

MINUTES OF THE MEETING OF THE BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

5:00 PM

The Board of County Commissioners of Brevard County, Florida, met in regular session on February 1, 2018 at 5:01 PM in the Government Center Commission Room, Building C, 2725 Judge Fran Jamieson Way, Viera, Florida.

CALL TO ORDER

Attendee Name	Title	Status	Arrived
Rita Pritchett	Chair/Commissioner District 1	Present	
Jim Barfield	Commissioner District 2	Present	
John Tobia	Commissioner District 3	Present	
Curt Smith	Commissioner District 4	Present	
Kristine Isnardi	Vice Chair/Commissioner District 5	Present	

ZONING STATEMENT

Chair Pritchett read aloud, "If a person wishes to speak on any Item on the Agenda, please fill out a Speakers Card; and the person who is addressing the Board shall have five minutes to complete his or her comments on each Agenda Item for which he or she has filled out a Speakers Card for."

INVOCATION

Chair Pritchett led the assembly in a Moment of Silence.

PLEDGE OF ALLEGIANCE

Commissioner Smith led the assembly in the Pledge of Allegiance.

PLANNING AND ZONING BOARD RECOMMENDATIONS OF JANUARY 8, 2018; THE NORTH MERRITT ISLAND DEPENDENT SPECIAL DISTRICT RECOMMENDATIONS OF JANUARY 11, 2018; AND THE LOCAL PLANNING AGENCY RECOMMENDATIONS OF JANUARY 22, 2018

Chair Pritchett called for a public hearing to consider the Planning and Zoning Board Recommendations of January 8, 2018, the North Merritt Island Dependent Special District Recommendations of January 8, 2018, and the Local Planning Agency Recommendations of January 22, 2018.

ITEM IV., M. PUBLIC HEARING, RE: ADOPTION OF 2017-2.1 COMPREHENSIVE PLAN AMENDMENT PACKAGE

Erin Sterk, Interim Planning and Zoning Manager, stated Item IV.M., needs to be heard before Item IV.A., because these are both companion applications; this Item is a public hearing requesting the adoption of the 2017-2.1 Comprehensive Plan Amendment; Item IV.A., is a change of zoning classification from PIP to RU-2-15 for Imperial South, Inc.; the property is 30.7 acres in size, located on the east side of Wickham Road; and the Planning and Zoning recommendation is for approval with a Binding Development Plan.

Bruce Moia, MBV Engineering, stated he is representing the applicant; he is present tonight to request the Future Land Use Map be changed as requested; and the re-zoning of Item IV.A. goes with the Future land Use amendment, which is the second reading; the staff report is about

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300 pages long; and all of the provisions are included that were discussed with the neighboring properties where there was some concerns about the concrete plant that is located across the railroad tracks. He added all of that has been put in the Binding Development Plan, as far as setbacks from the property, buffers, and walls; there was also some inclusion from some language from Commissioner Smith regarding having language written for leases and can or cannot be done, as far as petitioning the County for an grievances; and he is available to answer any questions.

Commissioner Tobia expressed his thanks to Commissioners Smith and Barfield for their leadership on the similar proposal that happened in March 2016; what they pointed out was true and is still true today; Commissioner Smith pointed out as the County develops industrial properties will still be needed; as a practical matter, it will be a lot more difficult to find land that can be re-zoned industrial once these lands are developed; there is a plan for a reason, "The County has Planners for a reason that put these things on paper years in advance because they have looked at it and planned on how the County should grow"; there has been a reduction of 86 acres in industrial zoning from January 2011 through March 2016 due to Comprehensive Plan changes; and since this time the County has had another net loss of 56 industrial zoned acres; the developers are now agreeing to put a buffer between residences, at the plant this does not affect the concerns with reducing availability of industrial property. He reiterated his thanks to the Commissioners who did their due diligence and though there may be buffers with the seminary asphalt plant, it still does not deal with the need for industrial zoning that is decreasing, and most likely need to have more space as moving forward.

There being no further objections heard, the Board adopted Ordinance No. 18-03, amending Article III, Chapter 62 of the Code of Ordinances of Brevard County; entitled "The Comprehensive Plan", setting forth Plan Amendment 2017-2.1; amending Section 62-501, entitled "Contents of the Plan"; specifically amending Section 62-501, Part XI, entitled Future Land Use Element and Future Land Use Map Series; providing for internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date.

RESULT:	ADOPTED [4 TO 1]
MOVER:	Kristine Isnardi, Vice Chair/Commissioner District 5
SECONDER:	Curt Smith, Commissioner District 4
AYES:	Rita Pritchett, Jim Barfield, Curt Smith, Kristine Isnardi
NAYS:	John Tobia

ITEM IV.A., CHANGE OF ZONING CLASSIFICATION, RE: PIP TO RU-2-15. IMPERIAL SOUTH, INC. (BRUCE MOIA). THE PROPERTY IS 30.7 +/- ACRES, LOCATED ON THE EAST SIDE OF WICKHAM ROAD, APPROXIMATELY 330 FT. SOUTH OF JORDAN BLASS DRIVE. (17PZ00109)

Erin Sterk, Interim Planning and Zoning Manager, stated Item IV.A., is a change request of zoning classification from PIP to RU-2-15.

Eden Bentley, Deputy County Attorney, advised it is with a binding development plan.

There being no further objections heard, the Board approved Imperial South, Inc. request to change zoning classification from PIP to RU-2-15 with a Binding Development Plan.

RESULT: ADOPTED [4 TO 1]
MOVER: Curt Smith, Commissioner District 4
SECONDER: Kristine Isnardi, Vice Chair/Commissioner District 5
AYES: Rita Pritchett, Jim Barfield, Curt Smith, Kristine Isnardi
NAYS: John Tobia

ITEM IV.B., CONDITIONAL USE PERMIT, RE: SECURITY MOBILE HOME AND FEE WAIVER. SEMINARY COVENANT COMMUNITY, INC. THE PROPERTY IS 2.92 ACRES, LOCATED AT 1260 S. COURTENAY PARKWAY, MERRITT ISLAND. (17PZ00135)

Erin Sterk, Interim Planning and Zoning Manager, stated Item IV.B., is a request for a conditional use permit for a Security Mobile Home and a fee waiver at Seminary Covenant Community, Inc.; the property is almost three acres and located in Merritt Island; the Planning and Zoning recommendation was for approval; this property has current Code Enforcement action pending; they are providing security via a Recreational Vehicle (RV), which is what the Code Enforcement action is for; and they are attempting to resolve that by locating a mobile home on the site.

Commissioner Barfield advised he does not see any issues with the property; and he is alright with it.

There being no objections heard, the Board approved Seminary Covenant Community, Inc. request of Conditional Use Permit as recommended by the Planning and Zoning Board.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Jim Barfield, Commissioner District 2
SECONDER: Curt Smith, Commissioner District 4
AYES: Pritchett, Barfield, Tobia, Smith, Isnardi

ITEM IV.C., CHANGE OF ZONING CLASSIFICATION, RE: AU TO RU-1-11. DONOVAN HOMES, LLC. THE PROPERTY IS 0.83 ACRE, LOCATED AT 1050 N. TROPICAL TRAIL, MERRITT ISLAND. (17PZ00138)

Erin Sterk, Interim Planning and Zoning Manager, stated Item IV.C., is a request for a change of zoning classification from AU to RU-1-11 by Donovan Homes, LLC; the property is 0.83 acre, located off of North Tropical Trail on Merritt Island; and the Planning and Zoning Board recommended denial, but is seeking direction from the Board regarding drainage issue.

Kim Rezanka, Law Firm of Cantwell and Goldman, provided the Board with a handout; she stated she is representing Donovan Homes, LLC; and Rob Donovan is present if the Board should have any questions. She went on to say the property is located on Merritt Island off of North Tropical Trail near Lucas Place; the first page in the handout is the property details of total acre being 0.83; on it is a 1934 home that predates the Zoning Code; it is a nonconforming lot of record in AU zoning; and the zoning request would make it conforming. She stated the second page of the handout is an enlarged zoning map; there is RU-1-9 to the north and it is surrounded by RU-1-11, and further to the south is AU; William Coe, Misty Long, and Craig Wenrich spoke in opposition at the Planning and Zoning board meeting; she came into this after the January 8 Planning and Zoning board meeting; the denial by Planning and Zoning was due to complaints by the neighbors of drainage; and direction from the Board of County Commissioners was needed. She added there were a lot of concerns about flooding; there has been concerns about flooding in almost everywhere on Merritt Island in 2017 from Hurricane

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Irma; the zoning and uses surrounding the property are consistent with the RU-1-11 request from AU; it was well explained in the staff report and the recent rezoning last year of the north lot zone to RU-1-9; RU-1-11 is a better zoning because it requires bigger lots and house sizes from the RU-1-9; in the provided handout there is map of surveys of an intended lot split of the 0.83 acre into two lots, which would be permissible with an RU-1-11 zoning; and the property information for 1060 North Tropical Trail, Merritt Island, is 0.68 acre was split in two as well, and is consistent with the neighborhood. She mentioned always hearing on new developed land that one cannot impact the neighbors, the post-development drainage has to be the same as the pre-development; she never knew where that came from; she researched the Code and she spoke with Joe Mayer of Bussen-Mayer Engineering Group, Inc., who agreed Section 22-48 is was the best Code to use to explain that; it talks about the purpose and the intent of Code is to ensure new residential construction, in additions provide for drainage and surface water away from structures to protect buildings from flooding, requires a site drainage plan in Section 22-48(c) for all new residences, it must be accompanied by site drainage plan, meeting the minimum standards, and must demonstrate surface waters diverted to the road right-of-way; and a final survey is required to include the elevations complying with the approved site drainage plan, the Certificate of Occupancy deviation or modification of the drainage system, or failure to maintain the drainage system that results in the intrusion of water on adjacent properties shall be the responsibility of the property owner. She advised this is to show the Board that this is a building permit issue; drainage is clearly a building permit issue, not a zoning issue; and she read aloud for further protection of the neighbors, Sections 62-4032 and 62-4033 are dealing with the duties of the building official to make sure the drainage plan is complied with, and that any new construction meets all requirements of the drainage. She continued to read aloud that no building permit shall be issued unless the applicant for the permit provides the proposed, or estimated building slab, less floor elevation, and will be utilized by the building official to ensure compliance of the Code; this is a building permit issue; under Administrative Policy there are a number of Policies that must be meet for rezoning; Policy three is compatibility dealing with hours of operation, lighting, odor, noise levels, traffic, and site activity and whether it is consistent with merging or existing patterns, which this certainly is; Administrative Policy four is the character of the neighborhood, looking at traffic and parking, trip generation, commercial and industrial activities in an established residential neighborhood; and Administrative Policy five whether adopted levels of service will be compromised. She stated the staff report shows this is all met by the applicant, but what is clear is drainage is not in the Administrative Policies regarding the rezoning. She provided the Board with a Federal Emergency Management Agency (FEMA) flood zone map of AE Zone; she stated she is requesting the Board approve the rezoning from AU to RU-1-11 as it is consistent and compatible with what is in the neighborhood; and that the Planning and Zoning board did not really address proper zoning criteria when it relied upon the drainage. She added the Codes would help the Planning and Zoning board to understand how drainage is to be addressed.

William Coe stated he resides next door to where Mr. Donovan wants to build his new houses; regardless of what the flood plan says the realities are different than that flood plan; the ditch back there is no way built sufficiently to handle the water that it gets; he assumed they could get more storms; his home was within inches of being flooded; he submitted a disk rather late, but he did not know he had to have it 24 hours in advance; and he filmed the flood that Ms. Sterk has in her possession. He went on to say the disk explains what he is trying to tell the Board about the water; he stated he was wading around in water up to his belt; that ditch, until the County improves it, and makes it do what it is intended to do will have no change; when the new houses are built he will get more water; and that may make up for the few inches that he did not get wet with during this past storm. He reiterated that this is a serious problem there.

Misty Long stated she has resided on North Tropical Trail for the past 20 years; Mr. and Mrs. Coe purchased their home in 2009 and the standard then was, he had to have his house four feet above road level; she is under that level; if Mr. Donovan comes in and has to put that much

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dirt in to build a house, the water is going to go off in all directions, but mostly to the east; after the ditch fills up the only place for the water to go is back to the west and to the south; the last storm carried a lot of water; but the rezoning over on Lucas Place has three houses now by the ditch. She went on to say that she was under the assumption that Mr. Donovan built those three homes, but he says he only built one; the water used to sit on that property and now that there are a few houses built it looks like they put in some type of drainage that leads to the ditch; after the ditch is full, which it is never empty, the water moves to the west where Mr. and Mrs. Coe's house is moated with water all the way around it; the water level rose and went into her garage; and by the time the water stopped rising, it was about 10 to 15 feet away from her drain field, and her septic. She mentioned there is nowhere for the water to go on the front of Tropical Trail and it will continue to go into the ditch; she does not know how it is going to be diverted anywhere else; with the next big storm or rain her drain field and septic could be ruined; the property that is going to be split has a house that sits there already; and she does not see how this is going to work because they are all going to keep getting more water. She added she understands what Ms. Rezanka said about the drainage not being a zoning issue; however, if that is all not fixed, the rest suffer; Mr. Donovan had the rezoning done on Lucas Place where one house was built; it was said the water will be retained on the property where the house will be built; that water is still going to be diverted to the ditch, then to the west, and then to the south; and she does not see how this problem is going to be fixed by the County, as far as diverting the water.

Craig Wenrich stated he has lived adjacent to the property in question on North Tropical Trail for 40 years; he talked with an attorney who told him it is a civil issue, but all that water that come onto his property is a form of trespassing; he is in the process of hiring a civil engineer and he has a surveying company, which he has to proceed with because he was within one-half inch of flooding; he is hearing that this is compatible with what is going on in the area; and there were no problems like this until zoning was changed in 2007 and 2008, and all the new houses started going up is going will put him under water. He added that he has never seen anyone out at the drainage ditch trying to clean it up in the 40 years he has resided there.

Commissioner Tobia inquired if he was reading correctly, there would not need to be any type of comprehensive drainage plan since this is going from one unit to two; and he stated if it was going to three units, it probably would meet some engineering.

Rebecca Ragain, Planning and Development Assistant Director, responded affirmatively; she stated what requires the drainage analysis is a subdivision plan; and when a property is split into three or more lots there is a subdivision requirement. She went on to explain splitting the lot from one into two is exempt from the subdivision requirement, so therefore, the only drainage that would typically be required would be with a single building permit and addressed with each building permit. Commissioner Tobia inquired if not a binding development plan is there any type of binding agreement that the Board could get for these folks to potentially move forward to find out if the flooding would potentially be adelaide if there were some sort of assurance that the remediation for that water would take place and there was a survey to show that it would deal with the concerns of the surrounding houses; and he inquired if there is a way in the absence of splitting three that could be done with two. Ms. Ragain replied a binding development plan is purely voluntary from the applicants standpoint; she stated if the applicant wanted to volunteer, they could conceivably submit a comprehensive drainage study that included both of the lots, or even perhaps all of the property owned; but that would be up to the applicant because that is something that Code does not require.

Commissioner Barfield advised he looked at the property because he goes by it every day while driving into the office; it appears the east side of this property runs down and it looks like wetlands in that area; he would like to see some way where a stipulation could be put on for a drainage study to be done; he thinks it is not an unreasonable request and it needs to be done;

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Lucas Place was blocked off because of a no wake zone and all of Buttonwood Drive to the south also had a lot of flooding; and he understands it is compatible, but a way needs to be looked at to actually put a little bit more into this to make sure this is not going to tip-it-over-the-edge on flooding. He recommended doing a binding development plan.

Ms. Rezanka stated Code covers that with a site drainage plan; it has all the requirements being asked for; Mr. Donovan will comply with Code, he does not object to doing so; it is something new that they do not know what would be in it; and she inquired if Section 22-48 with a site drainage plan required is dealing with the requirements of drainage for each individual lot. Ms. Ragain replied drainage with an individual lot as they come in with a permit.

Ms. Rezanka responded affirmative; and she stated the site drainage plan; she does not know how one would do that when the Code already requires it; and he needs to meet 15 requirements.

Ms. Ragain clarified the site drainage plan is not a drainage study, as far as drainage calculations and storage based on calculations; and she advised the site drainage plan with a building permit is more of a topographical review to verify that the drainage goes in the correct direction, or stays on the property.

Commissioner Barfield advised he is missing something with this; and he inquired what study do they need doing. Ms. Ragain responded a drainage study would need to be submitted with drainage calculations; and she asked if John Denninghoff, Assistant County Manager, would clarify what those drainage calculations do, versus just a topographical plan.

Mr. Denninghoff stated a drainage study that would reveal and inform as to what would take place in flooding conditions would be a pretty extensive stormwater modeling engineering effort, which would go well beyond what is ordinarily required, associated with a single-family lot; however, this is in an area that has a serious drainage issue; and it would be an expensive effort on the part of the property owner.

Commissioner Isnardi inquired if would be doing an unfair burden on any resident requiring them to do an extensive and very expensive comprehensive drainage study, if basing it on new Codes the Board put in place requiring the four feet of elevation, or otherwise, may impact other properties; she mentioned what makes her nervous is requiring this, it is either to approve or to deny it based on its face; and she reiterated that it is an unfair burden to require these kinds of requirements for an applicant to get an extensive drainage study which is not required of others. She went on to say as a Commission the Board has to be careful; of course weighing in the fact that Merritt Island had received a lot of water, but she and her staff visited dozens and dozens of residents and places where water and sewage was in people's houses; if the Board could do more, as far as that ditch goes if the County is not maintaining some of the drainage it could do better as a County; but to have this unfair burden place on anyone is not a fair burden, and it sets a bad precedence.

Mr. Denninghoff stated in the case of the ditch, very little of the ditch is actually in public right-of-way or drainage right-of-way, or easement; the majority of it actually is not and is actually a slightly channelized wetland slough that is a geological feature of Merritt Island, which predates any development; it has not been on the inventory for the County to maintain; he is not surprised that residents have not seen County forces in there doing maintenance work on that ditch; the burden, technically the property owner is required to demonstrate that they are not going to have any impact if on adjacent properties or other properties; but historically, and typically there is no requirement for that extensive effort. He added he does not know if that changes the law, but there is an increasing level of concern about this type of thing given the frequency of flooding events being talked about.

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Commissioner Isnardi inquired if this really does not fall under zoning, but does fall under permitting. Ms. Ragain replied affirmatively; and she stated it would have to be done prior to a building permit.

Commissioner Barfield stated he would like a legal opinion; and he inquired if about there being adjacent properties that has RU-1-11, showing consistency.

Eden Bentley, Deputy County Attorney, responded that is one of the things for the Board to consider, compatibility with the surrounding area of the existing characters of the land uses, the historic pattern of land use, and all of those are primary considerations for rezoning.

Commissioner Barfield inquired if the zoning change was approved today, it will have to go through permitting. Ms. Ragain responded affirmatively; and she stated Mr. Donovan would be allowed to go ahead and submit a building permit. Commissioner Barfield inquired what happens to the submitted drainage plan. Ms. Ragain replied it is submitted with the building permit; and there is a drainage engineer who would review the drainage plan, and approve it, or ask for changes if need be so that the property is graded in accordance with the plan they provide with building permit for the house.

Mr. Denninghoff explained the way the Code reads with respect to a lot in this sort of condition, it would be required to demonstrate that they have a water treatment and retention capability, which is not normally had for single-family residential lots, but this one has no legal positive outfall associated with it; that would be a requirement that would be imposed; and that does have a pretty elevated level of effort to it, that is not as extensive as he previously described, but it is a lot more than what would normally be required on a typical lot.

Chair Pritchett asked Mr. Denninghoff to repeat the first part of that. Mr. Denninghoff replied what would be able to be required, because it does not have a legal positive outfall, is a treatment plan and a retention plan for the stormwater with sufficient calculations to demonstrate that they were not exceeding the discharge rates, that are limited and associated with the Code of a 100-year storm; he stated that would put some controls on it; and that is an even bigger effort than is normally required on a single-family lot that has a legal positive outfall, but it is not as extensive as he described earlier with stormwater modeling of the whole area to examine what the impact would be throughout the whole drainage basin.

Commissioner Barfield advised he is okay with the zoning to be changed.

There being no further objections, the Board approved Donovan Homes, LLC's change of zoning classification from AU to RU-1-11.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Jim Barfield, Commissioner District 2
SECONDER:	Kristine Isnardi, Vice Chair/Commissioner District 5
AYES:	Pritchett, Barfield, Tobia, Smith, Isnardi

Commissioner Smith inquired if a summary could be requested of existing Codes that address Administrative Policy for drainage requirements to be referred to. Ms. Ragain responded staff will put together a summary for the Commission to have some guidance for these types of situations.

ITEM IV.D., CHANGE OF ZONING CLASSIFICATION, RE: AU TO EU-1. FRANK E. JONES, JR., TRUSTEE (RAONEL BARRIAL). THE PROPERTY IS 0.54 ACRE, LOCATED ON THE SOUTH SIDE OF JONES TRAIL, APPROXIMATELY 560 FT. WEST OF N. TROPICAL TRAIL. (17PZ00140)

Erin Sterk, Interim Planning and Zoning Manager, stated Item IV.D., is a request for a change of zoning classification from AU to EU-1 by Frank E. Jones, Jr., Trustee represented by Raonel Barrial; the property is 0.54 acre, located on the south side of Jones Trail, approximately 560 feet west of North Tropical Trail, Merritt Island; it is interesting to note that the North Merritt Island Dependent Special District and the Planning and Zoning recommendations both recommended approval for SR zoning; and Mr. Barrial will speak on that.

Mr. Barrial stated he and his wife are purchasing this lot from his best friend's father to build their forever home; after reviewing the first meeting with the North Merritt Island Homeowners Association it did make a lot more sense to them that the SR was more appropriate zoning than the EU-1; when he went before the Planning and Zoning board he spoke about SR zoning class; and they approved the change and made recommended approval for it.

There being no objections heard, the Board approved changing Frank E. Jones, Jr., Trustee's, zoning classification from AU to SR.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Jim Barfield, Commissioner District 2
SECONDER:	Kristine Isnardi, Vice Chair/Commissioner District 5
AYES:	Pritchett, Barfield, Tobia, Smith, Isnardi

ITEM IV.E., CHANGE OF ZONING CLASSIFICATION, RE: RR-1 AND RRMH-1 TO AU. WERNER R. SEILER (JOYCE COLE). THE PROPERTY IS 7.2 ACRES, LOCATED AT 4680 U.S. HIGHWAY 1, MIMS. (17PZ00146)

Erin Sterk, Interim Planning and Zoning Manager, stated Item IV.E., is a request for a change of zoning classification from RR-1 and RRMH-1 to AU by Werner R. Seiler and represented by Joyce Cole; the property is 7.2 acres, located in Mims; and the Planning and Zoning recommendation was for approval. She went on to say the purpose of them seeking this request was to build a larger accessory structure on the site that is permitted in the AU zoning.

Chair Pritchett advised this is located in her District and she is comfortable with this.

There being no objections heard, the Board approved Werner R. Seiler request of change of zoning classification from RR-1 and RRMH-1 to AU.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Kristine Isnardi, Vice Chair/Commissioner District 5
SECONDER:	Jim Barfield, Commissioner District 2
AYES:	Pritchett, Barfield, Tobia, Smith, Isnardi

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ITEM IV.F., CHANGE OF ZONING CLASSIFICATION, RE: AU AND RRMH-1 TO ALL AU. TINA G. CONOVER (JOHN CONOVER). THE PROPERTY IS 2.13 ACRES, LOCATED AT 6751 BARCELONA AVENUE, COCOA. (17P00147)

Erin Sterk, Interim Planning and Zoning Manager, stated Item IV.F., is a request for a change of zoning classification from AU and RRMH-1 to all AU, by Tina G. Conover, and represented by John Conover; the property is 2.13 acres, located in west Canaveral Grove; and the Planning and Zoning recommendation made is for approval. She added there currently is a Code Enforcement action that is pending that they are seeking to resolve via this rezoning.

Chair Pritchett stated Ms. Sterk advised her that this would help with a few of the issues with Code Enforcement.

Ms. Sterk advised she thinks there will be a few remaining issues.

Chair Pritchett advised those are being worked on.

Scott Conover remarking why not get the Code Enforcement guy here so it can be resolved.

Chair Pritchett expressed her apologies; but stated the Item before the Board right now is to help the Conover's move forward with their rezoning request.

Ms. Sterk advised a summary was requested of any of the issues with Code Enforcement; she stated if there are any questions about those issues, those may be answered; she elaborated about the case being for accessory structures without building permits; the property owners were cited and taken to a hearing for no permits; they have built the structures across two parcels; and she thinks after they receive this rezoning, they are going to seek to combine those lots or take some action to resolve those being across two property lines right now, and resolve the permitting issue.

Mr. Conover remarked this place has been here for 50 years; the Code Enforcement officer stopped there one day after a lady down the street called the police on him because of the trailer he bought and he threw her son out, because he was a dope head; he allowed the officer to come in and he asked him where did this place come from; and he responded this place has been here for 50 years. He went on to say he was asked when the house was built and he asked how long has he been a Code Enforcement officer; the officer said three months ago he got the job; he told the officer if he called Florida Power and Light, the lights have been there for 20 years; the water bill has been there for 20 years; and then he asked about the fence in the front. He continued to tell the officer to look at the Planning and Zoning board, the fence was there during the last storm, and the County waived the permit for three months; the officer told him one side of his lot is AU and the other side is Residential; he advised he is responsible for putting the metal on the roof of the pole barn, but it had been there for 35 years; it used to be a tomato packing plant on Barcelona Avenue, and the front of it was all one parcel; the officer started taking pictures; and he was never cited or given anything. He stated he attended the last hearing and nothing about all of this was heard; and the idea is to get it resolved.

Ms. Sterk stated a lot of the issues Mr. Conover speaks about would be resolved.

Mr. Conover stated he was told he was not allowed to have goats on the property; he told the officer to put them in his truck and take them; but he is allowed four chickens per-acre.

Ms. Sterk went on to say with all AU zoning Mr. Conover would be allowed to have the goats anywhere.

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Chair Pritchett inquired if it is all AU. Tina Conover responded affirmatively; she stated there is one pole barn that stands between the two lots they combined to have this problem resolved.

There being no objections heard, the Board approved the request by Tina G. and John S. Conover to change the zoning classification of AU and RRMH-1 to all AU on 2.13 acres, located at 6751 Barcelona Avenue, Cocoa.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Curt Smith, Commissioner District 4
SECONDER:	Jim Barfield, Commissioner District 2
AYES:	Pritchett, Barfield, Tobia, Smith, Isnardi

Mr. Conover inquired if all the Code Enforcement violations are over.

Tad Calkins, Planning and Development Director, replied the Code Enforcement violations that relate to the AU zoning which would be the setback, goats, and chickens would be okay; and he stated there is still a process that the Conover's would have to go through to get the permits issued for the other structures that are outside of this venue.

Mr. Conover remarked there is no other structures.

Mr. Calkins advised it was stated that there is a pole barn located on the property.

Mr. Conover stated that pole barn has been there for 50 years.

Mr. Calkins stated that is something that would have to be looked at.

Chair Pritchett advised for the Conover's to call her office tomorrow and she will get right on everything to figure out what they needed to do next.

ITEM IV.G., (THIS ITEM HAS BEEN AUTOMATICALLY TABLED BY THE APPLICANT TO THE 02/05/18 P&Z, AND 03/01/18 BCC MEETINGS. LETTER RECEIVED 12/28/17). CHANGE OF ZONING CLASSIFICATION, RE: RU-2-15 TO BU-2, AND REMOVAL OF EXISTING BDP. SOUTHERN SELF STORAGE, LLC (JAKE WISE). THE PROPERTY IS 1.10 ACRES, LOCATED AT 6 20TH STREET, COCOA BEACH. (17PZ00148)

Erin Sterk, Interim Planning and Zoning Manager, stated Item IV.G., has been requested to be automatically tabled by the applicant to the February 5, 2018, Planning and Zoning, and to the March 1, 2018, Board of County Commissioners meeting.

ITEM IV.H., CONDITIONAL USE PERMIT, RE: ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION. CLA RETAIL, LLC (CARMINE FERRARO). THE PROPERTY IS 1,820 SQUARE FT., LOCATED AT 2338 CITADEL WAY, UNIT 103, MELBOURNE. (17PZ00149)

Erin Sterk, Interim Planning and Zoning Manager, stated Item IV.H., is a request for a Conditional Use Permit (CUP) for alcoholic beverages on-premises consumption and for outdoor seating by CLA Retail, LLC, and represented by Carmine Ferraro; and the property is located in the Viera Avenues.

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Mr. Ferraro stated it is a pleasure to be before the Board a second time for applicant Charlie Grangers restaurant chain; they are opening their second location in Viera next to the Avenues; he is present seeking a CUP for alcohol services of beer and wine with food service; unanimous recommendations were received from the Planning and Zoning board who had no objections; and he is available to answer any questions tonight.

There being no objections heard, the Board approved CUP for alcoholic on-premises beverages on-premises consumption and for outdoor seating by CLA Retail, LLC.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Curt Smith, Commissioner District 4
SECONDER:	Kristine Isnardi, Vice Chair/Commissioner District 5
AYES:	Pritchett, Barfield, Tobia, Smith, Isnardi

ITEM IV.I., AMENDMENT, RE: EXISTING BINDING DEVELOPMENT PLAN. POWELL-GEARY SERVICES, LLC (RICHARD POWELL). THE PROPERTY IS 2.79 ACRES, LOCATED ON THE SOUTH SIDE OF BROADWAY BOULEVARD, AND EAST OF INDUSTRIAL DRIVE, APPROXIMATELY 0.47 MILE WEST OF U.S. HIGHWAY 1. (17PZ00150)

Erin Sterk, Interim Planning and Zoning Manager, stated Item IV.I., is a request for an amendment to an existing Binding Development Plan by Richard Powell of Powell-Geary Services, LLC; the property is 2.79 acres, located on the south side of Broadway Boulevard, and east of Industrial Drive in the Sharpes area; the applicant is present today and he received Planning and Zoning board recommendation of denial; and there is a request to table the Item.

Mr. Powell stated he resides four minutes away from the property in discussion; he is interested in having an industrial piece of property to put his things on; at the Planning and Zoning board meeting, he neglected to go back to the residents and talk to each one of them of his intentions; he made a change to the Binding Development Plan; however, he believes that it still needs to be refined, and restricted; he now has a concept drawing that he can present; and he asked the Board to table his Item. He went on to say he sent a letter to all of the residents and set up two meetings last Friday and Saturday, but no one came or came to any of the other meetings that he has had; he had gone to talk to residents before and has talked to some of them on the telephone, except for one Canadian couple who had a representative talk to him; and he had one gentleman who would not speak to him. He added he is willing to talk to anyone to let them know what he is doing there; he advised having a piece of property that enhances the value is wanted; and he asked for the Board to table to the April 5, 2018, Zoning meeting.

Chair Pritchett disclosed that she met with Mr. Powell, which she had placed in the Agenda packet for everyone to know she has spoken with Mr. Powell; she recommended adding some parameters in the plan for a pasture.

There being no objections heard, the Board approved Powell-Geary Services, LLC request to table to the April 5, 2018, Zoning meeting.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Jim Barfield, Commissioner District 2
SECONDER:	Curt Smith, Commissioner District 4
AYES:	Pritchett, Barfield, Tobia, Smith, Isnardi

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ITEM IV.J., SMALL SCALE COMPREHENSIVE PLAN AMENDMENT, RE: RESIDENTIAL 15 TO COMMUNITY COMMERCIAL - LTM OF FLORIDA HOLDING, LLC (KIM REZANKA). THE PROPERTY IS 2.42 ACRES, LOCATED AT THE NORTH END OF DIXIE HIGHWAY, APPROXIMATELY 0.22 MILE WEST OF U.S. HIGHWAY 1. (17PZ00041)

Erin Sterk, Interim Planning and Zoning Manager, stated Items IV.J., and IV.K., are companion Items; Item IV.J., is a request for a Small Scale Comprehensive Plan amendment from Residential 15 to Community Commercial; Item IV.K., is a change of zoning classification request of GU to BU-2; the property is 2.42 acres, located at the north end of Dixie Highway, approximately 0.22 mile west of U.S. Highway 1, Town of Palm Shores; she added the Planning and Zoning board recommendation for both Items is for denial; and are being requested by LTM of Florida Holding, LLC, and being represented by Kim Rezanka.

Kim Rezanka, Law Firm of Cantwell and Goldman, provided the Board with a handout; she stated present with her is Mark Mattioli, a representative of the client, and a planning consultant Stu Buchanan; she asked the Board for a tabling of both Items; and she stated it is unusual for her to provide handouts for a tabling request, but the Board needs to be well aware of the factors that are cause her to request the tabling. She went on to say in the provided handout it has the ask for tabling because the Declaratory Judgment Action that the Board approved the County Attorney filing on December 19, 2017, has yet to be filed to the best of her knowledge, and she has not been served if it has; she is working with the County Attorney's office to assist in that plan, but it is taking a bit of time; page three is an email from Eden Bentley, Deputy County Attorney, explaining all of the things that has to be done for this law suit; it is going to take a little bit of time; and page four is her public records request on January 9, 2018, and she just received over 500 pages of documents from the County on Tuesday to review. She added she does not have access to the attachments of over 500 emails and she needs to be able to get those documents as well; she just received the radius package with the public records request; at the Planning and Zoning meeting it was suggested that formal meetings with all the homeowners should have taken place because there were people who showed up from the subdivision to the south, which her client had not met with; and there is a misperception in the Town that this is going to be 24,000 square feet of industrial use, it is 24/1,000 square foot units that people can run businesses, and store lawn care equipment and things like that; and they do need to meet with all of the residents because there is a misconception in a good part of the Town. She stated if the Board does not agree to table it, she would like the opportunity to cross-examine them if they do speak; and she reiterated her request is to table.

Chair Pritchett advised she is fine with tabling and there are many speakers' cards; she stated she will call names to see if the speakers want to speak or not; and she asked if speakers Frank Falcone and Ed Washburn would like to speak.

Mr. Washburn stated this has been going on since May 8, 2017; the people present tonight have been coming out; this is the precise way to knock it down in opposition because it keeps getting drawn out and the people stop coming; he is sure they will all be present the next time; but he does not know how to table to a date certain because he does not know how Deputy Attorney Bentley is going to be able to tell the Board what date that it is going to occur and have the suit done.

Chair Pritchett asked if speaker Sharon Secord would like to speak.

Ms. Secord stated the only thing known about this proposed project is that it is storage facilities that will be rented out; it is wedged in-between two housing developments; it is unknown what the hours of operation will be; the restrictions are unknown, if any, on the renters; aside from the noise and the traffic, she is seriously opposed to this because she does not know what to expect; and no details about the size of the buildings has been given. She added her main

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concern is child safety; the only thing that will be separating the backyard is storage facilities or it is back of fences; these transient renters and customers will be coming and going right behind the houses; and she thinks it is not in the County's best interest to have this.

Chair Pritchett asked speakers Charles Chambliss, Tim Woolwine, Albert Benson, and Lindsey Robinson would like to speak.

Commissioner Smith inquired what happens if this is not tabled. Ms. Bentley responded Ms. Rezanka has made a public records request with a lot of documents, which may or may not be related; however, she did say that she is able to go forward today; the other thing that happens with multiple tabling is there can be Due Process Issues that arise; but that would be an issue that would related to whether or not other people could challenge the re-zoning. She added the Board has the freedom to move forward if it so wishes, but it would need to hear from everyone who put in speaker cards, and hear from the applicant in-full, not part way because right now it is middle path. Commissioner Smith inquired when the court date is determined. Ms. Bentley replied that is difficult; she stated it is a very complicated issue to determine status; at the moment there may be up to 20 defendants to sue in order to join all the parties who might have an interest in the area; one thing that is going on right now is Ms. Rezanka and her client are trying to see if they can get a quitclaim deed in favor of the corporation, so there can be limited number of defendants that will be in the suit; and the number of defendants can make the law suit longer or shorter, which is a complicated factor. She went on to say a survey has been ordered from the Survey Department and the title work is being worked on; she advised it is at the least one month away from being able to be filed; the other side will have to answer and then it will have to be scheduled for basically a trial; she thinks it is going to be well over six months and more like one year before there is an answer; and she is not able to give a date certain.

Commissioner Smith inquired what it does for Ms. Rezanka's client who is wanting to do business, but it is one year from now; and he stated from what he has been told her client is doing business there whether he has a permit or not. Ms. Rezanka remarked Commissioner Smith has been told improperly; and she stated that is not true and her client is not doing any business from there. She went on to say that she believes if this goes forward tonight it will be prejudice, because she does not have all of the records or had the chance to inform the neighbors due to there being some misrepresentations given; but she is prepared for a time certain May 5 to go forward whether the lawsuit is resolved or not. She disclosed that she knows Deputy Attorney Bentley and Karl Bohne, Town of Palm Shores Attorney, has talked about resolving its issues, which she found out from the public and she did not know of it before; there are things she is learning in the public records that are very surprising to her; and she reiterated she will go forward on May 5 whether the lawsuit is resolved or not. She advised if this is done properly, once the lawsuit is filed, they go into early mediation; and she thinks it could be done by May 5. She mentioned Scott Knox, County Attorney, stating in December that this could be done in six months; and she will go forward on May 5 regardless, unless it is close to being resolved and the Board feels it is a good thing to do. She reiterated she will be prepared and she thinks it would be prejudice at this point to go forward; she stated she can go forward, but it is likely that the Board will end up with another lawsuit.

Ms. Bentley advised with the allegation of prejudice due to the lack of documents, if the Board does not want to risk a lawsuit she recommended tabling the Item until May 5.

Chair Pritchett asked that there is nothing happening on the property currently. Ms. Rezanka replied there is no business being conducted; and she stated there is a fence that is going up, according to a permit that has been issued by the County. Chair Pritchett inquired if there is a wait, there is no harm done. Ms. Rezanka responded no.

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Tad Calkins, Planning and Development Director, stated the meeting this is being tabled to is May 3.

Commissioner Isnardi stated as upset as some of the residents may be, there is someone telling the Board to not table because they do not like to keep coming out here; she inquired where is the thought for the applicant who is sort of in limbo based on whether or not Miller Cove Road is a true road; and she stated the Board has to be a little sympathetic to that, and not just Ms. Rezanka's public records request which she thinks has taken too long. She went on to say the County Attorney was directed to move forward to figure this out; the County needs to make sure that it is doing the right things as a County to figure out how to move forward with this; and she is fine with tabling.

There being no further objections heard, the Board approved request of LTM of Florida Holding, LLC (Kim Rezanka) to table to the May 3, 2018, Zoning meeting.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Curt Smith, Commissioner District 4
SECONDER:	Kristine Isnardi, Vice Chair/Commissioner District 5
AYES:	Pritchett, Barfield, Tobia, Smith, Isnardi

ITEM IV.K., CHANGE OF ZONING CLASSIFICATION, RE: GU TO BU-2 - LTM OF FLORIDA HOLDING, LLC - (KIM REZANKA). THE PROPERTY IS 2.42 ACRES, LOCATED AT THE NORTH END OF DIXIE HIGHWAY, APPROXIMATELY 0.22 MILE WEST OF U.S. HIGHWAY 1. (17PZ00041)

Erin Sterk, Interim Planning and Zoning Manager, stated for Item IV.K., a similar motion will need to be made to table the item.

Chair Pritchett advised she has more speaker cards and she will call aloud the names on the speaker cards for if they would like to speak Kim Rezanka, Mark Mattioli, Stu Buchanan, Ed Washburn, Frank Falcone, Sharon Secord, Charles Chambliss, Tim Woolwine, Aaron Pitts, Lindsey Robinson, and Albert Benson.

There being no further objections heard, the Board approved the request of LTM of Florida Holding, LLC (Kim Rezanka) to table to the May 3, 2018, Zoning meeting.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Curt Smith, Commissioner District 4
SECONDER:	Kristine Isnardi, Vice Chair/Commissioner District 5
AYES:	Pritchett, Barfield, Tobia, Smith, Isnardi

ITEM IV.L., REMOVAL OF BINDING DEVELOPMENT PLAN AND CONDITIONAL USE PERMIT, RE: STEPHEN PROCTOR MANGUM; JULIAN SIDNEY MANGUM, JR.; AND SANDRA E. BAKER - (HARVEY BAKER). THE PROPERTY IS LOCATED AT 1740 W. KING STREET, COCOA. (17PZ00059)

Erin Sterk, Interim Planning and Zoning Manager, stated for Item IV.L., it is a proposal of removal of Binding Development Plan and Conditional Use Permit on the Mangum and Baker property, represented by Harvey Barker; the property is located at 1740 West Kind Street, Cocoa; the Planning and Zoning recommendation is for approval; and she feels there will be some good news shared.

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Harvey Baker stated where this left-off in December was with pictures being submitted showing the junk cars and equipment from around the property removed; the Board held this off until tonight to have the opportunity for another Code Enforcement officer to review the property again before taking its final vote; he does not know if that happened; and he submitted photos to the Board that he took two days ago. He went on to say the front of the building at 1740 West King Street, Cocoa, is the large building and was taken from S.R. 520; the lot to the right is the west side of the building, there are vehicles in the back but those do not belong to this property, and is the property next door; the next photo shows a road headed east, which going towards the back field where the junk cars used to be stored; the photo to the right of that is a partial of the field, which has grown up but has no cars; the photo below that photo is just another shot of the field in the back; and the last photo is shooting from the east back towards the building, and showing the carport overhanging area. He reiterated the junk cars and the equipment are gone; and he asked the Board to approve the removal of the Binding Development Plan and the Conditional Use Permit, and to remove the Code violation.

Stephen Mangum stated he thinks he has met every bit of the requirements with the place being closed, the salvage yard gone, no business, no cars, no phones, no taxes, and no occupational license; and the only thing he can do is ask the Board to approve and take the stipulation of the wall off, so this matter may be settled.

Julian Mangum advised that a Code Enforcement officer did come out to the property that Mr. Baker spoke of; he and the officer inspected the property together; and the property was photographed and it was agreed that the problems that were causing the Code violations had been resolved, and are no longer there. He asked the Board to remove the Binding Development Plan and the Conditional Use Permit, and the Zoning violation from the property; and to allow for it to go back to IU-1 zoning classification to move forward with their plans for the land.

Commissioner Smith inquired if he is supposed to disclose beforehand that he used to do business with these people. Eden Bentley, Deputy County Attorney, replied if he is no longer doing business with them and it was long in the past, it is okay.

Mr. Mangum inquired if he was treated fairly. Commissioner Smith responded affirmatively; he stated he does not recognize the place. Mr. Mangum stated it looked a lot different when he did business probably; this place has been in business there for about 50 years; there were some issues earlier in the time frame where there was zoning problems then, under a whole different regime, and those problems were solved; there was actually a court order by a County Judge that his father did actually have a right to be operating a salvage yard on that property and he ordered the County to no longer remove him from the property; he does not know what happened, but the business had been operating continuously since then without any involvement, complaint, or issue with the County, whatsoever; and then their parents passed away and they inherited the property. He added they want to sell the property as a salvage yard, suddenly this eight foot wall came out of nowhere at them as a condition for a Conditional Use Permit to operate a salvage yard there, because the County suddenly said that it was not zoned properly for that. He remarked 50 years and nobody in this County knew that it was not zoned properly for that; but that is water-under-the-bridge, it is over now, the business is gone, the salvage yard is gone, and they just want to clean the place up to be presentable for sale or rent to operate in a fashion that is legally able to be done.

Commissioner Barfield mentioned when he was a teenager he spent a lot of time at the salvage yard getting parts so he could get his car running.

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Commissioner Smith inquired if there is a lien involved here and does that have to be dismissed in his motion. Ms. Bentley responded she does not know; and she inquired if there is any Code Enforcement lien.

Ms. Sterk replied there was Code Enforcement action; she stated there is a Code Enforcement report in the file, which she will provide the Board with; and she thinks everything should be resolved after today.

There being no objections heard, the Board approved Stephen Proctor Mangum; Julian Sidney Mangum, Jr.; and Sandra E. Baker as recommended to remove the Binding Development Plan and Conditional Use Permit.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Curt Smith, Commissioner District 4
SECONDER:	Jim Barfield, Commissioner District 2
AYES:	Pritchett, Barfield, Tobia, Smith, Isnardi

ITEM VIII.D., JOHN TOBIA, DISTRICT 3 COMMISSIONER, RE: REPORT

Commissioner Tobia stated it appears that no substitutive action is being taken dealing with medical marijuana treatment centers; he knows the Board said March, but he thinks there is a clear indication that nothing is going to happen; at least one or two other Commissioners are interested, and it behooves the Board to move forward prior to the date discussed. He advised there are literally no bills in the Legislature that are moving; he does not know who is going to be bringing it forward; but it may come sooner than later.

Chair Pritchett informed the Board that she has been asking Tad Calkins, Planning and Development Director, some questions about the pharmaceutical zoning and they have been kicking some things back and forth; and she inquired if Mr. Calkins is ready to bring any kind of presentation on that. Mr. Calkins responded affirmatively; and he stated the plan is to bring that forward for the first reading on February 20, and then back to the Board on March 6. He stated that is a tight window but he was waiting to see what was going to come out of Legislation; there are still a few questions out there; he is planning on setting up meetings with each Commissioner to go through the final preparation; and he is preparing the ordinance and getting it tightened up to bring it to the Board.

Upon consensus of the Board, the meeting adjourned at 6:23 p.m.

ATTEST:

SCOTT ELLIS, CLERK

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