

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 March 3, 2016 at 5:00 PM in the Government Center Commission Room, Building C, 2725 Judge Fran Jamieson Way, Viera, Florida.

**CALL TO ORDER**

<b>Attendee Name</b>	<b>Title</b>	<b>Status</b>	<b>Arrived</b>
Robin Fisher	Commissioner District 1	Present	
Jim Barfield	Chairman/Commissioner District 2	Present	
Trudie Infantini	Commissioner District 3	Present	
Curt Smith	Vice Chairman/Commissioner District 4	Present	
Andy Anderson	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**

Reverend Ron Handlon, First Baptist Church of Cocoa, provided the invocation.

**PLEDGE OF ALLEGIANCE**

Commissioner Curt Smith led the assembly in the Pledge of Allegiance.

**PUBLIC HEARINGS**

Chairman Barfield called for a public hearing to consider Tabled Items and Planning and Zoning Board recommendations of January 4, 2016.

March 3, 2016

**ITEM IV.A.2., (15PZ00056) - IMPERIAL SOUTH, INC. - (WILL REYNOLDS) - REQUESTS A CHANGE OF CLASSIFICATION FROM PIP TO RU-2-15 ON 30.7 ACRES, LOCATED ON THE EAST SIDE OF WICKHAM ROAD., APPROX. 330 FEET SOUTH OF JORDAN BLASS DRIVE (2675 ALLEN HILL AVE., MELBOURNE (TAX PARCEL 253); 2600 PROMENADE DRIVE, MELBOURNE (TAX PARCEL 254); 6375 NORTH WICKHAM ROAD SUITE 107, MELBOURNE (TAX PARCEL 756); TAX PARCELS 265 AND 250 HAVE NO ASSIGNED ADDRESS AND ARE IN THE MELBOURNE AREA)**

Cynthia Fox, Planning and Zoning Manager, stated this is Item IV.A.2., and Item IV.C., Ordinance for Comprehensive Plan Package 2015-2 Comprehensive Plan Amendments, need to be considered with this Item; the Board should vote on Item IV.C. first; and the Board can discuss them together. She went on to say this is Imperial South, Inc.; they are requesting a change in classification from PIP to RU-2-15 on 30.7 acres; this is on the east side of Wickham Road; the Item was discussed at the Planning and Zoning board in October where they unanimously denied the request; and the Board tabled the Item at its December 3, 2015 and February 4, 2016 meetings. She added she submitted, through the Zoning Official, a memorandum based on a comment or question that was made regarding uses, specifically single-family uses, in PIP Zoning; and she stated if the Board would like her to discuss the memorandum, or if they have any questions for her, that can be done before the applicant.

Chairman Barfield asked Ms. Fox to go through the memorandum.

Ms. Fox stated the basic question is whether or no single-family residence uses were allowed in the PIP Zoning Classification; the short answer is no, only if they owned the property prior to 2004; that is listed as a permitted with conditions; and the condition is listed as permitted condition if they owned the property prior to 2004. She advised the Board in review of this Item in particular, it appears, from a closer review of their Deeds, that they submitted for the rezoning, that they have owned the property since the 1980s; there are several dates in the 1980s; under this scenario, if it was the desire of the applicant, they could build single-family homes; however, if the property was ever sold, the Ordinance states that any of the property owners that purchased the property after 2004 would not meet this condition and would not be able to build single-family homes. She went on to discuss the different sections of the Code, one in particular, is the permitted with conditions section that calls out single-family; she has discussed the Zoning Regulations, the consistency table, and it is clear that the PIP Zoning Classifications in the Planned Industrial Future land Use Comprehensive Plan designation; on page 3 she discussed additional uses; she believes it was stated before that in PIP it states that all uses in the BU-1 and BU-2 Zoning Classification uses and she has highlighted the ones that she thought could be considered residential, which is assisted living facilities, boarding houses, bed and breakfasts, resort dwellings, and group homes; and she thinks it is important to note that all of these activities in the County's Code are considered in a consistent manner Commercial or Industrial in nature, and they are all taxed and licensed and ran as commercial establishments and are often transient in character. She pointed out the difference in setbacks in PIP versus a traditional residential, single-family neighborhood; the PIP Zoning Classification provides for very large setbacks of 50 feet from the front and side property lines; and when a person's traditional single-family setbacks are much smaller, again indicating that PIP is not really designed for residential use. She added because of the proximity to the asphalt plant, which staff became aware of in the middle of the process at the Planning and Zoning meeting, they have concerns; she discussed the performance standards; historically they have applied the performance standards as they have performed against the Code and sought out compliance for performance standards; and in this situation, they would be limiting to the adjacent uses not just the flat out incompatibility,

March 3, 2016

but the ability for the applicant to meet the performance standards in proximity to residential development would become harder. She stated anything they would want to extend, enlarge, expand, reconstruct, redevelop, add new technology to, would be subject to performance standards regardless what is placed on the property, the performance standards will still come into play; she then summarized basically everything she has verbalized to the Board for it to draw its conclusions; the short answer is no, but in their circumstances, it is possible that they could build single-family; but that is not what they have asked to do.

Kim Rezanka, Law Firm of Dean Mead, stated she is presenting the applicant Imperial South, Inc; she gave her entire presentation a month ago; Commissioner Infantini was not at that meeting; and she is going to go through the Agenda Packet again. She went on to state she has more materials to provide to the Board; and she has a color copy of the binding development plan that has the map that shows the 900 foot sound wall, which she does not think the Board can see on the black and white copies. She pointed out she is present with a number of individuals who are very interested in the project, the developers Billy Bishop and Michael Beale with Bishop Beale, Will Reynolds with NARR Construction, Robert Brassman with Bowman Consultants, Gil Ramirez with Lassiter Transportation, Dan Esterline with Esterline Construction, and Adam Broadway with Certified General Contracting who actually constructed Fresh Market; and these people are involved in the community and this is an extension of what they want to do for the community by building these apartments. She noted she has not had a chance to look through the entire memorandum from Ms. Fox as it was handed to her when she came in today, but she thinks she can address it as she goes along. She stated Imperial South Inc. Has property, the 30 acres, some since 1985, but all since 1988; they could construct single-family use in that 30 acres; the reason she went on in length, and she will again today, about single-family uses that could go in PIP is to show there is really not a compatibility issue; if a person could already put single-family homes in there he or she should be able to put apartments in there as well; and if they sold the property, they could be a 100-year ground lease and get around that if they chose. She advised the Board they want to be honest about it, they want to buy it, so they are going to do the proper thing and re-zone it and change the Comprehensive Plan. She noted apartments are considered commercial use as they are done for profit, not done by someone who comes in, invests, lives there, and then sells it; but it is not specifically in the County's Code. She added she knows everyone probably knows where this is located on Wickham Road; it is on the east side of Wickham Road, south of the Fresh Market, extending all the way behind Petty's and the Post Office; Imperial South is selling the property to BBGL and they are seeking to put in 425 apartments on 30 acres; this is west of the former asphalt and concrete plant owned by Florida Hot Mix; and at Florida Hot Mix, these are three parcels, about 19 acres, and portions of this asphalt go back to 1963. She pointed out the occupational license for a concrete batch plant was issued in October 1978; Macasphalt owns about 15 acres to the east of the Hot Mix property; Mr. Marine was at all the hearings; he said he was representing Macasphalt; Macasphalt does not even abut the property at issue; the Macasphalt property is vacant; and there are no buildings on it. She went on to add there are mobile homes immediately adjacent to the north of that private drive; and then there are residences to the north and south of this property. She stated the property owned by Florida Hot Mix is separated by the property they are here to discuss by the Florida East Coast Railroad; Florida Hot Mix is a dissolved Florida Corporation; it has been inactive since 1972; these acres between the property at issue and Macasphalt has a non-existent owner; and maybe Mr. Marine can explain what she has not been able to figure out yet. She went on to say this rezoning was denied by the Planning and Zoning board because of Mr. Marine who testified that he represented the asphalt

March 3, 2016

facility and was in the process of reopening the plant; however, the plant has been closed for over four years; and there is a distinction as to whether it is an asphalt plant or a concrete plant. She pointed out a concrete plant might require conditional use and might have additional performance standards; if they do redevelop it, they have to meet Code regardless of what is next to it; and they already have residential next to it. She stated there is RU-1-13 immediately to the east, so if they try to redevelop it, they are already going to have to meet additional performance standards. She noted her clients were startled when they were denied by the Planning and Zoning Board because there had been absolutely no testimony at the prior transmittal hearing for the Comprehensive Plan; and that was back in July and August 2015. She stated truly this is a case of change of conditions to the area that warrants a change of land use and zoning; Wickham Road was a two-lane road until 1989; the Board can see that from the aerials; and she actually confirmed that with Mr. Ramirez who worked for the County. She went on to add there is a great deal of residential to the east and to the west, approximately 17 existing residential homes within the vicinity of the plant and the subject property; there are three residential lots that are not developed; and there are 95 mobile home/RV sites within the vicinity of the plant and the subject property. She advised the Board the things she wants to hand out is the Board's zoning map, which it has in its packet; she wants to show it where Macasphalt's 15 acres are; and then she has an aerial that she printed today with the homes adjacent and how long they have been there. She pointed out there have been no complaints about this asphalt plant, so residential homes and an asphalt plant can co-exist; they have for years and years; and she is going to hand out the information to the Board. She stated the yellow highlighted portion is the property at issue; the Board will then see the East Coast Railroad to the east; and then it has the triangle two pieces the IU and IU-1 that is Florida Hot Mix. She stated between that is the Macasphalt and the RU-1-13 property that is the RV park. She stated there is a pool that is immediately adjacent to the asphalt plant that was built in 1999; she does not know what the industrial use to the north of that is, but she suspects it may have something to do with the asphalt plant; but immediately to the north of that there is a house that has been there since 1964. She pointed out there is RU-1-13 immediately to the east and adjacent to the asphalt plant; prior review by the Planning and Zoning Board and the Board regarding this change of Comprehensive Plan and change of the rezoning that the compatibility issue was already addressed. She stated the apartment complex is a perfect live, work, and play development with the fresh Market restaurants, the school, and shopping in this area; this is a compatible use with what is there, because this area has changed so much; and there is also residential on the other side of Wickham Road, so this seems to fit right in this location. She went on to state during those prior hearings no residents or staff had any objections or concerns; Commissioner Smith raised a concern, which they believe has been addressed; and Mr. Lassiter will discuss it. She noted the conclusion was made that there will not be an increase in p.m. peak hour traffic counts over what is currently allowed; this Comprehensive Plan amendment is recommended for adoption concurrence and any required mitigation to support the proposed development plan will be assessed in greater detail during the final development permitting process; and if there is a traffic light that is needed or additional ingress/egress, that is a site plan issue that will be addressed at that time.

The Board approved extending the applicant, Imperial South's, time.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Andy Anderson, Commissioner District 5
<b>SECONDER:</b>	Curt Smith, Vice Chairman/Commissioner District 4
<b>AYES:</b>	Fisher, Barfield, Infantini, Smith, Anderson

Kim Rezanka, Attorney for Imperial South, Inc., stated she has the binding development plan with the color copy for the 900-foot sound wall; the binding development plan is in the Board's packet; and it has been amended after discussion with Commissioner Smith. She went on to say in paragraph two, it went from a six-foot high fence to a 10-foot high fence along the eastern boundary of the property from the retention pond, north along the adjacent property zoned IU and IU-1 as reflected in Exhibit B; the Board will see a red line in Exhibit B that extends from the retention pond on the right hand side to the end of the asphalt plant; and that is a 10-foot sound wall. She stated as the Board may recall, the apartment lease for any of these units will have a notification that the property to the east is zoned industrial and may be used for asphalt and/or concrete production and mixing; Paragraph 4 is new, the developer and owner acknowledge that the property to the east is zoned IU and IU-1 and agrees that it shall not object to any use of the adjacent property that is a permitted or conditional use as long as the adjacent property is in compliance with the County Ordinances; and they believe the vegetative buffer and the wall will buffer the noise to the east and all of the residents will be notified, so they cannot say they did not know. She noted regarding Mark Marine's concerns, there have been no complaints to Code Enforcement despite the fact that there are residential uses surrounding this asphalt plant; regarding the performance standards, she does not know if those were specifically laid out regarding the decibel levels that is in the County's Code Section 62-2271; and there is a table of the weighted sound pressure limits per receiving uses. She stated the receiving uses for residential are limited from 7:00 to 10:00 p.m. and from 10:00 p.m. to 7 a.m., and they are very low, about 60 and 65; commercial is 65 and 55; and industrial is 75 to 65. She pointed out currently they do not have problems with the performance standards; there are no complaints, but they believe that sound wall will buffer anything with the performance standards; and as was discussed at the last meeting, the asphalt plant may have some vested rights because it was there beforehand. She stated she thought that would be addressed in the memorandum. She stated they have to meet the performance standards already regarding the receiving residential uses; and if the County considers that the apartments are a commercial use, the residential standards are not as stringent. She advised the Board the property is zoned PIP; she went through this before and that is what prompted the memorandum that was provided to the Board; PIP allows BU-1 and BU-2 uses; and that is when she went through and said it appears that a single-family residential use could be in this already zoned PIP property. She noted that would be group homes, nursing homes, resort dwellings, tourist efficiencies, hotels, motels, treatment and recovery facilities, fraternities, and sororities; she also talked about the meaning of a resort dwelling, which can be in PIP; and that is any single-family or multi-family dwelling which is rented for periods less than 90 days or three calendar months. She stated it does not make sense the County can have a resort dwelling in PIP that someone can stay there for 90 days, but a person cannot have an apartment where people can stay for a year. She pointed out apartments are compatible with the uses allowed in the current zoning category; the staff report states that there could be 668,646 square feet of industrial space on this 30 acres; this is right adjacent to Wickham Road, which is a scenic highway designated corridor by the County's Code; she does not believe that 669,000 square feet of industrial space is esthetically pleasing in a scenic highway corridor; and the apartments with landscaping would be much more esthetically pleasing and be a better fit for this area. She concluded by saying that she is asking the Board to approve the Comprehensive Plan change from PIP to RU-2-15, the land use from PIP to RU-2-15, and the land use change from Planned Industrial part to Residential 15. She asked the Board if it has any questions.

March 3, 2016

Robin Sobrino, Planning and Development Director, stated she wants to clarify a couple of things Ms. Rezenka said. She went on to say if single-family homes are put in the PIP, then there is not a compatibility problem; the Code recognizes that there is an incompatibility problem; and that is why in 2004 single-family homes were removed as being a listed use in the PIP Zoning Classification as a permitted use. She stated the Board, at that time, recognized that there might be a property owner who held PIP zoning and might have relied on the zoning regulations in place prior to 2004 that allowed a single-family home; and therefore, the Board put in that condition that if a person owned the property beforehand he or she were still eligible to be considered for single-family use. She noted it is not recognition that single-family homes are compatible, it is strictly an acknowledgement that there might have been an expectation prior to 2004; and the Board was addressing that expectation. She added Ms. Rezanaka made a comment when she talked about a number of different uses that are allowed in the BU-1 and BU-2 classifications, the statement that this means apartments can go in PIP; and staff wants to clarify that the Zoning Code does not allow for multi-family residential uses in PIP nor does it allow for single-family residential.

Commissioner Anderson stated he knows the Board gets caught up in semantics and words; he inquired if a nursing home is a permitted use under BU-1 with conditions; and if the applicant wanted to put a nursing home or assisted living facility in there he could.

Ms. Fox replied if all conditions are met, and transient, commercial in nature, has to be licensed; and the Code contemplates that use not as residential but more institutional.

Commissioner Anderson stated assisted living facilities are long-term stay facilities.

Ms. Fox noted they are institutional uses.

Commissioner Anderson inquired if residents of an assisted living facility, who can drive their own cars in many cases could make complaints against the asphalt plant.

Ms. Fox replied affirmatively. She stated transient, commercial in nature, they have to be licensed.

Commissioner Anderson stated he hopes if he is living in a nursing home he does not live there longer than 90 days.

Ms. Fox stated the County's Code contemplates that use not as Residential Use, but more institutional.

Commissioner Anderson stated assisted living facilities are long-term stay facilities.

Ms. Fox reiterated they are institutional uses.

Commissioner Anderson stated these are words; and he inquired can residents of an assisted living facility who could drive their own cars in many cases could make complaints against the asphalt plant.

Ms. Fox responded affirmatively.

Mark Marine, Executive Vice President of Preferred Materials, stated he has been with the company for 31 years, but he never head the term Florida Hot Mix; he is confused because he thinks it was Florida Hot Mix, then Macasphalt, then Apeck Southeast, Inc., all incorporated in the State of Delaware; they were purchased in 2006 by Old Castle, an Irish Company, and their name changed from Apeck to Preferred Materials in 2014; and they are the owners of the

March 3, 2016

facility. He went on to say they have every intention of reopening the plant; there were folks questioning whether the reason they are going to reopen is a primitive strike against this rezoning; and he can say that is not the case at all, they have had a lot of discussion about the money that is going to be expended to get this plant up and running, and it will be in excess of \$200,000. He noted they have said on the record they oppose rezoning for this facility and are really not in favor at all of putting 400 and some families right next to the asphalt plant; he inquired if a tree falls in the woods and nobody's there to hear it, does it make a sound; he stated they have been in the woods for a better part of 30 to 40 years and there were not any issues about performance, they were just paving Brevard County roads; but as they have gotten further and further along, there has been homes put in, RV parks, and they have had to work hard as good neighbors to ensure they keep harmony in the community. He stated Ms. Rezanka had said at the last Planning and Zoning meeting that he derailed their application; he wishes he was that eloquent to be able to make that happen in a three-minute speech; but quite honestly, it was derailed by the Planning and Zoning Committee; and once again, it was unanimous as they saw that this was not a compatible use for this piece of property. He added Henry Minneboo, a long time fixture in the County, made a very profound comment, and he totally agrees with him; there are only three asphalt plants in the County; and the likelihood of somebody in the future being able to put in an asphalt plant is going to be minimal at best. He pointed out he was happy to hear Ms. Rezanka speak so highly of the asphalt plant; they have had zero Code Enforcement violations over the last ten years; she also said there was white paper that said they have not had issues with toxic fumes, toxic materials, or whatnot; and he is happy to hear they are doing a great job at NAPA to educate folks that asphalt is a phenomenal product. He stated it was kind of interesting the dynamics were that all of a sudden the tables were somewhat turned, and he being a huge proponent, a lifetime advocate of asphalt, was sitting there trying to explain how a person really does not want to live next to an asphalt plant. He stated their asphalt plant is by far a huge asset to the community and to the County, and for them to have 500 or some units next to it is going to definitely be contentious at best; and there are going to be issues like he has said in the past. He advised the Board that Randy Gaines, Regional Plant Manager, is going to speak after him; he did not have firsthand knowledge about the lady with the pool; but Mr. Gaines has firsthand knowledge. He went on to state Mr. Gaines will share with the Board some of the stories of what has transpired over the last 10 years; and it is not the pretty picture Ms. Rezanka portrayed. He stated in January there was a six-cent proposal for a six-cent gas tax by the Board and it was determined that it was not going to go through; the asphalt tonnage produced in this County last year was 191,000 tons; right now the asphalt is coming from Orlando and Kissimmee. He stated Donald Trump cannot build a sound wall that will mitigate this. He stated notice provisions have been discussed regarding potential tenants living next to an asphalt plant that have no clue what an asphalt plant is or what they are really signing up for.

Randy Gaines stated he has grown to know the lady with the swimming pool over the past 10 years; she is no longer living there; he has had phone calls from her; at one point, the plant crew had to call the police to have the lady escorted off of the property; and no record of that is shown because they want to be a good neighbor. He went on to say regarding the trailer park, the only trailer park he knows of is more to the north and not just to the right when coming in the road; that is a storage area; he has had complaints from that company; and he thinks they did write a check for about \$3,500 to the business to the north of them for detailing their cars with the ambient dust. He noted they try to be good neighbors; they ended up putting up a six-foot fence to assist the lady with the pool; they also ended up putting a buffer there; and it still did not help, she still called and complained. He noted to the south the Board will see in between their property lines there is a warehouse there; they have had complaints from them; and the ambient noise is within the restrictions of the daytime. He pointed out he has been in the asphalt business for 35 years, he has covered 12 asphalt plants, and he has covered the whole State from the central to the south; and they have had complaints just for the air coming out of their exhaust fans. He stated today he had two complaints, one at Naples regarding a smell

March 3, 2016

issue and one at Loral on a sound issue; and he handles a lot of complaints. He went on to add the good news is they have not had any Code Enforcement issues; he hopes it helps the County and saves taxpayer money; but the other point is that they do take a lot of complaints. He stated the woman with the pool told him if she knew about the asphalt plant she would have never moved there in the first place. He stated they have in the past spent a lot of money on mitigating noise complaints all over; he actually modified some stacks to try to mitigate some noise coming out of the stacks for one gentleman that lived over a half a mile away; and they spent \$25,000 to rebuild a stack to try to mitigate that. He concluded by saying there have been five or 10 people who have complained in the County; they have tried to help them out; but when talking about 500 families living to the west side of the plant, it will be difficult for him to try to please them. He stated it is like trying to put a square peg in a round hole; and he asked the Board to deny the request.

Commissioner Smith inquired if they have typical hours of operation, because he knows most roads are built in the night time.

Mr. Gaines responded most of the facilities are running 24 hours a day; and typically for the Department of Transportation work, they would do that at night.

Commissioner Smith inquired if it was uncommon for them to run from 8:00 at night until 8:00 in the morning.

Mr. Gaines replied no, most FDOT jobs do not want to inconvenience the traveling public, so that is why they run generally at night time.

Commissioner Anderson inquired if the applicant were to change their business model and put a motel in there, would they object to that.

Mr. Gaines replied they are not in favor of it by any stretch.

Commissioner Anderson inquired what about a bed and breakfast or fraternity or sorority.

Mr. Gaines replied sorority maybe.

Commissioner Anderson stated his point is group homes, nursing homes, resort dwellings, single-family residences, assisted living facilities, tourist efficiencies, and nursing homes; and they may want to object to those uses, but there is nothing they can do about it. He noted that is what he does not understand; and they could make a couple of tweaks and come back before the Board again over their conditions, which will be permitted.

Mr. Marine stated it is a very attractive piece of property; he cannot speak for potential applicants, but it is serviced by rail; there are a lot of different things that can be done; and a person can put in a siding and make a wonderful warehouse facility and still place nice landscaping and buffering on the front side of Wickham Road, and they would be better off financially. He pointed out there are just many other things that the property can be used for; and everyone is a capitalist at the end of the day.

Commissioner Infantini stated the point the gentleman is trying to make is just because the Board legally permits something does not mean it is feasible; it just means legally the Board could not lock out and not grandfather in certain uses; and she doubts any residents will be gotten if the property it turned into an assisted living facility.

Commissioner Fisher inquired where exactly in the photo is the production going to be; and is it on the south end where all of the buildings are located.



March 3, 2016

Mr. Marine replied affirmatively, and stated it is almost dead center of the property; the Board can see where the RV storage facility is located; the road going in is where the plant is; and it is an asphalt plant not a ready mix concrete plant. He noted asphalt is the number one recycled product in the United States.

Carla Casey, Regional Manager of Brenner Real Estate Group, stated for the past 16 years, Brenner Real Estate Group has been the manager of the property that is being discussed; and she has had the privilege of being the local manager for other assets owned by the parent corporation. She went on to add in her professional connection to the properties, she is also a resident of the County, and she has been for 12 years; tonight she is here to speak on behalf of Imperial South, Sterwick Development Corporation, and Golden Triangle Realty, each and all of these entities are either directly involved with this parcel or are adjoining to the parcel; and Imperial South has owned the land in question for roughly the last 30 years. She stated during the last 30 years, this group has also developed some of the most successful commercial properties in the immediate area, most notably Imperial Plaza and the Centre at Suntree; the group's involvement within the community has not only been for business purposes, they have also been involved with the betterment of the community as well; and the donation of the land for the Suntree Public Library was made by the group for the benefit of the community and the County in 1997. She added she believes there was some involvement with the Little League fields that are next to Suntree Elementary; they know how important to people that they have an environment that is safe, nice, and a good place to work, live, raise a family, and run their businesses; they also believe in the mindset and have worked hard to maintain the properties to the highest level, with constant upgrades and improvements; and a good number of the people who are their tenants at all three local properties are all Brevard County residents. She noted the management that has been in place for 16 years has worked very hard through the years to support the local small businesses in the County; it is a rare occasion that a vendor or contractor is obtained or used that is not based in this County; the only constant in life is change; they have an opportunity in this area to create a place for people to work, play, and live in an upscale setting, along with controlled growth; and the opportunity that is in front of the Board is to create upscale housing, which will increase the tax base and benefit the County. She went on to say the opportunity for added growth and business for all of the surrounding businesses, and adding quality business and retail opportunities based upon an increased residential component is a plus. She advised the Board the biggest objection to this Land Use variance that is currently circulating is based upon the plant that has not been functioning for over four years; they were blindsided by the fact that the plant chose to address this and come up publicly rather than coming and speaking with them, as they had business dealings with them in the past, and have been neighbors with them for 30 years; and they say they will be opening up soon for business. She inquired why they are not jumping up and down to add to the business and be involved in this project. She pointed out as the largest commercial paying taxpayer that is directly affected by this decision in that are, they would urge the Board to take all considerations into account for the local businesses in the area, their potential growth, their families, other property owners in the market, and the residents; this corridor area should be a place where people can work, live, and play; it should be an area where people can go to the doctor, the gym, the dentist, the bike shop, spa, florist, get an ice cream cone, go to the gas station, and all of the other retail and service establishments in the immediate area; and most are independently owned by the County residents. She stated they think this should be the County's priority when considering this matter.

Charles Tovey stated he could save a lot of people a lot of things and it is already prepared and ready to go; behind his house, has been cleared; there was an apartment building that was supposed to go there; and it fell apart. He stated the Town of Palm Shores is a half a mile or so from Apack; he knows some of the Apack family; and he can only speak highly of them and their family. He noted maybe Apack could throw in a couple of roads and the apartment complex could do some work in the Town of Palm Shores; and he will never get over what has

March 3, 2016

happened. He stated he may be poor but he will not live next to a tar factory; he is poor financially, but he does not worry about money. He stated it is obvious about asphalt, but there are compatible solutions to that area; and the Town of Palm Shores is open for development.

Chairman Barfield asked Ms. Rezanka if she had a rebuttal.

Ms. Rezanka advised there are more cards.

Chairman Barfield stated they are from the same organization.

Ms. Rezanka inquired if the Board is not going to let them speak.

Michael Beale, CEO of Bishop Beale, stated they are one of the development partners for this project; he just got off a quasi-judicial board that he sat on for five years; and he will try to be brief, because he knows this can be tedious and confusing at times. He went on to say they have looked very hard at this project; one of the things that lead them to the apartment complex is a few months back he was able to go on top of the office building that Dr. Hardune built; he built a nice patio there; and he looked to the south and it was almost amazing to him that there was this beautiful medical office park and next to it was a beautiful retail center. He noted there is an opportunity to put apartments there; apartments fit very nicely; there is an internal road system through a series of easements that keeps all of the traffic between the parcels off of the roads; and he thinks it is a very good use. He stated he has found in his career that it is contradictory that he is happy to have the 3000,000 tons of pavement; the reason he wants that or is going to get that is because of progress; and things are changing. He pointed out land finds its own highest and best use; he does not think the highest and best use of this property is industrial; and it does not fit with the neighborhood. He stated he appreciates everyone's concern, but it is their money that they are putting in; it is a substantial investment over \$50 million; and they have the risk of whether or not this will work or not. He explained to the Board they think it is a viable project and that they can minimize the impacts.

Gil Ramirez, Lassiter Transportation Group, stated they were the traffic engineers on the project; they have done a study that shows that the change in Future land Use will actually reduce the potential number of future trips on that parcel if this is approved; and as Ms. Rezanka has already said, if they move forward, they have to do a site plan. He stated at that point, they will address the specifics of any impacts associated with that project; the developer is aware and willing to come to the table to take care of those; and he is not going to belabor the point. He advised the Board if there are any traffic questions, he will be there for it.

Commissioner Smith inquired what their presumption was in making the determination that if this remains as the Comprehensive Plan exists that it would actually create more traffic than 426 apartment units.

Mr. Ramirez responded the calculation is actually pretty straight forward, and it follows the same procedure that County staff uses, because they do their own analysis in the same way; what they do, within the technical memorandum, is look at what the Future Land Use allows and what the best use may be based on the maximum floor area ratio; Ms. Rezanka said that the staff had assumed 600,000 square feet of industrial; and they actually assumed a little less in the analysis. He went on to say they assumed that they could probably get 534,920 square feet; take that number and there is a manual that they use that is developed based on other industrial uses throughout the nation that gives a square footage to number of trips generated; it is a simple calculation that tells a person how many trips is generated by the square footage; and then those are compared against the number of apartment homes and how many trips those generate.

March 3, 2016

Commissioner Smith inquired just how big is 534,000 square feet as opposed to a Sam's or a BJ's.

Mr. Ramirez replied 534,000 square feet would probably be a very large warehousing development; they have done some of those in Daytona; Commissioner Smith is probably talking about a development of that nature, if it is basically one large development; if it is broken up, it really depends on how it is laid out; but it is very large, like a warehousing type development.

Commissioner Smith inquired what kind of traffic pattern a warehouse is going to generate more cars per day than 426 apartments.

Mr. Ramirez responded they based it on ITE, which means International Traffic Engineers Society, a similar Land Use would generate about 448 p.m. peak hour trips, so that is 5:00 in the afternoon; and that would be late deliveries to Walmart and such that want to receive deliveries off peak; and by the time the trucks get there it would be about 448 p.m. peak hour trips for similar developments of that size.

Commissioner Smith inquired if they had an apartment complex with 426 units, would a normal number be two cars per unit.

Mr. Ramirez responded what he has is 334 p.m. peak hour trips for an apartment of this size; and this is what they predict will be generated by a very typical apartment complex.

Commissioner Smith stated he cannot picture that 850 cars coming and going out of there is going to be fewer than is going to be generated by some warehouses; and it is a little, what is the word, he will not use it.

Mr. Ramirez replied counterintuitive.

Commissioner Smith stated he will go with that.

Mr. Ramirez stated the analysis he did is the same exact methodology that is done by County staff; they do not come up with these numbers on their own, they use exactly the same resources and he does not make up the numbers; they use statistical studies that have been done in other areas, this is nationwide; and if a person goes to California to a board hearing they would get exactly the same numbers because they use exactly the same statistical data behind it.

Commissioner Smith inquired if Mr. Marine were to hire a traffic study company, does he think the numbers might reflect a different case than Mr. Ramirez has.

Mr. Ramirez replied absolutely not; by looking at what the Future Land use is now and a person tries to figure out what the maximum industrial use is, that is it, there is no magic to it; his reputation hangs on this, and he would not lie; this is just one of hundreds of projects that they do, so it is really not worth it for them to try to snow the Board; and that does not have anything to do with the fact that he is the former Traffic Operations Manager for the County. He pointed out he spent 10 years defending the capacity on Wickham Road; and he surely does not want to be the one to come over here and wreck it all after all of that work.

Commissioner Infantini stated she does not think it is lying; she thinks it is using the numbers to the fullest advantage to help present the point of view which he is sharing; and everyone should work the numbers for the best advantage possible.

March 3, 2016

Commissioner Anderson stated he used to think those numbers were weird but he recently worked with an economic development project for a warehouse; they he had to ask them to repeat the numbers to him.

Chairman Barfield inquired how many trips Mr. Ramirez said with the apartments.

Mr. Ramirez replied in the p.m. peak hours they are estimating 334.

Chairman Barfield inquired is that the peak hours or just trips.

Mr. Ramirez responded that is the p.m. peak hours, that is how many vehicles can be expected during say 5:00 to 6:00 in the afternoon on an average weekday.

Mr. Ramirez stated to speak to Commissioner Anderson's point, with industrial a person has definitely got a different mix; they recently did a study of a very large warehouse in Daytona; and they were at 40 percent heavy vehicles, so semi-trucks versus residential where that is going to be around two percent, which is the national average for something like that. He stated to address Commissioner Infantini's point, which is taken humbly, their analysis, if a person is comparing their numbers with the numbers staff used, they assumed that industrial would be less than what staff decided to use; and they also assumed more units than what staff assumed. He went on to add they are trying to be more conservative in their numbers, because they do not want to be in a position where they come before the Board and staff tells the Board they underestimated their numbers or they are trying to play the game; and they are trying to be completely forward with the Board.

Ms. Fox stated she would like to interject one thing, she does want to say that the technical memorandum that they received from the applicant really only brings in the peak hour numbers, not the total trips; and she wanted to make that distinction. She noted this memorandum is dated and was submitted at the time that they came for transmittal of the large scale plan amendment that the Board is voting for transmittal; they have not received a different one for adoption; the actual numbers that were used as the total numbers of residential dwelling units that they used in their report actually exceeds what they have asked for; and staff did the analysis at the time of the submittal of the large scale for transmittal, which indicated they were attempting to go for PUD Zoning. She pointed out if a person goes for a PUD Zoning, he or she would get a bump up in the numbers of units; it has turned out that since the transmittal, they changed their request and have gone from PUD to Residential RU-2-15 multi-family; and the new traffic memorandum or study would have to be done at the time they come in for site planning, at the very least, and staff is not operating with the most current numbers.

Chairman Barfield stated Ms. Fox figured there are 426 apartments, four trips a day, which is 1,704 trips a day; and he thinks what the applicant is saying about how man peak trips, was about a quarter of that.

Ms. Fox advised the Board total trips existing would be 354; trips entering would be 94; and total trips at 448 during peak times.

Dan Esterline, representing Mahaffey Apartment Company, stated they have built over 20,000 units in the State of Florida; he is the grandson of the founder Tom Mahaffey; as a family business with over 50 years in the apartment business, they currently manage 10 properties throughout Central Florida, and over 9,000 units; and their philosophy is they build apartments to own and manage as part of their portfolio and they are in this for the long haul as they build a quality product. He went on to say he has different roles that he fulfills in the apartment company; he deals in development, construction, and leasing of properties; he is familiar with the challenges of adjacent properties and the challenges of the railroad track and adjacent

March 3, 2016

properties there; and they are a pretty conservative group in how they do their developments. He pointed out they take a close look at properties like this and spend some time analyzing the property; and they had some concerns at first over the railroad track. He stated they had one of their representatives come down and spend some time in a hotel near the tracks and listen to it to see how the noise was at night, and it was not a concern; and they talked to some of the other apartment communities in the area, and their experience was it comes part of the background noise, part of the ambient noise that people get used to and deal with. He added they put a lot of effort into how they design their sites; where they have a challenge, whether it be a big roadway or railroad track, is they build that buffer zone into it themselves; and they will step back and they will lay out the buildings in a way to minimize those impacts in their buildings. He stated they consulted with their professionals, architects, and engineers; they have a property in Tampa near the Veteran's Expressway; and their architect said not to worry it becomes part of the background noise. He concluded by saying they have taken a hard look at this and they understand the challenges; and they have faced many challenges with adjacent Land Uses and they are comfortable with what they are looking at.

Commissioner Smith stated Mr. Esterline said a person came down and spent some time in a hotel or motel and listened to the train noise; and he inquired what about an asphalt plant. He stated they are talking beep, beep, beep in the middle of the night; kids are trying to get up fresh eyed and take a test; and mom and dad are going to work in the morning. He stated there are heavy tailgates banging against trucks; and he does not think a person gets used to those kinds of noises.

Mr. Esterline stated he has read the parameters of the Zoning with the restrictions and they are comfortable with that; and they think that the noise barrier and landscape barriers are sufficient.

Commissioner Smith inquired what about the smell of asphalt wafting into a bedroom at 2:00 in the morning.

Mr. Esterline replied he does not think it will be an issue.

Chairman Barfield inquired if Mr. Esterline has any apartments near industrial plants or a rock quarry.

Mr. Esterline responded they have large site developments near their properties; there is a site in Winter Haven that has a lot of site development and truck, road work, and things like that going on for a very extended period of time; and he does not want to say people just think it is what it is, but if it is beyond a person's control, he or she does not tend to complaint about it as it is just life.

Adam Broadway, President and CEO of Certified General Contracts, stated he has done 40 acres of new construction and development north of this property; along with the 40 acres, he has relocated 25 to 30 new businesses who all collectively spent tens of millions of dollars in the community on the Wickham Road corridor; what he has heard tonight is they are talking about the negative impact and making assumptions about the negative impact this would have on one business; but the Board is not looking at the positive impact it would have on 25 to 30 businesses that are all currently open and operating today.

Ms. Rezanka stated she has several questions for Mr. Gaines. She stated Mr. Gaines has had five to 10 complaints regarding this particular asphalt plant; and she inquired over what period of time those complaints have been.

March 3, 2016

Mr. Gaines replied it was more than five or 10 complaints; he has been in the company for 28 years; he cannot give Ms. Rezanka specific dates; but he can give her the name of the woman that had the complaints with the pool.

Ms. Rezanka inquired how many people have complained in the 10-year time frame.

Mr. Gaines replied probably five or six, plus having to write the check for the people on the north side.

Ms. Rezanka inquired where the 35-foot high screen is located.

Mr. Gaines replied in Gainesville.

Ms. Rezanka inquired if Mr. Gaines has that here.

Mr. Gaines replied no.

Ms. Rezanka inquired how much they have spent to mitigate noise at this asphalt plant.

Mr. Gaines responded he would estimate around \$30,000.

Ms. Rezanka inquired for a fence and for what else.

Mr. Gaines replied for a barrier wall, wrap barrier.

Ms. Rezanka inquired where that is.

Mr. Gaines replied on the right beside that swimming pool

Ms. Rezanka inquired if it is for the one unit, the house.

Mr. Gaines responded affirmatively.

Ms. Rezanka inquired if there is a sound wall around the plant.

Mr. Gaines replied no.

Ms. Rezanka stated they are not trying to put the asphalt plant out of business, they are only trying to build something that the developers believe is a good use; the Board has heard the testimony; it is their money; and it is their \$50 million that they are willing to spend, and willing to come to this community to do it. She went on to say there were no issues raised by the Planning and Zoning Board or the Board at the Comprehensive Plan transmittal hearing; all of these issues have come up in the last several months. She stated regarding Ms. Sobrino's comments, she did not mean to say that is not what the Code said, her point was that these uses are resort dwellings; they are similar because there are families living in them, so the Code allows families to live on PIP properties; and they believe the binding development plan cures any possible incompatibilities. She stated regarding the change in 2004, many Code changes are done that completely eliminate uses, so the Board at that time was not willing to completely eliminate single-family uses; it is done all over the country; and it is completely within the Board's power. She noted Mr. Marine said no one wants to live next to an asphalt plant; apparently in Brevard County dozens do because they have lived there since they have been in existence; and in the NAPA report she supplied at the last meeting it says hundreds of communities across the country coexist peacefully with asphalt plants. She pointed out if the apartment dwellers want to live there, it is their choice; they are on notice; it is a pretty big plant

March 3, 2016

and the woman with the pool was adjacent to it; and if the developer wants to build, it is their business decision. She stated regarding Mr. Marine and Mr. Gaines' comments, they talked generally, not specifically regarding five or six complaints in years prior to them being out of business, which is nominal, and it sound like most of them was the one lady who that had to put up the fence for. She pointed out they have done nothing to mitigate sound here; trucks are not allowed to beep after 10:00 p.m., as it is not permitted under the County's Code; and it is not a fire or safety so they still have to meet the Performance Standards of that back up beep. She stated they want to put \$50 million into the property; they want a nice development where people who work in this community can bring their children; they have already built Fresh Market; and they are committed to this community. She asked the Board to approve the Comprehensive Plan change and rezoning.

Commissioner Anderson stated he has met with the applicant and from the asphalt plant. He stated these are quasi-judicial hearings and expert testimony has to be taken into account; he knows the asphalt plant representatives have some concerns but they brought no expert witnesses in saying this would happen for sure; and it would be hard to do a Findings of Fact based on their testimony. He noted his fear is the County could end up in litigation; and on this one, he thinks the County would lose. He stated he is going to support the development and application.

Commissioner Infantini stated the Board just met a man with a Banyan Tree who said the Property Appraiser notified him he has to disclose that; and he will have issues selling his property. She inquired if a person sold his or her property could they still put residential there or was that only if they owned it prior to 2004.

Ms. Sobrino replied only if a person owned the property prior to 2004 when the Code changed.

Commissioner Infantini stated these people are grand fathered in; she would not recommend it; but the applicant could do it at their own risk. She stated it is kind of like warnings on packs of cigarettes, nobody pays attention to a warning notice. She pointed out the County allows assisted living facilities next to the asphalt plant; she dares the Board to vote to put an assisted living facility next to an asphalt plant; and the Board would not do it. She stated she cannot tell the Board the number of people who call her office about airplanes taking off from Valkaria Airport; she thinks they moved in next to an airport; if a person moves next to a playground, they will hear children playing; and if a person moves next to an airport, he or she will hear airplanes taking off. She noted she does not want to go through all of those complaints; and she will not vote in favor of this change in Zoning.

Commissioner Smith inquired if Ms. Fox has any idea how much industrial land the County has lost to Comprehensive changes.

Ms. Fox replied Industrial Zoning changes that have occurred from January 2011 to March 2016, the County gained 7.93 acres and it lost 94.48 acres of industrial land; and the net lost would be 86.5 acres the County has lost because of changes.

Commissioner Smith stated he was not anticipating that; he was curious because as a Board it can change Comprehensive Plan uses and adjust as the County grows; but the County has Planners that put these things on paper years in advance because they have looked at it and planned on how the County should grow; and he inquired was this area Zoning in 1990 industrial

Ms. Fox responded affirmatively.

March 3, 2016

Commissioner Smith stated he really liked the project; he thinks it would be a terrific addition no matter where it went; but he cannot get past inevitable complaints that are going to come from having an asphalt plant right nearby; and as he said before, he is really concerned as the asphalt plant is already in existence. He went on to say if 426 families comes in there, there is going to be complaints; you can tell people they are moving next to an airport or golf course, but there will still be people who complain about airplanes or golf balls; smelling asphalt is not one of the more pleasant things a person could smell, and it is distinguishable; and a person would be smelling that at 1:00 in the morning. He pointed out the plant has met emission standards, but people still complained about it; he understands that \$50 million is a lot of money; he would love to see that money spent in his District; the money that would be spent by 426 individuals would be phenomenal; but he cannot fathom that they would enjoy living next to an asphalt plant. He went on to add it has been four years since the asphalt plant has been idle; if the apartment complex was built, the tenants would not experience those smells and hear the noise right away; they would be told it might happen; but it is going to smack them right in between their eyes when it does happen. He advised the Board for that reason he would vote against this, and this would be a mistake for the Board to do this.

Commissioner Fisher stated this has been hard for him for a couple of reasons; one is he is a property rights guy, and if a person owns a piece of property, has been paying taxes for years on it, he would probably like to have the ability to develop it; it is a case where there is residential and those people understand there is an asphalt plant there; the property owner understands he is building next to that asphalt plant; and he is will to take that risk and spend \$50 million. He suggested a way to maybe get Commissioner Smith comfortable; he wonders if it was ever discussed to put commercial on the south end of the property where retail and stuff like that can be built; and maybe the owner could speak to that. He stated denying the opportunity totally to development when the applicant thinks this is the best and highest use, and he is willing to put \$50 million behind it, he is uncomfortable doing; but he would like Commissioner Smith to have some say in it. He pointed out he is not a Planner but it seems to him if the applicant could put an office building or something retail there, and put the apartments up in the other area; he wondered if the applicant could maybe split the property and not go all multi-family; and he inquired if that is something the applicant would consider or do they think that would make any sense for them.

Ms. Casey replied she cannot answer on the financial liability as far as splitting the development; being in the industry of managing properties and leasing she can say there are about 80,000 square feet of office building that are currently under construction within a three or four mile radius of the area; there is already probably a scenario with commercial where they are maximizing what is out there; and the applicant could build a nice building that would stay vacant for maybe five years or with one or two tenants. She went on to say she appreciates what Commissioner Fisher is trying to do and to find a middle ground; but realistically it is definitely not the highest and best use to put more commercial there; they could look at it; but she does not think it would work for them financially.

Commissioner Fisher inquired if the applicant would consider just Zoning the north part to Residential instead of the whole piece of property, that way he would probably phase it in; and once the asphalt plant is up, he could decide if he still wanted to do the whole thing.

Mr. Beale stated it really becomes the feasibility of being able to absorb all of the infrastructure costs; there is a minimum amount of units that need to be built to make the project work; they will have very nice amenities; and if it would be scaled down, it makes things harder to do and it drives rents up. He stated this is not a warehouse site; they have looked at warehousing and a lot of other things; and he owns warehouses and the ones that would go there would have a lot of traffic. He noted someone asked how big the Walmart's are; they are 200,000 feet; he thinks it would be a crime to use this property as a warehouse; and they have a unique opportunity to



March 3, 2016

build what is going to end up being a planned community. He pointed out places to live are needed.

Commissioner Fisher stated Wickham Road to him is probably not an industrial road today; years ago it might have been; but it has changed use over the years. He is having a difficult time because typically when someone downgrades and says they want a lesser use, the Board is pretty supportive of it.

Mr. Beale stated they are leasing out the retail center now and they have good activity; he does not think there is enough activity to take another 20 acres and build that out; he is not trying to put the asphalt plant out of business; but Mr. Marine should not be trying to put him out of business.

Chairman Barfield stated it comes down to the performance standards; one of the things that catches his attention is the standards for pollution, public health, and safety; it is not just for now but for the future; and he inquired what it means to the asphalt company.

Eden Bentley, Deputy County Attorney, stated depending on how they use the plant and what the noises are and emissions, it copied that the building envelope changes; the Board could have performance standards that require lower noises on an asphalt property; but the Board really will not know that until the activity occurs. She noted it may be a negative impact or it may not be; and it would have to prove a diminution in value for it to be a suit against the County.

Commissioner Fisher inquired if Ms. Bentley is making reference to a Byrd-Harris type of situation.

Ms. Bentley explained if there were 500 residential units there, that is a possibility; the single-family zoning is also a possibility; in the Residential Land use designation, the Zoning Classification that could go in there are Residential under existing Planned Industrial Park, as very few of them are residential; she thinks there are 120 uses that are not Residential; and the Board's odds of having a problem with Residential Zoning Classification against the asphalt company is a higher risk.

Commissioner Smith stated he liked the idea of this project; it does not belong there; the Planning & Zoning Board voted unanimously against it; the Board is being asked to change the existing use so they can built this really nice project; and in the process, the Board is going to take away the limited amount or some of the limited amounts of Industrial that it has planned.

Commissioner Fisher inquired from staff's standpoint, how changing this affects the asphalt plant even though it is not in operation.

Ms. Fox replied what it essentially does is puts Residential closer to the plant, which reduces the plants ability to exceed certain decibel levels as an example; in Industrial, the property has to be 100 feet away from residential with a 20 foot buffer; PIP has very large setbacks; and it will reduce the overall ability of the Industrial Use to expand.

Commissioner Fisher stated the last thing he wants to do is punish the asphalt plant; and it would be putting the plant in a situation.

Ms. Fox stated she thinks so.

Commissioner Anderson inquired if that is based on Ms. Fox's assumption.

March 3, 2016

Ms. Fox responded it is based on Performance Standards of the Code and the setbacks.

Commissioner Anderson stated so staff knows the asphalt plant is going to open up and he is going to be noisier than the Performance Standards.

Ms. Sobrino replied what staff is saying is that when there is adjacent industrial use, they are allowed to be louder than when suddenly introducing Residential Use.

Commissioner Anderson inquired how staff knows that he does not already meet those performance standards by being a good corporation.

Commissioner Fisher stated he would be in favor of splitting the Commercial and Residential uses, and he wishes the applicant would consider that.

Ms. Rezanka stated there is a strip of land between these and it has not been addressed in the memorandum; it has not been addressed why these are considered adjacent; she does not know that the Performance Standards are even an issue; and she asked why the Performance Standards should apply because it is directly adjacent.

Ms. Sobrino replied it is not a matter of contiguity per se, it is a matter of when a person has a use staff looks at how it impacts the surrounding area; they do not necessarily have to be contiguous; but if a particular use has discernable impacts in the area and it is another industrial property, it is not as a big concern because they are allowed to be louder, noisier, and smokier perhaps when they have other industrial uses; if the area has residential uses, the impact at that residential property line is what staff is going to measure; and then they would have to meet lower standards in order to be consistent with the Performance Standards. She went on to say staff's measurements are not made on the property that is making the noise, their measurements would be taken from the property line of the property that is complaining about the noise; and if it is zoned residential, then there is a lower decibel allowance than if it was zoned commercially or industrially.

Commissioner Smith stated he is glad to see Commissioner Fisher is trying to split the baby; that is kind of what he does; but he does not see how it can be done in this situation. He added if the reverse was happening where there was residential in place and an asphalt plant wanted to come in there, they would be held to extremely high standards; if the Board were to approve this change, it would really be putting this business in great jeopardy; and he thinks the Board would make an awful lot of tenants unhappy.

Commissioner Anderson inquired if the Performance Standards already exist because there is residential abutting this.

Ms. Fox replied the Performance Standards exist however, that plant was there prior to some of the single families moving in.

Commissioner Anderson inquired if the Performance Standards that he would have to meet for this complex would still have to meet them for newer homes that are near this property.

Ms. Fox responded affirmatively.

Chairman Barfield advised the Board he spoke with Mark Marine, Randy Gaines, Tres Holton, Will Reynolds, and Adam Broadway on the telephone.

Commissioner Smith advised he spoke with Tres Holton, Will Reynolds, and Mark Marine.

March 3, 2016

Commissioner Fisher advised he spoke to everyone as well but he has not talked to Mr. Gaines.

The Board denied request of Imperial South, Inc. for a change of classification from PIP to RU-2-15 on 30.7 acres, located on the east side of Wickham Road, south of Jordan Blass Drive.

<b>RESULT:</b>	<b>DENIED [4 TO 1]</b>
<b>MOVER:</b>	Trudie Infantini, Commissioner District 3
<b>SECONDER:</b>	Curt Smith, Vice Chairman/Commissioner District 4
<b>AYES:</b>	Robin Fisher, Jim Barfield, Trudie Infantini, Curt Smith
<b>NAYS:</b>	Andy Anderson

**ITEM IV.C., ORDINANCE, RE: COMPREHENSIVE PLAN PACKAGE 2015 - 2  
COMPREHENSIVE PLAN AMENDMENTS**

There being no further comments, the Board denied consideration of an ordinance for Comprehensive Plan Package 2015-2 Comprehensive Plan Amendments, including one private application for Imperial South, Inc. (2015-2.1); and approved Findings of Fact to come back to the Board for its consideration at the April 19, 2016, Board meeting, including performance standards are already in existence.

<b>RESULT:</b>	<b>DENIED [4 TO 1]</b>
<b>MOVER:</b>	Trudie Infantini, Commissioner District 3
<b>SECONDER:</b>	Curt Smith, Vice Chairman/Commissioner District 4
<b>AYES:</b>	Robin Fisher, Jim Barfield, Trudie Infantini, Curt Smith
<b>NAYS:</b>	Andy Anderson

**ITEM IV.A.3., (15PZ00078) - RALPH & CYNTHIA PERRONE - (MARK HOMER) - REQUESTS  
A SMALL SCALE PLAN AMENDMENT (15S.08) FROM NC TO CC, AND A CHANGE OF  
CLASSIFICATION FROM BU-1-A TO BU-1, AND REMOVAL OF A BSP, ON 1.07 ACRES,  
LOCATED ON THE NORTHEAST CORNER OF NORTH COURTENAY PARKWAY, AND  
SKYLINE BOULEVARD (140 SKYLINE BOULEVARD, MERRITT ISLAND)**

Cynthia Fox, Planning and Zoning Manager, stated this location is an undeveloped piece of property and they are seeking a Small Scale Plan Amendment from Neighborhood Commercial to Community Commercial, and a change of classification from BU-1-A to BU-1, with a removal of a Binding Site Plan; and this is for the purposes of developing the property with a Sonic Restaurant.

Commissioner Infantini stated she spoke to Ralph Perrone, Sr. and to Kim Rezanka.

Commissioner Fisher stated he spoke to Ms. Rezanka.

Commissioner Smith stated he spoke to Ms. Rezanka.

Commissioner Anderson stated he spoke to Ms. Rezanka.

Chairman Barfield advised he spoke with Ms. Rezanka.

March 3, 2016

Kim Rezanka, Law Firm of Dean Mead, stated she is here presenting Mark Homer the purchaser of the property owned by Ralph and Cynthia Perrone. She went on to say she has Mark Homer with her who owns a number of Sonic Restaurants around the country, Clark Mussleman who is the area manager for Sonic Restaurants, Ron Robins who is the realtor, Mr. Perrone is present, and also Brad Smith of Brad Smith Planning who has assisted with compatibility issues. She stated this property is located on State Road 3, north of Skyline Boulevard and east of SR 3, north of the gas station/convenience store, and west of Lewis Carroll Elementary; there are strip malls to the south and to the west, which are all multi-uses. She noted they are here before the Board because Sonic Restaurants could be in BU-1-A but it wants to have a drive through; they believe it is going to be a successful location for them; the area has changed substantially; and it is now a collector road. She advised the Board the size of this property is 1.06 acres, it has 200 feet of frontage on SR 3, it is a depth of 250 feet, and it has a number of uses that are around it; the convenience store is a BU-1 use; and some of the uses in the strip centers are BU-1 uses. She pointed out because they want to have a drive through they have to go from Neighborhood Commercial to Community Commercial; they could have a restaurant open until 2:00 a.m.; but the sole purpose for coming before the Board is asking for a drive through. She stated there is a number of drive through restaurants already on SR 3; and she advised the Board of the names of the restaurants that have a drive through. She noted many are on the east side of Courtenay Parkway, and Courtenay Parkway is considered a commercial boulevard. She stated they went before Merritt Island Redevelopment Agency (MIRA), and the request was approved 5:0 on December 10, 2015; they had two public meetings with the residents; and there were approximately 10 people at each meeting. She explained to the Board the residents issues were lighting, noise, traffic through their neighborhood, security, and property values; based upon what the residents told them, they developed a binding development plan, which is in the Board's package. She stated under Tab 1 is the proposed Sonic Restaurant; it has an entrance off of North Courtenay Parkway and another one off of Skyline Boulevard; there is a median off of Skyline Boulevard; and the median cuts directly to the convenience store to the south. She noted Sonic has moved the building and its configuration as far to the west along North Courtenay Parkway as it can, so the back of the building is 74.5 feet from the residents property line to the east; there is a good bit of distance there; at BU-1-A it could be a 50-foot setback; and they have a 75-foot setback. She pointed out there is no parking along the eastern border of the property; the two entrances are necessary; she spent time talking to John Denninghoff, Public Works Director, and Corina Gumm of the Transportation Department, and they said yes, they would need two driveways for safety purposes; and they could not both be on North Courtenay Parkway as Florida Department of Transportation (FDOT) will not allow it. She stated Mr. Denninghoff said they had to also do a traffic study; they are prepared to do that; it is a site plan issue; if the traffic study says there is too much traffic on Courtenay Parkway, and then they will do it; and there is not too much traffic on North Courtenay Parkway at this location. She stated Mr. Homer said most people drive through the drive through in Florida. She went on to say the second page under Tab 1 is the layout; the orange in the middle is where the building is going to be; and some of it may shift based upon if FDOT says they have to move the driveway cut. She noted they are trying to be as far away from the three residences to the east as they can be. She stated under Tab 2 are the meeting notices they sent out to let people know what they are doing so they could give input; they had some people show up who are in favor of it; the people who are opposed are the minority. She stated under Tab 3 she has pictures of the Sonic Restaurant on Wickham Road; it was developed immediately adjacent to a residential neighborhood; it has a wooden fence; and it was developed in 2001 by Mr. Homer. She noted they have had no noise complaints there. She stated the third page is an aerial of the property. She pointed out the next photograph is of a store on Babcock Street which was built in 2001; the next page is a picture of the Clearlake Road store built in 2004; and the next one is the Titusville Sonic built in 2006. She went on to add Tab 3 is the resume of Bradley Smith who will be speaking regarding the compatibility concerns that have been raised; and she would ask that his testimony be considered as expert testimony. She stated under Tab 5 she has a portion of the Planning and

March 3, 2016

Zoning minutes of December 4, 2015; and the reason those are in here, if the Board looks on the second page, Rochelle Lawandales who is a Planner, and she agreed with her saying she thinks the character of the area has changed. She suggested staff looking at the whole corridor to see what can be done regarding broader brush changes from Neighborhood Commercial to Community Commercial. She stated the P&Z Board on January 4, 2016 voted unanimously for the Sonic Restaurant with the binding development plan with no concerns about compatibility or the change of use. She stated she has in the package the Noise Standards; and they have the weighted sound pressure limits for receiving uses. She stated Mr. Homer knows he has to comply with the Sound Ordinances; they are putting up a masonry wall and 20 feet of landscaping as requested by the P&Z Board; that wall goes the entire length of the property; and the entire line of the property has more than just the land next to where the restaurant is going to be. She advised the Board there are three houses that will be buffered by a wall; the P&Z Board asked them to additionally buffer that northeast corner because House #4 has complained that she is concerned there will be noise, sound, and odor; they have to do not only the wall, they have to do 20-feet of Class A landscape, plus additional trees and shrubs; and at that corner, it has to be 30 feet wide. She stated regarding the possible uses in BU-1-A, Section 62-1481, things that could go on this property there can be drug and sundry stores, souvenir shops, a shark sign, bait and tackle shop, coin laundromat, restaurant, with conditional uses there can be a convenience store, public or private club, such as the Moose or Eagles, a cell tower, and it is a major commercial corridor; and there are restaurants adjacent to residential properties. She pointed out this is how planning works. She stated there are 20 feet of landscape buffering, then there is an eight-foot masonry wall; but there is a huge buffer from those three residents immediately to the east. She noted there have been comments both in staff's report and by information submitted to the Board that there are no Community Commercial; Tab 7 she has copied from the Comprehensive Plan; and she has circled four Community Commercial properties on the east side of Courtenay Parkway. She went on to say regarding traffic, if the Board will turn to Tab 8, she has a portion of the Courtenay Parkway corridor study, and she will submit a completed copy for the record, but this was done by State Road 3; by looking at it, it was designed because they want to make it multi-modal along SR 3; Section 2, existing conditions, FDOT has determined this is a urban principle arterial other; and it has changed over the years. She stated the next page is a map; if there are no issues with this area, Crocket Boulevard to Pioneer Road, it is a level of service C, and will remain a level of service C until 2020 and even through 2040 on the next page; and this section is not busy. She stated Lewis Carroll School will not address the problem with a traffic pattern because the parents are doing it; it is not peak times for Sonic customers; and they do not believe that will impact traffic for the drop off and pick up. She stated they will include those traffic peak times due to the school drop off and pick up. She summarized by saying the expansion of North Courtenay Parkway over the years has drastically changed the amount and time of traffic; the development in the area has become inconsistent with the Future Land Use Map; and the Zoning in the area are also inconsistent with the uses in the area. She pointed out a Sonic Restaurant would be consistent with the land use restrictions in BU-1-A but for the drive through; and the drive through is part of the Sonic brand. She stated they have agreed to landscape and maintain the land in the entrance median for the residents so it looks nice; they have agreed to limit the use of the property to a restaurant use or other BU-1-A; and even though it is going to BU-1, it is still limited to a restaurant use. She asked the Board to approve the Small Scale Plan Amendment from Neighborhood Commercial to Community Commercial, and the change of classification from BU-1-A to BU-1 on this property.

Ms. Fox stated Ms. Rezanka did talk about this being in the MIRA area; just so the Board understands, MIRA also did request that they work with the neighborhood, and include elements such as the wall, limiting the building to one story, and maintaining the large setback as shown as a conceptual plan; and in addition to having recommendations from Planning and Zoning, the MIRA board also recommended some buffering.

March 3, 2016

Commissioner Infantini inquired if MIRA approved this.

Ms. Fox replied affirmatively.

Commissioner Infantini pointed out that MIRA does not say yes to anything.

Brad Smith, Certified Planner and Registered Landscaping Architect, stated he worked on the Walgreen's at the Eau Gallie Causeway and US 1 that had buffering issues with the old neighborhood that they were successful with. He went on to say he is speaking to the Board about compatibility, the broader framework of compatibility, to touch on the P&Z Board action, the staff report, and the summary of the concerns expressed by the residents in responses to ensure those neighbors are not unduly impacted by this action; compatibility is something that everyone thinks they know when they see it; it does not make sense to put a high-end residential neighborhood next to a sawmill with nail guns, saws, and things buzzing; Chapter 62, the Land Development Regulations, does not specifically define the term; but the Comprehensive Plan does have an Administrative Policy #3 that lists criteria the Board will be using in reviewing this, which deals with hours of operation, lighting, odor, noise levels, traffic, and site activity that would significantly diminish the enjoyment of or the safety and quality of life in existing neighborhoods within the area that could foreseeably be affected by the proposed use. He noted a lot of the residents that he read the comments from characterized Sonic patrons as being noisy, rowdy, lovers of rap music, shouters of orders, and having a high propensity of revving up their motors; but he inquired what are the facts. He stated as a quasi-judicial board, it is important that the decision maker applies the regulation and not acting in an arbitrary manner; the State Statutes do define compatibility as a condition in which land uses or conditions can co-exist in relative proximity to each other and in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition; and compatibility is an assessment of a relationship of uses one to another and how they impact each other. He went on to add the apparent goal of the State definition is kind of a no hard, no foul type of a goal, more in line with not creating a nuisance in that compatible uses must create a positive relationship; at the State level, compatibility means not a negative relationship, not negatively unduly harming; it does talk about over time; and that suggests that it is not when there is a lot of hoopla when it is before the Board and people are concerned, but that over time there is not going to be a destabilizing influence. He pointed out the P&Z Board asked for an eight-foot wall, which was done; the Type A buffer that Ms. Rezanka talked about; and there are a lot of things, as a person reads those minutes, which were dealt with that the applicant agreed with. He stated all of the conditions are acceptable to their client; the staff report in the Findings of Fact talk about the change of land use being simply asking to have what is on the other side of the street, which is true; the compatibility issue they talk about in the area is primarily characterized by developed commercial parcels all around on the north, south, east, and west, with single-family homes to the east; and the only factor that is not currently addressed is the drive through lane. He stated staff said given the proximity to single-family abutting to the east, that the Board should consider the impact of a drive through; there are lanes that are spilling into single-family entrances would be a concern, but they are talking about Skyline Drive; and think about on the site plan there is space stacking for seven cars, and 11 cars can be fit into that line while they are waiting to place their order. He stated he has not eaten at a Sonic, but he watched their SEC Football ads, and if there were 11 people stacked up he would just head down to the Sonny's Bar-B-Q. He stated the compatibility argument is not going to hold water when it comes to negative impacts brought on by these hordes of people waiting in line to get their fast food; and the site plan adequately deals with this issue. He advised the Board the Community Commercial Development activities are intended to serve several neighborhoods; it is a lot different than in the 80's; and this is totally consistent. He noted the last thing County staff tells the Board is it should evaluate the potential land use incompatibilities with the neighborhood single-family residential; that is exactly what the P&Z Board did; they had a number of things that were dealt with; and it was kind of like horse

March 3, 2016

trading. He stated they have a good plan; the biggest concern addressed by the neighbors was the noise; the County has a Noise Ordinance; and it should be fine living by the standards. He stated he would rather smell burgers than an asphalt plant. He stated with the vegetative buffer, he does not know this will be an issue; there is a lot of documented science about vegetation working on screening, on privacy control, and outdoor sounds are usually attenuated or reduced in intensity before reaching the receiver; and that is what vegetation does, it works. He pointed out there are a lot of facts that state that this could certainly be dealt with, with vegetation, the buffer, the wall; and the plan that is in place, coupled with the Land Use Regulations that address noise, lighting, and so forth, adequately address all of the concerns that have been stated; and the changes in Land Use and Zoning is consistent with the Comprehensive Plan and the compatibility at the State level.

Ralph Perrone, Sr., owner of the property, stated he owns many properties on Courtenay Parkway, one exactly across the street; they just got an approval from MIRA to do a remodel there; and they will be doing the building north of Sonic. He went on to add one of the things that came up was noise; he did a records request of the City of Cocoa; and he provided the Board with a handout from the City of Cocoa. He stated he wanted to know from the City of Cocoa if they had any noise complaints from the Sonic in the City; right next door is a six story building for seniors; and they have had in the last five years no noise complaints whatsoever. He went on to say they do not have a landscape buffer, a wall maybe four feet tall, and if sound is going to travel, it would be upward. He stated he also spoke to the current woman who sits at the front desk there, and to a former employee who had that position, and they both stated they had not had any noise complaints from any of the residents there. He asked the Board to approve the request.

Mark Homer, Sonic Restaurants, stated his family has been in the Sonic business for 52 years; his dad is the original franchisee to the State of Texas; and there almost 1,000 Sonic Restaurants in Texas now. He stated this is the first time he has ever had to ask for a rezoning; every other community they have come into say to come on in they would love to have them; but he understands this is democracy. He noted the Board has heard it from everyone, they have been in business for a long time; he has never had any noise complaints over all of the years; but things do happen. He stated every dollar that is spent to build those stores is a dollar that he borrowed; they enjoy Brevard County and like doing business here; and they are not just takers, they give back to the community. He stated they try to be good neighbors; they are replacing the wooden fence; and while he is doing it, he is doing it with the neighbors on the other side and not charging them anything. He advised the Board they have come out of the ashes from the hard times of the last few years; their business is very successful; and they would like to continue to grow.

Brad Kohns, Remax, stated he is not being paid by anyone, he was asked by an associate to come and give an expert opinion on one question only, and that is if a drive through is added to the restaurant would it affect the property values. He stated in order to give the Board expert testimony, he has to bore it with his credentials; he has been selling real estate in Brevard County since September 2001; he has been a real estate broker since 2003; he sold an excess of \$150 million in the last 15 years, with 80 percent of that being listed property; he was the managing broker for Keller Williams of Brevard with 120 agents for six years; and he is a member of Remax Hall of Fame. He went on to say the question comes up if a drive through was added to a restaurant that is already allowed to be on this piece of property, would it affect the value; in his opinion, the answer is no; he did an analysis of the properties that abut the vacant commercial property; and in order to answer this question he has to explain how appraisals are done. He noted they can no longer can have a bank order an appraisal, it has to go through the appraisal house in Indianapolis, Indiana it has to be independently ordered and independently done; some of the appraisers are coming from other areas; and the one thing that never left this property was the possibility of a commercial piece of property or a commercial

March 3, 2016

building being built here. He added he looked at the adjoining properties that abut the east side of this commercial property, and with the advent of knowing there was always the possibility a commercial building could be built there, they have been able to appreciate anywhere from 41 to 52 percent over the last three years; an appraiser is going to come into a situation like this, their first goal is to get comparable properties within the neighborhood; and if they cannot find comparable properties within the neighborhood, they will go out one mile and then two miles to see if they can find those comparables. He pointed out there could very well be a comparable property on the Banana River Boulevard that would be used in this appraisal; the appraiser will look at the adjoining commercial buildings and they will make note of them; but they do not have that much of an impact unless it is something that is really out-of-line. He stated going back to the 41 to 52 percent increase, that is with a drive through bank that is within 500 feet of this commercial property; values are set by the buyers; and one of the things that there is not a lot of in Merritt Island are properties between \$80,000 and \$125,000. He went on to add in order for these values to go down, there would have to be a rash within other properties in a two-mile radius that would go down as well; the buyers are going to set the values, the appraisers are going to look at the adjoining properties, the ones that have sold, and at that point in time, they will give them a value; and obviously within the last three years with a 41 to 52 percent increase in value, the drive through bank within 500 feet of this property has not been a problem. He noted in his opinion, they would not see any loss in appraised value on that.

Chairman Barfield stated Sonic is more than just a drive through, it is basically an outdoor restaurant; he does not know how to put it in any sort of category; and he inquired if the fact it is an outdoor restaurant taken into account when an appraisal is being done.

Mr. Kohns replied even if they did not have the drive through it would still be allowed to have outdoor seating as it is currently Zoned; the advent of adding the drive through does not really add that much to the overall noise of the property; the commercial property that is adjacent is not given all that much weight unless it is something really out of the ordinary; and maybe the subject the Board had in the previous Item may be one of those, but as far as a drive through on a restaurant, there would be no value there.

David Diamond stated he is a real estate broker and he has his real estate license since 1989; they manage properties directly across the street from this property; and they have talked to some of the residents there about having Sonic coming in, and everyone he spoke with is excited to have it come to the area. He went on to state the property they manage there abuts the commercial property in front of Sonic that also has three restaurants; they have never had any complaints about smells or dumpster problems. He noted he did a comparison because one of the complaints was property values; and he provided a handout to the Board. He explained to the Board that the first page is the proposed site; he put that there to show the Board to show it a good comparison; if the Board flips the page over, the next page shows it another property just up the street from there where Checker's is; and it is a drive through hamburger place similar to Sonic. He stated they manage properties directly to the east of that; the complex there is 55 Needle Boulevard; they also manage properties right next door to that, which is 50 Needle Boulevard; and they abut a closed gas station and auto parts store. He added on the next page he compared rental prices between both of those complexes; the rental prices are \$725 a month; and the next one abuts the Checkers Hamburger place and the rental price is \$750 a month. He stated the rent prices between both properties are almost identical. He stated the sales price for the properties are both \$49,900; there is really no difference in values or rental prices for properties abutting a hamburger drive through restaurant.

Tony Giannetti, owner and broker for Serving Brevard Realty in Merritt Island, stated his office is south of the subject property; he is here to say he does a lot of brokers price opinions for banks as part of his job; and whenever he is doing them, they do not take into account what is next to the property, they look for comparables and value them that way. He stated he shows homes



March 3, 2016

wherever a person wants to look as he wants to make money; and he would not steer anyone away from a neighborhood for any reason.

Dan Platt, Platt Appraisal Services, stated he is a State Certified Residential Real Estate Appraiser; he has been an appraiser since 2003; and he has been declared an expert witness in Brevard County Courts in the 18th Judicial District. He stated he has been asked to speak on the potential impact on the proposed Zoning change of the subject property; he has done extensive research throughout Central Merritt Island, including up to SR 528 and down to SR 520; there are numerous commercial properties along SR 3 with residential neighborhoods that abut to these properties; and he found no market data that would indicate the potential fast food restaurant would have an adverse effect on the market value for the subdivision or surrounding area. He noted across the street from the subdivision is a convenience store/gas station, and at the other end is a school.

Carla Jones stated she owns lot number 4, which is 2155 Emerald Court; the Sonic property they proposed to buy is 200 lineal feet which encompasses lot number 1 and 2, and half of lot 3; and the wall for the sound would be covering the first two and one-half properties, it would not afford them any relief from noise. She went on to say she sent the Board Members each a letter. She stated in the late 70's she got her general contractor's license; shortly thereafter she became a realtor; in 1981 she became a real estate broker; and she was one of the founding brokers for one of two different real estate firms that specialized in Merritt Island. She pointed out she has a lot of years of real estate experience; there is truth to the fact if a person is the buyer, and they had four houses to look at, he or she would not choose to back up to the Sonic Restaurant; there is a lot of analogies between this public hearing and the first public hearing; and they are trying to put two pieces of property together without an intermediate buffer. She stated the subdivision here was built in the 1960's; those homes were there first; and they thought their position was guaranteed, and they did not back up to heavy duty commercial. She stated the proposal to have a Sonic there is very intrusive in that they will be coming and going until midnight or 1:00 in the morning; this is a working class neighborhood; and they will have a lot of noise in their backyard until early morning. She noted this is totally incompatible; the noise cannot be contained around the wall; and she suggested there are a lot of similarities between the previous hearing and this property change.

Commissioner Infantini stated the reason she does not feel like it is the same type of thing of what the Board was just confronted with is when the property owners bought the property, the property was already Zoned in such a fashion that there could be a restaurant there; there could be a restaurant with outdoor seating; and she understands the preference would be for the lot to be vacant.

Ms. Jones stated as a general contractor she was often the last property to be developed on the street, and she totally gets the use and privilege of having an empty lot next door; however, this differs from an outdoor restaurant in that all of the traffic is going to the rear right next to the residential homes; the restaurant across the street has cars and traffic on the Courtenay Parkway side; but this proposal runs all of the traffic right next to the houses. She stated there are 18 outdoor speakers; these people are ordering and talking back and forth to their neighbors in the car; and after Friday night football games, it is going to be a loud place.

William Jones stated his concern is this subdivision has been there for a long time, and they always thought the types of commercial that would be a buffer to that would be like a doctor or dentist office, which is what is down the road; and now they want to put a restaurant in there that has cars running through it all of the time up to midnight, which is noisy. He stated there is the smell and the high traffic; they would be concerned that their property is off to the side to where the wall is going to be; and he knows they have talked about another additional buffer.

March 3, 2016

He noted it seems like the wall is a good indication of why it is not compatible; and it is kind of like putting a Band Aid on a wound, it is probably better not having the wound at all.

Chairman Barfield stated Checker's on Courtenay Parkway is not the same as looking where Sonic wants to go; and he inquired what the differences are.

Ms. Fox replied the Sonic Restaurant, which is on the corner of Needle and Courtenay, is a signalized intersection; right behind it is a multi-family development, it is not really single-family; and to the north on Courtenay it is multi-family. She pointed out it is a really different type of neighborhood.

Ms. Rezanka stated the issue of the use, it is a restaurant; Ms. Jones said Carrabba's has no noise; and Carrabba's has outdoor seating right now, which is allowed in BU-1-A. She went on to say there has been a substantial change in the area especially since the 1960's when the area was built; two experts has said there has been a change in circumstances and this is compatible; Ms. Jones talked about traffic around the restaurant; and there is traffic on Skyline Boulevard all of the time, especially during school hours. She stated if there is a noise problem, people can call Code Enforcement or call the manager. She pointed out where the drive through speaker will be 60 feet from the property line, and it has 20 feet of landscape and a wall. She stated all commercial next to residential has a wall, a class A buffer. She stated Ms. Jones has repeatedly raised concerns about the valuation of property, everything else she has raised has been speculative; they do not know what will be there until it is there; and if there is a problem, it will be addressed. She noted a State Certified Appraiser testified there is no devaluation. She asked the Board to approve the Small Scale Plan Amendment from Neighborhood Commercial to Community Commercial because the area has changed and a change from classification from BU-1-A to BU-1 with the binding development agreement.

Chairman Barfield stated Ms. Rezanka said she has a list of names of people who approve of this; and he inquired if she has a listing of those.

Ms. Rezanka replied she does not have the file with her; and there is only one resident with speculative concerns.

Chairman Barfield stated having lived on Merritt Island for 25 years, there is a lot that needs to be taken into consideration; he is not convinced the compatibility is right; the property is located next to a doctor's office and daycare center; and it does not really fit right there. He provided the Board with pictures of Sonic at night.

Commissioner Infantini inquired why Chairman Barfield did not give these to Ms. Rezanka before the meeting.

Chairman Barfield stated one of his concerns is the hours of operation; it is not compatible with the other businesses around there as they are open from 8:00 a.m. to 5:00 p.m.; and when there are 20 parking spaces where cars are running, it has an impact on the neighborhood. He stated it will bring additional traffic to Skyline Road; it is already tough with traffic right there; hopefully someday SR 3 will be redone; but at this point, there is no traffic light there. He noted it is not an ideal location for an outdoor restaurant; he loves Sonic's food; but it is not the right place. He advised the Board it diminishes the enjoyment of the safety and quality of life of the people who can live around there; and that is a concern. He pointed out it is a smaller area; it is trying to cram something into the wrong place; and that is his take on it.

Commissioner Anderson stated he appreciates Chairman Barfield's concerns; they can already have a restaurant on the property; they could put a Denny's on the site; and the Board cannot

March 3, 2016

do anything about it. He asked who wins or who loses; he stated he has been at Denny's at 3:00 a.m., and it is not a great crowd of people; and the outdoor traffic could be worse.

Commissioner Smith stated the Board could not be here if the applicant was asking for a Sonic without a drive through; he does not see a drive through would cause that much noise; and without the drive through, the Board is not having this discussion.

Ms. Fox stated there are limits on the types of restaurants that could be put there; the fact the drive through has caused the change has to do with the Comprehensive Plan and the Future Land Use; this property has a Neighborhood Commercial Future Land Use that specifically prohibits drive throughs; and it does not prohibit other restaurants. She noted looking at the Zoning Code regarding BU-1-A, the snack bar and restaurants are only permitted with conditions; and it has to be limited to 49 seats.

Commissioner Smith inquired if Sonic decided they did not want to have the drive through, would it be before the Board asking for any changes.

Ms. Fox responded she would have to have a discussion, because every drive up menu board is a drive up menu board that functions kind of like a drive through; the noise aspect could be the same; but that would have to be something discussed; and something that generates noise close to single-family there is the ability to be an incompatible use.

Commissioner Anderson inquired if a 24-hour Waffle House could be put there without coming before the Board for approval.

Ms. Sobrino replied as long as it did not exceed the 49 seats; but at least everyone would be inside as opposed to being outside.

Commissioner Infantini stated the County's Code does not prohibit driving up, it just prevents driving through; and because it is not specifically stated, it would be permitted because a person can drive up just not drive through.

Commissioner Smith stated he is familiar with other Sonic Restaurants in other areas; he has never heard any complaints; and he would not, based on the testimony, vote against it.

Commissioner Fisher inquired from a legal standpoint has the Board in the past Zoned some properties similar to this to this type of Zoning category.

Eden Bentley, Deputy County Attorney, stated first the Board has to change the Future Land Use map, because now it says Neighborhood Commercial, and that is the first big hurdle; then the Zoning has to be changed; she is sure it has been done before; and this is very facts specific.

Commissioner Fisher inquired if there is a Chili's, would their packing lot be lit up all night long, or at least until 11:00 p.m., and would it be addressed by the Board in that case.

Ms. Bentley replied BU-1 just requires everything to be inside; but first the Comprehensive Plan needs to be changed.

Chairman Barfield read aloud the language in the Comprehensive Plan, as follows: "Administrative Policy 3, compatibility with existing or proposed land uses shall be a factor in determining where a rezoning or any application involving a specific proposed use is being considered. Compatibility shall be evaluated by considering the following factors: At a minimum Criteria A, whether the proposed uses would have hours of operation, lighting, odor,

March 3, 2016

noise levels, traffic, or site activity that would significantly diminish the enjoyment of safety or quality of life in existing neighborhoods within the area, which could foreseeably be affected by the proposed use."

Ms. Rezanka pointed out she understands Chairman Barfield's concerns; she does not know this is evidence of anything, because they have met the light standards; these are actually the new light standards, and they are less intrusive according to Mr. Homer than the ones that have been done in the past; and these will meet the light standards at the property line. She stated she does not believe there is substantial evidence before the Board to deny this request.

There being no further comments, the Board adopted Ordinance No. 16-01, Small Scale Plan Amendment 15S.08, amending Article III. Chapter, 62, of the Code of Ordinances of Brevard County, entitled "The 1988 Comprehensive Plan", setting forth the Eighth Small Scale Plan Amendment of 2015, 15S.08, to the Future land use Map of the Comprehensive Plan; amending Section 62-501 entitled Contents of the Plan; specifically amending Section 62-501, Part XVI(E), entitled the Future Land use Map Appendix; and provision which require amendment to maintain internal consistency with these amendments; providing status; providing a severability clause; and providing an effective date.

<b>RESULT:</b>	<b>ADOPTED [4 TO 1]</b>
<b>MOVER:</b>	Trudie Infantini, Commissioner District 3
<b>SECONDER:</b>	Andy Anderson, Commissioner District 5
<b>AYES:</b>	Robin Fisher, Trudie Infantini, Curt Smith, Andy Anderson
<b>NAYS:</b>	Jim Barfield

The Board approved a change of classification from BU-1-A to BU-1, removal of a Binding Site Plan, on 1.07 acres, located on the northeast corner of North Courtenay Parkway and Skyline Boulevard, and approved a Binding Development Plan, limited to the following: Providing a minimum eight foot (80) masonry wall along the eastern boundary of the property, and a Type A buffer along the easterly 30 feet of the north property line, along with a twenty foot (20') wide vegetative buffer along the east boundary with an additional three trees at least eight feet high or greater and a 20 percent increase in shrubbery at the time of installation; median buffer on Skyline Boulevard shall be landscaped and maintained by the developer/owners; developer/owners will coordinate with the County and Florida Department of Transportation (FDOT) to minimize traffic impacts to the residents and property owners along Skyline Boulevard; use of the property shall be limited to a restaurant use with a drive through lane or other use allowed in BU-1-A, and the height of the building shall be limited to one story provided to the use is limited to a restaurant; the setback of the building from the eastern boundary will be at least 74.6 feet as depicted on the conceptual site plan, provided that road improvements to North Courtenay Parkway are not required by FDOT that would result in the site improvements being shifted to the east; and that the trash receptacle is to be moved to the western portion of the property, as petitioned by Ralph and Cynthia Perrone.

Commissioner Fisher inquired if it is possible to bring the wall for the Jones' a little bit on the north side of the property line instead of just cutting it off at the half of that lot.

Mr. Homer replied they are willing to work with anyone; they want to be good neighbors; and he reiterated they will do everything in their power to make their neighbors happy.

March 3, 2016

<b>RESULT:</b>	<b>ADOPTED [4 TO 1]</b>
<b>MOVER:</b>	Trudie Infantini, Commissioner District 3
<b>SECONDER:</b>	Andy Anderson, Commissioner District 5
<b>AYES:</b>	Robin Fisher, Trudie Infantini, Curt Smith, Andy Anderson
<b>NAYS:</b>	Jim Barfield

**ITEM IV.A.4., (15PZ00079) - SOUTHGATE INVESTMENTS, INC - (JAKE WISE) - REQUESTS A SMALL SCALE PLAN AMENDMENT (15S.09) FROM NC AND RESIDENTIAL 15 TO CC, AND A CHANGE OF CLASSIFICATION FROM RU-2-15 AND RU -1-11 TO BU-1, ON 9.90 ACRES +/-, LOCATED ON THE SOUTHEAST CORNER OF PIONEER ROAD, AND NORTH COURTENAY PARKWAY. (NO ASSIGNED ADDRESS. IN THE MERRITT ISLAND AREA)**

Ms. Fox stated this Item is Southgate Investments; this was another tabled Item from the previous meeting; the intention was for the applicant to go back and look at the BU-1 uses; he has done that and provided a list of BU-1 and crossed out the ones he is eliminating; and this is a change in the Comprehensive Plan from NC and Residential 15 to Community Commercial, and a change of classification from RU-2-15 and RU-1-11 to BU-1 on 9.90 acres.

Jack Wise, civil engineer for the project, stated since Commissioner Infantini was not at the last meeting, he will do a brief recap, but he will not go through as much detail this time around. He went on to say normally when he comes before the Board he has a site plan, a concept, something they are showing they plan to develop; in this particular case, they did not have that; the reason they did not have that is this owner has had this property for decades; and this property is part of their retirement plan. He stated they wanted a contract around 2006, it got held up for a couple of years as the buyer tried to go through zoning and land uses; they ended up completely missing the market and losing the opportunity to sell their land; and now that the market is coming back, they want to sell the land, but every perspective buyer has wanted a very long due diligence period to go out after the Zoning and Land Use that they are requesting. He pointed out the reason they are here is to request a Zoning and Land Use they think is correct for this piece of property and to give the owner of the property the ability to move forward with selling the land to a developer. He stated the concern they heard at the last meeting was the Zoning has so many allowable uses, and some of them are intense; since the last meeting, they went through all allowable BU-1 uses; and they lined through the ones they thought would be too intense and would not be compatible. He noted they removed over 60 potential uses. He advised the Board he grew up in Merritt Island; this corridor and adjacent properties were all developed decades ago; and this is the only piece of property in the area that has not been developed yet. He went on to add there are three single-family homes that back up to the property to the south; they went before Merritt Island Redevelopment Agency (MIRA) and agreed that they would provide a good buffer for them; they are trying to preserve as much vegetation, put stormwater treatment back there, and work with them on any type of fence or wall that they prefer; and the realtor spoke with two of the owners. He stated they had unanimous approve from MIRA and Local Planning Agency (LPA).

Chairman Barfield advised the Board he spoke with Mr. Spurlock and Jake Wise.

Chairman Barfield passed the gavel to Vice Chairman Smith.

There being no further comments or objections, the Board adopted Ordinance No. 16-02, Small Scale Plan Amendment 15S.09 from NC and Residential 15 to CC, amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, entitled "The 1988 Comprehensive Plan", setting forth the Ninth Small Scale Plan Amendment of 2015, 15S.09, to the Future Land Use

March 3, 2016

Map of the Comprehensive Plan; amending Section 62-501 entitled Contents of the Plan; specifically amending Section 62-501, Part XVI(E), entitled the Future Land Use Map Appendix; and provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Robin Fisher, Jim Barfield
<b>SECONDER:</b>	Trudie Infantini, Commissioner District 3
<b>AYES:</b>	Fisher, Barfield, Infantini, Smith, Anderson

The Board approved a change of classification from RU-2-15 and RU-1-11 to BU-1, on 9.90 acres ±, located on the southeast corner of Pioneer Road and North Courtenay Parkway, and approved a Binding Development Plan, as petitioned by Southgate Investments, Inc.

Vice Chairman Smith passed the gavel back to Chairman Barfield.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Jim Barfield, Chairman/Commissioner District 2
<b>SECONDER:</b>	Trudie Infantini, Commissioner District 3
<b>AYES:</b>	Fisher, Barfield, Infantini, Smith, Anderson

**ITEM IV.B.1., (15PZ00085) - RICHARD A. & JOYCE V. MARSCHALL - REQUESTS A CHANGE OF CLASSIFICATION FROM GU AND SR, WITH A BSP TO ALL SR AND REMOVAL OF BSP, ON 0.66 ACRE, LOCATED ON THE EAST SIDE OF CARRIAGE GATE DRIVE, APPROX. 290 FEET NORTH OF PEACOCK DRIVE (NO ASSIGNED ADDRESS. IN THE MELBOURNE AREA)**

Cynthia Fox, Planning and Zoning Manager, stated this Item is a request to change from GU and SR, with a Binding Site Plan (BSP) to all SR and removal of the BSP, although after reviewing this Item, staff does not feel it is necessary to remove the BSP; the applicant is looking to build a single-family home.

There being no further comments or objections, the Board approved the rezoning from GU and SR, with a BSP to all SR, with the requirement to remove the BSP was withdrawn by staff, as petitioned by Richard A. And Joyce V. Marschall.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Andy Anderson, Commissioner District 5
<b>SECONDER:</b>	Robin Fisher, Commissioner District 1
<b>AYES:</b>	Fisher, Barfield, Infantini, Smith, Anderson

**ITEM V.A., APPROVAL, RE: MEMORANDUM OF UNDERSTANDING WITH COCOA EXPO SPORTS CENTER, LLC**

Stockton Whitten, County Manager, explained to the Board that Item V.A. is an amendment to Memorandum of Understanding with Cocoa Expo Sports Center LLC; if the Board recalls, sometime in March 2015 the Board suspended enforcement of the BDP, CUP, the Zoning Resolution, and specific Code requirements; and subsequent to that, the Board entered into a Memorandum of Understanding (MOU) to allow them to operate while finishing their site developments. He went on to say the MOU expired in December; since December staff has met with Cocoa Expo in an attempt to assist them in completing the remaining site improvements; they still have site improvements to complete; they have made significant progress; but there is still progress that needs to be made. He stated in order to allow them to continue on, the suggestion is that Cocoa Expo and the Board enter into the amended MOU that will allow them to continue on, and at the same time to amend the Binding Development Plan in order to address the initial bond requirements because of marketplace and other issues they cannot meet. He noted the meat of the MOU is on Page 4 and it gives the various conditions within the MOU; this is sort of the last time certain because it contemplates that they will go back and seek to amend the BDP that would allow them to address a number of issues there. He pointed out the significant changes are on Page 7, 'the County Commission imposed prohibition against baseball games after daylight hours' would be lifted; on Page 8 that they could use the softball fields provided that the currently installed and completed landscape buffers adjacent to the Young properties remain in place and compliant with those requirements; and the recommendation is an amended MOU that gets the Cocoa Expo to an amendment to the Binding Development Plan.

The Board executed Memorandum of Understanding with Cocoa Expo Sports Center, LLC, allowing Cocoa Expo to continue to operate until September 9, 2016, while it seeks an amendment to its Binding Development Plan.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Trudie Infantini, Commissioner District 3
<b>SECONDER:</b>	Andy Anderson, Commissioner District 5
<b>AYES:</b>	Fisher, Barfield, Infantini, Smith, Anderson

**ITEM VII., PUBLIC COMMENTS**

Charles Tovey stated this happens to him at his home, it happens to him everywhere; he was standing there minding his own business, and he was made to either sit down or leave; and he has his things on the Zoning issues. He stated he has lights all day and night, people and coming and going; and people threaten him and tell him how to live his life. He inquired what kind of Zoning he needs; he stated he has an application he is making that pulls up by cities and location all of the lowest income properties; and it shows a graph of how much money can be made if Code Enforcement is called and the people leave the property. He stated he cannot have a cat, a family, and he cannot sleep.

**ITEM VIII.A., STOCKTON WHITTEN, COUNTY MANAGER**

Stockton Whitten, County Manager, expressed his appreciation to staff for the long process of getting the Cocoa Expo where it needs to be.

March 3, 2016

**ITEM VIII.F., CURT SMITH, DISTRICT 4 COMMISSIONER, VICE CHAIRMAN**

Commissioner Smith stated he met with a gentleman named Daniel Guest; he represents a company called Home Serve who provides home warranties for water, sewer, air conditioning, and things like that on existing home; and when he spoke with him a few months ago, he was curious, because people who live in old homes would be able to take advantage of something like this. He pointed out he called other companies and they were five and six times the cost of this company to do the very same thing; he encouraged him to reach out to the other Commissioners; and he thought it may be something good for the County constituents.

Upon consensus of the Board, the meeting adjourned at 8:49 p.m.

ATTEST:

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JIM BARFIELD, CHAIRMAN  
BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA

\_\_\_\_\_  
SCOTT ELLIS, CLERK