

Brevard County Board of County Commissioners

*2725 Judge Fran Jamieson Way
Viera, FL 32940*



Minutes

Thursday, March 4, 2021

5:00 PM

Zoning

Commission Chambers

A. CALL TO ORDER 5:03 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 Smith led the assembly in the pledge of allegiance.

G. PUBLIC COMMENTS

Sandra Sullivan stated she wanted to talk about Hightower Park Preserve and a little bit about the zoning; this park predates the property across the street that was formerly with the Patrick Air Force Base housing; and she read from the Federal Agreement for the Preserve "The entirety of Hightower Park consists of 18.5 acres of oceanfront public conservation lands. This Agreement also incorporates the County's Management Agreement with the State. As a condition of the Preservation 2000 Grant Award, Hightower Park is restricted to public open space, limited recreation, and conservation use and perpetuity." She stated there is also a State agreement that says that the adjacent development has height limitations and land-use restrictions; the Florida Communities Trust gives grants to incentivize Comprehensive Plan amendments and in that Comprehensive Plan is a zoning height on the west side of Highway A1A to a limit of 25 feet for all structures including low-intensity commercial uses; the property across the street was zoned residential when it was annexed from the County, after the preserve was created; and the issue is a change of use of the Hightower Park Preserve to commercial use by a hotel, with the City and the developer proposing a sky bridge directly into the Conservation area; and on the application, the developer wrote "no environmental impacts related to endangered species are anticipated", however, as former Federal lands, they are regulated to have a Fish and Wildlife Service Section 7 consult to ensure the protection of endangered species under the 1973 Act. She continued to say Patrick Air Force base did that for the south of Shearwater Parkway and it says no lights are allowed to be seen from the

beach; she does not know how to do that with 85 foot condos; and what she is asking of the Commission is to consider giving the legal department the authority to pursue remedies and the easiest one, which Congressman Posey's office has suggested, is the idea that this become part of the Archie Carr National Wildlife Refuge.

H. PUBLIC HEARINGS

H.7. 5971 Cedar Lake Drive Revocable Land Trust and U.S. Highway No. 1 Commercial Land Trust (Kim Rezanka) Requests a Change of Classification from RU-1-11, TR-2, and BU-1, with a BDP, to TR-1 with a BDP Limited to 200 Units. (20Z00036) (Tax Accounts 2310971, 2310861, and 2316173)

Chair Pritchett asked the Board for a motion to table Item H.7 to March 23, 2021 at 9 a.m.

Chair Pritchett mentioned the Item that might have any conversation at all might be H.1., not that she thinks it would be bad conversation; she is going to begin with H.2. in order to get people out quickly; she mentioned H.2. is in her District and she is very comfortable with it; and Item H.3. was withdrawn.

There being no further comments or objections, the Board tabled Item H.7. to March 23, 2021.

Result: Tabled

Mover: Bryan Lober

Secunder: Kristine Zonka

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

H.2. Nichelle R. King (Teresa Davis) Requests a Change of Zoning Classification from AU to RRMH-1. (20Z00039) (Tax Account 2410958)

Chair Pritchett called for a public hearing on a request from Nichelle R. King (Teresa Davis) for a change of zoning classification from AU to RRMH-1.

There being no further comments or objections, the Board approved the request from Nichelle R. King (Teresa Davis) for a change of zoning classification from AU to RRMH-1.

Result: Approved

Mover: Bryan Lober

Secunder: Kristine Zonka

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

H.4. Preferred Leasing, LLC (Brian Stephens) Requests a Small Scale Comprehensive Plan Amendment (21S.02) to Change the Future Land Use Designation from RES 4, NC, and CC to all CC. (20PZ00116) (Tax Accounts 2103387 & 2103397)

Chair Pritchett called for a public hearing on a request from Preferred Leasing, LLC (Brian Stephens) for a Small Scale Comprehensive Plan Amendment (21S.02) to change the Future Land Use designation from RES 4, NC, and CC, to all CC.

Patrice Pilate stated she was present to represent herself and the Pilate family revocable trust; the adjacent properties are in both names either/or; she understands the recommendation for this evening is that this is to move forward as an approval, however, she has concerns that

were voiced in the Planning and Zoning meeting and she wanted to make sure they were addressed here; the property is adjacent to residential property and there is a conversation going on about a fence; and she wants to make sure the fence translates into a wall to cushion the sounds from a commercial establishment with a brick fence. She added the activities there, as they are now, sometimes start before seven o'clock in the morning; the second thing is the traffic it will create on Cuyler Street, which she personally experienced when it changed over from the tractor equipment place to Kubota, was that there were large semi-tractor trailers as well as other traffic that would park parallel along the road; now they are talking about increasing the size of the facility and the only entrance or exit is on Cuyler Street where there is a stop sign for US Highway 1; long-term she would anticipate that there should be a request for a light at that intersection, given the growth that is going on; and she heard talk in the Planning and Zoning meeting that there would be entrances on US Highway 1. She stated she has personally lived there for over 50 years and there has never been an entrance/exit on US Highway 1 to accommodate semi-tractor trailers delivering there; the Ordinance only required a notice to people within 500 feet, which did not notice everyone on Cuyler Street that their traffic pattern would be altered or affected by this change in Code and enlargement of the facility; there was also a comment at the Planning and Zoning meeting that it would create a job benefit for the people of East Mims, however there has been no set-aside for that and she has never know anyone that has been employed there from East Mims; and to recap she asked for a wall, not a fence, an entrance/exit on US Highway 1, and some type of traffic control.

Jason Bartlett stated he would address a couple of the issues that were brought up; as stated, the existing corner is owned by the applicant and what he is looking to do is to expand the BU-1 over the entire property, as right now, they are operating just under there with Robinson Equipment Company, who was a Kubota dealer; they were purchased by an alternate Kubota dealer which does a bit more volume than the existing tractor business; now Florida Coast Equipment who is operating in this facility, is looking to tear down the existing building and build a new showroom and service center; and he showed slides of the existing building which is not Americans with Disability Act (ADA) compliant, and not up to present single building Codes. He mentioned the only entrance that has been used is off Cuyler Street, as there is no ingress/egress off of US Highway 1; if a tractor trailer is unloading, it makes it difficult to park; he stated the existing building would be used until the new building is complete; and it was moved as far away from the residential areas as it could. He continued to show on the slides the location of the retention pond, buffers, and any required fence or wall; he showed the entrance on the Cuyler Street side with a long driveway to allow for three or four semi-trucks behind the building and off the street; he showed the map of the area and mentioned the Study done in 2011 that requested all commercial development be kept south of Main Street along the US Highway 1 corridor, which is exactly where this property is; and he showed the view of the small corner of the existing building and showing the size of the new corner site, which is more public friendly and a great improvement to the community as well as the tax revenue.

Chair Pritchett stated she thinks it is a good project for the area; it is upgrading an existing business and getting the traffic off of US Highway 1; and she is willing to support it if someone would make a motion.

The Board conducted the public hearing and adopted Ordinance No. 21-05, setting forth the tenth Small Scale Comprehensive Plan Amendment, (20S.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; and provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date.

Result: Approved

Mover: Curt Smith

Seconders: Kristine Zonka

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

H.5. Preferred Leasing, LLC (Brian Stephens) Requests a Change of Zoning Classification from BU-1 and AU to all BU-1. (20Z00041) (Tax Accounts 2103387 & 2103397)

Chair Pritchett called for a public hearing on a request from Preferred Leasing, LLC (Brian Stephens) for a change of zoning classification from BU-1 and AU, to all BU-1.

There being no further comments or objections, the Board approved the request from Preferred Leasing, LLC (Brian Stephens) for a change of zoning classification from BU-1 and AU, to all BU-1.

Result: Approved

Mover: Curt Smith

Seconders: Kristine Zonka

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

H.6. Pioneer Pointe (Jake Wise) Requests an Amendment to an Existing BDP in a BU-1 Zoning Classification. (20Z00042) (Tax Account 3022346)

Commissioner Lober stated he had some disclosures; on January 29, Don Spurlock emailed him with some attachments including photos and drawings of the proposed car wash; on January 29, Greg Stoll, sent an email expressing concerns; on February 2, he met with Jake Wise, Don Spurlock, and Ken Welsh to discuss what was proposed; on March 1, he exchanged emails with Mr. Spurlock again regarding the proposed Binding Development Plan (BDP); and on March 3, he received an email from Mr. Spurlock with respect to the BDP.

Chair Pritchett called for a public hearing on a request from Pioneer Pointe (Jake Wise) to consider an amendment to an existing BDP in a BU-1 zoning classification.

Commissioner Lober stated he had one concern but after an email to Mr. Spurlock regarding this, he thinks they are all in agreement; he was asking if they would consider a modification of the BDP; he read something he wrote that summarizes the concern, which would add to what is already on there "the only portion of the car wash which shall be in any sense, self-service, is the vacuum station which will be available only to those customers who have already paid for and gone through a full-service car wash, and that car wash will only operate while there is an attendant physically on site"; and if Ken Welsh is good with that, he is happy to make a motion.

Ken Welsh replied he is good with that.

There being no further comments or objections, the Board approved the amendment to an existing Binding Development Plan in a BU-1 zoning classification that the only portion of the car wash that shall be self-service is the vacuum station which will be available only to those customers who have already paid for and gone through a full-service car wash, and the car wash will only operate when there is an attendant, agent, or otherwise, physically on-site.

Result: Approved

Mover: Bryan Lober

Seconders: Curt Smith

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

H.1. Health First, Inc., Requests Adoption of the 2020-1.1 Large Scale Comprehensive Plan Amendment to Permit a Countywide Increase in Floor Area Ratio for Community Commercial Designated Sites from 1.00 to 1.75 Within a PUD Zoning Classification. (20PZ00069)

Chair Pritchett called for a public hearing on a request from Health First, Inc., to adopt the 2020-1.1 Large Scale Comprehensive Plan Amendment to permit a Countywide increase in Floor Area Ratio for Community Commercial designated sites from 1.00 to 1.75 within a PUD zoning classification.

Commissioner Lober stated he supports this but wants to make sure the Board is all on the same page with respect to his support; he knows it is early in the process, but prior to this coming back to the Board, he definitely wants to see a traffic study and a parking study just to make sure that it has what is needed in order to not have an issue with traffic piling up in that area; as far as what is being asked for today, is that this enables them to move forward to with the project and ask the Board down the road to approve the plans; and he moved to approve it.

Commissioner Zonka noted for the record that she must abstain due to conflict.

The Board of County Commissioners, in regular session on March 4, 2021, conducted the public hearing and adopted Ordinance No. 21-06, setting forth plan amendment 2020-1.1 Large Scale Comprehensive Plan Amendment, amending Part XI of the Future Land Use Map Element amending Policy 2.8 D., increasing the allowable building square footage Countywide within a Planned Unit Development (PUD), amending Policy 2.8 E., permitting a Countywide increase in Floor Area Ratio (FAR) for Community Commercial designated sites from 1.00 to 1.75 within a PUD zoning classification, and Policy 2.8, Table 2.2, updating the Table to the FAR increase from 1.00 to 1.75 within a PUD zoning classification; and approved execution of the transmittal letter.

Result: Approved

Mover: Bryan Lober

Secunder: Curt Smith

Ayes: Pritchett, Lober, Tobia, and Smith

Abstain: Zonka

L. BOARD REPORTS

L.4. Bryan Lober, Commissioner District 2

Commissioner Lober stated there was a Pastor that emailed Chair Pritchett and himself expressing interest in the Emergency Management (EM) Director making vaccines available to churches in District 1 and 2; the Pastor asked him to read his letter, but he is not and wanted to let folks know why; at the present, the EM Director and the County do not have the authority to make that decision; and he thinks it is a good idea to have a greater availability and access Countywide to the vaccine, unfortunately it is a State decision, and is not in their power. He stated Sally Lewis, County Manager's Office, sent out a couple of his resolutions earlier today; he thought since they were ready, he would bring them up in Board Reports; if the Board would like him to make a motion to approve them tonight, he is happy to, otherwise he can put them off till the next meeting; one is a resolution supporting House Bill 35 which deals with removing the "print legal advertisement requirement" and the other is a resolution opposing Senate Bill

62 which de-authorizes Regional Planning Councils; and he stated if the Board wanted to address them tonight, he can make motions, or put them on the next meeting agenda.

Commissioner Zonka stated she had a chance to read them and, while she agrees with House Bill 35, she thinks the resolution may just take it a little bit outside of Commissioner Lober's intent as far as supporting that Bill; as far as opposing the deregulation of Regional Planning Councils, she agrees with that resolution; and she does not know how the other Commissioners feel, but while she agrees with most everything in this resolution for House Bill 35, she thinks some of it is unnecessary.

Commissioner Lober stated it may be best for him to make a motion with respect to Senate Bill 62 and then bring the House Bill 35 back for the next meeting.

Commissioner Tobia stated he appreciated Commissioner Lober bringing that up but there are some issues on the resolution for Senate Bill 62 from a procedural and logical standpoint; from the ideological standpoint, he mentioned Commissioner Smith voted against one of his things, stating "As conservatives, we believe less government is better government"; these Regional Planning Councils are more government, so much so that County taxpayers are on the hook for more than \$125,000 and Satellite Beach had the audacity to send their City Manager, and also a City Council person, yesterday, up to Tallahassee to lobby against this; to put it into perspective, these Regional Councils are a derivation of liberal thought; and this came about in the early 1980's, when the Democrats ran the House and the Senate. He added this passed six to three, and the six people that voted in favor of this were republican Senators Baxley, Brodeur, Hooper, Hutson, Garcia, and Bradley; the three that voted against it were democratic Senators Cruz, Polsky, and Powell; he stated if the Board wants to support the democrats at the expense of republicans, more power to them, but he will not be there; and he stated it will not matter because Senate Bill 62 does not exist and has never been voted on. He stated Senate Bill 62 has a committee substitute, and before anyone says it is a technical difference, it is not; in the committee substitute, the one that was actually voted on, the top of the Bill analysis says there were substantial changes; he went through the Bill, which was 84 pages, and there was an amendment that was so large, they had to strike the first Bill and encumber the one in it; he does not know if that works towards the intent of where Commissioner Lober was going or not, but this is \$126,000 of General Fund money that the County could use for roads instead of having an additional level of government; and this is so terrible that this additional level of government has a lobbyist who lobbies for that additional level of government. He further stated there are cities who participate in this, but not financially, so no wonder they are so much for it, as it is the County's budget that is on the hook for this; the County can call up their Legislators; it is time to do away with these levels of government; he is strongly in favor, not of this resolution, but the exact opposite of the Bill; he did read through the Committee Substitute and he does not think substantively it changed much, however there are some large changes that probably need to be reflected in the resolution; and he will not be voting for this or with the democrats that want continued large government.

Commissioner Pritchett mentioned this was brought up at the Space Coast Transportation Planning Organization (TPO) meeting, just the specific board; and she asked Commissioner Lober if he served on this board.

Commissioner Lober replied yes.

Commissioner Pritchett stated the Board may need to do something different because she understands what Commissioner Tobia is saying; and she asked Commissioner Lober if he wanted to talk about what that board does.

Commissioner Lober replied he wanted to add a few things over and above what is actually in the resolution and address a few things; he does not begrudge someone's political affiliation if they have a good idea; the fact is, with this Regional Planning Council (RPC) that the County is a member of and have been for a number of years, the chair is a solid republican from Lake County; he agrees that by and large, less government is better government but he also agrees that local government is better government; and this is not adding an additional level of government, as it is already there, and he views it as an entity that essentially consists of local governments which will continue to exist irrespective of whether RPC's are there or not. He added it amplifies our ability to lobby for these different interconnectivity projects and issues that traverse and span from one county to the next; instead of the County being simply the tenth largest, by population, County in the State, with this RPC that it is a constituent member of, that RPC and the governments that are a part of it, represent approximately one-fifth the population of the State, so it really does elevate the County a bit; he thinks the number Commissioner Tobia mentioned was \$125,000, which sounds about right, although in isolation, he does not know what that means; to him a more relevant number that what it costs the County is what does it cost the County taken from whatever the benefit is; looking at the projects that are coming into Brevard and the constituent cities of the unincorporated areas, that to him, is a much more meaningful number; and if the County is spending \$125,000 and it is bringing something substantially higher than that to the County, then it may be money well spent. He stated the fact is, a slew of local governments and constituent cities are in favor of this and they are mostly red cities; in the resolution that he drafted, he mentioned some of the entities locally that support it, including the TPO, the Space Coast League of Cities, the City of Indianalantic, Indian Harbor Beach, Satellite Beach; and it is not that they support it because it is a blue or a red idea, they support it because it helps us locally by bringing in Federal dollars for projects that it would not have the lobbying strength otherwise to bring in; one of the things that he mentioned in the resolution was what RPC's do, like amplify the ability to lobby; and the things that are lobbied on are infrastructure concerns, connectivity concerns, resiliency concerns, economic development, public safety, hurricane preparedness, and environmental preservation projects. He continued to say it is not a foreign concept that does not have any relevance here, as there are tremendous advantages; as far as having an ability to sit down at the table with other local governments, there is good camaraderie and relationship building that occurs; when it is trying to figure out how Federal funds or how State funds are distributed when dealing with an entity like Florida Department of Transportation (FDOT) that could care less what the Board thinks; it puts the County in a far better position; and he can address any concerns that exist with the resolution, but he thinks the RPC's add a lot of value for relatively little cost. He agrees that less government is better, but this is not an additional layer of government, it is an entity that allows them to focus and have a greater degree of recognition when it comes to Tallahassee.

Commissioner Zonka stated she did not want to repeat much of what Commissioner Lober said but she thinks it is more about being a part of the planning process; she asked did it want the State level dictating what is done here locally, as the local State Representatives have said how against the home rule they are; and this is where the Board serves and if someone is against local government, then they probably should not be serving in it.

Commissioner Tobia remarked that was a long answer and really said nothing; this is an additional level of government that costs money; and he read the bill analysis "The complete dissolutions of RPC's may cause local governments to lose access to grant funds awarded by State and Federal governments, however, the Bill provides that government entities may independently create Regional Planning entities through Interlocal agreements which may preserve access and increase existing RPC grand fund opportunities." He stated it is either for more government and siding with the three democrats, or conservative and want less government and free up \$125,000; think about what can be done with \$125,000; he would rather see the money go to the zoo than an additional level of government, as he thinks that is

probably a better use of the money; and if this goes through, please at least put the Committee Substitute (CS) on the Senate Bill (SB) because SB 62 is dead and when the Senate and Representatives get it they will have a chuckle before throwing it in the trash.

Commissioner Lober stated he moves to approve this, irrespective of whether the legislative delegation in part or in whole, ends up putting this in the trash; and he stated there is a typo to be corrected to include the word 'and' after the line reading "eight municipalities located there."

The Board adopted Resolution No. 21-018, opposing any efforts of SB 62 to de-authorize or otherwise weaken Regional Planning Councils.

Result: Adopted

Mover: Bryan Lober

Secunder: Kristine Zonka

Ayes: Pritchett, Lober, and Zonka

Nay: Tobia, and Smith

Chair Pritchett asked Commissioner Lober to make a change to the resolution regarding House Bill 35 at the bottom of page three.

Commissioner Lober agreed to revise it; and he stated he would bring it back for the next meeting.

Upon consensus of the Board, the meeting adjourned at 5:39 p.m.

ATTEST:

RACHEL M. SADOFF, CLERK

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