Brevard County Board of County Commissioners

2725 Judge Fran Jamieson Way
Viera, FL 32940

Minutes

Thursday, October 6, 2022

5:00 PM

Zoning

Commission Chambers

A. CALL TO ORDER 5:04 PM

Present: Commissioner District 1 Rita Pritchett, Commissioner District 3 John Tobia, Commissioner District 4 Curt Smith, and Commissioner District 5 Kristine Zonka

ZONING STATEMENT

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

C. PLEDGE OF ALLEGIANCE

Commissioner Tobia led the assembly in the Pledge of Allegiance.

D. MINUTES FOR APPROVAL

The Board approved the August 9, 2022, Melbourne-Tillman Minutes.

Result: Approved
Mover: Rita Pritchett
Seconder: John Tobia
Ayes: Pritchett, Tobia, Smith, and Zonka

E.1. Resolution Requesting the Immediate Suspension of Indialantic Mayor David Berkman from Office

Commissioner Zonka advised there is a card for Item F.3., Requisition, Re: Fiscal Year 2023 Budget – Supervisor of Elections.

Commissioner Tobia read aloud, and the Board adopted Resolution No. 22-131, requesting the immediate suspension of Indialantic Mayor David Berkman from office and stands against the immature, improper, inappropriate, and alleged criminal actions of Mayor Berkman, and calls on Governor Ron DeSantis to utilize his authority to protect the citizens.

Result: Adopted
Mover: John Tobia
Seconder: Curt Smith
Ayes: Pritchett, Tobia, and Smith
Nay: Zonka

F.1. Public Transportation Grant Agreement (PTGA), Taxiway E Construction at Valkaria Airport

The Board approved and authorized the Chair to sign the Florida Department of Transportation (FDOT) Public Transportation Grant Agreement for Taxiway E construction at Valkaria Airport; and authorized all necessary Budget Change Requests associated with PTGA.

Result: Approved
Mover: Curt Smith
Seconder: John Tobia
Ayes: Pritchett, Tobia, Smith, and Zonka

F.2. Appointment(s) / Reappointment(s)

The Board acknowledged the reappointment of John (Jay) Woltering to the Melbourne-Tillman Water Control District, with term expiring October 8, 2025.

Result: Approved
Mover: Curt Smith
Seconder: John Tobia
Ayes: Pritchett, Tobia, Smith, and Zonka

F.4. Resolution to recognize and celebrate Coach Dixon's Dawg House Dedication

The Board adopted Resolution No. 22-132, recognizing and celebrating the dedication of Coach Dixon's Dawg House.

Result: Adopted
Mover: Curt Smith
Seconder: John Tobia
Ayes: Pritchett, Tobia, Smith, and Zonka

G. PUBLIC COMMENTS

George Bullard stated he has been a resident of Brevard County for 13-1/2 years; he moved here from Nashville, Tennessee; he looked at several different areas to move to; he and his late wife chose Viera as their home; and over the years he has noticed a decline in quite a few things. He pointed out there are things that are very concerning; and he knows Summerville is a Homeowners Association (HOA).

Chair Zonka asked if this is related to Item F.3.

Mr. Bullard stated it is concerns he has.

Chair Zonka noted it is probably Public Comment.

Mr. Bullard asked if he would have that opportunity.

Chair Zonka stated everyone is offered that opportunity during the Public Comment Section, Item G.

Mr. Bullard stated to put him down for Item G.

F.3. Requisition of Fiscal Year 2023 Budget - Supervisor of Elections

The Board approved a requisition of 40 percent of the Supervisor of Elections' Fiscal Year 2023 budgeted funds at the first Board meeting in October 2022, and 4.45 percent of the total budget each month thereafter.

Result: Approved
Mover: John Tobia
Seconder: Rita Pritchett
Ayes: Pritchett, Tobia, Smith, and Zonka

G. PUBLIC COMMENTS (CONTINUED)

George Bullard stated he is concerned about a couple of things; he lives in a Homeowners Association (HOA) on Summerville; it is Bright View Management, or Fairway Management, and on Summerville there are vehicles that are parking on both sides of the street; this has really gotten bad over the last six years; and it has become a danger. He advised he is a retired freight hauler with Yellow Frame, hauling doubles; there is no possible way a fire truck could get through there at 2:00 a.m.; it is against the law, it is plainly posted; he has already called Public Works, and he has been on the telephone all day with several companies, even with Fairway Management discussing this ongoing issue; and he has attended their meetings. He went on to say this is a safety concern; for instance, yesterday when he was on his way to church there were two vehicles on each side of the road; he drives a Toyota Tundra Crew Max; a little boy threw a ball into the street and a little girl goes to catch it right out in front of him; and he is very cautious, he has 3.5 million safe driving miles. He noted if someone was not paying attention, that little girl would have been hit; three years ago on September 27th, the west sun was in his eyes; there is a gentleman who owns four cars, zero in his driveway, and they are parked around a curb; the sun was coming into his eyes, he was blinded, and he was trying to navigate through these cars; and a gentleman stepped right out in front of his truck. He exclaimed thank God he was a professional driver as he would have ran over this guy; it is just a matter of time before someone gets ran over or the fire department is going to have to come; he has several elderly friends who have lived in this neighborhood since 2002; he reiterated a fire truck cannot get through there; and last night at 9:30, when he got home from church, there were 22 cars parked on both sides of the street. He stated this is ongoing; they have contacted the Sheriff's Department who come out once or twice a year and write tickets; he thinks there needs to be signs and it needs to be enforced; the homeowners should be told to get their vehicles off of the street; and a lot of them park in the street but have a clear driveway.

Commissioner Smith asked if Mr. Bullard lives in an HOA.

Mr. Bullard replied he does.

Commissioner Smith pointed out they are the ones who should be correcting this and behind it; they are the ones who put the sign up, they have to call to get those signs put up; and if the HOA is not doing it, Mr. Bullard should run for president or chairman.

Mr. Bullard stated his next door neighbor is a good friend of his and he is the president.

Commissioner Smith advised they are the ones who have to call the police; he should be having this discussion with them; he is glad Mr. Bullard is here and has the Commission to listen to him; there is nothing the Board can do; and what Mr. Bullard has to do is go before his HOA and give them that same little talk.

Mr. Bullard explained there is something he has to ask him; he did talk to Cynthia Morris with the Traffic-Op signs, she asked for video and pictures; but he would invite anyone of the Board Members to come up to this area even at 9:00 p.m.; he has seen trucks have to back up out of the neighborhood; and he reiterated this is very much a safety concern. He advised he would appreciate if the County could look at this and stand behind them.

Sandra Sullivan stated it is great to be safe and sound in Brevard County, and her heart goes out to the people on the west coast. She went on by saying regarding Hurricane Ian, it was in the news that the sixth insurance company has left Florida due to being insolvent; there is a bit of an insurance crisis; the State Representatives met a couple of months ago; and with Hurricane Ian, they are likely to see new legislation, and there are going to be a lot of changes coming. She provided the Board with packets of information. She noted on the table on Level E, Category 5, it is talking about the worst case Category 5 hurricane; she was reading the Comprehensive Plan for the County, and the barrier island dune is expected to be breeched in a Category 3 storm; the issues with this is not if but when Brevard County is affected like Fort Myers Beaches, a barrier island community; Brevard County is also a barrier island community; and it is not if, but when Brevard County has a direct hurricane that hits the coast. She pointed out they got very lucky with Hurricane Matthew, which was supposed to be a Category 5 direct hit on the Space Coast; by the grace of God, it went 20 miles off shore; she is sure they cannot always count on that; she has a storm surge map from the East Central Florida Regional Planning Council, as well as the flooded roadways, which would affect evacuation; and there was much more flooding with Hurricane Irma than what is being seen with Hurricane Ian. She stated State Road 520 and Eau Gallie Boulevard was closed; these are evacuation routes; the concern in one of the files she sent the Board Members, page 18, is about when there is rainfall prior to landfall, and these roads get closed; she reiterated these are evacuation routes; and her message today is that they have to be very mindful of the density, because they are already there, for evacuation on that first table, and there are 36 hours to evacuate. She noted by State Statute 163.3, they are supposed to be able to evacuate in 16 hours from the barrier island; Brevard is nowhere near that level; she is just asking the Board to be cognizant that there are going to be legislative changes; and the State rules are likely to be much more enforced moving forward.

Chair Zonka asked the Board if she could switch two items towards the bottom, and to hear Item H.6. after H.4., because she knows H.5. is going to be a lot longer; and she thinks it will allow people to get out sooner.

H.1. Mark A. and Rebecca L. Oostdyk Request a Change of Zoning Classification from RR-1 to AU. (22Z00036) (Tax Account 2405176)

Chair Zonka called for a public hearing to consider a change of zoning classification from RR-1 to AU as requested by Mark A. and Rebecca L. Oostdyk.

Jeffrey Ball, Planning and Zoning Manager, stated he is an American Institute Certified (AIC) Planner; Item H.1. is for Mark A. and Rebecca L. Oostdyk requesting a change of zoning classification from RR-1 to AU; the application number is 22Z00036; and it is located in District 1.

There being no comments or objections, the Board approved the request of Mark A. and Rebecca L. Oostdyk for a change of zoning classification from RR-1 (Rural Residential) to AU (Agricultural Residential), located on the west side of Cox Road, north of Rayburn Road.

Result: Approved
Mover: Rita Pritchett
Seconder: John Tobia
Ayes: Pritchett, Tobia, Smith, and Zonka

H.2. CGCR Holdings, LLC (Kelly Hyvonen) Request a Small Scale Comprehensive Plan Amendment (22S.12) to Change the Future Land Use Designation from NC and RES 4 to CC. (22SS00009) (Tax Account 2400719)

Chair Zonka called for a public hearing to consider a request for a Small Scale Comprehensive Plan Amendment (22S.12) to change the Future Land Use designation from NC and RES 4 to CC, as requested by CGCR Holdings, LLC.

Jeffrey Ball, Planning and Zoning Manager, stated Items H.2. and H.3. are companion applications; he will read both of them into the record at the same time; however, the Board will need to have a separate motion for each; Item H.2. is CGCR Holdings, LLC, requesting a Small Scale Comprehensive Land Amendment 22S.12 to change the future land use designation from NC and RES 4 to CC; and the application number is 22SS00009, located in District 1. He went on to say Item H.3. is CGCR Holdings, LLC, requesting a change of zoning classification from INL to BU-2; the application number is 22Z00031; and it is also located in District 1.

Kelly Hyvohen, Land Development Strategies, stated she is here today representing CGCR Holdings on a request for a Comprehensive Plan Map Amendment, as well as a rezoning; on this property, the aerial the Board sees before it, the yellow outline is the portion of the property they are seeking the change in the Comprehensive Plan, as well as the zoning; the property also extends, it is that southern red piece that is also zoned CC as part of the same property; what they are looking at doing is changing the future land use and zoning on the east parcel outlined in yellow; and right now the future land use is NC (Neighborhood Commercial) and RES 4, and they would like to change that to CC. She went on to add the zoning on that portion is INL, and they would like to change it to BU-2; what that would do is create a unified development parcel there to be able to have the same zoning of future land use across-the-board; it is a logical extension of the existing Community Commercial and BU-2 in industry, especially to the south; there is Amazon warehousing and industrial development to the south in the City of Cocoa, which the Board can see on that map, as well in the white on the east side of Grissom Parkway; and this has direct access to Grissom, so by putting this entire property together under the correct zoning, they will be able to develop it all together. She noted it has City of Cocoa water, but no sewer at this time; the unified development parcel would have consistent future land use and zoning for future office warehouse or distribution use; that would be compatible with existing industrial and heavy commercial uses along that Grissom corridor; it is a preexisting cluster of the Community Commercial that the Board can see in red on the screen in front of it; that needs to be expanded so they can create a meaningful development at that location; and there is a small area of wetlands on the northwest corner of the site that is under a half acre. She stated there are no protected species, and they do have a letter from U.S. Fish and Wildlife giving them Scrub Jay clearance at this location as well; it is not encroaching on other existing uses to the east, and well to the east it has a future land use of Residential 4; the way that was platted, without any means of roads and infrastructure being able to be provided, those lots are not really developable unless somebody aggregates a bunch of them and re-plats; the request is consistent with the Comprehensive Plan, and is in keeping with the character of this Grissom corridor; and with that, she is happy to take any questions.

Terrance Mulreany stated he has been a resident of Brevard County since 1985; he is here to go along with the zoning for H.2. and H.3.; he owns land directly north, adjacent to this property; he will be looking to put it at the same zoning next year; and he gives it 100 percent approval.

There being no further comments, the Board adopted Ordinance No. 22-30, amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, entitled "The 1988 Comprehensive Plan", setting forth the sixteenth Small Scale Plan Amendment of 2022, 22S.12, 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; provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date.

Result: Adopted
Mover: Rita Pritchett
Seconder: John Tobia
Ayes: Pritchett, Tobia, Smith, and Zonka

H.3. CGCR Holdings, LLC (Kelly Hyvonen) Request a Change of Zoning Classification from IN(L) to BU-2. (22Z00031) (Tax Account 2400719)

Chair Zonka called for a public hearing to consider a change of zoning classification from IN(L) to BU-2, as requested by CGCR Holdings, LLC.

There being no comments or objections, the Board approved request of CGCR Holdings, LLC for change of zoning classification from IN(L) to BU-2, on 4.83 acres located east of Grissom Parkway, south of Canaveral Groves Boulevard.

Result: Approved
Mover: Rita Pritchett
Seconder: Curt Smith
Ayes: Pritchett, Tobia, Smith, and Zonka

H.4. Wayne Frank Crisafulli and Sonja Anette Crisafulli Living Trust (Kim Rezanka) Request a Change of Zoning Classification from AU to RR-1. (22Z00038) (Tax Account 2316453)

Chair Zonka called for a public hearing to consider a change of zoning classification from AU to RR-1, as requested by Wayne Frank Crisafulli and Sonja Anette Crisafulli Living Trust.

Jeffrey Ball, Planning and Zoning Manager, stated Wayne Frank Crisafulli and Sonja Anette Crisafulli Living Trust requests a change of zoning classification from AU to RR-1; the application number is 22Z00038; and it is located in District 2.

There being no comments or objections, the Board approved a request by Wayne Frank Crisafulli and Sonja Anette Crisafulli Living Trust for a zoning classification from AU to RR-1 for property located lying within the NW ¼ of Section 23, Township 23S, Range 36E.

Result: Approved
Mover: Rita Pritchett
Seconder: John Tobia
Ayes: Pritchett, Tobia, Smith, and Zonka

H.6. Andrea Bedard and Nicholas Boardman (Kim Rezanka) Request a Change of Zoning Classification from AU to RU-2-4 and RU-2-6. (22Z00015) (Tax Account 2511124)

Chair Zonka called for a public hearing to consider a request of a change of zoning classification from AU to RU-2-4 and RU-2-6, as petitioned by Andrea Bedard and Nicholas Boardman.

Jeffrey Ball, Planning and Zoning Manager, stated Andrea Bedard and Nicholas Boardman requests a change of zoning classification from AU to RU-2-4 and RU-2-6; the application number is 22Z00015; and it is located in District 2.

Kim Rezanka, representative for the applicants, stated this project is basically an infill project on U.S. 1 and Barnes Boulevard; it is 1.01 acres of AU zoning, which is actually inconsistent with the future land use of a split land use of RES-4 and Neighborhood Commercial; the applicant is asking for a split zoning of RU-2-4 in the Residential 4 zoning of approximately a third of an acre, and RU-2-6 and Neighborhood Commercial of the west side of about .68 acres; she is here today with Nick Boardman as well; and the plan is to build four total units on the RU-2-6 property of two units, four duplexes, leaving the existing house that is there on the RU-2-4 section. She went on by saying according to County staff, the AU zoning is substandard due to the size of the lot; the surrounding area is a mix of zoning; there is Residential to the east, a transient motor lodge to the west, which is TU-1, 16 units, which is also owned by her client and a corporate entity; the retail to the south, Hounds Town; there is a 12-acre storage facility to the north, that the Board approved earlier this year; and there is a duplex use, a third of the acre to the south just so there is something similar in the area. She advised Coquina Road is a public road; by looking at the package she provided to the Board, page one is the property, page two is the property detail information, page three is Coquina Road, which is a public, local road, and properties along that road are entitled to access off of the road; Coquina Road runs from U.S. 1 to Rockledge Drive, and there are many concerns raised about this road at Planning and Zoning board meetings; however, design standards exist for these roads; the County must allow access; and pages four and five are the technical guidelines in the County's Code talking about pavement width, intersection standards, the accommodation for transportation facilities, traffic control devices, and access management. She added on page seven, access management, talks about shared driveways and cross access; at this point the properties have not been designed, but they will meet all County Code standards for the access management and the roadways; if the County needs improvements, then that would be part of the site plan; the four duplexes will generate nominal traffic; common sense would lead a person to know that most people are going to go to U.S. 1 where there is a traffic signal to get out, as opposed to Rockledge Drive which is a very slow and narrow road; the neighbors opposition is mostly for use of the road and the use itself; and AU allows raising and grazing of animals, chickens and beekeeping, parks, foster homes, and group homes. She explained residential use is a much better use than those next to residential and between transient; this project first came as extension of the motor lodge, it was voted down at the P&Z Board, and there was a great deal of opposition from the neighbors who said they wanted residential; now the applicant has come back with residential, and the neighbors said they did not really want just residential, they wanted single-family homes; the P&Z board was a 5:5 split for this request; and it was stated several times at the P&Z meeting that this is a compatible transition, it is a classic transition from single-family to a more commercial use. She stated by looking on page eight, this is the one email of all of the opponents and it shows their zoning and their names; they are indeed along River's Edge; only one, Ms. Susan Mills, is directly to the east, Parcel 508.1; by looking at page nine, Ms. Susan Mills has a .16 acre piece of land, it is a very tiny, old, non-conforming lot; and the lot next to her with the single-family house will be a third of an acre, so larger than what she has. She went on to say this is transitional zoning; they are not changing any of the future land use; the future land use of neighborhood commercial that is

on the western side of the portion will stay there and will be used for homes, for duplexes, so it will not be encroaching into the homes area; she cited from Chapter 5 of the Comprehensive Plan, the housing element, 'Brevard County shall continue to provide for adequate lands for residential uses and a wide variety of housing types, pricing levels, and geographic choices, and land development choices shall continue to designate lands for single-family, multi-family, and mobile homes"; and all is aware of the housing crisis in this County, and this will allow four new housing units to be rented as duplexes or possibly owned, the decision has not been made yet. She asked for the approval for the change in zoning from the AU to the RU-2-4 and the RU-2-6 as requested.

Commissioner Pritchett stated she is looking at the property and there is already a house on it; and she asked if the four family structures there include the house, or is that going to make five.

Ms. Rezanka replied that will make five; and that one will stay in the RU-2-4 on a one-third acre, they will split the lots, and then they will be at about .68 acre on the west, which will have the two duplex units.

Commissioner Pritchett advised she is still listening and working through this, and what will be consistent and compatible; and she asked if they do put in the duplexes, if they are single-level duplexes.

Ms. Rezanka responded affirmatively.

Commissioner Pritchett inquired if with the house they could not really do a buffer, and this property is going to belong to this one property owner.

Ms. Rezanka replied yes.

Commissioner Smith asked if there is sewer and water.

Ms. Rezanka responded there is water, not sewer.

Commissioner Smith stated that concerns him because it is very close in proximity to the Indian River.

Ms. Rezanka advised if Commissioner Smith looks at his packet, it is not in the septic overlay, but they will do whatever they need to do.

Commissioner Smith stated he would think an advanced treatment unit would be recommended in a situation like this; and if the applicants would be okay with that, short of having a sewer, that would be the next best option.

Nicholas Boardman asked if Commissioner Smith would repeat the question.

Commissioner Smith inquired if Mr. Boardman would be amenable to an advanced treatment unit for the septic system.

Mr. Boardman replied the existing house on the east portion at the moment does have about a two year old septic system, so that is obviously in really good shape; and the .68 acres being talked about on the west side, yes, he will follow any recommendations from the County during the building process.

Commissioner Smith pointed out there is a big difference between an advanced treatment unit and a new septic system.

Mr. Boardman noted he is not an expert, but if it is recommended and necessary, they will do whatever it takes.

Commissioner Smith advised he would feel much more comfortable, and he would hope his fellow Commissioners would feel the same way; this is right next to the Indian River Lagoon; the County is spending a lot of money to try to clean it up; and the best way to clean it up is to stop the bad stuff from being put in it in the first place.

Mr. Boardman stated he agrees with that.

Ed Johnson stated he is representing eight residents; two of them are not present today, one of them is a resident who lives on the corner, Frank Myers; the first page shows that these two zonings they want, one is one-third an acre lot, and the other one is for a two-thirds of an acre lot; he thinks both of these owners require an acre; and so, an RU-2-4 and RU-2-6 cannot be put on something less than an acre. He went on by saying he has a print out that says lot requirements maximum density for RU-2-4 is four units per gross acre, and for RU-2-6 is six units per gross acre; the septic situation has already been mentioned; the second page is a Geographer Information Systems (GIS) map of the local area and will show that all of the homes in the area are EU or EU-2; they would not be opposed to that; and he thinks that lot that does not have a home on it would easily qualify for EU or EU-2. He explained these duplexes are not in the character of the neighborhood; that was brought up in the advisory board meeting where it was rejected twice; the first meeting it was rejected unanimously; the second meeting was a 50/50 split; and he and his wife had COVID, so they were not able to attend. He pointed out another major concern is Coquina Road; Henry Minneboo stated in the meeting that it is a difficult situation in that area, and he cannot support anything on that road more than what is there today, the neighborhood does not deserve any further impact; Mr. Minneboo made a similar statement at the second meeting, or the second time they tried to get the revised zoning through; that whole area is composed of AU, EU, or EU-2; and the only other higher density in the area is all located on U.S. 1, it has frontage to U.S. 1, so it will not be using Coquina Road. He stated Coquina Road is a very narrow road; it restricts trucks due to its size; he personally was in an accident, and had his car totaled; he reiterated it is a slim, very narrow road; Mr. Minneboo knew it very well because he and Curt Myers were instrumental in getting it paved; and on the other end when going onto Rockledge Drive, a person has to stick his or her car out a little bit so they can see in each direction. He noted there will be accidents there; the residents just do not want any more traffic on that road; the residents and advisory board are worried about short-term rentals; the original zoning request was to have 10-12 units; when they went to the second meeting, it was said they wanted to put two duplexes on it; and with this zoning, which has a lot limitation where they cannot do that, and if it is approved they could potentially put 10 units on there, because they would have the RU-2-4 and RU-2-6 zoning on there. He added they all have about one acre lots, and if he tried to put 10 units behind his house, he thinks he would have to hire security.

Susan Mills stated she does not have any printouts for the Board, she just has her opinion; she lives closest to this acre of land; even though Ms. Rezanka does not think it has a lot of worth, she does live there; she has put a lot into her home; and she picked this neighborhood for a reason, because it does have a charm, a neighborhood feel, people are very respectful, and she feels very safe there. She went on to say she feels with short-term rentals in that area, the County is taking U.S. 1 and pushing it into a residential neighborhood, and that is not what that land really was for; it is for a neighborhood; single-family homes would bring families like them, which would be awesome, great, and well-supported; as far as the road, by pulling up to the light on Coquina Road, the people are trying to pull off towards them to go down to Coquina,

and gives them dirty looks because they think they pulled out too much and did not pull close enough to give them enough room to come down that road, even though a person is as close to the right as he or she can possibly be; that road was not meant for heavy traffic; and since she works from home, she sees trucks and cars come down there, large trucks, back up all of the time trying to get out, because they cannot make that turn. She asked the Board to take the residents' opinions, as well as the gentleman who wants to develop the land, into consideration; but she stated she would like to keep that a family-friendly neighborhood.

Ms. Rezanka stated all of that U-land spoken of by Mr. Johnson is all along the river's edge, very large lots; it is not necessarily a community as a person would think as one with having a subdivision, Homeowners Association (HOA), or something like that; Mr. Minneboo said he cannot support it, but it is a public road, it is a local road, and it is not heavily trafficked; Mr. Boardman actually had someone counting traffic; and in the morning, peak hours, it is less than 30 trips an hour, so it is not very high traffic. She went on to state there are trucks that go down there, it is not supposed to happen; she does not know how to prevent that; it is a County enforcement issue, not something caused by her client; when it was turned down at the Planning and Zoning meeting, it was looking to expand the motor court; and it is not what they are doing. She pointed out this is an additional four homes, four single-families; it is not a multi-family, it is not a six-story apartment building, these are individual families; the vote for this particular zoning request was 5:5; it was actually 6:5, but they found out an alternate voted; and they had to do a roll-call vote. She stated the problem with traffic seems to be at River Road; there is a traffic signal at U.S. 1; common sense would say this property is going to be closer to U.S. 1, and it would go to U.S. 1; she did not mean to say Ms. Mills' house had no value, it is a lovely house; and her point was it is a small house, it is a .16 lot. She added it is an older home; a lot of these homes are older; she believes Ms. Mills' lot was split from a larger lot to make that small lot; if the Board is concerned about the traffic, Mr. Boardman's employee is here today, and he can tell it what he saw; and she can tell the Board that on Tuesday and Wednesday of this week, from 7:00 a.m. to 9:00 a.m., and from 4:00 p.m. to 6:00 p.m., the traffic was about 30 vehicles an hour. She advised most of the vehicles are going to Hounds Town; at some point Hounds Town was allowed to put an access on Coquina Road; it is not possible to put 10 units on the property; the maximum units that could be put on here is six; they are not even sure two duplexes will fit; and Engineering has not been done. She noted her client has agreed to do the high-end nutrient reduction she assumes by a Binding Development Plan (BDP) should this be approved.

Commissioner Pritchett asked if this was an EU zoning, and how many units can be put on this property.

Ms. Rezanka advised most of them are EU-2, which are 10,000 square foot lots.

Mr. Ball stated EU requires a 15,000 square foot lot, and EU-2 requires a 9,000 square foot lot, so that is probably around a quarter acre, which would be four lots an acre.

Commissioner Pritchett stated she is not sure the RU-2-4 and RU-2-6 fit, but she thinks an EU would; since the applicant is doing four units, she could possibly be comfortable with this if the applicant would be willing to do a BDP saying the maximum amount they would do is four units with the advanced wastewater treatment, and single story; she thinks with the zoning that would be appropriate in the area as well, because she did have a little heartburn with RU-2-4 because there is not any, so she was not sure that was consistent; she thinks with the BDP it would make it consistent.

Ms. Rezanka inquired if that is a BDP for the entire acre or just for the RU-2-6.

Commissioner Pritchett noted the entire acre if they would have a maximum of four units put in with the advanced water treatment system and single story; there is already a house there, so she thinks the buffer is already there for the resident back behind it; she thinks that would get them to the place where it would have been the EU, same zoning; she thinks it is a little bit more protection; and she would feel a little more comfortable with consistency.

Ms. Rezanka asked Mr. Boardman if that is acceptable, and she expressed her appreciation to Commissioner Pritchett.

Commissioner Smith explained he would like to suggest restricting rentals to one-year minimums, because he can see why people would be concerned as there is the possibility of maybe 30-day rentals, or two-week rentals; that would ease the neighbors' minds greatly; and if that was Mr. Boardman's intent anyway, it is just putting it in writing.

Ms. Rezanka pointed out it is Mr. Boardman's intent, however, he does have a lot of out-of-town people who do come in for a month to three months, because that is what he is doing right now at the hotel, transient lodging; and they would prefer it be 90-day rentals.

Commissioner Smith noted he is not crazy about this being there in the first place because of the proximity to the river; they would be adding four units; if there were two people per unit, it would be eight people living within 150 feet of that river; even with an advanced treatment unit they are subject to probably six, and he does not remember which one is which, but six to eight pounds of nitrogen per a four-person family, and about the same amount of phosphorous; and that would potentially be dropping a lot of nutrients into that water. He advised he would just feel more comfortable if it was a one-year restriction.

Chair Zonka asked if the Board can legally do that.

Morris Richardson, County Attorney, replied that they can voluntarily submit to that sort of rental restriction; the Board could adopt an ordinance of general regulation; but through a Binding Development Plan (BDP) they could agree to a restriction or minimum rental period limitation.

Chair Zonka stated she does not know if she wants to be in the business of trying to manage that.

Commissioner Tobia stated while he appreciates Commissioner Smith's care of the Lagoon, he does know if the science backs it up; in fact, he is certain it does not; the Board has discussed the distance over and over from the Lagoon as what was needed for advanced septic, this did not make it; the applicant has decided at a great cost to do that, if it makes Commissioner Smith feel better; the reality is, on the other side of this property it is literally a hotel; and if Ms. Rezanka is up here any longer, the Board will be asking her to paint it a certain color of blue. He went on to say at some point it just becomes unfair to the applicant; they have gone above and beyond on it; and he had questions on requiring advanced septic because the cost on that, he does not know if the applicant knows it or not, it is going to be tens of thousands of dollars for something that the science does not back up.

Commissioner Smith asked who says the science does not back it up.

Commissioner Tobia responded the scientists.

Commissioner Smith inquired which scientists.

Commissioner Tobia advised Virginia Barker, Natural Resources Management Director; she has come up here and said when it is further than 150 feet that there is no measurable difference; and this is further than that.

Commissioner Smith stated it is pretty darn close.

Commissioner Tobia stated there is a lot, and he imagines it is going to be on the west side of that, so they will find out it is at least 200 feet.

Chair Zonka stated that is not 150 feet.

Commissioner Tobia advised it is going to be on the other side; they are going to put the drain field on the west side of that he imagines, so it is going to be further than that; but even if it was, the County has already set up that barrier so if they were in that, they would automatically be required to do that; his point is either way, the applicant has gone above and beyond the parameters that have been set forth; and literally there is a hotel right next to this.

Commissioner Smith exclaimed exactly, so there is a hotel dumping a lot of stuff in, say 300, 400 feet that has a tendency to make its way down to the river.

Commissioner Tobia pointed out he has given up on that because the applicant has agreed to Commissioner Smith's request for the advanced treatment unit, but now Commissioner Smith has lumped another request that it be a year rental, and he does not know where this ends up; he is afraid the Board is going to start making these arbitrary decisions further and further that is based on nothing; and that is why he mentioned for the Board to just decide the color of it, the shape of it, or the style.

Commissioner Smith noted he thinks that is facetious and not based on any science either.

Commissioner Tobia stated that is his point, the Board needs to stop with the arbitrary decisions and make one in a Quasi-Judicial fashion as it is obligated to do so; as the Board makes this decision, he will support this with the added, or without the added, advanced septic; and to be clear, that is where he is on this one.

Commissioner Pritchett stated she thinks what the neighbors are concerned with, since there is a hotel, is that this will be more of a hotel close to their homes, and that there will be two home duplexes; it is really hard to rent those out week-to-week; the way the economy is going, they should be really steady with a year's lease; that is probably not her biggest concern, but she understands that; she is good if the applicant is good with the BDP restricting it to that many homes; and that would be the same as the other zoning.

Ms. Rezanka stated the applicant has a year-to-year lease on the house.

Commissioner Pritchett stated it is nice to have long-term tenants as there is a lot less work repairing the properties.

Commissioner Smith stated he is fine with the advanced treatment unit.

There being no further comments, the Board approved the request of Andrea Bedard and Nicholas Boardman for a change of zoning classification from AU (Agricultural Residential) to RU-2-4 (Low Density Multi-Family Residential) and RU-2-6 (Low Density Multi-Family Residential), with a Binding Development Plan (BDP) limiting it to four homes, which would be two single-level duplexes with advanced septic, on property located on South Highway A1A, in Melbourne Beach.

Result: Approved
Mover: Rita Pritchett
Seconder: Curt Smith
Ayes: Pritchett, Tobia, Smith, and Zonka

*The Board recessed at 5:58 p.m. and reconvened at 6:07 p.m.

H.5. Dieter Tytko (Kim Rezanka) Requests a Change of Zoning Classification from RR-1 to RU-2-4. (22Z00039) (Tax Account 2955625)

Chair Zonka called for a public hearing to consider a change of zoning classification from RR-1 to RU-2-4, as requested by Dieter Tytko. She stated before getting started with this Item, there are 27 cards; each speaker has five minutes, so everyone can do the math; the applicant gets 15 minutes; plus the applicant gets to come back and rebut any comments; and so she has asked the applicant if she wants to cross-examine to raise her hand so she is not interrupting anybody. She stated the speakers can take the full five minutes, but to understand, if he or she is saying the same thing, she does not know how effective it is going to be.

Jeffrey Ball, Planning and Zoning Manager, stated this Item is Dieter Tytko requests a change of zoning classification from RR-1 to RU-2-4; the application is 22Z00039; and it is located in District 3.

Commissioner Tobia advised he has a few more disclosures, they have all been made up until yesterday at 4:50 p.m., but these are the ones that have happened since then; he will start with telephone calls, Susan Williams, Dan Winkler, Jane Rollins on October 6, 2022; then the emails received are Robert Lodgsdon, Mary Jane Patterson, Delores Conway, Michael Sego, William and Andrea Bowman, Nancy Blair on October 5, 2022, all of those happened since 4:14 p.m.; today starting at 7:24 a.m. Ali Otoya, Mary Vreeland, Charles Cain, Patricia Pasley, Krissy Willer, Steve Mavis, Christine Pierson, and Greg Nicklas; and these are just the ones he has received in the last 24 hours that he did not put into the record.

Kim Rezanka, Attorney with Lacey Lyons Rezanka, stated she is here on behalf of the contract purchasers, with permission of the owner, Dieter Tytko, and also with her is Clayton Bennett the engineer of the project; this project is to change the zoning on an RR-1 to RU-2-4, which is consistent with the Future Land Use (FLU) of RES-4; this has gone before the Planning and Zoning (P&Z) board, which was recommended for approval; the staff report was very detailed, it talked about the old 1998 rezoning; and she will talk about that as well. She went on to say there are about 120 people in opposition all saying the exact same thing, all saying a lot of misinformation and a lot of rumors; she tried to dispel some of those at the P&Z meeting, but they continue on because the neighbors are concerned, and they understand that; the neighbors want what they have, they do not want any changes, and they do not want anything that changes their way of life; however, this is going to put four units, which are likely going to be three, engineering is not complete, on a one-acre parcel; and it is between a five-story condominium, Sterling House over parking, and a three-story over parking Gull House. She added there is a single-family lot that was changed for unknown reasons in approximately 1994; Sterling House has 46 units, Gull House has 11 units, and they are seeking three or four units; the rumors and misinformation, first, this is not consistent with the Future Land Use, it is not consistent with coastal hazard, and it is not consistent with the Comprehensive Plan, and it is; the other rumor is in a coastal high hazard area, it is not; and on page 266, it shows it is not in a coastal high hazard area. She stated there is some confusion because there are different definitions; but the County's Code, it is not in the coastal high hazard area; another rumor is that Federal Emergency Management Assistance (FEMA) changed the zoning, FEMA does not change the zoning; the other rumor is there is no other multi-family zoning in this area; and there is multi-family zoning on each side of this property RU-2-10, and going south, there is

quite a bit of RU-2-4. She went on by saying these are townhome villas, maximum four; some people think they can put eight units on there; they are not going to put eight units, it would not fit; they are concerned this is going to devalue their property; and these units are going to be 3,000 square feet or more, sell for millions of dollars, which will increase their $550,000 condominium. She noted another rumor is this will harm the Sea Turtles, this will not happen, there are rules to prevent that; also, it is said this will increase traffic; no, the trip generation for this is 7.62 trips per unit, or a maximum of 30 trips per day; currently the capacity of traffic is 18.71 percent in this area, which is extremely low; and this will increase it to 18.74, a .04 percent, so traffic is not an issue. She explained the history of the property, again, this is administratively rezoned in 1998; the future land use was not changed at this time, and she does not think it is permitted under the administrative rezoning; the reason this property has not been redeveloped is because it is squished between two really big high-rise condominiums for that area; there was talk about violation of the coastal management element, Policy 7.1, shall not increase residential density designation for properties on the barrier island; and again, this is not residential density, this is zoning delineation. She pointed out there is also talk that it violates Future Land Use Policy 1.2; that is a confusing element she does admit; D says where public water service is available residential development proposal densities greater than four shall be required to connect to sewer; it is not greater than four, so that does not apply; where public water system is not available, residential densities greater than two shall be required to connect to sewer; and currently they do believe water is available. She went on to state it has not been approved yet, the application has not been put in, but there have been discussions; initially they were told by an agent that it was available; they do not know yet, they are doing a survey; the Board is going to hear about that tonight probably over and over again; and regardless with RU-2-4, they can do two units, four units, or three units, it is not site planning, engineering, it is not every service that they have to have for this project. She advised there have been many concerns; people are concerned about their view, breezeway, flood plain, land clearing, septic tanks, tree preservation, Gopher Tortoises, and climate change; all of these, if appropriate, will be resolved during site plan, and will be resolved consistent with the County's Comprehensive Plan and Land Development Regulations; again, they are not increasing residential density regulations; there is a concern about creeping of multi-family; it is not creeping because it is stuck between Sterling House and the Gull House, it is not going anywhere; and she has provided a packet to the Board. She stated the first page is directly from the Board's Agenda Packet showing the Sterling House to the north and the Gull House to the south; next is a density map showing the density to the north is about 12 units to the acre; to the south, they are looking at four units to the acre; regarding the zoning in this area, on page three the red highlighted is the applicant, it shows the RU-2-10 to the north and to the south; and then it shows a large amount of RU-2-4, most of it, the next 15 lots are RU-2-4. She pointed out, in fact, Melvin Scott's property is seven units to the south and it is RU-2-4, so he could put two units on his .6 acre lot if he wanted to; going to page four, continuing further south, there is actually some transient apartments on the west side of A1A, and there are more RU-2-4, less consistent, but again, there is additional RU-2-4 zoning to the south; page five is the estimate for the South Brevard Water Co-op; and again, this is what has to be paid before they even determine if they have water, so the applicant has not yet done that because a person does not put in for water unless he or she knows they will receive the rezoning. She added regarding the other Comprehensive Plan Elements, Housing Element Objective Four this is consistent with that, because it does provide a variety of housing; it is also consistent with the property rights element to allow the property owner to do what the neighboring properties are doing; she wants to talk a little bit about the 1998 administrative rezoning, the future land use directive, which is also in the Board's packet at 273; the rationale says, was recognized in limited number of instances the lower densities would result in significant incompatibilities based upon areas of existing higher land use densities and intensities; and it is odd this was actually in this 3,400 acres, because this was lowering intensities very small to one unit to the acre when there was 14 and 12 on either side. She went on by stating it is questionable why this was done at the time; it was not challenged at the time, but it has not

been developed, and it has not been developed for a reason; she wants to go through the Administrative Policies of 3, 4, 5, 6, and 7, and the law related to that; but she is going to wait for her rebuttal to do that to see what she actually needs to address instead of spending more time; this is consistent and compatible with the intensity and density nearby, it is consistent with the zoning to the south on the beachside; and the beachside is where this belongs on the east side. She noted it is not going to increase traffic; they will do whatever sewer and water that they need to do and can do; Planning and Zoning has recommended approval of this; and they would ask that the Board approve this change in zoning as well.

Commissioner Tobia stated for time's sake he wanted to have an opening and not get into a conversation with each and every person, maybe deal with it holistically in the end, but as a disclosure he has spoken with the representative for the applicant; but by a factor of about 3:1, he has spoken to residents on the other side; to be very clear, it would be very easy to deny this as there are so many residents that are against this; however, this is a Quasi-Judicial Board, and it must meet certain standards. He went on to say failing to do so could lead to legal action and the loss of dollars; this is his perspective, the burden must be first of all met by the applicant to show compatibility; from his perspective, it has; it has been vetted through Planning and Zoning to meet the matrix of compatibility; and now the burden switches to the opposition, it sounds like to the majority of people who are about to speak. He explained opponents, and this is all policy here, can argue compatibility and consistency with the surrounding areas with two things, so when he or she speaks, he asks that they focus in on fact-based evidence or providing expert opinion; this is reflected, if he or she was listening, it was derived from County Code and case law, and it was said at the beginning, opponents must also testify as to the facts or provide expert testimony; whether they like or dislike a request is not competent evidence; therefore, he has a few arguments that he should not approve this because the applicant was German; that is not either fact-based evidence nor is it an expert opinion, and thus he cannot, nor would he, take that into consideration; and he looks forward to listening and making decisions based on fact-based testimony or expert opinions.

Commissioner Smith stated he wanted to address the fact, as the audience is aware, there are an awful lot of people to speak or to be heard; the Board also knows in cases like this when there are a lot of people, it gets redundant, and people say the same thing that others already said; if someone feels he or she is not comfortable up here with a lot of other people speaking, they can just raise their hand and say someone else already said what he or she was going to say; and it gives them the opportunity to speed things up and not have to come up to speak.

Beth Glover stated she is going to read about the South Beaches Comprehensive Plan history. "Following the 1985 Growth Management Act, all of Florida, 67 counties, and at that time 435 cities took to drafting and adopting their first Comprehensive Plans, per Chapter 163 of the Florida Statutes. Brevard's 72 mile long and 24 mile wide area received its first future land map use and residential density map designation in 1988. As you might expect, the first adopted plan used a broad brush to assign every unincorporated parcel, land use, and density designation. This broad brush painted the South Beaches with a high density that would have enabled it to replicate the community feel of Cocoa Beach and some of our other denser and more intense beach front communities. Commissioners and staff at that time knew that individual neighborhoods would need to be revisited in a more deliberative, small planning effort that would occur in coming years. Hundreds of incidents of this broad brush approach to placing land use designations over underlying, existing zoning classifications and existing use provided a constant flow of right-sizing, administrative and property owner initiative comprehensive plan amendments to rezoning to accurately reflect existing use. The South Beaches small area plan was one of the County's first revisiting efforts following the Comprehensive Plan of 1988 adoption. Over one century later the South Beaches small area study of the early 90's and is recommended reductions and residential density designations and administrative downzoning remains one of the most impactful and endearing

Commissioner and approved land use initiatives arguably for Brevard County's history. At its core the South Beaches small area plan sought to accomplish several long-term community-defining goals that we can all see and feel in our way of life today. Firstly, the density reductions sought to ensure that an expensive and community altering widening of State Road A1A would not need to occur. Secondly, the globally significant Sea Turtle nesting beach known as the Archie Carr Wildlife Refuge would need a buildout plan to enable it to remain a low density and dark sky and stretch of beach devoid of urban glow and intense foot traffic."

Christine Kirchheimer asked why low density and dark sky are important to preserve; she stated because they know these developments impact and inhibit successful reproduction of the endangered Sea Turtle nests, and consistently there are 30,000 in number of those each year along this stretch of beach; Florida Department of Transportation (FDOT), Metropolitan Planning Organization (MPO), and County analysis of the potential need to fund a new costly bridge connecting Malabar Road to a landing near the South Beaches Café Coconut Cove was being considered; the System Analysis Program (SAP) sought to avoid this additional impact to the beach, the Indian River Lagoon, and the hurricane evacuation pressures that come from increased density that the bridge would promote; and fast forward to 2022, all can appreciate the fruits born from this small area plan Comprehensive Plan Amendments and subsequent administrative re-zonings. She went on to say the plan continues to forward these community's defining attributes today; some history on this small area plan, as part of the South Beaches plan, the subject property received a four units per acre residential density directive, which at the time would have allowed for four units per acre to be developed; however, it is critical to note that this small carve out fell within the midst of neighborhood-defining and community character creating a sea of RES-1, one unit per acre; page three of staff's report accurately reflects RES-1 as the predominant FLU designation along the east side of Highway A1A, along with PUD CONS, which is public conservation; and in addition to the RES-1 dominating this community, publicly purchased property is the other defining land use. She pointed out Brevard County has a rich and special history of voting to spend citizen tax dollars to preserve lands deemed critical to the balance between nature and suburbia that makes the Space Coast special; this property's place in the SAP can be seen in 1998 when it was unanimously administratively rezoned from RU-2-4 to its current 24-year status as RR-1; she asked why rezone to RR-1 in 1998; she stated five years after the down-sizing and administrative re-zonings on the South Beaches, this parcel remained vacant at either just under one acre or slightly above one acre, depending on the source; and this property had five years in a good real estate market to develop at RU-2-4.

Sid Kirchheimer stated before he continues with the history, he will address Commissioner Tobia's fact-based question; the undeniable fact is, if the Board approves this, it is setting a very dangerous precedent; everyone will change or seek change to make multi-units out of what is presently single-family units; Ms. Rezanka may say it will not affect traffic, but they had two fatalities in the span of one week a few months ago; and driving on A1A is dangerous, especially during the tourist season. He asked why the Commissioners would unanimously vote to rezone to RR-1 back then; he advised because it was the character of the area for the SAP to enshrine for this inevitable buildout that they are now nearer; former multi-family properties were being zoned as single-family residents; re-zonings were bundled by the dozens to be rezoned; and RR-1 is consistent with the plan, with directive RES-4, it is consistent with the residents, it is consistent with their lifestyle, and it will impact the beaches, turtles, wildlife, sewage, and the traffic. He added it may be three units, it may be four units, but the next guy may want more units, and before a person knows it, there will be high rises and it will be Cocoa Beach; this was zoned for RR-1 and the market reaction to this smart zoning back in the 90s increased the property values; the property values are high now; they really hope the Board preserves the vision of its predecessors from the 1990's, and that is what they are asking; other facts that Commissioner Tobia asked for is the property was purchased initially for $75,000 in

1993; and the current owner bought it a decade ago for $495,000, and it is currently on the market for $1.5 million. He noted that is one-half of a million dollars more than the vacant lot, which is larger, than Mr. Tytko's one acre, or less than one acre; if there is a problem, and it could be his price; and he asked the Board to keep the zoning RR-1.

Patricia Keller stated this property is fairly close to her subdivision; here is a fact, the one-acre property that abuts the Gull House to the south also just sold for $1.085 million in June 2021; south of that, another parcel sold for $1.3 million June 2021, it is also 1.25 acres; the vision of the 90s for this uniquely beautiful stretch of public and community investment has been one of value appreciation; and she would like to see this $1,300 rezoning application for what it truly and honestly is. She noted the story of this rezoning is to see if this investor can make more money than he currently can with his current zoning; it is not a question of whether he makes money or loses profits that a current market value asking price will bring him above the $495,000 real estate investment he made 10 years ago; denying this rezoning application is consistent with the policy framework of the Comprehensive Plan's words and intent; it is a bit ironic that public testimony and comment is offered regarding why the Board should deny this rezoning request under the spotlight of a Quasi-Judicial hearing, when the notion of rezoning hearings being Quasi-Judicial instead of legislative became law because of a Florida Supreme Court case that originated in Brevard County, Snyder v. Board of County Commissioners 1991; and Commissioners acting as judges, all ex parte communications being made public, substantial and competent evidence being needed instead of the previous fairly debatable standard that used to be the Board's sole basis for approving or denying requests came about throughout the State because of a rezoning request that occurred here in Brevard County. She asked why they make this point, because the 24-year old unanimous decision of the Board in 1998 to rezone this property to RR-1 was done with keen awareness as to the intent of the publicly adopted small area plan; and subsequent Comprehensive Plan amendments and the furtherance of the Comprehensive Plan by this one acre being rezoned to RR-1 five years after the property had the opportunity to react to RES-4 directive.

Harvey Levine stated when Commissioner Tobia said earlier he heard from a number of people that equals out to the people that are working with the buyer, the person who wants to rezone, he is sure the conversations were longer with the individual to his left than they were with the one or two people he said talked to him; being a 35-year educator, he is aware how political this could be; the basic tenets of the Comprehensive Plan still supports a denial of this request to quadruple residential density amidst a community dominated by public investment conservation and low density turtle nesting beaches that have been here for decades; Comprehensive Plan support to deny number one Future Land Use Element (FLUE) Policy 1.7, references the residential for FLU designation; and it then states that while up to four units per acre can be considered, this Policy contains a critical caveat that applies to this request. He advised it states, except as otherwise may be provided for within the Future Land Use Element, except as otherwise may be provided for the Future Land Use Elements renders the Board's ability to simply consider density as a consideration impermissible if this property were located somewhere within the mainland and had no environmental constraints not supporting small area plan, then density could be the sole consideration for the Policy; this is not the case here; FLUE Policy 1.7 requires that other FLUE provisions must be considered; he asked what are the considerations that are contained in FLU and Coastal Management Element include this property technically has a DIR-4 designation; and it is a directive-based designation, not a Residential 4. He pointed out that makes it special; it immediately requires further FLUE analyzation; numerous other Comprehensive Plan policies that address both coastal high hazard areas, the South Beaches especially, septic tank reliance, on-site advanced treatment that is still not considered; centralized sewer and Administrative Policy number three that addresses compatibility must be considered; and these policies will be elaborated upon by the local residents who will follow him. He stated he is a photographer and he is out there seeing what is going on, on the beaches and the things that take place out there, and the community is

one that has become very close to his heart over the last six years; and he asked the Board not to allow this to happen.

Carolyn Pangborn stated she wants to state something very personal that happened to a friend of hers in Floridana Beach yesterday who was riding her bike and was almost hit by a car because of the workers that are parking along the easement of their community; they are parking their vehicles and trailers on their side easement; this happens frequently; if there are more people, there will be more workers parking along the easement; and it was a close fatality, she wrote her about it. She went on to say Comprehensive Plan to support to deny number two, FLUE Policy 1.2, Criterion C, states that centralized potable water and wastewater treatment shall be available within a residential floor plan for land use designation; the staff report accurately states that central water and sewer is approximately five miles away to the north; Criterion D was represented by the applicant's attorney at the P&Z hearing as removing the relevance of Criterion C since they are attempting to connect to the South Brevard Water Co-op; while that connection may occur, the Board is not obligated in the South Beaches to allow Criterion D to override Criterion C; and the staff report represents this conclusion by stating as the project's density is four units per acre, connection to centralized sewer and potable water could be required under Criterion C. She went on by saying Comprehensive Plan support to deny number three sets forth the Quasi-Judicial framework for denying compatibility; while the applicant's attorney sought to focus the P&Z's attention on the abutting properties to the north and south, she failed to address the policy's full breadth of what the Board must consider about this neighborhood and the current RR-1 compatibility with this neighborhood; focusing on one's abutting neighbor to the north and south, when the neighbor to the east is the Atlantic Ocean is a deliberate omission by the applicant's attorney; having State Road A1A forever to the west and the Atlantic Ocean forever to the east makes for an unbelievable one-acre home neighbored by two more dense structures to the north and south; and coupled with a three-story view that the RR-1 allows, one residence is very compatible to the entirety of the greater neighborhood that is dominated by single-family and conservation lands.

Susan Williammee stated she is a realtor in the South Beaches and she has sold several oceanfront lots, and those that are not connected to the South Brevard Water Co-op, it is almost impossible; they are at capacity; she is not an expert in this, but she does have experience with people trying to get connected to the Water Co-op who are not already connected; her understanding, as a resident of Sunnyland and as a realtor, is it is not that simple; and they are saying they can rely on it, but she would be very surprised if they would get approved in that capacity. She went on to say knowing that, the Comprehensive Plan densities represent the maximum possible density; the market along the South Beaches has come to reasonably expect that the 24-year RR-1 zoning would be applied to permit only a single-family home on this .89 acre to one acre parcel; Administrative Policy 3, Criterion B, sets a very low value of just five percent material reduction in value as a basis for denying this application; as their Commissioners, is it worth it to side with an applicant seeking to make more money than the RR-1 will give him to allow for a quadrupling of units that might reduce the value of the abutting properties by just five percent; and more importantly, Criterion C, Admin Policy 3, is the only criteria the Board of County Commissioners needs to cite to deny this rezoning application. She explained it states whether the proposed use is consistent with an emerging or existing pattern of surrounding development as determined through an analysis of one, historical land use patterns, two, actual development over the immediately preceding three years, three, development approved within the past three years but not yet constructed, and four, whether the proposed use would result in a material violation of relevant policies in any elements in the Comprehensive Plan; the emerging or existing pattern of surrounding development in the South Beaches over the past 24 years has been overwhelmingly single-family; she asked the Board to find one rezoning over the past 24 years that has been successful in increasing density like this application seeks to do; she noted the Board will not find one; and it certainly will not find a pattern of multi-family development on low acreage

parcels. She noted the only recent multi-family example that has occurred in the South Beaches is in the former Hampton Apartments up closer to town; the property there was already properly zoned for the development; in fact, the developers there lowered the potential density from 254 units down to 190 units; and whether looking at historical, actual, approved, or proposed development, single-family development is overwhelmingly the trend in this market area.

Damien Martinez stated just weeks ago the Florida TODAY highlighted the new record for residential purchase; he asked where and what was it; he stated it was a single-family home in the South Beaches on one acre, it sold for $5.3 million; Floridana Beach has had multiple single-family lots sold and developed in the past three years; and post-pandemic property sales along the beach have snapped up almost all remaining South Florida opportunities. He went on to state the rezoning is an obvious aberration; the FLUE and the Coastal Management Element at their basic core outline South Beaches buildout consistent with the approved entities and designations; while this might not be affecting a designation, it is a density increase; it is a duck that walks and quacks like one; and this application is inconsistent with this obvious trend and a citation of the FLU based administrative policy is substantial and competent evidence to deny this request. He advised Comprehensive Plan to deny number four, while staff references Coastal Management Element Policy 7.1, it is important to look at the element in its entirety; beginning with the goal of the element, the first words of the Coastal Management Element speak to establishing growth management strategies that are embodied in the South Beaches Small Area Plan; that set forth in the 93 Comprehensive Plan amendment and this property's 1998 rezoning, five years later to match its acreage RR-1; the small area planning sought to limit public expenditures in this area subject to destruction by natural disasters; and here they are in the Board chambers just a week after a hurricane tore through the Sunshine State, and there is more development being considered on the beach. He pointed out, sometimes a person just must step back and say really.

Thomas Groblewski stated Objective 7 states, limit densities within the coastal high hazard zone and direct development outside this area; this Objective is straight-forward, this Objective is clear; this rezoning request is inconsistent with this Objective; pretty simple, policies are meant to further expound further upon objectives and to provide examples; policies are not more powerful or influential than objectives; and in fact, the opposite is true. He went on by saying goals rule supreme, objectives are right behind goals, policies are examples but not meant to be all-encompassing or exhaustive; this is straight out of Chapter 163, Florida Statutes; this is how comprehensive plans work; the applicant's attorney can argue about whether Policy 7.1's use of the word 'designation' disallows its use to deny density increase requests; Objective 7's very clear use of the word 'density' without specifying whether it is a zoning classification or a land use designation establishes a clear basis to deny the request; and today, one beautiful home can be built on this one-acre parcel. He continued by saying by approving a rezoning request the Board approves a density increase, which is contrary to Objective 7 of the Coastal Management Element; Policy 7.6 states, the existence of sewer, water, roadways or other public infrastructure shall not be considered adequate rationale for an increase in zoning density or intensity within the coastal high hazard area; the applicant's attorney did just that at the P&Z meeting; this water will connect to a water co-op, install an advanced onsite septic treatment tank and use an adequate SR A1A roadway; this policy forbids the point from being used to support the application; and this rezoning is an increase in density and possesses coastal high hazard within its boundaries. He advised it is beachfront; and this policy is also very clear.

Commissioner Tobia stated with the Chair's indulgence, Mr. Scott was very kind to come to his office; he has a couple of follow-up questions; he does not want them to count against his five minutes; and he asked if he can have a few minutes to ask him a few questions.

Chair Zonka replied affirmatively.

Commissioner Tobia asked if there was an error made on the Administrative Rezoning notice sent to the applicant's property when it was downsized to RR-1.

Mel Scott responded yes; and he asked if Commissioner Tobia would like for him to elaborate.

Commissioner Tobia advised Mr. Scott can; and he asked if Mr. Scott was the Chief Planning and Zoning Officer who signed the notice of Administrative Rezoning in November 1998.

Mr. Scott replied there was a wonderful invention that occurred before the electronic signature and that was the rubber stamp; yes, that was his signature; but they did thousands, probably tens of thousands of these; and he looked at that signature, and yes, that was his rubber stamp replica of his signature.

Commissioner Tobia pointed out on the notice it reads one acre, one unit per acre, residential Comprehensive Plan designation for the property; since Mr. Scott has established the error that he made, but he does have one question, which he will be happy to ask either Mr. Scott or Tad Calkins, Planning and Development Director; and he asked if this administrative rezoning notice, which if this error had not been made, this basic error, this inexcusable error by Mr. Scott, by his office, or someone using a rubber stamp, and it had been approved by the Board, would the applicant need to come before the Board at this time had he not made that error.

Mr. Scott advised yes, it would have occurred regardless of that, that rezoning would have occurred per the wishes of the County Commissioners, which it was staff's job to execute on the Board's behalf.

Commissioner Tobia noted he got a different answer from staff, so he is going to punt that over to Mr. Calkins.

Mr. Scott exclaimed they were not there, he was; that is how it works; and in 1998 how it worked is they worked for the Board of County Commissioners.

Commissioner Tobia stated he would like to punt this over Mr. Calkins; he asked if the administrative rezoning, and he will read the exact same question, notice, which included the basic error by Mr. Scott while he was the Planning and Zoning official and then it was approved by the Board, would the applicant have needed to come before this Board today.

Mr. Calkins responded if the administrative rezoning did not happen, the applicant would not need to be here.

Commissioner Tobia advised he and Mr. Scott talked, and Mr. Scott was holding himself up as an expert.

Mr. Scott stated he is.

Commissioner Tobia stated his point is there was an error on here, and good for Mr. Scott for recognizing the error he made, absolutely, but just to be clear, had he not made that error, and the Board had not approved that, he has part of County staff saying they would not be here today, so it is wonderful that Mr. Scott wrote that script, but he wants to be very clear with the rest of this, had he not made that error.

Mr. Scott noted that is incorrect, Commissioner Tobia is jumping to an incorrect conclusion.

Commissioner Tobia noted he is done with his questions; he has an answer from Mr. Scott; he has an answer from Mr. Calkins; and he would like to give Mr. Scott his full five minutes at this time.

Mr. Scott stated he has the Resolution; the Resolution was signed after the action; the Board of County Commissioners directed staff in 1998 to also right-size vacant parcels that had not yet been developed; the 1998 administrative rezoning occurred because this property, five years after the Comprehensive Plan amendment, which followed a small area planning process, which took a long time for staff to do, directed staff, he was not acting on his own behalf, and he was acting upon very clear direction from the Board at the time; also to put into the administrative bundles properties that were vacant, that were of a particular size that could also be right-sized in its zoning; and at one acre, this vacant parcel in 1998 was accurately put into the administrative rezoning bundle by staff to be considered by the Board, and that is why it got the RR-1 zoning classification. He continued by saying staff had a form and a Resolution that was used by thousands of administrative re-zonings; staff had, not the benefit of computers like there are today, had studious, studying Mylar maps, zippo knives, magic markers, and they had nine properties consisting of 3.5 acres at the time; and a form used correctly for thousands of administrative re-zonings was also used for a right-sizing rezoning that occurred at a clear direction of the Board. He added they were expecting it, it was talked about; Rick Enos in 1998 characterized what this bundle was going to be, and he said, the Board has approved a couple of ordinances that deal with what they have now called right-sizing of the rezoning for residential lots; he accurately described this to the P&Z Board at the time; they voted to send it on to the Board, who in 1998 administratively rezoned it; and that is the full, complete answer. He asked if staff would have brought this should they have; he stated yes, they could have; the form was clumsy; but the Board's intent and direction to staff was accurately put forth; and the Resolution says, "Whereas the Board after considering said application, and the Planning and Zoning Board's recommendation and hearing, and hearing all interested parties, after due and proper consideration have been given to the matter, find that this application should be approved now for." He continued by saying this application is in fact the administrative re-zoning that Commissioner Tobia spoke of; they believe they have presented an overwhelming case to deny this re-zoning density increase; they have given the Board ample, substantial, and competent evidence to deny this four-fold density increase; the Board has supported their desire to uphold the South Beaches plan buildout and to keep it unique and special; and this community has been supported by public investments to preserve its unique place. He noted, quite frankly, this Board and its predecessors are cherished by them for its quarter-century support of this very rich special place of Brevard County; they have presented it with Comprehensive Plan objective goals and policies to base this denial upon; they have highlighted the market's expectation of investment return that has gone up, up, up over time with zero density increases; they have seen values go up even for those developers that have chosen to build less than what they have been approved for; and this application really attempts to invest $1,350 in an application fee, get a really good land use attorney, and decide to roll the dice to increase its current profit by even more. He advised do not ask, do not get is the motto behind this very understandable move by someone who does not live here; he expressed his appreciation to the Board for recognizing that they have all the options available to new residents who wish to call the Space Coast home; he stated they have downtowns, new towns, rural communities, bustling beachfront communities, and the South Beaches; they are all different and all special; he asked the Board to not let a well-crafted, clearly implemented, and long-standing adherence to the South Beaches Small Area Plan, the Future Land Use Element, and the Coastal Management Element be eroded by, even in a small way, this request to just get more in a beach community that will give it so much.

Ms. Rezanka asked why Mr. Scott's property was not down-zoned.

Mr. Scott replied given the tremendous resource that was being provided by staff and the community to execute these small area plans, the Board said to just administratively rezone those properties that would result in an impact, meaning a density reduction and the elimination of more buildout potential; Ms. Rezanka references that he has a two-thirds of an acre RU-2-4 parcel, but his parcel was not administratively rezoned, because his Comprehensive Plan designation is RES-1; he has one house, he is stuck with one house, and he cannot build a second house; that would be news to him; and one house on two-thirds of an acre, the RU-2-4 did not need to change, because his property had already accomplished what the Small Area Study said to do, to lock in single-family.

Ms. Rezanka inquired if Mr. Scott could request to change his Future Land Use to RES-2 or RES-4.

Mr. Scott responded he could ask, but then he would be contrary to Objective 7.1 that says residential density designations cannot be increased, which a Comprehensive Plan amendment would be, so he would also have to change the Comprehensive Plan text, not just the map.

Ms. Rezanka asked if Mr. Scott would agree that the man that stated earlier that this was going to start a slew of re-zonings cannot happen because it is RES-1 in that area for the most part.

Mr. Scott advised for the most part it is RES-1; the gentleman stated a slew of re-zonings; and the gentleman would be correct in stating a slew potentially of applications.

Ms. Rezanka asked if he means applications for future land use changes.

Mr. Scott replied affirmatively.

Ms. Rezanka inquired why the County Commission did not change this particular parcel from RES-4 directive to RES-1 at the same time it rezoned it like it did back in 1993 with all of the other properties.

Mr. Scott stated that is a great question; at the time, by having a five-year moment of allowing the market to react to this RES-4 directive designation, the Board said it was going to right-size this property because it is vacant and one acre, and let the character of this community continue to buildout per what it has done over the last five years; let a future decision be made because going from RU-2-4 to RR-1 is a consistent move; and the Board chose not to change the RES directive on the Comprehensive Plan, because on its face, the administrative rezoning was consistent. He noted there can be a zoning less than the maximum possible on the Comprehensive Plan and have those two things be consistent.

Commissioner Pritchett advised she thinks like an accountant; typically, things done in the past to her are sunk, so today Mr. Scott is going to have to bring to light what the Board is trying to figure out that is consistent and compatible; that is what she is looking at moving forward; she does not care who does or does not make money, it is not part of the equation for her; and she would love for everyone in Brevard County to make money. She stated she believes there were nine properties that they decided to change the zonings with; and she asked how many actually ended up getting changed to RR-1.

Mr. Scott asked if Commissioner Pritchett is referring to the nine acres that consisted of the directives.

Commissioner Pritchett replied she believes there were nine parcels, and she knows not all of them changed; and she asked again, how many of those parcels actually changed to this zoning.

Mr. Scott asked what zoning.

Commissioner Pritchett responded RR-1.

Mr. Scott asked how many properties were zoned RR-1 administratively.

Commissioner Pritchett replied affirmatively.

Mr. Scott stated he does not have that exact number; he does not know if County staff has done that research; and he does not remember, but a lot.

Commissioner Pritchett noted she looks on the map and there does not look like there were many, she is seeing four; they are going back to past stuff; and there must have been quite a few that said no to it.

Mr. Scott advised no, his property is a perfect example, he is just a few properties to the south; RU-2-4 property classification remains a relic zoning classification because they are established single-family homes.

Commissioner Pritchett explained she is just telling Mr. Scott she does not see a lot of RR-1's on here just so he knows; she is just telling him, because they keep bringing up the past; and again, she is not making a decision on the past, but she just wanted to mention that to him.

Mr. Scott stated it is important that the existing development is single-family, so when looking at those zoning classifications at RU-2-4, that cannot realize the full potential of RU-2-4 because there is a RES-1 on top of it, those are all single-family homes or duplex.

Commissioner Pritchett pointed out there are also coastal setbacks now as well.

Mr. Scott noted that is why the Comprehensive Plan references existing development tracts.

Commissioner Pritchett stated the Board is not going to make an emotional decision on this; this needs to be kept on topic as to whether this is consistent or compatible; and that is what she is going to be looking for.

Chair Zonka asked if this item Mr. Scott signed is incorrect.

Mr. Scott replied yes, the administrative rezoning was done correctly; and at form it was clumsy as it referenced a 10.3 Policy, but does not reflect that the Board was also telling staff at the time to right-size properties that were vacant to their acreage, which fit the bill for this.

Chair Zonka inquired if Mr. Scott was living there at that time.

Mr. Scott responded affirmatively.

Chair Zonka asked if this benefits him.

Mr. Scott replied he does not think so.

Chair Zonka inquired if it increases his property value or benefits him in any way.

Mr. Scott advised if taking away density benefited his property, he does not see how that would work; he reiterated he does not think so, no.

Chair Zonka asked if he would not think that a RES-1 is more valuable than a RES-2-4, at least to somebody living next door or close by.

Mr. Scott stated as a staff person, he was following the Board's direction.

Chair Zonka pointed out not her direction, because she was not on there.

Mr. Scott advised he is looking at her as the Commissioner; at the time he was coming to work doing a job and following Board direction like he did for 20-plus Commissioners that he worked for; politics changed; and his job was to follow Board direction, which he did.

Chair Zonka explained she thinks what confuses many of the Board Members is why some properties were chosen and some were not; that to her does not sit right, because his property was in this area, he probably should not have been involved with it; she asked if he sees the conflict there, or does he see the perception of conflict; and as Mr. Scott knows being government and being a Commissioner, he or she deals with it all of the time.

Mr. Scott noted he has always been very proud of where he lives; he was told to do a job, and he is very proud of the job he did at that time; and staff does things as public servants at direction of the County Commissioners, and this was no different for him.

Sandra Sullivan stated she wants to start with why the right-sizing began in the first place; in 1991 there was a federal recovery plan for the endangered Green Sea Turtle, because Brevard represents about 50 percent of their nesting; Brevard County is also the largest Loggerhead Turtle nesting in the world now; Oman used to have four times what Brevard had, but they destroyed their habitat; and she wants to read from a 1996 Evaluation and Appraisal Report (EAR) as there were a lot of changes from the federal government under the Coastal Barrier Island Resource Act, and from the State because the coastal barrier island represents a risk to human safety for evacuation. She read, "The County continues to enforce regulations served to limit densities within the high hazard zone and direct development outside these areas. The State mandated . . . the comprehensive planning process has been successfully utilized to limit and reduce densities within the coastal high hazard zones. In the South Beaches, densities have been reduced from four, six, eight, and 10 dwelling units per acre to one and two dwelling units per acre. The objections in supporting policies should be maintained with the exception of 7.5, which mandates the adoption of post disaster redevelopment plan to limit redevelopment densities." She noted they just had Hurricane Ian, they just had another barrier island damage; they know from the Comprehensive Plan that a Category 3 Hurricane reaches the dunes; there is a deficiency in Brevard County; this is per State Statute 163; and she has emailed the Board a thousand times about it. She stated the County has to provide 16 hours, she provided the Board the documentation that Brevard County is not at 16 hours for evacuation of the barrier islands. She read from a 2006 Brevard County EAR, "Brevard County has historically been responsive to the concern of increasing densities in the coastal high hazard while being sensitive to property right issues. For example, the density rollbacks in the South Beaches area during the 90s were largely based on the County's recommendation that evacuation capabilities needed to be considered when evaluating development allowances. As such, the South Beaches density reductions were principally implemented for properties that were undeveloped at the time. Density reductions for improved properties were implemented to reflect existing development intensity of the property. Through small area studies, Brevard County proposes to continue evaluating density allowances within the Coast High Hazard Area (CHHA). As appropriate, the density reductions will be considered in order to protect current land use character of the study areas and to respond to evacuation, and minimize potential property losses due to storm events." She showed the Board a map and stated the property is a couple of buildings away from the Archie Carr State lands, it is in the Archie Carr area; the Sea Turtle nesting since 2019, the Board can see that the endangered Green Sea Turtles have decreased

significantly by half in nesting; Brevard represents 50 percent of Green Sea Turtle nesting in the State; a scientific study done by Stella Marr said the lighting data collected, the big difference between this year and last year was lighting environment; and according to Natural Resources in Brevard County, the decline in wildlife, including Sea Turtles, is due to the rapid rate of development in Florida because of the loss of wildlife habitat. She went on by saying the Brevard County beaches are part of the Archie Carr National Refuge, which are the number one nesting site for Loggerhead Sea Turtles; within this refuge, behind the dunes, are developing areas with houses nestled in; and she urged the Board for public safety to not increase density and respect that this represents a risk to the residents.

Jack Ratterman, representing the North Merritt Island Homeowners Association, stated they are the largest and oldest homeowners association in the County, and the reason he is here is because they face many of the same problems that the South Beaches do, increased density and over-development; Administrative Policy number 3 and especially 4, the character of the neighborhood says, “Administrative Policy number 4, character of the neighborhood or areas shall be a factor in considering whether this zoning is denied or accepted. Must not adversely affect the established precedence of the neighborhood, being intensity of traffic, volume, type of vehicles, and commercial levels”; he noted sometimes at the end people use the Bert Harris Act, that if the Commission does not do this, they will sue, and the party will get it anyway; and to address that, looking at the letter of 2018 from Mary Sphar, who wrote the letter from the Sierra Club, “Turning to the idea of property owners might sue Brevard County under the Bert Harris Private Property Act of 1995. The County Attorney’s Office has a copy of the Bert Harris claims dating back to 2001”. He stated he does not know if there has been any more since 2018. He went on to read from the letter, “This reality check identifies seven claims, five of which were dismissed and denied, one accurately resolved, and one settled for $160,000, so in short, the County only actually lost $160,000 to plaintiff’s during 21 years because of Bert Harris. While protecting the County from the greed of overdevelopment, the pressure of rezoning and overdevelopment, this unique culture and our beloved community has been preserved and leaving a legacy that will positively protect future generations”; he respectfully asked the Board to deny this; he stated surely the Board watches this at night and it sees all of those folks over there at Fort Myers; when a person is living two feet above sea level, what is expected; and this is the same thing. He added maybe Cocoa Beach and Satellite Beach are a little bit more, but by the grace of God, it has not been hit; if it does, Brevard County will be on the national news; he wonders how many people in that county government over there are wondering why he or she approved development so close to the beach; and he again asked the Board to deny this zoning.

Steve Mabus stated he is here to oppose this rezoning; to Commissioner Smith’s point, a lot of his notes have been used by others in front of him, so he will just give a little perspective, and he will excuse himself; he is pro-development, he is in real estate; there are times it does not make much sense; and in this particular case, this property is surrounded by the Archie Carr Wildlife Refuge, its barrier island protected, and there is the $400 million Lagoon Project. He continued by saying the word creep has been used tonight; little incremental changes will add up; this density will build up; when it is building up, it will cause problems for the infrastructure; and traffic is a problem already as it is going to increase. He noted the South Brevard Water Co-op is having water problems already; increasing density little increments at a time is going to lead to bigger problems for everybody down the road; the last Planning and Zoning meeting, one of the gentlemen who is a rescue person voted no because he knew density is going to lead to problems when it gets hit with severe weather; this problem is going to be added to if the little density increases are allowed; and they should not be allowed almost in the bullseye of protected land for wildlife and all. He advised it is common sense; this is not the right zoning decision for this particular property; and he provided the Board with a hard copy with 50 signatures that had not been provided to it until today via email.

James McGrath stated he is requesting disapproval from rezoning of RR-1 to RU-2-4; during the Planning and Zoning meeting, which he attended, this issue came up and he read, “Public Facilities and Services Requirements Policy 1.2, minimum public facilities and services requirements should increase as residential density allowances become higher. The following criteria shall serve as guidelines for approving new residential land use designations”; he stated specifically in Criteria C, which the Planning and Zoning board brought up, in Residential 30 Directive, Residential 15, Residential 10, Residential 6 and Residential 4 land use designations, centralized potable water and wastewater treatment shall be available concurrent with the impact of the development; in the Planning and Zoning board comments specifically stated that as the project’s density is four units per acre, connection to a centralized sewer and potable water could be required under Criterion C, site is currently unimproved and not connected to utilities; and central water and sewer is approximately five miles away to the north. He went on to say the Planning and Zoning board specifically relied heavily on the owner’s representative’s statements that public water was available from the South Beach Water Co-op; they stated that they were in communication with the South Beach Water Co-op and received an estimate from them that they would receive public water; they did not communicate this with the South Beach Water Co-Op, but relied on their contractor accurate utilities representative statements, not the board; he had a meeting with the chairman of the board of the South Beach Water Commission on October 3, 2022, and discussed the water availability of this particular project; and Steven Petrovits stated the first time he has ever heard about the issue of supplying water to 6345 Highway A1A was on September 26, 2022, and this is when a resident of South Beaches was inquiring about the subject property. He continued by saying Mr. Petrovits stated to him that they have never received a formal request for water from the owner’s representatives in the form of an application; he also stated they are limited by law the 42,000,000 gallon per year of well water from the aquifer by the Florida Rural Water Authority; they currently have 500 customers and they are concerned about reaching limitations for their primary customers, that being Sunnyland Subdivision; and analysis has to be completed on all vacant lots in the surrounding area to obtain information needed to see what the margin is to the Florida Rural Water Authority. He pointed out Mr. Petrovits stated that a two-month study would have to be completed to answer the question whether or not public water could be supplied to the subject property, because the margin is very slim; currently right now they are concerned about the empty lots that they have at Sunnyland; they have to fill that capacity first; and in fact, he received an email yesterday from Mr. Petrovits that they are looking at cutting off any further development of the north of Sunnyland Subdivision for public water. He stated lastly, the Administrative Policy 6, the use of proposed under the rezoning, conditional use or other application for development approval must be consistent with all written land development policies set forth in these administrative policies; future land use element, coastal management element, conservation element, potable water element, sanitary sewer element . . .

Paul Moran stated he has sent letters to all four Commissioners; he and his wife own two acres abutting across the street from this subject property; he has looked at this property for nine years; he can tell the Board, there is no financial hardship, and why the property was not developed; the asking price for this property was always 20 to 40 percent over market price; and the guy bought it, and two weeks later he tried to sell it for 40 percent more. He went on to add he would have bought it himself if it was a real good deal; he has two acres, but he does not have direct ocean access; he looked at this and it would be a perfect bolt on property; he reiterated he has always asked too much money for it; he bought the property, he knew it was an RR-1, and the condos were there 21 years before he even saw this property; and there is no hardship as he should have known what he was buying. He commented properties south of the Gull House have sold recently, larger lots, for significantly less money than he was asking for; Administrative Policies for land use designation Section D where the proposed would result in material violation of relevant policies in any elements of the Comprehensive Plan; that has clearly been answered yes; and the Comprehensive Plan limiting densities within the coastal high hazard areas and direct development outside the area, this is right on the beach. He noted

he does not know how the Board can rationalize increasing zoning densities; when one lot is going to potentially be four units as this allows, there is three potentially; within the last year the State paid $46 million for three and one-half acres right down the road from this to take it off of the market from development, to put it into public conservation; there is a Brevard zoning Section 62-4204, if there is conflicting regulations in case of direct conflict within any provisions or any part of provisions in that of any other applicable federal, State, or county law rule, code, or regulation, the more restrictive provision shall apply; and hopefully when the Board makes its decision it keeps consistency within Objective 7 in mind, and limit the densities within the high coastal areas. He pointed out the Board has consistently upheld that for the last 20 years.

Joan Vaughan stated she had a very lengthy letter to read; she sent it to all of the County Commissioners; she is not going to read it, it has all been covered; she just wants to say in the South Beaches where they all live on that fragile barrier island is a treasure; and yes, this would just chip away at it, because if one person gets to change that density and changes that zoning, it is just going to keep on going and going. She explained it is so special there; and she expressed her appreciation to Commissioner Smith for trying to save the Indian River Lagoon, standing up for what was right, and she appreciates that.

Ronald Cobb stated for 30 years he has lived in the South Beaches, and for 20 of those years he was Deputy Chief for the South Beaches Fire and Rescue; they responded, out of 64 and 65 stations, to everything from structure fires, to car accidents, to gunshot wounds, to beaches that had whales on them; he knows what it is like to respond to an emergency in the South Beaches; and he knows what it is like to coordinate evacuations on Highway A1A, that two-lane highway that runs from Indialantic, south to Vero Beach. He went on by saying it is the only road that they have, they do not have any alternate roads for evacuations; it is the only artery, and everything that can be done to keep it from getting blocked is a plus for the community; what he has heard today is the only reason why this zoning is wanting to be changed is because if they do not, this land will never sell; he does not think the Board believes that, everything in Brevard County is selling; and this land is going to sell because the lots, as was mentioned before, two lots south of the Gull House sold for a little over a million and one for $1,350,000. He pointed out this investor wants the Board to change the zoning so he can sell his lot for $1,500,000; that is fine, he should make as much money as he wants to, but not if it impacts others; everyone here tonight has told the Board what the impact is going to be; anyone who wants to make money off of the South Beaches can do that; but they have to make sure it does not impact public safety when that is done. He commented what he heard tonight is the impact is going to be very small; there is no impact that is too small for public safety; he asked the Board to represent the residents on this and to deny this zoning; he noted basically, it is a matter of greed versus public safety; every Commissioner he has ever worked with has always chosen public safety over anything else; and that is the situation here tonight. He asked the Board not to allow this, to support Brevard County, to support the South Beaches, and to support all of the things that are so special to Brevard like the South Beaches; and he advised there are a lot of them in this County, and it makes this County special.

Mike Sego stated he just wants to save some time and to say he opposes the rezoning of the property.

Delores Conway stated she is about less than a mile from the property; she opposes the zoning change; she has a background in commercial real estate, so she would like to offer her perspective on the subject lot; it was implied at the zoning meeting, and stated again today, that the subject lot was not selling because it was zoned RR-1 and its proximity to multi-family; if this were true, a person would have to conclude that similar lots are not selling either, but that is not the case; and comparable lots in that area have been selling. She continued by saying she has some examples, some of them have already been said, but she will be brief; 9351 South Highway A1A sold on March 17, 2022, for $1.3 million; 5335 South Highway A1A, next to

multi-family, with 114 feet of ocean frontage sold on March 14, 2022, for $1,650,000; and 6905 South Highway A1A, next to multi-family, 170 feet of ocean frontage, sold on April 4, 2022, for $1,300,000. She added 5221 South Highway A1A, next to multi-family, with 82 feet of frontage, sold on April 8, 2022, for $1,325,000; 6365 South Highway A1A, next to multi-family, 129.5 feet of ocean frontage, sold on June 4, 2021, for $1,085,000; she asked if other similar lots next to multi-family are selling, what makes this lot different; she pointed out many of the lots that sold had some degree of preparation, soil test, survey, and the lot was cleared or filled; and most of the lots that sold were marketed heavily as for a beach house. She advised a quick look at the sales listing for the subject property reveals a less than ideal way to market an oceanfront, single property home; the listing had few words promoting the single-family, beachside home, and then it went on to promote the multi-family possibilities of rezoning to RU-2-4; in her opinion, the emphasis on rezoning may have put off fires that envisioned an oceanfront mansion, an easy build, without implied zoning issues; she asked without a zoning change, can the seller make a profit; and she stated she knows they are not supposed to talk about that. She stated multiple lots marketed as single-family have sales records up to $1,650,000 with an average sales price closer to $1.3 million; in closing, she thinks it can be that sellers will not be disadvantaged if the RR-1 zoning stands; the South Beaches area places a premium on single-family oceanfront homes; they believe the Commissioners may confidently keep the zoning at RR-1 and avoid setting a precedent; and she asked the Board to deny this request.

Commissioner Tobia stated he did not have Ms. Conway's list a head of time, so he only got three of them down; he was just looking for the rest of them; he has 9351, 6808, and 5221; what he is looking for, as she has said comparable properties, one that has two multi-families; the three he wrote down do not; and he was just trying to find one with two multi-families.

Ms. Conway advised they may have a duplex.

Commissioner Tobia asked if she can just give him an address.

Ms. Conway stated she does not have that note with her.

Commissioner Tobia noted that is fine.

Ms. Conway explained one may have been a duplex and one may have been a larger multi-family; and a total apples to apples is difficult to find.

Commissioner Tobia expressed his appreciation to Ms. Conway for being specific on that, he appreciates it.

Brian Hennessey stated that he is glad Object 7 in Policy 7.1 have been covered; he will not go through it because it has already been covered well; but they are told that Object 7 is not relevant because the property is not in the coastal high hazard area; if this was a couple of years ago, that would be correct; and it is now in the coastal high hazard area. He went on to state in Policy 6.1 of the Coastal Management Element, it says that the County shall designate coastal high hazard areas as established by a Sea, Lake and Overland Surges from Hurricanes (SLOSH) computerized storm surge model that is provided by the National Hurricane Center; that model is updated on a regular basis; the previous model had the coastal high hazard area ending at the dunes; the current model, and this is right off the FEMA website, that is the coastal high hazard zone; and about 60 to 70 percent of the property is directly it in. He mentioned by going onto the County's own Public Works website, it shows it in exactly the same spot, because they get the data source from the same area; he reiterated it most definitely is in the high coastal hazard area; he noted this has been ruled on in the past; in February 2021, there was a property that was seeking a zoning change, and it was denied because a portion of the property was in the coastal high hazard area; he asked how can the

Board say no to them, but yes, to a property that is also in the coastal high hazard area; and this property is directly in the middle of the coastal high hazard area. He advised the properties that sold just to the south of Gull House Condos, this is the one right here, for $1.3 and $1.085; the reason why he shows that, when talking about creep, creep is going to be these people asking about zoning change; it does not end because there is a condo between them; looking at the current properties for sale and the recent sales, and do a comparison to see at $1.5 million, how much is that per acre; and there was currently a sale that just listed this week that is $2.4 million an acre. He noted there is a property that just sold at 6835 A1A; this is a knockdown, and it sits right next to a parking lot and then a motel; it is not like an ideal location; it sold for $2.3 million per acre, so the owner is not going to be financially hard-shipped; and $1.5 is actually market correct for a single-family.

Commissioner Tobia advised Mr. Hennessey that he is going to punt this over to an engineer if that is okay; there are some pretty convincing graphics up there; he really appreciates the effort Mr. Hennessey went through; he asked Mr. Denninghoff, as of today, or recently, if that property sits in the coastal high hazard zone area; and if it does not, can he explain why there may be incongruent potentially with the pictures that were brought up by Mr. Hennessey.

John Denninghoff, Assistant County Manager, replied he thinks he can explain how the confusion might exist; the Comprehensive Land Use Plan refers to the coastal high hazard area and defines it as the SLOSH model, which is the Category 1 Hurricane storm surge inundation area; the map that Mr. Hennessey is referring to, both on the County Public Works website and the FEMA maps, is the area which is the VE Zone, which is an area that is inundated during the 100-year flood elevation that comes from the studies that FEMA performs, and they are two different things; the coastal high hazard area by FEMA definition is the VE area, it is not the same thing as what the Comprehensive Land Use Plan refers to as a coastal high hazard area; and it is just simply not the same thing.

Commissioner Tobia inquired, to be clear as of today, this property does not sit in the coastal high hazard area zone.

Mr. Denninghoff responded the very beachside portion of it is probably in the coastal high hazard area, but it is just that little edge.

Commissioner Tobia asked if that is taking into account the setbacks.

Mr. Denninghoff advised yes, that is not in it, but they really need a survey that would show where that area is, and they do not have that.

Mary Vreeland stated she has owned property in the area for the last 25 years; she is really opposed to a change of zoning classification of this property; she is asking the Board to please vote against it; she really does not have that much to add that has not been elegantly said by all of her neighbors; and she hopes the Board will hear what everybody said and vote no.

Mark Shantzis stated the Board knows him pretty well; it knows he is pretty explicit and fact-based; first of all, Commissioner Tobia saying they are there for Quasi-Judicial reasons, but he wants to go on record and tell the Board that when Ms. Rezanka says that the property has not been developed because it is squished between two buildings, that is not Quasi-Judicial; they have data that says that property can be sold at the right price, in market, regardless whether or not there is, as Commissioner Tobia says, two RU-2-4 on both sides, RU-2-4 on one side or the other, whether the property itself is RR-1 and it is two on the other side, there is no differentiation; it is completely irrelevant because the properties sell based on the ocean not on their neighbors; that is what goes on, on the beaches; and as far as the map for high hazard is concerned, it should be known that FEMA, which is the holy grail of flood

disaster funding, has a map the Board has seen, where the line goes right up the center of the property. He explained yes, there is confusion about the map in the Comprehensive Plan that was 24 years old; there is a SLOSH of some of the property that is in a high hazard zone; but FEMA, which is the most credible entity around, and is going to determine whether the County gets funding for disaster, says that property is in the high hazard zone; the Board has to consider that FEMA is going to consider the Board is up zoning in their high hazard zone; the Board is looking where to hang its hat as far as a rule, a Quasi-Judicial reason; and clearly there is enough people in the neighborhood who do not want this. He added clearly there is turtle considerations and all kinds of considerations, sewage, evacuations, which converts to, on a marginal basis, people unfortunately that could die if they cannot evacuate because the South Causeway, which is in Indian River, closes very quickly because it floods out, so there is only one way to go when evacuating; Policy 3, about compatibility, because it was mentioned a few times, says with existing and proposing land uses shall be determining where a rezoning, this is not a designation, this is a rezoning, is done, and at a minimum, so this is a legal document, to look at historical land use patterns; there is no historical land use patterns that calls for a multi-family over there; there is something from 24 years ago; but then it goes on to say that the actual development over the immediate three years, and there has been none. He continued it says the development approved in the past three years, which may be constructed; there is none; from a legal standpoint, this violates Policy 3.C.1, 2, and 3; B of that same Policy talks about if a property devalues by five percent and then Bert Harris kicks in; if the Board does nothing on this issue, Bert Harris does not kick in; if the Board makes a decision, Governor DeSantis' decision in 2021, last year, to make Bert Harris to extend to additional re-zonings that governments make will take effect; and then the Board will have liability.

Michael Giancarlo stated he is opposed to the zoning change; he wants to give the Board his real life experience with creep; he has lived on South Beach for three years; he retired with his wife from New Jersey, where they were business owners, on the side he was a Republican Councilman, later he was the Council President for six years, and later was the planning board/board of adjustment for the town for about 12 years; and the Town's name was Hillsdale. He went on to say it is not as large as the Board's representation, but it had about 10,000 people; he knows first-hand how the sausage of government is made; he knows through experience, there is not a lot of accidents in politics; in Hillsdale, strangely, they were able to keep it a one-party town for roughly 20 years, even though there was a sea of the other party; and they were the strange Republicans who embraced environmental issues, but yet remained fiscally conservative. He commented they emphasized the preservation of the neighborhoods and environmental issues, so when he goes to hearings that attempt to change density on the South Beaches, he cannot help to think to himself that he has seen this all before; additionally, he does not understand why the completed attempts to embrace this type of things, such as the last meeting he was at about vacation rentals, he does not understand it; as someone who has begged someone to put his campaign signs up through the years and through talking to them, he has to say, and this is just an aside, the only things he was concerned about in this area when he drove around was seeing campaign signs around business developments there; he did not like it; and he did not like it on Highway A1A when he saw it. He pointed out where he was from it was always a conflict of interest; in his former county it started as a few politicians who embraced developers and greenlighted zoning changes that favored high density; initially the opposition of his state was known as the environmental party; but out-of-the-blue a new party, a Democratic government came in and invested a euphemism called smart growth; and smart growth was a nefarious little thing that basically greenlighted high density housing, and basically high-density development that had a low-income component. He added no matter how small or inconsequential it became an inherently beneficial use; Board's like the Brevard County Commissioners in the stroke of a pen lost about 80 percent of their power, and people in Trenton, New Jersey, basically told town's like Hillsdale what kind of zoning they were going to have; a lot of times, by setting a precedent, by changing zonings on things like this, they are only as good as the next governor who comes;

he watched good intentioned people like the Board Members be swept away virtually overnight to either join the smart club growth or be swept away; and that is a really strong allegiance between developers, fair share advocates, which are Condominium Owners Association (COA) units and politicians; and that is too strong for people like the Board Members because there is just too much money involved. He continued this is a change of zoning which is a significant threshold to reach; he is quite sure it will have implications well beyond and negligible impact the applicants are inferring and ramifications for all going forward; and he asked the Board to please deny this zoning permit and support the constituents.

Clayton Bennett stated he is a professional engineer registered in the State of Florida; he has been working on the Brevard County beaches for roughly the last 25 years; one of the items that has come up in regards to the South Brevard Water Co-op, they are a small co-op, they contract their utility service work, and they have coordinated with them, and in order to application for that it was going to cost $14,000 once all of the various fees are added in; he thinks that is partially why that information had not been forwarded on to the Board Members; and in regards to the height, on this particular site the elevation up near the Brevard County coastal setback line there is a 19-foot contour line, which is significantly higher than what took place on the west coast. He advised this is a 100-foot wide parcel that is in between a couple of condominiums; questions have come up about lighting; any work on here if it is done seaward of the new coastal construction control line, will require a State coastal construction permit, which regulates the lighting for the sea turtles; that has become very restrictive in recent years to keep the beach dark; and in addition, Brevard County has its own lighting ordinance, which when coming through for the building permit, they will have to fill out and meet the lighting ordinance. He noted regarding the coastal high hazard area, he thinks that is an area that is a little bit confusing if a person is not familiar with the regulations; he agrees with Mr. Denninghoff, it is dealing with a certain term with two different definitions; one that FEMA has and one that is listed in the Comprehensive Plan; it is the same term, different definitions, and used differently; and regarding creep, which has been mentioned, this site is nestled in between two condominiums. He stated having worked on the Brevard County beaches for the last 25 years, specifically in the south beaches, he agrees this parcel was probably incorrectly administratively rezoned; typically what has happened in the past was with the Comprehensive Plan and having a zoning classification that was not consistent with the Future Land Use, that is when staff would come in and administratively rezone the parcel; in this particular case there was an RU-2-4 with a RES-4, which was consistent; and there was no reason for staff to come in and administratively rezone, because there was already a consistent classification. He mentioned this is not a septic high septic overlay area; and again, it is not at the site plan process area, so talking about specifics as far as the onsite sewer or water will be addressed when the project comes in for development.

Ms. Rezanka explained creep will not happen, even Mr. Scott said that, because it is RES-1; this is so different because of the adjoining lands being RU-2-10; the Administrative Policies and Section 62-1151C says the character of the land of the property surrounding and the adjacent properties; and the adjacent properties are clearly multi-family. She stated the other issue regarding the coastal high hazard area, the County's maps do not support that it is in the coastal high hazard area, and she appreciates Mr. Denninghoff and Mr. Bennett explaining that; FEMA does not govern the County's zoning; the character of the adjacent land, 24 years ago those condos were built allegedly, that is historical, that is what historical is; not all land was downsized in 1998; and there is a ton of RU-2-4 along the beachside. She went on to say there is a case out of Volusia County that actually said that type of administrative rezoning is spot zoning, and she knows because she argued that, so it was done wrong back then; there is no evidence that complies with the burdens of Snyder that the Board has heard tonight; there is no evidence to prove that maintaining the existing zoning accomplishes a legitimate public purpose; there are a lot of good people here that mean good things, but he or she cannot say public safety without proving it; and she reiterated there is no evidence to show it is a public

safety issue. She continued based upon Section 62-1151C, the character of the land surrounding the property, the availability of the traffic patterns, sewer, septic, other public facilities, there is capacity on the road, they have to comply with sewer and septic; the compatibility of the proposed zoning classification on the conditional use, and this is not a conditional use; as to the County's Administrative Plan, the Comprehensive Plan, those are to be considered by the Board; it can consider them and weigh them; and it does not have to have every one of them, so they are factors in making its determination. She noted there is not proof of material reduction; there are historical land patterns; there is no violation of relevant competent plan policies; the character of the neighborhood is not going to be materially affected by traffic, trip generation, or commercial activity; and there is no impact on the transportation facilities. She stated this as shown is consistent with the County's Land Development Code, is consistent with the Comprehensive Plan, and this will not substantially aggravate drainage plans on surrounding properties or significant, adverse, immitigable impacts on wetlands, waterbodies, or habitats; with that, she will request that the Board approve the rezoning to RU-2-4 from RR-1, as this is consistent with the area, it will not cause creep; and they have met their burden and standard.

Chair Zonka stated she is curious on the history; and her understanding that this was at one time RES-4 with RU-2-4 zoning.

Tad Calkins, Planning and Development Director, replied affirmatively.

Chair Zonka asked if it was administratively rezoned to RES-1.

Mr. Calkins stated that is correct, in 1998.

Chair Zonka inquired if that was an error.

Mr. Calkins stated he would say it was an unnecessary action by the Board at that time, because when looking at the Policies for Administrative Rezoning it specifically says it should be administratively rezone properties that are inconsistent with the land use.

Chair Zonka asked if it was an error of the Board or an error of staff.

Mr. Calkins responded he does not know, he was not part of that; he would not be able to say; and it was presented to the Board, and the Board took action on it.

Chair Zonka stated but if Board direction said to make it consistent, and that was the direction, she does not know if it would go and . . .

Mr. Calkins stated that is correct; and to clarify this, because the Policy does not limit the Board's ability to administratively rezone property as well, it just says when there is an inconsistency the Board shall administratively rezone that.

Chair Zonka inquired if it is Mr. Calkins' professional opinion that it was not correctly corrected.

Mr. Calkins replied it was an unnecessary action.

Chair Zonka advised she is not asking Mr. Calkins' opinion if it should be a RES-1 or a RES-4, she is asking him, based on the history, she just wants to know if there was an error there, and that actually is a piece of the information she wants to make her decision.

Mr. Calkins reiterated it was unnecessary; and he thinks it was probably done as an oversight of the consistency that existed with the plan at that time.

Commissioner Pritchett stated she tried to listen to all of that data, and she had been doing some studying before she got here with this; she is looking at this one that did happen, and that is a good line of questioning because if it was today, it would not be done; it would not seem appropriate to change property; RR-1 is not consistent with the other zoning, and what is already in there; and she kind of struggles with that. She continued by saying if at that time they tried to change everybody's properties, there would be some consistency; but right now she is looking at RU-2-10, RR-1-13, and the request is consistent, compatible; before this was administratively done, it was the zoning that was already on the property; RU-2-10 is almost more consistent than what he is asking for right now; and what she is looking at right now, that piece of property, if it is RU-2-10, the lot sizes are 7,500, which is the same as the neighborhood across the street that is RU-1-13, so it is actually the same density that is there. She added she has a feeling as they try to build, she is not sure they will get four in there because of the different setbacks that were on the property in 1998, there is a difference in coastal setbacks, which is going to be interesting; but looking at this, the Board is not to make emotional decisions on what it feels; it has to go by data and facts that are appropriate, because it is so important that the Board respects an owners property rights; if the property rights are denied when something was administratively rezoned in the past, it could be done to everyone; and it is not right for government to have that kind of ability or that kind of power to do that to people who own property, nor would it be right for the Board to do it now. She pointed out this was administratively done in the past and it was not done to all of the properties; she has great heartburn over that as well as this came up with some questions tonight as this was being gone through; this is Commissioner Tobia's District, he has a little bit more of the personality here; and unless he has some other reason, she does not know how the Board cannot pass this request tonight. She noted if a person loses his or her emotions, they lose; and emotional things never work when trying to make good decisions.

Commissioner Smith stated he has been listening to what has been said tonight, and he heard the special character of the area should be preserved; that is probably a fact in most people's minds, it could also be considered an emotion, because what is special to one person might not be special to others; he does not know how it can be denied that, that area is special, because it is; it is not Cocoa Beach, it is not Satellite Beach, it is not Miami Beach, it is Melbourne Beach; and Melbourne Beach has a special character. He went on to state it is not dense, it is not full of motels and lots of tourists; for him, the lack of sewer is a big deal; by adding a lot of people, four people, four per family, that is 16 people, and a lot of pollution going into the ground; not having sewer on the beaches is a big no, no for him; he does not see a reason based on facts to compel the County to change the zoning being asked for by the applicant; he just does not see it; and it is something he wants, but there are no facts involved that would force the Board to do so. He advised whatever the Board decides, he is a no vote on this.

Commissioner Tobia commented he is not under the misconception here that anything he is going to say is going to change minds on this; he just wants to lay out the conclusion he came to today; first, it was mentioned the Board needs to look at the neighboring properties, so he did look at the neighboring properties; one property to the south had 15 on a similar piece of land, an acre; and the one to the north had 11, or vice versa. He continued by saying either way, units per acre they are more than four times; second of all, while he appreciates the fact that the residents spent a great deal of time looking at Code and Comprehensive Plan, it made the Board work harder, and that is a darn good thing; but there was a lot of talk on future land use, and it is very important; future land use is not being changed here, so all of the stuff that was dealt with were if the Board was going to change it; the future land use was changed a couple of agenda items previous; but this one does not require it, so had the Board done that to grant, as Commissioner Pritchett said, a higher zoning density than that, then that would have been some of the parameters the Board needed to look at, but it did not because the future land use designation is not being changed. He noted he does not know if there are going to be four units on this; there are still a bunch of hoops that must be gone through before that takes

place; some are parking, ingress/egress, National Fire Association requirements, stormwater drainage, height requirement, zoning breezeway, coastal construction setback requirements, sewer and septic, and water connection, so he does not know how that is going to end up; he is not an engineer, but that is something that goes through an equation and a determination whether or not that will happen; and he does not have an answer for them on that. He mentioned he knows, should this pass, there will be no more than four units, but he cannot speak to that; he reiterated he appreciates the residents' passion; he stated unfortunately, they followed a flawed leader on this one; he knows the people appreciate everything Mr. Scott said, but the notice that was sent to the land owner was an error; he admitted the error; and his excuse was a rubber stamp. He added either way, it came out of his office; the audience heard from his staff here; had Mr. Scott done his job correctly, they would not be here today; he just wants everyone to understand this was predicated on a staff error that Mr. Scott admitted; and as staff pointed out, had he done his job correctly, effectively, and provided the correct documentation, not only to the land owner, but to the Board, they would not be here. He pointed out then to compound that, Mr. Scott went out and riled folks up, which is fine, he appreciates the people showing up and participating, but to please understand that Mr. Scott is the cause of this problem; in 1993, a liberal Commissioner proposed limiting property rights, and it passed; five years later, staff made an error by putting those in; he thinks it is time that this Board looks at restoring property rights to the folks who currently live out there and will live out there in the future; and talking about creep, there may not need to be any, because this Board acts conservatively and in favor of property rights. He advised maybe one of the Commissioner's is not going to do that, but he is not going to be here very much longer, then the Board will not have to have that issue; and he looks forward to seeing the residents out in the audience again, because he appreciates their participation, their time, and he greatly respects all of their opinions.

Chair Zonka reiterated the County made an error right, wrong, or indifferent; whatever happened to that property, the County made an error; and like Commissioner Tobia said, the residents would not be here if the error had not been in play.

There being no further comments, the Board approved the request of Dieter Tytko for a change of zoning classification from RR-1 (Rural Residential) to RU-2-4 (Low Density Multi-Family Residential, on 1.01 acres located on the east side of Highway A1A, north of Cortez Street.

Result: Approved
Mover: John Tobia
Seconder: Rita Pritchett
Ayes: Pritchett, Tobia, and Zonka
Nay: Smith

Commissioner Smith asked if he could direct the County Attorney for a findings of fact based on the Board's decision on this issue, or at least ask what his thoughts are.

Chair Zonka asked if the Board does that if it is approved.

Morris Richardson, County Attorney, advised typically the Board can; in this case, the Board has usually only stated intended zoning action at that point, and then it gives direction to bring it back after closing the public hearing; in this case, the Board has already taken final action; and typically it is not done on approvals, but it can be.

Commissioner Pritchett stated she knows what Commissioner Smith is asking; what is interesting when she was trying to research this, if this is something the Board would ever really do with these properties, and everyone said no, it really should not have been done; she thinks it is something, maybe it was emotional at the time when it was done, she does not know; she

wants to say in the midst of this with what Commissioner Tobia said, she wishes the Board was keeping Commissioner Smith; and she wanted to say that.

Commissioner Smith noted at least there are a couple.

Commissioner Pritchett stated she wanted to mention that because it was a tough night; she would never bring this forward to pick and choose a few properties to do this with in the midst of all of those properties; she knows there is a lot of argument about evacuations and stuff; but living in Florida, people need to get the heck out of dodge before running into zero hours trying to get off of A1A; and people should have left before seeing the storm coming. She explained she thinks it was the right decision.

Chair Zonka advised her biggest concern is what else happened back then; there were properties picked and chosen to be rezoned; people did benefit from that; she does not know if the Board should give staff direction to look into it; and she asked how big of an undertaking is that.

Commissioner Tobia noted he was not even aware there was administrative rezoning, it is very troubling.

Chair Zonka pointed out she does not even know where to tell staff to start, maybe around that time.

Mr. Calkins replied that people's private property rights is something he knows this Board is very respectful of and his office is very respectful of; there are provisions in the Comprehensive Plan and the County's Code for administrative re-zonings; he will not say they are not a valuable tool for the Board, but he thinks that it has to be done very delicately; back when this all occurred was prior to Bert Harris; and he believes now with Bert Harris being in play that it really limits the County's ability to do what was just heard. He went on to say staff is going to be going into their EAR phase coming up, and that is one of the things staff can look at Policy and the Comprehensive Plan at that time; and it can be tightened up with the Bert Harris actions to try to make it be a better tool than it was intended to in that, and try to update it, because he does not think that action has been touched in the Comprehensive Plan since probably the 90s.

Chair Zonka stated or perhaps to go back in the timeframe when that happened in Melbourne Beach; she does not see how the Board would downzone something that was not consistent with the future land use; and that is kind of confusing to her when it did not need to be changed.

Mr. Calkins explained in the Comprehensive Plan Amendment that establishes the directives, it mentions nine properties, but in there it identified five properties; and it looks like administrative actions were only taken on two of the properties, so he does not know if it was very widespread.

Chair Zonka asked if that is not bazaar to Mr. Calkins as a Director that only two properties were selected; she stated it smells, it stinks, it really does; she wants some kind of look at this; she is not saying she wants staff to pursue somebody, and expose people; she is not even looking at that; and she wants to make sure the Board is being fair with these properties as it is very disturbing to her.

Attorney Richardson stated regarding those two properties, they are talking about two of the nine that were left out of the Comprehensive Plan Amendment that retained the RES-4; and they are not talking two overall.

Mr. Calkins noted two of the nine.

Attorney Richardson pointed out there were many more properties that the future land use was brought down to the RES-1; there were nine properties left out of that in 1993; there were many properties administratively rezoned right, wrong, or indifferent, many of them to match the reduced future land use; he can say a better thing to have done would have been to have gone through the more difficult process of amending the future land use down to RES-1 rather than rezoning what was already consistent with RES-4; but that did not happen. He continued by saying he would be cautious to impute ill motives here; there is clearly a mistake on the notice; and it does not mean the action was not consistent with Board direction at the time.

Chair Zonka mentioned she does not know how to downzone someone and do that justifiably and not worry about helping or hurting somebody's private property; she does not know how that is done administratively; maybe staff can just take a look at it and just do an evaluation; and if something is found the Board needs to fix, concerns staff may have, or inconsistencies, maybe the Board can address it.

Mr. Calkins stated staff will take a look at it.

Chair Zonka advised she does not want staff to look at the shoreline for the entire County, but she just does not like this.

Commissioner Tobia commented he thinks it has been established here, not only the person's whose signature is on this, but the County Attorney just said there was an error made; to assume just for a second there was no error made, a citizen received a letter in the mail, and he does not know if this is certified, but pretend a person got this letter in the mail that dealt with RU-2-4, RR-1, residential Comprehensive Plan, this document does not say private property rights will be taken away; he hopes the State has cleared up some of this stuff; but even if this document that these folks received had been accurate, which it is not, he does not know if 20 years ago if he would have gotten something like this he would not have just thrown it to the side and thus lost private property rights, because the property, as the Board heard from everyone here, decreased in value when this took place; and unfortunately, this happened through action of the Board as well at a larger scale with that small scale study that happened back in the early 1990s. He went on to say in his District, and he would not ask anyone to do it in any of his or her Districts, but in the District he represents it is something he will look at; because it happened in the 1990s it does not necessarily mean its valid today; there have been many changes in not only technology, but safety, that needs to be taken into account; maybe changes do need to be made; and that is something his office, for his area, will look for. He noted hopefully administrative rezoning will not be done by the Board, and if it does, it is more clear about it; a person will be losing property rights, and the value of a person's home may possibly go down; and he is just very concerned about this letter that, and he is sure it has not been sent out in the recent term, but he understands even if there had not been an error, this is hard for anyone to understand.

Commissioner Smith stated he finds it hard to believe that was sent and whoever owned the property did not have an objection to it.

Chair Zonka stated but they may not have understood it; and she asked if Commissioner Smith looked at it.

Commissioner Smith inquired if they would not have hired an attorney to ask what this means.

Commissioner Tobia advised a person should not have to hire an attorney when government sends them a letter; on top of that, many of these houses, he believes, probably are not owner/occupied, they may be rented out; and the owner may have never seen this.

Commissioner Smith pointed out it is vacant land, there is no house there.

Commissioner Tobia advised this is one example.

Commissioner Smith stated it is two out of nine properties.

Commissioner Tobia noted one other person had their property downzoned; and he does not think those are odds he wants to work with.

Commissioner Smith asked if Commissioner Tobia received that, if he would question somebody, and would an attorney make the most sense.

Commissioner Tobia replied he does not want to have to deal with an attorney to deal with his government.

Commissioner Smith stated he can want all he wants, but if he received that, that is conversation he started; and if he received that, he is not just going to throw it away.

Commissioner Tobia pointed out he does not want to receive it in the first place; he does not want government telling him his land is not worth what it once was; and as a Republican and American, he does not like that.

Commissioner Smith explained that is not what is being talked about, it is about receiving that letter and not having some response to it.

Commissioner Tobia stated he does not want it sent out in the first place.

Commissioner Smith advised that was done 20, 30 years ago; that is what is being talked about; and it is not about now. He reiterated he finds it hard to believe someone received a letter like that changing their zoning and they did not question it.

Chair Zonka stated the lay person may not know what the impact is; and they could think it is trash, they could think it is spam, they can think it is whatever.

Commissioner Smith stated if a person owned property 20 years ago, it is not different than today.

Chair Zonka commented maybe if a person is 70 or 75 years old and not a big developer, she does not know; and it can be argued.

Commissioner Smith stated again, it is just hard to believe.

Chair Zonka mentioned it is hard to believe that government would administratively downgrade a person’s property.

Commissioner Pritchett stated if it was regular mail it may have gone in her garbage, but certified she may have taken it, she does not know.

Commissioner Smith advised he sent a registered letter from New Jersey to Florida for his sister who bought a car from him, and she never received it; that was 30 years ago; and the people may have never received it in the mail.

H.7. Public Hearing, Re: Amendments to Sec. 62-1844, Brevard County Code of Ordinances, Criteria for Tiny House and Tiny House on Wheels (Second Reading)

Chair Zonka called for a public hearing to consider amendments to Section 62-1844, Brevard County Code of Ordinances, regarding criteria for tiny house and tiny house on wheels.

Jeffrey Ball, Planning and Zoning Manager, stated this is a public hearing for amendments to Section 62-1844, Brevard County Code of Ordinances, criteria for tiny house and tiny house on wheels; it is the second reading; the ordinances proposes three main changes to the ordinance; it creates a common, maximum floor area of 750 square feet for a tiny home across all classifications that already allow for tiny homes for a permanent use with conditions; it allows for multiple tiny houses on a mobile home park TR-3 zoning; and it removes the requirement to gain notarized approval from the owners of abutting development properties.

There being no further comments, the Board adopted Ordinance No. 22-31, amending Chapter 62, “Land Development Regulations”, Code of Ordinances of Brevard County, Florida; amending Article VI, Division 5, Section 62-1844, “Tiny House or tiny House on Wheels (THOW)”, by creating a uniform maximum floor area of 750 square feet, exempting lots in TR-3 zoning from being restricted to a single Tiny House or THOW, and removing the requirement for approval of the owners of abutting property when seeking a Tiny House or THOW permit; providing for conflicting provisions; providing for severability; providing for area encompassed; providing for an effective; and providing for inclusion in the Code of Ordinances of Brevard County, Florida.

Result: Adopted
Mover: John Tobia
Seconder: Curt Smith
Ayes: Pritchett, Tobia, Smith, and Zonka

L.3. Rita Pritchett, Commissioner District 1

Commissioner Pritchett stated the County did go through a major hurricane; it really got blessed and was not bombarded too hard; the patience of the citizens this time have been remarkable; she wants to throw out kudos to the County, and staff has been incredible with getting a head of some things, especially in District 1; and they had roads get washed out, people trapped in their houses, and staff worked above and beyond in getting people help with good attitudes. She expressed her appreciation to Frank Abbate, County Manager.

Upon consensus of the Board, the meeting adjourned at 8:37 p.m.

ATTEST:

_____ _____

RACHEL SADOFF, CLERK

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