

Kimberly Powell

From: Kimberly Powell
Sent: Monday, December 05, 2016 9:53 AM
To: 'Lewis, Sally A'; 'Scott.Knox@brevardcounty.us'
Subject: 10-13-2016 Minutes Approval
Attachments: 10-13-2016 Zoning.doc

Attached are the minutes of October 13, 2016, which will be considered by the Board on December 6, 2016.

Thank you.

Kimberly Powell
Recording Secretary
Clerk to the Board
(321) 637-2001
Kimberly.powell@brevardclerk.us



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

5:00 PM

The Board of County Commissioners of Brevard County, Florida, met in regular session on October 13, 2016 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	
Jim Barfield	Chairman/Commissioner District 2	Present	
Trudie Infantini	Commissioner District 3	Present	
Curt Smith	Vice Chairman/Commissioner District 4	Present	
Andy Anderson	Commissioner District 5	Present	

ZONING STATEMENT

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

INVOCATION

The invocation was provided by Pastor Eric Ward, Calvary Chapel, Viera.

PLEDGE OF ALLEGIANCE

Commissioner Andy Anderson led the assembly in the Pledge of Allegiance.

October 13, 2016

ITEM I.A., RESOLUTION, RE: PROCLAIMING OCTOBER 15,2016, AS "WHITE CANE SAFETY DAY" IN BREVARD COUNTY

Commissioner Infantini read aloud, and the Board adopted Resolution No. 16-185, proclaiming October 15, 2016, as "White Cane Safety Day" in Brevard County.

Camille Tate stated there is a car and bike show on October 15, and invited the Board.

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

ITEM III., PUBLIC COMMENTS

Charles Tovey Jr. stated he is glad Commissioner Infantini is not there; he does not like to stare at people but the camera is there and he never had the opportunity, so he is taking the opportunity to address, excuse his expression if he hurts anyone's feelings, it is no comparison to how he felt and what he has been through; the County is shrinking as far as the environmental places; and he is looking for reservations of areas especially now, hind sight is 20/20, when it is too late it is too late. He continued by saying his property, he guesses it is up to him, no one is going to participate in helping him straighten out the situation there; he has asked what he could do and things; and he has to do it. He went on what he states, sometimes he says too much information, a lot, it is for other people and it is the only way they have communication; they see how he is and whether he is alive or not; so other people watch television and this channel has increased as well as all the other things he has addressed, the zoning problems with his property, he has noticed all of his neighbors get to do anything they want, but he is adhering to certain things; and he asked what the Board can do for him. He stated he stated he has the biggest tree in Brevard County; and that is what has been happening, it is like looters every time he leaves, and it is the same people as he is wide awake, watching these people do this stuff. He continued on that they threaten him; he is going to be left to take care of the situation; he appreciates the Board allowing him to express himself while working with it all this time; the tortoises walking down the street and the way the semi-trucks and the rest of the traffic blazes down and Mo, Larry, Curly, Joe, and Shimp, he knows there are five of them that were there and not addressed; the osprey nests are being chopped down as well as the eagles nests; and he has a seven to 10 foot artesian well, and that is why he did not care when they ripped out his water, because he would rather save the springs. He went on to say Pineda is a very important environment; he would like to change his property, satisfy whatever complaints the Board has as well as living under what he works for; he has worked his whole life and it is all gone; he wants to participate; and he has been compliant, paid all his fines, but yet it has progressed. He continued by saying there are things against his safety, which is not an issue, but there are fuel tanks still down at the end of the road; he thanked the Board.

ITEM IV., PUBLIC HEARINGS

Chairman Barfield called for a public hearing to consider Tabled Items and Planning and Zoning Board recommendations of September 12, 2016; and Port St. John Recommendations of September 14, 2016.

ITEM IV.B.1., (16PZ00073) - MIKE ERDMAN MOTORS, INC - (MIKE WILLIAMS) - REQUESTS A CHANGE OF CLASSIFICATION FROM PIP AND PBP TO BU-2; AND REMOVAL OF EXISTING BCP, WITH BDP, ON 4.13 ACRES, LOCATED ON THE NORTH SIDE OF VIERA BOULEVARD, APPROXIMATELY 100 FEET WEST OF U.S. 1 (NO ASSIGNED ADDRESS. IN THE VIERA AREA)

There being no comments or objections, the Board approved the request of Mike Erdman Motors Inc. for reclassification from PIP and PBP to BU-2, and for the removal of the existing Binding Development Plan (BDP) on 4.13 acres located on the north side of Viera Boulevard.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Trudie Infantini, Commissioner District 3
SECONDER:	Curt Smith, Vice Chairman/Commissioner District 4
AYES:	Fisher, Barfield, Infantini, Smith, Anderson

ITEM IV.B.2., (16PZ00070) - JONATHAN AMICK - REQUESTS A CHANGE OF CLASSIFICATION FROM AU TO SR. ON 0.55 ACRE, LOCATED ON THE WEST SIDE OF FOLSOM ROAD, APPROXIMATELY .25 MILE SOUTH OF KELLY ROAD (2612 FOLSOM ROAD, MIMS)

There being no comments or objections, the Board approved the request of Jonathan Amick for a change of classification from AU to SR on 0.55 acre located on the west side of Folsom Road approximately 0.25 mile south of Kelly Road.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Robin Fisher, Commissioner District 1
SECONDER:	Curt Smith, Vice Chairman/Commissioner District 4
AYES:	Fisher, Barfield, Infantini, Smith, Anderson

ITEM IV.B.3., (16PZ00074) - K&T ENTERPRISES OF BREVARD COUNTY, LLC - (JOHN W. MALOY, JR.) - REQUESTS A CUP FOR ALCOHOLIC BEVERAGES (BEER AND WINE ONLY) FOR ON-PREMISES CONSUMPTION IN CONJUNCTION WITH A RESTAURANT, IN A BU-1 ZONING CLASSIFICATION, ON 0.79 ACRE, LOCATED ON THE SOUTHEAST CORNER OF U.S. 1 AND BROCKETT ROAD (3121 NORTH U.S. 1, MIMS)

Cynthia Fox stated this is a request for a conditional use permit for alcoholic beverages, beer and wine only, for the on-premise consumption in conjunction with the restaurant in a BU-1 zoning classification located at the southeast corner of U.S.1 and Brockett Road; the Planning and Zoning (P&Z) did recommend several conditions given that the property has been commercial for a while and had many uses on it; at one time, it was a car lot; some of the neighbors from the area came; and P&Z has recommended the request be approved with the condition that the lighting is restricted, fencing and landscaping along the east area of the property, the parking lot be striped, and the hours of operation be limited to 10:00 a.m. to midnight with the exception of a couple holidays per year; and she asked for clarification on the holidays. She went on to say there was a little bit of a split vote at P&Z.

John Maloy stated he leased the property; he is trying to set up a small beer and wine pub and eatery; he will eventually have a limited food menu, serve beer, wine, and refreshment; and he does have some photographs that show the fence he has installed. He continued one of the members of P&Z suggested a privacy fence be put up from the front corner of the building to block any headlights from shining on the properties behind the building and to stop cars from

October 13, 2016

driving into the side yard; he had someone look at the parking lot for striping; he took measurements and was working on a layout and then the storm hit so he has not been able to make it back; however, it is in the planning stage and he is going to stripe the parking spaces. He stated according to this gentleman there should be 20 parking spots, including the handicap spot.

Eden Bentley, Deputy County Attorney, stated the County needs some definition about the couple holidays per year; she believes she thinks what he means is he wants to stay open longer on certain holidays, however, there needs to be some definition.

Mr. Maloy commented the P&Z Board discussed the possibility of staying open a little later on certain nights before holidays.

Attorney Bentley asked him to specify those holidays.

Mr. Maloy replied as suggested New Year's Eve would be a good one; holidays where people will be off work the next day.

Commissioner Infantini asked why not pick them all.

Mr. Maloy stated all legal holidays recognized by the County and State offices.

There being no other comments or objections, the Board approved the request of John Maloy for a CUP for alcoholic consumption, beer and wine only, for on-premise consumption in conjunction with a restaurant in a BU-1 classification, on 0.78 acre located on the southeast corner of U.S.1 and Brockett Road with the P&Z conditions and operation hours to increase to 1:30 a.m. during the holidays listed in the Florida Statutes.

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

ITEM IV.B.4., (16PZ00072) - EARL AND STEPHANIE CANNON - REQUESTS A CHANGE OF CLASSIFICATION FROM GU TO AU(L), ON PROPERTY DESCRIBED AS LOT 22, BLOCK 16, CANAVERAL GROVES UNRECORDED SUBDIVISION. SECTION 20, TOWNSHIP 24, RANGE 35. (1 ACRE) LOCATED ON THE NORTH SIDE OF BURNING TREE AVENUE, APPROXIMATELY 0.16 MILE EAST OF SATELLITE BOULEVARD (6736 BURNING TREE AVENUE, COCOA)

There being no comments or objections, the Board approved the request of Earl and Stephanie Cannon for a classification change from GU to AU(L), on property described as Lot 22, Block 15, Canaveral Groves unrecorded subdivision, Section 20, Township 24, Range 35. It is one acre located on the north side of Burning Tree Avenue.

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

ITEM IV.B.5., (16PZ00077) - VIOLETA V. WELSH - (DIANE NAGEL) - REQUESTS A CHANGE OF CLASSIFICATION FROM RU-1-9 TO AGR, ON 9.68 ACRES, LOCATED ON THE SOUTH SIDE OF PARRISH ROAD, APPROXIMATELY 0.42 MILE WEST OF BURNETT ROAD AT TERMINUS OF ROBESON ROAD ON SOUTH END (NO ASSIGNED ADDRESS. IN THE COCOA AREA)

There being no further comments or objections,, the Board tabled consideration of the request of Violeta V. Welsh for a change of reclassification from RU-1-9 to AGR on 9.68 acres, located on the south side of Parrish Road, approximately 0.42 mile west of Burnett Road at terminus of Robesen Road on the south end to the November 3, 2016 Board of County Commissioners meeting.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Trudie Infantini, Commissioner District 3
SECONDER:	Robin Fisher, Commissioner District 1
AYES:	Fisher, Barfield, Infantini, Smith, Anderson

ITEM IV.B.6., (16PZ00064) - JANICE RENK - (ROBERT POTTER) - REQUESTS A CHANGE IN CLASSIFICATION FROM AU TO RU-2-8, ON 1.89 ACRES, LOCATED ON THE EAST SIDE OF SOUTH TROPICAL TRAIL, APPROXIMATELY 102 FEET SOUTH OF RIVER CLIFF LANE (892 SOUTH TROPICAL TRAIL, MERRITT ISLAND.)

Cynthia Fox, Planning and Zoning Manager stated this item was tabled from a previous Planning and Zoning meeting; there were sign issues; and some other questions. She continued the request is a change from AU to RU-2-8 for the purposes of building duplexes; there were many people who came to the Planning and Zoning meeting, therefore their vote is reflected as unanimous.

Robert Potter stated due to the storm some of his partners are out of state, therefore he would like this to be tabled.

There being no other comments or objections, the Board tabled consideration of the request by Janice Renk for reclassification from AU to RU-2-8 on 1.89 acres, located at 892 South Tropical Trail, Merritt Island to the November 3, 2016 Board of County Commissioners meeting.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Andy Anderson, Commissioner District 5
SECONDER:	Robin Fisher, Commissioner District 1
AYES:	Fisher, Barfield, Infantini, Smith, Anderson

ITEM IV.B.7., (16PZ00055) - BANANA RIVERFRONT, LLC - (KIM REZANKA) - REQUESTS A SMALL SCALE PLAN AMENDMENT (16S.05) TO CHANGE THE FUTURE LAND USE FROM RESIDENTIAL 15 AND CC TO ALL CC; AND A CHANGE OF CLASSIFICATION FROM RU-2-15 TO BU-1 ON 2.44 ACRES, LOCATED ON THE WEST SIDE OF ORLANDO AVENUE, APPROXIMATELY 415 FEET NORTH OF CRESENT BEACH DRIVE. (2200 SOUTH ORLANDO AVENUE, COCOA BEACH)

Cynthia Fox, Planning and Zoning Manager, stated this Item is Banana Riverfront , LLC, also known as Squid Lips; they have been through several reiterations of this during different meetings; she believes they are still working through some issues; and the applicant is present to request tabling.

October 13, 2016

Kim Rezanka stated originally her client was scheduled for surgery, that did not happen due to the storm; now they are trying to work on the stormwater plan, which was one of the conditions recommended by the Planning and Zoning Board; and also the PID has given that as an option to fully enter into a stormwater plan. She continued they are working with their engineer and the County to make sure they can do that before they go forward with this request; and she requested this item be tabled to November 3, 2016.

Chairman Barfield asked if this is also for Item IV.D., on the Agenda.

Ms. Rezanka replied yes.

There being no further comments or objections, the Board tabled consideration of the request of Banana Riverfront, LLC for a Small Scale Plan Amendment (16S.05) to change the Future Land Use from Residential 15 and CC to all CC; and a change of classification from RU-2-15 to BU-1 on 2.44 acres, located on the west side of Orlando Avenue, approximately 415 feet north of Crescent Beach to the November 3, 2016 Board meeting.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Robin Fisher, Commissioner District 1
SECONDER:	Andy Anderson, Commissioner District 5
AYES:	Fisher, Barfield, Infantini, Smith, Anderson

ITEM IV.D., REQUEST FOR PUBLIC INTEREST DETERMINATION (PID) FOR SQUID LIPS, RE: RESTAURANT TO ALLOW PLACEMENT OF PRIMARY STRUCTURES WITHIN THE SURFACE WATER PROTECTION BUFFER, AND IMPERVIOUS AREAS EXCEEDING 30 PERCENT OF THE REQUIRED BUFFER AREA (DISTRICT 2)

There being no further comments or objections, the Board tabled consideration of the request by Kim Rezanka to the November 3, 2016, Board meeting.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Robin Fisher, Commissioner District 1
SECONDER:	Andy Anderson, Commissioner District 5
AYES:	Fisher, Barfield, Infantini, Smith, Anderson

ITEM IV.B.8., (16PZ00058) - RJM MERCO, LLC - (KENDALL MOORE, ESQ.) REQUESTS A CHANGE OF CLASSIFICATION FROM RU-1-9 TO BU-1-A, ON 0.37 ACRE, LOCATED ON THE NORTHEAST CORNER OF ELKCAM BOULEVARD AND MANTH AVENUE, APPROXIMATELY 470 FEET WEST OF U.S. HIGHWAY 1. (LOT 1 = NO ASSIGNED ADDRESS. IN THE COCOA AREA. LOT 2 = 1070 ELKCAM BLVD., COCOA)

Cynthia Fox, Planning and Zoning Manager, stated this Item is out of the Port St. John Special Independent District; they have been working with the applicants and the neighborhood to change the classification from RU-1-9 to BU-1-A for purposes of having an Assisted Living Facility; they have agreed to a Binding Development Plan (BDP) limited to an age of 65 and over; and that the property be used as an assisted living facility only.

Commissioner Infantini asked why they want to limit the age at 65 because there are times when people need Assisted Living Facilities that are younger than 65.

October 13, 2016

Ms. Fox replied the applicant can answer that, but she believes that is the population that they serve.

Commissioner Infantini stated they are welcome to do that, she just does not understand why they would want to be that restrictive.

Kendall Moore stated they would prefer the number not be at age 65, but clearly wanted to convey the intent because County Code talks about group home; there is no real intent to do that just based on the number 14; it is really an Assisted Living Facility but the Code only calls it that once it surpasses 14 in number in terms of beds; therefore, they are not calling it an assisted living facility willing to enter into that for BDP, but clearly there could be a resident that is 50 that has dementia or things of that nature and would love the opportunity to be able to have them, but that was the recommendation that came forward from the Port St. John Advisory Board.

Commissioner Infantini stated she just did not know if that precluded him from accepting somebody younger.

Mr. Moore replied it certainly would, it is clearly intended for over 65 and is extremely restrictive; and he feels that is what the Port St. John Advisory Board was intending.

Commissioner Anderson stated he is dealing with this in his family with a younger person who already has Dementia and feels that the age should be lowered to approximately 50 years old.

Commissioner Infantini thanked Commissioner Anderson.

Commissioner Fisher asked if the Advisory Board made any stipulations.

Mr. Moore stated he thinks the clear intent was they wanted to not have minors, not have people with felonies, or anything of that nature; Mr. McCoic and his partners intend to be in the assisted living facility business; and he thinks Commissioner Infantini's point is clear, there could be someone who meets that criteria and definition of that particular age; but that was the request coming from the advisory board. He went on to say if they were able to accept people between 50 and 65 they would be happy to do it; he wants to be very clear that the BDP specifies it as a Assisted Living Facility and that is what it is intended to be.

Commissioner Fisher stated with the spirit of the Port St. John Advisory Board if the age was lowered to 50, they could still keep the felons and others out.

Mr. Moore replied that is correct. He stated he thinks staff pointed out to the advisory board that this is going to be governed by Statute and a licensing from a State perspective so those parameters will specifically define who can and cannot be a resident in that facility.

Chairman Barfield stated assisted living is defined by the State and actually the Federal Government too, so it is very clear and they must be licensed.

Ms. Fox stated the Port St. John Board was concerned about making this a commercial piece; so if it could at least make sure the BDP stipulates the age to be 50, that would be fine; but she asked to please limit it to an Assisted Living Facility because that was very important to the advisory board.

Mr. Moore stated Ms. Fox was correct; that was the clear intent from the Board; and he is fine with that.

October 13, 2016

There being no further comments or objections, the Board approved the request by RJM Merco, LLC for a change of classification from RU-1-9 to BU-1-A, on 0.37 acre, located on the northeast corner of Elkcam Boulevard and Manth Avenue, approximately 470 feet west of U.S. Highway 1; and to change the age of the residents to 50 and older and still remain as an Assisted Living Facility.

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

ITEM IV.C.1., (16PZ00067) SECTION 31, TOWNSHIP 23, RANGE 36, TAX PARCEL 260; AND SECTION 31, TOWNSHIP 23, RANGE 36, TAX PARCEL 2, OWNED BY STATE OF FLORIDA, ITTF - 28.19 ACRES, LOCATED ON THE SOUTHWEST CORNER OF CAMP ROAD AND THE F.E.C. RAILROAD. (TAX PARCEL = NO ASSIGNED ADDRESS. IN THE COCOA AREA; TAX PARCEL 2 = 555 CAMP ROAD, COCOA) CURRENT ZONING : GU GENERAL USE) AND RU-1-7 (SINGLE -FAMILY RESIDENTIAL) PROPOSED ZONING: GML(I) (GOVERNMENT MANAGED LANDS - INSTITUTIONAL)

There being no further comments or objections, the Board approved the request to change the zoning classification from GU and RU-1-7 to GML(1).

RESULT: ADOPTED [UNANIMOUS]
MOVER: Andy Anderson, Commissioner District 5
SECONDER: Robin Fisher, Commissioner District 1
AYES: Fisher, Barfield, Infantini, Smith, Anderson

ITEM IV.C.2., (16PZ00071) SECTION 19, TOWNSHIP 26, RANGE 37, A PORTION OF TAX PARCEL 521, OWNED BY BREVARD COUNTY - 1.10 ACRES LOCATED ON THE SOUTHWEST CORNER OF HOLY TRINITY DRIVE AND PINEDA CAUSEWAY. (NO ASSIGNED ADDRESS. IN THE MELBOURNE AREA.) CURRENT FUTURE LAND USE AND ZONING: (PUBLIC, AND GML(H) (GOVERNMENT MANAGED LANDS - HIGH INTENSITY) PROPOSED FUTURE LAND USE AND ZONING: CC (COMMUNITY COMMERCIAL) AND BU-1 (GENERAL RETAIL COMMERCIAL)

Cynthia Fox, Planning and Zoning Manager, stated this is a property swap; this was coordinated through Public Works and the Planning and Zoning Department; it is between Pineda and Holy Trinity; and she requested the Board to rezone it appropriately to the BU-1 zoning classification.

There being no further comments or objections, the Board approved the request to change the zoning classification from GML(H) to CC and BU-1.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Curt Smith, Vice Chairman/Commissioner District 4
SECONDER: Andy Anderson, Commissioner District 5
AYES: Fisher, Barfield, Infantini, Smith, Anderson

ITEM VIII.D., TRUDIE INFANTINI, DISTRICT 3 COMMISSIONER

Commissioner Infantini stated she is very happy Brevard County made it through Hurricane Matthew as well as it did. She expressed thanks to the individuals in the retail stores for stepping up. She stated she personally has never really thought about the magnitude of what they contribute to the community; she certainly saw it now that she lives on the mainland; she saw people hustling and working with a smile; loading lumber into trucks and on roofs for people who were not properly prepared, but thought perhaps they were; and they were continually loading pallets of water until they ran out. She continued on to say the healthcare care individuals who manned the hospitals and often times the police receive recognition but not a lot of these other people in the community; County and City staff were available doing Public Works to make sure the roads were cleared; all these people were amazing; they worked exceptionally hard and long hours; and she just wanted to thank them. She went on to thank the restaurants that were kept open so that those without power could get a breakfast in the morning.

ITEM VIII.E., ANDY ANDERSON, DISTRICT 5 COMMISSIONER

Commissioner Anderson requested a Waste Management Representative be at the next meeting to talk about debris removal and why it is taking so long to move things. He stated in unincorporated South Brevard it is a disaster; he has not seen a Waste Management truck or any other contractors since the storm; and he would like to ask them what is going on.

Commissioner Infantini stated she spoke to one contractor who was up and running and ready to start picking up debris when he found out they no longer had the job because Brevard County was going to exercise its Federal Emergency Management Association (FEMA); she believed that DCI was more than willing to get out there until the rug got pulled out from under them.

Commissioner Anderson stated he does not know what it is like in the rest of the County, only in South Brevard; it is a week later, and if he at least saw a truck around he would feel good; but it has gotten to the point of ridiculousness.

Stockton Whitten, County Manager, stated he would be happy to, but it will not be Waste Management because they do regular garbage pickup, under State of Emergency it is Crowder Gulf in South County and Ashbritt in North County. He went on to say the Solid Waste Management Director would be at Tuesday's meeting to update the Board.

Commissioner Anderson stated he understands some municipalities do go with a third party to utilize their waste management contract and those need to be addressed by those municipalities.

Mr. Whitten commented there are seven to nine municipalities that are on the contract with the County, everyone else is on their own.

Commissioner Anderson stated he just wants to see something happen.

Mr. Whitten stated the Solid Waste Management Director could update the Board.

Commissioner Fisher stated one of the things that happens is there is waste for normal pickup in unincorporated areas under normal debris and then when the storm hit the County goes to the FEMA contract with Ashbritt and Crowder, then Waste Management does not have the responsibility to pick up, the other contractors do.

October 13, 2016

Commissioner Anderson stated that is part of the problem; he has had several calls prior to this on normal brush pickup; so the brush was not being picked up routinely or consistently before, so there were already brush piles all over unincorporated West Melbourne before the storm even hit; and he still wants Waste Management to fix whatever is broken on their end, beyond the contract.

Commissioner Fisher stated he would like to have Waste there too because he has some other issues with some pick up.

Mr. Whitten stated to make sure to separate the storm issues from the regular pick up issues because it is complicated once in to the Emergency Declaration and the FEMA requirements; he reminded the Board there was damage to the landfills as well; and he stated a lot of people had called thinking they could get out there after the storm passed and pick up debris, but it is much more complicated than that. He went on to say all of the players will attend on Tuesday.

Commissioner Anderson stated when the Board ratified Waste Management's contract, part of that contract included that it hire a third party brush removal company Doug Connors; he staffed up trucks; and he has yet to see one of his trucks in South Brevard and unincorporated so he would like Waste Management to tell him if they are using who the Board was told it would be using. He went on to ask if the Board needs to revisit the contract or get with its attorney.

Commissioner Infantini stated Waste Management is not using him.

Mr. Whitten commented that Mr. Connors is up in North Carolina working at capacity.

Commissioner Anderson stated he is talking pre-storm, normal operations; Waste Management is supposed to be using Doug Connors to keep up on brush removal; and they have not.

Mr. Whitten apologized to Commissioner Anderson.

ITEM VIII.G., JIM BARFIELD, DISTRICT 2 COMMISSIONER, CHAIRMAN

Chairman Barfield expressed his thanks to everyone in the County for coming together and evacuating when they were told to. He stated people were doing things with a smile; they knew the importance of it; they knew they needed to get out; and having working in the Emergency Operation Center (EOC) gives a bigger appreciation to what goes into this.

Upon consensus of the Board, the meeting adjourned at 5:49 p.m.

ATTEST:



SCOTT ELLIS, CLERK



JIM BARFIELD, CHAIRMAN
BREVARD COUNTY BOARD OF
COUNTY COMMISSIONERS
BREVARD COUNTY, FL

Deborah Thomas

From: Jones, Jennifer <jennifer.jones@brevardfl.gov>
Sent: Wednesday, September 21, 2016 9:17 AM
To: Christine Mulligan; Deborah Thomas; Donna Scott; Kimberly Powell; Tammy Rowe
Subject: P&Z, Admin, and PSJ Minutes
Attachments: Planning and Zoning Minutes 2016 09 September.pdf; Administrative Planning and Zoning Minutes 2016 09 September.pdf; Port St. John Minutes 2016 09 September.pdf

"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, September 12, 2016**, at **3:00 p.m.**, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order by the Chair, Henry Minneboo, at 3:00 p.m.

Board members present were: Henry Minneboo, Chair; Bill Cannon; Robert LaMarr; Clyde Thodey; Rochelle Lawandales; Ron McLellan; Jeff Holleran; and Ron Bartcher.

Staff members present were: Cristina Berrios, Assistant County Attorney; Cindy Fox, Planning and Zoning Manager; Paul Body, Planner I; and Jennifer Jones, Special Projects Coordinator II.

The eight members present voted throughout the meeting.

Henry Minneboo – This is the Planning and Zoning Board meeting, which is an advisory board to the Board of County Commissioners, and any recommendations that we make today will be in front of them on Thursday, October 6th, back in this room, so those of you all that are concerned with it, it's on September 1st back here at 5:00 p.m. in this room. As a reminder, board members, these are new microphones and he have to stay on top of them a little bit better. Has everybody had an opportunity to see the P&Z minutes of August 8th, 2016?

Clyde Thodey – I make a motion to approve.

Ron McLellan - Second.

Henry Minneboo called for a vote on the motion as stated, and it passed unanimously.

IV.B.1. (16PZ00073) – MIKE ERDMAN MOTORS, INC. – (Mike Williams) – requests a change of classification from PIP and PBP to BU-2; and removal of existing BCP, with a BDP, on 4.13 acres, located on the north side of Viera Blvd., approx. 100 ft. west of U.S.1 (No assigned address. In the Viera area.)

Joe Mayer – Good afternoon, my name is Joe Mayer, I'm with Bussen-Mayer Engineering Group, and the Engineer of Record for the project. I'm here representing the applicant, Mike Erdman Motors. Also in attendance with me today is Mike Williams of M.H. Williams Construction, who will be the general contractor on the project. If I may, I'd like to give you a brief handout to facilitate my presentation. The subject parcel for this rezoning is Tax Account 2533296, contains 4.1 acres, and is located at the northwest corner of Viera Boulevard and U.S. 1. It is bounded on the south by Viera Boulevard, the east by the railroad tracks and U.S.1, on the west by a vacant wooded parcel, and on the north by an IU zoned warehouse facility, Richards Paints. The parcels across the street are also vacant. The proposed project consists of a maximum of 64,441 square feet of self-storage mini warehouse units to be located in four to six structures; the layout shows four, and we're probably going to break that perimeter building and turn it into five buildings. All access will be internal; the project is solely enclosed; all doors to all units will be internal and secured with perimeter walls. The project will include approximately a 1,000 square-foot manager's office; five parking spaces, per code; it will be fully handicapped accessible; and we'll have our own onsite stormwater management system in accordance with codes and criteria. There will be one access driveway to Viera Boulevard that aligns with the intersection of Silicon Avenue; we will also be providing a left turn lane for that intersection to make it safer for the project. The proposed zoning change is from PIP and PBP to BU-2, with an updated binding development plan; the comp plan designation is Planned Neighborhood Industrial Park. The existing binding concept plan was approved in 1982 for just the PBP portion of the property, which is kind of a sliver on the east side of the property, next to the railroad tracks, not the entire parcel. It should be noted that the subject parcel is considered a transitional use parcel, and therefore, zoning staff has determined that a small sale comp plan amendment is not required. The key components in our proposed binding development agreement are one access to Viera Boulevard, a 45-ft. maximum height limit for all buildings – current code allows 45 ft., the proposed rezoning would allow 60 ft., but we're agreeing per the BDP to limit it to 45 ft. Also, the BDP provides for 15-ft. side setbacks and 40-ft. front and rear setbacks; the current code requires a 50-ft. side

setback, and the BU-2 code requires a 5-ft. side setback, but we're proposing to limit ourselves to a 15-ft. side setback. Similarly on the front, PIP requires 50 ft. on the front, BU-2 allows 25 ft., and we're proposing to limit ourselves to 40 ft. On the back, PIP requires 25 ft., BU-2 allows 15, and we're proposing to limit ourselves to 40 ft. We believe this zoning request should be approved, as it is consistent with all the applicable administrative policies and elements of the comprehensive plan, is consistent with the future land use code designation as a transitional parcel, and it will be compatible with the existing surrounding uses and zoning classifications. The proposed use does not create noise, odors, or lighting issues with surrounding properties. It's a very low traffic volume generator. We will not negatively impact the existing character of the neighborhood; in fact, we think we'll positively impact the existing character of the neighborhood. Our traffic study shows that we will not impact the roadway level of service or existing road system. Our environmental study shows that there are no wetlands on the property, only a few gopher tortoises, which we will re-locate in compliance with State criteria, along with an Osprey that we will re-locate, if required, in compliance with State criteria. The project will not impact area drainage, or have un-mitigatable impacts to wetlands or endangered species. In summary, we believe we meet all the necessary policy requirements and future land use comp plan requirements, and therefore, we respectfully request approval.

Henry Minneboo – Any questions for Mr. Mayer? Seeing none, is there anyone in the audience who would like to speak for or against this item?

Sue Ellen Strother – My name is Sue Ellen Strother, 188 Maritime Place, Rockledge. I'm curious about why they need to reduce boundaries from the road. I believe I heard they were asking for a reduction from the boundary from the road.

Henry Minneboo – Are you talking about the setbacks?

Sue Ellen Strother – Yes, why that's necessary. The maximum, to me, would seem nice.

Joe Mayer – The problem with the PIP zoning code is that it calls for 50-ft. side setbacks. If you apply 50-ft. side setbacks to each side of this project we essentially don't have a project anymore; it squeezes us down too tight. The 50-ft. side setbacks, in my opinion, are based on uses that are much more industrial in nature, and this is not a typical industrial use, which is why it's allowed in the BU-2 zoning classification. It's very passive and everything is internal to the site. We can't live with the 50-ft. setbacks.

Henry Minneboo – Any other questions? Joe, that's a tremendous project for that corner, and it's certainly a lot better than a 7-Eleven, so tell the owners that should be a nice addition to Viera Boulevard. What's the pleasure of the board?

Peter Aydelotte – I make a motion for approval.

Ron McLellan – Second.

Henry Minneboo called for a vote on the motion as stated, and it passed unanimously.

IV.B.2. (16PZ00070) – JONATHAN AMICK – requests a change of classification from AU to SR, on 0.55 acres, located on the west side of Folsom Rd., approx. .25 mile south of Kelly Rd. (2612 Folsom Rd., Mims)

Jonathan Amick – I'm looking to rezone from AU to SR on parcel ID 23-35-18.

Henry Minneboo – We need your name and address, please.

Jonathan Amick – My name is Jonathan Amick and my current address is 1770 Windover Oaks Circle, Titusville; and this is regarding property at 2612 Folsom Road, Mims. I'm requesting rezoning from AU to SR for purposes of constructing a single-family residence.

Henry Minneboo – Any questions for this gentleman? Is there anybody in the audience that would like to speak for or against this? Seeing none, I bring it back to the board.

Robert LaMarr – I make a motion to approve.

Ron McLellan – Second.

Henry Minneboo called for a vote on the motion as stated, and it passed unanimously.

IV.B.3. (16PZ00074) – K&T ENTERPRISES OF BREVARD COUNTY, LLC – (John W. Maloy, Jr.) – requests a CUP for Alcoholic Beverages (beer & wine only) for On-Premises Consumption in Conjunction with a Pub, in a BU-1 zoning classification, on 0.79 acres, located on the southeast corner of U.S. 1 and Brockett Rd. (3121 N. U.S. 1, Mims)

John Maloy – Good afternoon, my name is John Maloy, I lease a property at 3121 N. U.S. 1 in Mims. I got a lease on the property a few months ago and did some remodeling, and I'd like to open a small pub and eatery-type of business, with a limited food menu, specialty sandwiches, that type of thing, and serve beer and wine. We've got some RV Parks and trailer parks in the area and we've got a lot of people from the north who spend winters here, older retired folks, and I'd like to try to open a little place that can cater to those folks and give them some place to go to socialize with the neighbors and have a sandwich and a drink or two and watch the ball game. I'm asking for a CUP to be able to serve beer and wine on-premises. I'm not sure what other information you need.

Henry Minneboo – I think you've given us plenty. Anyone have a question for this gentleman?

Andy Barber – Is the property currently used for anything?

John Maloy – The property was not currently a use for anything when I leased it. I've been there for about eight months, and I've done some remodeling on the building and some fix-up work. There wasn't anybody there when I moved in. There's nothing going on there right now, I'm trying to get the place opened up.

Andy Barber – Our notes say there was alcohol there back in '69.

John Maloy – The building was a tavern years ago, before my time here, and there have been a couple of other businesses there in between. There was a car lot there for a while, and a couple of other small businesses that didn't stay long.

Andy Barber – One of the other notes that came in our package was the possibility of maybe striping the parking lot. Do you have an asphalt-based parking lot?

John Maloy – The parking lot is asphalt; it's in pretty good condition; it is not striped at the current time. I did have a fellow come in and strip a handicapped spot for me. Other than that, the parking lot is not striped. I can strip the parking lot for parking spaces, but I don't think it needs to be repaved.

Robert LaMarr – My question to staff is if there was any complaints from residents around the facility?
Cindy Fox – I don't believe that we've received any letters, but the audience needs to speak.

Henry Minneboo – Is there anybody who would like to speak for or against this?

Karl Krupp – My name is Karl Krupp, I own the residence directly behind this establishment, at 3535 Brockett. The bar that was in question used to be called the Citrus Lounge, and it's been closed since '02 or '04, and then it became a used car lot. I've lived in the same location since '97 and the issue we have with having a bar there is there is a grass field, and when everybody leaves they like to tear that field up all the time. I have property damage from them doing that. There was noise all the time. If he wants to get a conditional use or at least some sort of noise barrier and some way to block off that area, like his diagram shows, he would have enough parking, but there's stuff that's got to be done to make sure that the residents that live there.....I have school-aged children who are in bed at 8:00 at night. People coming out of a bar at midnight are intoxicated and very loud revving engines, and it wakes me up, my dogs go nuts, and my daughters do not get enough sleep. Since the bar has been closed they converted it into a used car lot for several years and it has been very peaceful and quiet. The lighting on the building does glare into our home, and I had to black out the windows on that side, which has since been taken off after the bar closed. The original bar was closed because of illegal use of drugs and drug sales that was going on; the owner at the time wasn't buying his alcohol from distributors; at the end of Brockett Road has a high crime and drug problem, which having this bar back open will mitigate it back up to that area and that is not something that I want to see. I'm working on building a house myself, so I can move, but I have six step-daughters; I own the first two houses and one of my daughters is going to be in one of those houses and I really don't want to see this right next to them, not in the form it's being proposed.

Henry Minneboo – Thank you. Cindy, what restrictions do we have up there? We don't have any, do we?

Cindy Fox – No, this was an old BU-1 property. We can ask the applicant to install a wall; the current land development regulations require a 6-ft. wall from commercial property. From a perspective of compatibility, there's BU-1 to the north and south, it's just under-utilized to be an area.....they do have a pretty large parking area, they are on a corner. You're able to place operational conditions on the CUP if you want to talk about hours of operation and things like that with the applicant.

Henry Minneboo – The Citrus Lounge had a reputation over the years. Unfortunately, we only get to hear what's negative, so I don't know. Does the board have any questions for the gentleman?

Ron McLellan – Have you all tried to talk together and work things out?

John Maloy – I have spoken to Karl a couple of times, but not since I've applied for this permit. I haven't spoken to him for a while. If I could just say, I myself have never experienced the Citrus Lounge, but I don't plan on operating that type of an establishment. I just want to run a little neighborhood pub and eatery, and try to cater to more mature folks, people who want to come in and have a sandwich and drink, and maybe watch a ball game and not cause any problems. I'm not going to try to cater to people that are into drug use and if I see that kind of thing going on in my establishment you're going to be done, and there's no second chance. That's not something I'm going to put up with in my establishment.

Ron McLellan – How about your hours of operation?

John Maloy – What I would like to try to do is open at about 10:00 a.m., and I would say that most of the time the place will be closed by midnight or before midnight, maybe earlier on some weeknights, just because of the location. Normally, I would say the latest the place would stay open would be midnight.

Henry Minneboo – Nobody enlightened you about the rough times up there?

John Maloy – I've heard some stories, but I don't plan on opening that type of an establishment; I don't want it to be that way, and I'm going to do what I can to keep it from turning into that.

Ron McLellan – That's a pretty big chore sometimes.

John Maloy – I agree.

Andy Barber – You could control the lighting because the lighting was a problem before, it probably stemmed from the car lot being there before. And if you were to put up a fence from your building down to the street, that might keep the donuts out of this grassy area. It's just a thought.

John Maloy – Along Brockett Road?

Andy Barber – Yes, just block off so they can't go wheeling out of that area.

John Maloy – Okay.

Cindy Fox – With a conditional use permit you can stipulate it to be accessory to 32-seat pub, with operation hours of no later than midnight. I don't know if you want to consider a holiday concession, like if it's the day before a holiday, or the day after a holiday. I think limiting the access to Brockett is a good idea, with perhaps some additional landscaping. I'm sure he wants to make the site look pretty and inviting. Stripe the parking lot so we can get an assessment of how many parking spaces he has or needs. Some of those things are things I would recommend if you choose to approve this.

Clyde Thodey – How many parking spaces are you going to put up?

John Maloy – I figured I could have approximately 21 parking spaces, including the handicapped space. Maybe a couple less than that, but approximately 21 spaces. There's space in the parking lot to stripe out that many parking spaces and still have room to get around the lot to get in and out. Emergency vehicles should still be able to get in and out.

Clyde Thodey – How many seats are you going to have inside?

John Maloy – The place is set up for 35 seats, that would be the maximum.

Henry Minneboo – The problem in the old days is they would park on Brockett and US 1.

Ron McLellan – It's not just going to be a restaurant, it's going to be a bar, too.

John Maloy – There's a bar in the building, but it's going to be a pub and eatery type of business.

Ron McLellan – Can you come in and have four or five beers?

John Maloy – Somebody could do that. It's up in the air, whoever is working with me, to try to keep them from getting too intoxicated.

Ron McLellan – I just have a problem with homes and teenagers right next door.

Henry Minneboo – What's the pleasure of the board?

Michael Moore – My name is Michael Moore, I live at 145 Ravencliff Lane, and I'm here for another matter, but I was listening to what he was talking about. I've been in Special Operations all my life in the military and have been all over the world, so I have a different view than most people do, of the world. This could turn into a biker hangout, right? It's up in a rural area and biker guys like to frequent places like that. This could turn into that. Guys just show up with their bikes and Harley's at midnight and light them up. They are obnoxiously loud. You have to consider all avenues about this. I don't know how rural this place is, or how quiet it is there. Is a 6-ft. privacy wall required for stuff like this?

Henry Minneboo – Yes, sir.

Michael Moore – It might help, but still, noise at that late hour can wake peoples' kids.

Elizabeth Michelman – Elizabeth Michelman, I'm also here for another item, but I just came up with an idea. My address is 890 S. Tropical Trail. Just as a win/win, I've heard a lot of 'would have, could have, should have's', but there is no business plan here. Maybe if this individual went back to the drawing board and had said, "this is what I'm going to do, these are my hours of operation, this is my plan", then you could address the problems. I don't know about you, but 10:00 a.m. to midnight is a lot of hours for a single individual, and I think he really needs to take a look at what he wants to do so you can make the best decision for that neighborhood.

Henry Minneboo – Anybody else? Seeing none, I bring it back to the board.

Andy Barber – Henry, I'll make a motion. I motion to approve with a binding development plan that requires him to restrict the lighting, put up fencing and landscaping is put up to keep people off Brockett and the grassy area, that he stripes the parking lot, and he limits the hours to no later than midnight with the exception of a couple of holidays per year, something like that.

Henry Minneboo – Cindy, can we revisit.....we re-do these every year, don't we, these conditionals?

Cindy Fox – No. As long as this is established within three years it stays, and they would have to willfully abandon it for 180 days, or a certain number of months out of a certain year.

Henry Minneboo – Can we do a mandatory re-visit in six months?

Cindy Fox – You're talking about an administrative process, an administrative type of thing that we would do for a temporary.....I don't think we can do that here. If it gets established there's no going back.

Henry Minneboo – The problem is this guy can be the greatest guy in the world, but that place has got a pretty interesting reputation. Is it going to come back, or is everybody dead now? I don't know.

Cindy Fox – If the Board of County Commissioners finds that they have violated any of the conditions of the CUP they have the ability to come back and revoke the CUP.

Henry Minneboo – Meanwhile, the guy in the back has to cope with all this until we go through the ramifications.

Cindy Fox – There would be a Code Enforcement action.

Henry Minneboo – Okay, there's a motion on the floor.

Clyde Thodey – I'll second it.

Henry Minneboo - We ought to ask the gentleman if he can comply with the stipulations.

Cindy Fox – It's a CUP, so we can put those conditions on a CUP.

Henry Minneboo called for a roll call vote, and the motion passed 6:3, with Minneboo, McLellan, and Holleran voting nay.

IV.B.4. (16PZ00072) – EARL & STEPHANIE CANNON – request a change of classification from GU to AU(L), on property described as Lot 22, Block 16, Canaveral Groves Unrecorded Subdivision. **Section 20, Township 24, Range 35.** (1 acre) Located on the north side of Burning Tree Ave., approx. 0.16 mile east of Satellite Blvd. (6736 Burning Tree Ave., Cocoa)

Earl Cannon – My name is Earl Cannon, 61 Jackson Court, Byron, Georgia. I'm requesting rezoning from GU to Agricultural Light, on property addressed 6736 Burning Tree Avenue, which is on the north side of Burning Tree, about 175 ft. east of Satellite Boulevard. I'm requesting this for a small, single-family dwelling, and an agricultural farm for personal use only.

Henry Minneboo – Anybody have any questions for this gentleman? Is there anyone in the audience who would like to speak to this item? Seeing none, I bring it back to the board.

Bill Cannon – I move to approve.

Clyde Thodey – Second.

Henry Minneboo called for a vote on the motion as stated, and it passed unanimously.

IV.B.5. (16PZ00077) - VIOLETA V. WELSH – (Diane Nagel) – requests a change of classification from RU-1-9 to AGR, on 9.68 acres, located on the south side of Parrish Rd., approx. 0.42 mile west of Burnett Rd. At terminus of Robeson Rd. on south end. (No assigned address. In the Cocoa area.)

Cindy Fox – We have an issue with the next one. The person who actually owns the property, which the applicant has a contract for purchase, did not sign the right form to hear them. So, we technically can't hear the item.

Henry Minneboo – We need to table it.

Cindy Fox – Legally, we should not hear it.

Cristina Berrios – There's a contract for sale, but it has conditions in that contract.

Henry Minneboo – I'm just wondering if there's a lot of people here today for this.

Clyde Thodey – I make a motion to table the item until the next board meeting.

Cindy Fox – The next board meeting is October 10th.

Cristina Berrios – Also, as we are a public board, people who wish to speak on the item are welcome to speak on it.

Henry Minneboo – I'm going to let them talk.

Cristina Berrios – But they should know that whatever they say here won't be considered at the next meeting as part of the record. So, they can speak now, but what they say will not be considered as evidence or testimony on this item because the item is not being heard today.

Henry Minneboo – There's a motion and we need a second.

Ron McLellan – I'll second.

Henry Minneboo called for a vote on the motion as stated, and it passed unanimously.

Henry Minneboo – The people that are here to talk about it, you're more than welcome to talk today, but the next time will be the 10th of October.

Cindy Fox – The other thing I can suggest is if some people are here to speak and they cannot make it to the next meeting they can submit something in writing.

Henry Minneboo – We'd really appreciate it if you'd send us something in writing, email.....it would help us. Believe me, we do read what comes to us. Does that help some of the people that are here? If you still have heartburn, we're here if somebody wants to talk about it.

Robert Dennis – My name is Robert Dennis, I live at 3710 Catalina Drive. The residents out there are opposed to any re-classification. We've been residents of the area since 1964 and we don't want hogs, cows, or chickens to ease into our neighborhood when there's no other to speak of. We already have legal action pending as of February 2016 against Brevard County Sheriff's Department about an outdoor range in our community. We were there for 20 years before they got there, and we don't keep going through legal action, but we will if we have to. We do not want to be rezoned; we don't mind expanding residential, but we don't want agricultural in our community. Thank you.

Henry Minneboo – Thank you.

THE FOLLOWING ITEM WAS TABLED FROM THE 07/11/16 AND 08/08/16 P&Z MEETINGS

IV.B.6. (16PZ00064) – JANICE RENK – (Robert Potter) - requests a change in classification from AU to RU-2-8, on 1.89 acres, located on the east side of S. Tropical Trail, approx. 102 ft. south of River Cliff Lane (892 S. Tropical Trail, Merritt Island.)

Cindy Fox – We did not get a proper sign at the last meeting.

Henry Minneboo – But we're okay now?

Cindy Fox – I'm not sure. Is the applicant here?

Henry Minneboo – Is the applicant here?

Cindy Fox – Mr. Potter? If there is no one here to represent this item as the applicant the board can still consider the item.

Henry Minneboo – This board needs to make a decision.

Cindy Fox – I would like to say one thing, this is on Merritt Island, in the area of Merritt Island that where septic is the primary source, so just put that in your frame of reference. With the Indian River Lagoon there will be more efforts in the future to try and eliminate that.

Henry Minneboo – I don't know of any multi-family south of Cone Road. I think a gentleman spoke to that regard. I don't know why.....I guess I'm addressing this board.....why we want to do it.

Cindy Fox – I just want to clarify that while there is not multi-family south of Cone Road, there are some sporadic pieces of commercial, institutional, like churches and schools, and convenience markets down there, but really, the only large condominium-type of project is probably still under proposed development, so it's not in this area.

Henry Minneboo – I don't think this area is ready for it. We need action by the board. Keep in mind this is the second time we've had these people come here, and it's not fair.

Robert LaMarr – Based upon there's no type of classification like that south of Cone Road, I make a motion to deny.

Ron McLellan – Second.

Henry Minneboo called for a vote on the motion as stated, and it passed unanimously.

Cindy Fox – This item will still go onto the Board of County Commissioners and be heard on October 6th, and it starts at 5:00 p.m. here.

IV.B.7. (16PZ00055) – BANANA RIVERFRONT, LLC – (Kim Rezanka) – requests a Small Scale Plan Amendment (16S.05) to change the Future Land Use from Residential 15 and CC to all CC; a change of classification from RU-2-15 to BU-1; and a Conditional Use Permit for Alcoholic Beverages (full liquor) for On-Premises Consumption in Conjunction with a Restaurant, on 2.44 acres, located on the west side of Orlando Ave., approx. 415 ft. north of Crescent Beach Dr. (2200 S. Orlando Ave., Cocoa Beach)

Kim Rezanka – Good afternoon, Chairman Minneboo, members of the LPA and P&Z board, my name is Kim Rezanka, I'm here representing Banana Riverfront, LLC, the applicant in this matter. I'm with the law firm of Cantwell Goldman in Cocoa, Florida. We are here before you for three matters. The first is a comp plan amendment on 1.26 acres, Neighborhood Commercial to Community Commercial, to allow the rezoning. The second item is a rezoning from RU-2-15 to BU-1 with a binding development plan to limit the use of this property to only a restaurant, no other commercial uses. This is what the property has been used for for over 60 years. The rezoning is an attempt to cure a non-conforming use, which exists since the 2006 rezoning when the property went from BU-1 – which it has always been – to RU-2-15. Again, that was in 2006 when everyone was going to condos, but this property was never developed into a condominium because of market conditions. The property remained a restaurant like it had been since 1952. As you know, the purpose of ordinances involving non-conformities is to end or remove a non-conforming use. This restaurant is part of the character of Cocoa Beach, and in fact all of the beachfront property, since 1952. It was formerly the Lobster Shanty. The third item before you is a conditional use permit for onsite consumption of alcoholic beverages. This was granted on July 11, 1974, even though alcoholic beverages had been served here in the '50's and '60's. I assume it had something to do with the comp plan and zoning codes being put into place. This was an oversight back in the 2006 rezoning when it was rezoned to residential; according to your code, it should have asked to renew the conditional use permit, but they did not ask that. The Lobster Shanty still continued to sell alcohol from 2006 until they sold the property in October 2015. I believe this could be a grandfathered use or a vested right issue. The County asked us to renew this conditional use permit for alcoholic beverages, and we agreed to do so, along with the rezoning and comp plan amendment. I'm here with the owner of the property, Buzz Underhill, who will give you a background of his purchase of the property to how we got to where we are

today. Before he comes up, I want to pass out a picture just so you know what the issue is. What we are here for is to allow a deck to stay, which he'll have to properly permit, which will allow a canopy, which was installed by Mr. Underill – he'll tell you without a permit, but he's trying to make it right. I do want you to see what the improvements are; and that's really why we're here for the rezoning, and it's a non-conforming use, which cannot be enlarged at all, not even a cubic square inch.

Henry Minneboo – Cindy, there's three issues we're dealing with today. We're dealing with zoning, code enforcement issues, and a conditional use permit?

Cindy Fox – Yes, let me give you.....from our perspective, what happened is that in 2006 this came in for multi-family during the housing boom when everything was going to multi-family condo. They changed it to multi-family so they could develop a multi-family project. This was subsequent to the Magnolia Bay property to the north. As it appears, the property really hasn't changed because the restaurant has remained open. But because they changed their underlying zoning from commercial to multi-family they've become a non-conforming use. They expanded that use – our code says you cannot expand – because you cannot expand a non-conforming use, what they're here to do today is to go back to the commercial zoning that they need for the commercial restaurant; and that is the associated future land use change to community commercial, and the CUP for alcohol. It does say in our code that the CUP, when there's an expansion, you've got to come back and ask for it. This is all just getting them back to where they were until their expansions. If this board chooses to deny this request what it means is the restaurant will remain non-conforming. It does not mean it will close, it will remain non-conforming. And any of those areas that they have expanded upon that were not part of the overall historical footprint of the property that he's recently added will need to be removed. Again, the restaurant will stay open; you would probably need to go ahead and approve the CUP so we can make sure that's in place so they can have their commercial zoning. I believe they are also coming forward with a on Tuesday in front of the Board of County Commissioners. There are several things coming public interest determination together for this item.

Henry Minneboo – In sequence here, this board is going to deal with the zoning first?

Cindy Fox – We have

the legal opinion that they need to re-establish their zoning and future land use.

Henry Minneboo – Okay, we're going to do that first, and then we're going to deal with if there are some deficiencies here.

Buzz Underill – Buzz Underill, 490 N. Harbor City Boulevard, Melbourne. The history on this is we were approached last June by the owners of the Lobster Shanty, and they said they were going to be closing and they wanted to see if we might be interested in purchasing the property. After a couple of months we made a bid and ended up closing on October 22nd. I was aware there was a non-conforming use on it; I realized that one of the conditions under 'non-conforming use' was that we needed to have it open again within 180 days. On October 28th I signed an application for a building permit – and I have it with me here – that we gave to an individual that was going to have one of his guys pull a permit for us so we could start construction on it. We moved ahead and we were doing some infill.....I don't know how many of you are familiar with the property, but it has deck all along the river and then it comes back towards the building, and there's some open areas, so it's not covered, and from an operating standpoint it's pretty difficult to deal with your customers when they're out there eating in the rain when a storm comes in. So, we wanted to try to make that a little more user friendly, so we wanted to infill on the deck and put a canopy over the dining areas. We started construction on that and got to the point that as we started to put on the roof I went to them and said, "Did we pass our inspection for the foundation?" He wouldn't look at me in the eye and twisted and turned on it, and it turned out

that he couldn't find anybody to pull the permit. I went to two other individuals that were licensed general contractors in the county and asked them if they would do it, and they both said they would look at it. They went to look at it and said, "We don't want the liability, you're too far along, so we suggest that you go ahead and just complete it. The County will stop you, and if they don't stop you, then eventually they'll come in, you'll have to pay the fine and you'll have to put in the applications and pull a permit." So, that's kind of where we were. We opened in late February; we had hoped we'd be able to open in the first part of January, but as I found out later, that once we added anything to that footprint we lost our conditional use permit for the restaurant. So, we went ahead, and they noticed there were some deficiencies in the life safety issues on the property; we had a sidewalk leading off the deck that was 36 inches wide, and it needed to be 44 inches wide; the code only requires that it go through a 36-inch doorway; we didn't have a voice-activated alarm system to tell people if the building was on fire; we had that inside the building, but did not have it on the deck; and we didn't have a southern sidewalk, or walkway, for people to be able to exit in the event of a fire to go the parking lot. So, because of that they shut us down from operation. We are in the process of trying to do what is necessary to meet all the requirements in the county. We had kind of a perfect storm when we opened, unfortunately, we wanted to open in January to give us 30 days to figure out what we're doing. We opened at the latter part of February and we had all kinds of demand interest with people who just wanted to see who we were, people that were excited about us coming in the area, competitors that wanted to check out what we were doing. Plus, it was the middle of the season and it was the beginning of spring break. So, as a result, we had some operational issues that were unpleasant for our neighbors and unpleasant for us. We've tried to deal with some of them and I think that has created some hard feelings from my neighbors, understandably so, especially some of the folks at Magnolia Bay, and there were a couple of people across the street. Since our last meeting we have sat down with them and talked about some of the areas they are concerned with. We have made some changes that they suggested, and some things that I think were appropriate and seem to address their concerns. So, we're here today to take it to the next step, and I'd be happy to answer any questions.

Henry Minneboo – Buzz, have you talked to the people in the subdivision to the north?

Buzz Underill – Yes, the condos.

Henry Minneboo – I'm not talking about just going by and talking to one or two people. That was one of our requirements. Did you all meet with those people?

Buzz Underill – We did on August 23rd, in their clubhouse. We met with their officers and a number of residents, and we listened to their concerns.

Henry Minneboo – What was the date on that?

Kim Rezanka – August 23rd.

Henry Minneboo – Okay, I thought I heard October.

Buzz Underill – No, October 28th was when I signed the paperwork last year.

Henry Minneboo – Did you have a fair representation of people there?

Buzz Underill – I think so. There's probably a bunch of them here right now, so they can tell you, but I think so. It was a very opened, very candid, conversation. I thought their points were well taken. We told them we would take steps to mitigate some of the issues and we are doing that.

Henry Minneboo – That was my question. Anybody else on the board for Mr. Underill?

Kim Rezanka – I just wanted Mr. Underill to talk about what happened. He's admitted he's made mistakes and we are trying to move forward. He cannot pull a building permit, can't even put in for a building permit to fix the life safety violations, can't put in for a site plan permit until we get the rezoning, because right now we're out of compliance with the zoning because the non-conformity use and the expansion of the deck and canopy. They shut down the deck only, based on the life safety violations. That is a code enforcement matter; there were a couple of stop-work orders, which that information was sent to you recently with some pictures. They were trying to form out the area for a sidewalk because they were doing some interior work for some flooding. They were told to stop so they did. Turning to your staff report, there are two staff reports, actually three, with Natural Resources. The first staff report is as the LPA for a change to the comp plan amendment and it talks about all the items that we need to prove, and basically they've gone through each of them. The issue is whether we meet the development trend; there's a reference to Natural Resources report, and we've addressed the Natural Resources issue of the 50-ft. surface protection buffer, by applying for a Public Interest Determination, which I'll share with you in a little bit. If you look at the staff report it seems to support the change from community commercial; if you look at your maps on page 71 and 72, we're adjacent to other community commercial, which is what we're asking for, for community commercial to be extended to the river. There's other community commercial that extends to the river, so it's not inconsistent with what is already there. In order to rezone back to BU-1, that is necessary. I do not know if back in 2006 they changed the future land use; I doubt they did, so they were non-conforming and inconsistent with the future land use back before 2006. Again, it talks about an expansion of an existing restaurant use. The expansion is just the infill of the deck on 900 square feet and a canopy that's put over it. There will be an expansion of seating outside of about 50 seats, but he's reducing the interior seating by 150 seats. So, overall, there are less seats at this restaurant, and all of that will be addressed at site plan to make sure we have proper parking. Now, the way the code is, you need parking based on square footage, not the seating, so we're still going to have to meet the standard site plan requirements before we can get any permits to re-open anything. But we have to get the zoning, otherwise the deck will have to be torn down and the canopy will have to be torn down. The rezoning review worksheet talks about the history of the property, which Mr. Underill has done; it says we've expanded the restaurant footprint, but we believe we just expanded the deck, so we've got a disagreement on the terminology. Again, we're reducing the actual number of seats. There were a number of complaints; the restaurant was only open five weeks before they shut down the deck, and it was February 23rd to March 30th, I believe; the complaints were during the opening weeks; and as Mr. Underill has explained, it was new, it was exciting, and every time a new restaurant or shop opens everyone wants to see what happens, but that would have calmed down. There were operational aspects that he did not anticipate, which the residents complained of and he addressed and we will address the conditions to the conditional use permit. There are no new impacts. This restaurant has been there for very long time; the Lobster Shanty had been there for a very long time and had outdoor music. We believe this restaurant is part of the character, as I mentioned earlier. They have stated in the staff report that the parking lot has changed dramatically; they put in millings, not asphalt, and millings where grass and weeds were, which was always used for parking. These are code issues that we will correct, and site plan issues we will correct. In the Natural Resources report, again, it talks about the 50-ft. surface water protection because we're against the aquatic preserve and Class II and outstanding Florida waterway, three of the big ones. There is supposed to be 50 feet back before any structures; that deck, which they consider to be a structure – has been adjacent to the seawall since it's been constructed; and this property has always violated that surface water protection buffer. What we were trying to do by going to the County Commission is the public interest determination because this is a restaurant use. Your comp plan provides for special privileges for waterfront use that the public can enjoy, and that's what we're using to go through with the public interest determination so that infill of the deck will be acceptable. We're also improving the quality of the water; there was no drainage on that property, so it was all going to the river. He's put underwater French storm drains, so that they're going back towards the east, so the water actually will improve now with the public interest determination that the County Commission will review. There have been quite a few public comments, and I've gone through them all and added them up; I know it's not a petition or a popularity contest, but there were 52 in favor, four that are against, and only one against since the meeting

with Magnolia Bay, and there were 13 of concern, which I would really say are against, but they were dealing with the operational issues such as traffic, noise, trash, and parking, so those are issues we're attempting to address in our conditions. Just for the record, because there are so many, a few comments were made.....Carol Craig, with Craig Technologies, "As a business leader in the community, I also understand the economic impact a business like this has due to jobs and tax revenue, as do you, I'm sure. I hope Squid Lips is given the opportunity to comply with all the rules and requirements and provide this service to the Cocoa Beach area." Realtor, Marilyn Swanson, "We are for the zoning of Squid Lips approval because it is a great addition to the south end of Cocoa Beach. They have great food and dining and is a very friendly family restaurant." Phillip Rooney, "For the brief period of time it was open, this business was thriving in a section of the market that is desperate for what they offer." Ed Martinez, Commissioner, City of Cocoa Beach, "This family has done a great job of re-developing this restaurant and the deck is a great addition to the property. I believe this addition will have very little, if any, impact to the surrounding area due to its location. I visited the restaurant a few times prior to them having to shut it down." Again, if you look at the concerns, they are all similar, they all address the same issues. I also mentioned in the packet there's a binding development agreement, and in Paragraph 2 it says, "No other commercial uses shall be permitted on the property and the owner agrees not to seek any additional commercial uses for this property." This binding development plan will attach to this property for all time, so any subsequent owner will be bound by that. There were some concerns raised in the letters that the new owner wouldn't be bound; the new owner would be bound by this and any conditions that you or the Commission put on it. First, in the packet presented, is a larger version of what was already in your packet. These have been attached to a number of different items, and the public interest determination was attached to the conditional use permit application. Basically, the first document shows the current deck in yellow, it's a tiny portion of this property, and that is what the issue is, is that portion of the property. It shows where the deck is now, and if you turn to the second page, the yellow is what was added, the 1,900 square feet of de

ck, just to give you a perspective of what we're talking about, because what was in your packet was not easy to read. The third page is the conditions that we just modified today after receiving input from Sam Shake, President of Magnolia Bay Condo Association. These were previously provided to you; the underlining in subsection 1 is what is new, and then number 2 was limiting the outside music, and we had 'approximately' 10:00 p.m., and they asked we strike the 'approximately' and we agreed to do so. As you'll see, one of the biggest issues was noise, and Mr. Underhill intended to, because he's done this in his other restaurants, to install a sound curtain barrier that would be along the north end of the deck, and he's used this in other restaurants and has been very successful. So, until that is permitted and installed you'll have no outdoor music. If the sound barrier curtain does not mitigate the noise to within County Code requirements, a mass loaded vinyl covering will be installed on the canopy ceiling over the bandstand area. That's something else that's supposed to mitigate the noise from the band, right over the band area, and if this doesn't work and we're still violating the code requirements, he will be notified by Code. He wants to work with the residents. The second condition is limiting the outside music. The third is to pay for and install signage for no left turns onto Orlando Avenue, which he has already done.

Henry Minneboo – Kim, you have a couple of minutes left.

Kim Rezanka – There was some concern about trash, and he wants to install a trash compactor, but again, it has to be permitted, and he can't get any permits until we get the rezoning. If we don't get the rezoning he can't install a trash compactor. Briefly, also in the packet you'll see the last email that I provided to Sam Shake from Magnolia Bay, showing that we made the changes they asked. Last in your packet is a copy of the request for public interest determination, which is to resolve the surface water protection buffer issue. Similar public interest determinations were granted for the new development, Tingley Marina, and the reason is because on the last two pages, pages 5 and 6 of that, because the public benefits – these are in your comprehensive plan.....actually, in your County Code, "Recreational waterfront, enhanced water use availability, increased water access, improving experiences of residents and customers, improved environmental conditions, increased jobs, and increased tax revenue to the County." These are all similar to

what Tingley Marina was approved. The last, which I will just go through briefly, is our other option if the rezoning fails. It's called Procedures for Mitigating a Non-Conformity. I don't know if you remember when South Banana River Marina came through a couple of years ago and they wanted to build a bathroom and a laundry facility, but they couldn't because they were a non-conforming use, but it was determined they were part of the character of the community. They, the County, did this procedure for mitigating a nonconformity. It's only been done once in this county that Rick Enos can remember, since 1984. The County staff is not in favor of this, so we did not go this route, but I believe that if you all do not agree the rezoning is appropriate, you can go ahead and do this with the other conditional use permit already presented. The conditions that would mitigate the non-conformity, or any potential adverse impacts, are already ones that we have agreed to in the conditions for the conditional use permit for onsite consumption of alcoholic beverages. With that, I have nothing further. I ask that you approve these three items, and I would ask to have a few minutes for rebuttal time.

Henry Minneboo – Is there anybody in the audience who would like to speak for or against this? Yes, sir. I'm hoping you all have one or two people to speak for the majority of the group.

Sam Shake – Sam Shake, 2022 Julep Drive, Cocoa Beach. I am in receipt of the proposed conditions for the conditional use, and I want to thank Buzz and Kim for what they've done here to work with us. It took a lot of guts to come and speak in front of the group that he spoke in front of. What we don't know is what happens now with the proposed conditions; Buzz has made some promises, I assume he's going to follow through, but what happens if it doesn't work? That's where we are.

Henry Minneboo – Aren't those what you have agreed to in concept? Have you seen every one of those? Is that consistent with the binding development plan we've seen today?

Sam Shake – I think so, according to what Kim said. How do we hook his commitments to his permit to do what he wants to do and follow through?

Henry Minneboo – That's going to be our job.

Mark Holloway – Mark Holloway, 2012 Julep Drive, Magnolia Bay. I looked at what Buzz and Kim proposed and it looks good as long as it's enforced. My one concern is that 50-foot seawall that we talked about earlier, having to be 50 feet back. I'm very concerned about the health of our Lagoon, and I think it's been a big issue for us, economically, climate-wise, et cetera. I think Kim mentioned that in the past that was ignored and that's maybe the reason we should continue to ignore it. I can't support that. I mean, I agree with what they're doing operational-wise, but I think that this commission should seriously consider that fact that if something was ignored in the past it does not mean it should be ignored in the future. Thank you.

Dave Couch – My name is Dave Couch and I live at 2022 Julep Drive. I've been a tax payer and resident of Brevard County since 1991, I've had eight different properties I've owned in this county. When we moved into Magnolia Bay in 2011 we knew that the zoning for this property was the way it is, residential condominium. We were right next door to the Lobster Shanty, we've listened from our patio the Lobster Shanty's patrons, et cetera, and everything was fine. The concern now is that the music is going to change and the value of our property is going to go down, or it might not go up as much as it might in the future, which is going to restrict not only my interests, but also the interests of Brevard County for the ad valorem taxes. Thank you.

Susan Suplee – My name is Susan Suplee, I live at 2022 Julep Drive. I was not in town at the time of the conversation with Buzz and Kim. My concern is our wildlife conservation district in the backyard. Since the deck has been closed the wildlife is back in full force with Osprey, the Manatees are back in the cove where they normally are, and when the deck was open with the loud music the birds had disappated. We're in a major fly zone in this area, and we have Osprey, Herons, and everybody nesting there. My concern is that if

we do approve the zoning there's no going back. What's to say that the sound shields are going to be a factor and how will that affect our conservation district, as well as the Lagoon that we're trying to protect. Also, my question is how do you measure the decibel level? Is it measured from the source? The average decibel level in this room is 26, and if you're talking about 65 decibels, does that include the sound barrier?

Henry Minneboo – Cindy, where do they measure that from?

Cindy Fox – We have a set of performance standards in the Code that deal with everything, and noise is very specific about decibel levels, and we can share the Code with you.

Henry Minneboo – Where do they pick up the db levels?

Cindy Fox – The decibel levels are actually on the receiving property, so it would be from that property that they would go out and measure from.

Henry Minneboo – So, if a complainant was two or three units north, that's where they would test from?

Cindy Fox – They might just test from the condo, because it's one parcel, so they might do it from the condo boundary.

Henry Minneboo – Does that help?

Susan Suplee – That helps. So, what is being proposed is we're going to have music seven days a week, with constant background noise seven days a week?

Henry Minneboo – I don't know that. That's a question we may be addressing as a board.

Susan Suplee – I would hope that you would seriously consider that. I'm all for a non-conforming use if they can maintain their deck, but acoustical music would be great. I'm a rock-n-roller, I love music, and I love to go to your other location and listen to bands, but not in my backyard.

Bob Baugher – Bob Baugher, 118 Sunset Cove, to the south side, I own the 2.87 acres to the south for over 20 years. I also run a commercial office complex. I support the zoning change because we have a limited amount of waterfront restaurants in this area; it's always been a water front restaurant. I think Buzz made some very poor operational decisions when he first opened, but the area needs waterfront restaurants, so I ask you to put any type of limitations you want on him, and note that in the comp plan, half of it is residential and half is business, just like my property. In this case, it's not so much what you're doing, it's how you're doing it. I don't have any concerns with the animals and the river and all that stuff, I've seen the Ospreys come and go, so they can operate in this environment. I've been a resident since 1961, and some of the birds are stronger now because of the environmental stuff and chemicals and stuff, so the birds are coming back. I'm all for this with the limitations to operate a restaurant in this area.

Henry Minneboo – Cindy, if we deny the zoning, he'll be able to continue to run this as a restaurant?

Cindy Fox – As a non-conforming restaurant, correct. Under the non-conforming section of the Code, he can do minor repairs up to 50% of the value of the structure. We would certainly allow him to put a large dumpster in, and we would certainly allow him to put a curtain up. Those types of things need permits, but those are the kind of things we would allow. If you deny the request he will remain a non-conforming restaurant and there would be limitations on any expansions.

Unidentified Speaker – Inaudible.

Henry Minneboo – That's something the County has felt very strongly about. The decks that have been installed with improper permits, or no permits but improperly done, the County feels very strongly that if they let him do it then they might as well let everyone down through there do whatever they feel like.

Cindy Fox – The public interest determination does not come in front of you, it goes to the Board directly, so you may see, in the future, other public interest determinations on a property that may not need a rezoning, and it may open up your waterfront to other restaurants that you may not be able to place conditions on. So, keep that in mind.

Henry Minneboo – Can they still apply for a public interest determination if we haven't changed the zoning?

Cindy Fox – No.

Henry Minneboo – That's what I thought.

Cindy Fox – I was under the impression that we had to do the zoning before it would be granted. That was something that came from the County Attorney's Office.

Henry Minneboo – What about.....we can restrict the days of when bands can be there, can't we?

Cindy Fox – You can condition those types of things; you can limit it to twice a week, three times a week, or.....

Henry Minneboo – I don't know any facility around here that runs seven nights a week.

Cindy Fox – For outside music? I'm not sure. One of the other things the board may consider is.....I don't know the capacity of the deck or the restaurant, or any addition or elimination of seats, and where that all lays out, so if the board wants to limit the number of seating outside so perhaps there's less ambient noise, even without the music, that's a possibility. If the board thinks that no music should be allowed, that's up to you guys to discuss as well. These conditions are for compatibility issues.

Henry Minneboo – If you go to the Port and convey to them you'd like to be outside there's a lot of those places where you're outside, but you're not outside, you're covered with Plexiglas or something all the way around. I'm wondering if that's.....I need to think through that.

Buzz Underill – Let me clarify something, because it irritates me a little bit. The document that you got here recently paints me in a picture that's not totally fair to me. When they asked us to cease and desist.....first of all, as the application we had, you had mentioned something, Mr. Minneboo, about not being built properly. We had full structural drawings that were attached to the submittal on it, and we're getting as-builts that are done to re-submit. I think in the report it said we didn't use any licensed contractors, but that is not true. Everybody was licensed with the exception of the laborers and carpenters, and those were my employees that we used. When they told us to do the cease and desist it was my understanding we cease and desist on what we were doing in the deck area. I did not realize until they came back and shut me down that I couldn't do anything else on our property. Also, Chapter 489, Section 103, Item 3, gives us an exemption, so we were to within two of those three that they cited me on the second time around I was within my rights to be able to do it anyway, but we elected not to say anything about it. I just wanted to set the record straight on it because even though we made a mistake in the beginning, it was not intentional. I didn't intentionally try to do it without the benefit of a permit; it was one of those things where he didn't do what he was supposed to do and I was caught in the middle. I'm willing to pay the price; I've already paid penalties for it, and we're willing to jump through whatever hoops we need to jump through to be able to rectify this and do the procedure that's set up by the County for instances where we don't have permitting. The structure is going to meet all the requirements and

all the Codes. It's going to go through the process that any other construction would go through and if it doesn't meet it we will do whatever needs to be done to be able to make that. I just wanted to clarify and put things in perspective. Thank you.

Kim Rezanka – There were a couple of comments by the Magnolia Bay residents. Mr. Shake asked what happens if he doesn't comply. You all know he can be shut down. That's one of the conditions of all the conditional use permits and a binding development agreement, is that if they are out of compliance with zoning it can be shut down. There are performance standards, as Ms. Fox stated, and they always have to comply with zoning standards. I believe the residential to commercial, the decibel level is like 55 after 7:00 p.m. and 65 before 10:00 p.m., and normal conversation is about 50 to 55 decibels, so this is not 26 decibels. When you look at the noise standards, which I'm very familiar with dealing with a mine in Palm Bay, the decibel levels are much higher than you would anticipate, so it's going to be a challenge for him to make those decibel levels and he will do that. As to the health of the Lagoon, we're all concerned about the health of the Lagoon, and when this is properly permitted the health of the Lagoon will be better because it will be less runoff coming from this property into the Lagoon. It has to be that way, otherwise we can't make any public interest determination and we can't get permitted. Regarding the public interest determination, we were actually asked to do that before we came to rezoning, by Commissioner Barfield's office. They wanted to know that the Commission were going to support this public interest determination. Again, the only one that has ever been approved that I'm aware of that can be cited to me in the recent past is the Tingley Marina. It's not something that is done everyday and is at the discretion of the County Commission. Looking at the conditions that have been proposed to attach to the conditional use permit, condition 2 limits outside music on the weekends to 10:00 p.m., Sundays to 8:00 p.m., Monday – Thursday will be limited to solo, duo, or acoustical acts. He has agreed to limitations; he's not going to be having any live bands outside seven days a week that are full bands. That's not the intent and the demographics won't support that. In fact, if the deck gets re-opened, people will get bored with it after a while like they do with any new restaurant. Again, if there are additional conditions you want placed on it, but this limiting of outside music is pretty stringent as it stands.

Henry Minneboo – The Magnolia Bay HOA agreed with that?

Kim Rezanka – Yes, and that's the email that's in the packet from Sam Shake, the President, who had the concern about the additional conditional use conditions. That's why these changes were made, that's why they are underlined and struck-through. They were sent to Mr. Shake and I did not have a chance to hear from him, but those are what they specifically asked for, verbatim, in his email.

Henry Minneboo – Kim, what about the deck size?

Kim Rezanka – If the rezoning is not approved the deck will have to come down. The 1,900 square feet of infill will have to come out, unless there's another remedy through this conditional use to mitigate a non-conformity, which we thought was a great idea, but staff did not like it so we didn't do it.

Cindy Fox – Kim, you said 1,900 square feet of infill, that's the area that's now covered that was not previously covered?

Kim Rezanka – No, that's just the deck. By the way, the deck is on 2x8's on the ground, it's not an elevated deck, it's on the ground and very sturdy. The canopy is over most of the deck except part of the 8 feet from the walkway, so the canopy would have to come down, too. The deck will have to come out if we're not permitted to enlarge the non-conforming use.

Cindy Fox – Was any part of that 1,900 square-foot there before?

Kim Rezanka – The deck? No.

Cindy Fox – So, he added 1,900 square feet.

Kim Rezanka – Of deck.

Cindy Fox – That would include additional seating outside that he's added.

Kim Rezanka – He's actually removed the seating from along the walkway, along the Indian River Lagoon, and he's rearranged the seating.

Cindy Fox – To put it on the deck instead?

Kim Rezanka – Yes, to put it on the deck instead, but he anticipates an additional 50 seats on the deck from what was there before, but he's taking 150 out from inside.

Cindy Fox – What's the total inside and outside? Sorry to put you on the spot.

Kim Rezanka – It's okay, I have that information. Inside and outside anticipated is 380, where before it was 459. And that was how he purchased the property in 2015. That's the square footage with the fire codes and everything else.

Cindy Fox – I think that we just didn't have a clear picture of what was coming and going inside and the number of seats, and we were concerned about what was being added in the back now that that part has been enhanced.

Henry Minneboo – Is what they have there significantly an issue, or are we going to start talking about feet and inches?

Kim Rezanka – I think it's a site plan issue.

Cindy Fox – It's really a site plan issue. I was trying to figure out how much space was there before and what's been added. If you're saying it's 1,900 square feet of infill and some of the Property Appraiser records only show the existing restaurant at 1,700 square feet, that's a lot of floor area to add.

Kim Rezanka – I don't know what the Property Appraiser shows as decking, either.

Cindy Fox – I know, and that's not clear to me either, and that's why I was trying to clarify.

Kim Rezanka – You've got walkways and deckways, and stair area.

Henry Minneboo – In light of this, Cindy, if nobody is sure of it, how is this board going to address it?

Cindy Fox – What do you mean?

Henry Minneboo – I don't know the math, so we're not going to be sure, here.

Kim Rezanka – Mr. Minneboo, it's a site plan issue. That's something that has to be site planned.

Henry Minneboo – I fully understand that, Kim. You haven't lost me on the site plan.

Cindy Fox – I was incorrect, it does look to me like the Property Appraiser is showing a total base area of 10,000 square feet in one building, and another 1,100 in another building, 28,000 of paving. They had a 2,280 square foot wood deck, and there's a gazebo. So, there's quite a bit of outbuildings there.

Kim Rezanka – The two outbuildings are storage, they are not used for personnel or customers.

Cindy Fox – This is the pleasure of the board. We have a rezoning, small scale plan amendment, and CUP.

Henry Minneboo – Are you done?

Kim Rezanka – I am, unless there are more questions.

Robert LaMarr – Kim, what about the issues of the parking lot? A lot of the residents were concerned about parking, overparking, and all of the place.

Kim Rezanka – We now have a parking agreement and valet parking, so there's no staff parking onsite. There are 48 parking spaces about a block and a half away, so that's one issue. There hasn't been a parking problem since the deck has been shut down. There's been a 'No Left Turn', because part of the concerns of the residents of Magnolia Bay is people were turning wrong way on a one-way road. So, that's why the No Left Turn sign was installed. It was the perfect storm. Mr. Underhill did not know to anticipate that many people showing up. They know better now, and he won't let it happen again. If police are needed he will hire the police, especially the first opening weekends, to make sure that there's not a problem with over-parking. Part of the problem, with any restaurant, or in the Mims matter earlier, people park where they think they can park. There's been a concern about the triangle, and probably No Parking signs need to be put on the triangle to the east of it. We can do it if the County allows us, as it is County property. Actually, I think it's State property. Those are issues we can work with, but he's not going to let it happen again. If there's some kind of condition that needs to be placed.....but it's not good for his business, either, if people are going the wrong way and getting in accidents, or if the neighbors are complaining, because the neighbors live there and he wants them to patronize them, he does not want to make them mad.

Andy Barber – Magnolia Bay was built in '06?

Kim Rezanka – Correct.

Andy Barber – And this restaurant has been there, but it was zoned residential, so these people when they bought, they see a restaurant, but they also see residential zoning underneath it, but the business never stopped operating as a restaurant. So, I'm just trying to see if they bought something thinking it was going to be residential, or if they bought knowing there was a restaurant next door. Who knows the answer to that question. I guess the restaurant had outside music before, and this is not a new use, it has always been there. The ability to have outside music has always been there whether they had it or not.

Cindy Fox – As a typical operation for a restaurant, I would say yes.

Robert LaMarr – Is most of the concerns of the condo met as far as the noise? The noise seemed to be the biggest concern.

Kim Rezanka – The noise, the traffic, the trash. Those are the three things, people going the wrong way. We've done what we can do, and we can only police so much, but we've made conditions that they seem to appreciate, assist, and if we don't meet the performance standards we go back. We agreed with the condo association that if they aren't happy we'll meet again.

Jeff Holleran – On your noise limitations, you've got noise limitations for Friday, Saturday, and Sunday, and types of bands Monday through Thursday. What time constraints are you putting on Monday through Thursday? You don't have any specified.

Kim Rezanka – I'm assuming they'd be the same as 10:00 p.m., but I don't know.

Buzz Underill – It wouldn't be any later than that. Maybe a little bit earlier.

Henry Minneboo - I don't know of anywhere that has them seven days a week. Does Grills do seven days?

Robert LaMarr – They do acoustics.

Cindy Fox – Please consider location. Grills is not next door to residential. Also, I wanted to mention that the sound barrier curtain, is this a typical product that a typical building department would know what it is, and do we need to be more specific in our language here? I'm just trying to make sure these conditions are enforceable.

Buzz Underill – It's a sound blanket manufactured custom for each location. It's a fiberglass, batten type of structure with a heavy vinyl outside on it. It is designed to be used outside. They are used as sound barriers on industrial sites and a lot of other things. We had a similar situation with our Squid Lips in Melbourne; we're right next to Pineapple House, which is condo which is actually closer than Magnolia Bay, and we had the same sort of issues. We brought in sound engineers out of Orlando that do this stuff for Universal, and they came in and did all their tests, and this is what they suggested. We had that built and put that in place, and that seemed to do the job, and we haven't had a problem with the Pineapple House in two or three years since we installed that. We've had the other ones designed and ready to pull the trigger.....they're not cheap, they're expensive, and as soon as we get the zoning we will pull the trigger and we'll have that done and we'll provide the specs and everything to the Building Department. It seems to do a pretty good job. As I mentioned before to the group when I talked to them, the problem that you have is based because it's omnidirectional, it goes in all directions, you can't focus it out. So, there may be a possibility that even though this will eliminate the stuff coming from the sides, maybe some of that noise that comes up through that ceiling, and if that's the case, we'll put what's known as a mass-loaded vinyl, which is a sound-proofing material, and we'll put that over.....which is, again, a sound-proofing material and we'll drape that over where the band is and that will absorb that noise. I'm not in the entertainment business, particularly for the music, it's just part of what everybody expects. The last thing I want to do is create problems for people. I've got other issues in life other than that. We are committed to do just like we did in Melbourne, and we'll do the same thing with these folks. Whatever we need to do we'll do. If we can't keep it in the range we need to keep it in then we won't run live music on those days.

Cindy Fox – I think it would be a good idea if you provided some specifications so that when this goes to the Board of County Commissioners they can really see what you're talking about.

Buzz Underill – I can do that.

Henry Minneboo – We probably should deal with zoning first.

Cindy Fox – Actually, would you please do the comp plan change first?

Andy Barber – I'll make a motion to approve the comp plan amendment.

Clyde Thodey – I'll second it.

Henry Minneboo – Is that all you're going to do, Andy?

Andy Barber – I think we can approve this project with these limitations that everybody has hammered out. So, whatever steps we have to take to get to that point is what we have to do, and if we have to do this first we have to do this first.

Henry Minneboo called for a vote on the motion as stated, and it passed unanimously.

Cindy Fox – You can consider the rezoning and CUP in the same motion, and this is where we'd put our conditions on the CUP.

Kim Rezanka – And the binding development plan.

Cindy Fox – And the binding development plan.

Andy Barber – I'm willing to take a stab at it. I'm not sure which is which, but basically I'd like to make a motion that we approve the conditions that Kim has outlined here, but I would like to add a few things. Item 2, where you have 'limiting outside live music', I want strict adherence to the noise level so these people don't get.....I know that's the law anyway, but if somehow we can highlight that again. That's very important to these people that they don't have to listen to rock music when they're going to bed every night. Items 3 and 4 are fine. I think somebody had a complaint about an outside smoker, and I think that smell and sound are always issues to me, and if there's anything you can do to control sound or smell, I think would be appropriate, so I'll throw that out there if you want to do it. Obviously, you have to obtain all the permits and remove any deck if you don't get permits for them. And one more small curve ball, because I, too, live on the Lagoon, and I'm troubled by it, but maybe we can take advantage of this opportunity to request some kind of a stormwater management plan; putting in French drains probably is just like a band aid, and there's no real alternative solution because the French drains fill up on the first quarter inch of rain, so if there's a way to consider somehow controlling the runoff from the property to the Lagoon that would be a fantastic thing, and I think if we can make that a condition that will make me a very happy person. That's my motion if that makes any sense.

Kim Rezanka – With a binding development plan?

Andy Barber – With a binding development plan.

Henry Minneboo – You want to go back to BU-1?

Andy Barber – That's their request and that's what it is, so I don't have problem with it converting back to its original use.

Cristina Berrios – Do you want these conditions in the CUP and the BDP?

Andy Barber – I'm not smart enough to know the difference between the two.

Cindy Fox – Kim, is there a reason why you'd like to do a BDP rather than just put conditions on the Conditional Use Permit?

Kim Rezanka – The mortgagee has agreed to the one condition of no other commercial use; the mortgagee is difficult to deal with and will not agree to the rest of this stuff. I don't know why. The conditions work the same, and we still have to abide by them.

Cindy Fox – But you're still going to do a binding development plan that....

Kim Rezanka – We did, limited to just the restaurant use, and he already signed that.

Cindy Fox – We just need these conditions on the conditional use permit.

Kim Rezanka – We have no problem with the conditions recommended.

Henry Minneboo – Cindy, since we're in discussion, everything that Andy wanted, can't we leave that under the RU-2-15?

Cindy Fox – You can't do a CUP for alcohol in RU-2-15.

Henry Minneboo – You can't make alcohol separate?

Cindy Fox – No, because you would need the underlying zoning, and the conditional use permit for alcohol.....

Henry Minneboo – We don't allow alcohol in RU-2-15?

Cindy Fox – No.

Henry Minneboo – There's a motion on the floor. Is there a second?

Bill Cannon – I'll second it.

Henry Minneboo called for a vote on the motion as stated, and it passed 8:1, with Minneboo voting nay.

Upon consensus, the meeting was adjourned at 4:53 p.m.

**PLANNING AND ZONING BOARD
ADMINISTRATIVE REZONING MINUTES**

The Brevard County Planning & Zoning Board, and Local Planning Agency, met in regular session on **Monday, September 12, 2016**, at **3:00 p.m.**, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order by the Chair, Henry Minneboo, at 3:00 p.m.

Board members present were: Henry Minneboo, Chair; Bill Cannon; Robert LaMarr, Clyde Thodey, Ron McLellan, Andy Barber, Peter Aydelotte, Ron Barcher, and Jeff Holleran

Staff members present were: Cristina Berrios, Assistant County Attorney; Cindy Fox, Zoning Manager; and Jennifer Jones, Special Projects Coordinator.

IV.C.1 (16PZ00067) Section 31, Township 23, Range 36, Tax Parcel 260; and Section 31, Township 23, Range 36, Tax Parcel 2, owned by State of Florida, ITTF – 28.19 acres, located on the southwest corner of Camp Rd. and the F.E.C. Railroad. (Tax Parcel = No assigned address. In the Cocoa area; Tax Parcel 2 = 555 Camp Rd., Cocoa)

Current Zoning: GU (General Use) and RU-1-7 (Single-Family Residential)
Proposed Zoning: GML(I) (Government Managed Lands – Institutional)

Henry Minneboo – This is owned by the State, it is the road crew station, right?

Cindy Fox – Yes, we just bring these through as they come up.

Bill Cannon – I motion for approval.

Andy Barber – Second.

Henry Minneboo called for a vote on the motion as stated, and it passed unanimously.

IV.C.2. (16PZ00071) Section 19, Township 26, Range 37, a portion of Tax Parcel 521, owned by Brevard County – 1.10 acres, located on the southwest corner of Holy Trinity Dr. and Pineda Cswy. (No assigned address. In the Melbourne area.)

Current Future Land Use and Zoning: Public, and GML(H) (Government Managed Lands – High Intensity)
Proposed Future Land Use and Zoning: CC (Community Commercial) and BU-1 (General Retail Commercial)

Cindy Fox – This is an administrative zoning for a property swap that we're doing with Holy Trinity, just to bring it all into compliance.

Andy Barber – I move to approve the future land use and the zoning.

Clyde Thodey – Second.

Henry Minneboo called for a vote on the motion as stated, and it passed unanimously.

PORT ST. JOHN DEPENDENT SPECIAL DISTRICT BOARD MINUTES

The Port St. John Dependent Special District Board met in regular session on Wednesday, September 14, 2016, at 6:00 p.m., at the Port St. John Library, 6500 Carole Ave., Port St. John, Florida.

Board members present were: Vaughan Kimberling, Chair; Carmella Chinaris, Vice Chair; Greg Messer; Wendy Porter; Pete Costello; and Gary Musselman.

Staff members present were: Cindy Fox, Planning and Zoning Manager; and Jennifer Jones, Special Projects Coordinator II.

The meeting was called to order by Chairman, Vaughan Kimberling, at 6:00 p.m.

IV.B.8. (16PZ00058) – RJM MERCO, LLC – (Kendall Moore, Esq.) requests a change of classification from RU-1-9 to BU-1-A, on 0.37 acres, located on the northeast corner of Elkcam Blvd. and Manth Ave., approx. 470 ft. west of U.S. Hwy. 1. (Lot 1 = No assigned address. In the Cocoa area. Lot 2 = 1070 Elkcam Blvd., Cocoa)

Kendall Moore – Good evening, my name is Kendall Moore, my professional address is 895 Barton Boulevard, Rockledge, Suite B. I'm here this evening on behalf of RJM Merco, who is your applicant, and I am going to allow him to speak first, Mr. Ralph McCoig. Let me first apologize; I'll blame it on me, not on the owner. We did have two tablings, but if you recall, the first time we were here there was another agenda item more popular than ours on that first night. They did withdraw, but it was very clear to us that night that there are residents that had many questions. So, it was prudent for us to take the time and sponsor a public meeting, which we did, in this room; we collected names and numbers that night and asked people to spread the word, and had 15-20 attendees, and we spent a couple of hours answering questions specifically relating to the project that will be before you tonight. What we would like to do is divvy the presentation up into three basic pieces. One of the questions we were asked most often was if this land is under contract because the person being referred to is a developer, and if it was a contingency. This is a piece of land owned by RJM Merco and the single member of RJM Merco is Ralph McCoig; he currently owns the property and has a full understanding of what he intends to develop on that property, and we will present that to you this evening; he has quite a bit of long-term business connection here in the Port St. John area, having done a variety of things; and I'll let him go over those first and give his presentation, then we'll talk specifically about what we intend to do. I have some photos that we will share with you that we also shared with the public. Last but not least, we will speak to you on a technical side a little bit about the staff report, trying to specifically say why we're requesting that particular zoning category and change specifically for what Mr. McCoig is intending to do with Merco. So, we'll let Mr. McCoig go first and follow from there.

Ralph McCoig – Thank you, Mr. Chairman and board members. My name is Ralph McCoig, my business location is 1037 Pathfinder Way, Suite 140, Rockledge. Just for clarification, there are two pieces of property involved, and I thought I only heard one piece mentioned in the agenda item.

Cindy Fox – Lot 1 and Lot 2.

Ralph McCoig – Correct. First of all, I'd like to disclose that Mr. Moore and I served on the Rockledge City Council for many years, and I can tell you – and I think he'd agree with me – that we really appreciate the time and energy you board members donate to the community, so thank you for that. Since 1995, my family and I have been investing in Port St. John.

Carmella Chinaris – Can we move the podium off to the side so that everyone can hear.

Cindy Fox – We still have to make sure we get him on the microphone and he is addressing the board, but you're welcome to move the podium.

Ralph McCoig – As I was saying, my family and I have been investing in Port St. John since 1995, primarily building and leasing single-family homes. Over the 20 years, I can say that we've provided safe, clean housing

to hundreds of Port St. John residents. We have paid hundreds of thousands of dollars in real estate tax, fire assessment fees, road taxes, and school taxes; we support our local businesses and hire as many local vendors as possible. We think now there is a need in our community to provide compassionate care and companionship opportunities to our senior population. My family and I would like to supply that need and open, own, and operate a business that would take care of our senior population. Let me introduce Coralee Prince and Angela Spence. If approved, these two young ladies will be managing the day to day activities of our home; they presently own and operate several facilities for many years down in the south part of our County. We're here to answer any questions that you might have, and we respectfully request that you have a recommendation tonight that is positive.

Kendall Moore – We wanted to address two things tonight for the board. One was to try to give you an idea of the end-all-be-all of what RJM Merco intends to develop on that site, and then talk technically about how and why we chose that particular zoning category, and ultimately how we got there. I'm going to ask Mr. McCoig if he'd be kind enough to share the photos that he has with the board. I'd be happy to pass them around and make them available to anyone in the public. These are hard copy photographs that were provided to the public as well, but these photos are ultimately a facility that is currently run by Ms. Spence and Ms. Prince in the southern part of county. They have been in the assisted living facility business for many years, so this is not a test or trial, or anything of that nature or magnitude. It would be intended to be a facility where there will be the exact same type nature and stature, and if approved by the County, would follow the same building plan and style that you see included in the pictures in front of you. I think it's important to particularly note – as you can see, both from the interior and exterior photos, this is intended to be a small scale old style environment, not a large commercial building, not a large institutional style use, but much more something relative to an individual who has an elderly family member to be included in a residential-style setting, almost as if they were in your home. We referenced previously that there are two lots that exist there, and if you take a look at the last page of your packet that has the aerial map that's included, you will notice that it's indicated – and I want to talk about where the property is located because I think it goes to the end-all-be-all question that's before you tonight. If you look at the property, clearly many of the residents that are here tonight, some of them would live to the left, or to the west, or to the north or south of the subject property in the residential area that borders on the north a little bit to the south and to the west side. If you notice to the east side of the property there is a fairly.....

Gary Musselman – I'm sorry, I want to make sure I understand correctly. You're looking at acquiring some of these residential houses?

Kendall Moore – No, not at all, just describing what actually surrounds our subject property.

Gary Musselman – Okay.

Kendall Moore – On all four sides. I think that once we get to the staff report, the actual question that's before you tonight, has a significant bearing on what's around that property. If you notice and can tell from the aerial photo, those are single-family homes, and then to the east there is a fairly intense use of property. There's actually a medical facility and then a retail facility that is on US 1, but if you notice all along that BU-1, which is a more intense commercial border, all of those properties actually border on residential homes along that entire US 1 stretch. Those homes back up to a fairly intense BU-1 zoning. You can see – I think it's a Wuesthoff – and a fairly large retail store that border on the other side, and that's an important factor for our discussion this evening because if you were to reference what the staff has put together, and they have done an excellent job, but on Page 12 of the staff report we can go through some of the specific items. The summary item says, "The applicant intends to develop a Level II Group Home" – and I want to talk a little bit about that – "on the subject property. The Level II Group Home is permitted to use in the BU-1-A zoning classification, which may permit a maximum of 14 assigned residents", and here is the key thing, "The board is requested to determine whether the Level II Group Home is a transitional use". The question before you tonight is whether or not this zoning category that we're asking for, and the potential end-all-be-all use, is an appropriate transitional use between

what would be on the east side, i.e., the more intense BU-1 zoning that exists on US 1, and the residential zoning that exists to the west. That becomes one of the tests that's before you tonight, whether or not what's being proposed, both in the zoning category and in what the developer intends to build is an appropriate transition between the two. The staff has gone through and has actually discussed in their report many of the things that the public were asking about, and we won't go through the number of pages that exist, I'm sure you have read through the administrative policies or are familiar with them and the comparisons that are given, but there are a few of them that I think are important to point out, and primarily they were pointed out by the public. If I have a residentially zoned house in that area – some of the things that were brought up in the meeting was that people were interested in analysis on noise, light, traffic, value, there were a variety of questions that were asked in that regard. I want to try to discuss and clarify for you some specifics relative to those. If we take a look – and I think it's probably easiest for us to use the staff report, Page 10 in the packet that you have that is called a Zoning Review Worksheet. As it relates to traffic, you can see at the bottom of that page that there was an analysis from a traffic standpoint, and if you think about the nature of what's being proposed, this assisted living facility, typically the residents do not have vehicles. They are ambulatory, so they can get around; they do not have serious medical conditions; they don't intend to have a license that would allow them to have intensive medical uses; they would not have a license that would allow them to have intensive psychological concerns with patients. We would be talking about regular, traditional, elderly individuals – still ambulatory with the ability to get around, but typically not going outside and driving. So, it is not a parking lot full of 14 customers associated with that. Typically, the traffic coming and going would be the workers, or workers' trips that may be on behalf of the residents that exist, but from the analysis that was done there is no concern relative to the number of trips generated by this facility. I think it's also important to note that where it is located, it's less than 500 ft. from US 1 and there are no residences between this location and US 1, so even the minimum number of trips that it would create, they would not be passing by any of the residential locations that exist. Because of the acuity associated with the patients, this is also not something with an intensive number of ambulances and trips of that kind of nature, because we're talking about traditional daycare style – not daycare, it's actually 24 hours – arrangements, not anything where a person would require ongoing intensive medical care from a physician or kind of a nursing situation that would be around them 24 hours a day. There were questions about noise, but we're talking about 14 elderly residents, typically, and their staff – nursing or other medical-related staff – although functioning 24 hours a day because there are people living there, not a noise concern relative to that. There is not a light concern, there's no activities going on there that would create scenarios of big, bright, parking lots or things like that going on 24 hours that would be impacting the individuals that live around them. There was lots of discussion about if this activity brings about any crime. There's no intent on behalf of this facility to have juveniles, felons, ex-offenders, or any of those things, as that is not the population market for this facility. I will tell you, specifically, most of the questions that we got, either that night or individual calls to us thereafter, dealt with the connotation that the Brevard County Code refers to it as a Group Home, and that name, I think, conjured up in many peoples' minds something that would be different than assisted living. I'm going to say this.....and it's been controversial to do, but people have asked about the two lots and building two homes on them.....someone asked us when we were there previously, "Couldn't you build two, individual facilities side-by-side", because in the existing zoning category, RU-1-9, a Level I Group Home of up to six residents is a use that is allowable without coming to this board or doing anything else, so you could build two, side-by-side, and that is something that the developer could have chosen to do, is build two of those, side-by-side, not have to come to this board, not have to ask any questions, and in fact, they would not necessarily have to limit the population to what they intended to do without asking anyone's permission under the existing zoning. When you start talking about two facilities, side-by-side, double the staff, all of those things, and in all full candor from the developer's standpoint, the ability to ask for this transitional zoning that would allow them to go to 14 residents from 12. So, going to one single-family rather than two, and arguably better the design, you may actually be able to create two buildings side-by-side in the current zoning that could actually be bigger than the one existing because of the necessity for the configuration that would be associated with the two buildings. So, the thought process was, to go from 12 to 14 residents, to attempt to do one building rather than two, to do something that would still have a residential character look and feel to it that would fit appropriately in that particular area, but again, the question before you tonight is, is it an appropriate transition? And I think that staff referenced that if you go to Page 12, and

they not only talk about the concurrency analysis in the first paragraph, but it says in the third one, "The request should be evaluated within the context of Policy 2.14C of the Future Land Use Element, which can allow Neighborhood Commercial uses if they serve as a transition between higher intensity and lower intensity uses." So, when we talk about that, it's just exactly what we described: To the east, a much higher intensity use in BU-1-A of the medical uses and the retail uses, and a lower intensity of residential to the west. Does this use and this zoning category characterize what would be a transition between the two. And we submit to you tonight, and you see some of the references in the staff report that the higher intensity uses, industrial and.....it's not industrial, but the types of uses that exist to the east, and then the residential uses that exist to the west, we believe that this BU-1-A designation is an appropriate step down from the commercial that exists to the Neighborhood Residential on the other side. From the photographs, maintaining the same style and appropriate character and the look and feel, the traffic in the same nature that would be before you relative to what they intend to build on that site. I would suggest to you this evening that we have tried our best to answer as many questions, and from our perspective we understand that change at times can certainly be difficult, but we do believe that we meet the criteria that have been laid out relative to an appropriate transitional use between the uses that currently exist on the ground and would ask tonight that you would support, as exists in the packet that's been put before you, that you would determine that this particular use and this particular zoning is an appropriate transition between the BU-1 and the RU-1-9 residential, and allow this to move forward to be taken up by the County Commission. We'd be happy to answer any questions you might have.

Vaughan Kimberling – Are there any questions from the board for Mr. Moore or Mr. McCoig?

Carmella Chinaris – The facility pictured, is that comparable in size to what you are proposing? How many residents does that facility hold?

Kendall Moore – The comparable size is in the neighborhood of 5,000 square feet.

Ralph McCoig – Ms. Prince actually owns and operates that facility now in Palm Bay.

Carmella Chinaris – And that's comparable to what you're proposing here? Have there been any problems or complaints about the maintenance of the outside of the facility at all?

Ralph McCoig – Not to my knowledge. Ms. Prince can speak to that, but not to my knowledge.

Carmella Chinaris – Because from the photo it looks well maintained from the outside, and that's the normal state of affairs for the property?

Ralph McCoig – Ms. Prince has a website, and I think one of the comments on the website is, "I took my mother there and you can eat off the floor".

Carmella Chinaris – Thank you.

Wendy Porter – What is the age bracket for people there? In other words, what's the low for getting in?

Ralph McCoig – Our target market is going to be an elderly person, typically 65 years or older.

Gary Musselman – So, you're looking at building essentially a 5,000 square foot facility on two lots?

Ralph McCoig – Correct.

Gary Musselman – So, in theory, if you're going to be doing it you could build under the existing zoning with two, 2,500 square foot facilities.....I realize the economic difference.....and in that case you look like a

residential home and nobody would know the difference. I understand the economics of what you're doing, and that obviously is a major factor. When you build a 5,000 square foot facility.....we talked about lighting, is there any exterior lighting requirements for a facility like this that would require spot lights to be on all night long, and flood lights to be on all night long?

Ralph McCoig – Not to my knowledge. Ms. Prince could probably speak to that better than I, but not to my knowledge.

Kendall Moore – And I think Ms. Fox may be a better professional to assist in this, but I also do not believe that they would allow, or authorize, light.....in other words, you wouldn't be able to shine lights onto private residential properties beyond that. So, you want something that's lit from a safety perspective. Mr. McCoig and I were involved in an issue many years ago where a residence next to a hospital asked that question and there was actually a shade study done to make sure that they were not creating light pollution for those surrounding. I think part of the intent, and I want to be perfectly clear - certainly, to his business benefit, going from 12 to 14 and building a single residence has its business benefits, but secondarily, many of things that could be done in a group home setting that he doesn't have the intent to do that he could have done without asking anybody, he knows that wouldn't be beneficial for the other properties he owns or a thing that you would prefer as a resident in Port St. John, so I think that's the other consideration. So, lighting, noise, traffic, all of those considerations.....

Gary Musselman – The potential clientele for this, you said they're not necessarily people with significant medical conditions, so it's not a nursing facility by any means. Would an Alzheimer's person be someone that is a potential candidate for.....

Ralph McCoig – I'd like Ms. Prince to answer that.

Coralee Prince – My name is Coralee Prince, I am the owner of the facility that you looked at. I've been in business for about 15 years now, in assisted living. My address is 1767 Foundation Circle, Palm Bay. Assisted living is a place where we have people 65 and over that can no longer take care of themselves. That's called ADL, Activity of Daily Living. Yes, we have patients who have dementia, which is someone that forgets all of the future, but they remember the past. They remember as a child, but can't remember what happened yesterday. So, these people need someone to tell them when to eat and to go to bed. They don't go out alone, they don't drive. If you look at the pictures you will see we do have a parking lot, but during the daytime there is my car and one worker. Most of the workers we have live in the neighborhoods and some of them walk to work. The people we're going to have here, they are going to be the ones that need tender loving care; we're going to make sure that they eat and stay healthy.

Vaughan Kimberling – Let's talk about outside activities. In the photos I saw there seems to be a rather large backyard area, are there outside activities that might occur, like a 4th of July bar-b-que or something?

Coralee Prince – We're not going to have loud music, but we might sit on the porch and have the family come over, and we might cook a big lunch and sit and mingle. It's just like having a Thanksgiving dinner, that's what it will be like.

Vaughan Kimberling – Is there a lot of visitors from the family that come in?

Coralee Prince – We don't get a lot of visitors at one time. We might have a daughter that comes and sits with mom and spend a half an hour. Then we might have somebody else come another day. It's never all at one time. The people we have, they have children that still need to work, so they're at work and that's why they can't take care of them anymore.

Vaughan Kimberling – How many staff members are required for 14 residents?

Coralee Prince – On a daily basis we will have three staff members there, and that doesn't include a secretary or me hanging around as the supervisor.

Wendy Porter – Are the residents each in their own apartment?

Coralee Prince – No, it's going to be a home-like setting. Like at your house you have your bedroom, I have my bedroom, and I cook the food.....just like you do every day.

Vaughan Kimberling – It sounds almost like a dormitory, where you have the individual rooms and you have the central gathering place for meals.

Greg Messer – The other part to this is they can already do this in a residential setting. I mean, we can't stop it from happening even if you want to. The only thing they're going to get is one building instead of two. It's already acceptable in the zoning we have.

Carmella Chinaris – You would not at any time have an elder daycare operating at the same time? This is just for the residents of the facility?

Coralee Prince – Correct.

Vaughan Kimberling – If there are no more questions from the board I will open it up to the floor. I will ask that you step forward to the podium and state your name and address for the record. The time for all questions per person is five minutes.

Andrea Cann – My name is Andrea Cann and I live at 1025 Elkcam Boulevard, which is six doors away. My concern is once this is rezoned to commercial residential what is to stop 10 years from now, or five years from now, from them moving out and something else going in there? Can they guarantee me that they're going to be there forever? When I purchased my home I purchased it in a residential area. If I wanted to live in a commercial area I would have done so. I'm concerned about property values, they are so low now, is it going to go even lower because it is a commercial area? That's my concern.

Cindy Fox – One mechanism that we have for the applicant is a voluntary agreement that they sign with the County if this board chooses to ask the applicant if they will voluntarily agree, they can limit the use of the property to an assisted living facility only. That will run with the land if the property is sold, changes hands several times, unless they come back to this board and ask for it to be removed and for another use to go in, it will be limited to only an assisted living facility.

Andrea Cann – So, if it's sold, does that property still stay commercial residential?

Cindy Fox – Yes, and it would also still stay as an assisted living facility. The current property owner at that time would have to come back to this board and have it removed. Let's say they wanted to change it into a daycare, they would have to come back to this board and ask for that stipulation of limiting it to an assisted living facility be removed and to allow a different use.

Andrea Cann – But there's no way that goes back to simply being residential?

Cindy Fox – No.

Greg Messer – It stays within the BU-1 classification, which there are a lot of restrictions on that. We have the plaza on Fay Boulevard, and you're really restricted to what uses you can and can't have. It's not just everything like the wild, wild west.

Andrea Cann – the one thing that bothered me in the presentation was that he kept stressing what's on the east. Well, there are a lot of us on the west in the residential area. There's a lot of empty property on Route 1 that is open for commercial. That's all I've got to say.

Ralph McCoig – In addition, I've been a realtor for 32 years and I've been involved in a lot of appraisals. With this type of zoning, if you were going to sell your home and the person was going to obtain a loan, the appraisal process would be that they would compare your home to similar houses in the neighborhood that had sold recently. They would not compare your home with this facility here. As far as desirability, once this is in place you will know who your neighbors are. I can tell you we have sold homes in Port St. John and I've gotten calls months and years later complaining about neighbors that have moved in right beside them. With this facility you know exactly who your neighbors are.

Ron Hogan – My name is Ron Hogan, I live at 6745 Cedar Ave, Cocoa. I've been involved in rezoning before. I moved here from Tampa two years ago, and I've been involved in some that were more sticky and more difficult when land uses went from residential to multi-family, which in some cases becomes a very difficult situation, especially an area that's been long-established where many people live and they're always afraid of the impact on traffic, noise, et cetera. The reason why I'm here today is because of two factors, and I do know Mr. McCoig. I just moved my mother here from Tampa in April and I had to move her to West Melbourne. She lives with my sister, and I know for a fact that both of them – because they're both older and not well – for me, the impact of this area is so limited – that's my opinion – we have Publix there and other things, we even take our daughter to rehab at the medical center right next to it. She had an operation, so we go there now, and that's the only reason I know where the property is. I know if something happens to either my mother or my sister, they can't live together, I would love to be able to have one of them, because the time is going to come when something happens to one or the other unless they both end up in a nursing home. This would be a fantastic facility for them. I'm telling you, none of us in here are spring chickens; I look around here and I don't see anyone in high school. As far as land usage, I used to do appraisals, and when I did mortgages I would always have comps from a single-family home and there is no way to co-mingle a comp for a single-family residence and a commercial property. They will never intermingle or mix. So, with that being said, and the fact that my parents.....I would love to have them next to me, because when something happens.....they can get around and do whatever they want, but when she falls she has a hard time getting up, and I'm not there to help her. What kills me is, one of these days maybe our loved ones are going to have us in a place like this near us. This is not a very difficult scenario. These are people that may not have kids that can be there with them, but they would have people who would look out for them and care for them. I live in this community and I want my mom to be near me. This is something beautiful that this community needs. I understand that the concerns you have are valid. I asked Mr. McCoig to talk to the neighbors beforehand, and sometimes being informed prior to can give insight, than come here to a committee having a witch hunt. I want my mom or my sister to be able to come to this facility. I want my mom near me. That's all I have to say.

Vaughan Kimberling – Any other questions?

Paul McGill – My name is Paul McGill, 249 Manth Avenue, about five doors down. I have a four-year old who turns five tomorrow, so I kind of have a vested interest in what residents would go there. I spoke to Mr. McCoig after the meeting they did a month ago. I have concerns about what type of residents would live there, specifically those that.....where I work I deal with assisted living facilities, so I'm very familiar, and I've seen many times when consensus gets low in a facility that they will take certain clients that may not be the best choice for that facility for what they're trying to do. I understand that they have made pledges and promises to restrict whatever residents go there and I appreciate that. I appreciate what you're doing and that you want to do this. A lot of time it's a scary lot, it's overgrown, there's snakes, and things get dumped there, so something newer and nicer may be nice, but my concern would be who would be moving there. Another concern, and I know that you've expressed that it's your intention to keep this property for you and your family and keep it an assisted living facility for a long time, and I appreciate that, but things happen, accidents happen, situations happen, and if for whatever reason you were not able to continue and you were forced to sell that property, my

concern is that the zoning would stay the same, and it would continue to be an assisted living facility. My question is, what would that open up to other groups moving into that facility, another ALF moving into that facility and opening up and call it an ALF but bring in folks that are.....we're going to help DCF out and bring some 16 & 17 year old boys in there that are troubled. What prevention is there to prevent that from happening? Or another group comes in and brings in some guys that are on alcohol and make this a half-way house. I just want to make sure there's protections for my neighborhood as to who is going to be living there. I understand that it's absolutely your intention to do this and it's admirable and I appreciate that, and if this gets passed, I hope it does great and I hope it's what you're saying it's going to be, but my concern is, if for whatever reason this happens and it failed, that zoning has been forever changed and now I'm worried about who could – under the guise of being an assisted living facility – who could bring other residents in that could be detrimental to my family and the neighborhood. So, if someone can enlighten me that there's a guarantee that there will never be a minor living there, there will never be someone who has a felony on record, that there will never be somebody that who has been discharged from a psychiatric facility. Can someone guarantee me that there will only be 65 year olds that have walkers, or 80 year olds.....if you can guarantee that's all it will ever be, I'm not opposed to it, but I'm scared you can't give me that promise that that's all there will be.

Carmella Chinaris – Can I address that? You don't have a guarantee of who's going to be your neighbor no matter where you are. If you look at some of the rundown properties that are across Elkcam, it looks like neighborhood improvement would be a good thing. I would like to ask you, if you could speak one more time, about the agreement, binding agreement, to keep this zoning change for elder care assisted living facility only.

Cindy Fox – Yes. I want to point out a couple of things first, specifically to your concerns. This facility is going to be licensed by the State. No matter what, the State governs these facilities. The County has its own nomenclature, we call it a Group Home because we have different zoning classifications where things go. We actually have something called Assisted Living Facility and it's over 14 residents, and that's what we call an Assisted Living Facility. A few years ago, the Fair Housing Act changed and because of that change at the federal level they said to all the local jurisdictions, cities, counties, and State, "You cannot discriminate against these types of facilities, small, intimate, group home-type facilities". So, they are allowed in every single zoning classification, and at any time you could have a group home in the unincorporated area of Brevard County next door and you may not know. So, we're not allowed to discriminate from them from doing that. They do have separation distance requirements, minimum square footage requirements, minimum bathroom requirements, dining facilities, so the County looks to the State to govern all these things and many of our regulations are duplicated from the State, so the State is really in control, but the County will not allow this to be a treatment recovery facility, or any type of halfway house; we don't even have that kind of designation in our zoning code in Brevard County. We would not allow any people to be there that have a direct correlation to be recently involved with the Department of Corrections, so those people would not be there, either. So, you do have those assurances that we have other zoning classifications and other names of those facilities that we would put those types of people in and it's highly regulated by the State. A Binding Development Plan, which is a voluntary agreement between the property owner and the County, can have many conditions on it. Again, we can have it be an assisted living facility with clientele limited to the elderly person 65 and over. On an extreme err of caution, this board could also say to not have any minor residents or residents that have been involved with the Department of Corrections, and you could even add in any types of undesirables. That would give you a guarantee that going forward in the future it would stay that, and if it was going to be changed, if the property sold 20 years from now, they would still have to come back to this board or the Board of County Commissioners and ask for that change and you would know it.

Paul McGill – Mr. McCoig in that meeting had expressed his intention to do that, just as a resident I wanted to make sure that that was accomplished.

Cindy Fox – Yes.

Paul McGill – That is my concern. Like I said, I'm not horribly opposed to it if we can guarantee that's who will be there and it will always be that use and that's all that will ever be there, then I can understand that. So, that's the concerns I have today.

Vaughan Kimberling – Are there any more questions or comments from the audience? Okay, any more questions from the board? We have to make a decision on changing the classification RU-1-9 to BU-1-A for these two lots, and we also need to determine whether it is a Level II Group Home that is consistent with a transitional use.

Cindy Fox – No, the approval of the zoning would do that, but if you want to do a BDP I would please ask you to ask the applicant to come up and acknowledge that they would voluntarily agree to enter into a BDP with the limitations discussed on record.

Vaughan Kimberling – Okay, I need a motion.

Wendy Porter – I move the change of classification from RU-1-9 to BU-1-A on the property on Elkcam Boulevard and Manth, with a binding development plan to go along with it that will stipulate that it will be an assisted living facility for the elderly, 65 years and older.

Vaughan Kimberling – Does that also include Lot 2 at 1070 Elkcam?

Wendy Porter – Yes, it will include that lot.

Gary Musselman – I second, but I have a question. It says there's two lots, so they will eventually need to deed the two together to make it one lot to build this, correct?

Cindy Fox – Once they pull a permit and it goes across both lots there's no problem.

Gary Musselman – But eventually the two lot distinction goes away and become one lot?

Cindy Fox – It will be assigned a separate tax parcel number.

Vaughan Kimberling – Mr. McCoig, I would like to ask you about the binding development plan.

Ralph McCoig – Yes, Mr. Moore and I had talked about that. The stipulation is that this would be an assisted living facility for 65 years and older, and yes, I am in agreement with that.

Vaughan Kimberling called for a vote on the motion as stated, and it passed unanimously.

Upon motion and second, the meeting was adjourned at 6:55 p.m.