

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 May 2, 2013 at 5:04 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	Commissioner District 2	Present	
Trudie Infantini	Commissioner District 3	Present	
Mary Bolin Lewis	Vice Chairman/Commissioner District 4	Present	
Andy Anderson	Chairman/Commissioner District 5	Present	

ZONING STATEMENT

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, inspections, 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 of 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

Invocation given by Dr, Michael Andrews, Pastor, Palmdale Presbyterian Church, Melbourne.

PLEDGE OF ALLEGIANCE

Commissioner Nelson led the assembly in the Pledge of Allegiance.

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PUBLIC HEARING, RE: PLANNING AND ZONING BOARD RECOMMENDATIONS OF APRIL 8, 2013

Chairman Anderson called for the public hearing to consider the Planning and Zoning Board's recommendations of April 8, 2013.

V.B.1. (13PZ-00006) – ST. ANDREWS – NORTH, INC. – (MICHAEL MCWILLIAMS) - REQUESTS A CUP FOR ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION IN A PUD ZONING CLASSIFICATION ON A PORTION OF A LOT CONTAINING A TOTAL OF 1.87 ACRES. LOCATED ON THE NORTHEAST CORNER OF ST. ANDREW'S BLVD. & WICKHAM RD. (PART OF 6963 N. WICKHAM RD., MELBOURNE)

Cynthia Fox, Planning and Zoning Manager, stated this is an item requesting a Conditional Use Permit (CUP) for the on premises consumption of alcoholic beverages; and is part of an existing retail package liquor store. She added the initial request was for 10 seats, and she understands they have amended it to 20 seats; it is located in Suntree Plaza; and there are already two existing CUP's in this plaza.

Michael McWilliams stated he has been in retail for 37 years, worked both sides of the picture, and has always wanted to be a business owner. He went on to say he moved here from up north, and he loves it; he purchased a business in November; the community has been super special, the business has been in place for 10 years; he feels the community has embraced them as new owners; and noted they would like to be in business for many years to come. He advised at the beginning of the year, they knew competition was coming to the area and expected some impact, but nothing to the degree it is now; and he is hoping that business will speed up once the newness of the other store wears off. He stated the reason for them being at the meeting today is for the Board's approval of the CUP, to recoup some of the lost revenue; in February when the process started, he was asked how many seats were at the bar; he stated 10, and took it literally as seats at the bar and not the whole lounge; in reading through, he spoke with some people and decided they need 20 seats; and the parking is covered.

All of the Commissioners went on record to say he or she has spoken with the applicant.

There being no further comments or objections, the Board approved the Conditional Use Permit (CUP) for Alcoholic Beverage for On-Premises Consumption in a PUD zoning classification on a portion of a lot containing the total of 1.87 acres, limited to 20 seats as accessory to the package store.

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

V.B.2 (13PZ-00003) – DEER PARK RANCH, LTD. - (WILLIAM C. KEMPFER) - REQUESTS A CHANGE FROM GU TO AGR ON 2,044 ACRES. LOCATED ALONG THE WEST COUNTY LINE, APPROXIMATELY 3.47 MILES SOUTH OF HIGHWAY 192.

There being no further comments or objections, the Board approved the request to change from GU to AGR on 2,044 acres.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Chuck Nelson, Commissioner District 2
SECONDER:	Trudie Infantini, Commissioner District 3
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

V.B.3. (13PZ-00005) – DOUGLAS & KATHRYN PEEBLES – REQUESTS A CHANGE OF IU TO IU-1 ON 6.54 ACRES. LOCATED ON THE WEST SIDE OF PAW PRINTS AVENUE, APPROXIMATELY 1,500 FEET SOUTH OF EAU GALLIE BOULEVARD. (833 PAW PRINTS AVENUE, MELBOURNE)

Cynthia Fox, Planning and Zoning Manager, stated this request stems from the denial of a business tax receipt for a truss plant on the property; in order to operate a truss plant, the applicant needs a Conditional Use Permit (CUP) in the IU zoning classification, or the IU-1 zoning classification; and the applicants have requested the IU-1 zoning classification. She added there are two letters of objection; if the Board chooses to approve the request, it may wish to consider limiting the request to a truss plant only; with the IU-1 zoning classification; and the applicant could come back and ask for additional uses.

All of the Commissioners went on the record to say he or she has met with, or talked to, the applicant.

Timothy Williams stated he is present on behalf of the applicant; they are requesting a change to the IU-1 zoning classification; the reasons for this is to make sure they are in compliance with the operation of a mobile truss plant on the property; this is a truss plant that is designed to go onsite to build the trusses, which does not require a permit; business was slow; they had a few requests to build trusses where the trailers were parked; and ship them off site. He added there was some dispute about whether or not that required a permit or proper zoning; Code Enforcement said it does; and they informed the applicant that they either needed a CUP, or to change the zoning. He went on to say the zoning change would also be for building materials and recycling on premises, which requires the heavy industrial zoning. He advised the staff report shows this property having industrial zoning, consistent with Future Land Use Designation as far as compatibility with existing uses; the map shows there are other properties with heavy industrial zoning; and the attachment also shows consent from adjoining properties. He noted as far as environmental impacts, the staff report speaks of the maps used by Natural Resources; they show there are possible wetlands and that the property is in the flood plain; they are going just by maps; and the staff report also shows there was no site visit done. He added St. Johns River Water Management District (SJRWMD), in connection with a couple permit applications, has done site visits and an inspection and determined there are no wetlands on the property; and that it is not on the flood plain. He added there was an issue raised by the neighbor to the south regarding drainage; and at the Planning and Zoning meeting, the neighbor stated drainage is an issue and that his client's property picked up drainage from the applicants property. He advised that may be true; there is a ditch that goes along the south portion of the applicant's property; the ditch at the easternmost edge is mostly on the applicants' property; and as it runs westerly, it is mostly on the southern property. He went on to say it drains only on the applicants' property in the counter basin, it does not drain the southern property owner's property; and his drainage is completely separate. He added in a sense he is accepting drainage from the applicants' property, as some of the drainage runs across his property; in response to this, the applicant applied for a new permit from SJRWMD; the permit was issued on Friday; and it allows for the construction of a new ditch that runs completely on the applicants property, and completely separating the two. He advised the ditch should be completed in 30 days; a Notice of Commencement has been filed for construction on

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Tuesday, with a 48-hour waiting period; and as of tomorrow, construction will begin and it will be finished in 30 days. He stated the counter basin is the colored property on the provided maps, it is a separate drainage basin; the property generally drains to the west and to the south, it collects into a retention pond in the southwest corner; and from there it is pumped and runs through a County dike, which drains into the St. Johns River. He added, the city mentioned having concern of Lake Washington; the entire drainage system, including any water that drains towards Lake Washington, is done through permitting through SJRWMD, and it does not allow for any negative impacts; the rezoning will not require any additional permitting by SJRWMD; it will not increase the impacts; and if the use of the property subsequently changes to a use that potentially has impacts to water quality, the Florida Department of Environmental Protection (FDEP) would step in with its oversight monitoring. He mentioned being quite a way away from the Washingtonia Extension of the St. Johns Heritage Parkway; and the applicants property is adjacent to one, of two potential locations for the Parkway; the City of Melbourne thinks industrial uses are not appropriate for anything adjacent to the Parkway. He added, they do not say what is appropriate; he understands the Parkway is going to be a four-lane limited-access highway; residential would not be wanted there due to the noise; retail does not allow for limited-access; and the city needs to be clear on what is an appropriate use. He stated the neighboring property owners are in agreement that this is an industrial area; and he wants to ensure the property is in compliance with the Future Land Use Plan (FLUP).

Doug Connor stated he owns a piece of property at 803 Paw Prints Avenue in the same area the applicant does; he and the applicant have been neighbors for 20-plus years; he is zoned heavy industrial; and the applicant is trying to have the same industrial code as he. He mentioned his brother and sister who own 60 acres of property to the west of him and the applicant; they are zoned heavy industrial; he and the applicant are on a flag-lot; and the neighbors in front of him are zoned heavy industrial, as well as Chuck Griffis who has five to six-acres zoned heavy industrial.

Philip Nohrr stated he is present today on behalf of an entity known as M-135 LLC, which is the joining property owner to the south, and who is in opposition of the applicants' request. He mentioned the staff report is telling the Board that IU-1 is the heaviest industrial zoning in the Code; it allows for heavy manufacturing, outside activities, commercial incinerators, and truss plants; and the staff report says under IU, there can be a truss manufacturing facility as a Conditional Use Permit (CUP), if granted. He inquired why the applicant is asking for IU-1, when he can get what he wants in IU, if he comes before the Board for a CUP, which is going to be the same type of application; and the Board could allow more things in a CUP, rather than changing the zoning requirement. He provided the Board with an overview map covering a lot of territory; stated it gives the Board a pictorial of what many commissions before and after this Board will be working on, as a major transportational mode within South Brevard County; it shows the parkway and the proposed Washingtonia Extension; and the coming interchange by Ellis Road, and shows an off-shoot of where Washingtonia Extension is going to go. He added, it is known that Washingtonia Extension will be going through his client's property; and the City of Melbourne is working with him, in conjunction with the County, for a Right-of-Way (ROW) to be included in the development agreement.

Commissioner Fisher inquired where approximately the M-135 LLC property is on the overview map. Mr. Nohrr responded M-135 LLC is north of the white, rectangular area and on both sides of where the ROW will be going.

Mr. Nohrr went on to say at the Planning and Zoning Board meeting questions were raised about the Eau Gallie Boulevard ROW, if it would be an off-shoot intersection, or if it will go straight across. He stated it is going to go straight across because that is the most logical place to put it, and the best place to put it, without impacting a lot of sensitive area up and down the

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north side of Eau Gallie Causeway, including a lot of water bodies, continuing north, swinging to the east, and picking up Jones Boulevard and then on up to Viera.

Chairman Anderson inquired if Larry Finkelstein is the representative of M-135 LLC. Mr. Nohrr responded affirmatively. Chairman Anderson advised Mr. Finkelstein came to see him about one year ago, with his preferred alignment; he inquired if this is a matter of Mr. Finkelstein driving the alignment that he prefers on his property to oppose this re-zoning; and stated the first person on the original parkway has changed six times. He stated for a line to be put without a Project Development and Environment (PD&E) study and any permitting feedback from SJRWMD is premature. Mr. Nohrr replied it is not premature; he stated he understands they are not at the PD&E segment yet, but it is close; and the consultant's report is not based upon his client's preference, it is based on the exchange at Ellis Road being the limiting factor on the south side; and the limiting factor on the north side is going to be Eau Gallie Boulevard; and how far one can get away from the ramps and what is facing them on the north side. He mentioned Mr. Finkelstein has preference of the line going through M-135 LLC, is to have a slight curve in the road, but it does not affect where it comes out on Eau Gallie Boulevard; and it does not affect where it comes in on the south.

Mr. Knorr went on to say the City of Melbourne has raised concerns in a letter provided to the Board concerning the advisability of putting the heaviest industrial zoning adjacent to the Washingtonia Extension; he provided an overview, including the leg-out to Eau Gallie Boulevard; and he pointed out the properties zoned IU. He inquired what happens to all of the property if IU-1 is granted; and if there is a desire to reach out and allow a truss manufacturing facility on the subject property. He advised it can be done, and still keep IU zoning by letting them go through the CUP process and not put IU-1 right up to where the Parkway is believed to be going. He concluded there is no need to go to IU-1 and disrupt the entire neighborhood; stated there is potential for residential and mixed-use there; but between the State, Federal, County, and private enterprise, a lot of money will be put into the north/south extension; it is a major roadway that needs to be planned for carefully; and none will be in a position of authority when the time comes to build, but now is the time that decisions affect the future.

Chairman Anderson passed the gavel to Vice Chairman Bolin Lewis.

Motion by Commissioner Infantini, seconded by Commissioner Anderson, to approve a change from IU to IU-1 on 6.54 acres, approximately 1,500 feet south of Eau Gallie Boulevard (833 Paw Prints Avenue, Melbourne).

Commissioner Nelson inquired if he had IU Zoning and wanted the truss manufacturing why the applicant did not go through the CUP process. Mr. Williams responded the applicant is trying to ensure the truss plant is in compliance, and to allow for building material recycling use on the property. Commissioner Nelson inquired if that discussion occurred at the Planning and Zoning Board.

Chairman Anderson reiterated he is familiar with this item and the issue in M-135 LLC; Mr. Finkelstein is from Boca Raton; and is badgering property owners down there on anything that looks to be out of compliance. He stated there are property owners that have been there for 20-plus years, with an out-of-town-guy looking for every instance to submit a violation on some source; and his fear of a CUP is, the would be guy looking for everything running outside of the CUP, to call Code Enforcement and his office. He believes that M-135 LLC, is wanting residential; are worried about esthetics; and added, the Board needs to take care of its own residents first and let them worry about their future residential development some where else down-the-road.

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Commissioner Nelson commented the Board cannot control what an individual property owner does; stated they still own the property, and have some opportunity to comment; but he is not sold on the fact that this is consistent, because to him it does not touch IU-1. He stated he does not see that connection except maybe for a sliver in the southeast corner.

Chairman Anderson pointed out on the map, it would be the plot to east is where the current Melbourne, Motorsports Park is located.

Commissioner Fisher inquired if some of the ROW is acquired, will the County be paying more for a ROW in IU versus IU-1. Morris Richardson, Assistant County Attorney, responded the merits of this application, with consistency and compatibility, and cannot be brought into the discussion.

Vice Chairman Bolin Lewis called for a vote on the motion.

Vice Chairman Bolin Lewis passed the gavel back to Chairman Anderson.

RESULT:	ADOPTED [4 TO 1]
MOVER:	Trudie Infantini, Commissioner District 3
SECONDER:	Andy Anderson, Chairman/Commissioner District 5
AYES:	Robin Fisher, Trudie Infantini, Mary Bolin Lewis, Andy Anderson
NAYS:	Chuck Nelson

V.B.4. (13PZ-00002) – RICHARD LEE BEATTIE – RICHARD LEE BEATTIE - (BRUCE A. MOIA, P.E.) REQUESTS A SMALL SCALE PLAN AMENDMENT TO CHANGE THE FLU DESIGNATION FROM NC AND RES 15 TO CC ON 6.21 ACRES, +/-; AND CHANGE FROM BU-1 AND BU-2 TO ALL BU-2, WITH REMOVAL OF AN EXISTING BDP, ON 14.76 ACRES. LOCATED ON THE SOUTH SIDE OF HIGHWAY 520, APPROXIMATELY 500 FEET WEST OF LAKE POINSETT ROAD (5155 HIGHWAY 520, COCOA)

Cynthia Fox, Planning and Zoning Manager, stated this item has been tabled to the August 1, 2013 meeting.

V.B.5. (12PZ-00080) – MIAMI CORPORATION AND SWALLOWTAIL , LLC – (GLENN STORTCH) REQUESTS (PART A) A CHANGE FROM GU TO AGR ON 8,933.854 ACRES, WITH A CUP FOR TRANSFER OF DEVELOPMENT RIGHTS; AND (PART B), A CHANGE FROM GU TO FARM-1, WITH RECEIPT OF DEVELOPMENTAL RIGHTS, ON 2,768.596 ACRES, +/- . SITE LIES WEST OF HIGHWAY 5A AND I-95 INTERSECTION ALONG NORTH AND WEST BREVARD COUNTY LINES. (IN THE SCOTTSMOOR AREA)

Cynthia Fox, Planning and Zoning Manager, stated this is the Miami Corporation and Swallowtail, LLC requesting a change from GU to AGR on 8,933.854 acres, with a CUP for Transfer of Development Rights; and a change from GU to Farm 1, with receipt of development rights, on 2,768.596 acres, lying west of Highway 5A and I-95 intersection along north and west Brevard County lines, in the Scottsmoor area.

There being no comments or objections, the Board approved the Planning and Zoning recommendations of (Part A), changing from GU to AGR on 8,933.854 acres, with a CUP for Transfer of Development Rights.

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

There being no comments or objections, the Board approved the Planning and Zoning recommendation of (Part B), changing from GU to Farm 1, with receipt of development rights, on 2,768.596 acres, lying west of Highway 5A and I-95 intersection along north and west Brevard County lines.

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

V.B.7. (13PZ-00007) – CHARLES B. & CONNIE L. KIBLER – REQUEST A CUP FOR A PRIVATE BOAT DOCK ACCESSORY TOP AN ADJACENT SINGLE-FAMILY RESIDENTIAL LOT IN AN RU-1-13 ZONING CLASSIFICATION ON 0.03 ACRE. LOCATED ON THE NORTH SIDE OF ROSS AVENUE, APPROXIMATELY 610 FEET WEST OF SEILER STREET. (IN THE MELBOURNE BEACH AREA)

Cynthia Fox, Planning and Zoning Manager, stated this item is requesting a CUP for a Private Boat Dock Accessory to an adjacent single-family residential lot in an RU-1-13 zoning classification on 0.03 acre, located on the north side of Ross Avenue, approximately 610 feet west of Seiler St.

There being no comments or objections, the Board approved Charles B. & Connie L. Kibler request of a CUP for a Private Boat Dock Accessory to an adjacent single-family residential lot in an RU-1-13 zoning classification on 0.03 acre, located on the north side of Ross Avenue, approximately 610 feet west of Seiler St.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Trudie Infantini, Commissioner District 3
SECONDER: Chuck Nelson, Commissioner District 2
AYES: Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM V.C. PUBLIC HEARING, RE: ORDINANCE AMENDING ZONING REGULATIONS TO PROVIDE FOR SEASONAL PACKAGE STORAGE/DELIVERY ACTIVITIES

Chairman Anderson called for the public hearing to consider ordinance amending zoning regulations to provide for seasonal package storage/delivery activities to the second reading tentatively scheduled for May 14, 2013.

There being no objections, the Board continued the public hearing for ordinance amending zoning regulations to provide for seasonal package storage/delivery activities to the second reading tentatively scheduled for May 14, 2013.

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By consensus of the Board, the meeting adjourned at 5:46 p.m.

ATTEST:

ANDY ANDERSON, CHAIRMAN
BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

SCOTT ELLIS, CLERK