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

5:00 PM

The Board of County Commissioners of Brevard County, Florida, met in regular session on February 7, 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 Invocation was given by Pastor Mike Bynum, Grace Fellowship Church, Rockledge.

PLEDGE OF ALLEGIANCE

Commissioner Trudie Infantini led the assembly in the Pledge of Allegiance.

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

Commissioner Nelson stated he and George Mikitarian, President and CEO of Parrish Medical Center, had the opportunity to speak to *Florida TODAY* about their concerns with the school closure issues in Brevard County. He noted, he is hopeful that there could be a resolution that ends with the schools remaining open as everyone works through the difficult process. He added, there will be a School Board meeting on February 12th to discuss the school closures; and he is continuing to work with the community and *Florida TODAY* to make sure the information out there is accurate and correct, and fairly represented.

ITEM III.A., APPOINTMENTS/REAPPOINTMENTS, RE: CITIZEN ADVISORY BOARDS

The Board appointed/reappointed **Douglas Hendriksen** to the Historical Commission, with term expiring December 31, 2013; and **Wayne Snyder** to the Merritt Island Redevelopment Agency with terms expiring December 31, 2015.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
SECONDER:	Trudie Infantini, Commissioner District 3
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

PUBLIC HEARING, RE: PLANNING AND ZONING BOARD RECOMMENDATIONS OF JANUARY 7, 2013

Chairman Anderson called for the public hearing to consider the Planning and Zoning Board's recommendations of January 7, 2013.

ITEM V.B.1., (12PZ-00077) BRIAN BURT - (LINDA GRZYBOWICZ) - REQUESTS A CHANGE FROM RR-1 TO AU, WITH REMOVAL OF AN EXISTING BDP, ON 4.91 ACRES, LOCATED ON THE NORTH SIDE OF PARRISH ROAD, APPROXIMATELY 0.34 MILE EAST OF U.S. HWY 1 (IN THE TITUSVILLE AREA)

Cindy Fox, Zoning and Enforcement Manager, advised the request is a rezoning change from RR-1 to AU, with the removal of an existing Binding and Development Plan (BDP), on 4.91 acres. She added, the BDP was actually a limitation on not developing the property as an open space subdivision; this is a small portion of a larger portion of property that was encompassed by the BDP, and therefore its removal as part of the application is inconsequential. She stated the application was approval unanimously by Planning and Zoning Board.

Brian Burt stated he would like to rezone to keep the horses on the property, and possibly build a house in the future.

Hal Hite stated he sent information to Commissioner Fisher requesting the Board be as fair to the people in the area in which he lives and represents, as it would be to Mr. Burt. He expressed his dislike of living next to a horse barn with dogs, hogs, and the stench from all the animals. He advised he received an email of a sexual predator moving in next door, and the front door is right across the road from Mr.Burt's property where he has a lot of kids on the weekend, and it is not a good situation.

Robert Hite stated he owns the property next to Mr. Burt, and all the trouble started when he caught Brian Burt sneaking two horses on a small piece of land. He encouraged the Board to look at Mr. Burt's criminal record, and that will give everyone some hint of what his word is worth. He added, as he passed the barnyard on the way to the meeting two of the horses where leaning over the fence reaching out to the road, and the fence is in such a state that it is possible the horses are out of the fence by now. He stated he did not move into a barnyard, but into a residential neighborhood and he would encourage the Board to change the zoning to residential. He went on to say there is a gentleman that lives beside the barnyard who has lived there 25 years, now he lives beside the barnyard and believes it is not fair.

Mr. Burt stated there have been nine agencies out at the barn and it has been proven that the accusations are not true. He went on to say there is not horse poop everywhere across the land, he gives it to the neighbors. He added, the Board was given a petition supporting the zoning change with fifty-seven signatures from the entire neighborhood; and stated he has always complied with Code Enforcement. He explained he leased the land for eight to ten years before he bought it, and the only reason he bought it was because it was changed to RR-1; and there was supposed to be an amendment to grandfather in to keep the horses on the land, but the realtor did not follow through. He stated he did not know about it until he bought the land and applied. He stated he has done everything to make the neighbors happy and has tried sprucing up the property by planting trees. He stated he knows nothing about the sexual predator, and yes, he has kids out to ride, but one of the boys is disabled and animal therapy is good for him. He noted, he is trying to get along with all of the neighbors. He reiterated, there is not poop everywhere and he gives it away as quickly as the horses produce it; and he keeps the place clean. He stated he has two acres fenced in, and is allowed four horses per acre, which would be eight total; he explained he had seven horses at one time because a friend was moving from one barn to another, and since has moved the two horses. He added, he has picked up a rescue horse, and now has a total of six horses on the property, along with three dogs and three pet pigs.

Commissioner Fisher stated he understood Planning and Zoning approved this item unanimously, and normally this would be a downgrade when one goes from RR-1 to AU. Cindy Fox responded yes, 4.91 acres would allow four homes on it with the current density in the zoning classification, so going to the AU classification would take it down to one unit and it would allow Mr. Burt to maintain the horses without having a home on the property, and also allow him to maintain the pigs. Commissioner Fisher asked if Code Enforcement has gone out there on complaints. Kathy Beatson, Animal Services & Enforcement Interim Director, stated the Department has been called out there three times in the last six months based on neglect calls, and have never found any evidence of neglect, it has documented photographs, talked to the neighbors, talked with Code Enforcement, and talked with the owner. She explained, even when Animal Services has been out there and the owner is not present, they have has been able to contact Mr. Burt and he has come out to meet them, and it has found no evidence of the complaints.

Commissioner Nelson asked staff for clarification on how many horses are allowed, and how many would be allowed. Cindy Fox responded in the RR-1 zoning classification there can be a maximum of four per acre, as long as they are accessory to a residence; and in the current situation there is no residence on the property, so Mr. Burt would not be allow to have any horses. She went on the explain the AU classification would also allow four horse per acre without a residence.

There being no further comments or objections, the Board approved the request by Brian Burt, as recommended by the Planning and Zoning Board.

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.2., (12PZ-00086) FRATERNAL ORDER OF EAGLES AERIE #4257, INCORPORATED (CHARLES BERNARDO-CLEARVIEW TOWER COMPANY, LLC) REQUESTS A CUP FOR A TOWER & ANTENNA IN A BU-1 ZONING CLASSIFICATION ON 3,500 SQUARE FEET, MORE OR LESS, LCOATED ON THE EAST SIDE OF N. COURTENAY PARKWAY, APPROXIMATELY 280 FEET SOUTH OF MUSTANG WAY (PART OF 1050 N. COURTENAY PARKWAY, MERRITT ISLAND)

Cindy Fox, Zoning and Enforcement Manager, advised the request is for a Conditional Use Permit (CUP) for a cell tower at 150 feet, located on the Courtney Parkway corridor, this was approved with a seven to four vote at the Planning and Zoning meeting, and at the Merritt Island Redevelopment Agency (MIRA) meeting held in December it was a split vote, so it was sent forward without a recommendation.

The Board stated they have all meet with Kim Rezanka on the item.

Charles Bernardo stated he is representing the petitioner, Clearview Towers Company, and handed out a booklet of exhibits to the Board. He noted, in the booklet is the RF Engineer resume who will be testifying for the group, and he is from Metro PCS. He reviewed tab one, and pointed out the Eagles property is designated, to the north is a high school, and to the south is a McDonald's to drive-thru and commercial properties, to the east and west are the two residential areas; and on page two is the boundary survey and next is the compound. He stated under tab two it shows the Board all the properties lining Courtenay Parkway; the 200 feet setback from the edge of the compound, and which parcel could actually put a tower on and comply with it, and only one parcel on the whole mile strip could possibly comply with the 200-foot setback. He explained the Code calls for a 200-foot setback from all property lines, this would make a compound 405 feet by 405 feet for the applicant to lease a tower, the Brevard County Code requires the pole to be setback from the compound boundary by 200 feet in every direction, which again would give the petitioner 405 feet across by 405 feet, which is not commercially feasible in the telecom industry. He advised, he has built 1,800 sites in Florida and has never had a compound that large for any pole. He stated the proposed setback that the applicant is looking for, the compound is 50 by 70 feet, and it needs a variance to the north of 175 feet, a variance to the south of 175 feet, a variance to the east of 161 feet, and a variance to the west of 169 feet; and the 50 by 70 compound is a typical size for this type of pole in order to put five carriers equipment on the ground, which has to be there for them to utilize the tower. He pointed out the compounds are usually 10 by 20-foot for each carrier, and are all contained within the 50 by 70-foot area; and he stated it has an engineering letter in case of pole failure it will safely fall within the tower compound. He reviewed the five times tower height from single-family residential, in order to meet this on a 150-foot tower it would need a 750-foot setback; and it meets the setback. He referred to a sketch of a compass which gives the Board an idea how far the tower is from residential and it ranges from east 871 feet, when only 750 feet is required, to the south 3,890 feet, to the north 2,230 feet to residential, and the applicant shifted the tower to the west by 107 feet, from previous meetings with Commissioner Nelson and staff to increase the setback to the multi-family on the east side of the parcel. He explained by doing this the most it reduced the setback on the west side was to 629 feet, that is the only direction it would need a variance in, as to the west direction from the pole to the residential zone. He stated under tab four is the backup for the engineer, who is present and will be speaking and addressing the propagation maps and the height requirements. He added,

after 13 months of contact with Verizon Wireless, they also have an interest in the tower. He stated in the fall the carriers are usually concerned with putting sites on air, the engineers are tied up with getting the sites they leased in the first part of the year on the air for the year. He explained, on the air for the year means it has their bonuses, it has the grid, it has their network, all the improvements are done and in place, and getting feedback from the original filing in July to January was very difficult because no one knew what their budget would be for 2013. He stated he has worked with every carrier for over 15 months since it first came to the site a year ago in December; he got a reply back from T-Mobile that it may have an interest in the tower, but it does not have their budget yet, and therefore, Clearview Towers has two carriers interested in the tower and one carrier that my be interested. He pointed out Clearview Towers are more aesthetically pleasing than any of the five towers closest to the site because it is stacking a monopole tower; and explained the locations of the existing five towers, none of which are monopole towers, all are self-support guyes and the large support with four legs. He stated the aesthetic monopole is similar to the pole that is purposed at the Circuit City location, except it is 30 feet shorter, it has five positions instead of six positions, it has platforms for the antennas, Circuit City has six 14-foot platforms for the antennas according to their building permit, and the applicant has five platforms for the carriers in order to hold antennas and required coverage. He stated he has been building towers since 1996, and has built 1,800 towers for three carriers, all in Central Florida and South Florida.

Commissioner Nelson stated in terms of setbacks, Mr. Bernardo is correct that in just about any site on Merritt Island there is going to be a requirement for waivers. Commissioner Nelson asked if Clearview Towers actually has a contract for service with any of the carriers mentioned. Mr. Bernardo stated it has a lease and a letter of intent, which is what is required for a company to have, upon approval from the legal departments of the carriers, and typically requires zoning approval before it goes to the lease stage. Commissioner Nelson inquired again if Clearview Towers actually has a carrier under contract at this point in time. Mr. Bernardo stated he has the interest letter from MetroPCS. Commissioner Nelson asked if the letter of interest is binding on Clearview Towers; with Mr. Bernardo responding it is not binding, it is binding that it has carriers before it can stack the pole. Commissioner Nelson added, the existing towers shown in the booklet are ugly, but all were approved prior to the process that the County currently has in place, and prior to technology changing for monopoles. Mr. Bernardo pointed out except for the Circuit City tower. Commissioner Nelson stated there was no picture of the Circuit City tower; and what is in the booklet are existing towers in the area, and while yes towers are ugly, that is part of the issue going to be talked about, placement is important, and aesthetics is important. Mr. Bernardo stated the reason he did not provide a picture of the Circuit City tower is because it is not built yet, but he does have copies of the building permit and it does show a 180-foot monopole tower with six platforms. Commissioner Nelson replied the issue is the Board was presented with pictures of ugly towers which were put into place many years ago.

Mark Gowans, MetroPCS Engineering Manager, stated he is before the Board to explain why MetroPCS needs a150-foot tower. He stated a CityScape Tower consultant did agree with MetroPCS that it does need coverage in the area, and the only thing they did not agree on was the tower height, he mentioned it could use 80 feet, and MetroPCS is requesting 150 feet. He explained the four surrounding towers in the area heights are 160 feet, and MetroPCS RAD Center is 169 feet, 127 feet, 107 feet, that being the lowest, and 147 feet. He added, when trying to design a network, every structure, every tree, every leaf that comes between the cell phone user and the tower degrades the signal; at 80 feet, over two miles away to the nearest site, one is trying to burn through a lot of clutter; and MetroPCS's objective is to get above the clutter and be looking down to serve the users. He continued, cell phones have become more of a necessity, people are using them in their homes instead of their land lines, and MetroPCS wants to be at 150 feet so the first thing the signal hits is the roof of the building trying to serve the customer. He pointed out every foot that MetroPCS goes up on the tower it costs money, and if it could get away with 80 feet it would do that, and coaxial cable at this size is very

expensive. He added, he does not know what powers CityScape used in the determination of what would work; and if one is pumping out a 1,000 watts, yes 80 feet would cover very well, but Metro PCS does not pump out 1,000 watts, it is 12.5 watts at hatch plate. He went on to say this site needs to have a minimum radius of two miles; he has sites 140 feet that do not go two miles in Orlando due to trees, buildings, and clutter. He stated CityScape did use the Cost 232 analysis, which is the same model it used to determine its propagation of the signal and how well it goes, but CityScape used it without clutter, without trees, and without buildings, but it may be valid over water. He concluded, MetroPCS needs to be above the clutter looking down and that is why it needs to go to a 150-foot tower.

Commissioner Nelson addressed the mentioning of five carriers on the tower. Mr. Gowans stated he represents one carrier, MetroPCS. Commissioner Nelson stated the indication was that there would be up to five carriers, not everyone is going to be at 150 feet. Mr. Gowans replied absolutely not, it is at 107 foot on one tower and that is the highest it could go, that is why he read the heights of 169 feet, 127 feet; and explained MetroPCS is trying to makeup for some of the lower tower heights in the 150 foot tower height. Commissioner Nelson asked where would MetroPCS had gone if this site was not available; Mr. Gowans replied nowhere, it is on the four towers surrounding the area already; and stated MetroPCS has been trying to get into this location for seven years. Commissioner Nelson stated he has been a Commissioner for six and it has never come up, and is not sure at what point it that actually occurred. Mr. Gowans stated MetroPCS has had a search ring in this location since MetroPCS launch seven years ago. Commissioner Nelson asked if he is saying this is the only site that works for MetroPCS. Mr. Gowans replied no, MetroPCS could put a tower anywhere, however this is the only buildable land as far as he knows, he is a RF Engineer and not a site acquisition person. Commissioner Nelson stated this is what he is asking Mr. Gowens to testify to, if he were to move east, west, north, or south. Mr. Gowans responded yes, it could move in any direction for the 150 foot height.

Commissioner Infantini inquired if the heights given out earlier of 107 feet, 129 feet, are the heights that MetroPCS current carrier is at; Mr. Gowans replied it is the height at the RAD center. Commissioner Fisher asked if it would still work for MetroPSC if the site would go a quarter of a mile one way or the other; Mr. Gowans replied absolutely. Commissioner Fisher inquired what would happen if it went a half-mile. Mr. Gowans stated it depends on what direction it would go, and how close it puts one to the next tower; and noted it is like putting two Walmart's next to each other, one is going to lose money, and if one is overlapping coverage it is not a wise use of resources. Commissioner Fisher asked if there is available space on other towers near this location; Mr. Gowens responded MetroPCS is on the other towers. Commissioner Fisher asked if MetroPCS was on every one of the surrounding towers. Mr. Gowens stated yes, everything around the area, there is nothing for two miles in this area from this location; and added, its closest site is two miles away.

Jack Rupert, Clearview Tower Company, stated he has been in the business since 1989 and understands what the Board is going through; he has built an excess of 500 towers, many of them that require a zoning like Brevard County; and he can assure the Board the company will not build a tower taller then it needs to be. He added, he is not interested in spending any more money than he has to in order to have a higher tower. He stated collocation is important, and important to the County so there are not towers all over the place; Clearview Tower Company always builds towers to collocate, and as Mr. Growan's mentioned, if MetroPCS is at 150 feet, everyone else will have to be lower, and other carriers will have to be at different heights at different towers depending on when they come in. Mr. Rupert stated it is not a spec tower without a tenant; and he will not build a tower without a signed lease from a carrier.

Kim Rezanka, Dean Mead Attorney representing Clearview Tower Company, stated the County Code does not have clear standards for design and aesthetics; and she understands the

concerns of the people who do not want the tower, for whatever reasons. She stated the petitioner has moved the tower 170 feet to the west, and it is the exact same type of tower that was approved at Circuit City, and that information was provided to the Board earlier; and it was 180-foot tower, 14-foot platforms at 180,172,162,152,142 and that is in a very similar zone, a commercial zone. She explained where the proposed tower is now is zoned commercial, it is next to a school, on Courtenay Parkway, similar to the corridor of SR 520, which is a commercial zone. She stated Mr. Bernardo explained that when he looked at property there was not a lot of property on Courtenay Parkway; and MetroPCS has testified that it needs 150 feet and that is want Clearview Tower intends to build. She added, Clearview Tower does intend to collocate, the Code requires collocation for at least two other carriers; there has been discussion if the applicant would consider a flagpole, Mr. Rupert is here and can answer the question, but when one goes to a flagpole, as Mr. Gowans testified to the Planning and Zoning Board on January 7th, then the carriers generally need two canisters, they need 10-foot canisters; and so one goes from 5 carriers, what has proposed with the monopole, to probably two and a half, or maybe three carriers on a flagpole at 150 feet. She provided to the Board a packet, and stated in the packet there is a case it is called Global Tower v. Hamilton Township, and it deals with the telecommunications act of 1996, and it deals with unreasonable discrimination. She read aloud the provision, "Seeks to ensure that, once the municipality allows the first wireless provider to enter, the municipality will not unreasonably exclude subsequent providers who similarly wish to enter and create a competitive market in telecommunications services." She stated the Board approved the Circuit City site on May 31, 2012; she has provisions from the Circuit City application in the handout, it has the zoning map, it is a BU-2, next to a BU-1, which is very similar with the application before the Board, future land use map, community commercial, same as the applicant has, and also, some part of the building permit showing it is the same type. She pointed out a picture of a monopole tower that was provided to the Board with the Circuit City application, but it does not reflect what the tower is going to look like, it has a little triangle on top at a 180 feet; and when the Board is looking at Mr. Bernardo's application, he has gone to the trouble of putting four or five antennas on it. She added, Commissioner Nelson stated the towers are ugly, and she understands that, but at least Clearview Tower was honest when presented to the Board what the tower was going to look like; stated also in the packet from Circuit City were aerial views from 1,000 feet away, 700 feet away, 1, 600 feet away, 2000 feet away; and the Code is not clear on how to show aesthetics, and hopefully that is something staff will address in the future. She reiterated the Code does not say how to prove aesthetics, and she has gone round and round with Assistant County Attorney Morris Richardson, and he says it is up to the applicant, but there are not guidelines on how to prove aesthetics. She went on to say the Circuit City Letter of Interest from AT&T, did not have AT&T as a carrier, it just said they would be interested, it is not even a letter of intent; the Board approved the Circuit City tower for Florida High Speed Internet based upon a propagation maps, and noted it does not look anything like what MetroPCS provided; and Florida High Speed is not a national carrier, it is not even a statewide carrier, and yet the Board approved a 180-foot tower for Florida High Speed Internet. She stated she has submitted, for the record, the complete packet of what was supplied by the Circuit City application, and she believes the Board needs to be consistent with what it approves; she knows every application stands on its own, but the Federal Act clearly states it can not discriminate, and she believes if the Board was to deny the same type of pole at a lower rate in a commercial area, it would be discriminatory. She talked about the information provided to the Planning and Zoning Board, and would like to briefly go over Code 62-1953, and under subsection (b), collocation, section (c) collocation, MetroPCS can not collocate, Mr. Gowens just testified to that, and on subsection 62-1653 (g) (6) states towers must be constructed to other comparable communication providers to use the tower. She stated CityScape said it only needs 80 feet, which MetroPCS has denied, and if it is built at 80 feet no one else can go there, so the Board can not approve it at 80 feet. She explained MetroPCS has asked for the waivers and provided reasons for the waivers; one, the wavier for the compound itself, it has a 50 by 70-foot compound, it is supposed to be 200 feet from the property lines; and Circuit City also got that waiver, it got two

waivers for the property line, it had a 126 feet to the north and 149 feet to the west, because it would have to have a very large 4-acre parcel to be able to meet the setbacks of 200 feet. She went on to explain the applicant has a 50 by 70-foot compound from that it also does not meet the single-family residential five times the height, which would be 750 feet away, but it does from Catalina Isles, who where the main objectors, but it does not meet it from the other side of Courtenay Parkway, which is on the west side and another residential neighborhood who has not objected. She continued, the applicant has asked for a 121-foot waiver from the west of the single family residential, and Circuit City was given a 579-foot wavier from single-family residential, they are only 321 feet, and the applicant is 621 feet from the nearest single family residence. She stated because Clearview Tower is asking for the waviers, subsection (h) states it has to go back to subsections (d) and (e) to address the distance separation and the aesthetic concerns in subsection (d) and (e); in (d) and (e), one subsection deals with landscaping, and the other a 35 foot height, construction technics that do not require guyed wires; and that is the only design standard in the code, that is (d)(2) i.e. lattice or monopole structures, structures shall use lattice or monopole structures. She noted, the applicant has asked for a monopole, that is what the Code requires; there is nothing in the Code that states one must have a flagpole, one must have a stealth, in fact it states one must use something that requires guyed wires. She explained what she has to prove for a conditional use is that the proposal is consistent with the County's land use plan, which it is in the right zone and future land use; that the use specifically authorizes that special exceptions in the zoning, which it is, and the request meets the applicable zoning code standards of review, which the applicant states that he does. She stated the applicant has met the requirements for the waivers, because the applicant is requesting a monopole, and there is no other place to put the pole along Courtenay Parkway, there is actually no place that meets the residential setbacks. She mentioned it did meet the residential setback where it was until the tower was moved to the west, and now it does not. She stated once the applicant meets its burden the opposition must carry its burden, to demonstrate the request does not meet the standards, or in fact is adverse to the public interest; and that is the standards it believes the applicant has met. She indicated there is a petition from Catalina Isle residents that was filed in the prior application, and in that it states they do not like the low height and the aesthetics of the proposal, in fact the residents wanted a flagpole at the high school; and at the Planning and Zoning board meeting of January 7th, Ms. Coggins stated that the School Board is not interested in having any cell towers on their property. She added, part of the CityScape report is that it should be at the high school. She concluded by asking the Board to approve the Conditional Use Permit at 150 feet with a monopole, with the waivers as stated in the application.

Commissioner Infantini confirmed that Ms. Rezanka gave the Board some court litigation that stated in December 2012 the U.S. District Court ruled the Board could not prohibit and allow for discrimination by just having one carrier. Ms. Rezanka stated the Brevard Code requires that towers be able to collocate with two other carriers; the Federal District court case that she cited was for the discrimination provision of the Federal Telecommunications Act, which says it would be unreasonable to discriminate if it lets one wireless provider in similar situations and not let another. Commissioner Infantini suggested it would be like the Board making a rule that if there already is Publix supermarket, and since that could meet the needs, that does not matter it would still have to allow a Winn-Dixie supermarket because otherwise it would be preventing competition. Ms. Rezanka stated the Telecommunications Act of 1996 really just deals with telecommunications, and Commissioner Infantini is dealing with all kinds of different issues when talking about commercial retail stores; this is specific to a provision Section 47 U.S.C. 332(c)(7)(B)(I)(I). She explained, it was to illustrate that because Circuit City has come in and it is similarly situated, it needed waivers and the petitioner needs waivers, and they are in the same zoning categories with the same kind of design, that it would be discriminatory to deny the application, the Board my have other opinions, and a violation of the Federal Act. Commissioner Infantini agreed and does not see how the Board could deny the request for a variance when it granted another one. Ms. Rezanka stated the tower is a mile and half to the

north, it is not right next to the Circuit City, and that is why it does not work for MetroPCS because it has another tower to the south, and it is specific to the carrier. Commissioner Infantini inquired if staff has considered changing the setback regulations, because clearly, for carriers to have a four-acre parcel, these setback requirements of two feet all the around seem excessive and everybody that applies for a tower asks for a variance, and therefore, if every single person that is putting up a tower comes in and asks for a variance, it is no longer a variance, it is not an exception it is the rule; and she asked staff to look at what other communities do for setbacks. Cynthia Fox stated it has been a staff concern and they are hoping that the master plan that staff has initiated will help it be more consistent with the other jurisdictions.

Commissioner Nelson stated he has a different perspective, his job is to represent the constituents first because this is a land use decision, and make sure that it meets all the criteria, and Ms. Rezanka has done a great job in stating the strengths in the case, but there are also weakness in the case. He pointed out one of the things he see is the analogy to Circuit City; the distances off of S.R. 520 are much different from the Circuit City site, and this site is much closer to Courtenay Parkway then the tower is at Circuit City to S.R. 520; and this site has on its backside residential, whereas the Circuit City site has BJ's Wholesale Club, another commercial site. He continued the application that was provided did a great job of showing some of the locations, but as one drives north on Courtenay Parkway it is dead center in the roadway; and if one is coming out of the subdivisions to the west there is a huge tower coming out of the Eagles Lodge. He went on to say the Board has run into this problem, which is to retain the ability for the Commission that are most beneficial to the community first, because he thinks that is their responsibility, and when the consultant process concludes it will have identified needs and locations so it becomes an administrative process. He remarked he hoped the applicant would have waited and submitted it as part of the process, because then the Board could evaluate it, and indeed if the argument is that it is the only place it would have come out in that process, but at this point and time, what has is an application for a big intrusive tower that is right middle of the roadway headed north in Merritt Island. He stated he knows it is going to need a tower, but is this the best location and what is the appearance of the tower; this is in a redevelopment area, it is going to have an impact; and he would not do this to the other Commissioners, and certainly would not like to see this one. He added, ironically on Circuit City, he would have preferred it be in a different location, but because of the process at that time, the Board never got to hear it. He stated it is part of the problem with the current process and that is the problem the Board is going to fix.

Ms. Rezanka responded the tower is not in the middle of the roadway, it is possibly closer to the roadway then Circuit City, but Circuit City is closer to residential that the current applicant. Commissioner Nelson proposed Ms. Rezanka is going to hang up on the single-family versus the multi-family. Ms. Rezanka stated that is the Code. Commissioner Nelson stated there are actually people living in apartments, and the Code does say single-family and he can not imagine why it would disenfranchise someone who happens to live in an apartment. Ms. Rezanka stated the applicant has moved the tower further; MetroPCS said it has been looking at a need since 2006/2007, just because they have not come before the Board does not mean it does not have the need. She continued, the applicant came before the Board first in July, and then based upon a suggestion it be moved, the applicant had to come back with a new application, reapply, resubmit, repay, and everything else, so it is not like it has come 'Johnny come lately', and slipped under the two cycles per year; and stated it would not even get back before the Board before November. She stated Clearview Towers has a contract with the Eagles Lodge, it has a letter of intent, it has a MetroPCS engineer who has been to now three hearings, and they have a real interest and a real need, and to ask the applicant to put off further, when in July this was not even contemplated, is really not fair.

Commissioner Fisher asked, based on the case study, does that mean if the Board allows the tower, then AT&T comes tomorrow, it has to allow that tower, and the next tower; and stated it just keeps snowballing and could get crazy if the County, keeps allowing towers everywhere. Ms. Rezanka stated the Board has to allow the applicant's tower because it allowed the Circuit City tower. Christine Lapore, Assistant County Attorney, stated it is not that simple, and it is not a matter of if the Board allows one tower in a community it has to allow all towers in all parts of the community; it has to look at whether the two locations as well, because the Board has the authority under the Federal and the State law to consider the zoning issues of location. She explained the Board has to consider the locations are substantially similar, not just the tower and not just the service providers; and to take one case from Pennsylvania without understanding the facts of the case and say it applies in Brevard County, and it applies in such a way a tower was allowed on another commercial corridor in another part of the city, that means it has to allow this particular tower. Chairman Anderson stated the ruling on the Global Tower case said the jurisdiction made an error on the decision because it considered declining property values and health and safety welfare without any substantial testimony or evidence from any experts; and Commissioner Nelson just mentioned redevelopment, this case clearly states if it looks at things, even globally, that affect property value, there better be substantial competent evidence in front of the Board to prove the case that it does decline. He cautioned the Board to, no matter which way it votes, go in such a manner that is does not cost taxpayers a lot of money in lawsuits, and asked Ms. Lepore if the Global Tower case Is very limited in itself. Ms. Lepore stated there was only opinion testimony from citizens about decrease in value, and that is really what the court dug into under that particular fact scenario; she pointed out that the court recognizes some discrimination is going to occur, the question is whether it is going to be reasonable discrimination, and if it is going to be very specific is applying the provisions of the Telecommunications Act. She addressed the issue of what criteria is applicable here; with any CUP, not just a tower CUP, the applicant has to meet two sets of criteria, there is the general standard criteria that is in 1901(c), and then there is the criteria specific to the particular use that is in the CUP; and in the general criteria, which every applicant has to meet, the Board always gets to look at compatibility with neighboring property, and the Code specifically says, "A point of compatibility is the height of the proposed use." She stated she has looked at a copy of other Federal Court cases in the middle district and the 11th Circuit Court that deal with aesthetics in tower applications, and there is nothing that requires specific criteria for what exact pole and facilities it has to approve or deny in the CUP; and the courts recognize that this is going to be somewhat subjective and gives that ability to local governments to make those decisions on a case by case basis.

Ms. Rezanka stated she has three points; first, if there is a need in the area and MetroPCS says it can only go a quarter mile; and she referred to a map and asked if not at the proposed location, then where. She stated the question Commissioner Fisher had was, does the Board have to approve everyone; it still has Brevard County Code, the State Code, and the Federal Act, that requires collocation if possible, it has to prove collocation is not going to work; and the proposed tower is in the center of all of the towers. She added, she too has looked at various case law throughout the middle district, throughout the Country, and many Codes, such as Jacksonville, actually has design standards; it can not be near a historical zone, can not be in a redevelopment zone, one must have a certain type of tower, and a lot of them are very specific, but Brevard County does have substantial competent evidence, but it has no design guidelines. She stated she believes the applicant has met the standards and now it is the burden of someone else to come forward and say the applicant has not.

Commissioner Nelson stated Ms. Rezanka made a point of, if not this location then where, and the Board has just initiated a process that is going to say that, and it is a concern that the Board is going to take Ms. Rezanka's word for it even though the expert testified it could be moved around. He added, he is looking out for the community, and Mr. Rezanka is looking out for the client; he wants to find a place that is best suited for the service; and he is not arguing about

collaction, because he wants fewer towers, but there has to be a location that best serves not only the client, but the constituents and he does not know this is the place. He went on to say aesthetically, driving on Courtenay Parkway, one is going to see the tower everyday; he wants to make sure if he has to make a decision that this is the only place where it works, that he has done the research; and that there is no site on Merritt Island that is not going to need some kind of waiver.

Mr. Rupert displayed a map showing Commissioner Nelson where Clearview Tower can not go and meet the setbacks he is talking about, and that is a one mile stretch, and Mark Gowen testified he could move one-quarter of a mile, and one-quarter of a mile takes him to the top of the high school. He stated the research has been done for twenty years. Commissioner Nelson stated he realizes there is going to be a waiver requirement because it is in a urbanized area; questioned is it the most aesthetically desirable location for the community; and stated he believes the community deserves to have better information about where it should be. He added, the Board has to vote yes or no to the application without the information to back it up. Ms. Rezanka stated she is of the understanding that towers can not go in residential, and asked if that is correct under the Brevard County Code. Ms. Lepore replied there are provisions in state law that provide where there is a residential area that needs coverage and there is not other location then there is a process by which the city and the applicant, or the county and the applicant work together to find a solution to the problem. Ms. Rezanda stated everything else along the Merritt Island corridor is residential, so when it moves a one-quarter mile it will move on to residential.

Ralph Perrone stated when the Circuit City application came through there were no residents that had an issue of the tower going there; and the application before the Board today should stand alone, it should not be a comparison to a tower somewhere else that was already approved, and has been permitted, and construction has started.

Commissioner Nelson stated the expert testified the tower could only move a quarter of a mile, he heard the same testimony from AT&T the last time around and has since moved the tower a half-mile. Ms. Rezanka responded AT&T has no tower that has been approved for them. Commissioner Nelson explained their expert was the one who testified on behalf of the Circuit City site, just as the MetroPCS expert is here to testify; and the point is he would like to have the County's expert weigh in on the distances that a tower can be moved to either confirm or reject it; the Board heard this is the only place it could be and yet just a few weeks later it was faced with an application with the same person testifying it was okay; and he would like an independent understanding whether of not that is the case. Ms. Rezanka stated the Board's expert is present, Mr. Edwards.

Richard Edwards, CityScape Consultant, stated he represents the County on the issue before the Board; he presented a report based on the application he saw and it was just on the information provided for this particular site at the time; subsequent to that, he was provided additional information on the Circuit City site and additional information provided in testimony; and the conclusion has not changed since the beginning. He agreed there is a facility needed in the general area because of the separation between the existing sites to the north, south, east, and west; the separation of sites is sufficient distance that is height of a certain amount will be required to handle the hand-offs between different locations and the calculation where based on the propagation mapping for PCS Communication, which is what Metro PCS uses in their type of communications, which is the more restrictive of the two of them, the other is the cellular type with is the 800 megahurtz service, which is less restrictive. He went on to say the information he used was based on general information, it was not specific to what their particular power was, but the way he approached it was not necessarily what the tower sends out in relative power, but what return signal there is from the handsets; the handsets use quarter watts or less, and it varies based on the power needed to reach the particular cell site; and from that, he

concluded that the height of 80 feet in the area would work for their needs as they described. He added, he did consider collocations and there are many towers in existence that are 80 feet and lower with multiple collocation; it can divide them for a certain amount of collocations, it is usually related to the amount of structures at a certain height; the height of obstruction of tree height is 40 feet and allows up to four collocations and four facilities on a 80-foot pole; and stated there is a flagpole tower in Viera with five canisters, which is a very similar facility. He agreed a site is needed in the general area, which is within a quarter mile separation, based on the locations of the facilities and the hand-offs that are required of the locations; and the question is the balance between what the community will accept, or what will fit best with the land use for Brevard County in that particular area and meet the criteria that the Federal Government has mandated to the carriers that they must have for service, specifically the emergency 9-1-1 service. He stated the carriers are mandated to provide the service and the citizens want it, and needs to find the best way to balance out what is under the law required and at the same time what carriers want, and what the carriers can accept in a location; and that based is how he does reports and bases his opinion.
Commissioner Bolin Lewis asked, based on the information given does that particular area need to have a tower to provide good coverage to the citizens. Mr. Edwards responded that is correct, coverage and capacity. Commissioner Bolin Lewis stated currently the applicant asked for 150 feet, and when talking about 'balance', is that the aesthetics as far as how it looks in the community. Mr. Edwards responded yes. Commissioner Bolin Lewis confirmed there is a need for a tower it is just that everyone has not been able to agree on the aesthetics.

Commissioner Nelson stated he has asked staff to look if there is a County park site within the quarter-mile radius; the point is it has not looked at what other sites are available; he reiterated it is taking at face value that this is the only place available. He continued, if he is going to pick something this ugly, this badly placed, he wants to know there is no other place for it to be. He added, all applications after this will have to go through a different process then this one, this one got in because staff made the change and it was already on the books. He stated he is not going to support the application for the location, and it would be appropriate for the overlay process to conclude so it can identify where the best sites are located and best serve the community and that is what the Board is charged to do. He added, he would be willing to offer to the applicant the ability to be considered as part of the overlay process to make the determination, and not with any fees associated with the process, but the point is to make sure this is the best location before the Board approves it. He stated he would like to move for denial with the ability for the applicant, at no additional cost, to be part of the overlay process.

Commissioner Fisher inquired when the overlay process will be finished. Robin Sobrino, Planning and Development Director, stated staff has just put the request for proposal out on the street, and the proposals are due on February 28th. Commissioner Fisher inquired how long will it take for the study; with Ms. Sobrino responding, it will go through the selection process and would anticipate to have someone under contract by early April. Commissioner Fisher asked if the County has a park within the quarter-mile within the site. Commissioner Nelson stated certainly within a half-mile. Commissioner Fisher asked to consider tabling the item. Commissioner Bolin Lewis stated she was also going to go with tabling the item, and inquired if Commissioner Nelson likes the flagpole tower over the design that has the multi-canister. Commissioner Nelson responded aesthetically, it is a much better choice wherever it goes, but in some settings it may not be as appropriate as others, and he believes there are better choices than what has been shown so far. Commissioner Infantini stated tabling may be okay, because she is leaning towards approving it unless there is a County site within a quarter-mile from the applicant's location, and is willing to allow the applicant to go locate the County site; and to start the process all over again does not seem fair. She reiterated if the Board would approve it pending a more appropriate location within a quarter-mile on County property, she would be in favor of that; and she does not think the flagpole tower consideration maybe altogether fair, because based on prior testimony it would appear you can only generate 50

percent as much revenue because instead of having five canisters, one can only have two and half, that is half the money and takes one a lot longer to return the investment, and it is not for the Board to determine how much profit that somebody should make.

Commissioner Nelson stated he would move to table to allow the process to proceed and to identify locations. Commissioner Fisher seconded the motion. Ms. Lapore stated it needs a date certain. Ms. Fox stated the next board meeting is March 7th for the zoning items, and the next one would be April 4th. Chairman Anderson announced the item will be moved to April 4th, because it needs a full Board present for the discussion.

Ms. Rezanka asked Mr. Edwards if he recalls testifying at the October 15, 2012, Planning and Zoning meeting that the cellular communications infrastructure is only 30 to 40 percent built for what the future is going to need. Mr. Edwards responded that is correct. Ms. Rezanka stated Mr. Edwards had submitted several emails to the County over the past number of months, and in one of them he indicated the County Codes want to control the tower, primarily from an aesthetics perspective; and asked it he remembered making that statement. He responded yes, it was probably a slip of the tongue; it was a discussion he had with staff, and it was an intent or desire. Ms. Rezanka asked who he had the conversation with. Mr. Edwards responded he does not remember. Ms. Rezanka stated there was a series of emails today; in one email, Mr. Edwards indicated that 150 feet would work very well for carriers, and if the County approves that height he would not have any problems in supporting it; and asked if he agreed with that. Mr. Edwards responded absolutely, if the Board approves the height he would not be against it, as that is not what he was asked to do. She stated Mr. Gowen said it was cost 232, but Mr. Edwards said cost 231, and inquired if Mr. Gowen misspoke. Mr. Edwards replied, yes, Mr. Gowen misspoke, it is 231. Ms. Rezanka stated a rule of thumb, without knowing the exact parameters of the transmission, would work for 80 feet; and inquired if that indicates that Mr. Edwards does not know the exact parameters of what Metro PCS needs. Mr. Edwards replied, in that reference he was talking about MetroPCS not providing him with the power level, and it was in reference to a comment he had seen on something that was submitted; and stated what he was referencing was that he looks at what the receiver is, from that standpoint that whatever they are transmitting is really irrelevant because it is the return signal coming back from the handset that is the controlling factor. Ms. Rezanka inquired if Mr. Gowens testified opposite to that. Mr. Edwards responded, no, he testified that they are using 12 watts sending, and he is talking about receiving. Ms. Rezanka stated in email correspondence between Mr. Edwards and Mr. Ritchie, there is a reference to Section 62-1953, regarding co-location; and inquired if Mr. Edwards testified tonight that he believes other carriers can co-locate on an 80-foot tower on the site. Mr. Edwards responded yes, absolutely. Ms. Rezanka inquired what carriers would those be. Mr. Ewards replied any carrier that would apply for it; he reached out to AT&T to see if it had an interest in the site because he was trying to find out if there were any additional needs for the tower; the purpose of that was to find a justification for going higher than 80 feet; and stated as to the question of which carriers, the tower would be available to anybody. Ms. Rezanka inquired if Mr. Edwards knows of any specific carrier that would be interested in co-locating at this location under 80 feet. Mr. Edwards replied, he does not know of any that would be co-location because there are many towers that are 80 feet or less and have co-location. Ms. Rezenka again inquired if Mr. Edwards knows of any carriers that would co-locate under 80 feet at the proposed site. Mr. Edwards responded with the way the question is asked, it is a trick question. Ms. Rezenka stated Mr. Edwards does not know because he does not have all the information from all the carriers. Mr. Edwards noted that statement cannot be made because he does not know what the carriers' needs are. Ms. Rezanka continued, in the email chain there was an email from Josephine Conde, the real estate manager from Verizon Wireless, that said Verizon would have a height preference of 130 to 140 feet, and asked Mr. Edwards if he reached out to Verizon Wireless. Mr. Edwards replied he cannot remember, but he knows he reached out to AT&T; and stated he believes he did send a note to Josephine Conde at some point, but he is not going to testify to that because he does not remember

specifically, because Ms. Conde is a contact person he communicates with a lot at Verizon Wireless. Ms. Rezanka stated in one of the correspondence, Mr. Edwards almost indicated that if a tower was built, carriers would come because they are not looking enough ahead; and inquired if it is his opinion that the tower carriers are not looking forward enough to know that they need in the coming years. Mr. Edwards replied he does not think that is true because he has seen projection maps from multiple carriers that have two and three years' projection of where they would like to be. Ms. Rezanka asked if he has seen the projection for Merritt Island; with Mr. Edwards replying no, he has not.

There being no further comments or objections, the Board continued the item to April 4, 2013 meeting.

ITEM V.B.3., (12PZ-00087) CHARLES D. EATON, TRUSTEE - REQUESTS A CUP FOR ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION IN CONJUNCTION WITH A RESTAURANT IN A BU-1 ZONING CLASSIFICATION ON 0.52 ACRE, LOCATED ON THE NORTHWEST CORNER OF 35TH STREET AND S. ATLANTIC AVENUE (3466 S. ATLANTIC AVENUE, COCOA BEACH)

Cindy Fox, Zoning and Enforcement Manager, advised the item is in conjunction with a restaurant, and the recommendation from the Planning and Zoning Board was to approve it with the condition there be no adult entertainment and limited to beer and wine only. She added, the applicant did voluntarily agree at the Planning and Zoning meeting, and testified that he would be surrendering the adult entertainment aspect to the business.

Charles Eaton stated he is confused by the recommendations by the Planning and Zoning Board; he was under the impression that it approved beer, wine, and liquor pending the restaurant license. He explained he wished to apply for a 150-seat restaurant license so that he can utilize the SRX Restaurant liquor license for the State. He added, the question was brought up if there was enough parking to utilize the license, and he would like to clarify that. He stated his parents bought the building in 1974, and used it as an investment property to supplement their income; it was leased as a bar in the 1980's, and one of the tenants came to the County and applied for the adult entertainment license; and it was granted and has been adult entertainment ever since. He continued 30 years ago, the neighborhood was not as built up and it really was not an issue; and since the neighborhood has evolved he is the first to agree that the adult entertainment no longer fits with the area, and he does not wish to pursue it. He stated he would like to utilize the property for what it is best suited for, which is a restaurant/lounge; it was a restaurant/bar back in the 1980's; it has a full kitchen, and it is zoned BU-1, which includes restaurant/bar; and he reiterated he would like to utilize it as such. He added, he definitely wants to eliminate the adult entertainment. He stated he would have done something about this sooner, but due to lease obligations and financial situations this is the first opportunity he has had.

Commissioner Bolin Lewis asked if there is currently a business a in the building at this time; with Mr. Eaton responding it is currently shut down. Commissioner Bolin Lewis inquired how many parking spaces are needed for a restaurant with 150 seats. Ms. Fox replied the land development regulations require one parking space for every three seats; and the other aspect is that Mr. Eaton wants to have a 150 seats because that is part of the alcohol in conjunction with the restaurant's license. She added, he needs to be able to park and have enough spaces for a least 150 seats; the building is over 5,000 square feet, so she believes it is not an issue of whether of not he can have that many seats in the building, but staff has concerns over the ability to park that many cars in the lot. She explained he submitted a plan that shows over 50 parking spaces, but the site has never been site planned, and probably even if it had, the age when the building was built would probably not meet current County standards. She reiterated

the building is certainly big enough to accommodate 150 seats, but the concern is parking. Commissioner Nelson asked staff about available handicap parking spaces; with Ms. Fox responding, staff does not know at this time whether or not the site is Americans Disability Act (ADA) compliant. Mr. Eaton stated there are two existing handicap spaces. Commissioner Nelson stated two is not going to be sufficient for the size capacity. Ms. Fox stated that will be evaluated if the Board makes it part of the condition of the CUP. Mr. Eaton stated if he did not have enough parking to accommodate the SRX license, another option is the 4-COP license, which is a totally different arrangement and does not depend on the amount of parking spaces; and stated he would like to have that as an option. Commissioner Infantini inquired if it would be acceptable if the Board granted Mr. Eaton conditional approval pending the site plan being able to meet the established requirements, such as what is required for handicap parking and the 50 parking spaces; and asked the Board if that would be acceptable.

George Hurt stated at the Planning and Zoning meeting the recommendation for beer and wine only, was what it talked about; and the residents were against the hard liquor license, and the parking next to A1A, having to back into the road. He added, he applauds Mr. Eaton removal of adult entertainment; the residents supported the Planning and Zoning for no adult entertainment and the limitation of beer and wine. He asked what a SRX alcohol permit is; with Ms. Fox responding when made in conjunction with a restaurant it is called a 4-COP/SRX, and it just has a different name, and it requires a minimum of 150 seats in order to serve full alcohol. Mr. Hurt stated when he talked to Mr. Eaton he seemed like a nice guy, but he has had the adult entertainment there for a number of years, and as residents, they were leary about how much they could depend on Mr. Eaton following through to make sure there is no adult entertainment and no hard liquor. He reiterated the residents do not support hard liquor and adult entertainment.

Robert Welo stated within 100 yards of his residence is the facility, and also condominiums, sport stores, surf shop, and a hotel down the street; and he does not think a restaurant with a bar is going to make any difference, and therefore he supports the application.

Mr. Eaton advised the original application was for beer, wine, and liquor; and he was under the impression that the Planning and Zoning board made the stipulation that the liquor would be granted or denied based on the parking availability, but it was for the SRX license and not the COP. Commissioner Nelson stated if it is operated as a restaurant he would be concerned if the bar was open until 2 a.m., and inquired if Mr. Eaton had plans for how the restaurant looks and what the neighbors would expect. Mr. Eaton responded he is planning on a contemporary causal menu featuring Florida seafood; he does not want to stay up until two o'clock in the morning, he does not want to run a nightclub, he does not want a stand-alone bar, he just wants to run a full service facility and be able to accommodate customers requests; and stated full service is important. Commissioner Nelson stated there is an issue with the cars backing onto A1A, and that is an issue with any use that goes in there, because that is a section where the speed tends to go up because of the nature of the design; and asked how Mr. Eaton proposes to address that. Mr. Eaton responded he can not change the way the parking is laid out; he thinks there are seven parking places across the front under the building, and he has utilized them many times over the years, and there is room to back out of the angled spaces and not be on the roadway. Commissioner Nelson stated he is not sure that is going to be in the Code after going through an analysis, he thinks it will be problem. Mel Scott, Assistant County Manager, stated in the abundance of fairness, no the record, it will be a problem; on the record, Mr. Eaton can not incorporate those kind of spots on the right-of-way, especially that stretch of A1A.

Commission Infantini stated perhaps the Board would entertain a motion to grant a beer and wine only at this time, and allow as many seats as the parking lot permits; and then once Mr. Eaton sees he is doing well, and he is a success, and the neighbors see he is doing well and

not having events that are not conducive to the community, then he can come back and ask for full liquor. She added, it would give Mr. Eaton a chance to get started before he purchases alcohol. Mr. Eaton stated that would help. Commissioner Fisher stated if Mr. Eaton figure out a way to have full liquor and serve customers, he thinks there is some value in that; and from a personal standpoint he would rather drink Captain Morgan than wine; and he thinks one can be irresponsible with alcohol or wine. He stated he thinks the Board should approve the full liquor, just put the challenge on Mr. Eaton to solve the parking issues; and stated he has seen some irresponsible people on beer and wine. Chairman Anderson stated this is one of those situations that Mr. Eaton has an older building, and somebody approved it somewhere in the County a long time ago; he does not want a vacant building; and he would like to find a way to work with Mr. Eaton, even if that is full liquor and food, and some kind of waiver on the parking requirements. He added, the Board is going to run into this as the State, National, and local governments want to do infill process; and one complains about urban sprawl but if one is going to start to talk about infill of old existing buildings the Board is going to face this; and therefore, the Board has to find a way to accommodate these situations.

Commissioner Bolin Lewis stated she would feel fine with Mr. Eaton going forward with the full liquor, if he can do that; and she would want Mr. Eaton to stop all adult entertainment there, and that be written into it. Mr. Eaton responded that is not a problem, it is not right for the area; and he believes a full service restaurant, including full beverage service, would be a definite improvement and a help to the area. Commissioner Bolin Lewis made a motion to approve.

Commissioner Nelson inquired what he like to suggest is that the Board stipulate no operation after midnight, as that tells the community it can not run a bar. Mr. Eaton stated he would have no problem with that. Commissioner Nelson added, he would like Mr. Eaton to make sure that he is going to meet Code; he is going to lose the seven spaces up front because it just will not meet Code and it is not safe; and he is probably going to have to end up getting the other license because he will drop below 150 seats because the parking is not going to be there; and he is going to have to put in the appropriate number of handicap spaces, and the Board needs to have Mr. Eaton surrender the entertainment license so that the Board never has that as an issue. Robin Sobrnio, Planning and Development Director, asked the Board if that requires that the parking be site planned and installed in accordance with the County standards. Commissioner Nelson stated because of the loss of the spaces, he thinks to have any assurance he thinks that is a yes; staff does not need to get into drainage, but a layout that shows the parking and that it meets the criteria, because that is going to general the number of seats.

There being no further comments or objections, the Board approved as requested on the condition that the applicant meet Code requirements for parking, including ADA requirements, and with additional conditions of no operation after midnight and to surrender the adult entertainment license.

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.B.4., (12PZ-00074) EPH320, LLC (JAKE WISE, P.E.) - REQUESTS A SMALL SCALE PLAN AMENDMENT TO CHANGE THE FLU MAP DESIGNATION FROM RES 6 TO CC AND A CHANGE FROM RU-2-6 TO BU-1, WITH A CUP FOR COMMERCIAL MARINA ON 1.00 ACRE +/-, LOCATED ON THE EAST SIDE OF U.S. HWY 1, APPROXIMATELY 500 FEET NORTH OF JEN DRIVE (PART OF 6075 N. HWY 1, MELBOURNE)

Cindy Fox, Zoning and Enforcement Manager, stated the item is a portion of property owned by Grills Restaurant; it was left as multi-family when it purchased the property back when it was conducive for multi-family, and it wishes to bring it in compliance with the rest of their holdings and to use it for parking and maintaining the commercial marina that has been existing.

There being no further comments or objections, the Board approved as recommended, and adopted Ordinance No. 2013-02, setting forth the first Small Scale Plan Amendment of 2013.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
SECONDER:	Trudie Infantini, Commissioner District 3
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM V.B.5., (12PZ-00085) ICV VIERA, LLC (TONY GEBHARDT) - REQUESTS A CUP FOR ALCOHOLIC BEVERAGES (BEER & WINE ONLY) FOR ON-PREMISES CONSUMPTION IN CONJUNCTION IWTH A RESTAURANT IN A PUD ZONING CLASSIFICATION ON 1.15 ACRES +/-, LOCATED ON THE NORTH SIDE OF VIERA BLVD., APPROXIMATELY 840 FEET WEST OF MURRELL ROAD (PART OF 1950 VIERA BLVD., ROCKLEDGE)

Cindy Fox, Zoning and Enforcement Manager, advised the item is a Conditional Use Permit (CUP) and it is for beer and wine only, and it would be in conjunction with a newly constructed restaurant.

Anthony Gebhardt stated he is just looking for beer and wine license

The Board approved the requested CUP for Alcoholic Beverages (beer & wine only) for On-Premises Consumption in conjunction with a restaurant in a PUD zoning classification on 1.15 acres, +/-, located on the north side of Viera Blvd., approximately 840 feet west of Murrell Road.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
SECONDER:	Trudie Infantini, Commissioner District 3
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM V.C., ADOPTION, RE: COMPLIANCE AGREEMENT AND REMEDIAL COMPREHENSIVE PLAN AMENDMENT

Chairman Anderson called for a public hearing to consider the Planning and Zoning Board's recommendations of January 7, 2013.

Christian Lepore stated this is a compliance agreement to resolve the administrative petition that was filed in November to challenge the recent Wetland Comprehensive Plan Amendment, and it contains the remedial amendment, which essentially incorporates into the Comprehensive Plan, the Interim Enforcement Policy that the Board voted and approved unanimously at the time the amendment was enacted in October.

There being no further comments or objections, the Board adopted Ordinance No. 13-03, amending Article III, Chapter 62, of the Code of Ordinances of Brevard County; entitled "The Comprehensive Plan", setting forth Plan Remedial Amendment 2013-R; amending Section 62-501, entitled "Contents of the Plan"; specifically amending Section 62-501, Part I, entitled conservation element; providing for internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Trudie Infantini, Commissioner District 3
SECONDER:	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM VII.B.1., REQUEST FOR BIDS, RE: SUBLEASE OF PROPERTY LOCATED AT 705 BLAKE AVENUE AND 830 KNIGHT STREET, COCOA

The Board authorized staff to advertise a Request for Bids, utilizing the procedures found in Florida Statute 125.35, for the sublease of State property (County leased) located at 705 Blake Avenue and 830 Knight Street, Cocoa; and authorized the County Manager to sign a sublease with the highest and best bidder.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Mary Bolin Lewis, Vice Chairman/Commissioner District 4
SECONDER:	Trudie Infantini, Commissioner District 3
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ADJOURNED

Upon Board consensus, the meeting was adjourned at 6:53 p.m.

ATTEST:

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

_____
SCOTT ELLIS, CLERK