the August 21, 2012, Board meeting.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Andy Anderson, Vice Chairman/Commissioner District 5
SECONDER: Robin Fisher, Commissioner District 1
AYES: Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ADJOURNED

Upon consensus of the Board, the meeting adjourned at 7:46 p.m.

ATTEST:

MITCH NEEDELMAN, CLERK

CHUCK NELSON, CHAIRMAN
BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA