

Brevard County Board of County Commissioners

*2725 Judge Fran Jamieson Way
Viera, FL 32940*



Minutes

Thursday, November 3, 2022

5:00 PM

Zoning

Commission Chambers

A. CALL TO ORDER 5:04 PM

Present: Commissioner District 1 Rita Pritchett, 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.

C. PLEDGE OF ALLEGIANCE

Commissioner Pritchett led the assembly in the pledge of allegiance.

D. MINUTES FOR APPROVAL: August 30, 2022, Regular Meeting Minutes

The Board approved the August 30, 2022, Regular meeting minutes.

Result: Approved

Mover: Rita Pritchett

Seconder: Curt Smith

Ayes: Pritchett, Tobia, Smith, and Zonka

F.1. Final Plat and Contract Approval, Re: Adelaide Phase 6B

Developer: The Viera Company

The Board, in accordance with Section 62-2841(i) and Section 62-2844, granted final plat and contract approval for Adelaide Phase 6B – Developer: The Viera Company; and authorized the chair to execute the Plat and Contract.

Result: Approved

Mover: Rita Pritchett

Seconded: John Tobia

Ayes: Pritchett, Tobia, Smith, and Zonka

F.2. Acceptance, Re: Binding Development Plan with Amie Lynn Hall, David Walter Hall, Gene Thomas Buxcel, and Charlene Odenbach Jonsson (f.k.a. Island Bluff, LLC)

The Board accepted and executed Binding Development Plan with Amie Lynn Hall, David Walter Hall, Gene Thomas Buxcel, and Charlene Odenbach Jonsson for property located in part of lots 10, 11, 12, 13, 14, 15, 16, 17, 18, and Kings Lane (now vacated), all as shown on the Plat of Sunnyside Terrace (now vacated), according to the Plat thereof recorded in Plat Book 11, Page 41, of the Public Records of Brevard County, Florida.

Result: Approved

Mover: Rita Pritchett

Seconded: John Tobia

Ayes: Pritchett, Tobia, Smith, and Zonka

F.3. Acceptance, Re: Binding Development Plan with Paul J. Marion, Kimberly Ann LaMattina, Kayla Marie Losat, and Jessica Lynn Ripper; and Robert Clay Kirk and Ethylmay Kirk

The Board accepted and executed Binding Development Plan with Ethylmay Kirk, Robert Kirk, Paul J. Marion, Kimberly LaMattina, Kayla Losat, and Jessica Ripper for property located in Tax Parcels 12 and 265, as recorded in ORB 8804, Pages 1941 – 1943, of the Public Records of Brevard County, Florida.

Result: Approved

Mover: Rita Pritchett

Seconded: John Tobia

Ayes: Pritchett, Tobia, Smith, and Zonka

G. PUBLIC COMMENTS

Charles Tovey stated he wanted to speak about the status of his property; first, he wanted to thank Audie Murphy, a great veteran for this country, and all who served, no matter what their position; his property is ready and he is waiting on the bank to clear his first draw; the trailers will be emptied tonight for the reconstruction and the driveways are finished; and the trees will be done tonight and tomorrow. He added he did half of the vehicles this afternoon and will do the other half this evening and tomorrow morning, and they will be done; he is sorry for the delay; instead of surgery, he chose extensive physical therapy and it occupied a lot of his time; he tried to get everything straightened out for Commissioner Smith's departure; he had a couple of days with the surveyors who were having a difficult time; and the property next to him sold and he is going to reach out to the new owners. He stated besides that, and asked why he was not asked first, as he has never been asked anything; it would have saved him a lot of time and, with all due respect, he appreciates the Board's patience and respect towards him

and his situation; he mentioned he got into a car accident in his youth and had a corrupt attorney; it is probably not important to anyone and nobody will probably believe it, but John Taurus and Bill Mick did a show about a corrupt attorney and he said that sounds like his attorney, and it was; there is nothing he can do but he feels responsible for things; and people just have to ask him. He commented he is a very cooperative person and he loves everybody until he is disrespected.

Sandra Sullivan mentioned last night at the City Council meeting, the City of Satellite Beach voted on their new ordinance for parking management to charge for parking at Hightower and Pelican, and while that is not the issue, the issue is the deed restrictions when the County gave them the park that there would be no differential in fee; she shared a photo of their parking community proposal from what they put up last night in the ordinance; it says for City residents will be paid by City taxes; the problem is, not all city residents actually own property, as some of them rent; and then there are residents like veterans, who do not pay property taxes. She added Eden Bentley had done a legal opinion at her request on December 22, 2020, and she read an excerpt from Eden Bentley, "whereas the County believes the annual parking pass program violates the terms of the current deed restrictions"; she showed a copy of the financial projections that they are expecting; she stated she watched at the time they had their committee parking management and the key point that was being made is there is not enough parking for the City residents and the City residents were complaining; and she believes the intent in all of this is to discourage people from parking at the park so their residents have a place to park. She noted as a bit of history, Hightower used to be an unincorporated area and was only annexed into the City for conservation, and the County park itself is part of a Federal agreement, LW 541, which has an included survey that makes it part of those conservation lands; there are a lot of issues and she believes that this is a trial balloon to see what they can get away with because of the contention that is going on with the inappropriate development on the view property; the Florida Community Trust State (FCT) agreement has an adjacent property clause in its deed restrictions that limits height and land uses that would otherwise harm that preserve; there is a broader issue, she believes, and the reason they have been pushing to release covenants in the past as well, is so that they can do inappropriate uses; and there is also another legal opinion that was issued by the County pertaining to the sky bridge, which is in several plans that the City approved both in 2019 and 2020, with that plan showing the sky bridge. She stated the view is still when people go in there, they are still telling people that is still being built; and she asked that the County invoke the reverter clause, both to protect the County from future liability, potentially, and the residents.

H.1. Sunshine State Wildlife Conservation, LLC (Jeff Murray) Requests a CUP for Land Alteration, in a GU Zoning Classification (22Z00040) (Tax Account 3001207)

Chair Zonka called for a public hearing to consider a Conditional Use Permit (CUP) for Land Alteration, in a General Use (GU) zoning classification as requested by Sunshine State Wildlife Conservation, LLC.

Jeffrey Ball, Planning and Zoning Manager, stated this Item is for Sunshine State Wildlife Conservation, LLC requesting a CUP for Land Alteration, in a GU zoning classification; the application number is 22Z00040, tax account number is 3001207; and it is located in District 5.

There being no comments or objections, the Board approved the request for a CUP for Land Alteration in a zoning classification for Sunshine State Wildlife Conservation, LLC.

Result: Approved

Mover: Rita Pritchett

Secunder: John Tobia

Ayes: Pritchett, Tobia, Smith, and Zonka

H.2. Lifestyle Homes Builders, Inc. (Jordan Luhn / Natasha Petrie) Requests a Change of Zoning Classification from RU-1-7 to RU-1-11 (22Z00044) (Tax Account 2864390)

Chair Zonka called for a public hearing to consider a change of zoning classification from RU-1-7 (Single-Family Residential) to RU-1-11 (Single-Family Residential) for Lifestyle Homes Builders, Inc.

Jeffrey Ball, Planning and Zoning Manager, stated this Item is for Lifestyle Homes Builders, Inc. requesting a change of zoning classification from RU-1-7 to RU-1-11; the application number is 22Z00044, tax account number is 2864390; and it is located in District 5.

There being no comments or objections, the Board approved the request for a change of zoning classification from RU-1-7 to RU-1-11 for Lifestyle Homes Builders, Inc.

Result: Approved

Mover: Rita Pritchett

Second: Curt Smith

Ayes: Pritchett, Tobia, Smith, and Zonka

H.3. Daisy Mae of Brevard, Inc. (Louis Columbo Andrus) Requests a Change of Zoning Classification from BU-1-A to RU-2-12 (22Z00046) (Tax Account 2731679)

Chair Zonka called for a public hearing to consider a change of zoning classification from BU-1-A (Restricted Neighborhood Commercial) to RU-2-12 (Medium Density Multi-Family Residential) for Daisy Mae of Brevard, Inc.

Jeffrey Ball, Planning and Zoning Manager, stated this Item is for Daisy Mae of Brevard, Inc. requesting a change of zoning classification from BU-1-A to RU-2-12; the application number is 22Z00046, the tax account number is 2731679; and it is located in District 5. He added for the record, he needed to state that staff has not reviewed a concept plan for the proposed use and the uses that would be permitted would need to go through the review process to make sure that it complies with Brevard County Code.

Wendy Kleefisch stated she had a lot of concerns, obviously a lot more than a loss of sunset or sunrise, more so that this proposed high-density 12 unit will impact her property at a substantial, more than 20 percent loss, right off the top; she wanted the Board to be aware of that; she displayed a zoning map and noted she found something very important, Chapter 16.6 Residential zoning districts; she wanted to share that just west of her property is zoned as an AR, which is an Agriculture low, low, low density with chickens and so forth; she already has a buffer wall to her west along with an agriculture zoned property; and she is in the middle and Daisy Mae is where the yellow box is. She added she has been a tax-paying citizen for 16 years and loves her home; she looks at this as if she is being stuck between two walls and she cannot see any other way; she asked respectfully, that this is considered when making the vote; she is disabled, whether the Board wishes to know this or not, and she has everything she needs for the Board if they wish to have it; her house is Americans with Disability Act (ADA) compliant and she wants the Board to know that she has taken the extra steps to make her house ADA compliant for the wheelchair and so forth, which is very important and not an easy

task to do. She explained she realizes the future and her direction is to be 100 percent in the wheelchair; Multiple Sclerosis will take her down but, right now, she is here today fighting and asking the Board to please consider her, as a buffer wall to the west already and to put another wall to the east is...; and she asked the Board if it could understand.

Chair Zonka asked if the buffer wall is going to decrease her access to her property.

Ms. Kleefisch replied yes, and not only does it decrease her access, but it also decreases the value of her home more than 28 percent if she were to put it for sale today; just the two zonings, everything else is RU-11, the Daisy Mae of Brevard was also an RU-11; to go from a one-story to an aggressive RU-12 Resort family, that is a lot, but because what she loses the most is her home; she asked the Board to please consider that in its decision; and she realizes that real estate is on fire, but she is respectfully asking that maybe it can stay even within the RU-11 zone and keep Franklin Avenue a very nice, peaceful, residential place.

Commissioner Tobia asked Ms. Kleefisch if she said that this would drop her property value more than 28 percent and if she sent that to him, as he did not recall seeing it.

Ms. Kleefisch replied she is sorry but that was directly from her corporate attorney and she did not.

Chair Zonka asked if she had anything documented that she could show the Board today.

Ms. Kleefisch replied she did not have anything with her today, but could follow up with an email immediately, as she had just got wind of what was really going on, a clear understanding,

without receiving a zoning card in the mail, when she was clearly the closest; she stated she would get him whatever he needs; and if Brevard's Code was followed, with a five percent loss of revenue, that is the County's statute.

Commissioner Tobia asked if she had anything that showed five percent.

Ms. Kleefisch replied she had nothing from her corporate attorney.

Commissioner Tobia remarked he just wanted to make sure he was not overlooking something.

Commissioner Pritchett noted Ms. Kleefisch had mentioned a wall on each side and asked if she would be more comfortable if there was a natural buffer there instead to separate the properties, and if that would help some.

Ms. Kleefisch replied she did not know what the correct answer is for this situation; she had asked to get some tall palms to get some separation between the two; but to answer honestly, when she looks out the front door, she will see a wall and she will have no backyard for the rest of her life because she will see duplexes.

Commissioner Pritchett remarked she understands that, and she asked if she knows how it is zoned right now is actually business, low intensity business, but there is the possibility of things with the zoning going in right now that would be very uncomfortable to live next to; and she wanted her to be aware of that.

Chair Zonka mentioned Ms. Kleefisch talked about handicap access, and asked her how having anything built like that next to her house would impair the ability for her to access, via wheelchair, her property.

Ms. Kleefisch stated she would have to move; she has no privacy any more.

Chair Zonka asked if it was a privacy issue for her.

Ms. Kleefisch replied it is both.

Chair Zonka stated she is concerned about access and if it is going to interfere, or block her somehow.

Ms. Kleefisch remarked with 12 units and two vehicles, that is 24 cars; she does not know where they are going to go.

Chair Zonka stated they would not be on her property.

Ms. Kleefisch responded that they are currently, and she has no issues, by the way, with the cars from the ice cream place that come and use the driveway or park, because it has been that way since she moved in; she has no idea where these other vehicles are going to go, or where they would park; there is a lot of concern there as well; for her, it changes her quality of life completely, with not even a breeze anymore, and walls surrounding her; and that is not why she moved to Indialantic and spent 16 years of paradise there.

Chair Zonka noted that typically she goes with the applicant first to present their case and talk about it, but she does not have a card for the applicant; and she remarked if the applicant is in the room, she would encourage them to fill out a card so they can speak and have time to respond to the comments.

Anthony Robinson stated he is just west of the proposed unit of Daisy Mae Inc. for 12 units; his main concern is with 12 units being there, with two cars per unit and two trashcans per unit, and one recycle bin; that is 24 cars and 36 trash cans in a half-acre area; he asked how that could be possible to have that large of an impact into the area that does not block the scenery, but his concern is the noise and the trash that would be coming from that; another concern is the utilities, the water, sewer, and electric; and he asked if there has been a study saying that the neighborhood will be able to withstand the 12 unit upgrade without downgrading the system. He added it is well known from Hurricane Ian, he lost power for two days; he asked if there is a study that could tell him that this area of 107 Franklin Avenue is able to withstand 12 units of electricity, water, and sewage; living on the barrier islands, a couple of things he has is water, sewage, and electric; with the water, he has low pressure because of the location; with 12 units added, he asked will there be a study to show if an upgrade is needed, and if so, who would pay for the upgrades to the electric, sewage, and water; and he asked if the taxpayers will be paying for this, or the homeowners, or Daisy Mae. He added that is one of the main things he is worried about is the upgrades and who would be paying for it.

Chair Zonka remarked she knows there are capacity things for all of the utilities and she does not believe a 12-unit would cause it to have to expand or grow.

Tad Calkins, Planning and Development Director, mentioned as a point of clarification, the property is only a half-acre, so it would only be six units; and when the concurrency analysis was done, it indicated there is adequate capacity for transportation, education, and utilities.

Alena Knoepfler stated she is speaking for her husband as well; they had discussed back and forth about if the Board would really consider this rezoning application today because it already considered and approved a rezoning down the street, only 418 feet away from the subject property; this was done last year and was rezoned from RU-1-11 to RU-2-12 and it is even

smaller than the subject property today, which is only one-half an acre; her concern is not only what Ms. Kleefisch and Mr. Robinson have already said about the door-to-door issues; when it comes to quiet enjoyment, the valuation and depreciation of property value, the view, the noise, and all the parking spots which will be needed for even a six-unit with two cars each; she is wondering what will happen next; and she was discussing with the neighbors what is next and it is pretty simple. She advised sheworks in the real estate industry and everyone is making money, which is great, as she is making money with the A1A rezoning the Board approved a couple of weeks ago; everyone is seeking to make money but the real question she has for the Board and County planners, is when they start, and she has investors by her side who are keen to get her property, which is already an agricultural one, which is considered as a low density property and close to Ms. Kleefisch's home, what would happen next; she asked if the County is really prepared in this neighborhood, in this street, and all other streets, for multi-family homes, because they were flipped; the people are now seeking the chance to upgrade, which is okay, but the question is if the infrastructure is prepared, not only on her street but in the other neighborhoods nearby; she asked are they really prepared for rescue, energy, waste management, schooling, and hospitals; people will upgrade and flip their properties to multi-family homes; and this is good as long as the County is prepared. She continued by asking if the County is really prepared when any other neighbor wants to upgrade, including herself, as she is toying with the idea to do it too because she can make money; this is a money making machine and her neighbors around the corner with duplexes will then upgrade to two-story homes and everybody will do this to make money; but she questions the infrastructure and if it will be prepared. She added another thing for consideration is when she was looking for the past, historic land pattern, she could only find RU-1-11; when she looked in the past it was formerly rezoned as a RU-1-11, and 30 years ago it was rezoned as BU, which is still a very medium or low density property; now it is seeking to be doubled; besides this, when it comes to the future land use, and this is another concern she has, the Board has already approved 117 Franklyn Avenue a year ago to be rezoned from RU-1-11 to a multi-family zone, but it is not constructed yet; and when it comes to the future land use, when there is no construction in place and it is now for sale for three times the price, the Board will know what is going on.

Louis Andrus stated this is new to him, and he owns the lot in question; he has owned it for 22 years and paying taxes, insurance, and upkeep on it for 22 years; he owns the ice cream shop in front of the lot; Ms. Kleefisch owns the house west, adjacent to the vacant lot; where she was thinking 12 units is beyond him; he has had many people want to buy that lot because it is BU-1-A, and build up to 30-35 feet; and he thought he would do the right thing and do multi-family there because it is better than another commercial building and traffic and everything, on Grosse Pointe and Franklyn Avenue. He mentioned Ms. Kleefisch owns a limousine service that she runs out of her house, which does not bother him, as she can do whatever she wants; maybe her knowing it is six units instead of 12 will change her opinion; he does not know what else to tell the Board except he has had it for 22 years and he really does not see an issue with making it more family than business; and it is surrounded by business on both sides, if anyone is familiar with that area.

Chair Zonka remarked that if there are any questions, she will have Mr. Andrus come back up.

Sandra Sullivan stated of course, she lives beachside and the concern she has, and she has spoken about here many times, is about the critical evacuation deficiency that exists where she is, on Pineda Causeway, and down in Eau Gallie; the more that the County adds density to the barrier island, the more this becomes an issue; if one wants to see something that highlights that, just look at Fort Myers Beach barrier island, impacted by a hurricane, that had 117 people lose their life; when there is a Category 3, according to the Comprehensive Plan, the barrier island dunes get breached; and according to studies, and she will send the Board an email on one today, the storm surge will be 20 feet and a lot of buildings will be just like what

was seen in Fort Myers. She went on to say it was here recently at the meeting following this 7.2 plus million gallons of treated sewage that just went into the Lagoon; that South Beaches plant is at 86 percent capacity, with State concurrency, there should be a plan at 85 percent and there is not a plan for extending the capacity of that plant yet, which is another issue; the sewage is an issue, the roads, Eau Gallie has areas that are D and E levels of service, so when it is said there are no infrastructure issue, there absolutely are infrastructure issues beachside; incrementally, one could look at a single property, this is just six units, but incrementally, if one adds across the barrier island, it is adding density and there is a lot of development pressure; and like the other speaker said, what is the plan to address infrastructure, because every it rains, and not just with Hurricane Ian, it started in the beginning of September after the droughts, it starts dumping on these sewage treatment plants that are at 86 percent capacity. She added the County has to be more responsible; lastly, on the topic of impact fees, as density is added, there must be impact fees but the impact fees have not been updated in nearly two decades; and now under the affordable housing, there is talk of waiving the fees and nothing even has to be built.

Chair Zonka asked Ms. Sullivan to try to stay to the subject of this Item.

Ms. Sullivan responded it is all related to how infrastructure is paid for.

Chair Zonka mentioned to Mr. Andrus that he said he has owned the property for 22 years; and she asked Mr. Calkins if he could comment on what could be built there, based on the current zoning.

Mr. Calkins remarked the current zoning is a BU-1-A, which is a neighborhood commercial; it is one of the lower intensity commercials, but it would allow for multi-family, professional offices, other businesses, retail, or convenience stores; and there are things there that would allow for it to have a lot greater traffic impact than the duplexes that are being proposed.

Mr. Andrus commented that he kind of looked at all that and that is why he went the direction he went.

Chair Zonka stated she knows people would like there never to be any development, especially if it is nice and clear; she thinks one of the biggest arguments for people that come up and testify, one is supposed to provide evidence; that is why there are so many questions about documentation because the Board looks for concrete facts and not emotion; people do not want the Board to approve anything if they live next door to a vacant land, which is a given, but they have property rights as the owner of that property; and she has no issue with this Item as it stands.

Commissioner Pritchett stated she agrees; if someone owns property, they should be allowed to build on it; she thinks Mr. Andrus is actually downzoning; he will have to figure out what fits on half an acre and he has a few more things to go through, but she thinks it is pretty good; there were just some comments about getting off the island in a catastrophe, and everyone has to run that risk themselves, but it does not mean people cannot enjoy their properties; and she wanted to say about the impact fees, somebody is going to pay for them, it is not like the cost is not being picked up; if the builder does, everyone is going to pick up the cost anyway; and it is just trying to figure out how to collect them down the road. She added she does not know what to do with that when it comes up continually, but it is something everybody pays for, regardless; if one goes to a business, they raise their rates, and the customer pays for it; and it always gets passed down.

Chair Zonka noted that Mr. Andrus has to bring a plan that is conceptually sound and follows

the Code; and she is not worried about that.

Commissioner Pritchett thanked Mr. Andrus for bringing this project forward, it is actually kind of workforce housing that the County is looking for; she likes it when the building goes up because there is less of a footprint on the land; she thinks he will be respectful of the neighbors; but if they are running a business out of there anyway, it is interesting.

There being no further comments or objections, the Board approved the change of zoning classification from BU-1-A to RU-2-12 for Daisy Mae of Brevard, Inc., with the understanding that the applicant will need to provide a concept plan for review that complies with Brevard County Code.

Result: Approved

Mover: Rita Pritchett

Seconder: John Tobia

Ayes: Pritchett, Tobia, Smith, and Zonka

H.4. John H. and Diana Beni Request a Change of Zoning Classification from RRMH-1 to AU (22Z00043) (Tax Account 2000678)

Chair Zonka called for a public hearing to consider a change of zoning classification from RRMH-1 to AU for John H. and Diana Beni.

Jeffrey Ball, Planning and Zoning Manager, stated this Item is for John H. and Diana Beni requesting a change of zoning classification from RRMH-1 to AU; the application number is 22Z00043, tax account number is 2000678; the location is in District 1; based on the Planning

and Zoning recommendation, zoning AU-L was recommended, which is a light version of AU, to recognize the commercial aspects of AU zoning; and the applicant stated he was in agreement with that recommendation.

There being no comments or objections, the Board approved the request of John H. and Diana Beni for a change of zoning classification from RRMH-1 to AU-L.

Result: Approved

Mover: Rita Pritchett

Seconder: Curt Smith

Ayes: Pritchett, Tobia, Smith, and Zonka

H.7. Ordinance Amending Chapter 62, Article VI, Section 62-1255, Re: Establishment of Zoning Classification Section 62-1573, Institutional Use, and Section 62-2106, Mixed Use

Chair Zonka called for a public hearing to consider an ordinance amending Chapter 62, Article VI, Section 62-1255, for establishment of zoning classification Section 62-1573, Institutional Use, and Section 62-2106, Mixed Use.

Jeffrey Ball, Planning and Zoning Manager, stated this Item is to consider an ordinance amending Chapter 62, Article VI, Section 62-1255, for establishment of zoning classification, Section 62-1573, regarding Institutional Use, and Section 62-2106, regarding Mixed Use; these are in response to the update for the Evaluation and Appraisal Report (EAR), as the policy number just changed; and the zoning code is being updated to reflect those changes in EAR.

There being no comments or objections, the Board adopted Ordinance No. 22-32, amending

Chapter 62, Article VI, Division 3, Section 62-1255, "Establishment of Zoning Classifications and Consistency with Comprehensive Plan" by amending Comprehensive Plan Policy references; amending Chapter 62 Article VI, Division 4, Section 62-1573, "Institutional Use IN(L) and IN(H)" by amending Comprehensive Plan Policy references; amending Chapter 62 Article VI, Division 6, Section 62-2106, "Mixed Use Commercial and Residential Use" by amending for conflicting provisions; providing for severability; providing for area encompassed; providing an effective date; and providing for inclusion in the Code of Ordinances of Brevard County, Florida.

Result: Adopted

Mover: Rita Pritchett

Second: John Tobia

Ayes: Pritchett, Tobia, Smith, and Zonka

H.8. Ordinance Amending Chapter 62, Article VI, Re: Sewer Lift Stations, Sewer Vacuum Stations, and other Water and Sewer Utility Infrastructure Elements (second reading)

Chair Zonka called for a public hearing to consider an ordinance amending Chapter 62, Article VI, for sewer lift stations, sewer vacuum stations, and other water and sewer utility infrastructure elements. This is the second reading.

Jeffrey Ball, Planning and Zoning Manager, stated this Item is to consider an ordinance amending Chapter 62, Article VI, regarding sewer lift stations, sewer vacuum stations, and

other water and sewer utility infrastructure elements; this is the second and final reading; and this proposed amendment allows for more flexibility for the Utilities Department to retrofit existing communities with lift stations and other infrastructure requirements to do that.

There being no comments or objections, the Board adopted Ordinance No. 22-33, amending Chapter 62, Article VI, Division 1, Section 62-1102, "Definitions and Rules of Construction" to create a new definition for "Sewer Lift Stations, Sewer Vacuum Stations, and Other Water and Sewer Utility Infrastructure Elements"; creating Chapter 62, Article VI, Division 5, Subdivision II, Section 62-1844.7, "Sewer Lift Stations, Sewer Vacuum Stations, and Other Water and Sewer Utility Infrastructure Elements," thereby allowing sewer lift stations, sewer vacuum stations, and other water and sewer utility infrastructure elements uses as a permitted use within all zoning classifications subject to specified conditions; amending Chapter 62, Article VI, Division 6, Subdivision I, Section 62-2103, "Alteration of Lot Size; Structures and Lot Sizes Made Nonconforming as a Result of Dedication or Partial Condemnation; Access to Lots," to maintain the viability of existing structures made nonconforming by setback or reduced building spacing distances should the new property line otherwise make the structure nonconforming; amending Chapter 62, Article VIII, Section 62-3202(b), "Exemptions," to add an exemption for sewer lift stations, sewer vacuum stations, and other water and sewer utility infrastructure elements from the Site Plan Code; providing for conflicting provisions; providing for severability; providing for area encompassed; providing an effective date; and providing for inclusion in the Code of Ordinances of Brevard County, Florida.

Result: Adopted

Mover: Rita Pritchett

Second: John Tobia

Ayes: Pritchett, Tobia, Smith, and Zonka

K. PUBLIC COMMENTS

Donald Frantzen stated he owns Brevard Towing and is present to speak about the ordinance that the Board is working on; he knows the Board has put a lot of work into it and it is something with a lot of moving parts; he stated he would like to do anything he can to help work with the Commission to come up with a common sense towing ordinance and an update; there has not been an update since 2008 and a lot has changed since then; and he mentioned he spoke with Morris Richardson, County Attorney, and he said he was not sure, but thought it was advertised today. He added he did not see it advertised today and that was one of his questions; if it was not advertised today, there is a vote coming up on the 15th; and as far as he knows, it has to be advertised 10 days before the vote.

Chair Zonka replied it is advertised for the next meeting.

Mr. Frantzen asked if that was done today, as he did not see it.

Attorney Richardson replied he did not have that in front of him but it was advertised for the 15th.

Mr. Frantzen asked if there would be a vote on the 15th.

Chair Zonka responded it would be addressed, but not necessarily voted on, as it may be sent back; but it is up for a public hearing.

Mr. Frantzen stated beyond that, all he requests is that there could be some discussion with the tow companies prior to the vote, so they could have some input; he was present before and had asked for that; but the tow companies have not had much to say in reference to this and they wanted some input on the decision.

Commissioner Pritchett asked Mr. Frantzen if he had received the preliminary package, so he could look through it.

Mr. Frantzen replied he had not seen anything.

Commissioner Pritchett remarked that any one of the Commission offices has something to send out; she thinks it was going to be on the last agenda; and she suggested he contact Commissioner Smith, as he has done a lot of work on this.

Mr. Frantzen responded it would be an honor to work with Commissioner Smith; and he will reach out to him.

Commissioner Pritchett stated this is a really good time for him to study it and see if there is anything he wants changed; and then he could let the Board know.

Commissioner Smith stated after the meeting he would go up to his office and make copies for the tow companies represented there today; and they can get back with him with any questions or thoughts.

C.J. Chase stated the last time he was present, there was talk about a round table and the towing companies were to be involved; he is a little irritated that he got a call late last night about possibly voting on the towing ordinance; he received a partial amount of the some of the stuff that might be put in the resolution by text; he stated he is a business and there to make money, but prices have gone up; he mentioned Oil-dry, which used to cost him \$4.50 per bag,

is now \$20 per bag; he cannot work for the rates that were proposed in the new ordinance; and it is not as much the rates as the limitations. He added if he gets into an ambulance, he is charged \$19 for an Acetaminophen, and that is the County charging that; the County put in that the ambulatory rates needed to be improved and the County approved that; his trucks are just like that ambulance, as he has to have his truck available to respond to any accident call; and those trucks are not just there and they just happen to run out for people because they are not doing anything else. He stated they do other work while they are waiting for a call; just like an ambulance or firetruck, the truck he ordered last week was \$652,000, which will take him 10 years at \$6,000 per month to pay off, and the insurance will be three or four thousand a month on top of that, for that one truck; that truck allows them to tow a firetruck, that the County only wants to pay \$300 to tow; the tow companies need input into this, as the Board does not know what towing is about, just like he could not walk into K-Mart and tell them how to run it; he does not want to be told he is going to be a part of it and then find out at the last minute to come to the meeting to put his two-cents in; and he thinks they should be notified, as their emails were given the last time, but he has not gotten an email from anyone. He reiterated that the Board wants us to work with them, but does not want to foot the bill for things that the County cannot afford, because he can assure the County cannot afford wreckers; there are two at the Sheriff's Department and they still hire-out to the tow truck companies, but limit their fees to a loss with every tow that he does, based on the rates for the County; he stated the Board mentions the Sheriff a lot in the packet; but the Sheriff does not have a lot to do with it, the Commission, but he does not understand why the Sheriff.

Sam Roig stated he is the owner of Imperial Towing of Brevard in West Melbourne and wanted to reiterate about the towing; there has not been a round table discussion; he saw the fees and read some of the verbiage; some of the verbiage, even in the same paragraph, is contradicting itself; the tow companies really need to sit down and hash all this stuff out, as it is getting a little crazy; the trucks are getting very expensive; and he ordered three trucks this year and has not seen one yet. He advised he is about to spend \$.5 million on three trucks and they are just not here; things in the economy these days are not easy, as a lot of things are getting more expensive; he understands and tries to do good for the community, but at the same time, he cannot work in the red, or at a loss; like was said, he is on the highway at two or three in the morning and two weeks ago somebody got shot at in Cocoa just towing a car; he does not know if the Board heard about that, but one of his colleague's tow truck is shot up; and he does not know who is going to fix that, as it has to be fixed out-of-pocket. He added that tow companies run these risks, and he is not talking about private-property tows, he is talking about tows in emergency situations, the ones to open roads on the highways; he has to respond within a certain amount of time; it is hard to retain employees, as everyone wants big money; if he has to work on a small budget, he cannot afford an employee to get in the truck; these are some of the things he would like to discuss and consider with the package; it is not just that they need the money because the trucks are expensive, as it is the whole genre of business insurance, and gas, which is up over \$6 per gallon; and the consideration of all these things are just so he can maintain his operation.

Commissioner Smith commented that he appreciates the tow truck operators being there; he has worked with some towing companies and they were part and parcel of a lot of the discussions; he has been on the sidelines kind of guiding the conversations; he would be happy to sit down with the tow companies, but first he thinks they need to get an up-to-date copy of what has been proposed so they have an idea of what and where they are; he would be happy to continue the conversation in his office tomorrow or next week to get his input; and he stated he is looking out for them, as he is a fellow businessman, and he appreciates the fact that he is going through some tough times. He added they have no control over inflation and it is killing everybody; he had lunch with a head of one of the hospitals last week and he was telling him that he has people with \$100,000 jobs that do not call in and do not come back to work; it was said that they used to just ignore it, but now they are needed because there is nobody to

replace them; the attitude that business people have to deal with right now is crazy; what the Board is trying to do is protect the public and take care of the tow companies at the same time; but he thinks it can get there.

Commissioner Pritchett stated she knows there are a bunch of people that take the towing jobs, and she asked Commissioner Smith how they get into that, and if a contract is submitted to do it; and she asked if the Board sets the rates and then the tow companies submit contracts if they want to be in the rotation schedule.

Morris Richardson, County Attorney responded that currently, the Sheriff administers the rotation system; they are listed with Brevard County Sheriff's Office (BCSO), he thinks by zones, and BCSO maintains those lists; and it is a true rotation, as they will call the next up on the list and continue to call until someone responds.

Commissioner Pritchett asked if they are required to do it to get other business from the County.

Attorney Richardson replied there is no requirement to be on the wrecker rotation list; he thinks it is considered a thing of value by most of the towing companies; some have even acquired smaller companies in order to get an additional place on the rotation list; that is going to be part of the ordinance that is considered on November 15th, the formalizing of the wrecker operator system; and that is really the only thing the Sheriff has been involved in, not in the rate discussion.

Commissioner Pritchett asked if there was a way to have the wrecker operators do competitive bids to be on the rotation to do these jobs.

Attorney Richardson replied the Sheriff is going to have a lot of discretion about how to operate that, but that is an example; a Request for Proposal (RFP) could be put out for inclusion on the rotation list; and there are a number of ways to do that.

Commissioner Pritchett remarked that could be a way to get some rates set differently; she is thinking there are so many more different types of towing; she is interested in the conversation that will be had next week; she would not mind a phone call from the tow companies in the meantime to receive information; she told them to definitely get in touch with Commissioner Smith; and she is sure it will be more money than they are receiving now, as they will be doing a lot of work over the next week or so.

Chair Zonka commented that if the Board is not comfortable, it will not just vote for it just to get it done; if there are many people wanting to offer more and there are a lot of questions, it will be brought back like last time; the Board is charged with protecting the public as well as making sure that the companies can function and making sure it is affordable for the companies that are able to do the towing, as if it is not, there will not be companies that are able to tow; the Board does not want people getting these frivolous charges either, as she thinks has happened; she thinks that is sort-of what brought this up after hearing complaints that people cannot afford to get their vehicles out of impound; and she does not want people abusing that either.

Commissioner Smith commented that is typically the single tow truck companies that are just trying to find a tow; they are the ones that are likely to tow a car out of a parking lot that has a little sign about parking illegally and being fined; and that is covered in the ordinance as well.

Commissioner Pritchett stated she thinks Commissioner Smith has done well with addressing

some of those transparency issues for the public to know costs; she thinks the rotation situation also needed to be addressed; and there is a lot to be addressed.

Commissioner Smith stated if the Board cannot get the tow companies comfortable with this, then it will just move forward to the next meeting; the work has been done by the attorneys and all he has done is give guidance because of his background; he thinks it is about 95 percent there; and he is sure that it can get it to where the tow companies will like it as well.

Chair Zonka remarked that no one will like it 100 percent; and there will be people in the industry that do not like it, some that say it is better, some that say it is worse.

Commissioner Pritchett stated even if Commissioner Smith is not here, this is not something that the Board is taking lightly.

L.3. Rita Pritchett, Commissioner District 1, Re: Board Report

Commissioner Pritchett stated she has something but she is going to bet Commissioner Tobia wants to bring it up, and she will let him do so.

L.5. John Tobia, Commissioner District 3, Re: Board Report

Commissioner Tobia stated he would like to thank the executive staff and Larry Lallo and Marcus Herman of the Merritt Island Redevelopment Agency (MIRA) for all their hard work, as they certainly went above and beyond; seeing that there will be a new Commissioner in a few weeks with a potential for new priorities, and the priorities of MIRA may shift accordingly, he does not think his motion provided enough time for MIRA to adapt to some changes that may happen; he still thinks it is good that MIRA looks at going forward and making that plan better; he would like to make a motion to remove the deadline requiring December 20th for staff to return to the Board with a revised plan and allow them to come back to the Board at their earliest convenience to give them a little bit more time; and they have definitely put forth a good faith effort and he greatly appreciates it.

Chair Zonka stated since this has been Commissioner Tobia's initiative, to make sure he stays on top of it so it does not get missed; she is not saying that will happen with the new Commissioner, but she wants to make sure it gets done; and she is excited with the work they have done too.

The Board approved removal of the deadline requirement of December 20, for staff to return to the Board of County Commissioners with a revised MIRA plan, and to allow them to come back to the Board at their earliest convenience.

Result: Approved

Mover: John Tobia

Secunder: Rita Pritchett

Ayes: Pritchett, Tobia, Smith, and Zonka

Commissioner Tobia added that last night, he spent over an hour and one-half at Satellite Beach City Council meeting, where he did not speak on the Board's behalf or his own; there was a first reading of the ordinance that would establish parking fee programs; what he thought was interesting was the six or seven speakers, with six of them speaking against it; one Republican candidate said 90 percent of the residents he had spoken with were against it; and even a non-partisan candidate did not take an affirmative stand. He went on to say the Mayor of Satellite Beach said that people had contacted him saying the parking fee should be much higher, like \$85, even though no one come and supported the \$25 fee; the beach parking fee

program would cover all of their parks, but two of their parks are ones that were formally owned by Brevard County, which are Pelican Park and Hightower; the deeds for these parks contain restrictions that require the cities to make parks available to all resident and visitors with no differential in fees and the user fees must be uniformly applied; to enforce these deed restrictions, the County would need to file a lawsuit against the City of Satellite Beach, to request one, an injunction preventing Satellite Beach for implementing the differential parking scheme, and two, revision of the ownership of the parks from Satellite Beach back to the County; and he just wanted to mention this, as this was just the first reading and a second reading would be necessary to do this. He stated Satellite Beach voted unanimously on this. He noted that in the meeting packet, he observed Sunshine Law, and he quoted "they have received direct contact from some of the County Commissioners" in regard to the \$25 fee; some of the arguments against it, other than illegal, were brought up by some of the residents; the Board's argument is a legal aspect, but he wanted to show broader ones because it was interesting going to a different meeting; some folks had some privacy issues, as they will be taking photos of the license plates, some feel visitors will start parking on the side streets which may block resident parking, and one resident brought up that there was no limits to how many permits a house could get; and there were many questions, as the residents of Satellite Beach brought up some very good points. He stated it was interesting to see the look on the City Council member's face when their own residents were saying this may not be the greatest idea; this will be coming up at their next meeting, and should they go through, those are the two options; he encouraged the Board, in the meantime, to speak with the County Attorney's office about which option makes the most sense; and he encouraged the Board to read the Agenda Report because their minutes state that some of the Board has contacted Satellite Beach.

Commissioner Pritchett thanked Commissioner Tobia for bringing this up; she is thinking Satellite Beach is having trouble maintaining the park; she mentioned everyone in the County that parks there is going to pay for it, so she thinks the County should probably take the parks back, then it could do this and pay for the upkeep, that way everybody is paying the same; it is a valuable property that was handed over to Satellite Beach; she thinks the County should just take them back; and keep parking free to everyone would be fine and it could find a way to absorb it. She is leaning more towards that because when it went through situations in the past, she realized that cities shut-down all of the public beaches.

Commissioner Smith commented he will not be around when the decision is made, but he is trying to get rid of parks, which was one of the first things he did was to get rid of a Palm Bay Park; he is not in favor of going that route; from the very beginning, he suggested that he did not think this was a good idea; and if he was a resident, he would say that he never goes to the beach and he wants a credit on his property taxes for the parking fee amount.

Commissioner Tobia remarked that he is not accusing any of the Board, if fact, it is quite the opposite; and he read from the Satellite Beach ordinance, "since then we have received some direction from some of the County Commissioners to lower the annual pass fee for County residents to \$25"; this is the information they are peddling to their citizens and board members; and he had a conversation that they should change it to zero, certainly not to \$25.

Commissioner Smith stated he did not have an objection to them charging whatever they want to charge, but if they are going to charge their residents the same, which they are bound to do, then the resident that uses it should come in and spend the \$25 or whatever they decide; he does not know why they are married to that idea, but he does not agree with it; in their defense, they have spent thousands of dollars to upgrade that park with the bathrooms and have a lot of expenses maintaining them; he gets why they want to charge, but one of the concerns is that the properties across the street, businesses or homes, will have cars parked in and around their property; and he thinks Satellite Beach will have to figure it out on their own, as he does

not think the Commission should get involved.

Commissioner Pritchett suggested a plan B, as they have other properties and Commissioner Tobia advised they are raising the rates on all of them; if the County takes it back and they can buy it back from the County and do what they want to do; this is property that was given to them and in all fairness, substance over form, she read Eden Bentley's opinion and this is uncomfortable to her; she suggested to send a letter to Satellite Beach before their next meeting letting them know they probably need to reconsider their position; and that may solve a lot of problems.

Commissioner Tobia remarked he wanted Morris Richardson, County Attorney, to work and to file this stuff; he guesses she is talking about a demand letter; and he asked if that was correct.

Chair Zonka replied she thinks that if they are watching, which she is sure they are, they will know that they need to come up with a different plan; she understands why they need to raise the revenue if they want to keep the park at a standard they want it; but the County does not have \$200,000 per year to maintain this park.

Commissioner Pritchett noted it would if it charged everyone to park.

Chair Zonka replied exactly; she thinks maybe task Mary Ellen Donner, Parks and Recreation Director, to consider charging for parking if the County takes it back, or to come up with a reasonable rate, the same across the board; she is not crazy about the switcheroo, and apparently the residents are not either, to charge them a parking fee and then give it back to them on their taxes, which is kind of weird; she thinks there were some opinions on whether or not that was legal; and she will get with Attorney Richardson offline to determine what is legal and what is not legal. She added she would be happy to reach out to Satellite Beach as well; and there is someone else coming in to this District so the Board should allow for that conversation to occur.

Commissioner Tobia stated he would be more than willing to grant authority to give the Chair the discretion to send the feeling, which was pretty obvious of the Board, to Satellite Beach before their second reading vote; and he thinks the Board was pretty clear last time and they still went forward with a 4:0 vote.

Chair Zonka asked if the letter should just say that the Board is not comfortable with the current plan as was voted on at the last meeting.

Commissioner Tobia suggested it could say, should the City go forward, the Board will either file an injunction preventing Satellite Beach or whatever she wants; and he is excited to see Attorney Richardson at work.

Commissioner Pritchett mentioned she would vote to take the property back, just so they know; it would be the County's; and it could charge the same for everybody, and it would be fair for everybody.

L.6. Curt Smith, Commissioner District 4, Vice Chair, Re: Board Report

Commissioner Smith gave a shout-out to Public Works; he advised he got a tour today of their operations center on Pineda Causeway and it is very impressive; he is happy for them that they have a first-class facility to perform their operations; they have done a wonderful job at that property; he went in there eight years ago when he ran the first time; he knew who this guy was because he was heavily involved with the gun shows in Melbourne, so he asked if he could put

one of his signs on his property; the guy asked who he was and he told him he was running for the County Commission as a conservative and he wanted to put his sign there because it is a very heavily-traveled road; and he got to see the inside of those buildings, and they were nice on the outside but not much more than dirt on the inside with equipment, boats, and stuff everywhere. He mentioned the Board should get a tour if they have the opportunity, and he thinks each Commissioner would be impressed.

L.7. Kristine Zonka, Commissioner District 5, Chair, Re: Board Report

Chair Zonka asked if she was to write a letter and what was wanted in this letter; she does not want it to be aggressive or too light; and she wants them to understand that the Board is not in agreement with their plan and may pursue action.

Morris Richardson, County Attorney, commented he would work with her.

Chair Zonka asked if he would write the letter.

Attorney Richardson replied he would be happy to do that.

Chair Zonka mentioned something had been brought up in the past that there are two public comments sections and she believes that procedure and policy is if the first public comment goes beyond 30 minutes, the meeting goes into the second public comment; she asked if there is some way to put that on the Agenda, like a bullet point; she mentioned initially, people were signing up for both public comments, which is not supposed to be done; and she just wants it clear for people.

Frank Abbate, County Manager, replied it is absolutely possible; the Agenda can be modified and a notation could be made.

Chair Zonka commented she knows it sounds ridiculous; she figured now is a good place to bring it up; she wants to make sure people have a chance to speak; and she is fine with letting them go beyond the 30 minutes in the first hour, she just does not want it to get abused.

Upon consensus of the Board, the meeting adjourned at 6:19 p.m.

ATTEST:

RACHEL M. SADOFF, CLERK

RITA PRITCHETT, CHAIR
BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA