

Brevard County Board of County Commissioners

*2725 Judge Fran Jamieson Way
Viera, FL 32940*



Minutes

Thursday, March 3, 2022

5:00 PM

Zoning

Commission Chambers

A. CALL TO ORDER 5:00 PM

Present: Commissioner District 1 Rita Pritchett, Commissioner District 2 Bryan Lober, 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.

F.1. Committee Appointment Re: Public School Facility Planning and Concurrency Interlocal Agreement (ILA)

The Board approved the request to appoint **Brian Lock**, Interim Assistant Director, as the County's primary representative and **Billy Prasad**, Special Projects Coordinator IV, and **Keith Neterer**, Planning and Development Support Services Manager, be appointed as alternate representatives to ILA Capital Outlay Committee (COC).

Result: Approved

Mover: Rita Pritchett

Secunder: Curt Smith

Ayes: Pritchett, Lober, Tobia, Smith, and Zonka

F.2. Approval Re: Request #23 for Disbursement of Educational Facilities Impact Fees

The Board approved the request to appoint Brian Lock, Interim Assistant Director, as the County's primary representative and Billy Prasad, Special Projects Coordinator IV, and Keith Neterer, Planning and Development Support Services Manager, be appointed as alternate representatives to ILA Capital Outlay Committee (COC).

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

F.3. Precinct Boundaries - Altered and Added (Chapter 101.001(1) F.S.)

The Board approved the revised boundaries due to annexations by the Cities of West Melbourne and Palm Bay.

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

G. PUBLIC COMMENTS

Richard Heffelfinger stated he came to the meeting because he thought something had been tabled from the February 22, 2022, meeting to this meeting; he made some inquiries and does not see it on the Agenda; he could ask for clarification of why it is not; it was a result of the February 22, 2022, Regular meeting, where something occurred that distressed him greatly; a motion was brought forward by Commissioner Tobia to vote on a Citizens Oversight Committee (COC) board member removal, just procedural stuff, not to mention that he thinks everybody kind of realized it was identified as somewhat of a retaliatory response to a previous Agenda item; but the motion that was brought during that meeting was brought during an Agenda item that had nothing to do with the current motion. He added at the same time, someone should have made a call for order of the day, because it was out of order, and at the least, he thinks the motion should have been moved to new business during that meeting; another point, the process used to discuss the motion was disorderly; he has a recommendation that the Board find some guidance on how to handle motions fairly and with equity in mind; he believes that tabling the motion for the later time was appropriate, although he questioned why this motion was suggested to be moved to this Zoning meeting; and in his humble opinion, it is not zoning related and therefore is not appropriate in that forum. He mentioned he did not see the urgency that made it have to be put in this earlier meeting; that brings him to today and it is not on the Agenda, so he hopes no one is going to make a motion somewhere during this meeting to discuss it or vote on it; and if the motion is to be move to the Regular meeting on March 8, 2022, he hopes it has an Agenda item allocated for it and it has information linked to the meeting details to include the text of the motion and some rationale for making the motion as was done, as an example, under the Item I.2. during the February 8, 2022, meeting.

H.1. Brad A. Lange Requests a Change of Zoning Classification from BU-1 and RU-2-30 to RU-2-4 (21Z00047) (Tax Account 2318704)

Chair Zonka called for a public hearing on a request by Brad A. Lange for a change of zoning classification from BU-1 and RU-2-30 to RU-2-4.

Jeffrey Ball, Planning and Zoning Manager, stated for Item H.1., Brad A. Lange requests a change in zoning classification from BU-1 and RU-2-30 to RU-2-4, application number 21Z00047; and it is located in District 2.

There being no comments or objections, the Board approved the request by Brad A. Lange for a change of zoning classification from BU-1 and RU-2-30 to RU-2-4.

Result: Approved
Mover: Bryan Lober
Second: John Tobia
Ayes: Pritchett, Lober, Tobia, Smith, and Zonka

H.2. Sunil Rajan, Sudhir Rajan, and Suresh Rajan (Kim Rezanka) Request a Small Scale Comprehensive Plan Amendment (21S.09) to Change the Future Land Use Designation from NC to CC (21PZ00082) (Tax Account 2412234)

Chair Zonka called for a public hearing on a request by Sunil Rajan, Sudhir Rajan, and Suresh Rajan (Kim Rezanka) for a Small Scale Comprehensive Plan Amendment (21S.09) to change the Future Land Use designation from NC to CC.

Jeffrey Ball, Planning and Zoning Manager, stated Sunil RAjan, Sudhir Rajan, and Suresh Rajan request a Small Scale Comprehensive Plan Amendment (21S.09) to change the future land use designation from NC to CC, application number 21PZ00082, located in District 2; and just for the record, the applicant has provided a concept plan; and that concept plan is non-binding and has not been vetted to make sure that it meets the County Land Development Code.

Commissioner Lober stated the only concern he has is with respect to the driveway, that it not be shared with the church, absent the church's permission.

Kim Rezanka stated she is present on the behalf of the applicant and specifically Nick Rahal, who is the developer of the site; to answer Commissioner Lober's question, there is a letter in the packet dated February 24, 2022, from the Diocese of Orlando which states they support the Dunkin Donuts on the property, but are not supportive of a shared driveway between the church; and the developer does not want to do that either, in fact, Florida Department of Transportation (FDOT) has tentatively approved the driveway as proposed in the concept plan.

Commissioner Lober asked for a Binding Development Plan (BDP) just to say that any shared driveway use would require their permission.

Ms. Rezanka replied affirmatively.

There being no further comments or objections, the Board conducted the public hearing and adopted Ordinance No. 22-05, setting forth the sixth Small Scale Comprehensive Plan Amendment (21S.09) to change the Future Land Use designation from Neighborhood Commercial (NC) to Community Commercial (CC) (21PZ00082).

Result: Approved
Mover: Bryan Lober
Second: John Tobia
Ayes: Pritchett, Lober, Tobia, Smith, and Zonka

H.3. Robert Griffith Requests a Change of Zoning Classification from RRMH-1 to TR-1 (21Z00035) (Tax Account 2102136)

Chair Zonka called for a public hearing on a request from Robert Griffith for a change of zoning classification from RRMH-1 to TR-1.

Jeffrey Ball, Planning and Zoning Manager, stated Robert Griffith requests a change of zoning classification from RRMH-1 to TR-1, application number 21Z00035; and this is in District 1.

There being no comments or objections, the Board approved the request from Robert Griffith for a change of zoning classification from RRMH-1 to TR-1.

Result: Approved

Mover: Rita Pritchett

Secunder: Bryan Lober

Ayes: Pritchett, Lober, Tobia, Smith, and Zonka

H.4. Scott Minnick Requests a Change of Zoning Classification from AU to RR-1 (21Z00025) (Tax Account 2102550)

Chair Zonka called for a public hearing on a request from Scott Minnick for a change of zoning classification from AU to RR-1.

Jeffrey Ball, Planning and Zoning Manager, stated Scott Minnick request a change of zoning classification from AU to RR-1, application number 21Z00025; and this is in District 1.

There being no comments or objections, the Board approved the request from Scott Minnick for a change of zoning classification from AU to RR-1.

Result: Approved

Mover: Rita Pritchett

Secunder: Bryan Lober

Ayes: Pritchett, Lober, Tobia, Smith, and Zonka

H.5. Lance C. Boncek Requests a Change of Zoning Classification from GU to AU(L) (21Z00046) (Tax Account 2403955)

Chair Zonka called for a public hearing on a request from Lance C. Boncek for a change of zoning classification from GU to AU(L).

Jeffrey Ball, Planning and Zoning Manager, stated Lance C. Boncek request a change of zoning classification from GU to AU(L); application number 21Z00046, located in District 1; for the record, in the Agenda Report there was an error in the variance request; if the Board would look at paragraph two where it says that the acreage of the property is 1.42 acres, it is only 1.08 acres; that was the variance that was granted for the size of the lot; and staff comments are correct.

There being no comments or objections, the Board approved the request from Lance C. Boncek for a change of zoning classification from GU to AU(L).

Result: Approved

Mover: Rita Pritchett

Secunder: John Tobia

Ayes: Pritchett, Lober, Tobia, Smith, and Zonka

H.6. Jackson Family Trust; and C.B. Davis Family Trust (Kim Rezanka) Request a Small Scale Comprehensive Plan Amendment (21S.08) to Change the Future Land Use Designation from NC to CC (21PZ00081) (Tax Account 2100183)

Chair Zonka called for a public hearing on a request from Jackson Family Trust and C.B. Davis Family Trust (Kim Rezanka) for a Small Scale Comprehensive Plan Amendment (21S.08) to change the future land use designation from NC to CC.

Jeffrey Ball, Planning and Zoning Manager, stated Items H.6. and H.7. are companion applications and he will read them into the record simultaneously; there will need to be separate votes for them; Item H.6. is Jackson Family Trust and C.B. Davis Family Trust requesting a Small Scale Comprehensive Plan amendment (21S.08) to change the future land use designation from NC to CC, application number 21PZ00081, located in District 1; and Item H.7. is Jackson Family Trust and C.B. Davis Family Trust requesting a change of zoning classification from GU to BU-1, application number 21PZ00044, located in District 1.

There being no comments or objections, the Board conducted the public hearing and adopted Ordinance No. 22-06, setting forth the third Small Scale Comprehensive Plan Amendment (21S.08) to change the Future Land Use designation from Neighborhood Commercial (NC) to Community Commercial (CC) (21PZ00081).

Result: Approved

Mover: Rita Pritchett

Seconder: Bryan Lober

Ayes: Pritchett, Lober, Tobia, Smith, and Zonka

H.7. Jackson Family Trust; and C.B. Davis Family Trust (Kim Rezanka) Request a Change of Zoning Classification from GU to BU-1 (21Z00044) (Tax Account 2100183)

Chair Zonka called for a public hearing on a request from Jackson Family Trust and C.B. Davis Family Trust (Kim Rezanka) for a change of zoning classification from GU to BU-1.

There being no comments or objections, the Board approved the request from Jackson Family Trust and C.B. Davis Family Trust (Kim Rezanka) for a change of zoning classification from GU to BU-1.

Chair Zonka remarked she does not think people realize the amount of work that actually goes into getting to this point; obviously, everyone agrees and that is a good thing; and the applicants were able to work out any difficulties if there were any.

Result: Approved

Mover: Rita Pritchett

Seconder: Curt Smith

Ayes: Pritchett, Lober, Tobia, Smith, and Zonka

H.8. Jackson Family Trust; and C.B. Davis Family Trust (Kim Rezanka) Request a Small Scale Comprehensive Plan Amendment (21S.10) to Change the Future Land Use Designation from RES 2 to RES 4 (No assigned address. In the Mims area.) (21PZ00089) (Tax Account 2100183)

Chair Zonka called for a public hearing on a request from Jackson Family Trust and C.B. Davis Family Trust (Kim Rezanka) for a Small Scale Comprehensive Plan Amendment (21S.10) to change the Future Land Use designation from RES 2 to RES 4.

Jeffrey Ball, Planning and Zoning Manager, stated Items H.8. and H.9. are companion applications and he will read them into the record simultaneously; there will need to be separate votes for them; the applicant has submitted a Concept Plan for the Board's recognition; it is non-binding and has not been vetted to make sure that it meets the County Code; Item H.8. is Jackson Family Trust and C.B. Davis Family Trust requesting a Small Scale Comprehensive Plan amendment (21S.10) to change the future land use designation from RES 2 to RES 4, application number 21PZ00089, located in District 1; Item H.9. is Jackson Family Trust and C.B. Davis Family Trust requesting a change of zoning classification from AU, GU, BU-1, and

BU-2, to RU-1-7 with a Binding Development Plan (BDP), application number 21Z00043, located in District 1; the applicant has submitted a Concept Plan for the Board's recognition; and it is non-binding and has not been vetted to make sure that it meets County Code.

There being no comments or objections, the Board conducted the public hearing and adopted Ordinance No. 22-07, setting forth the fourth Small Scale Comprehensive Plan Amendment (21S.10) to change the Future Land Use designation from RES 2 to RES 4 (21PZ00089).

Result: Approved

Mover: Rita Pritchett

Seconder: Curt Smith

Ayes: Pritchett, Lober, Tobia, Smith, and Zonka

H.9. Jackson Family Trust; and C.B. Davis Family Trust (Kim Rezanka) Request a Change of Zoning Classification from AU, GU, BU-1, and BU-2, to RU-1-7 with a BDP (21Z00043) (Tax Account 2100183)

Chair Zonka called for a public hearing on a request from Jackson Family Trust and C.B. Davis Family Trust (Kim Rezanka) for a change of zoning classification from AU, GU, BU-1, and BU-2, to RU-1-7 with a Binding Development Plan (BDP).

There being no comments or objections, the Board approved the request from Jackson Family Trust and C.B. Davis Family Trust (Kim Rezanka) for a change of zoning classification from AU, GU, BU-1, and BU-2, to RU-1-7 with a BDP.

Result: Approved

Mover: Rita Pritchett

Seconder: Curt Smith

Ayes: Pritchett, Lober, Tobia, Smith, and Zonka

H.10. John Louis Freeman (Pamela McCarty) Requests Removal of a BDP in an RU-2-12 Zoning Classification (21PZ00090) (Tax Account 2520101)

Chair Zonka called for a public hearing on a request from John Louis Freeman (Pamela McCarty) for the removal of a Binding Development Plan (BDP) in a RU-2-12 zoning classification.

Jeffrey Ball, Planning and Zoning Manager, stated Item H.10. is John Louis Freeman requesting a removal of a BDP in an RU-2-12 zoning classification, application number 21PZ00090, located in District 2.

Commissioner Lober mentioned taking a look at this, and this was one of a group of six that were in a prior meeting as well where another one of the six was dealt with; looking at the map, the concern was that the BDP that existed before limited the group of six to 13 units; to divide it up fairly without getting into the ownership of the six units, it looks like by acreage or by land area that all but the northwestern-most of the six, would be able to build two units, based on the zoning, and then the northwestern-most would be able to build three; this one looks like it is only able to build two, anyway, with that particular zoning; and he does not have a problem removing the second condition from the BDP, but he would like a new BDP that limits to a maximum of two units. He added he did not think they could build more than that anyway; but in order to save the folks that live nearby any potential that there would be more than two units, that is what he would ask.

Pamela McCarty responded, in all fairness to the client, one of the concerns brought up at the last meeting, and this is not something she and the applicant are experts on, was what the need for the BDP is, when the permitting process itself and the zoning regulations that would be followed, would not allow for anything resembling two, probably, but a maximum of two; and she asked what were the benefits.

Commissioner Lober replied safety for the neighbors in case there is something that the Board is misunderstanding; he thinks they are in the same boat in terms of their understanding with his; and he asked what she meant by authorized representative.

Ms. McCarty replied she signed papers to speak for them and she has been speaking for them; they are joining her as the owners; and she asked what the BDP serves in the absence of the density issue that is trying to be addressed that is, in essence, fully resolved in the permitting process through the County; and she is trying to understand what the purpose of the BDP.

Commissioner Lober responded it is a safety factor for the folks that live nearby; he is trying to be fair with respect to the original BDP that applied to the six lots and divide it up so there is no ambiguity; with any comparable request that the Board gets, looking at this, the fair way to do it is all but the northwestern-most lot would get two, and the northwestern-most lot would get three; and he is not doing this differently for her Item versus H.11., as he will ask them the same.

Ms. McCarty asked if there is any downside to the property owner who builds a single-family residence, as that is the intention, and they know their neighbors could build two, as that was their decision to build the lot; in terms of bureaucracy or red tape permitting, when one goes to sell, she asked what the BDP does if one is already in compliance with what it is trying to restrict, or the conditional use of the property.

Chair Zonka asked staff if the BDP is necessary.

Tad Calkins, Planning and Development Director, replied the original zoning was approved with a BDP that restricted the development of the property to 13 units in luxury townhomes; the request before the Board is to remove that condition and remove this property from that BDP; he believes Commissioner Lober's concern is that once you cut a hole in the pastry, what happens to the remaining part and to the 13 units; in this case, the property has been split so there is underlying ownership and property size that would have to comply with the density requirements of both the zoning classification and the land use; he thinks it is a matter of what Commissioner Lober is proposing is just a clarification for the other property owners to know that the net sum of what is happening is exactly what was had before, with or without the BDP; and he thinks it is more of a matter of tracking.

Ms. McCarty stated the BDP has no relevance as long as one is conforming with code, it has no relevance; she asked in other words, if one's intention is to build one property, in the applicant's case, only one could be permitted, it does not circumvent the proper permitting process; and she asked if it does not change the density or anything like that.

Mr. Calkins replied it does not; the BDP is a mechanism for individuals to present mitigating circumstances to help lessen the impact of the development being proposed with the Board.

Ms. McCarty remarked even though it is already enforced by the permitting process, this would be another level of enforcement to make sure there would not be a density increase because of some kind of building permitting change.

Commissioner Lober replied exactly, just double enforced; it is basically requiring what is already required, but if the requirement that exists that serves to actually impose that obligation were to be changed or relaxed to allow more units, this would serve to basically be a function to catch this parcel and still require it to not be beyond the two units.

Ms. McCarty asked, because she is really uninformed on this, is there any consideration of taxation differences or fees that would affect a property that is within the restricted use of the BDP, versus not.

Mr. Calkins replied none that he is aware of.

Commissioner Lober asked Mr. Calkins if he would be striking the correct condition, and asked if the BDP is a condition two.

Mr. Calkins replied affirmatively; and he added he would be requesting a new BDP removing condition two, revising that language limiting it to two units.

Ms. McCarty asked if that is the only conditional use definition of this BDP on this lot, other than the permitting rules; this is just an add-on; she asked does it affect the timeline for permitting; and would there need to be anything special to get his home permitted.

Mr. Calkins replied the County would need the actual BDP document itself and staff could work with them outside of this meeting to get it back before the Board; he does not believe that it would be very difficult in this case because it is very minor what the Board is asking; and he would help with this after the meeting.

Ms. McCarty asked if that could be done within the permitting process because if this were successful, it has been a really long time; neither of these people purchased the lots knowing the BDP was there, so everything is lingering; and she asked if it could be done within a month.

Mr. Calkins replied probably within 30-45 days.

Commissioner Lober asked if the applicant is okay with it now.

John Freeman stated he thought at the last meeting it was said that the BDP would be removed and it made sense.

Ms. McCarty stated there was a discussion; when she came up just saying that is cool; then she was like, why have the BDP; she heard that was very smart; that was the first Board meeting she had ever been to; and there seemed to be a consensus that it did not make sense. She added they have come back kind of predisposed to it being a good point, as there is no need for it since he can only build one anyways; anything that creates a delay is a problem, as these people have been really compromised to the degree that there may have been misrepresentation on behalf of the seller; they want the BDP removed, as a lot of that comes from the last meeting; and then there is another document and there does not seem to be anything that protects it more than the building regulations themselves.

Commissioner Lober stated as far as the not understanding that it was there, he apologizes, but that comes with due diligence; he has bought property before and it is one of those things that if he missed something, it is not this Board's doing; realistically, he does not have a problem if staff or the Board wants to put it on the soonest Agenda, even if it is not a zoning meeting, just to get this done a little quicker; and he asked Mr. Calkins what he thought the turnaround would be if this were expedited.

Mr. Calkins replied he thought it could probably be done in a 30-45 day time frame but it depends on them executing the documents and who has the authority to execute the documents, as far as a mortgage or the like, associated with the property.

Commissioner Lober asked Mr. Calkins if he was able to allow them to submit what they otherwise would submit to keep that rolling in the meantime; and he knows it is just a month.

Mr. Calkins responded he believes there is probably some flexibility to help them with their time frame.

Commissioner Lober stated if the applicant is going to submit what they are going to submit, if the BDP is going and the other process is going as it ordinarily would, he does not know that this will add any time to it.

Ms. McCarty mentioned she will have them speak for themselves on this because they left here being convinced by their own governmental authority that this would make more sense; it was kind of just dismissed; and she added that nobody is a victim here, but it has become so perilous and costly.

Commissioner Lober remarked they are very close to being able to build what they want.

Ms. McCarty asked what the delay would be if it was not acceptable to not have the BDP removed and replaced with a new BDP.

Commissioner Lober replied the Board would either vote to approve it, deny it, or continue it without it.

Chair Zonka asked Mr. Calkins for the worst-case scenario if the BDP is removed altogether.

Mr. Calkins replied if the BDP was removed then they would have to comply with the RU-2-12 zoning classifications and be limited to that exclusively in the land use, which would be RES-12 and two units.

Ms. McCarty remarked they would obviously be satisfied with that, since they only want one.

Chair Zonka asked what could potentially happen at this property and why the encouragement to put a new BDP in place.

Mr. Calkins replied for some reason, when the Board changed the zoning, it felt the need to put the BDP in place; he is not sure why, as that was in 2005; now with removing the BDP, the remaining six properties are going to have a BDP on them saying they are limited to 13 units; the underlying land use and zoning will not allow them to build 13 units because it is less than that; and taking this property out of the BDP will have a result that they can build two units because of the size.

Chair Zonka remarked okay, so it grossly impacts the other property.

Mr. Calkins replied affirmatively; and he apologized that he may not have explained that portion clearly.

Chair Zonka stated the applicant is in an unfortunate situation only because he had no idea; and she would definitely go after the seller of the property for misrepresenting; but he will still be able to do whatever it is that he wants to do on that property.

Ms. McCarty asked Mr. Calkins again what the disadvantage would be if the BDP was removed from these two; and she asked if he is saying that the other neighbors could be harmed if it was removed because why.

Mr. Calkins replied he is not saying that they would be harmed; and he is saying there are 13 remaining units that would be limited for those other properties.

Ms. McCarty stated people could put the properties together again and there could be 13 units; someone like the homeowners could be harmed by a multi-family going into their luxury housing community; and she asked if that is what was meant.

Mr. Calkins replied in a way, yes, but they would be limited to the zoning classification that they are constructing.

Ms. McCarty asked if they could not just limit themselves to the zoning classification and the building regulations.

Mr. Calkins replied they have to be limited to the zoning classification and the building regulations.

Ms. McCarty inquired what would be the downside to the community, as that matters, and she wants to understand.

Mr. Calkins thinks that the downside is that there is an accounting purpose of the BDP, as it applies to the whole six lots, is 13 units; and now buyers are coming in and cutting those out; does the lot have a greater density opportunity than what is had; and he thinks what the Board is asking is to ensure that they do not have a perceived density grab.

Ms. McCarty stated anyone who would go by these lots would not be concerned about these properties; she know that is not the law and is irrelevant, but the persons that could be more concerned would be these guys, because there are six lots, three of which are individually owned now; they are getting ready to construct their primary single-family residences; the people that could be harmed if it is those other lots glued together, formed a new BDP; but the zoning regulations would no longer allow the 13. She added that would be her client's downfall because it is perceived their luxury home might be better off amongst other luxury homes; she just wanted to make sure she understood that; she can see the downside to her clients because if the other people do not do it and they cluster those lots together, there could be a nice big whatever is allowed in zoning; she asked if she is understanding that; but in terms of the downside to everyone else by being restricted to the zoning regulations only, they cannot change their mind on their home, because their prices went up, and then sell it to one of those people and create a worse problem. She continued by saying she could argue that now they could just sell it to the other person and now they could go back to maybe 10 units in between a \$2 million and \$1.5 million homes.

Chair Zonka stated the Board did not make the purchase decision for her client.

Ms. McCarty remarked her clients are willing to take the risk; she wanted to know why, if they're okay with that, that any downside would not be in their favor; that is what she meant; she stated nobody here is a victim as they all love their lots; and she asked what the downside is that would require or suggest that two regulations are needed on a lot that is already regulated to everyone's satisfaction by reducing density.

Commissioner Lober remarked respectfully, he thinks this is going in circles; he apologized and stated he did not mean to cut her off; and if she wants her 15 minutes to present, the Board would give it to her.

John Freeman asked for clarification because when Mr. Calkins highlighted that, he did say that the density would be two units per lot, which is pretty much what it is right now.

Commissioner Lober replied the problem is that BDP that is in existence that has 13 across that smattering of six lots; taking pieces of that out serves to complicate the whole issue, assuming the zoning classification would allow, are they able then to build at higher densities in the remaining lots; he does not want it to happen to Mr. Freeman or the others; and he is trying to apply the same standard to everyone.

Mr. Freeman remarked he thought that is what was just said; and it would be two units with the rezoning.

Commissioner Lober stated that is his understanding, and he thinks that is Mr. Freeman's understanding; in case anyone is missing anything and also to account for this out of the BDP, considering there is a BDP right now; he is happy to take that condition off of his back, so to speak, but this provides a safeguard for everyone that is next to him; and the next item up, he is going to ask to do the same thing, which stands to benefit Mr. Freeman.

Mr. Freeman stated the middle lot has already had the BDP revised.

Commissioner Lober replied he would have to look, as the Board gets a lot of them.

Mr. Freeman stated he is just not clear what is best for him.

Ms. McCarty asked if it comes to a vote at this point.

Commissioner Lober replied either they want the BDP or not; and a decision needs to be made as to whether or not the client is willing to go with the BDP.

Ms. McCarty stated she guessed they are asking for the BDP to be removed; and if the vote is against that, then it would be there.

Commissioner Lober replied he is not going to have it go down and then reconsider, as he will not do that.

Ms. McCarty remarked she does not know how this works; it was a question; and she is sorry.

Commissioner Lober stated he is just trying to help get everyone through this.

Ms. McCarty stated Mr. Freeman will do the new BDP.

Commissioner Lober asked Mr. Calkin to please double-check to make sure it is condition two that everyone is looking at so there is no mistake or complication for anyone; he will strike condition two and the new BDP will have a maximum of two units on this particular parcel; and he asked if that was correct.

Mr. Calkins answered it is condition two that he wants to affect.

Commissioner Lober asked Ms. McCarty if that is her understanding as well.

Ms. McCarty replied yes; and she asked if the County would work with them on the paperwork.

Mr. Freeman stated he has the smallest parcel and cannot have two units; and did not know if that mattered.

There being no further comments or objections, the Board approved the removal of an existing Binding Development Plan (BDP) in an RU-2-12 zoning classification; and approved the addition of a new BDP to remove condition two, and limited to two units.

Result: Approved

Mover: Bryan Lober

Seconder: Curt Smith

Ayes: Pritchett, Lober, Tobia, Smith, and Zonka

H.11. Michael R. and Malena C. Stewart (Pamela McCarty) Request Removal of a BDP in an RU-2-12 Zoning Classification (21PZ00091) (Tax Account 2521132)

Chair Zonka called for a public hearing on a request from Michael R. and Malena C. Stewart to request removal of a Binding Development Plan (BDP) in an RU-2-12 zoning classification.

Jeffrey Ball, Planning and Zoning Manager, stated Item H.11. is Michael R. and Malena C. Stewart requesting removal of a BDP in an RU-2-12 zoning classification, application number 21PZ00091, located in District 2.

Commissioner Lober stated if Michael Stewart was okay with it, he could make this really quick and easy for him.

Mr. Stewart replied absolutely; he stated the Board could refer back to the minutes from the February 14, Planning and Zoning meeting where Bruce Moia made a motion to strike this mention of adding a BDP and he thinks there is some logic there; it may be moot but he would prefer to not have the BDP because he has been through hell and back on this process, but it is his fault, not the Board's; and he asked if there was any empathy for him.

Commissioner Lober responded he has to treat everyone the same and this essentially is the same as the prior one, other than being next door; he reiterated to Mr. Stewart if staff is flexible enough that they can go ahead and accept everything he would be submitting anyway, while he is dealing with the BDP process, as this is something that he is already restricted to doing; and he mentioned even if it takes 30 or 45 days, if staff is still processing everything else at the same time, it may not delay him a minute.

Mr. Stewart stated the other concern he has, from a cost perspective, is would he have to come back before the Board and have additional fees.

Mr. Calkin replied the only fee would be the recording fee of the BDP through the Clerk of the Court.

Mr. Stewart stated any consideration to waive those fees, given what he has been through, would be much appreciated.

Commissioner Lober stated if he is good with the BDP, he is fine with it.

Mr. Stewart stated he is really trying to make this area really nice; he is going to put a wonderful house on there; and he knows it is Commissioner Lober's district.

Commissioner Lober stated he is good with the BDP and he will give the same conditions as the prior item.

There being no further comments or objections, the Board approved the removal of an existing Binding Development Plan in an RU-2-12 zoning classification; and approved the addition of a new Binding Development Plan to remove condition two, and limited to two units.

Result: Approved

Mover: Bryan Lober

Secunder: Curt Smith

Ayes: Pritchett, Lober, Tobia, Smith, and Zonka

K. PUBLIC COMMENTS

Robert Klimkowski stated he comes today to speak to the Board; last time he spoke as well, impromptu; he was appalled at the last meeting about what happened between Item J.1. and J.2., he thinks it was; nobody knew what was going on; he sat through the meeting and nobody said the name of the Citizen's Oversight Committee (COC) member that was being removed; he asked others if this was about a lobbyist; and then he believes it was the Co-Chair that said it was Ms. Hodggers that was being removed. He added with that, he is asking for anybody that is on the COC to be reviewed and for the Board to weigh the possible removal of anybody that might have a conflict of interest serving on the Save Our Indian River Lagoon (SOIRL) COC; he is also asking for an audit for 2020 to be done, the Internal Audit for SOIRL; he does not believe that was done per the referendum and that needs to be completed; he mentioned in recent weeks, he has seen a lot of deflection and redirection about this issue; he has seen the COC member, Ms. Hodggers and another board member go at this issue one way, and the Board react another; and with that it was three different aspects of this last week. He stated number one, a conflict of interest in the SOIRL COC that had to do with dredging and the septic to sewer; number two, this is textbook redirection and deflection; it seems that when the COC is doing exactly that, providing oversight, that instead of promoting Ms. Hodggers, which she should be, she is being removed; and number three, he believes this entire issue is a \$750 million slush fund and that is really what needs to come to light, as the best disinfectant is light and this needs to be brought out into the light.

Sandra Sullivan stated there is both a lack of transparency and accountability for the Save the Indian River Lagoon (SOIRL); the optics are not good for public trusting the oversight; Matt Reed wrote in 2016 "Don't burn our trust on the Indian River, all we can do is trust these people for every good step one Florida politician has made recently, another has done something that shakes the trust. It's more of a problem of optics. The people in charge must act better if they want our votes and tax dollars to see this cleanup through"; the people of Brevard have a problem with optics now; they have a problem with transparency; a problem with getting public records; and a problem with conflicts of interest. She added promises were made to the people of Brevard; the people trusted the Board to provide oversight; they are watching who will be the bad actors who obstruct oversight; there is a problem that 19 entities told the Board in 2020 of a conflict of interest issues; and the Board did nothing. She stated the Board's lack of action in 2020 and recently obstructing transparency undermines the very trust that was the primary concern when voters approved the SOIRL tax; this is half a billion dollars over 10 years, plus an intent to double with State and Federal grants; Virginia Barker, Natural Resources Management Director, was put in charge of the Lagoon in 2008 and again promoted to the Director of Natural Resources Management in 2015; and it appears that this Lagoon tax is a slush fund for friends and families of the insiders under her management of the Lagoon Plan, starting with not disclosing family tied to Florida Institute of Technology (FIT). She went on to say since the Board was told in 2020 alleged conflicts of interest have been allowed to continue is a violation

of trust; now she understands why people were promised and not delivered, and instead got the muck tax in 2018; the letter of 2020 signed by 19 entities highlights issues with dredging and conflicts of interest that asks the Brevard County Commission for: one-new and better management of the SOIRL program, two-removal of any Citizens Oversight Committee (COC) member with a conflict of interest, and three-external expert review of SOIRL projects by individuals who are not paid consultants or otherwise, from institutions receiving SOIRL funding; she agrees with these requests and has one more to add; and she respectfully request this Commission to put on the next Agenda a vote for an external audit of the SOIRL tax and State and Federal grants. She exclaimed the genie is out of the bottle and trying to skirt this issue will only serve to degrade public trust.

Chair Zonka remarked she had a question; she stated she sees as part of Ms. Sullivan's conspiracy theory, there is a picture of herself and Courtney Barker; and she asked why the other two in the picture were blocked out.

Ms. Sullivan replied because this is pertaining to this conversation.

Chair Zonka stated this did not fit the agenda that you are trying to push now because...

Ms. Sullivan exclaimed Ms. Barker serves on the COC.

Chair Zonka explained that this is Senator Mayfield and Bruce Moia; this is a Home Builders and Contractors meeting; and she asked if this is some sort of, what are we having a party.

Ms. Sullivan replied no, it has to do with what has been going on.

Chair Zonka stated she had no more questions.

Commissioner Lober called Ms. Sullivan to return as he feels people should have an opportunity to finish and asked her to finish the sentence she was on.

Ms. Sullivan remarked just that the genie is out of the bottle and the public trust now is eroded; and if the Board does nothing, when the County wants to renew this tax again, because the Lagoon is a long-term interest and if it does not do this audit, it is undermining the trust and the funding coming into the County; and it is actually in the County's interest to do the external audit, given the questions that have been raised, not by herself, but many other entities.

Chair Zonka stated she has a card for Rick Heffelfinger, but if he would read the meeting Agenda, the process was changed because there were people speaking at two public comments segments and people are supposed to choose one; she would love to have him come up here and speak again but she does not want to violate the rules because the Board does not allow Ms. Sullivan to speak twice; and sometimes there are a gazillion cards so that is kind of why it is a little bit more in order.

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

Commissioner Tobia stated this is dealing with a technical issue; this is not getting into any specifics, but it does deal with much of the purchase card situation going on; it is dealing with Policy BCC-47, the one that was unanimously passed; Directives II.B.4. says Brevard County purchasing card monthly reconciliation report for Commission Office shall be included on the Brevard County Board of County Commissioner's Agenda in the bill folder; and it looks as though, based on this next Agenda, that it is being put on Consent. He asked his fellow Commissioners, as he made this mistake or what he assumed to be a mistake right off the bat, where the requested action is, just as he changed his, to an acknowledgement of receipt; he

does not want to put any of his charges and responsibilities on anyone else here; he thinks the purpose of this is to bring all the Board's purchase card purchases to light; initially it was asking for more than acknowledgement approval; he is not comfortable asking anyone else up here for approval; and he is not comfortable in voting for anyone's approval. He added he amended his to say acknowledgement of receipt; he is more than willing to vote for anyone's as long as it says acknowledgement of receipt, because all that is doing is saying that the Board had access to see it, not necessarily that it is approved; if that is the case, he is more than willing to do that; but he would like it further down and not under Consent and then it would have his full support.

Chair Zonka replied okay and maybe the item is on the Agenda as an acknowledgement of receipt as well, so it is pretty clear to the public.

Commissioner Tobia remarked this was the first go at things and the Board is just trying to keep everything straight; if approval is wanted, by all means, leave it at that; he is just not willing to put anyone else in that position for what he puts up there; and he certainly does not want to do that for anyone else. He stated it is just a request and he does not want to surprise anyone at this upcoming meeting and pull it to do it that way; and he would rather just air his opinion here ahead of time.

Commissioner Lober asked if Commissioner Tobia was trying to put that on for this coming meeting or on Consent for the next meeting, as he is trying to understand the schedule.

Commissioner Tobia replies yes, Policy BCC-47 says all purchase cards prospectively would be brought to the Board; it looks as though, based on the Agenda that was just put out, this is on Consent, so the it is uniformly voting for this; he only feels comfortable for voting for an acknowledgement of receipt, that he has seen it; he does not feel comfortable voting for anyone else's that he approves of it; he does not think that is his role as a Commissioner; and he thinks that is probably the Clerk's role and the public to see that and judge those purchases.

Commissioner Lober stated he is on board with this but he is trying to understand because he has not heard a motion; he asked Commissioner Tobia if he is going to make a motion; and he just does not understand what mechanism he is going to put in place to effectuate what he is suggesting.

Commissioner Tobia remarked he is not making a motion; he is just telling the Board, unless it says acknowledgement of receipt or something similar in nature, he is not comfortable voting for it; if it says something other than just acknowledgement of receipt, he will vote in the negative for it; his report, under F.16. simply says acknowledgement of receipt, so should it be voted on, it is not voting for his purchases, just that it has had access to the purchases; and for instance, the Board is not liable for any of his purchases, but only saying that it has seen the purchases put forth on the Agenda. He added he is just asking that under requested action, when voting on Consent, it says acknowledgement, not approval.

Commissioner Lober asked just to be clear, if there was a motion today.

Commissioner Tobia replied Commissioner Lober could do what he wants, he is just telling the Board that in the future, he will only vote for things that say acknowledgement.

Commissioner Pritchett remarked that was a very good catch; she guessed that it could be moved to a different area that the Board is just acknowledging it; that is really smart and a good catch; and she wanted to bring up that she may bring back another idea of doing that same thing with the purchase orders, that it will go into the same kind of system.

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

Commissioner Smith stated he takes issue with some of the comments that were made at the end of the meeting because he is part of the public and he trusts the process; he has been involved in this since the beginning; himself, Virginia Barker, and Jim Barfield marched up and down the County and gave the people the pros and cons of this tax and it was left up to them; the public was not told they should or should not vote for it; one of the key things that was heard at all those meeting was, how do they know that if this tax if voted on, that the politicians are not going to subvert the funds and do pet projects; and that is where the idea for the Citizen's Oversight Committee (COC) came from. He added there is a group of people on the COC, and he does not remember how many, but he read that somebody said something to tune of they are not oversight, they are lapdogs for the Commissioners; he takes issue with that as well because he does not influence them or call them on the phone; he takes what they say and either agrees with it or he does not; the COC gives their advice and thoughts after they get direction from the Director of Natural Resources Management; and that is two entities, and then it comes to the final authority which is the Board. He added the Board makes the final decision; it takes everything that has been heard by the COC and the Director of Natural Resources Management and then makes the final decision; that means there are three different groups with lots of different eyes; for anybody to step up here with a straight face and say there is some kind of conspiracy, well, one can guess how absurd he thinks that is; and he just wanted to point that out. He stated he is a member of the public and trusts the process; he could give an update on his river right in front of his house; he has seagrass growing in front of his house now which he hasn't seen in a long time; the water is clear, not crystal clear, but he can see the bottom; that was not the case five and six years ago; and that is his perspective.

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

Commissioner Zonka stated she did not have anything to speak of; she would say if everybody took pictures of the Board members at events...; she remembered running into Sandra Sullivan at a republican liberty caucus event, after she had been to these chambers for a year, and Ms. Sullivan thought she was Debbie Mayfield; she thought that was interesting; she will never apologize for the people that she socializes with; being in politics for as many years as she has, she has come to know a lot of really great people; and some grand conspiracy sounds exciting, but it actually has to be true.

Upon consensus of the Board, the meeting adjourned at 5:59 p.m.

ATTEST:

RACHEL M. SADOFF, CLERK

KRISTINE ZONKA, CHAIR
BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA