

Brevard County Board of County Commissioners

*2725 Judge Fran Jamieson Way
Viera, FL 32940*



Minutes

Thursday, September 3, 2020

5:00 PM

Zoning

Commission Chambers

A. CALL TO ORDER 5:02 PM

Present: Commissioner District 1 Rita Pritchett, Commissioner District 2 Bryan Lober, Commissioner District 3 John Tobia, Commissioner District 4 Curt Smith, and Commissioner District 5 Kristine Isnardi

The Board of County Commissioners acts as a Quasi-Judicial body when it hears requests for rezoning and Conditional Use Permits. Applicants must provide competent substantial evidence establishing facts, or expert witness opinion testimony showing that the request meets the Zoning Code and Comprehensive Plan criteria. Opponents must also testify as to facts, or provide expert testimony; whether they like, or dislike, a request is not competent evidence. The Board must then decide whether the evidence demonstrates consistency and compatibility with the Comprehensive Plan and the existing rules in the Zoning Ordinance, property adjacent to the property to be rezoned, and the actual development of the surrounding area. The Board cannot consider speculation, non-expert opinion testimony, or poll the audience by asking those in favor or opposed to stand up or raise their hands. If a Commissioner has had communications regarding a rezoning or Conditional Use Permit request before the Board, the Commissioner must disclose the subject of the communication and the identity of the person, group, or entity, with whom the communication took place before the Board takes action on the request. Likewise, if a Commissioner has made a site visit, inspection or investigation, the Commissioner must disclose that fact before the Board takes action on the request. Each applicant is allowed a total of 15 minutes to present their request unless the time is extended by a majority vote of the Board. The applicant may reserve any portion of the 15 minutes for rebuttal. Other speakers are allowed five minutes to speak. Speakers may not pass their time to someone else in order to give that person more time to speak.

Chair Lober stated he understood Commissioner Smith was on the line.

Commissioner Smith stated that would be correct.

Eden Bentley, County Attorney inquired if Commissioner Smith could see the Commissioners on the dais.

Commissioner Smith replied he can.

Ms. Bentley inquired if Commissioner Smith could see the screen behind the Board.

Commissioner Smith replied he can.

Ms. Bentley stated to applicants and speakers if they have documents that have not been previously presented to staff to put in the packet, they could present those documents to the Commissioners and Commissioner Smith by using the projector to the right of the lectern that will be used, and the projector will put the documents on the screen behind the Commissioners and Commissioner Smith can see it there.

Chair Lober stated unless someone had an objection, he would just skip all the way down to Item G., Public Comments; and heard no objections.

G. PUBLIC COMMENTS

Richard Heffelfinger stated his topic was solid waste; he has reached out to just about everyone on the Board, as they received his emails; he wanted to speak on September 25, but he had the incorrect time; he wanted to take the opportunity to vent because after the meeting,

he was disappointed because he got the notice of the price increase for Waste Management; and he thought he should present some stuff or this is going to cost him. He stated it is really not a lot, depending on how much money one makes; he sent the Commissioners an objection to passing that as he thought it was an objection to passing the contract; he did not realize it was just forwarding documentation; he was not sure what the public hearing was; he thought the contract has been let, the horse has left the stable; that makes him a bit upset; and he apologized to the Commissioners for sending snarky comments to anyone who voted yes for that, as he thought the vote was to engage that contract. He added he had a lot of material to present, which he sent some of to the Commissioners for the public record; he sent an objection as soon as he could because he thought he wanted to give the Board time to look at it; if he had come to speak maybe the Board would have acknowledged the fact that it saw his objection; he objected to many things that he did not have all the information on since he has only been working on this since receiving the notice, which was not much time; and he has had more time since then and he would like the Board to consider the PowerPoint slide of some ideas he had. He stated he would like the opportunity to discuss that in the future; he knows he sent the correspondence late, and that was his bad and will do better in the future; he thinks he has some ideas but they do not mean anything if the contract is a done deal; he had some ideas about how to negotiate which he made comments that probably offended people as he accused the negotiation team of not being qualified; and he did not get an answer to that. He went on asking if the negotiators had any negotiation training since it is taking on a multi-billion dollar contract and those guys do not play around; he would not have gone in against them and he has negotiated contract before at his work; it is talking about a \$150 million or more contract, for seven years, and wanted a 29 percent increase in one year; and he asked why as he did not remember the cost of living going up 29 percent. He asked why they needed 29 percent and was it because they were losing money; and he just had a lot of questions.

Chair Lober stated he had a couple of thoughts without getting too far off-topic with what is on the Agenda; he does not think anyone besides Waste Management is happy the rates went up as they did; it may not be fair, but it is stuck with the bids it gets; he wishes it did not go up; it is not that the Board benefits or has any sort of advantage on the basis of that; and he stated he would be happy to chat with Mr. Heffelfinger after the meeting, as this should be a relatively quick meeting.

H. PUBLIC HEARINGS

Chair Lober stated he thinks the three Items are going to be relatively uncontroverted so he does not know that a tremendous amount of detail is needed; and if one of the Commissioners wants more detail, certainly they could ask staff and it will have as much discussion as it would like.

H.1. Skyview Plaza, LLC (Paige Lane) Requests a CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in Conjunction with a Bar, in a BU-1 Zoning Classification (20Z00017) (Tax Account 2607202)

Chair Lober called for a public hearing on a request by Skyview Plaza, LLC (Paige Lane) for a Conditional Use Permit (CUP) for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a bar, in a BU-1 zoning classification.

Chair Lober asked staff if there was some concern with respect to internal access to the adjacent business.

Commissioner Smith stated it was suggested by staff that perhaps a visual buffer and acoustical screening would be in order for the outdoor patio separating it from the residential lot

and he would like to see that happen and also eliminate any possible internal connection between this franchise and the adjoining adult entertainment business.

Chair Lober stated the applicant was there, Paige Lane, and asked if that would be acceptable, and if it is, it sounded like he would get it.

Mr. Lane stated currently, there is no connection between the two and there is no planned connection; there was at one time, but seeing the inherent difficulties in doing that, it is no longer in the plan; even the two decks that are behind both establishments have a physical separation between them; and the only way to traverse from one business to the next is to go out to the front and go through the front door.

Chair Lober asked Commissioner Smith if that was sufficient.

Commissioner Smith replied that gets him where he wants to be as he wanted to eliminate any possibility that it would happen or would be in the future.

Chair Lober asked if he wanted it to be a condition in the CUP.

Commissioner Smith replied yes, just to prevent anything from being changed in the future without coming back to the Commission.

Chair Lober asked Mr. Lane if that was alright.

Mr. Lane stated it was agreeable to all parties.

Chair Lober stated to Commissioner Smith that he would take that as a motion on his behalf if that was alright.

Commissioner Smith replied yes, and to include the visual buffer and acoustical screening.

There being no further comments or objections, the Board approved a CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a bar, in a BU-1 zoning classification with the condition of no internal connection now or in the future.

Result: Approved

Mover: Curt Smith

Secunder: Bryan Lober

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

H.2. Health First, Inc., Requests Transmittal of the 2020-1.1 Large Scale Comprehensive Plan Amendment to Permit a Countywide Increase in Floor Area Ratio for Community Commercial Designated Sites from 1.00 to 1.75 Within a PUD Zoning Classification (20Z00069)

Chair Lober called for a public hearing on a request by Health First, Inc. for Transmittal of the 2020-1.1 Large Scale Comprehensive Plan Amendment to permit a Countywide increase in Floor Area Ratio for Community Commercial designated sites from 1.00 to 1.75 within a Planned Unit Development (PUD) zoning classification.

Commissioner Isnardi stated there is a conflict on this Item based on the informal opinion and soon-to-come formal opinion from the Ethics Commission because she is employed with Health First, Inc. and cannot vote or discuss this matter or any matters similar to this; and she will fill out the paperwork and file it with the clerk.

Chair Lober stated he has a disclosure as well; on June 17, 2020, and June 23, 2020, he had an email from Kim Rezanka with documents attached; on June 24, 2020, he had a video meeting with Kim Rezanka, Tom Davis, the System Vice President for Health First, Inc., and Steve Crisafulli; and on August 3, 2020, he had a video meeting with John Hopengarten. He added it looks like staff noted there was an email on the prior Item but he did not see that and does not think a disclosure is necessary on that.

Commissioner Pritchett stated she had a video meeting as well with Tom Davis, Kim Rezanka, and Steve Crisafulli.

Chair Lober stated this is in his District and he has no problem with what has been proposed; he would welcome a motion; in moving forward, at the time the PUD plans are submitted, he would really like to see a parking study; he knows that Merritt Island, especially on the north side of SR 520, has a lot of problems with parking and he wants to make sure that by allowing Health First, Inc. to go vertical, that there is ample parking; and presuming it gets that and there are not concerns raised by staff, he welcomes a motion to pass H.2.

There being no further comments or objections, the Board approved the Transmittal of the 2020-1.1 Large Scale Comprehensive Plan Amendment to permit a Countywide increase in Floor Area Ratio for Community commercial designated sites from 1.00 to 1.75 within a PUD zoning classification.

Result: Approved

Mover: Rita Pritchett

Secunder: Bryan Lober

Ayes: Pritchett, Lober, Tobia, and Smith

Abstain: Isnardi

H.3. Public Hearing Re: Amendment to Chapter 62, Article VI, Zoning Regulations to Allow Administrative Approval of On-Premises Consumption of Alcoholic Beverages for Restaurants\Snack Bars (Second Reading)

Chair Lober called for a public hearing on an Amendment to Chapter 62, Article VI, Zoning Regulations to allow Administrative Approval of on-premises consumption of alcoholic beverages for restaurants/snack bars.

There being no further comments or objections, the Board approved the Amendment to Chapter 62, Article VI, Zoning Regulations to allow Administrative Approval of on-premises consumption of alcoholic beverages for restaurants/snack bars.

Result: Approved

Mover: John Tobia

Secunder: Bryan Lober

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

J.1. Interlocal Agreement with the Barefoot Bay Recreation District and the Brevard County Board of County Commissioners Regarding a Cap on the Levy and Collection of Special Assessments Within the District and Companion Resolution Rescinding Resolution 20-001 which Called for a Referendum Election on November 3, 2020 on the Question as to Whether to Revoke the Barefoot Bay Recreation District's Authority to Collect its Special Assessments in the Manner Provided for Ad Valorem Taxes

Commissioner Tobia stated a couple months ago, the Board put a referendum on the Barefoot Bay ballot and this came as a surprise to many of the Barefoot Bay residents; it was concerning raising fees above the Consumer Price Index (CPI); it was a discussion that he had with some representatives of that board more than a year ago; they have seen the light and he thanked the Board for allowing him to put this on the ballot, however, they decided an interlocal agreement may be a better avenue; the interlocal agreement drafted by Attorney Clifford Repperger and checked by the County Attorney's Office, does everything that he initially asked for, which would keep those fees below CPI; and in the case of emergency, it would allow the representatives to come and seek an exemption with four-fifths vote of the Commission. He added when he was in negotiations with Mr. Repperger, he was clear that it was just him and he did not have the unilateral decision; he will be voting for this, however, he fully respects the Board if they decide that this is not the direction to go; he could not thank the Board enough for sticking with him and allowing him to get this on the ballot and doing him this big favor; and he stated he did not care how the Board voted on this but he will be voting in favor of approving the interlocal agreement and another motion to rescind the Resolution 20-001.

Attorney Repperger stated he is an attorney with Whitebird and they serve as general counsel for the Barefoot Bay Recreation District; in May the Board approved a Resolution calling for the referendum election on the question of whether the district had the authority to collect via the uniform method of collection; their assessment should be revoked; in an effort to avoid that referendum election and the possible negative consequences associated with it, his office worked with Commissioner Tobia, who graciously agreed to try to help find a solution to that problem, and he worked with the County Attorney's Office to develop the interlocal agreement to limit future assessment increases of the District's assessment rate to the CPI percentage that is found in the County Charter; and the Board of trustees of the Barefoot Bay Recreation District approved the interlocal agreement on August 25, 2020, and authorized him to present it to the County Commission. He went on to say along with the interlocal agreement that is in the package, there is also a resolution rescinding the prior Resolution 20-001, which called for the referendum election; he is also asking the Commission to pass that resolution; and hopefully it will be enough time to take that language off the ballot, if not, he will send out subsequent notices instructing that the ballot not be counted.

Commissioner Tobia stated the first motion is to approve the interlocal agreement with the Barefoot Bay Recreation District; and the second to approve the resolution rescinding the Resolution 20-001.

The Board approved the Interlocal Agreement between the Barefoot Bay Recreation District and the Brevard County Board of County Commissioners regarding a cap on the levy and collection of special assessments within the District; and adopted Resolution 20-002, rescinding Resolution 20-001, which called for a Referendum Election on November 3, 2020, on the question as to whether to revoke the Barefoot Bay Recreation District's authority to collect its special assessments in the manner provided for Ad Valorem taxes.

Result: Approved

Mover: John Tobia

Secunder: Bryan Lober

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

L. BOARD REPORTS

L.2. Eden Bentley, County Attorney

Chair Lober mentioned to Eden Bentley, County Attorney, there was an item they had spoken about briefly before the meeting started and there was some concern that he would be given

authority to sign a contract with the School Board for CARES Act allocation; he mentioned she heard from Marcy Murphy, President of CareerSource Brevard and she had concern that he had authority to contract with them to put in place what the Board previously authorized; and he did not know if she had more on that but he would make a motion, or ask for a motion, to authorize him to the extent he has not already been authorized, to sign the necessary documents to effectuate the Board's wishes with respect to the School Board and CareerSource.

Attorney Bentley stated she has only been addressing the School Board item; his conversation with Ms. Murphy is new to her; but the School Board item, he approved the interlocal to track the municipal interlocal agreements; and it simply needed the formal authorization for him to sign the same type of agreement with the School Board.

Chair Lober stated he might as well go ahead and ask for the motion; and he asked if this would authorize him to execute whatever documents are presented to him by the legal department in accordance with the Board's wishes with respect to CARES Act allocations to the School Board and CareerSource to the extent that he does not already have that authorization.

The Board authorized the Chair to execute documents presented to him by the Brevard County Legal Department, in accordance with the Board's wishes, with respect to CARES Act allocations to the Brevard County School Board and CareerSource.

Result: Approved

Mover: Rita Pritchett

Secunder: Bryan Lober

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

L.7. Kristine Isnardi, Commissioner District 5

Commissioner Isnardi stated she had asked the Board at the last meeting to allow for an Attorney General Opinion (AGO) regarding voting on Health First issues as far as CARES Act funding and other issues; it turns out that the State Statute is covered by the Ethics Commission as they typically punt to the Commission on Ethics, which one would think the AGO is at the top, but not always covering the entire book of statutes; she asked the Board if it is alright to rescind her request for an AGO, at least for now; and she asked Eden Bentley, County Attorney, if she was moving forward to ask for a formal opinion on the CARES Act funding, zoning issues, and that sort of thing.

Attorney Bentley replied to do that, she would have to get a formal opinion at the Commission on Ethics Board hearing in October.

Commissioner Isnardi stated she would like to, at least, do that because, right now, there is an informal opinion and there have been questions because there are other situations where it does not exactly cover.

Attorney Bentley stated she could ask them to do that; if she wants to appeal further, it goes to the First District Court of Appeals and she would not have an opinion until 2021.

Commissioner Isnardi stated she did not think it should be appealed once she has a formal opinion, but she would like a formal opinion since this is, hopefully, going to impact her for another four years; she wants to make sure she is doing her job by voting where she is supposed to and not voting if she needs to abstain; and she would like that in a formal opinion.

Commissioner Tobia asked Attorney Bentley to explain how the formal opinion works and if she would have to be sent to Tallahassee or if it could be done remotely.

Attorney Bentley replied she hoped, with the Pandemic, that it could be remotely; it could be that they simply review it and the Board would be sent some sort of recommendation and maybe not have to go at all; she would have to look at that and see; and she stated she can come back with a report on that since it will not happen until October.

Commissioner Tobia asked Attorney Bentley if that was something the Commission generally executes immediately or if it takes months; and he was wondering since the CARES Act expenditures need to be made by the end of the calendar year.

Attorney Bentley replied she can ask and come back with a report.

Chair Lober stated maybe it could be put off until the next meeting, assuming Attorney Bentley has what she needs by then.

Commissioner Isnardi stated she also has questions on zoning and that sort of thing as well and she would like those decisions to be very clear as well; and since she already asked for the informal opinion, the Commission on Ethics (COE) has already investigated it.

Attorney Bentley stated she thinks she can get it moving and she can give the Board the report and if Commissioner Isnardi decides she does not want to proceed, she could do it that way, if that would help.

Chair Lober stated if it is simply sending them a letter and having staff spend an hour or two putting it together, that he does not have an issue with, but if it is something the Board is going to have to start sending staff to Tallahassee, put them up overnight for several nights, and absorbing those costs, simply to get something memorialized in a different way, he does not know that he would be thrilled with that unless it is something that is truly imperative for Commissioner Isnardi; and if it is that important to her, he would support it.

Commissioner Isnardi stated the reason it is important is because she wants to make sure that she is fulfilling her duties as a Commissioner and whether or not she should or should not be voting, because an informal opinion is just that, it is informal; and she does not see Attorney Bentley having to be up there for days.

Chair Lober asked Attorney Bentley if Commissioner Isnardi were to rely on the written opinion that she has gotten thus far from the COE, if there was any possibility of her facing some sort of liability as a result thereof.

Attorney Bentley responded no, those opinions are protective of the recipient.

Commissioner Isnardi inquired if that was for the informal one.

Attorney Bentley responded yes.

Commissioner Isnardi inquired if the formal ones go before the COE and the Board as well.

Attorney Bentley responded right.

Commissioner Isnardi stated that is why she wanted at least a formal opinion.

Chair Lober stated if she wanted to roll the dice again, she was welcome to do it; he thinks if she is being told that she is inoculated to a certainty as a result of relying on the opinion she has been given; but it is up to her.

Commissioner Isnardi stated she felt more comfortable with the formal opinion.

Chair Lober asked if the Board could have Attorney Bentley come back and let the Board know if that is something that would require sending staff to Tallahassee.

Attorney Bentley stated she is happy to get that information.

Commissioner Isnardi stated that is fine with her, but she would also like any time that one of the Commissioner's offices put on staff on the attorney's office, if the Board is going to nickel and dime expenses, because she rarely uses them unless she absolutely has to; and she is not necessarily complaining but she wants to make sure that she is doing the proper and legal thing and she thinks that is the most solid way she can do that by making sure she has a formal opinion.

Commissioner Pritchett asked Attorney Bentley if there was an exorbitant cost for doing a formal opinion.

Attorney Bentley replied there has not been one in recent years, so she does not have a cost estimate on it at this time; she could probably have that information at the Budget Hearing, or get it out in an email format; and there may be a way of getting estimates of time that other similar types of appeals have taken, since that is what she is really talking about and travel if it is required.

Commissioner Pritchett stated if there is a Commissioner who feels it is important to them to feel like they are doing their job adequately, she would be very hesitant to block that, because she knows time is valuable with what the Board does, and if Commissioner Isnardi feels like it is going to stop her from being able to do her job appropriately, then she would probably support that.

Chair Lober stated he had no problem with getting a COE opinion; his understanding is that those are absolutely, conclusively protective of the individual that acts in reliance in that opinion; he thought it was a little odd to go the AGO route as he did not think that the AGO would ever conflict on a COE opinion, if one was even given; he would think, out of deference to the other agency, that they would not give one, but he figured it does not hurt to ask; it is a little bit of staff time but there is not really a tremendous cost associated with it; and asking, essentially just to get what the Board has already been told put in a more formal format, knowing full well that there is absolutely no possibility of liability with reliance on what has already been provided, and that is where he starts to wonder if it is perhaps a bit overkill. He continued to say there is a chance that the COE could change their mind but when things are appealed, most appeals are not successful; and the higher they are kicked up, the less likely there will be a decision the other way around.

Commissioner Isnardi remarked to Attorney Bentley that when she spoke to her, she did not see this as a big issue or tremendous cost to the Board because the questions have been asked; and she is asking for a formal opinion.

Attorney Bentley stated the basic research has been done.

Commissioner Isnardi asked if Attorney Bentley sees a tremendous cost for the Board to ask for a formal opinion.

Attorney Bentley replied she did not see it taking more than eight hours for staff internally; she is not even sure it would take that much; and she would have to really get into the rules and see exactly what has to be submitted and that sort of thing to give a good estimate.

Commissioner Isnardi stated she has no problem taking that opinion; it is just that several County and city attorneys over the years, and she has voted on Health First issues in the past as far as health insurance and other items, they have all said the same thing that she does not stand to financially benefit, et cetera; since this Health First issue now, and given the importance of abstaining or voting, she wants to make sure the Board is doing it exactly right; she wants to make sure that it is solid because there are many attorneys that have different opinions; and she has even been told to hire an expert on conflict of interest matters. She went on to say she does not want to do that, as she is not trying to fight to vote, she just wants to make sure it is solid; and if eight hours of the County Attorney's time, if the Board cannot ask to commit that, she does not think that is much time at all.

Chair Lober stated if someone wanted to make a motion to authorize up to eight hours.

Commissioner Isnardi asked what if it is nine hours, would it need to come back for another vote.

Chair Lober asked if she would like to make it 12 hours, he would be fine with that; and his concern is having people start going up and spending overnight out of the area because he has never heard of that occurring before.

Commissioner Isnardi stated she could guarantee that her office has used significantly less of the County Attorney office's time than some of the other Commissioners, if he is nickel and diming everything.

Chair Lober asked Attorney Bentley when was the last time she had requested a formal opinion form the COE.

Attorney Bentley replied she never has.

Chair Lober inquired if that was an atypical request.

Attorney Bentley replied she has not seen it before.

Chair Lober inquired how long she has been with the County.

Attorney Bentley replied decades.

Chair Lober inquired when the last time was that she had to travel to Tallahassee in furtherance of investigating a concern of a Commissioner, whether on a past or present Board.

Attorney Bentley replied she has not gone for that purpose.

Chair Lober stated he is happy to accept the motion and he is happy to allow up to 12 or 18 hours; he just has a concern pushing for a different answer; and it almost strikes him as not liking the results for an election and asking for a recount, and not liking the recount and asking for recount again.

Commissioner Isnardi remarked it was not even close, but in all fairness, and she is not going to put Attorney Bentley on the spot by asking how many hours she has committed toward each Commissioner, not just handling legal matters for Commission offices, but as far as how much

time she has committed for things she has not had to do before; she just asked for a formal opinion and does not think it is really too much to ask given the information that she has been told over the years by expert attorneys in the field for decades as well; all she can do is ask the Board to allow for it and if the Board says no, it says no; she thinks it is really ridiculous that it is still talking about this, as she does not see why anyone would be opposed to it; and she asked Attorney Bentley if a motion was needed.

Attorney Bentley replied yes, in this situation.

Commissioner Isnardi stated she wanted to make a motion to allow for the County Attorney's Office to request a formal opinion on Health First Conflict of Interest with herself and if the time becomes exorbitant, it will be brought back to the Board.

Chair Lober asked if more direction could be given in terms of how many hours that would be.

Commissioner Isnardi asked Attorney Bentley how many hours she thought to be safe.

Attorney Bentley replied she thought eight to 12.

Commissioner Isnardi asked Attorney Bentley to bring it back to the Board if it exceeds 12 hours.

Chair Lober stated to Attorney Bentley if she knew it was going to be beyond 12 hours, to let the Board know and they could put it on the agenda; and he seconded the motion as it sounded reasonable.

The Board approved Attorney Bentley to request a formal opinion on Conflict of Interest between Health First, Inc. and Commissioner Kristine Isnardi with provisions to return to the Board if the time incurred exceeds 12 hours.

Result: Approved

Mover: Kristine Isnardi

Seconded: Bryan Lober

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

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

ATTEST:

SCOTT ELLIS, CLERK

BRYAN ANDREW LOBER, CHAIR
BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA