

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 May 28, 2015 at 5:00 PM in the Government Center Commission Room, Building C, 2725 Judge Fran Jamieson Way, Viera, Florida.

CALL TO ORDER

Attendee Name	Title	Status	Arrived
Robin Fisher	Chairman/Commissioner District 1	Absent	
Jim Barfield	Vice Chairman/Commissioner District 2	Present	
Trudie Infantini	Commissioner District 3	Present	
Curt Smith	Commissioner District 4	Present	
Andy Anderson	Commissioner District 5	Present	

ZONING STATEMENT

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

INVOCATION

The invocation was given by Deacon Sergio Colon, Ascension Catholic Church, Melbourne.

PLEDGE OF ALLEGIANCE

Vice Chairman Barfield led the assembly in the Pledge of Allegiance.

ITEM II.B. PRELIMINARY PLAT/FINAL ENGINEERING APPROVAL, RE: VIERA PRESERVE - VIERA PRESERVE DEVELOPMENT

The Board granted preliminary plat and final engineering approval for Viera Preserve, subject to minor engineering changes as applicable, and the approval of this project does not relieve the developer from obtaining all other necessary jurisdictional permits.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Andy Anderson, Commissioner District 5
SECONDER: Curt Smith, Commissioner District 4
AYES: Jim Barfield, Trudie Infantini, Curt Smith, Andy Anderson
ABSENT: Robin Fisher

ITEM II.C. APPROVAL, RE: WAIVER REQUEST OF THE 15 FEET PERIMETER BUFFER TRACT ON VIERA PRESERVE SUBDIVISION

The Board approved a waiver to Section 62-2883(d) that required a 15 foot perimeter natural buffer tract on the Preserve Subdivision.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Andy Anderson, Commissioner District 5
SECONDER: Curt Smith, Commissioner District 4
AYES: Jim Barfield, Trudie Infantini, Curt Smith, Andy Anderson
ABSENT: Robin Fisher

ITEM II.D. APPROVAL, RE: HOLD HARMLESS AND INDEMNIFICATION AGREEMENT WITH SUN NUCLEAR CORP. FOR FIBER OPTIC CABLE INSTALLATION WITHIN RIGHT OF WAY OF PINEDA COURT

The Board executed Hold Harmless and Indemnification Agreement with Sun Nuclear Corporation for fiber optic cable installation within the right-of-way of Pineda Court located in Melbourne.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Andy Anderson, Commissioner District 5
SECONDER: Curt Smith, Commissioner District 4
AYES: Jim Barfield, Trudie Infantini, Curt Smith, Andy Anderson
ABSENT: Robin Fisher

ITEM II.E. APPROVAL, RE: PERMISSION TO ADVERTISE THE PROPOSED EXCHANGE AGREEMENT AS REQUIRED BY SECTION 125.37, FLORIDA STATUTE RELATING TO LAMPLIGHTER DRAINAGE IMPROVEMENTS

The Board authorized the advertisement of the proposed Exchange Agreement between Lamplighter MHP Associates, LC and Brevard County as required by Section 125.37, Florida Statutes.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Andy Anderson, Commissioner District 5
SECONDER: Curt Smith, Commissioner District 4
AYES: Jim Barfield, Trudie Infantini, Curt Smith, Andy Anderson
ABSENT: Robin Fisher

ITEM II.F. APPROVAL, RE: TEMPORARY CONSTRUCTION EASEMENT FROM LAMPLIGHTER MHP ASSOCIATES, LC TO BREVARD COUNTY FOR THE PURPOSE OF CLEANING, GRADING SLOPES, AND OTHER ACTIVITIES RELATED TO IMPORVEMENTS OF THE M-1 CANAL

The Board authorized the County Manager to accept delivery of the Temporary Construction Easement needed from Lamplighter MHP Associates, LC for improvements to the M-1 Canal until such time as Lamplighter conveys the area to Brevard County by deed.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Andy Anderson, Commissioner District 5
SECONDER: Curt Smith, Commissioner District 4
AYES: Jim Barfield, Trudie Infantini, Curt Smith, Andy Anderson
ABSENT: Robin Fisher

ITEM II.G. APPROVAL, RE: CONTRACT FOR SALE AND PURCHASE AND ADDENDUM FOR THE ACQUISITION OF THE WILLIAM J. PAGE PROPERTY AS PART OF THE PINEDA CAUSEWAY GRADE SEPARATION PROJECT

The Board executed Contract for Sale and Purchase and Addendum for the acquisition of the William Pager property as part of the Pineda Causeway Grade Separation Project in the amount of \$2,910,000.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Andy Anderson, Commissioner District 5
SECONDER: Curt Smith, Commissioner District 4
AYES: Jim Barfield, Trudie Infantini, Curt Smith, Andy Anderson
ABSENT: Robin Fisher

ITEM II.H. APPROVAL, RE: RESOLUTION WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND LOCAL AGENCY PROGRAM (LAP) AGREEMENT FOR THE COUNTYWIDE INTELLIGENT TRANSPORTATION SYSTEM (ITS) OPERATIONS PROJECT FPN 428930-1-88-01

The Board adopted Resolution No. 15-086, authorizing the execution of Local Agency Program (LAP) Agreement with the Florida Department of Transportation (FDOT) for Countywide Intelligent Transportation System (ITS) Operation Project FPN 428930-1-88-01; executed Local Agency Program Agreement; and approved any necessary budget change requests associated with this request.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Andy Anderson, Commissioner District 5
SECONDER: Curt Smith, Commissioner District 4
AYES: Jim Barfield, Trudie Infantini, Curt Smith, Andy Anderson
ABSENT: Robin Fisher

ITEM II.J. APPOINTMENTS/REAPPOINTMENTS, RE: CITIZEN ADVISORY BOARDS

The Board appointed/reappointed **Marty Adams** to the Charter Review Commission, with term expiring November 4, 2016; **Peter Fusscas** to the Charter Review Commission, with term expiring November 4, 2016; **Tom Jenkins** to the Charter Review Commission, with term expiring November 4, 2016; **Henry Minneboo, Jr.** to the Charter Review Commission, with term expiring May 28, 2016; **Chuck Nelson** to the Charter Review Commission, with term expiring May 28, 2016; **Cole Oliver** to the Charter Review Commission, with term expiring May 28, 2016; and **Dale Young** to the Charter Review Commission, with term expiring May 28, 2016.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Andy Anderson, Commissioner District 5
SECONDER: Curt Smith, Commissioner District 4
AYES: Jim Barfield, Trudie Infantini, Curt Smith, Andy Anderson
ABSENT: Robin Fisher

ITEM II.I. APPROVAL, RE: RESOLUTION WITH FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND FLORIDA EAST COAST RAILWAY, LLC, AND RAILROAD REIMBURSEMENT AGREEMENT FOR GRADE CROSSING TRAFFIC CONTROL DEVICES CR-511/AURORA ROAD FPN 433678-1-57-01

The Board adopted Resolution No. 15-087, with the Florida Department of Transportation (FDOT) and Florida East Coast Railway, LLC for Grade Crossing Traffic Control Devices CR-511/Aurora Road FPN 433678-1-57-01; and executed the Railroad Reimbursement Agreement.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Andy Anderson, Commissioner District 5
SECONDER: Curt Smith, Commissioner District 4
AYES: Jim Barfield, Trudie Infantini, Curt Smith, Andy Anderson
ABSENT: Robin Fisher

PUBLIC HEARINGS

Vice Chairman Barfield called for a public hearing to consider Planning and Zoning Board Recommendations of May 4, 2015.

ITEM III.B.1. (15PZ00018) - GRANVILLE MARION AND ELEANOR JOY BRADY, CO-TRUSTEES - REQUESTS A SMALL SCALE PLAN AMENDMENT (15S.05) TO CHANGE THE FUTURE LAND USE FROM RESIDENTIAL 1 TO RESIDENTIAL 4, AND A CHANGE OF CLASSIFICATION FROM AU TO RU-1-11 ON 0.41 ACRE, LOCATED APPROX. 0.11 MILE EAST OF U.S. 1, AND APPROX. 111.5 FT. SOUTH OF BELMONT AVE.

Cynthia Fox, Planning and Zoning Manager, stated this is a request to change the Future Land Use designation from Residential 1 to Residential 4, and a change of classification from AU to RU-1-11; and this request represents the applicants desire to legalize the zoning on an existing lot that the applicants own, in order to build a single family home.

There being no comments or objections, the Board adopted Ordinance No. 15-16, amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, entitled "The 1988 Comprehensive Plan", setting forth the fifth Small Scale Plan Amendment of 2015, 15S.05, 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:	ADOPTED [UNANIMOUS]
MOVER:	Andy Anderson, Commissioner District 5
SECONDER:	Trudie Infantini, Commissioner District 3
AYES:	Jim Barfield, Trudie Infantini, Curt Smith, Andy Anderson
ABSENT:	Robin Fisher

ADMINISTRATIVE REZONING RECOMMENDATIONS OF MAY 4, 2015

Vice Chairman Barfield called for a public hearing to consider Administrative Rezoning Recommendations of May 4, 2015.

ITEM III.C.1. (15PZ00020) SECTION 12, TOWNSHIP 26, RANGE 36, SUBDIVISION DE, BLOCK 43, LOT 1, OWNED BY KMM-FL, LLC - 0.55 ACRES, LOCATED ON THE NORTH SIDE OF BLUEFISH WAY, APPROX. 420 FT. EAST OF WAELTI DR.

Cynthia Fox, Planning and Zoning Manager, stated this item is an administrative re-zoning, staff received a development order on this piece of property in the form of a site plan and staff is down zoning it to the BU-2 zoning to be consistent with the land use, the IU is no longer needed; the property owner is aware and is in support of this re-zoning.

There being no comments or objections, the Board adopted a change of classification from IU to BU-2 on 0.55 acres, located on the North side of Bluefish Way, approx. 420 ft. East of Waelti Dr.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Andy Anderson, Commissioner District 5
SECONDER:	Trudie Infantini, Commissioner District 3
AYES:	Jim Barfield, Trudie Infantini, Curt Smith, Andy Anderson
ABSENT:	Robin Fisher

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ITEM IV.A. BOARD DIRECTION, RE: ON-LINE BENEFITS ENROLLMENT SYSTEM SELECTION, REQUEST FOR PROPOSALS #P-3-15-12

Leslie Rothering, Central Services Department, stated that for the On-Line Benefits Enrollment System, on April 28, 2015, a representative from FBMC approached the Board regarding some inconsistencies in the selection process, or the scoring for an RFP process, the Board directed that FBMC go through the formal protest procedures, and the committee did go through that; the protest committee consisted on Venetta Valdengo, Assistant County Manager, Kimberly Prosser, Emergency Management Director, and Kathy Lively, Transit Services; the committee met on May 13, prior to the meeting the Clerk's Office, or the representative for the Clerk was contacted regarding her scoring and there was an error in her scoring that was corrected just prior to the protest hearing; so basically the committee recommended to take that back to the insurance committee today, to provide them with the revised scoring, and then bring this information back to the Board; today at the Insurance Committee, members were provided with information on the revised rankings, which FBMC became the number one ranked firm and CBIZ, which was their recommendation to the Board originally, moved to the second ranked firm.

Vice Chairman Barfield asked if there was any issue if the Board wanted to ask for best and final offer to possibly get a better price.

Ms. Rothering replied by stating no, that the proposal has a clause that states best and finals could be requested.

The Board approved Option 1, to accept the revised final consolidated rankings and authorize the Insurance Director to execute all contracts and/or service agreements necessary to secure the services of FBMC as a plan year 2016 cost of \$93,493 per year, and \$467,465 over the term of the contract.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Trudie Infantini, Commissioner District 3
SECONDER:	Curt Smith, Commissioner District 4
AYES:	Jim Barfield, Trudie Infantini, Curt Smith, Andy Anderson
ABSENT:	Robin Fisher

ITEM IV.B. STATUS OF CHALLENGES FILED BEFORE THE FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS, RE: DJJ RULE PROMULGATION AND ESTIMATED COSTS FOR 2014-2015

Vice Chairman Barfield stated that this is a status of changes of filing challenges for the DJJ Rule.

Shannon Wilson, Deputy County Attorney, stated that she would like to make a correction, that the money held back was \$439,230.60 there is a difference of \$1,000 in her calculations; additionally she is also looking for direction to continue to pursue the challenge on the estimated cost for this Fiscal Year.

The Board approved not appealing the findings of the Administrative Law Judge (ALJ) regarding the challenge of the latest rules promulgated by DJJ and to proceed with the challenge to the estimated costs for Fiscal Year 2014-2015.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Andy Anderson, Commissioner District 5
SECONDER:	Curt Smith, Commissioner District 4
AYES:	Jim Barfield, Trudie Infantini, Curt Smith, Andy Anderson
ABSENT:	Robin Fisher

ITEM V.A. BOARD DIRECTION, RE: LOCAL PREFERENCE APPLICATION OF BOND COUNSEL SERVICES

Leslie Rothering, Central Services Department, stated that staff is requesting direction regarding the bond counsel services. She explained that the Selection Committee met on May 22nd to review five responses that were received, the Committee scored and evaluated them; during the evaluation it was determined that two of the firms did not submit the required local preference form, which is required in order to receive additional points for being a State of Florida firm. The local preference points for the firms; they had to complete the forms, submit it, and request the State of Florida, even though the Committee did acknowledge that they are, that it is a requirement for the submittal to be qualified, you had to be a State of Florida business. She went on to state that staff is requesting direction regarding the receiving of the forms to be applied to the firms that did submit the application correctly, waive the application of the local preference due to all firms must be licensed in the State of Florida. She added that the Board can waive the local preference resolution Policy at any time, or allow the two firms to receive just the additional points that would be allowed for a State of Florida firm.

Vice Chairman Barfield requested the pleasure of the Board.

Commissioner Infantini inquired the number times the Purchasing Department and the Selection Committee has gone back and assisted somebody and come to the Board and requested to change somebody's application so that they'd earn more points.

Ms. Rothering replied that since 2009, 2010, when the Board passed the resolution, there was one time in 2011 that additional points were given to a firm that had completed the form incorrectly.

Commissioner Infantini stated that she would like to not set this precedent; and she explained that the Board has a filing process and these law firms are known to pay attention to detail and if they are not, then perhaps that should consider not being the Board's law firm.

Commissioner Anderson stated that the Agenda Report says the firm was mistakenly informed by our staff.

Ms. Rothering clarified that the firm was mistakenly informed by their own staff.

Commissioner Infantini confirmed Ms. Rothering's clarification and added that the firm did not fill out the form in the application, and if the Board is going to start going back and awarding points that she would like to also make a motion that the Board go back and review everybody's applications to make sure they were filled out correctly and all of the appropriate documents were attached; because she believes that it is setting a bad precedence.

Commissioner Infantini motioned to not go back and make the change and stated that the Board has a Policy.

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Stockton Whitten, County Manager, stated that the two firms simply made a mistake and they are currently the Board's bond counsel and disclosure counsel; he added that as Committee Members the Board is aware that all five firms are Florida firms, yet only three are receiving benefit of the points for being Florida firms. He noted that it is unfair because the firm made a mistake and did not fill out the form, or did so incorrectly, and the Board works with them day in and day out and knows that they have to be Florida Bar Certified; and so the process, in his opinion, is unfair and the firm is being penalized for simply making a mistake.

Commissioner Infantini stated that in the past the Board has not gone back and reviewed everybody's application to make sure that they are doing it properly. She added that one of the firms that made a mistake has been the Board's bond counsel for a number of years and have received automatic renewals; and it is possible that the firm thought it was foregone conclusion that once again they would receive this renewal and be automatically chosen. She stated she wants to leave her motion as it stands.

Commissioner Anderson stated that the Board knows they are Florida firms and beyond that the Board cannot make assumptions that they firm thought they would receive renewal and be automatically chosen. He stated he does not believe that anybody who bids on contracts assumes they are getting anything. He added that he is not going to support the motion and that he is going to choose Option three.

Commissioner Infantini asked Commissioner Anderson if he would then go back and correct everybody.

Commissioner Anderson replied no.

Commissioner Infantini inquired if this is just for law firms that the Board is going to make corrections to their applications.

Commissioner Anderson stated that the firm has to be Florida Bar Certified and the Board knows they are and that they have Florida preference, otherwise they would not be able to practice law; and it makes the Selection Committee work a little skewed because the Board knows they are Florida Certified.

Commissioner Infantini stated that she understands and appreciate the firm's mistake, but going forward, if the Board is going to correct the mistake for this firm, she would like consideration to be given to all other firms that apply with Brevard County.

Commissioner Anderson inquired about the Board only having this happen one time.

Commissioner Infantini responded by saying no, the Board has only had one time brought to them because somebody pointed out that they knew clearly that they had the Florida preference and had been working with one of these two firms for a very long time.

Commissioner Anderson agreed with Commissioner Infantini and added that in the future if somebody is supposed to be a Florida preference and they made a mistake, he would be willing to hear that on a case-by-case situation.

Mr. Whitten commented that it was the Committee that wanted to come back to the Board, because they said it is unfair for them not to be able to have a level playing field; he added that the Committee consists of Ms. Wilson, Mr. Burdett, and himself, and that they are all in agreement that these are all Florida firms and it seems unfair to give the three points when it is known that the other two firms are also Florida firms. He added that he believes the Committee is exposing the unlevelled playing field and if the scoring is examined the Board will see that

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these two firms, or at least one of the firms, was not ranked going into the interviews as the number one firm. He added that there is not assumption that the firm is getting the business, that it was simply a mistake, and the Committee knows that they are all Florida firms, and that it is not fair that on firm get more points because the others made mistakes.

Vice Chairman Barfield stated that he would be going for Option Three.

Commissioner Smith stated that if the Board has a rule he would have to assume that the rule is important or else it would not be there; and he inquired if the Board does not follow the rule, why have it. He went on to state that not following the rule tells him that it was not important, and that if it is not important, he suggests throwing it out and not using it as a guidepost, but if it is important the Board needs to abide by it.

Commissioner Anderson stated that he did not believe that it was meant as a rule, at the time the Board was trying to make sure that Florida and Brevard firms received preference over out of State or out of County firms; he added that it was more of a good intent than a rule.

Commissioner Infantini stated that the Board probably should not have put it in the application.

Commissioner Anderson stated that there is a motion on floor.

Commissioner Barfield confirmed there was a motion by Commissioner Infantini, seconded by Commissioner Smith for Option One to direct staff to evaluate the responses based on the submittals received and apply local preference to firms submitting the Local Vendor Affidavit of Eligibility.

RESULT:	DEFEATED [2 TO 2]
MOVER:	Trudie Infantini, Commissioner District 3
SECONDER:	Curt Smith, Commissioner District 4
AYES:	Trudie Infantini, Curt Smith
NAYS:	Jim Barfield, Andy Anderson
ABSENT:	Robin Fisher

Commissioner Infantini stated that this also means that it does not go forward to get rid of it; and she asked Staff to confirm that the Committee is asking permission.

Ms. Rothering replied yes.

Commissioner Anderson stated that he could make a motion for Option Three, and then he made the motion for Option Three to allow Bryant Miller-Olive and Nabors Giblin & Nickerson to receive local preference points.

The Board considered direction to the Selection Committee regarding Local Preference Application of Bond Counsel Services, and tabled to a future Board meeting.

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RESULT: DEFEATED [2 TO 2]
MOVER: Andy Anderson, Commissioner District 5
SECONDER: Jim Barfield, Vice Chairman/Commissioner District 2
AYES: Jim Barfield, Andy Anderson
NAYS: Trudie Infantini, Curt Smith
ABSENT: Robin Fisher

ITEM VII.B. REPORT RE: CHRISTINE LEPORE, ASSISTANT COUNTY ATTORNEY

Christine Lepore, Assistant County Attorney, stated on May 12th the Board detailed an agreement with Cocoa Expo to continue operating for 120 days, today staff received the agreement signed by Cocoa Expo; in light of there being events scheduled this weekend they would like a motion to authorize the Vice-Chairman to sign it in the absence of the Chairman for the purpose of the record.

The Board authorized Vice-Chairman Jim Barfield to sign the Cocoa Expo Agreement, in the absence of the Chairman Robin Fisher, in light of there being events scheduled the weekend of May 30, 2015.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Andy Anderson, Commissioner District 5
SECONDER: Curt Smith, Commissioner District 4
AYES: Jim Barfield, Trudie Infantini, Curt Smith, Andy Anderson
ABSENT: Robin Fisher

ITEM VII.D. REPORT RE: CURT SMITH, DISTRICT 4 COMMISSIONER

Commissioner Smith wished everyone on the County Commission a wonderful and safe month off.

ADJOURNED

Upon consensus of the Board, the meeting adjourned at 5:33 p.m.

ATTEST:

SCOTT ELLIS, CLERK

ROBIN FISHER, CHAIRMAN
BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA