

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 October 4, 2012 at 5:00 PM in the Government Center Commission Room, Building C, 2725 Judge Fran Jamieson Way, Viera, Florida.

CALL TO ORDER

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

INTRODUCTION TO ZONING PROCEDURE

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

INVOCATION

The invocation was given by Reverend Jennifer McGee, Eastminster Presbyterian Church, Indialantic.

PLEDGE OF ALLEGIANCE

Commissioner Bolin Lewis led the assembly in the Pledge of Allegiance.

ITEM I.A., RESOLUTION, RE: RECOGNIZING EAGLE SCOUT KYLE BOCK

October 4, 2012

Commissioner Anderson read aloud, and the Board adopted Resolution No. 12-211, recognizing Eagle Scout Kyle Bock, for his outstanding efforts in obtaining his Boy Scout Eagle Scout Award, and offered congratulations and best wishes for a successful future.

Kyle Bock expressed his thanks to the Board for recognizing his Eagle Scout Award; and stated many people thought he was not going to complete his project; but he completed the project and the paperwork three days prior to his 18th birthday.

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

ITEM II.D., REPORT, RE: TRUDIE INFANTINI, DISTRICT 3

Commissioner Infantini informed the Board that she now is a grandparent to a new granddaughter who was born last night.

ITEM II.G., REPORT, RE: CHUCK NELSON, DISTRICT 2

Chairman Nelson expressed his thanks to the Board Members who attended this mornings presentation at the Melbourne, Chamber of Commerce from Florida Technical Institution.

ITEMS TABLED FROM THE AGENDA

Cindy Fox, Planning and Zoning Enforcement Manager, stated Items V.B.2., (12PZ-00055) - Sherwood Lands, LLC - (Z. Sid Chehayeb) - requests removal of an existing BSP in an RU-2-10 zoning classification on 7.766 acres, more or less, that is located on the south side of London Town Road, and approximately 300 feet west of N. Carpenter Road; and Item V.B.5., (12PZ-00057) - Fraternal Order of Eagles Aerie #4257, Incorporated - (Charles Bernardo/Clearview Tower Company, LLC) - requests a CUP for a Tower and Antenna in a BU-1 zoning classification on 3,500 square feet, more or less, that is located on the east side of N. Courtenay Parkway, Merritt Island) needs tabling to the November 1, 2012 Zoning meeting.

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

PUBLIC HEARING PLANNING AND ZONE BOARD RECOMMENATION OF SEPTEMBER 10, 2012, NORTH MERRITT ISLAND SPECIAL DISTRICT RECOMMENDATION OF JULY 12, 2012, AND PORT ST. JOHN SPECIAL DISTRICT RECOMMENDATION OF SEPTEMBER 12, 2012

October 4, 2012

Chairman Nelson called for a public hearing to consider Public Hearings of Planing and Zoning Board recommendations of September 10, 2012, North Merritt Island recommendations of July 12, 2012, and Port St. John recommendations of Items of March 3, 2011 and May 26, 2011 Board of County Commissioners Meetings, as follows:

V.B.1., (12PZ-00054) - NATHANIEL & BERNICE PILATE, TRUSTEES - (PATRICE PILATE) REQUESTS A CHANGE FROM RRMH-5 & TR-1 TO AGR ON 6.37 ACRES. LOCATED ON THE NORTH SIDE OF CUYLER ST., APPROXIMATELY 0.3 MILE EAST OF HARRY T. MOORE AVENUE (2714 CUYLER ST., MIMS)

Patrice Pilate stated she is present today on behalf of her parents Nathaniel and Bernice Pilate, Trustess who are requested a rezoning from RRMH-5 & TR-2 to AGR on 6.27 acres.

Chairman Nelson stated the property is being utilized by Horse Sisters'; there have been some questions raised; and he wants to ensure the process through the County Attorney. Morris Richardson, Assistant County Attorney, stated he is not familiar with the Code action regarding the zoning of the property. He advised Horse Sisters' earlier this year had a 'Fitness to Own Action' put in place; the County removed several horses that were severely under weight; the court found the horses were not being properly cared for and treated; and removed those horses from Horse Sisters' custody. He added since then there has been many instances of horses-at-large; the Sheriff's Office is regularly called upon for the at-large reasons; and in April, the Sheriff's Department requested the County issue citations to try and help stop the problem from happening. He added, those cases were recently resolved in court, but only to have more incidences in June, last week, and reports this week of horses getting off the property stopping traffic.

Chairman Nelson stated the zoning category being asked for will allow for 24 horses; he inquired if this is being done to allow Horse Sisters' to continue to provide the service it provides, or if Ms. Pilate's is planning to own 24 horses. Ms. Pilate responded she does not personally own any horses. Chairman Nelson expressed his concern of Ms. Pilate's being surrounded by residential on two-sides, with a couple of mobile homes, which is the current zoning; and his concern is this is being done for a special purpose, which is to allow Horse Sisters' to continue. He inquired if it were not being done for that reason would the Board want 24 horses on property immediately adjacent to other residential.

Ms. Pilate stated the property that is immediately adjacent to the lot allows for 24 horses.

Chairman Nelson inquired if Ms. Pilate is correct with rural residential. Ms. Fox responded the RRMH-1 zoning classification allows up to 4 horses per acre, but they have to be for personal use; the owner has to reside on the property because they are accessory to a single-family residence. She advised the AGR zoning classification does not have that same limitation; it is still four horses per acre, with a Conditional Use Permit (CUP) to go over four horses per acre; but they are not required to be accessory to an on-premise single-family use, or for personal use.

Commissioner Fisher stated the Pilate's do not own or operate Horse Sisters'; the reason for the zoning is because it is not in compliance; and by having the right zoning helps Horse Sisters' with their issues.

Commissioner Nelson stated the Board runs into this a lot particularly in Canaveral Groves, it tends to change the zoning to meet the use that it has been put to; he is okay with this, but at some point, if Horse Sisters' decides they no longer want to do that and the applicant is in a different position, would the Board have made that decision to change the zoning to this. He added under that circumstance, his thought is probably not, he would keep it in the zoning

October 4, 2012

category where it currently is, because you still get the horses but you do not have to worry about the commercial aspects of it. He inquired if the Board is able to have it revert back to the current zoning should the Horse Sisters' or a rescue operation no longer be there.

Mr. Richardson responded he would suppose through the right Binding Development Plan (BDP) the Board could make it contingent on the existing use, and make the zoning necessary to require that it be operated in a certain fashion, as a horse rescue. He added it is certainly unusual and he does not know if it is a springing-reverted, it would not be automatic, it would probably take some further action by the Board.

Commissioner Nelson stated at some point the Board needs to look at this issue because it is the kind of zoning it keeps running into; which is, it does not fit but the Board makes it fit; and inquired what would happen if Ms. Pilate changes her mind, the property is sold and someone else comes in.

Ms. Pilate stated she understands; she went through a number of things when she was talking to staff to come up with this idea; and there were some other ideas that were thought to be not in the best flow of the current zoning and to keep the current flow of the zoning in place. She added the idea was to go with this re-zoning application; and that is would be the most sufficient way to keep with the current Policy because the other ones were of a different nature; and this is actually what staff and the zoning area recommended.

Commissioner Nelson stated staff certainly has come up with a solution to her circumstance and is good at that, but it does not mean it is necessarily consistent with what staff would have done if she would have come in and said that she just wanted to have 24 horses and no structure. He advised he would like to continue to work with staff, but will go ahead and vote with this. He added he would like to work with staff to come up with some mechanism to address this; it seems to be a re-occurring kind of issue; and he is not comfortable doing this forever. He stated believes the Board needs to come up with a better solution; and added La'Java left, and his biggest fear has now been realized, which is a CUP left and all the conditions that the Board agreed to are still there, but it is a new business now; it is now an Irish bar; and that kind of thing happens. He stated what the Board gives her today may change if she decides to sell.

Ms. Pilate stated that Zoning staff has been most informative, educated, versed, and any other compliment that she can throw that way.

There being no objections, the Board approved as recommended.

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

V.B.3., (12PZ-00056) - DEAN HUBERT - (STACY HUBERT) - REQUESTS A CHANGE FROM GU TO AU ON 1.25 ACRES. LOCATED APPROXIMATELY 900 FT. NORTHWEST OF THE WESTERN TERMINUS OF ARECA PALM ST. (IN THE CANAVERAL GROVES AREA)

Chairman Nelson inquired what the applicant would like to do to the property.

October 4, 2012

Stacy Hubert responded she would like to keep her horse and animals; and has been going through this for over two years. She advised when the property was bought the realtor told them they could have horses; the property is land-locked; and there is no access to it. She advised she went to court, and the Judge told her she should get a lawyer because things were told to her wrong; she has had her horse on the property for two years; and it is the only home her horse knows. She added her and her husband tried to get access for the land; had the land surveyed; she was told it should go through to have access, but it got denied; she was told to try and get rezoned for Agricultural Use. She noted there are five homes out there that are AU zoned, there are no horses out there at this time, but the possibility is there. She added she is aware she cannot do certain things on her property, but would like the horse to have her home and not be moved; she also wants chickens for the eggs, a couple ducks, has a couple rabbits, and barn cats.

Chairman Nelson inquired if she would be doing anything commercially, as AU allows to actually do commercial activity.

Mrs. Hubert responded apparently they cannot, because there is no access. Chairman Nelson responded they could achieve access after they leave here; there are ways that could happen; but that is between them, the neighbors, and maybe, the court system.

Mrs. Hubert stated she does not understand that because she has a paper that shows she does have access from a 1966 law; she paid good money for access and still has no access to be able to go to and from her property.

Chairman Nelson stated the action the Board is talking about tonight is zoning; and it is not going to be about access. He advised that is an issue they are going to have to deal with separately from the Board; and added it can make the approval, but he would ask for no commercial use.

Commissioner Fisher added only for personal use.

Mrs. Hubert inquired is she could have sheds, or something like it to put her hay somewhere.

Chairman Nelson responded that is a different issuing, which is not being addressed today, but a building permit provides access. He added what the Board can do is give the zoning, no commercial use; and then she will have to continue working on the access issue.

Dean Hubert inquired if they would still be able to have chickens and till a garden.

Chairman Nelson responded yes; the legal issue of access is separate from what the Board is able to talk about this evening.

Commissioner Fisher stated the applicants still have to go through the permitting process; and added that Commissioner Nelson does not want a bunch of chickens, with them selling eggs and chicken; the zoning would be specific to personal use only.

Mrs. Hubert stated that is fine.

Chairman Nelson inquired if the Board can do this by stipulation, or if it has to do a Binding Development Plan (BDP); and that he has been able to do stipulations in the past

Commissioner Fisher stated he hopes the Board is not going to ask the applicant to come back and do a BDP, because he believes it gets more complicated.

October 4, 2012

Chairman Nelson stated he is trying to make this simple with a stipulation process.

Mrs. Hubert noted they do not plan on building anything except something for the coverage of the hay.

Ms. Fox inquired if the Board would like to do a stipulation or that there be no commercial activity, or does the Board want to require the applicant to do a BDP that there be no commercial activity.

Chairman Nelson if the Board could do a stipulation with the approval, that would be his preference; it is just a much simpler way of doing it; and gets it on the record; and inquired if the Board could do it.

Morris Richardson, Assistant County Attorney, stated this is news to him; he was not aware of this issue; and has not dealt with the stipulation. He advised he would like to see the BDP because that is enforceable, as to a stipulation on the record, it is incorporated into the Zoning Resolution; and inquired if that is the process done.

Ms. Fox responded, that is what the Board has done in many years past, similar to a Conditional Use Permit (CUP).

Mr. Richardson advised the enforceability might be conducive but could certainly do that; he has never used that vehicle or seen it enforced; and inquired if the applicants owned the property out right, or is there was a mortgage.

Mr. Hubert responded no, it is paid for.

Mr. Richardson stated that is one thing in their favor for stipulating on the record for the rezoning, but if the property were to change hands, the stipulation will not be seen, it would be seen as zoned AG. He advised a BDP is recorded and goes into the record; it follows the property; and any subsequent purchaser is on notice of that restriction.

Chairman Nelson stated since the applicants own the property the BDP is a much simpler process.

Mr. Richardson stated no joinder is needed from the mortgage holder, it is just a simple form to sign.

Commissioner Fisher stated without access is going to be very difficult to get any kind of commercial use on it.

Mrs. Hubert inquired what the difference of that stipulation and a Binding Development Plan (BDP); and if it would cost them more money.

Ms. Fox stated a BDP is actually an agreement, it is a voluntary agreement between the Board and the applicant; the applicant prepares the BDP; it is reviewed by the County Attorney's Office; it is executed; comes in front of the Board again; and does cost money for recording.

Mr. Richardson stated in the BDP, it will need one additional paragraph stating no commercial uses on the property.

There being no objections, the Board approved with a Binding Development Plan limited to no commercial use.

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

V.B.4., (12PZ-00050) - BARBARA K. KELLER - REQUESTS A CHANGE RU-1-9 TO RP ON 0.36 ACRE. LOCATED ON THE NORTH SIDE OF FAY BOULEVARD, APPROXIMATELY 500 FT. WEST OF U.S. 1. (1168 FAY BOULEVARD, PORT ST. JOHN)

There being no objections, the Board approved as recommended.

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

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

There being no objections, the Board approved as recommended; and adopted Ordinance No. 12-29, setting forth the second Small Scale Plan Amendment (12S.02) of 2012.

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

V.C.1., (12PZ-00053) - SECTION 26, TOWNSHIP 24, RANGE 36, PARCEL 258, ON 0.95 ACRE, LOCATED ON THE EAST SIDE OF BEVIS ROAD, APPROXIMATELY 1,000 FT. SOUTH OF LUCAS ROAD (IN THE MERRITT ISLAND AREA) CURRENT FUTURE LAND USE DESIGNATION & ZONING: RECREATION AND GOVERNMENT MANAGED LANDS (GML)

Cynthia Fox, Planning and Zoning Manager, stated the Board executed an Agreement where the church would take over this property and maintain it as a cemetery. She added there are eight existing graves, stipulations and regulations do not allow any future interments; there is a revocation clause that states if the church uses it for any other use other than a cemetery, it would come back to the County; and at that time staff was directed to do the rezoning.

October 4, 2012

Commissioner Nelson stated it is in his district and he is okay with it.

There being no objections, the Board approved as recommended; and adopted Ordinance No. 12-30, setting forth the sixth Small Scale Plan Amendment (12S.06) of 2012.

Commissioner Fisher stated in making a reference to a cemetery, he is unsure if the Board is aware, but has been researching and finding out more and more that the government has acquired 300 acres in northern end of the County for a Veteran's Cemetery, a national cemetery; and the Board is in contact with that office and believes that is coming along soon.

Chairman Nelson stated he had hoped it was going to be on the island, but Commissioner Fisher got it, and he does not have 300 acres for them to use. He added having a National Cemetery in the County is a wonderful thing.

Commissioner Anderson stated when he dies his family is going to have to drive to Titusville to visit him.

Commissioner Fisher stated he will be in God's country.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Andy Anderson, Vice Chairman/Commissioner District 5
SECONDER:	Mary Bolin Lewis, Commissioner District 4
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ADJOURNMENT

Upon consensus by the Board, the meeting was adjourned at 5:38 pm.

ATTEST:

MITCH NEEDELMAN, CLERK

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