

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 October 3, 2013 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	Commissioner District 1	Present	
Chuck Nelson	Commissioner District 2	Present	
Trudie Infantini	Commissioner District 3	Present	
Mary Bolin Lewis	Vice Chairman/Commissioner District 4	Present	
Andy Anderson	Chairman/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 Board observed a moment of silence.

PLEDGE OF ALLEGIANCE

Commissioner Infantini led the assembly in the Pledge of Allegiance.

ITEM II.A., REPORT, RE: MEL SCOTT, ASSISTANT COUNTY MANAGER

Mel Scott, Assistant County Manager, advised he would like clarification on a motion that was made at the September 26, 2013, Final Budget Hearing regarding Salary Adjustments. He stated staff would like to get that lined up to the beginning of the pay period, which began September 28, 2013.

The Board approved salary adjustments for County employees to line up with a pay period to be effective as of September 28, 2013.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
SECONDER:	Chuck Nelson, Commissioner District 2
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM II.D., REPORT, RE: CHUCK NELSON, DISTRICT 2 COMMISSIONER

Commissioner Nelson stated he passed out some pictures from North Banana River Drive, by Kelly Park; and he has been working with the permitting agencies to try to repair this. He advised the water's edge is three feet from the shoulder of the road; school busses go by there on a daily basis; he is receiving a lot of phone calls; and it is to the point where some of the utility cables are being exposed. He added the Board needs to move forward with this; and would like the Board to authorize John Denninghoff, Public Works Director, to begin the process to stabilize this shoulder. He noted he would not like to be the person that did not bring it to the Board's attention, and then end up with some kind of injury or worse associated with somebody leaving the road; and in one good storm, that is the only north/south road on the east side of Merritt Island.

The Board authorized John Denninghoff, Public Works Director, to begin the process to stabilize the shoulder of North Banana River Drive by Kelly Park.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Chuck Nelson, Commissioner District 2
SECONDER:	Trudie Infantini, Commissioner District 3
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM II.F., REPORT, RE: MARY BOLIN LEWIS, DISTRICT 4 COMMISSIONER

Commissioner Bolin Lewis thanked the Board for the employee raises; and in the discussion, she listened to each of the Commissioners comments as to the concerns about how the Board is going to be able to fund this; and she would like to talk further on it to live up to its commitment that it has with the municipalities for the first responder money. She inquired if the Board would consider and discuss whether or not the Board would be able to make them whole for the \$438,300 by using reserves; and if the Board would like to entertain that idea.

Commissioner Infantini stated she does not want to use the reserves for that purpose, would rather reallocate and prioritize in another manner; and she is not prepared to discuss it with ideas. She added if she would like to carry the discussion any further she does not have any suggestions at this time.

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Commissioner Nelson recalled, during the discussion there were some ways of the Board being able to fully fund this; and he believes it was the Board's decision to fund six months. He added his preference would have been to fund the full year to allow them to prepare; and if it initially needs to be reserves just to make it whole, that would be fine. He went on to say he also believes that there were other options the Board had, and the Board could ask county staff to come back with what those options were.

Chairman Anderson stated the Board knows the First Responders are getting the first six months, so staff could come back with the options the Board asked for; sometimes because of adjustments from the Tax Collectors Office, or other things, sometimes revenue gets freed up; and the Board needs to look at those options as well.

Commissioner Bolin Lewis stated what she is proposing is that reserves is one way of doing things; and she would like the Board to make the commitment to them that the Board will somehow fulfill its obligation financially for this year.

Commissioner Fisher added to internally figure out how to do that; and that he is comfortable with that.

Chairman Anderson stated he is also comfortable with that as well, but would like to make it very clear that the First Responders not expect that next year.

Commissioner Bolin Lewis stated she believes they understand it very clearly that next year is a whole different ball game.

Commissioner Infantini stated she will approve the motion provided it does not come out of reserves, because if it comes out of reserves, that would be her only caveat. She added if she has to approve it regardless of where it is coming from, without knowing where something is going to come from, she just does not spend out of pockets of money where she does not know where it will be taken from.

Chairman Anderson stated he believes the motion was to make it whole and have staff bring back the options to fund the last six months for the cities.

Commissioner Bolin Lewis stated the Board has to move forward with the understanding that the reserves are one of the options that could be brought back.

Commissioner Infantini stated that is not one of her options, if that is going to be on the table; and if the Board is going to be funding something without knowing where it is coming from, she is all for paying for things, if she knows how she is going to pay for it, but she is not for making a commitment if she does not know where the money is coming from; and does not believe that is a great deal.

Chairman Anderson stated he believes the Board can handle this by having a motion to fulfill it; the cities need to understand that if the Board does not find an appropriate resolution that gets three votes then their still out six months.

Commissioner Infantini stated she has watched how this panel votes in the past; and she would rather vote no. She added if the Board cannot determine where the money is coming from, it either needs to be left at six months, and when those other funds are found, then it can be brought back to the Board.

The Board directed staff to bring back to the Board options of how to fully-fund the two percent pay increase for FY 2013/2014; and directed staff to send out a formal letter informing the

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municipalities the First Responder Program will be fully-funded for FY 2013/2014 but not the next Fiscal Year.

RESULT:	ADOPTED [4 TO 1]
MOVER:	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
SECONDER:	Robin Fisher, Commissioner District 1
AYES:	Robin Fisher, Chuck Nelson, Mary Bolin Lewis, Andy Anderson
NAYS:	Trudie Infantini

ITEM IV., PUBLIC COMMENTS

Rich Charbonneau stated he has been speaking with a lot of friends from the Fire Department; and they thought they were not going to get the raise, so they are thankful of it. He added he told them he would say something today; and thanked the Board for giving it to them.

PUBLIC HEARING, RE: TABLED ITEM AND PLANNING AND ZONING BOARD RECOMMENDATIONS OF SEPTEMBER 9, 2013

Chairman Anderson called for a public hearing to consider Tabled Item of September 12, 2013; Planning and Zoning recommendations of September 9, 2013; and North Merritt Island recommendations of September 12, 2013.

ITEM V.A.1., (13PZ-00029) - WILLOW LAKES RV PARK, INC. - (LOYS WARD) - REQUESTS A SMALL SCALE PLAN AMENDMENT (13S.05) TO CHANGE THE FUTURE LAND USE DESIGNATION FROM RESIDENTIAL 2 TO RESIDENTIAL 6, AND FROM TR-2 TO RVP ON 4.97 ACRES MORE OR LESS. LOCATED ON THE NORTH SIDE OF PARRISH ROAD, APPROXIMATELY 840 FT. EAST OF U.S. 1. (1650 & 2690 PARRISH ROAD, TITUSVILLE)

Cynthia Fox, Planning, Zoning, and Enforcement Manager, stated this item was previously before the Board on September 12, 2013; and was tabled so the applicant could work with the neighborhood a little more. She added the applicant is here, they have further amended their request to include some of the desires of the residents; and she will let them explain what they have come up with.

Commissioner Infantini stated she met with an individual regarding this application, which was not the applicant.

Randy Lund stated he is the developer/owner of Willow Lakes; and the reason for this request is because they have been trying to become a destination resort, in which he has over 250 home owners that are supportive of that. He added they need 50 acres and the rezoning request would give them that total; he has amended the request because there have been concerns with the neighbors, and the continuity of having TR-2 down Parrish Road, and then having RV sites in the middle of it was not the best. He went on to say he would amend the rezoning to let that property remain TR-2, so the back property lines along Parrish Road would coincide with the lots where the rezoning request would be; the RVP zoning is completely isolated; and is losing about eight RV sites, but is okay with that. He noted those spots would most likely not be the most desirable; he met with the concerned neighbors and that was a concern; and they are supportive of that now.

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Frank Skiengel stated Mr. Lund has met with him and showed him the amended rezoning; and it was what he was looking for. He added, the road that is going down the middle was supposed to be a grassy lane; and his only concern would be if he ever developed those two properties, that road is supposed to be for emergencies only, would need to be the access road to those two properties. He advised all of the neighboring properties have driveways.

Commissioner Infantini stated Mr. Skiegel is who she spoke with on this issue. Commissioner Fisher stated he spoke with him as well.

Mr. Lund stated where the RVP ends, that property would be all fenced in, and there will be a gate there that is always locked. He added, they have the same situation on Cuyler Street, which is an emergency gate; and it is always closed up, there would be no traffic ever going through that property.

Commissioner Fisher stated he believes the Board is requiring part of it to have an emergency exit; and inquired if the Fire Department is requiring it. Ms. Fox replied that is correct, the applicant has been through a preliminary site plan and pre-application conference, and that was a comment that was brought up.

Commissioner Fisher inquired if it would be used for daily use. Mr. Lund responded no, they do not want their residents to have any other access, they have one gated entrance, and it can be controlled that way. Commissioner Fisher commended Mr. Lund on his efforts in working with the neighbors; he understands it was a controversy issue; and he believes he has done a good job.

Mr. Skiengel stated that is not exactly what he was talking about; if he ever develops those two R-2 properties, he would not like them to use that road either. Commissioner Fisher stated he does not believe anyone is going to use it, unless there is an emergency.

Gayle Staczynski stated her main concern was for the natural spring, because of all of the animals in the area. She noted there are eagles and egrets that live on Hammock Road. She noted she is a little farther down, but there is a gopher turtle in their yard, hawks, and many others; and she does not want to lose the wildlife. She advised they do not want the natural spring covered up or filled in, because that is how sink holes start.

Commissioner Infantini inquired where the spring was. Mrs. Staczynski replied it is inside their property, about 50 feet in from the road. Chairman Anderson inquired if it was a spring or an artesian well. Mrs. Staczynski responded it is not an artesian well, it is a natural spring.

Chairman Anderson inquired if they would be under State rules on those things. Ms. Fox responded that is correct; and the dimensions of that square is 241 feet back from Parrish Road and about 240 feet wide. She added the spring is about 50 feet in; and the applicant would potentially avoid that.

Peter Staczynski stated he hopes that if a gate is placed on Parrish Road, that it is not going to look like a prison in the Willow Lakes area, there are 29 properties for sale; and expanding that will actually cut the value of those properties. He added, when looking at the lower properties, there is only one property for sale on the south side of Parrish Road and Palomino Drive; and now that the plan has changed, they feel it is acceptable.

Commissioner Fisher inquired if the developer had any idea of what type of fence was going to be put up. Mr. Lund responded it will not be a razor wire type, it will be a six-foot cyclone fence, and there will be a 25-foot landscape area all the way around it.

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Commissioner Nelson inquired if Mr. Lund was going to use barbed wire. Mr. Lund responded no. Commissioner Nelson further inquired if he would be using any type of wire. Mr. Lund responded no, it will just be a privacy type fence.

Ms. Fox inquired if the applicant would reiterate the conditions set forth in the Binding Development Plan for clarification purposes.

Mr. Lund stated the first condition that was discussed was the entrance to Parrish Road, which shall be used for emergency use only and be a grassy entranceway, only. He added the second condition was the project will be served with a private sewer plant, and County potable water service that is existing in the park; the project shall comply with County's drainage requirements, and he will install and maintain an opaque visual barrier consistent with landscaping on six-foot fence adjacent to all of the adjoining properties currently zoned TR-2. He added the minimum building setback of 50-feet from Parrish Road was crossed out because they moved back two hundred and some feet. He went on to say the use of all RV sites adjacent to all properties currently zoned TR-2 should be limited to resort homes, which are single-family homes of standard construction, per Code; and that is the nicest structure they can do once they get the resort destination designation. He noted they were amending the zoning request to exclude property to the south that will remain TR-2 to keep zoning on Parrish Road the same, which was to address neighbors concerns.

Ms. Fox inquired if they were eliminating condition number seven, because he has now provided the new sketch. Mr. Lund responded yes, that is correct.

There being no objections, the Board approved Binding Development Plan with stipulation of removing number 7, for Willow Lakes RV Park, Inc.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Robin Fisher, Commissioner District 1
SECONDER:	Trudie Infantini, Commissioner District 3
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM V.B.1., (13PZ-00067) - JTW VANTAGE GROUP, INC. - (JAMES WHITE) - REQUESTS A CHANGE OF CLASSIFICATION FROM GU TO AU ON 7.0 ACRES, LOCATED ON THE EAST SIDE OF JONES ROAD, WEST OF I-95, AND 520 FT. NORTH OF W. EAU GALLIE BOULEVARD. (NO ASSIGNED ADDRESS. IN THE MELBOURNE AREA)

Cynthia Fox, Planning, Zoning, and Enforcement Manager, stated this Item is a request from GU to AU on 7.0 acres; this request was approved at the Planning and Zoning meeting; and this is for the purpose of establishing a fish farm and aquaculture on the property.

There being no comments or objections, the Board approved JTW Vantage Group, Inc.'s request for a change of classification from GU to AU on 7.0 acres, located on the east side of Jones Road, west of I-95, and 520 feet north of West Eau Gallie Boulevard, Melbourne.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
SECONDER:	Robin Fisher, Commissioner District 1
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

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ITEM V.B.2., (13PZ-00059) - BD910, LLC - (EDWARD J. KINBERG) - REQUESTS A CHANGE OF CLASSIFICATION FROM BU-1 TO BU-2 ON 0.43 ACRE, LOCATED ON THE WEST SIDE OF GROVE STREET, APPROXIMATELY 105 FT. NORTH OF MERRITT ISLAND CAUSEWAY. (15, 25, & 35 N. GROVE STREET, MERRIT ISLAND)

Cynthia Fox, Planning, Zoning, and Enforcement Manager, stated this request is for a rezoning change from BU-1 to BU-2, in the Merritt Island Redevelopment Area (MIRA) in Merritt Park Subdivision; this Item has been heard by MIRA on two different dates and by the Planning and Zoning Board; the MIRA board denied the request both times; the Planning and Zoning Board offered up a approval with the elimination of the northern most parcel of the property owned by the applicant on 35 North Grove Street to remain BU-1 with no outdoor activities.

Commissioner Nelson disclosed he met with Jason Valavanis; stated he has received numerous emails that have been made part of the record; and he also has done a drive-by.

Ed Kinberg, Associates, Attorneys at Law, LLC, stated he represents BD910; he provided the Board with a copy of a PowerPoint Presentation; there are comments being heard that BD910 owner had tricked the County; a couple of MIRA members kept making it a point that zoning was applied for, and did not disclose the purpose; and he stressed that it not true. He explained when Belinda DeMasso, came to apply for rezoning, she was told by the Planning and Zoning Department what she had planned on doing in BU-1, by expanding her operation to add flaps in the walls for a dog-run in and out; and at that point the word dog-run was circled, and was told she could not do that because it would be a dog-run. He added, in supervised dog play areas of the County there is no dog-runs, which is the basis of her building her business and putting over \$100,000 worth of improvements into a flea-free, smell-free zone; stated she has a very expensive sanitation area that is cleaned daily and has no disturbance on it; there is a front yard area for small dogs to play; there is a back yard area for large dogs to play; and all dogs are supervised all the time. He went on to say catty-corner across the street there is another kennel that occasionally has dogs barking much more than Ms. DeMasso's dogs; and advised when Ms. DeMasso's dogs start barking, the pack leader dog is taken inside and removed from the scene; and there is simply no incessant barking. He advised this issue first surfaced by a gentleman who owns an apartment complex and has residential zoning in the multi-block area; the rest of the area is zoning BU-1, except for BU-2 areas going across Highway 192; there is BU-2 on the next block at a tire center, with half BU-1 that has no permitted use, and makes loud noises from compressor use; and has no complaints. He advised since 1999 on his clients property there has been one noise complaint that was filed by residents of the apartment complex after all of the public hearings were set; there were dogs barking across the street; and the noise in not at this location. He went on to say the issue is when the owner of this property got the property, she disclosed her intended purpose, and was told that intended purpose was okay; stated in 2006, Jason Valavanis, filed a complaint about the rezoning; from 2006 to 2012 there are no public records objecting to the property being properly zoned that he is aware of; and once Ms. DeMasso decided to purchase property from Mr. Valavanis' family, he then filed a Code complaint. He stated the Code complaint was investigated; it was determined the property was in compliance; there was a letter written by someone to the Planning and Zoning Director, who then changed the definition orally; and there is no definition in the Code of what a dog-run is. He stated a solution for this problem is to define what a dog-run is; the area has been used for an outside supervised play area since 1999; it was disclosed to the Zoning Department that Ms. DeMasso applied for a business license; and it continued that way without objection of her ownership from at least 2010 to 2012. He stated if the issue is excessive barking, it is simply not there; if the Board hears that Ms. DeMasso was told she could not have a dog-run is not true; and was told she could have a dog-run. He stated since applying for rezoning the property at 35 North Grove is run down; Ms. DeMasso's plan is to rehabilitate that property and restore it to its former good looks; originally, she was going to expand the dog operations to the outdoor area where dogs are allowed to play with supervision; he developed

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the Binding Development Plan (BDP) agreeing to not go further or push for the rezoning of 35 North Grove Street; only to push for the rezoning at 15 and 25 North Grove Street; and agreed to limit the hours, make landscaping improvement with a three foot barrier between the apartment. He stated they are working hard to try and accommodate the six people that live in the apartment building; Mr. Valavanis may mention he cannot rent the apartment, but he has heard five of the units are now rented, so that is not so much of an issue; but the bottom line is Administrative Policy 3, Compatibility with Existing or Proposed Land Uses. He provided criteria of properties at the front and back sides are surrounded by BU-2 uses; the lot across the street is zoned BU-1; and the entire multi-block area is listed as commercial. He added, the proposed use will not cause a material reduction in the value of the abutting lands; it is consistent with the historical patterns of use in the area; the property does not materially and adversely affect an established residential neighborhood because there is no established neighborhood; there will be no impact on traffic patterns; the proposed use is consistent with all written land development policies; the proposed use will not cause or substantially aggravate any drainage problems; and he provided a picture of the property. He concluded it is substantial personal expense; Ms. DeMasso is going to address the Board to confirm that she can continue to run a supervised outdoor dog play area for her clients, with many clients using her services since 1999; she spent over \$100,000 remodeling the property to make it a state-of-the-art facility; and has had no complaints for two year, until she made an offer to purchase the property, and a competing offer arose. He stated he asking for the Board to rezone 15 and 25 North Grove Street, to BU-2, which will allow to continue an operation; he knows when Mr. Valavanis speaks to the Board, he will be complaining about a lot of noise; there are means of handling noise, and if he continues to file noise complaints they will deal with them as they arise; but this use is a consistent use with the use in the area and enhances the value of the area, by providing an area where local business owners can keep pets for the day, and still visit them.

Commissioner Nelson inquired about Mr. Valavanis being told the property was for sale and that he had talked to the owner; but the affidavit in the package says, that he did not return the call. Mr. Kinberg replied Mr. Valavanis called the owner, left a message saying he is interested in buying the property; stated at that time the owner had all ready agreed to sell the property to Ms. DeMasso; and there was nothing to call back about. Commissioner Nelson stated there was never any conversation between those two. Mr. Kinberg advised it to be nit-picking. Commissioner Nelson stated it is evidence entered; it is not nit-picking; and he is trying to ensure what is being testified. He inquired the number of dogs being talked about. Mr. Kinberg responded the dog numbers vary every day by 20 to 30 that are broken up into three separate play areas. Commissioner Nelson advised for zoning capacity how many dogs. Mr. Kinberg replied there is no zoning capacity limitations for how many dogs can be there.

Commissioner Nelson inquired what the need for a certain number of parking spaces is based on. Ms. Fox responded it is similar to dividing square footage of retail space to have one space for every 200 to 250 square feet of building. Commissioner Nelson inquired if it were calculated with the additional building. Ms. Fox responded the parking is existing; and the parking has not been evaluated, as part of this request.

Commissioner Nelson inquired if a number of dogs that could be told as the maximum number of dogs. Mr. Kinberg replied the County does not have a maximum number in its Code; stated he cannot provide a maximum number; and Ms. DeMasso can tell the Board how many dogs the facility is designed to hold; but the Code does not limit it. He went on to say defining what a dog-run is because it is not good to have undefined terms in Codes.

Chairman Anderson disclosed that Ms. DeMasso posted on his Facebook.

Belinda DeMasso, Island Pet Resort & Spa owner, stated the parking is for the dropping off; they do not stay; in 2010 she had opportunity to open her dream pet resort; she spoke with

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previous owners at 15 and 25 North Grove Street, and was informed the residents were leaving the area; it was an opportunity for her to take over a place that was all ready establish; there is fencing in order, has an outdoor play area, grooming facility, and a kennel; she contacted the owners they told her the only way they would rent to her is to continue renting 15 and 25 together, because they had been together and was no access to 15 off of Grove Street; and she agreed to that. She stated the women who owned 15 asked her if she wanted to buy it and would carry the note so she could continue receiving monthly payments, and she agreed with that; she is not knowledgeable with commercial properties; she went to the County to get information and explained her plans for the pet resort; and she followed the County's direction to apply for proper licensing. She mentioned speaking to the County about having a dog-run from the building, by opening the sides through the block for the dogs to come in and out from a dog-run; and she was told she could not have a dog-run because she was not zones for it, but if she kept somebody in the yards with the dogs at all time and the dogs do not have free access in and out of the building, she could maintain the business as it had been maintained before. She explained she hired more employees; she put out over \$150,000 a year on salaries to keep those yards maintained; the only time the resort is extremely busy is holiday weekends; and in one day, she may only have five dogs and it is not a full-time 20 to 30 dogs daily. She added, she teaches animal behavior at local schools about the care and job opportunities available in the field; she donates food, toys, blankets, leashes, and money to the local pet rescue facilities; she does not pick one over the other and she helps them all; she takes in a number of rescues a month to help find them homes and to keep them out of the County's facility; and she has hired laid off people from Sea Ray, Kennedy Space Center, law enforcement officers, fire fighters, and retirees to work at the resort while going through their transitions of being laid off, or retiring. She stated she has had no issue, complaints, or problems; she does have the regular commercial area sounds of SR 520; she gets an occasional tire that is accidentally thrown over the fence from Bridgestone Tires, located behind her; there is a band that practices for hours from one of the bay areas that are in the building behind the apartment complex; she has not complained because sounds are expected; but when she purchased 25 and 35 North Grove Street, she started having issues within 10 days of her purchase, and received a letter from the attorney for the apartment complex telling her she was in Code violation. She went on to say she called the County and was told she is not out of Code; she had Code Enforcement visit her facility and they told her that she is in compliance with her current zoning; but since then, she has noticed the tenants that use to come over and visit with pets have stopped visiting; there is now trash and lit cigarettes being thrown over her fence; and there are many people walking and standing in front of the resort filming, taking pictures, and taunting the pets. She desired from that point to hire an attorney; she tried meeting with the real estate agent that manages the apartment complex to see what she could do to resolve the issues; the only real information she received from the agent was they tried to buy 35 and was surprised the owner sold it to her; and she offered to sell it to the agent at that time, so she did not have to go through this process. She asked the Board for its support to receive rezoning to keep her first-class business running and to keep her employees.

Joseph DeLeo stated he is the attorney representing Park Place Patio and Roth Financial, located next to, on either side of the Island Pet Resort & Spa; contrary to what Mr. Kinberg has said, Park Place Patio Manager, Jason Valavanis, has since 2006 tried to complain and get a resolution of the dog barking at the facility; and it was late last year when he was hired and the County took its action. He noted BU-1 prohibits outside kennels and runs period, which was known to Ms. DeMasso; he provided the Board with a packet of a couple maps showing the location of his clients properties, the Island Pet Resort & Spa, and the other pet grooming facility, located on SR 520 diagonal to Island Pet Resort & Spa; the second page shows predominate BU-1 in that area; and it was designed for mixed business with residential. He advised after going past the first block off of SR 520, it is BU-1; this is a non-conforming request; it is a business area with 20 to 40 dogs outside barking; and he has video showing the dogs barking any time someone goes by. He stated the barking reduces his client and other

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business values of properties; Mr. Valavanis will explain he has difficulties renting, because when a potential renter comes there is continuous barking; and Arthur Roth will explain he had to move his office inside his own building closer to SR 520, and deal with the noise of SR 520 because that is less onerous than listening to the dogs barking. He provided the Board with tax receipt applications with information of when Ms. DeMasso applied for them; the County specifically wrote on those applications, no outside kennels or runs; she knew up-front what she was getting into; and eventually, she was cited with a Code violation. He provided in the second part of the packet the history of the prior uses; it was dog grooming, not outside kennels and run; anyone who was using an outside kennel and run was in violation; and he has shown that the prior owner listed the business property address as on East Merritt Island Causeway near the Island Lincoln Mercury, not 15 North Grove Street where the business was actually being ran; it is not constant and does not have a prior history as prior indoor dog grooming, but not a prior history of outside use, except for a couple years prior, and it has expanded and got worse as time has gone on which has led to the complaints. He mentioned this has affected Ms. DeMasso's business, but it has effected other businesses as well, which are equally important; others are living within their zoning and Ms. DeMasso is not because it is not a compatible use; the other kennel has a license for pet grooming with a smaller kennel, and are not operating legally either; but that is not a precedent either. He reiterated the history and conformance are not there; stated it is huge nuisances; and he is respectfully requesting the Board deny the zoning request.

Jason Valavanis stated he and his father built their property from a wooded lot to an apartment building and successfully had been keeping it full all the up to the time they renovated it; in 2006, the dog grooming parlor that was down the street at 15 and 25 North Grove Street, started expanding into a kennel operation; and the dog barking then of three or four dogs was a nuisance. He stated in 2010, Ms. DeMasso expanded the dog operation to as many as 50 dogs at one time; he provided the Board a video of the back of Ms. DeMasso's property; and he video tapped twice to provide it to the Board today. He stated the dogs are always agitated any time there is a noise, or if a person comes by; the front yard shows when one dog arrives 40 dogs start barking; the previous dog operation at 15 North Grove Street was only a dog kennel and had a one-year license; the other 10 years they moved their license to 1835 East Merritt Island Causeway; and is how they concealed their true location and why Code Enforcement did not catch them. He stated there are arguments about another kennel across the street from this current kennel has a lot of dog barking; he checked business tax receipts in Titusville; he spoke to an administrator and the tax receipt for that location at 140 East Merritt Island Causeway, Paws and Claws; it is licensed as dog grooming; but they are operating as a kennel, but are not a kennel and the precedence of a large noisy kennel is not there. He mentioned the chronology of the history of events that Ms. DeMasso stated is tremendously exaggerated and not accurate; stated he has been complaining since 2006, through Animal Control Services; he has called Planning and Zoning and Code Enforcement; and it was looked up, but he could not get anyone to enforce it until he hired an attorney.

Chairman Anderson inquired who owns the apartment complex. Mr. Valavanis responded it is in a family trust. Chairman Anderson inquired if the apartment complex is a pet-free facility. Mr. Valavanis responded cats are allowed. Chairman Anderson inquired about the statement of him trying to purchase the property at 35 North Grove Street. Mr. Valavanis replied the house between the kennel and the apartment complex used to be owned by his family; it was sold in the 1980's; he really does not want it because it is a rundown property, but when he heard the kennel operation was expanding to a potential third property, he tried finding out what the price was; and he would do anything to keep a kennel from coming one lot closer to the apartment complex.

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Commissioner Fisher inquired what the yellow rectangle is referring to on the provided map. Mr. Valavanis responded Tires Plus; stated its bays face west; and noises are kept inside its bay areas.

Mr. Roth stated he owns the building south of the property in question; he is pro-business, but not at the expense of others; when he purchased his property in 2004, he had clarity of his and surrounding properties zoning; and was assured the property in question could be nothing more than a dog parlor with minimal noise. He advised it is unfortunate that all of this could have been avoided, if handled professionally; by giving the requested zoning does not make sense to him; there are laws against spot zoning across the country; and rezoning the property does not fit into the Merritt Island Park Place, which is a professional and quiet business community. He stated he does not want to hurt anybody's livelihood; he loves animals; and this should not be approved.

Commissioner Nelson inquired how Mr. Roth's property has been affected. Mr. Roth responded he had to move his office from the north side to the south side, because it was loud; stated he recently was declined setting up a deal to rent out that north side office, but the dog noise became a problem; and his property value is declining.

Lester Miller stated he has had a wonderful life, he is 93 and was raised on a farm in Illinois, and he knows how dogs like to be outside and not pinned up; they like to be outside and run; having a lot of dogs in one place can make a dog more anxious to get outside and it makes them bark because it wants to do something; he is confined in his apartment because he can no longer drive and due to his condition he sleeps eight hours during daytime hours; and when he opens his door to leave for church at 8:00 a.m., he hears barking dogs; and when he returns a couple hours later the dogs are still barking.

Larry W. Jefferson, Sr. stated he is a disabled Veteran and lives on North Grove Street; there are nice people and businesses in the area; his experiences walking by the dog area is frequent because he does not have a car; while he waits for the bus, he is listening to barking dogs on both sides of the street; at the end of the day there is noise when he is trying to rest; there are points in the area when he cannot stand outside to talk on the phone because the dogs are loud; and he thinks it is not fair to those in the community and they need a bigger area.

Commissioner Infantini inquired about both sides of the street having dogs and is it from Paws and Claws as well. Mr. Jefferson responded yes.

Elaine Fee stated she provides booking for Island Pet Resort and Spa; the dogs are not outside the entire day; there is a time period that they are brought in and are not outside more than three to four hours at any given point in time; and 5:00 p.m. is a usual pickup time and there is more activity just as a daycare for children would have. She stated the issue of dogs barking is still going to exist due to barking going on across the street at Paws and Claws. She advised this business has been operating in its location with the same blueprint for a long time; the current owner and business license owner has improved the property; it provides a great service and is a viable business to the community with jobs, tax money, and increases traffic to other businesses. She mentioned she live in Satellite Beach but because she is at the resort often, she shops and eats in the area there, and provides extra tax dollars. She stated to not award the rezoning is going to affect the livelihood of a lot of people; the resort is a top-notch facility, with attendance at all time; Ms. DeMasso has shown good faith to come up with a compatible solution; and she is asking the Board to change the Code and to not change the operations of a viable business. She added, there is rarely anyone walking in the area because it is not a high traffic sidewalk area; and she is wondering why someone would renovate and have a residential area in a commercial area.

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Paul Marshik stated he is a tenant at the Park Place Patio; the noise is the issue; it is not all the time, but is at all the wrong times; everyone has rights; and he would like to live his life quietly in his nice apartment because he has cancer and does not have much time left, and does not want to move again.

Debbie Wilborn stated she owns La Casa Senior Assisted Living and Memory Care and nine parcels on Grove Street; she is amazed by how people do not have their facts right; the BU-2 zoning in Merritt Park Place fronts the major thoroughways of S.R. 520 and Courtenay Parkway; there is no BU-2 zoning on the streets going through and those are all BU-1; she is adamantly opposed to rezoning parcels within the heart of Merritt Park Place into BU-2, because it changes the whole game in there because it is a quiet with some residential and businesses that are up-scale and quiet. She advised she has dumped a lot of money into La Casa; it is very successful because it is very quiet; residents are taken up and down the sidewalk in wheelchairs; they do not want to hear dogs barking; she has nothing against dogs or Ms. DeMasso; but this is not the place for these businesses because it is devaluing her business.

Karen Berggrein stated this facility is not an outdoor dog-run; she owned an 84 kennel dog-run in Naples and had a Veterinary Clinic in Brevard County; outdoor boarding runs are when dogs can let themselves in and out; this facility is not that, it is supervised; and for anyone that says anything different, does not know what they are talking about. She stated she has no incentives speaking here today because she is not a resident and does not own a business; she was a resident in the area for many years; the tire business is not quiet; the dog facility has been here for many years; and it is not like it is something new. She pointed out there is another facility across the street and they do let their dogs outside, because the animals have to relieve themselves; the people in the area are saying it has been quiet for years; it is not quiet; Mr. Roth should have complained years ago; and she has lived there and she knows. She stated she remembers the area being ran down and Ms. DeMasso has beautified her area, and she brings in a lot of dollars for the community; Ms. DeMasso places a lot of animals that would otherwise be in County shelters; and wants her to continue her willingness to keep her business going.

Deborah Smith, Esquire, stated she heard about this cause yesterday from an email she received from a Homeowners Association; she is an animal enthusiast; and that is when she started using her research tools. She stated Merritt Island is not the same as it was 30 years ago; she visited the tire shop this morning; she met a manager; had no issues while talking outside; there was no barking; and she inquired if the Board ever stood outside of a tire place and listened to pneumatic tools. She went on to say the area is completely surrounded by commercial properties; it is not a residential neighborhood; she is a little confused about the people hearing the dogs because the apartment complex is a lots distance away from the resort; and she read aloud a quote from the last meeting of Mr. DeLeo who said "Next door is a weed infested, abandoned building." She inquired if the Board would rent a place next to a weed infested, abandoned building and live there; that weed infested, abandoned building she saw this morning is all cleaned up; that is where the administrative portion of this business is to be housed; and it does not compromise property values. She mentioned her parents being landlords and she knows all about tenants and noise; stated when a person moves to a city, a block away from S.R. 520 noises are going to heard; Ms. DeMasso made something from nothing and it is an amazing place by providing a service, employing people, community service, and donating her time; and it is time for the government to help the self employed people. She requested the Board to not shut Ms. DeMasso's business down; this is the lifeblood of the County; and reiterated it is not a residential neighborhood.

Dan Fowler stated he is an attorney practicing at 25 McLeod Street, which is a property directly east of the subject property; this property has been owned since 2000 and has seven employees; when the property was purchased it was about the time that the Merritt Island Redevelopment Agency (MIRA) was created by the Board to improve the area know as Merritt

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Park Place; the firm invested several hundred thousand in developing its property; and the surrounding area has kind of followed suit. He added, the area now is concentrated with professional offices, and there are some residential properties sprinkled around in-between; it all has tremendously improved Merritt Park Place; but the firm is opposed to the change in zoning because it is incompatible with the emerging and existing pattern of surrounding development; and having adverse impacts of potential use. He stated the firms property is valued at about half of what it was when it was purchased and improved; many of the properties in the area are underwater and just beginning to recover the values; incompatible uses are not wanted to be permitted in the area that would adversely impact the value and continue use of properties; and it is imperative that the Board consider the worst case impacts of potential uses available, which is a Policy that should be followed. He went on to say this is nothing to do with whether dogs are loved or not; the MIRA hearing had testimony of a lot of people talking about the resort being a fantastic facility; and it not an appropriate place for boarding dogs in the midst of the professional offices in the area, plus setting a bad precedence. He mentioned MIRA has rejected this twice; stated he is respectfully asking the Board to give full consideration to property owners and established businesses; and pointed out Paws and Claws has only a grooming license there.

Robert Scorah stated he has owned property on Merritt Island since 1977; he is familiar with the resorts location and how rundown it was in the late 1970's and early 1980's; the improvements in the area are extraordinary; he has been a client of the resort since 2011; it is well ran, kept clean, and odor free; and the reason he continues using the resort is because he does not want his pet to kept in a crate or dog-run; the animals are allowed to play in the yard and socialize during daylight hours; and he would like the resort to remain where it is. He asked the Board to grant the rezoning, or be grandfathered in; stated the property has been in compliance; and some consideration should be given to this business owner due to the improvements of the property.

Mary Phillips advised her dog has been going to the resort for three years; it is a nice facility; she is a positive reinforcement dog trainer; and the treatment of dogs is important to her. She mentioned leaving dogs caged up all day is cruel; Ms. DeMasso is providing a safe place for dogs when the owners cannot be with them; the dogs are not running around; dog-runs are where a dog can go in and out on its own, with no one knowing that they are there; and this facility is 100 percent pro-positive reinforcement training. She advised she is working with Ms. DeMasso to look for ways to keep the noise down; she does not want to see this business be shutdown due to daytime noise; Paws and Claws has dogs howling because there is not enough room for the dogs there. She asked the Board to consider keeping the resort opened; stated the property has improved tremendously; and she is going to continue working with Ms. DeMasso and the dogs to make this a quieter area for all.

Dorothy Healey stated her dog has been going to Island Pet Resort and Spa for three plus years; the facility is nicer now than is ever used to be; there is nowhere else in Cape Canaveral to take a dog to play outside with other dogs; and the resort is a second home to her dog. She asked the Board to leave the facility open.

Lester Bullock stated he is a customer of Island Pet Resort and Spa; he is a business owner in Brevard County and has several hundred employees, with many of them using this facility; if this facility is not going to be there any longer, the next closest facilities are in Palm Bay and Melbourne; and changing the rules now after 15 years, and after money had been invested is not right. He stated mitigating the noise can be worked on by the owner for everyone to be comfortable; and he would like the Board to follow the Planning and Zoning recommendation, to approve.

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Nichole Greco stated she is the manager of Paws and Claws; her main concern about Island Pet Resort and Spa being granted the zoning is the safety of the dogs; a few of their dogs have gotten off the location; dog fights happen there all the time; controlling a pack of dogs requires a lot of interaction; and all the employees do is spray water on the dogs. She stated it makes her want to cry because at Paws and Claws the main concerns are happiness, health, and safety of the dogs; and she feels those main concerns are not Ms. DeMasso's main concern. She stated she heard that Ms. DeMasso does not live in the State of Florida; mentioned she has worked at Paws and Claws for two years; and has seen Ms. DeMasso twice. She remarked there not much professional at the resort; the employees do not wear uniforms; the dogs are vicious and when someone walks by the fence they want to attack them; Paws and Claws are a licensed kennel; and there are a lot of true and false statements being made today about the area. She stated Ms. DeMasso has consistently harassed Paws and Claws by having her employees call Animal Services and the Sheriff's Office about unreal situations; there was an incident with the resorts of two dogs been on the loose for 20 minutes running down the side of S.R. 520; and Paws and Claws has had a lot of the resorts clients come to Paws and Claws. She went on to say she is the person who is in the yard with the dogs at all times and they are not close to a street or a business because two building are owned, and the yard is in the middle of those two buildings; the top, bottom, and sides are fenced; they just expanded to have a huge yard; and the resort does not have enough space. She stated Paws and Claws customers are scared of the resorts dogs because they only have a four foot fence along the property line; people come from the apartment complex asking what they should do because they see the resorts employees hitting dog; she has worked at six other kennels and those experiences are nothing like her experiences with Island Pet Resort and Spa; and it does look nice on the outside.

Commissioner Bolin Lewis inquired if she is classified as a kennel and keeps dogs overnight at your location. Ms. Greco responded affirmatively. Commissioner Bolin Lewis inquired if she has a large area that is the outside play area for the dogs. Ms. Greco responded they have six areas and five indoor areas as well. Commissioner Bolin Lewis inquired on the outside playing area, how many dogs does she has during a period of time in the day. Ms. Greco replied the reason she looks so messy is because she came from work, and today they only had eight. Commissioner Bolin Lewis inquired what most dogs, in the two years she has been there, have been outside at one time. Ms. Greco advised she does not allow more than 15 dogs in that one outside area.

John Sperling stated it was mentioned this went before MIRA twice; the reason was the first time Mr. DeMasso was not notified properly of the meeting, so her side was not heard; and that is why it went through twice. He went on to say his big issue is they said since 2006 they have called Animal Control and Code Enforcement complaining; being Deputy Sheriff for 25 years, he knows it is investigated; it had to be investigated and she was told she was in compliance; and in the end of 2012 and early 2013 they are saying they are out of compliance. He pointed out someone has changed the definition of a dog run, and that Ms. DeMasso is out of compliance. He stated he was an ex dog handler in the Air Force and the Sheriff's Office, and to him a dog run is an area a dog can freely go in and out with its own free will, not a large yard where the dogs are maintained; as far as the video that was shown, he did not see 30 dogs there; and dogs will bark if someone is hanging over the fence with a video camera. He advised he does not want to get into it with Paws and Claws, he does not know them, but they are competition across the street. He stated it is not a reason to possibly shut someone down and lose possibly 50 percent of her business; he attempted to bring his dog to Remington in 2001 or 2002, but he did not bring them there because it was too expensive; but his purpose was since he was a German Sheppard puppy that needed to be outside all day. He added, he worked that area in Merritt Island while being a Deputy Sheriff most of the time; he has seen it go from being a very bad area with a lot of drugs and vice issues to a nice area now; Ms. DeMasso has cleaned it up; and it is an improvement to the area. He stated Ms. DeMasso has had special needs people

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work there and help with the dogs; she is working with the apartment complex; and he suggested the Board not shut the business down.

Commissioner Infantini inquired if the Board is calling the play space a dog run; and she wants to clarify. Ms. Fox replied there has never been the ability to have any activity outside at this location. Commissioner Infantini inquired how any dog is allowed to be at a grooming facility if they cannot have dogs outside; and stated it does not go with any type of logic that the County would allow a grooming facility without a fenced in area to allow the dogs.

Melinda Morgan-Stowell stated she has been going to this facility through three owners and she has seen the changes that have been made to this facility through the years; one of the things that have not changed is the use of the property, it has always been used with outdoor play areas; Paws and Claws' yard is facing Grove Street; the dogs are not mistreated; she has been with these people for years; and when her dog suffered seizures, they got him to the vet immediately. She went on to say her dog goes to day care every single day because she works long hours; she knows the dog is well cared for, because she has dropped in for inspection; she knows the dogs are not allowed to bark consistently; and they use humane methods to silence the dogs. She noted she does not understand because of the zoning difference the business may be taken down, but it does not change matters with the facilities that is allowed to have dogs, which is a matter of 40 feet. She stated the Planning Commission seemed to come up with a good compromise, keeping the middle building between the apartment complex and the existing facility as a buffer zone seems to be a good idea.

Amy Elkavich stated she is here on behalf of Maggie and Sophie, her two dogs; they have a lot of energy; they live in a condo where dogs cannot enjoy off lease time with someone watching out for them; at doggie daycare they can do that safely and socialize with other dogs; and Sophie and Maggie have been going to doggie daycare for almost a year now. She stated improving the area by cleaning up the property lot next door and increasing the financial opportunities for this business, these things are smart decisions; this is a clean, safe, and extremely friendly business that is convenient for her to use; they did online research when they moved here and found this business had the best reviews, and those reviews were spot on; and the staff is wonderful and their dogs love them. She asked the Board to vote in favor of rezoning.

Emily Rios stated she is an employee of Island Pet Resort and Spa; she stated the dogs walking out in the parking lot were strays; and she went out in the street to get them. She stated they kept them on the property until Animal Control came by. She advised as an employee, it is one of the best facilities she has ever seen; she has looked at other daycare's in Orlando, and some of them are trash; every employee who works there care about and love the animals; it is a place for them to play instead of being caged up at home while their owners are away; and to shut a place like that down would tear her apart.

Debbie Rose stated those buildings in question were a terrible eyesore; until recently the apartment building was not very attractive either; and it did not look like anyone lived there. She stated the building and yard looks better with just some upkeep. She stated she takes her dog Rosy to daycare there; she does not have a place for her to run; she loves going; and she has become more tolerant of other dogs.

Robin Andrews stated she is a Manager of Island Pet Resort and Spa; the tenants at the apartment buildings chose to live there knowing there were two existing kennels nearby; they try to keep the noise down for everyone; they have two large yards that are fenced in with attractive chain link; she was raised running a kennel; and there were indoor/outdoor runs. She stated the yards are too big to call runs or kennels; and there is plenty of room for the dogs to run and play. She asked the Board to grant the zoning change.

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Mr. Kinberg stated there was one witness that said the only areas that were BU-2 were areas that were on Merritt Island Causeway; this whole block behind her is BU-2 block from end to end; and even though it is labeled as BU-1 behind her building, it is being used as BU-2. He showed the Board a photo. He stated they could have fought this through Code Enforcement proceedings because up until 2013 this has been an outdoor pet resort; it has always been zoned BU-1; and it has always had an outdoor play area. He pointed out when Ms. DeMasso applied for her business license, she was told she could have the outdoor play areas but she could not have the indoor/outdoor transition areas; what the County has done is take an undefined term, defined it in one way for at least 12 years, and because of one complaint, it wants to change that definition. He stated the rezoning route has the least impact to the County; if it is rezoned to BU-2, it is within the Code; a noise violation is habitual or incessant noise; and there are witnesses who say it is not all of the time. He stated Planning and Zoning voted in favor of this recommendation. He stated they close down at 6:00 p.m. for outside dogs; they are not out before 7:00 a.m.; they agreed to put in a three foot vegetative buffer zone; and this binding development plan says the only BU-2 uses that can be used for pet care and outdoor pet daycare.

Commissioner Infantini inquired how much money the owner of the shop has received from the Merritt Island Redevelopment Association for improvements to her property. Ms. Demasso responded they could have asked for the money but she has always felt very strong about the County, she did not need, so she did not take it. Commissioner Infantini stated the other property owner of the apartments did receive funding from the MIRA; she does not know if anyone were residing in those apartment during renovations about a year and a half; she could only find complaints from July; and she is not even sure why she is here. She went on to say she read through all of this and she misunderstood, she thought the applicant was asking for something, when in fact the County changed the rules in the middle of the game; and the applicant is just asking for permission to stay in business. She pointed out Ms. DeMasso is consistent with neighboring properties; the one gentleman who spoke is actually closer to the other kennel, yet he is not comfortable with Ms. DeMasso's, which is further away; and she does not see any way the Board could not approve it, because it is consistent with the adjacent properties. She noted she does not really call that a residential area; they are next to a tire store; and the other individuals have a kennel.

Commissioner Nelson stated Commissioner Infantini has not read the plan for Merritt Park Place; the Board in 1996 identified this for specialty retail service and office establishments; but more importantly, it says MIRA has determined this community can function viably as a residential and commercial mixed use area; and it was always intended to be a mixed use area. He went on to say the residential was there long before the dog groomer. Mr. Kinberg stated the kennel was there when it was zoned residential. Commissioner Nelson stated it is a redevelopment area; it means its goal is to go towards a mixed use; and some of it already exists, there are other residential areas.

Ms. DeMasso stated when she was not notified of the MIRA meeting, they had made an impact on their own on the negative side; the next time she went in, the opinions were already in their heads; and it is not an ugly place.

Commissioner Nelson stated the worst part of this whole process is character assassination, and it has gone on, on both sides; from the speakers who support the applicant, as well from the others side who do not support it. He stated this is a compatibility question about the business use, BU-2, adjacent to residential; that is what the Board has to decide; and it ultimately comes down to a BU-2 use immediately adjacent to residential. Mr. Kinberg reiterated it is a compatible use; a supervised outdoor play area is not a dog run; it is a well ran business; and it should be rezoned. He went on to say Ms. DeMasso has spent a lot of her own money on the property; and this is a private dispute to try to gain advantage. Commissioner Nelson inquired

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how many dogs Ms. DeMasso is talking about. Ms. DeMasso responded yesterday she only had six dogs, and two large dogs in the back; during the week there are not as many; and she can have up to 30 dogs. Commissioner Nelson inquired if she has established a maximum. Ms. DeMasso responded she has not had the issue, other than she does not allow vicious dogs and certain breeds; and she keeps the dogs down to a minimum.

Commissioner Bolin Lewis stated she has dogs in the play yard and dogs that stay overnight; and inquired if the dogs in the play yard, is there a spot indoors for them, and are there kennels for every dog she has on the premises every day. Ms. DeMasso responded she has two play rooms that when it is rest time, the dogs go into the rooms to rest. She stated she could not put more than 20 dogs in a room.

Commissioner Fisher inquired if the County was aware of the business and was there just a technicality, and did the County not believe dogs would be outside playing and going to the restroom. Assistant County Attorney Morris Richardson replied in BU-1 zoning, a dog kennel is not permitted; there is a kennel that is a structure and one that is a boarding operation, and that is not permitted in BU-1 period whether it is outside or inside; the business tax receipts that have been signed off for here, they specifically list the BU-1 conditions; and the County believed no outside activities was occurring. He went on to say the issue for this Board tonight is if the BU-2 is consistent and compatible with the neighborhood with regard to the zoning request, regardless of any of these other issues; and if a person is running an outside doggie daycare, it is inconsistent with the current zoning.

Commissioner Infantini inquired if there has been a difference in the use. Mr. Valavanis responded the barking does not bother him; he is concerned with the change in the zoning, the character, and making it incompatible with the mixed use of professional offices and residential use; and he is very concerned with the effect it has on the value of the property.

Commissioner Fisher inquired if Mr. Valavanis was aware of the Binding Development Agreement where the applicant's uses will be limited. Mr. Valavanis responded no.

Mr. Kinberg stated the public records show this has been licensed as a dog resort since 1999.

Commissioner Fisher stated there is a collar his daughter has on her dog that if he barks, runs away, or gets out of distance, he will get a little zap. Ms. DeMasso stated they are thinking about a panel that can go between the street and the fencing so the animals will not see the people walking by; the barking is not all of the time; they are outside playing with the dogs; and the Board is only hearing about the barking, but it is not like that all day. She added, the dogs go inside for rest time for two and a half hours every day; they start arriving at 7:00 a.m.; they put the dogs up at 11:00 a.m.; they put them back out around 2:30; and the parents pick up the dogs from 2:30 p.m. on. She stated she is willing to do whatever she can, she does not want to close down a dream she has been putting together. Commissioner Fisher stated he does not think Ms. DeMasso went into business to break the rules or that she was trying to get around a Code; he is trying to figure out how to keep the character of the neighborhood but at the same time keep the business; and to be sensitive to the neighbors.

Chairman Anderson stated the applicant agreed to pull the Unit 35 and keep it BU-1, which is next to residential; he would rather have two dog kennels next to him than a tire changing place; maybe there was some misunderstanding about the dog run; and the applicant is asking to comply with the law with BU-2 zoning. He stated there is already a dog kennel across the street that can hold far more dogs than the applicant; and his vote will be in favor of the rezoning.

Motion by Commissioner Infantini, seconded by Commissioner Anderson, to approve request by BD910, LLA, subject to a BDP.

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Commissioner Nelson stated the Board is just setting Ms. DeMasso up; what is going to happen is her dogs are going to be outside and will bark; and there will be complaints and BU-2 does not fix that. He went on to say she will find herself out of Code compliance because of the barking dog issue; she is asking the Board to believe that only certain hours the dogs are going to bark when they are outside; and he just does not believe that. He pointed out if it was not for the barking, no one would have been called; and that problem cannot be solved by rezoning the property. He stated it is a mistake to have Ms. DeMasso believe that if she receives the votes it will solve her problems; it is a mistake for the Board to say because a tire place makes more noise for it to make bad decisions; that is troubling to him as well; and the Board should not use previous decisions that were potentially in error as a justification to make more of those. He noted if Merritt Park Place is ever going to make that transition to mixed use, they have to understand they have to keep it as a neighborhood that has residential as well as business use; he does not know how having dogs outdoors is village character; it would not be done in downtown Melbourne, Cocoa, or Titusville; and it is just inconsistent. He stated he is not supporting the motion.

Chairman Anderson stated he understands why they put those plans in place, but plans and future ideas on how something should look aesthetically or be zoned does not outweigh the fact he will not put a lady who has put her life's savings in a business out of business because the Board does not like the way it looks or sounds. He stated it is consistent with the neighborhood; and the only thing inconsistent is the residential portion.

Commissioner Nelson stated it is a criterion that cannot be used for evaluation purposes; he is making a decision on something the Board is not supposed to consider. Chairman Anderson stated he is considering consistency.

Mr. Richardson inquired if he can have a clarification on the motion; stated there is a mention of a BDP; and inquired if that is the BDP that was submitted by the applicant's attorney.

Commissioner Fisher inquired if the County Attorney's office has seen the BDP. Mr. Richardson replied he has reviewed it for legal form and content, and it was satisfactory; but it is up to this Board whether to approve it and under what conditions. Mr. Richardson read paragraph four of the BDP to the Board regarding the conditions. He stated the property at 15 and 25 will go to BU-2, 35 will remain BU-1; the outside play area will be limited to the 15 and 25; the applicant will establish a three-foot landscape buffer at the northern boundary at 35 North Grove Street; and the outside play area will be limited to use between 8:00 a.m. and 6:00 p.m. during weekdays, and on Saturdays 9:00 a.m. to 6:00 p.m., and on Sundays 9:00 a.m. to 12:00 p.m. and 3:30 p.m. to 5:30 p.m. He stated the Planning and Zoning Board recommended some of the items in the BDP, and some items were volunteered by the applicant. Commissioner Fisher inquired if the applicant gets complaints what are the game plans. Ms. DeMasso advised she will deal with each of those issues as they arise; and she is hoping the tenants and owner will work with her, and not continue this.

Commissioner Infantini stated she does not understand why the other kennel has not had complaints.

Commissioner Bolin Lewis inquired if it is possible to do a buffer along the entire area where it is exposed for the dog to interact with the general public on the street side or the other location where she has fencing. Ms. DeMasso stated there is some type of plastic she can put on the fence that keeps the dogs from seeing people and cars pulling up. Commissioner Bolin Lewis inquired if that can be placed in the BDP, besides the three-foot buffer, that will be done. Ms. DeMasso stated in the front yes, but in the back is the whole building of the tire company. Commissioner Bolin Lewis stated she would like to see that added to the BDP.

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Commissioner Fisher inquired if she can get some height on the three-foot buffer. Ms. DeMasso advised it will grow; her concern is the expense; she paid a lot of money to clean up the trash and debris; and she probably took away some of the barrier that was keeping the sound in.

Chairman Anderson stated Commissioner Bolin Lewis wants to add in the visual block on the chain link on the front of the fenced area as a condition of the BDP. Commissioner Bolin Lewis stated where appropriate to block the sight line.

Commissioner Nelson stated if this is going to pass, he would like applicant to stipulate to if she decided she does not love dogs anymore and decides to do something else, that the property be placed in a more appropriate use for the future, like a professional office or something along that line so she would have the ability to do this while she is there, but if she decides to move to a different place because she wants to expand, that the future uses of that property would be more consistent.

Ms. DeMasso stated she has no goals in doing that but at the same time she also looks at the value in her business is the income of the business; the property values in Merritt Island are terrible. Commissioner Nelson stated that would not changed; what he is saying is when she is no longer doing that; and his fear is that she runs a good business, but the next one may not. Chairman Anderson stated upon sale of the property. Ms. DeMasso stated when she shows her financials to someone, they are basing their decision on the income.

Commissioner Infantini amended her motion to include the visual block on chain link fence at the front of the building as appropriate to block the sight line.

Chairman Anderson called for a vote on the motion. Motion carried and ordered. Commissioner Nelson voted nay.

There being no further comments or objections, the Board approved BD910, LLC - (Edward J. Kinberg) requests a change of classification from BU-1 to BU-2 on 0.43 acre, located on the west side of Grove Street, north of Merritt Island Causeway, subject to Binding Development Plan as amended by the Board to include visual block on chain link fence at the front of the building as appropriate to block the sight line.

RESULT:	ADOPTED [4 TO 1]
MOVER:	Trudie Infantini, Commissioner District 3
SECONDER:	Andy Anderson, Chairman/Commissioner District 5
AYES:	Robin Fisher, Trudie Infantini, Mary Bolin Lewis, Andy Anderson
NAYS:	Chuck Nelson

ITEM V.B.3., (13PZ-00065) - CHARLES T. AND ELLEN M. SALVAGGIO - REQUESTS A CHANGE OF CLASSIFICATION FROM EU TO RU-1-13 ON 0.25 ACRE, LOCATED ON THE NORTH SIDE OF MELODY LANE, APPROXIMATELY 465 FT. WEST OF NORTH TROPICAL TRAIL, IN MERRITT ISLAND. (NO ASSIGNED ADDRESS. IN THE MERRITT ISLAND AREA)

Cynthia Fox, Planning, Zoning, and Enforcement Manager, this is a rezoning from EU to RU-1-13; this is also on Merritt Island on North Tropical Trail; this was approved unanimously by the Planning and Zoning Board; but the only concerns they had is the character of the surrounding residential area is a zoning classification that requires larger homes to be a minimum of 2,000 square feet with larger setbacks. She went on to say she had a discussion with the applicants regarding to have the zoning classification but still maintaining the character of the area and adhering to the EU zoning classification. She added, EU requires a 2,000 minimum square foot house in comparison to the RU-1-13, which requires a minimum of 1,300 square feet.

The applicants advised the Board they will stipulate to a home of 2,000 square feet to maintain the character of the area.

There being no further comments or objections, the Board approved Charles T. and Ellen M. Salvaggio's request for a change of classification from EU to RU-1-13 on 0.25 acre, located on the north side of Melody Lane, west of North Tropical Trail, with a stipulation to limit the minimum house size to 2,000 square feet to maintain the character of the area.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Chuck Nelson, Commissioner District 2
SECONDER:	Robin Fisher, Commissioner District 1
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM V.B.4., (13PZ-00066) - EDWIN GONZALEZ & KRISTINA M. GONZALEZ - REQUESTS A SMALL SCALE PLAN AMENDMENT (13S.09) FROM PLNIP TO RESIDENTIAL 1, AND A CHANGE OF CLASSIFICATION FROM PIP TO RR-1 ON 1.34 ACRES, LOCATED ON THE NORTH SIDE OF D'ALBORA ROAD, 560 FT. EAST OF N. COURTENAY PARKWAY. (1360 D'ALBORA ROAD, MERRITT ISLAND)

Cynthia Fox, Planning, Zoning, and Enforcement Manager, stated this request includes a Small Scale Amendment Classification; with a change from PLNIP to Residential 1, and a change of classification from PIP to RR-1 on 1.34 acres; there is an existing home on this site, they gained the property prior to the Future Land Use change to the Planned Industrial; and the applicant wants the smaller residential setbacks.

There being no further comments or objections, the Board approved Edwin and Kristina Gonzalez's request for a Small Scale Plan Amendment (13S.09) from PLNIP to Residential 1, and a change of classification from PIP to RR-1 on 1.34 acres, located on the north side of D'Albora Road, east of North Courtenay Parkway; and adopted Ordinance No. 13-034, amending Article III. Chapter 62, of the Code of Ordinance of Brevard County, entitled "The 1988 Comprehensive Plan", setting forth the Eighth Small Scale Plan Amendment of 2013, 13S.09, 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(D), 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:	Chuck Nelson, Commissioner District 2
SECONDER:	Trudie Infantini, Commissioner District 3
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM V.C., PUBLIC HEARING, RE: ORDINANCE CREATING THE AU(L) ZONING CLASSIFICATION

Chairman Anderson called for a public hearing to consider an ordinance creating the AU(L) zoning classification.

Cynthia Fox, Planning, Zoning, and Enforcement Manager, stated this is an ordinance creating the AU(L) zoning classification that addresses the uses of agricultural pursuits of property of a non-commercial nature; it will still fall within the AU requirements for setbacks, setbacks for barns, and different things like that; and it is just a kind of in between AU and RR-1 zoning classification as to not get bound down to so many binding development plans.

There being no further comments or objections, the Board continued the public hearing to consider ordinance creating an AU(L) zoning classification to the second public hearing at the October 22, 2013, Board meeting.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
SECONDER:	Chuck Nelson, Commissioner District 2
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM V.D., PUBLIC HEARING, RE: TRANSMITTAL OF COMPREHENSIVE PLAN PACKAGE 2013 - 2 PLAN AMENDMENTS

Chairman Anderson called for a public hearing to consider transmittal of the 2013-2 Comprehensive Plan Amendments, including one private application for Harbortown Marina LLC (2013-2.1) and two County-initiated amendments.

Stuart Buchanan, Planner II, Planning and Development Department, stated the first item includes three motions, the rescission of the Development of Regional Impact (DRI), the change in land use, and the adoption of the new development order; and the two other Comprehensive Plan Amendments 2.3 and 2.3 are one motion.

There being no further comments or objections, the Board approved language for the 2013-1 Comprehensive Plan Amendment Package, Plan Amendment 2013-2.1, as recommended; and the Board further adopted Resolution No. 13-183, and executed Developer's Agreement with Harbortown Marina-Canaveral, LTD. rescinding the Harbortown Marina Development of Regional Impact (aka Abby Marina).

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Chuck Nelson, Commissioner District 2
SECONDER:	Robin Fisher, Commissioner District 1
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

There being no further comments or objections, the Board adopted Plan Amendment 2013-2.2 as recommended.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Chuck Nelson, Commissioner District 2
SECONDER:	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

There being no further comments or objections, the Board adopted Plan Amendment 2013-2.3 as recommended.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
SECONDER:	Chuck Nelson, Commissioner District 2
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM V.E., AMENDING SECTION 62-2117 “PARKING OF BOX TRUCKS ON RESIDENTIAL LOTS” (SECOND READING)

Chairman Anderson called for a public hearing to consider an ordinance amending Section 62-2117, "Parking of Box Trucks on Residential Lots".

Cynthia Fox, Planning, Zoning, and Enforcement Manager, stated this stemmed out of a Code Enforcement case; it came before the Board in March and April; staff has progressed it through the process; and the Building and Construction Advisory Committee and the Local Planning Agency (LPA) have reviewed the ordinance.

Jude Donaldson stated she read in the newspaper October 2nd that their County Commissioner needed their help for the unincorporated areas he is over; she opposes the overnight parking of step vans and box trucks for obvious reasons, safety, roadways, and so many communities going back to the 50's and 60's; and the roadways cannot handle three way traffic. She advised the Board she opposed the overnight parking.

Bruce Moquin stated he feels at a disadvantage because he was not invited to the first reading of the ordinance; and if he were to be asked if he thinks the Code should be changed to include box trucks, his first response would be no. He showed the Board photos on the overhead projector. He stated he was told he could not have a box truck but it would be fine to have a UPS truck; it took him filing an appeal in a higher court; if the Code is changed to allow the box trucks, it will have larger trucks included in the definition; and both of the larger vehicles are in compliance. He inquired before he filed his claim, did Chairman Anderson realize a step van problem in his District. Chairman Anderson stated they have had very few complaints. He

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inquired if Commissioner Infantini realized a step van problem. He went on to say the Board may be fixing the wrong thing. He stated the only answer to this is a weight class limit; the Board drew a line in the sand with the step van; he was on his side of the line but he still got in trouble; and the ordinance cannot be based on the name of the vehicle. He asked the Board not to write the ordinance to outlaw step vans or box trucks, to write it for a weight class limit.

Commissioner Infantini inquired how Mr. Moquin would feel if the County gave him a Conditional Use Permit so it does not change the ordinance; and inquired if he could have a CUP. Mr. Moquin stated that is not fair to the rest of the County.

Commissioner Nelson stated Mr. Moquin got into Code issues because his neighbors objected; and not everyone likes what he parks in his driveway. Mr. Moquin stated they do not dislike his truck, they dislike him. Commissioner Nelson stated the rules since Mr. Moquin has lived in his home said he could not have that truck there.

Mary Hillberg stated as a board member of the North Merritt Island Homeowners Association she represents this Association for this item; they have over 7,000 residences in North Merritt Island; and she is also a member of the Sunset Lakes Homeowners Association, and although gated and private, they support the safety and property values of all of the surrounding communities. She went on to say this proposal may well devalue the property of the subject neighborhoods, as well as the surrounding neighborhoods; and visual impressions are very lasting. She pointed out it can adversely affect the character and quality of life in unincorporated communities; this is a compatibility issue; and even though there are a lot of people out of compliance, it does not matter as it is the wrong thing to do. She stated this change obstructs visibility; many of the older neighborhoods have small lots; and the citizens of unincorporated Brevard County depend on the Board to protect them with appropriate parking restrictions, consistent and similar to those enjoyed by the cities. She requested the proposal be denied.

John Schantzen stated he rented an 18-foot box truck and he drove a car into the 18-foot box truck so he could pack furniture on top of it to move his car along with his furniture to a new location; that shows a person it is a whole lot wider than a car; and these streets, especially the older neighborhoods, the streets are narrow. He stated it is a safety issue; it leaves blind spots where children play; and it is ill advised in neighborhoods to allow such vehicles. He stated he uphold people's property rights until it starts impinging on his property rights.

Arnold Graham stated he is here to urge the Board to oppose the change in the ordinance; he does not think they need to have the ability to park bigger trucks, or trucks at all, in the residential neighborhoods; there are plenty of places where trucks can be parked off sight; and there are businesses that allow truck parking. He stated sometimes there are cars parked on each side of the street and a truck cannot get through; it adds to the visual deterrent for people to keep up their property values. He provided pictures to the Board. He asked the Board not to allow the change.

Commissioner Nelson stated he wants to thank the Board for allowing him to contact the community so they could come out tonight; the Commissioners have received a lot of emails from all over the County; the community was stunned by what happen the first time around; he cannot go back and fix the motor home issues; but the Board needs to draw the line with expanding the access to commercial vehicles in neighborhoods.

Motion by Commissioner Nelson, seconded by Commissioner Bolin Lewis, to deny ordinance amending zoning regulations to permit the parking of single box trucks or step-van, not exceeding 24 feet in length, on a residential lot, as long as the vehicle is parked within the confines of the lot.

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Commissioner Fisher stated he has been surprised with the community outpouring; if the Board does not allow the ordinance change, there will still be RV's being parked; and it does not address the RV issue at this point in time. He stated he has been struggling to clean up North Brevard County; he understands property rights, but when a person is fighting for jobs and people are driving around looking for housing, it is not an image that plays well; and he is flipping on this one because he does not like where his District is going.

Commissioner Nelson stated the Board did get some relief with the RV's by moving them off of the property lines. Commissioner Fisher stated he has not had a lot of people wanting him to fight for this ordinance change.

Chairman Anderson called for a vote on the motion. Motion carried and ordered. Commissioners Anderson and Infantini voted nay.

There being no further comments or objections, the Board denied ordinance amending zoning regulations to permit the parking of a single box truck or step-van, not exceeding 24 feet in length, on a residential lot, as long as the vehicle is parked within the confines of the lot.

RESULT:	ADOPTED [3 TO 2]
MOVER:	Chuck Nelson, Commissioner District 2
SECONDER:	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
AYES:	Robin Fisher, Chuck Nelson, Mary Bolin Lewis
NAYS:	Trudie Infantini, Andy Anderson

Upon consensus of the Board, the meeting adjourned at 8:20 p.m.

ATTEST:

ANDY ANDERSON, CHAIRMAN
BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

SCOTT ELLIS, CLERK