

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, July 11, 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; Andy Barber; Clyde Thodey; Rochelle Lawandales; Bruce Moia; John Stone; Jeff Holleran; Ron Bartcher; and Richard Charbonneau.

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

The seven 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 all items today will be heard on Thursday, August 4th, back in this room here, at 5:00 p.m. Has everybody had an opportunity to see the P&Z minutes of May 9th, 2016?

Clyde Thodey – Motion to approve.

Rochelle Lawandales – Second.

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

Cindy Fox – We have two items that have to be tabled, but first I'd like to introduce Dave Lindeman from the School Board, and he's going to introduce our new School Board representative.

Dave Lindeman – My name is Dave Lindeman, I'm the Manager of Facilities Planning at Brevard Public Schools, 2700 Judge Fran Jamieson Way, Viera. The reason I'm here today is that the School Board has a new appointee to your board and his name is Jeff Holleran, he comes to us from Blackberry, and his appointment was sponsored by Andy Ziegler, and the School Board voted to appoint him to this board. Just a little bit of background, the State regulations and also our Interlocal Agreement with Brevard County allows the School Board to have a representative on all of the local planning agencies for each of the cities and also the County, so we're really happy to be part of that coordination effort and to be able to coordinate with this board. If you have any questions for the School Board, definitely ask Mr. Holleran and I'll do my best to get the information back to him for the board; and as well, he coordinates with us on residential developments that we should be looking for in the future so that we know how to plan for our schools. One other thing I do want to say is that we really do appreciate Loretta Goggin's service on this board as well. She was the past School Board appointee and she served many years of good service. Thank you for letting me speak and thank you for welcoming Jeff Holleran.

Henry Minneboo – Thank you for letting us know what's going on. Welcome aboard, Jeff. You may want to be here one meeting and quit. Cindy, go ahead.

Cindy Fox – In total we have nine items on the agenda today. Items 2 – 5 are either North Merritt Island or the Port St. John Special Districts.

IV.B.9. (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 Ave., approx. 415 ft. north of Crescent Beach Dr. (2200 S. Orlando Ave., Cocoa Beach)

Cindy Fox – We had some issues with Item IV.B.9., and staff is requesting this item to be tabled. This will be appearing on your August 8th, and September 1st County Commission agenda.

Bruce Moia – Motion to table.

Rochelle Lawandales – Second.

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

IV.B.12. (16PZ00057) – RIVERSIDE COMMONS, LLC – requests a Small Scale Plan Amendment (16S.06) to change the Future Land Use from NC to CC; and a change of classification from RP to BU-1, on 2.52 acres +/-, located on the east side of Hwy. 1, approx. 780 ft. north of Rockledge Dr. (No assigned address. In the Rockledge area.)

Cindy Fox – Likewise, IV.B.12., we had an issue with the courtesy notices, and one of the primaries on the property is actually in France, so we'd like to table that item as well.

Bruce Moia – Motion to table.

Rochelle Lawandales – Second.

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

IV.B.1. (16PZ00046) – EDWARD A. (III) & JENNIFER J. OSTOPOVICH – request a change of classification from GU to AU on 2.89 acres, located on the east side of International Ave., approx. 700 ft. north of Golden Shores Blvd. (5175 International Ave., Mims)

Cindy Fox – Mr. Ostopovich, I need your purple waiver form. Did you post your sign?

Edward Ostopovich – I will as of this afternoon.

Cindy Fox – No, if you didn't post it prior to this meeting we can't hear the item.

Edward Ostopovich – I misunderstood, after this meeting it's posted 15 days prior to the fourth meeting.

Cindy Fox – No, the Planning and Zoning meeting.

Henry Minneboo – This one is more important than the Commission.

Rochelle Lawandales – Motion to table.

Bruce Moia – Second.

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

Edward Ostopovich – The next meeting is when?

Henry Minneboo – The 8th.

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, August 8, 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, September 1st, 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 July 11th, 2016?

Clyde Thodey – I make a motion to approve.

Rochelle Lawandales - Second.

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

IV.B.1. (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.)

P&Z Recommendation: Lawandales/Thodey – Tabled to the 09/12/16 P&Z meeting. Vote was unanimous.

Cindy Fox - We need your affidavit.

Henry Minneboo – Is the applicant here?

Bob Schreiber – I'm the co-applicant.

Henry Minneboo – Do you have your purple sheet with you?

Bob Schreiber – No. When this process was started, Robert was the owner and we have since bought the property from him. I have a closing statement from the closing, but the deeds are not back from title yet.

Cindy Fox – We have to have an affidavit that says you posted the sign. Whoever posted the sign on the property is the one that needs to turn in the form.

Bob Schreiber – Robert was supposed to take care of it.

Robert Potter – We never posted it.

Bob Schreiber – You never did?

Robert Potter – No.

Rochelle Lawandales – Move to table.

Clyde Thodey – Second.

Bob Schreiber – So, what has to happen now?

Henry Minneboo – You're going to have to come back.

Cindy Fox – We can't hear it unless the sign has been posted on the property.

Bob Schreiber – Where can I get this affidavit and sign from? Since he didn't want to do this I'll do it coming up.

Robert Potter – We didn't own it when it was supposed to be posted.

Paul Body – I can take you over to our office and get you one.

Cindy Fox – We can do that now, but we can't hear the item until the sign has been posted appropriately. We will table this to the next meeting, which is September 12th.

Audience member: We have a lot of people here to speak in opposition.

Henry Minneboo – You're entitled to come up and speak.

Cristina Berrios – They're entitled to make public comment, but whether or not you guys can consider it as part of the item, the item is not before you guys, but it can be public comment in general. Any public is permitted to come and talk to you guys about whatever they want to speak to you about as part of your agenda.

Elizabeth Michelman – My name is Elizabeth Michelman, I live at 898 S. Tropical Trail; I am on the most eastern border; I own 1.27 acres. My property also includes a 20-ft. ingress/egress flag stem to S. Tropical Trail. I'd like to state that Mr. Schreiber currently is receiving hate mail through Facebook and is going through other options. He asked a very legitimate question. He no longer owns the property and he'd like to see if maybe the application name can be changed to the true owner. Just for consideration.

Cristina Berrios – Because they're not actually hearing the item right now they can't actually make any decisions based on the item; they can hear you speak, but they can't make any decisions based on it.

Elizabeth Michelman – I just wanted you to be aware of that because this is an opportunity for us to address a lot of things. First, I'd really like to thank you because this commission is the they only way we heard first of this information and we appreciate that, but because of that and the Indian (inaudible) in our very small neighborhood we did get this information out, and I'd like to look to the audience and ask that everybody who is here opposed to it, raise your hand. This is just a small group that has already expressed a lack of interest in this development. We, like the rest of South Merritt Island, are exclusively single resident homes. There's not much else to build on South Merritt Island. We are a little micro chasm, meaning that one of the owners has 2.54 acres, he's zoned agricultural, he has a working farm, and he is totally to the south of the property. We have another owner here who has an additional 2.3 acres. In between we have a County pond. We are a community within a community, but nevertheless we are still surrounded by our neighborhoods. We've known these people for a very long time, and we are extremely uncomfortable with the direction that this development can take the property; we feel that we're getting squeezed; the developers had made offers to other land owners, so when you think about these seven duplexes I want you to think about the fact that we have other lands in that area and we are very uncomfortable. If you put that development in you could be looking at a

Pandora's box. There is nothing in the last three years that's been conducive to this type of building, except for two duplex units on the entire South Merritt Island; there are no other units; this is strictly all residential, or one-home residences. We have concerns on what the plat looks like, what they are going to do, how are you going to stuff 14 homes on a property that is 100 – 103 ft. wide, and that does not even include my ingress/egress easement. I can go on here about all the type of tort law; you've got an attorney here, but the laws are starting to say that you've got to consider us. That banding in the 14th amendment is not always going to be a good way to go. It's not a cat and mouse game. We live here; we've had people that have been in this area for 45 years, and we ask that you consider us, our concerns. What are you going to do with septic? What are you going to do with sewer? What are you going to do with the traffic flow? You've got an egress not 65 feet, not 100 feet, not 200 feet, but 65 feet from the edge of the property to River Cliff. That's the actual measurement. That's the egress for a public school. Even traffic engineers have shown concern that there's a street across the way called Victoria Court and that does concern them. In addition, you have other communities just within 100 feet. We have representatives from Oak Grove here; we have people that live on River Cliff; we have people that live on Victoria; that live on Goldenrod; and that's the entire neighborhood. From your own people from P&Z, and I do quote, "You have to consider the worst case scenario for applications that are not consistent with the prevalent zoning of a community." That's in your own paperwork. There's a concern that there are wetlands on the property; there's concern it's the wrong soil types; and recently, you're showing more concern for keeping trees and for keeping the wildlife. We do also have a giant pond the County built specifically to address some of the issues of the rest of the island. Now you're asking us to lay down and say you should put more problems on the island. Anyway, that's my opinion; other people are here to address their concerns, but thank you for hearing us.

Cristina Berrios – I do want to clarify that if you guys want your testimony to be on the record you have to come back to the next meeting on September 12th to actually have your testimony to be put on the record before the board.

Elizabeth Michelman – That purple sheet that we're talking about, it does indicate that it had to be up for a minimum of 15 days. It also said that if it was on your agenda and it wasn't submitted, you have the right, right here and now and then, right here, to deny this application. It's on that purple sheet. We're respecting that you do so.

Cindy Fox – The board has tabled this item to September.

William Lee Barnhart – My name is William Lee Barnhart, I've lived here for 75 years between Orange Avenue in Rockledge for 17 years, and the rest of the years on Merritt Island. Our family's properties are all on Merritt Island near this place. My address is 845 S. Tropical Trail, Merritt Island, 32952. I think it's totally inappropriate that the County and the zoning department would even entertain a request to put multi-family housing south of Cone Road on S. Tropical Trail. It's totally inappropriate and it is really, really flying in the face of tearing up a residential community. If you think that this will cause no problems, just you wait, you let a multi-family residential situation occur at this site, you're going to see condo requests and big multi-family requests coming up on both sides of the road, I guarantee you. I'm requesting that you deny this, it's totally inappropriate, and where the County even will consider a request to change the zoning south of Cone Road is just inexcusable.

Henry Minneboo – Anybody else? Seeing none, we'll come back on the 12th. I need a motion and a second to table.

Clyde Thodey – I make a motion that we....

Cindy Fox – you've already tabled it.

Several people spoke at once from the audience and were inaudible.

Cindy Fox – Board, we need to clarify who the seconder was on that motion to table. Rochelle, I know you made the motion.

Henry Minneboo – Clyde.

Cindy Fox – Thank you.

IV.B.2. (16PZ00046) – EDWARD A. (III) & JENNIFER J. OSTOPOVICH – request a change of classification from GU to AU on 2.89 acres, located on the east side of International Ave., approx. 700 ft. north of Golden Shores Blvd. (5175 International Ave., Mims)

P&Z Recommendation: Lawandales/Cannon – Approved. Vote was unanimous.

Cindy Fox – Mr. Ostopovich has gone to the Mims Community Group and they have no issues with his request.

Ed Ostopovich – Ed Ostopovich, 5175 International Avenue, Mims, and I'm here to change our property's zoning from GU to AU to enhance our bee capabilities to make a bee farm.

Henry Minneboo – Anybody have any questions of this gentleman?

Clyde Thodey – What are you going to put on the land?

Ed Ostopovich – The bees have been there. I've had a five year run, and we just did a test run with my aviary. The bees are onsite and we've got 150; we normally operate at 128, but they've done so well this year in the area; he likes our yard the best as far as North Brevard goes. The gentleman works out of Edgewater and he hits a little bit of Brevard and Volusia County mainly. The expansion side of the house is mainly just for processing; we're going to throw some more clover out in the field, and it would enhance our abilities a little bit easier.

Rochelle Lawandales – I was just curious as to what the different requirements are in the ag versus the non-ag classifications.

Cindy Fox – We really don't have a lot to control under the AU zoning classification when it comes to bees; bees are environmentally crucial and so the State, the U.S. Department of Agriculture has adopted statutes to protect and do the operations; and the regulations for those that are in non-ag, it's even more restrictive than we could even do through zoning. Now that he's going to AU he's still going to have to follow the same guidelines, but he has to continue to work with the USDA.

Ed Ostopovich – I've communicated with them and they're familiar with what we're trying to do. Actually, they recommended we come see you guys first to make sure we're up to par.

Rochelle Lawandales – I'm glad they're doing well.

Henry Minneboo – Is there anyone out in the audience who would like to speak for or against this item? Seeing none, I bring it back to the board.

Rochelle Lawandales – I move approval.

Bill Cannon – Second.

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

IV.B.3. (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 Ave., approx. 415 ft. north of Crescent Beach Dr. (2200 S. Orlando Ave., Cocoa Beach)

P&Z Recommendation: Lawandales/LaMarr – Tabled to the 09/12/16 P&Z meeting. Vote was unanimous.

LPA Recommendation: Lawandales/LaMarr – Tabled to the 09/12/16 P&Z meeting. Vote was unanimous.

Kim Rezanka – Good afternoon, Chairman Minneboo and members of the Planning and Zoning Board. My name is Kim Rezanka, I'm with the law firm of Cantwell-Goldman in Cocoa, Florida, and I'm here representing Banana Riverfront LLC. As you're aware we've had many issues raised by the residents regarding noise and traffic and trash, and we would like to ask for a continuance to September 12th to work with the residents to see if we can develop some conditions that will satisfy them so they'll be more comfortable with the rezoning to keep the restaurant.

Rochelle Lawandales – So moved.

Robert LaMarr – Second.

Henry Minneboo – Is there anybody here who would like to speak?

Tony Cook – My name is Tony Cook, 2022 Julep Drive, #205, Cocoa Beach, and that's the Magnolia Bay Condo. We are directly next door to Squid Lips. I did write a letter to you guys outlining a couple of major problems we have. I think that letter can stand on its own, but I think what the attorney just said is probably going to answer some of our problems. We don't necessarily stand against it, but as long as there's some conditions on the noise, and parking, and the safety. I think that's a good idea to table until later.

Henry Minneboo – I think we have about 25 letters, so don't think like you're alone.

Tony Cook – I think the problems, at least from the Magnolia Bay Community, are all going to revolve around the same three or four issues.

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

IV.B.4. (16PZ00057) – RIVERSIDE COMMONS, LLC – requests a Small Scale Plan Amendment (16S.06) to change the Future Land Use from NC to CC; and a change of classification from RP to BU-1, on 2.52 acres +/-, located on the east side of Hwy. 1, approx. 780 ft. north of Rockledge Dr. (No assigned address. In the Rockledge area.)

P&Z Recommendation: Thodey/McLellan – Denied. Vote was unanimous.

LPA Recommendation: Thodey/McLellan – Denied. Vote was unanimous.

Cindy Fox – This item, at the last meeting that it was supposed to be heard, it was tabled and the applicant did not appear at that time either, they were actually out of the country. So, given that this is the second time with no show, I think the board has a right to make whatever decision they would like to on this item.

Henry Minneboo – Yes, this is twice.

Cindy Fox – We don't usually have this happen. We've been in contact; they've received all the normal noticing, so I really don't understand.

Henry Minneboo – You can only do so much.

Clyde Thodey – I make a motion to deny the request.

Ron McLellan – Second.

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

Upon consensus, the meeting was adjourned at 3:20 p.m.

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 Ravenscliff 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', 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 Underill, 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. Underhill 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. Underhill 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. Underhill 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 Underhill – 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.

Sec. 62-1372. - Medium-density multiple-family residential, RU-2-10, RU-2-12 and RU-2-15.

The RU-2-10, RU-2-12 and RU-2-15 medium-density multiple-family residential zoning classifications encompass lands devoted to medium-density multifamily residential purposes, together with such accessory uses as may be necessary or are normally compatible with residential surroundings.

(1)

Permitted uses.

a.

Permitted uses are as follows:

Multifamily dwellings.

Duplexes.

Resort dwellings.

Single-family attached dwellings, in accordance with the development standards in the single-family attached residential zoning classifications.

Single family dwellings up to the allowable density limitation of the zoning classification. For the purposes of setback and spacing requirements, such single family dwellings shall be considered principal buildings. Additional multiple-family dwellings are permitted on the parcel if all units comply with the density limits.

Parks and public recreational facilities.

Private golf courses.

Foster homes.

Sewer lift stations.

b.

Permitted uses with conditions are as follows (see division 5, subdivision II, of this article):

Group homes, levels I and II, subject to the requirements set forth in-section 62-1835.9.

Preexisting use.

Private parks and playgrounds.

Temporary living quarters during construction of a residence.

(2)

Accessory buildings or uses. Accessory buildings and uses customary to residential uses are permitted. (Refer to definition cited in section 62-1102 and standards cited in section 62-2100.5).

(3)

Conditional uses. Conditional uses are as follows:

Boardinghouses and bed and breakfast inns.

Change of nonconforming agricultural use.

Development rights receipt or transfer.
Guesthouses or servants' quarters, without kitchen facilities.
Land alteration (over five acres and up to ten acres).
Power substations, telephone exchanges and transmission facilities.
Recreational facilities.
Residential/recreational marina.
Skateboard ramps.
Substantial expansion of a preexisting use.
Wireless telecommunication facilities and broadcast towers.

(4)

Lot requirements.

- a. Minimum lot size is 7,500 square feet.
- b. Minimum lot width is 75 feet.
- c. Minimum lot depth is 75 feet.
- d. Maximum density is as follows:
 1. RU-2-10: Ten units per gross acre.
 2. RU-2-12: 12 units per gross acre.
 3. RU-2-15: 15 units per gross acre.For the purpose of computing allowable density property divided by a public road shall be considered separate parcels.
- e. Maximum lot coverage is 40 percent.

(5)

Setbacks and spacing requirements.

- a. *Accessory buildings.* Accessory buildings shall be located to the rear of the front building line of the principal building or structure closest to the front property line and shall be set back not less than seven and one-half feet from the side and rear lot lines for developed single family sites and not less than ten feet from the side and rear lot lines for developed multiple family sites, but in no case within the setback from a side street. There shall be a minimum spacing of five feet between any other structure on the same site.
- b.

Breezeway/visual corridor. All riverfront and oceanfront properties are subject to breezeway/visual corridor regulations enumerated in section 62-2105.

c.

Principal structures.

1.

The front setback shall be 25 feet.

2.

The rear setback shall be 20 feet.

3.

The side setback shall be not less than seven and one-half for all single family residences and ten feet for all other structures. On corner lots, side setbacks shall be at least 15 feet from side lot line. If a corner lot is contiguous to a key lot, setbacks shall be not less than 25 feet.

d.

Spacing between principal structures. Principal buildings or structures shall be spaced a minimum of 15 feet from other principal buildings or structures on the same site. Such spacing shall not be covered or connected to the principal structures.

(6)

Usable common open space requirements. If the lot, plot, tract or parcel is two acres or more in size, or, regardless of the size, if the property has or will have more than 15 total dwelling units, then 35 percent of the total land area shall be utilized as usable common space as defined in section 62-1102. At the time of site plan submission, the method of perpetual maintenance of common facilities shall be provided as required in section 62-1445(a). Ten percent of this area shall be retained in natural vegetation rather than improved.

(7)

Minimum floor area. Minimum floor area is as follows:

a.

Single-family dwelling unit: 1,100 square feet.

b.

Duplexes: 1,150 square feet and 575 square feet per unit.

c.

Apartments:

1.

One bedroom: 500 square feet.

2.

Two bedrooms: 750 square feet plus 100 square feet for each additional bedroom.

3.

Efficiencies: 400 square feet.

(8)

Structural height standards.

a.

Where the property abuts any other land located in the GU, AGR, AU, ARR, REU, RU-1-7, RU-1-9, RU-1-11, RU-1-13, RR-1, EU, EU-1, EU-2, SEU, SR, RVP, TR-1-A, TR-1, TR-2, TR-3, TRC-1, RRMH-1, RRMH-2.5, RRMH-5, EA, PA or GML

zoning classification, the maximum height threshold of any structure or building thereon shall be 35 feet.

b.

Where the property abuts any other land located in the RA-2-4, RA-2-6, RA-2-8, RA-2-10, RU-2-4, RU-2-6, RU-2-8, RU-2-10, RU-2-12, RU-2-15, RU-2-30, RP, BU-1-A, BU-1, BU-2, PBP, IU, PIP, IU-1, TU-1 or TU-2 zoning classification, the maximum height threshold of any structure or building thereon shall be 45 feet.

c.

Where any structure or building exceeds 35 feet in height, all conditions enumerated in section 62-2101.5 as applicable shall be fully satisfied.

d.

Structures or buildings may not exceed the maximum height thresholds stated in this subsection unless otherwise permitted by section 62-2101.5.

(9)

Ownership. A multi-family residential development site shall be subject to single ownership or condominium ownership.

(Code 1979, § 14-20.09(B); Ord. No. 95-47, §§ 32, 33, 10-19-95; Ord. No. 95-49, § 18, 10-19-95; Ord. No. 96-16, §§ 35, 36, 3-28-96; Ord. No. 98-08, § 2, 2-10-98; Ord. No. 99-07, §§ 12, 15, 1-28-99; Ord. No. 99-33, § 4, 5-6-99; Ord. No. 2000-02, § 1, 1-11-00; Ord. No. 01-30, § 4, 5-24-01; Ord. No. 2002-49, § 19, 9-17-02; Ord. No. 2003-03, § 19, 1-14-03; Ord. No. 04-29, § 19, 8-5-04; Ord. No. 2004-52, § 16, 12-14-04; Ord. No. 05-27, § 3, 5-19-05; Ord. No. 05-40, § 4, 8-23-05; Ord. No. 2007-59, § 22, 12-6-07; Ord. No. 2014-30, § 2, 10-2-14)

ec. 62-1482. - General retail commercial, BU-1.

The BU-1 general retail commercial zoning classification encompasses land devoted to general retail shopping, offices and personal services to serve the needs of the community. Where this zoning classification is presently located or is proposed to be located adjacent to the lagoonal water edge or fronts on the ocean, water-dependent uses such as fish, shellfish and wildlife production, recreation, water-dependent industry and utilities, marinas and navigation shall have the highest priority. The next highest priority for uses along the waterfront include water-related uses such as utilities, commerce and industrial uses. Water-enhanced uses such as restaurants and tourist attractions shall have the next highest use priorities. Of lowest priority are those uses which are nonwater-dependent and nonwater-enhanced, and those which result in an irretrievable commitment of coastal resources.

(1)

Permitted uses.

a.

All business uses and all material and products shall be confined within substantial buildings completely enclosed with walls and a roof; however, retail items of substantial size or which of necessity must remain outside of a building may be permitted to be displayed outside the buildings. Such retail items include but are not limited to motor vehicles, utility sheds, nursery items such as plants and trees, and boats.

b.

The following uses, or other uses of a similar nature compatible with the character of the uses specifically described in this subsection, are permitted, and shall be limited to retail only:

Administrative, executive and editorial offices.

Antique shops.

Aquariums.

Art goods and bric-a-brac shops.

Artists' studios.

Auditoriums.

Automobile hire.

Automobile parts, if confined within a structure.

Automobile repairs, minor (as defined in [Section 62-1102](#)).

Automobile sales and storage, provided sales are from a permanent structure and the storage area meets the requirements of article VIII of this chapter, pertaining to site plans, and article XIII, division 2, of this chapter, pertaining to landscaping.

Automobile tires and mufflers (new), sales and service.

Automobile washing.

Bait and tackle shop.

Bakery sales, with baking permitted on the premises.

Banks and financial institutions.

Barbershops and beauty parlors.

Bed and breakfast inn.

Bicycle sales and service.

Billiard rooms and electronic game arcades (soundproofed).

Bookstores.

Bowling alleys (soundproofed).

Cafeterias.

Ceramics and pottery; finishing and sales; no production or firing except accessory to on site sales only.

Civic, philanthropic or fraternal organizations.

Coin laundromats.

Colleges and universities.

Commercial schools offering instruction in dramatic, musical or other cultural activity, including martial arts.

Confectionery and ice cream stores.

Conservatories.

Contractors' offices, with no outside storage.

Convenience stores, with or without gasoline sales.

Curio shops.

Dancing halls and academies (soundproofed).

Child or adult day care centers.

Display and sales rooms.

Dog and pet hospitals and beauty parlors, with no outside kennels or runs.

Drug and sundry stores.

Dyeing and carpet cleaning.

Electrical appliance and lighting fixtures.

Employment agencies.

Fraternities and sororities.

Florist shops.

Foster homes.

Fruit stores (packing on premises).
Funeral homes and mortuaries.
Furniture stores.
Furriers.
Gift shops.
Grocery stores.
Group homes, levels I and II.
Hardware stores.
Hat cleaning and blocking.
Hobby shops.
Hospitals.
Interior decorating, costuming and draperies.
Jewelry stores.
Laboratories.
Laundries.
Lawn mower sales.
Leather good stores.
Luggage shops.
Mail order offices.
Meat, fish and seafood markets.
Medical buildings and clinics, and dental clinics.
Messenger offices.
Millinery stores.
Motorcycle sales and service.
Music, radio and television shops and repairs.
Newsstands.
Nursing homes.
Optical stores.
Paint and wallpaper stores.
Parking lots (commercial).

Parks and public recreational facilities.

Pawnshops.

Pet shops, with property enclosed to prevent any noxious odors.

Photograph studios and galleries.

Plant nurseries (no outside bulk storage of mulch, topsoil, etc.).

Post offices.

Printing services.

Professional offices and office buildings.

Resort dwellings.

Restaurants.

Sale of alcoholic beverage, package only.

Schools for business training.

Schools, private or parochial.

Shoe repair shops.

Shoe stores.

Single-family residence.

Soft drink stands.

Souvenir stores.

Stationery stores and bookstores.

Tailor shops.

Tearooms.

Telephone and telegraph stations and exchanges.

Television and broadcasting stations, including studios, transmitting stations and towers and other incidental uses usually pertaining to such stations.

Theaters, but no drive-ins.

Ticket offices and waiting rooms for common carriers.

Tobacco stores.

Upholstery shops.

Wearing apparel stores.

Worship, places of.

- c. Permitted uses with conditions are as follows (see division 5, subdivision II, of this article):
- Assisted living facility.
 - Automobile and motorcycle repair (major) and paint and body work.
 - Boat sales and service.
 - Cabinetmaking and carpentry.
 - Dry cleaning plants, accessory to pickup stations.
 - Farm machinery sales and service.
 - Gasoline service stations.
 - Manufacturing, compounding, processing, packaging, storage, treatment or assembly of certain products.
 - Outdoor restaurant seating.
 - Outside sale of mobile homes.
 - Preexisting use.
 - Substations, and transmission facilities.
 - Security mobile home.
 - Self storage mini-warehouses.
 - Tourist efficiencies and hotels and motels.
 - Treatment and recovery facility.

(2)

Accessory buildings or uses. Accessory buildings and uses customary to commercial and residential uses are permitted. (Refer to definition cited in section 62-1102 and standards cited in section 62-2100.5). Additional accessory uses are as follows:

a.

Completely enclosed lumber sales are permitted as an accessory use to hardware and supply stores.

b.

A roadside stand used as provided in chapter 86, article IV, is permitted as an accessory use.

(3)

Conditional uses. Conditional uses are as follows:

Alcoholic beverages for on-premises consumption.

Change of nonconforming agricultural use.

Commercial entertainment and amusement enterprises (small scale and large scale).

Commercial/recreational and commercial/industrial marinas.

Land alteration (over five acres and up to ten acres).

Performance Overlay Districts.

Plant nurseries (with outside bulk storage of mulch, topsoil, etc.)

Security mobile home.

Substantial expansion of a preexisting use.

Trailer and truck rental.

Wireless telecommunication facilities and broadcast towers.

(4)

Minimum lot size. Except for gasoline service stations, an area not less than 7,500 square feet is required, having a width and depth of not less than 75 feet.

(5)

Setbacks.

a.

Generally.

1.

Gasoline Service Station setbacks in this zoning classification shall be governed by section 62-1835.7.

2.

The front setback shall be 25 feet from the front lot line.

3.

The rear setback shall be 15 feet from the rear lot line. However, if the rear lot line abuts a dedicated 20-foot alley or roadway, the setback shall be five feet.

4.

Side Setbacks:

a.

Where a side lot line abuts a residential zone, such side setback shall be a minimum of 15 feet.

b.

Where a side lot line abuts a non-residential zone, such side setback shall be 5 feet.

c.

Where a side lot line abuts a combination of commercial, industrial or residential zonings, the respective side setbacks as stated in a. or b. above shall apply to the affected side yard area.

d.

Where a 20 foot dedicated alleyway or roadway exists adjacent to or abutting the rear lot line, and the zoning adjacent to the side yard area is non-residential, no side setback is required when a three hour firewall is constructed along the side lot line. However, where the side lot line abuts a residential zone on that side, the minimum side setback shall be 15 feet.

e.

Notwithstanding the requirements of section 5(a)(4)(b) above, where a 20-foot dedicated alleyway or roadway does not exist adjacent to or abutting the rear lot line, lots whose sides abut non-residential zonings may utilize a ten-foot paved driveway setback along one side and a zero foot setback on the other provided a three-hour firewall is constructed where the building is proposed within five feet of the side property line. However, where the side lot line abuts a residential zone on that side, the minimum side setback shall be 15 feet.

f.

On a corner lot, the side street setback shall be 15 feet. If a corner lot is contiguous to a key lot, then the side street setback shall 25 feet.

5.

Within the Merritt Island Redevelopment Area. On all lots in the Merritt Park Place Subdivision except corner lots, structures shall be set back not less than 15 feet from the front lot line where parking is located to the side or rear of the principal structure. Otherwise, all other provisions as described above shall apply.

b.

Breezeway/visual corridor. All riverfront and oceanfront properties are subject to breezeway/visual corridor regulations enumerated in section 62-2105.

(6)

Minimum floor area. All structures shall contain a minimum of 300 square feet of floor area.

(7)

Structural height standards.

a.

Where the property abuts any other land located in the GU, AGR, AU, ARR, REU, RU-1-7, RU-1-9, RU-1-11, RU-1-13, RR-1, EU, EU-1, EU-2, SEU, SR, RVP, TR-1-A, TR-1, TR-2, TR-3, TRC-1, RRMH-1, RRMH-2.5, RRMH-5, EA, PA or GML zoning classification, the maximum height threshold of any structure or building thereon shall be 35 feet.

b.

Where the property abuts any other land located in the RA-2-4, R-2-6, RA-2-8, RA-2-10, RU-2-4, RU-2-6, RU-2-8, RU-2-10, RU-2-12, RP or BU-1-A zoning classification, the maximum height threshold of any structure or building thereon shall be 45 feet.

c.

Where the property abuts any other land located in the RU-2-15, RU-2-30, BU-1, BU-2, PIP, PBP, IU, IU-1, TU-1 or TU-2 zoning classification, the maximum height threshold of any structure or building thereon shall be 60 feet.

d.

Where any structure or building exceeds 35 feet in height, all conditions enumerated in section 62-2101.5 as applicable shall be fully satisfied.

e.

Structures or buildings may not exceed the maximum height thresholds stated in this subsection unless otherwise permitted by section 62-2101.5.

(8)

Fencing and buffering. See article XIII, division 2, of this article, pertaining to landscaping.

(9)

Metal buildings. Metal buildings shall be permitted in this zoning classification subject to the restrictions presented in section 62-2115.

(10)

Maximum floor area ratio. The floor area ratio shall be governed by section 62-2110.

(Code 1979, § 14-20.12(B); Ord. No. 95-17, § 1, 4-11-95; Ord. No. 95-47, §§ 52, 53, 10-19-95; Ord. No. 95-49, §§ 3, 9, 12, 18, 21, 10-19-95; Ord. No. 95-51, § 4, 10-19-95; Ord. No. 96-16, §§ 55, 56, 3-28-96; Ord. No. 96-46, § 14, 10-22-96; Ord. No. 97-23, § 2, 7-8-97; Ord. No. 97-40, § 2, 10-14-97; Ord. No. 99-07, § 12, 1-28-99; Ord. No. 99-24, § 9, 4-8-99; Ord. No. 2000-50, § 3, 10-31-00; Ord. No. 01-07, § 2, 2-20-01; Ord. No. 01-30, § 10, 5-24-01; Ord. No. 2002-42, § 4, 8-27-02; Ord. No. 2002-43, § 2, 8-27-02; Ord. No. 2002-49, § 33, 9-17-02; Ord. No. 2003-03, § 27, 1-14-03; Ord. No. 03-36, § 1, 8-7-03; Ord. No. 04-29, § 26, 8-5-04; Ord. No. 2004-52, § 23, 12-4-04; Ord. No. 05-27, § 3, 5-19-05; Ord. No. 05-40, § 7, 8-23-05; Ord. No. 06-21, § 3, 4-25-06; Ord. No. 06-36, § 3, 5-24-06; Ord. No. 2007-59, § 3, 1

Sec. 62-1906. - Alcoholic beverages for on-premises consumption.

The sale of or serving of alcoholic beverages on the premises shall only be permitted in accordance with the following conditions:

(1)

a.

A bar or cocktail lounge may be a conditional use in a general retail zoning classification (BU-1), a retail warehousing and wholesale business zoning classification (BU-2), a general tourist commercial zoning classification (TU-1) and a transient tourist zoning classification (TU-2). Such conditional use shall be considered in the same manner and according to the same standards of review as specified in this division.

b.

A bar or cocktail lounge is prohibited within the restricted neighborhood commercial zoning classification, BU-1-A. The on-premises sale or serving of alcoholic beverages in BU-1-A may be a conditional use as accessory to a snack bar and restaurant pursuant to section 62-1842. Such conditional use shall be considered in the same manner and according to the same standards of review as specified in this division.

(2)

The on-premises sale or serving of alcoholic beverages may be a conditional use as an accessory use to civic, philanthropic or fraternal organizations, lodges, fraternities and sororities, or marinas, golf courses, stadiums or other similar recreational uses, in those zoning classifications in which such uses are permitted. Such conditional use shall be considered in the same manner and according to the same standards of review as specified in section 62-1151. The conditional use shall be granted only as an accessory use to the primary use requested. Bottle clubs shall be considered commercial uses subject to the requirements of this section.

(3)

Except for restaurants with more than 50 seats, no alcoholic beverages shall be sold or served for consumption on the premises from any building that is within 300 feet from the lot line of a school or church if the use of the property as a school or church was established prior to the commencement of the sale of such alcoholic beverages. For the purposes of this subsection, a school shall include only grades kindergarten through 12. For the purpose of establishing the distance between the proposed alcoholic beverage use and churches and schools, a certified survey shall be furnished from a registered engineer or surveyor. Such survey shall indicate the distance between the front door of the proposed place of business and all property lines of any church or school within 400 feet. Each survey shall indicate all such distances and routes.

(4)

For restaurants with more than 50 seats located in shopping centers, no conditional use permit is required for on-premise consumption of alcoholic beverages.

(5)

Imposition of additional operational requirements. When deemed appropriate, as based upon circumstances revealed through the general and specific standards of review set forth in this division, the Board shall have the option of imposing operational requirements upon an establishment approved for a conditional use for on-premises consumption of alcoholic beverages. Requirements may include, but are not limited to, the following: maximum number of patrons; hours of operation; limitations upon outdoor seating and service of alcoholic beverages; limitations upon outside music and/or public

address systems; additional buffering requirements; additional parking requirements; internal floor plan arrangement; or other specific restrictions based upon special neighborhood considerations. Additional requirements shall not exceed the limits of regulatory authority granted to local governments in the State Beverage Law, F.S. § 562.45.

(6)

Expansion of conditional use permit. The square footage area or location of premises designated for a conditional use permit for on-premises consumption of alcoholic beverages shall not be expanded beyond that approved by the conditional use permit without filing a new application for a conditional use permit in accordance with the requirements contained in this section and section 62-1901 and having same approved by the board of county commissioners. "Expansion," as used herein, shall include the enlargement of space for such use and uses incidental thereto as well as the extension of a beer and/or wine use to include intoxicating liquor. The new application must cover both the existing approved designated area as well as the proposed expanded area. All areas approved shall be regulated under the same business license and shall be subject to uniform rules and regulations

- **Subdivision III. - Conditional Uses**

- **Sec. 62-1901. - Generally.**

(a)

Permitted uses. In addition to the permitted uses specified in each zoning classification, there are also additional uses specified in each zoning classification which may be considered subject to the specific restrictions and conditions specified in this subdivision. These conditional uses shall be reviewed pursuant to the general standards specified in subsection (c) of this section.

Conditional use permits issued to properties which subsequently are divided into two or more lots or parcels shall be retained only on those parcels that still meet the conditions of the conditional use permit which are in effect at the time the land is subdivided.

(b)

Approval procedure. An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in section 62-1151. The approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved. If the applicant meets its initial burden, then the board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use.

Any applicant who seeks a conditional use permit shall submit with the application a site plan as described below. If a CUP not listed in Exhibit "A" below is requested on a site which is either undeveloped or which is to be altered by 50 percent or greater of the original floor area or seating capacity of an existing structure, a reproducible site plan signed by a registered engineer, land surveyor or architect must be presented. The site plan shall depict the structure, parking, ingress/egress, landscaping, refuse, screening or buffering, height and stormwater retention areas. For an existing structure not to be altered more than 50 percent of the original floor area or seating capacity, or for a CUP specifically listed in Exhibit "A" below where practical, a scaled dimensional sketch plan may be presented as an alternative which delineates parking, landscaping, external structural changes, and ingress/egress. Either site plan referenced herein shall be binding on the use of the property if the conditional use permit is approved. Minor modifications to the approved site plan which, in the opinion of the county manager or designee, do not deviate from the intent of the original approved may be approved administratively at the time of the development permit.

Exhibit A. Conditional Use Permits Requiring
Scaled Dimensional Sketch Plan Only

Code Section	Condition Use Permit
<u>Sec. 62-1904.</u>	Agricultural pursuits.
<u>Sec. 62-1913.</u>	Boarding of horses and horses for hire.
<u>Sec. 62-1917.5.</u>	Change of nonconforming agricultural use.
<u>Sec. 62-1925.</u>	Development rights receipt and transfer.
<u>Sec. 62-1927.</u>	Farm animals and fowl.
<u>Sec. 62-1932.</u>	Guesthouses or servants' quarters.
<u>Sec. 62-1935.</u>	Horses and barns.
<u>Sec. 62-1945.</u>	Recreational facilities.
<u>Sec. 62-1945.5.</u>	Roadside stands.
<u>Sec. 62-1946.</u>	Security mobile homes.
<u>Sec. 62-1947.</u>	Single-family residential second kitchen facility.
<u>Sec. 62-1948.</u>	Skateboard ramps.

Sec. 62-1951.	Temporary medical hardship mobile homes.
Sec. 62-1956.	Veterinary hospitals or clinics; pet kennels.
Sec. 62-1958.	Captive wildlife.
Sec. 62-1959.	Zero lot line subdivisions.

Other information which may be requested by the county manager or designee, planning and zoning board, or board of county commissioners relative to a specific conditional use permit application must be provided at least two weeks prior to the time of the applicable public hearing.

In stating grounds in support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odor, glare and noise, particulates, smoke, fumes and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.

(c)

General standards of review.

(1)

The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon a consideration of the factors specified in section 62-1151(c) plus a determination that the following general standards are satisfied. The board shall make the determination whether an application meets the intent of this section.

a.

The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1) the number of persons anticipated to be using, residing or working under the conditional use; (2) noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3) the increase of traffic within the vicinity caused by the proposed conditional use.

b.

The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.

- c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebutably presumed to have occurred if abutting property suffers a 15 percent reduction in value as a result of the proposed conditional use. A reduction of ten percent of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The board of county commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an MAI certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.

(2)

The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:

- a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1) adequate to serve the proposed use without burdening adjacent and nearby uses, and (2) built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20 percent, or ten percent if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at level of service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable county standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the board of county commissioners.
- b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.
- c. Noise levels for a conditional use are governed by section 62-2271.
- d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
- e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
- f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce

substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.

g.

Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to, traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.

h.

Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.

i.

The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.

j.

Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

(d)

Modification, revocation, penalty.

(1)

The board shall have the authority to modify or revoke a previously granted conditional use permit where there has been no development, construction, or implementation of the conditional use. Such modification or revocation may occur when the board finds the use of the conditional use permit:

a.

- Would cause substantial and adverseSubdivision III. - Conditional Uses

- **Sec. 62-1901. - Generally.**

(a)

Permitted uses. In addition to the permitted uses specified in each zoning classification, there are also additional uses specified in each zoning classification which may be considered subject to the specific restrictions and conditions specified in this subdivision. These conditional uses shall be reviewed pursuant to the general standards specified in subsection (c) of this section.

Conditional use permits issued to properties which subsequently are divided into two or more lots or parcels shall be retained only on those parcels that still meet the conditions of the conditional use permit which are in effect at the time the land is subdivided.

(b)

Approval procedure. An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in section 62-1151. The approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved. If the applicant meets its initial burden, then the board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use.

Any applicant who seeks a conditional use permit shall submit with the application a site plan as described below. If a CUP not listed in Exhibit "A" below is requested on a site which is either undeveloped or which is to be altered by 50 percent or greater of the original floor area or seating capacity of an existing structure, a reproducible site plan signed by a registered engineer, land surveyor or architect must be presented. The site plan shall depict the structure, parking, ingress/egress, landscaping, refuse, screening or buffering, height and stormwater retention areas. For an existing structure not to be altered more than 50 percent of the original floor area or seating capacity, or for a CUP specifically listed in Exhibit "A" below where practical, a scaled dimensional sketch plan may be presented as an alternative which delineates parking, landscaping, external structural changes, and ingress/egress. Either site plan referenced herein shall be binding on the use of the property if the conditional use permit is approved. Minor modifications to the approved site plan which, in the opinion of the county manager or designee, do not deviate from the intent of the original approved may be approved administratively at the time of the development permit.

Exhibit A. Conditional Use Permits Requiring Scaled Dimensional Sketch Plan Only

Code Section	Condition Use Permit
<u>Sec. 62-1904.</u>	Agricultural pursuits.
<u>Sec. 62-1913.</u>	Boarding of horses and horses for hire.
<u>Sec. 62-1917.5.</u>	Change of nonconforming agricultural use.
<u>Sec. 62-1925.</u>	Development rights receipt and transfer.

<u>Sec. 62-1927.</u>	Farm animals and fowl.
<u>Sec. 62-1932.</u>	Guesthouses or servants' quarters.
<u>Sec. 62-1935.</u>	Horses and barns.
<u>Sec. 62-1945.</u>	Recreational facilities.
<u>Sec. 62-1945.5.</u>	Roadside stands.
<u>Sec. 62-1946.</u>	Security mobile homes.
<u>Sec. 62-1947.</u>	Single-family residential second kitchen facility.
<u>Sec. 62-1948.</u>	Skateboard ramps.
<u>Sec. 62-1951.</u>	Temporary medical hardship mobile homes.
<u>Sec. 62-1956.</u>	Veterinary hospitals or clinics; pet kennels.
<u>Sec. 62-1958.</u>	Captive wildlife.
<u>Sec. 62-1959.</u>	Zero lot line subdivisions.

Other information which may be requested by the county manager or designee, planning and zoning board, or board of county commissioners relative to a specific conditional use permit application must be provided at least two weeks prior to the time of the applicable public hearing.

In stating grounds in support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odor, glare and noise, particulates, smoke, fumes and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.

(c)

General standards of review.

(1)

The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon a consideration of the factors specified in section 62-1151(c) plus a determination that the following general standards are satisfied. The board shall make the determination whether an application meets the intent of this section.

a.

The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1) the number of persons anticipated to be using, residing or working under the conditional use; (2) noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3) the increase of traffic within the vicinity caused by the proposed conditional use.

b.

The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.

c.

The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebutably presumed to have occurred if abutting property suffers a 15 percent reduction in value as a result of the proposed conditional use. A reduction of ten percent of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The board of county commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an MAI certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.

(2)

The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:

a.

Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1) adequate to serve the proposed use without burdening adjacent and nearby uses, and (2) built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20 percent, or ten percent if the new traffic is primarily comprised of heavy vehicles,

except where the affected road is at level of service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable county standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the board of county commissioners.

- b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.
- c. Noise levels for a conditional use are governed by section 62-2271.
- d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
- e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
- f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.
- g. Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to, traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.
- h. Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.
- i. The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.
- j. Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

(d)

Modification, revocation, penalty.

(1)

The board shall have the authority to modify or revoke a previously granted conditional use permit where there has been no development, construction, or implementation of the conditional use. Such modification or revocation may occur when the board finds the use of the conditional use permit:

a.

Would cause substantial and adverse impact to the general health, safety or welfare through the effect of emissions, particulates, noise, or other negative impact;

b.

Due to changed conditions created by the person or entity owning the property to which the CUP was issued, would not meet the original standards for such approval;

c.

Would not meet the specific review standards or conditions attached by the board as part of the approval; or

d.

Due to changed conditions in the surrounding neighborhood as it has developed, would now cause substantial and adverse impact to the general health, safety or welfare of adjacent or nearby residents that would not have been apparent at the time of approval.

(2)

The board shall have the authority to modify or revoke a previously granted conditional use permit where there has been development, construction, or implementation of the conditional use. Such modification or revocation may occur when the board finds the use of the conditional use permit has failed to comply with any of the conditions and restrictions imposed in the conditional use permit, has created an unforeseen negative impact such as emissions, particulates, noise, or other negative impact, or has otherwise caused substantial and adverse effects on the general health, safety or welfare of adjoining and nearby property owners and residents, and the owner has had adequate opportunity to correct the deficiency through code enforcement procedures or other avenues of due process. This provision shall apply retroactively.

(3)

All special use permits and conditional use permits as described below shall be subject to revocation. Such permits are as follows:

•

Special use permits issued to properties prior to the removal of such permits from the Brevard County Code on August 2, 1973;

•

Conditional use permits which have been removed from the Brevard County Code or from the applicable zoning classification; and

•

Conditional use permits approved prior to the effective date of Ordinance No. 99-43 which remain unused three years or more after the effective date of Ordinance No. 99-43.

Such uses constructed or under construction at the time of the Code amendment shall be considered nonconforming uses.

(4) Modification or revocation proceedings shall be initiated and processed in the same manner as an administrative rezoning.

(5) It shall be unlawful to use any land designated for a conditional use on the official zoning maps in violation of the restrictions and conditions placed on the conditional use of the land under the provisions of this division or the applicable resolution of approval. Any person found guilty of violating this subsection shall be deemed guilty of an offense and shall be punished by a fine not exceeding \$500.00, or by imprisonment in the county jail for a period not to exceed 60 days, or by both such fine and imprisonment. The board also reserves the right to seek injunctive relief or any other appropriate legal remedy to enforce compliance with applicable land use regulations.

(e) *Rezoning, effect.* Existing conditional use permits shall be presumed to be waived when a rezoning application is granted, unless the applicant requests renewal of the conditional use permit(s). In the event of a rezoning request wherein the subject property also has an approved conditional use permit, upon request, the board shall renew, modify, or revoke each existing conditional use permit. Unless reauthorized, conditional uses constructed or under construction at the time of the rezoning shall be considered nonconforming uses.

(f) *Expiration.* Conditional use permits approved after the effective date of Ordinance No. 99-43 shall expire within three years from the date of approval if the approved use is not constructed or under substantial and continuous construction. One administrative extension of up to two years may be approved by staff prior to expiration if the applicant has submitted an application for a development order. Renewals of expired conditional use permits may be considered by the board in public hearing pursuant to subsection 62-1901(b) if the applicant can demonstrate compliance with all current standards or review criteria.

(Code 1979, § 14-20.16.2(A), (C)—(E); Ord. No. 99-43, § 1, 8-3-99; Ord. No. 2002-40, § 1, 8-13-02; Ord. No. 2005-25, § 6, 5-19-05; Ord. No. 06-004, § 1, 1-10-06; Ord. No. 2009-06, § 5(Exh. A), 2-5-09)

State Law reference— Penalty for ordinance violations, F.S. § 125.69.

• **Sec. 62-1902. - Reserved.**

Editor's note— Ord. No. 01-30, § 20, adopted May 24, 2001, repealed § 62-1902 in its entirety. Formerly, § 62-1902 pertained to additional building height and derived from Code 1979, § 14-20.2(B)(1); Ord. No. 97-49, § 11, adopted Dec. 9, 1997.

• **Sec. 62-1903. - Reserved.**

e impact to the general health, safety or welfare through the effect of emissions, particulates, noise, or other negative impact;

b.

Due to changed conditions created by the person or entity owning the property to which the CUP was issued, would not meet the original standards for such approval;

c.

Would not meet the specific review standards or conditions attached by the board as part of the approval; or

d.

Due to changed conditions in the surrounding neighborhood as it has developed, would now cause substantial and adverse impact to the general health, safety or welfare of adjacent or nearby residents that would not have been apparent at the time of approval.

(2)

The board shall have the authority to modify or revoke a previously granted conditional use permit where there has been development, construction, or implementation of the conditional use. Such modification or revocation may occur when the board finds the use of the conditional use permit has failed to comply with any of the conditions and restrictions imposed in the conditional use permit, has created an unforeseen negative impact such as emissions, particulates, noise, or other negative impact, or has otherwise caused substantial and adverse effects on the general health, safety or welfare of adjoining and nearby property owners and residents, and the owner has had adequate opportunity to correct the deficiency through code enforcement procedures or other avenues of due process. This provision shall apply retroactively.

(3)

All special use permits and conditional use permits as described below shall be subject to revocation. Such permits are as follows:

•

Special use permits issued to properties prior to the removal of such permits from the Brevard County Code on August 2, 1973;

•

Conditional use permits which have been removed from the Brevard County Code or from the applicable zoning classification; and

•

Conditional use permits approved prior to the effective date of Ordinance No. 99-43 which remain unused three years or more after the effective date of Ordinance No. 99-43.

Such uses constructed or under construction at the time of the Code amendment shall be considered nonconforming uses.

(4)

Modification or revocation proceedings shall be initiated and processed in the same manner as an administrative rezoning.

(5)

It shall be unlawful to use any land designated for a conditional use on the official zoning maps in violation of the restrictions and conditions placed on the conditional use of the land under the provisions of this division or the applicable resolution of approval. Any person found guilty of violating this subsection shall be deemed guilty of an offense and shall be punished by a fine not exceeding \$500.00, or by imprisonment in the county jail for a period not to exceed 60 days, or by both such fine and imprisonment. The board also reserves the right to seek injunctive relief or any other appropriate legal remedy to enforce compliance with applicable land use regulations.

(e)

Rezoning, effect. Existing conditional use permits shall be presumed to be waived when a rezoning application is granted, unless the applicant requests renewal of the conditional use permit(s). In the event of a rezoning request wherein the subject property also has an approved conditional use permit, upon request, the board shall renew, modify, or revoke each

existing conditional use permit. Unless reauthorized, conditional uses constructed or under construction at the time of the rezoning shall be considered nonconforming uses.

(f)

Expiration. Conditional use permits approved after the effective date of Ordinance No. 99-43 shall expire within three years from the date of approval if the approved use is not constructed or under substantial and continuous construction. One administrative extension of up to two years may be approved by staff prior to expiration if the applicant has submitted an application for a development order. Renewals of expired conditional use permits may be considered by the board in public hearing pursuant to subsection 62-1901(b) if the applicant can demonstrate compliance with all current standards or review criteria.

(Code 1979, § 14-20.16.2(A), (C)—(E); Ord. No. 99-43, § 1, 8-3-99; Ord. No. 2002-40, § 1, 8-13-02; Ord. No. 2005-25, § 6, 5-19-05; Ord. No. 06-004, § 1, 1-10-06; Ord. No. 2009-06, § 5(Exh. A), 2-5-09)

State Law reference— Penalty for ordinance violations, F.S. § 125.69.

- **Sec. 62-1902. - Reserved.**

Editor's note— Ord. No. 01-30, § 20, adopted May 24, 2001, repealed § 62-1902 in its entirety. Formerly, § 62-1902 pertained to additional building height and derived from Code 1979, § 14-20.2(B)(1); Ord. No. 97-49, § 11, adopted Dec. 9, 1997.

- **Sec. 62-1903. - Reserved.**

- **Subdivision II. - Nonconforming Uses**

- **Sec. 62-1181. - Definition.**

For the purposes of this subdivision, the term "nonconforming use" is defined as the use of land or structures that was lawful prior to the effective date of the ordinance from which this article is derived or the county comprehensive plan, or the effective date of any amendments thereto, but is not now permitted within the applicable zoning classification or is not permitted under any provisions of this article or the county comprehensive plan or any amendment thereto. In order for a use of land or structures to be included within such definition, such use must have been permanent and continuous prior to the effective date of the ordinance from which this article is derived or the effective date of any amendment to this article. The casual, intermittent, temporary or illegal use of land or structures prior to the effective date of the ordinance from which this article is derived or the effective date of any amendment to this article shall not be sufficient to qualify such use for the privileges of this subdivision.

(Code 1979, § 14-20.38(A))

Cross reference— Definitions generally, § 1-2.

- **Sec. 62-1182. - Continuation generally; enlargement, expansion or modification.**

(a)

The use of land or structures qualifying as a nonconforming use as defined in this subdivision shall not be:

(1)

Enlarged, extended, increased or expanded to occupy a greater area of land than was occupied upon the effective date of the ordinance from which this article was derived or the effective date of any amendment to this article, whichever date rendered such use nonconforming. However, any conforming structure on a substandard lot may be expanded to occupy a greater land area provided such expansion complies with all setback requirements and provided such expansion is not for living area.

(2)

Reestablished if such nonconforming use of land or structures ceases or is discontinued for a period of 180 consecutive days, or for 18 cumulative months during any three-year period. However, nonconforming residential structures in residential zoning classifications and the GU classification may be reestablished.

(3)

Enlarged, extended, increased or expanded by the erection of any additional structure that is not permitted in the applicable zoning classification or not permitted under any provision of this article. However, on parcels of five acres or more devoted to nonconforming agricultural use, supporting structures of an agricultural nature may be erected. Such structures shall meet all setback requirements of the agricultural zoning classification.

(b)

In addition to the provisions of subsection (a) of this section, structures qualifying as a nonconforming use as defined in this subdivision shall not be:

(1)

Moved in whole or in part to any portion of the lot or parcel not occupied by such structures upon the effective date of the ordinance from which this article is derived or the effective date of any amendment to this article, whichever date rendered such use nonconforming.

(2)

Enlarged, extended, increased or expanded in any manner unless such enlargement, extension, increase or expansion is specifically in conformity with the provisions of this article and does not increase the nonconformity of such use. Nothing contained in this subsection shall be construed to prohibit the ordinary repair and maintenance of nonconforming structures provided such repair does not increase the cubic content of the structures; result in the enlargement, extension, increase or expansion of the nonconforming use; or result in a cost of repair and maintenance in excess of 50 percent of the fair market value of the structures. Fair market value for the purposes of this section shall be deemed the valuation of such structure by the county property appraiser in his assessment for levying of ad valorem taxes for the year of the intended repair or maintenance.

(3)

Rebuilt, repaired or replaced if such structures are destroyed or damaged by any cause and such damage exceeds 50 percent of the fair market value of such structure. Fair market value for the purpose of this section shall be deemed the valuation of such structure by the county property appraiser in his assessment for the levying of ad valorem taxes for the tax year in which such damage was sustained, and the estimate of the damage shall be established by the building official of the county. Except, condominium, duplex and single-family residential structures which are inconsistent with the comprehensive plan's future land use map series, or are nonconforming structures in residential and GU zoning classifications may be rebuilt at the original square footage if destroyed by fire, wind, flooding or any other similar act of God resulting in destruction of the structure beyond 50 percent of the fair market value. Should such structure be rebuilt, it shall either approach or, preferably, meet all setback requirements of the zoning classification if possible. This provision is not intended to apply where natural deterioration of the structure results in damage exceeding 50 percent of the fair market value of the structure or renders such structure unsuitable for human habitation pursuant to chapter 22 or the current Standard Housing Code as adopted by the board of county commissioners.

(4)

Moved to any parcel of land not occupied by such structure upon the effective date of the ordinance from which this article is derived or the effective date of any amendment to this article, whichever date rendered such use nonconforming.

Structures, the use of which conforms with the zoning classification, but which are nonconforming due to setback, may be enlarged or expanded if the enlargement or expansion meets the required setbacks of the specific zoning classification.

(Code 1979, § 14-20.38(B), (C); Ord. No. 93-18, § 1, 6-22-93; Ord. No. 95-56, § 1, 12-12-95; Ord. No. 96-16, § 1, 3-28-96)

- **Sec. 62-1183. - Abandonment.**

If any nonconforming use of land or structures is abandoned or discontinued for a period of 180 consecutive days or for 18 cumulative months during any three-year period, the land or structure shall thereafter only be put to a use specifically in conformity with the provisions of the applicable zoning classification and any other provision of this article or amendment to this article, and the privileges of this subdivision shall be deemed forfeited for the land or structures. This provision

shall not apply to any nonconforming residential structure in a residential or GU zoning classification, or to an agricultural use which has been seasonally discontinued as part of an on-going agricultural operation.

(Code 1979, § 14-20.38(D); Ord. No. 95-56, § 2, 12-12-95)

- **Sec. 62-1184. - Discontinuation on damage to structure.**

If any nonconforming structure is destroyed or damaged by any cause and such damage exceeds 50 percent of the fair market value of such structure, such structure shall thereafter only be put to a use specifically in conformity with the provisions of the applicable zoning classification and any other provision of this article or amendment to this article, and the privileges of this subdivision shall be deemed forfeited for such structure. Fair market value, for the purposes of this section, shall be deemed the valuation of such structure by the county property appraiser in his assessment for levying of ad valorem taxes for the tax year in which such damage was sustained. Exceptions to this section shall be as provided in section 62-1182(b)(3).

- **Sec. 62-1255. - Establishment of zoning classifications and consistency with comprehensive plan.**

(a)

Zoning classifications established. Within the unincorporated areas of the county, the following zoning classifications are hereby established, such zoning classifications being created under this article or being zoning classifications incorporated by reference under this article:

(1)

Unimproved, agricultural and residential zoning classifications:

- a. General use zoning classification, GU.
- b. Productive agricultural zoning classification, PA.
- c. Agricultural zoning classification, AGR.
- d. Agricultural residential zoning classification, AU.
- e. Rural estate use residential zoning classification, REU.
- f. Rural residential zoning classification, RR-1.
- g. Suburban estate residential use zoning classification, SEU.
- h. Suburban residential zoning classification, SR.
- i. Estate use residential zoning classifications, EU, EU-1 and EU-2.
- j. Single-family residential zoning classifications, RU-1-13 and RU-1-11.
- k. Single-family residential zoning classification, RU-1-9.
- l. Single-family residential zoning classification, RU-1-7.
- m. Single-family attached residential zoning classifications, RA-2-4, RA-2-6, RA-2-8 and RA-2-10.
- n. Residential-professional zoning classification, RP.

(2)

Multiple-family residential zoning classifications:

- a. Low-density multiple-family residential zoning classifications, RU-2-4, RU-2-6 and RU-2-8.
- b.

Medium-density multiple-family residential zoning classifications, RU-2-10, RU-2-12 and RU-2-15.

c.

High-density multiple-family residential zoning classification, RU-2-30.

(3)

Mobile home residential and recreational vehicle park zoning classifications:

a.

Rural residential mobile home zoning classifications, RRMH-1, RRMH-2.5 and RRMH-5.

b.

Single-family mobile home zoning classifications, TR-1 and TR-1-A.

c.

Single-family mobile home zoning classification, TR-2.

d.

Mobile home park zoning classification, TR-3.

e.

Single-family mobile home cooperative zoning classification, TRC-1.

f.

Recreational vehicle park zoning classification, RVP.

(4)

Planned unit development zoning classifications:

a.

Planned unit development zoning classification, PUD.

b.

Residential planned unit development zoning classification, RPUD.

(5)

Commercial zoning classifications:

a.

Restricted neighborhood retail commercial zoning classification, BU-1-A.

b.

General retail commercial zoning classification, BU-1.

c.

Retail, warehousing and wholesale commercial zoning classification, BU-2.

(6)

Tourist commercial and transient commercial zoning classifications:

a.

General tourist commercial zoning classification, TU-1.

b.

Transient tourist commercial zoning classification, TU-2.

(7)

Industrial zoning classifications:

a.

Planned business park zoning classification, PBP.

b.

Planned industrial park zoning classification, PIP.

- c. Light industrial zoning classification, IU.
- d. Heavy industrial zoning classification, IU-1.

(8) Special zoning classifications:

- a. Environmental area zoning classification, EA.
- b. Government managed land zoning classification, GML.
- c. Institutional zoning classification, IN.

(b)

Consistency of zoning classifications with comprehensive plan. The 1988 county comprehensive plan establishes specific future land use designations, which are depicted on the future land use map within the future land use element. The future land use element also has policies and criteria which delineate how the various designations shall be applied. The zoning classifications depicted on the official zoning map of the county shall be consistent with the future land use map and the policies and criteria relating to the application of future land use designations on the future land use map.

(1)

Future land use designations.

a.

Residential. Residential uses include single-family detached, single-family attached, multiple-family, recreational vehicle park and mobile home developments.

1.

Residential 30:

A.

Maximum, unless otherwise provide herein: 30 units per acre.

B.

Merritt Island redevelopment area: Development containing a mixture of uses: 50 units per acre per policy 1.3(B)(2) of the Future Land Use Element.

C.

Redevelopment district: 37.5 units per acre per policies 1.3(B)(1) and 11.2(F) of the Future Land Use Element.

D.

Planned unit development: 37.5 units per acre per policy 1.3(C) of the Future Land Use Element.

2.

Residential 15:

A.

Maximum, unless otherwise provide herein: 15 units per acre.

B.

Redevelopment district: 18.75 units per acre per policy 11.2(F) of the Future Land Use Element.

- C. Planned unit development: 18.75 units per acre per policy 1.4(E) of the Future Land Use Element.
3. Residential 10:
- A. Maximum, unless otherwise provide herein: 10 units per acre.
 - B. Redevelopment district: 12.5 units per acre per policy 11.2(F) of the Future Land Use Element.
 - C. Planned unit development: 12.5 units per acre per policy 1.5(E) of the Future Land Use Element.
4. Residential 6:
- A. Maximum, unless otherwise provide herein: 6 units per acre.
 - B. Redevelopment district: 7.5 units per acre per policy 11.2(F) of the Future Land Use Element.
 - C. Planned unit development: 7.5 units per acre per policy 1.6(D) of the Future Land Use Element.
5. Residential 4:
- A. Maximum, unless otherwise provide herein: 4 units per acre.
 - B. Redevelopment district: 5 units per acre per policy 11.2(F) of the Future Land Use Element.
 - C. Planned unit development: 5 units per acre per policy 1.7(D) of the Future Land Use Element.
6. Residential 2:
- A. Maximum, unless otherwise provide herein: 2 units per acre.
 - B. Redevelopment district: 2.5 units per acre per policy 11.2(F) of the Future Land Use Element.
 - C. Planned unit development: 2.5 units per acre per policy 1.8(D) of the Future Land Use Element.
7. Residential 1:
- A.

Maximum, unless otherwise provide herein: 1 unit per acre.

B.

Redevelopment district: 1.25 units per acre per policy 11.2(F) of the Future Land Use Element.

C.

Planned unit development: 1.25 units per acre per policy 1.9(D) of the Future Land Use Element.

8.

Residential 1:2.5: 1 unit per 2.5 acres.

b.

Neighborhood commercial. Appropriate uses within the neighborhood commercial designation are specified in the Future Land Use Element. Residential densities shall be subject to the conditions set forth in the Future Land Use Element.

c.

Community commercial. Appropriate uses within the community commercial designation are specified in the Future Land Use Element. Residential densities shall be subject to the conditions set forth in the Future Land Use Element.

d.

Planned industrial. Appropriate uses within the planned industrial designation are specified in the Future Land Use Element.

e.

Heavy/light industrial. Appropriate uses within the heavy/light industrial designation are specified in the Future Land Use Element.

f.

Agricultural. Appropriate uses within the agricultural designation are specified in the Future Land Use Element. Residential densities shall not exceed one dwelling unit per five acres.

g.

Public facilities. Appropriate uses within the public facilities designation are specified in the Future Land Use Element.

h.

Recreation. Recreation uses include all public parks and recreational facilities.

i.

Public conservation. Conservation land uses include lands under the ownership of the county, the St. Johns River Water Management District or other such agencies for the purpose of environmental protection and lands within the environmental area (EA) zoning classification. Residential densities shall not exceed one unit per 50 acres.

j.

Private conservation. Conservation land uses include lands under private ownership and are zoned (EA) zoning classification. Residential densities shall not exceed one unit per ten acres.

k.

Developments of Regional Impact (DRI). DRI land uses include lands that have an adopted Development Order pursuant to the requirements of Chapter 380, Florida Statutes, Chapters 9J-12 and 28-24 Florida Administrative Code and applicable local ordinances.

(2)

Consistency with future land use map. The following table depicts where the various zoning classifications can be considered based upon the geographic delineation of future land uses on the future land use map and locational criteria defined in the policies of the future land use element of the 1988 county comprehensive plan. Where an application for a change of residential zoning classification is not consistent with the residential future land use map designation as depicted on the following table, the rezoning may be considered if the applicant limits the project to a density equal to or less than the maximum density threshold for the subject property.

EXHIBIT A. CONSISTENCY OF ZONING CLASSIFICATIONS WITH FUTURE LAND USE MAP SERIES

Zoning Classifications	Land Use Designations																		
	Ag ric	Re s 1:2 .5	Re s 1	Re s 2	Re s 4	Re s 6	Re s 1 0	Re s 1 5	Re s 3 0	N C	C C	P I	H/ L	P U B	Re C	PR C O N	PU B C O N		
GU, PA, AGR, RRMH- 5, PUD, RPUD, RVP	Y									Y*	N	N							
AU, REU, RRMH- 2.5	N	Y									Y*	N	N						
ARR, RR-1, SEU, RRMH-1	N		Y									Y*	N	N					
SR, TR-	N			Y									Y*	N	N				

2					
EU, EU-1, EU-2, RU-1-13, RU-1-11, TR-1, RA-2-4, RU-2-4	N	Y	Y*	N	N
RU-1-7, RU-1-9, TR-1-A, TR-3, TRC-1, RU-2-6, RA-2-6	N	Y	Y*	N	N
RU-2-8, RA-2-8, RA-2-10, RU-2-10	N	Y	Y*	N	N
RU-2-12, RU-2-15	N	Y	Y*	N	N
RU-2-30	N	Y	Y*	N	N
BU-1-A, IN	Y**		Y**	N	N

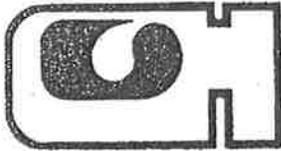
RP	N	Y**	Y	N	N	
BU-1, TU-1, TU-2	N		N	Y	N	N
BU-2	N		N	Y	Y**	N
PBP	N		N	Y	Y	N
PIP	N		N		Y	N
IU, IU-1	N		N	N	Y	N
EA, GML	Y		Y		Y	Y

Land Use Designations	
Agric—Agriculture	NC—Neighborhood Commercial
Res 1:2.5—Residential (one unit per 2.5 acres)	CC —Community Commercial
Res 1—Residential (one unit per acre)	PI—Planned Industrial

Res 2—Residential (two units per acre)	H/L—Heavy/Light Industrial
Res 4—Residential (four units per acre)	PUB—Public Facilities
Res 6—Residential (six units per acre)	REC—Recreation
Res 10—Residential (ten units per acre)	PR CON—Private Conservation
Res 15—Residential (fifteen units per acre)	PUB CON—Public Conservation
Res 30—Residential (thirty units per acre)	
<i>Explanation of Symbols</i>	
Y—Yes, classification may be considered.	
Y*—Yes, classification may be considered, if permitted by Policy 2.13 of the Future Land Use Element.	
Y**—Yes, classification may be considered if use is transitional, per Policy 2.14 or if permitted by Policy 2.17 of the Future Land Use Element, as applicable.	
N—No, classification may not be considered.	

(Code 1979, § 14-20.07; Ord. No. 99-07, § 8, 1-28-99; Ord. No. 2000-38, § 1, 8-1-00; Ord. No. 2002-01, § 4, 1-8-02; Ord. No. 04-29, § 2, 8-5-04)

- Secs. ~~62~~-1256—~~62~~-1300. - Reserved.



CHARLES D. HELLER, ARCHITECT - PLANNER

32780

TITUSVILLE, FLORIDA

1003 S. WASHINGTON AVE.

May 5, 1982

Brevard County Engineering Department
506 S. Palm Avenue
Titusville, FL 32780

RE: Addition to Jack Baker's Pelican Point Inn

Dear Sir:

By way of these eleven (11) copies of our Site Development Plan, we are making formal submission for Administrative Site Development Plan Review as stated under exhibit N of Zoning Regulations of Brevard County, dated March 11, 1982.

The General Statement for the Site Development follows:

It is the intent of Chef's International, Inc., the property owners, to add additional dining and lounge area to facilitate the operation of the existing restaurant. The zoning is BU-1.

The addition will be at continuous elevation at existing floor grades. It will be fire sprinkled as is existing, and construction will conform with applicable State and County regulations.

The slope of the site toward the restaurant from A1A sets the existing floor elevations below the crown of the road by about 4.5 ft. and will require a waiver.

Although the site is currently well drained, a retention pond is planned as a landscaped decorative area on the riverside to hold the first one inch of run-off from the site.

Existing paved and shelled parking is more than required by regulation, assists in drainage, and was part of the original renovation in the 70's. Please provide waiver, if necessary.

TEL. 305-267-4914

Brevard County Engineering Dept.
May 5, 1982
Page 2

Approved variances include V-769, a wooden screen wall between north property and subject site shall be part of development plan when permitted; and V-801, for expansion of a non-conforming structure pertaining to setback encroachment of the existing building's southwest property lines.

Conditional Use Permit Z-3712 is for on premise consumption of alcoholic beverages.

All other pertinent information is reflected on the Site Plan.

Reduced copies of the existing survey is attached to 9 sets and certified copies are attached to 2 sets as requested for specific information on existing dimensions.

Complete working drawings are available upon request.

I hold this information to be complete to the best of my knowledge of my client's intents and interests. If there are any further waivers required, your assistance would be greatly appreciated.

Yours truly,



Charles D. Heller
Architect-Planner

Attachments

BREVARD COUNTY
SITE DEVELOPMENT PLAN APPLICATION

I. SPECIAL APPLICATION INSTRUCTIONS AND INFORMATION

- A. Print clearly or type Application.
- B. Applicant is to submit with this application, eleven (11) copies of a Site Development Plan prepared in accordance with the requirements stated in Exhibit N of the Zoning Ordinance and any other requirements noted in Pre-Application Conference, to the County Engineering Department. The review timeframe is ten (10) working days; however, this may be extended if the Site Development Plan is found to be incomplete, incorrect and/or in need of revision. Per Paragraph (G) of Exhibit N, Application will be rejected if Site Development Plan appears substantially incomplete.
- C. Important Telephone Numbers: (dial appropriate number from North, Central, South)
 COUNTY PLANNING AND ZONING DEPARTMENT: Merritt Island Courthouse X-517
 COUNTY ENGINEERING DEPARTMENT: Titusville Courthouse X-372

II. APPLICANT SHALL COMPLETE THE FOLLOWING:

<p>A. PROPERTY (SITE) OWNER:</p> <p>1. Name: <u>Chef's International, Inc.</u></p> <p>2. Address: <u>2200 S. Orlando Avenue</u></p> <p>3. City/State/Zip: <u>Cocoa Beach, FL</u></p> <p>4. Telephone: <u>(305) 783-1350</u> ³²⁹³¹</p> <p>5. Check as applicable:</p> <p><input checked="" type="checkbox"/> Owner of Record per legal description</p> <p><input type="checkbox"/> Purchase under negotiation</p> <p><input type="checkbox"/> Other (Explain) _____</p>	<p>B. APPLICANT (if not owner)</p> <p>1. Name: <u>Charles D. Heller</u></p> <p>2. Address: <u>1003 S. Washington Avenue</u></p> <p>3. City/State/Zip: <u>Titusville, FL 32780</u></p> <p>4. Telephone: <u>(305) 267-4914</u></p> <p>5. Check as applicable:</p> <p><input checked="" type="checkbox"/> Architect/Designer</p> <p><input type="checkbox"/> Engineer/Surveyor</p> <p><input type="checkbox"/> Contractor</p> <p><input type="checkbox"/> Other (Explain) _____</p>
---	--

- C. Site Plan Title or Project Name: Addition to Jack Baker's Pelican Point Inn Restaurant Site Acreage: 2.4
- D. Site's Legal Description: See Attachments, S-26, T-25, R-37
- E. Site's Existing Zoning and/or Requested Zoning (if applicable): BU-1
- F. Intended Use of the Property: Existing restaurant addition
- G. Statement of Accuracy:
 I hereby confirm that the above information is true and correct and I assume all responsibility for the truth and validity of this Application and its Site Plan and associated required exhibits submitted herewith.


 Applicant's Signature

III. COUNTY OFFICIAL SHALL COMPLETE THE FOLLOWING:

- A. Is the Pre-Application Record complete; if not, Application shall not be accepted. Acceptable: _____ (Initial/Date); Not Acceptable: _____ (Initial/Date).
- B. Has Applicant provided documentation to verify the stated ownership (survey, deed, etc.); if not, Application shall not be accepted. Acceptable: _____ (Initial/Date); Not Acceptable: _____ (Initial/Date).

IV. APPLICATION FEES

A schedule of fees and charges for site plan review is established and adopted by the Board of County Commissioners of Brevard County, Florida, and may, from time to time, be amended.

Fee for this Application is \$ 75.⁰⁰ (P&Z Initial: PCO)
 Accepted By: _____ Date: _____
 (County Eng. Department)
 Receipt Number: _____ Date: _____

PLEASE MAKE CHECKS PAYABLE TO: BOARD OF COUNTY COMMISSIONERS

BREVARD COUNTY PLANNING & ZONING DEPARTMENT: PRE-APPLICATION CONFERENCE RECORD

PLANNING

ENGINEERING

A. Date: 4-30-82 Time Started: 11:00 AM Date: _____ Time Started: _____

B. Applicant/Owner and Representative's Name, Address, Etc. (provide both as applicable):
JACK BAKER Co. (App) CHARLES D. HELLER, ARCH.
Chef's International, Inc. 1003 So. WASHINGTON AVE, TITUS, FL.
 Zip: _____ Phone: 783-1350 Zip: 32780 Phone: 267-4914

C. Project Name: PELICAN POINT RESTAURANT - ADDITION

D. Legal Description of Site: (Section 26 Township 25 Range 37)
ALL OF THE REPART OF AVON COURT (PLAT OF AVON COURT BEING RECORDED IN P.B. 10 Pg. 39) ACCORDING TO P.B. 10 Pg. 61 (2.40 AC.)

E. Special Use Permit(s): N/A

F. Conditional Use Permit(s): Z-3712 (ON-PREMISES CONSUMP. ALCOH. BEV.)

G. Variance(s) and/or Waiver(s): V-801 (Expan. of U/C Use) V-769 (Wood Fence instead of)

H. Existing Zoning: Bu-1; Ordinance Excerpts Provided (check as applicable): C.B. WALL

Exhibits:

EXHIBIT N (Site Plan Review)

- | | | | |
|---|--|-------------------------------------|---|
| <input type="checkbox"/> A (GU) | <input type="checkbox"/> I (RR-1) | <input type="checkbox"/> R (TTP) | <input type="checkbox"/> Z (SR) |
| <input type="checkbox"/> B (AU) | <input type="checkbox"/> J (SEU) | <input type="checkbox"/> S (TR-1) | <input type="checkbox"/> AA (TU-1) |
| <input type="checkbox"/> C (EU) | <input type="checkbox"/> K (RU-2-10) | <input type="checkbox"/> T (TR-3) | <input type="checkbox"/> BB (TU-2) |
| <input type="checkbox"/> D (EU-2) | <input type="checkbox"/> L (RU-2-15) | <input type="checkbox"/> U (TRC-1) | <input type="checkbox"/> CC (PUD) |
| <input type="checkbox"/> E (RU-1-7) | <input type="checkbox"/> M (RU-3) | <input type="checkbox"/> V (RRMC-1) | <input type="checkbox"/> DD (Apt. Res.) |
| <input type="checkbox"/> F (RU-1-9) | <input type="checkbox"/> O (BU-1-A) | <input type="checkbox"/> W (PIP) | <input type="checkbox"/> EE (Perform.) |
| <input type="checkbox"/> G (RU-1-11) | <input checked="" type="checkbox"/> P (BU-1) | <input type="checkbox"/> X (IU) | <input type="checkbox"/> SEC. 7() Defin. |
| <input type="checkbox"/> H (RU-1-13) | <input type="checkbox"/> Z (BU-2) | <input type="checkbox"/> Y (IU-1) | <input type="checkbox"/> SEC. 25() CUP |
| <input type="checkbox"/> Section 61 (Building Permits) | | | <input type="checkbox"/> FLOOD HAZ. ORD. |
| <input checked="" type="checkbox"/> Section 70 (Parking Requirements) | | | |

Other Sections of Exhibits or Ordinances Provided: _____

I. Comments: Pre-Application Conference is not to be considered a review or approval of site plan/drawings submitted. Applicant is to provide 2 copies of a certified survey of site at time site plan is filed for

J. Applicant developed a formal type site plan prior to this conference: YES () NO () review

K. Submission and Approval Timeframes for P & Z Board and Commission Approvals Only (the following dates represent the latest date an application can be accepted in relation to the noted Board/Commission hearing date...timeframe assumes a complete and correct site plan):

LAST DAY TO SUBMIT:	P & Z BOARD:	COMMISSION HEARING DATE:
1. <u>N/A</u>	_____	_____
2. _____	_____	_____
3. _____	_____	_____

L. Other Divisions, Departments and Agency Conferences: Conferences as may be required with the following must be substantiated by an initial of an individual from the applicable Division, Department or Agency for this form to be complete and acceptable for site plan receipt purposes.

Required (✓) Recommended (x)	Initial	Date	Division/Department/Agency
<input checked="" type="checkbox"/>	<u>D.A.</u>	<u>5-3-82</u>	Engineering Department
<input type="checkbox"/>	<u>Rm</u>	<u>4-30-82</u>	Traffic Engineering
<input checked="" type="checkbox"/>			Building Department
<input checked="" type="checkbox"/>			Environmental Health
<input type="checkbox"/>			Fire Department
<input type="checkbox"/>			County Util. (Sewer & Water)
<input type="checkbox"/>			City Utilities (Sewer, Water, Etc.)
<input type="checkbox"/>			Private Util. (FPL, Gas, Solid Waste, Etc.)
<input type="checkbox"/>			Mosquito Control
<input type="checkbox"/>			Fl. Dept. of Environmental Regulation
<input type="checkbox"/>			Fl. Dept. of Natural Resources
<input type="checkbox"/>			Corps of Engineers
<input type="checkbox"/>			Fl. Dept. of Transportation
<input type="checkbox"/>			Other

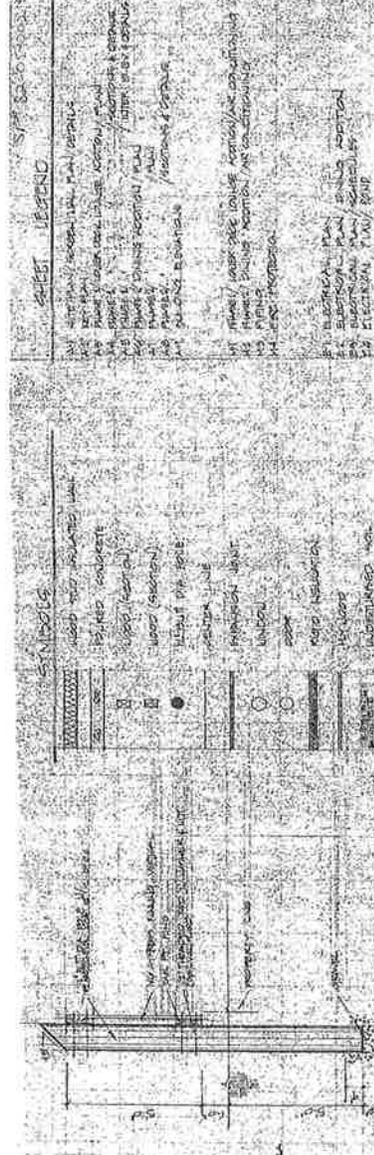
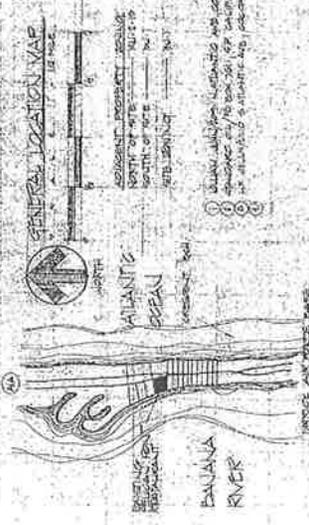
M. Provide a copy of the Site Plan Application (PZ Form 101) and note the exact fee.

N. Time Pre-Application Conference Ended: P&Z: 11:45 A.M. Eng. _____

O. County Representative's Initials: P&Z: RAD Eng. _____

P. Applicant's or Representative's Receipt Signature: P&Z: Charles Heller

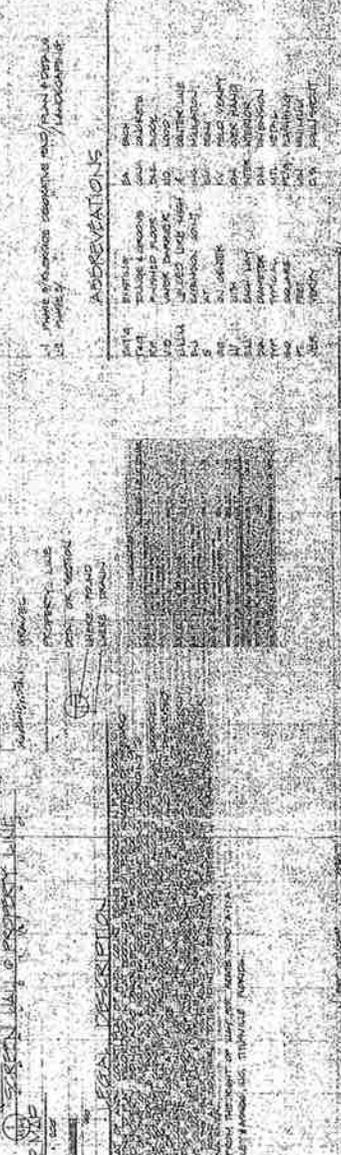
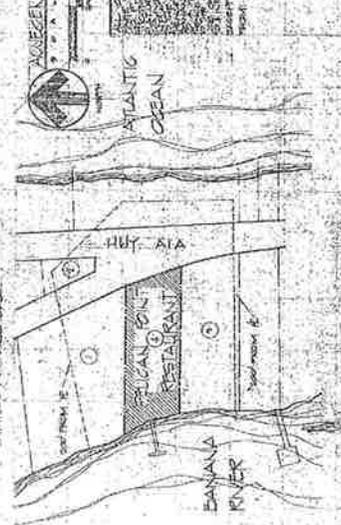
Quail Run 2000 S. Orlando Ave., Cocoa Beach



SELECT LEGEND

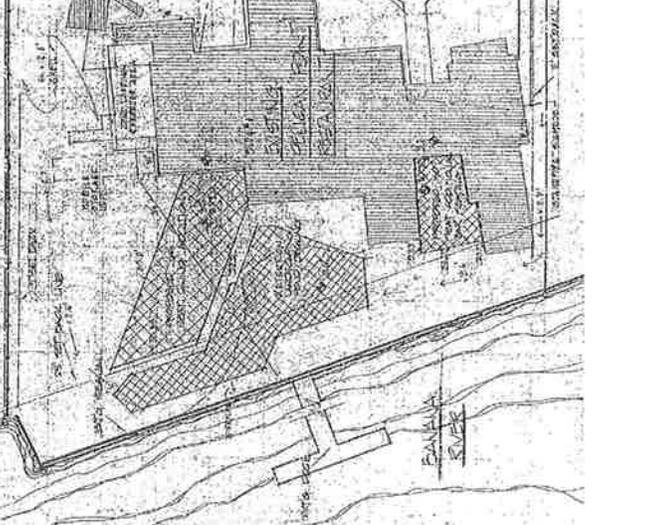
- 1. EXISTING IMPROVEMENTS
- 2. EXISTING DRIVEWAYS
- 3. EXISTING SIDEWALKS
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CHARLES DITTEL ARCHITECT
 100 SOUTH WASHINGTON AVE.
 TITUSVILLE, FLORIDA 32780
 386-267-6644



ADDITIONS

- 1. EXISTING IMPROVEMENTS
- 2. EXISTING DRIVEWAYS
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ADMINISTRATIVE POLICIES

Administrative Policy 1

The Brevard County zoning official, planners and the director of the planning and zoning staff, however designated, are recognized as expert witnesses for the purposes of Comprehensive Plan amendments as well as zoning, conditional use, special exception and variance applications.

Administrative Policy 2

Upon Board request, members of the Brevard County planning and zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan appeals, vested rights or other applications for development approval that come before the Board of County Commissioners for quasi-judicial review and action. The Board may table an item if additional time is required to obtain the analysis requested or to hire an expert witness if the Board deems such action appropriate. Staff input may include the following:

Criteria:

- A. Staff shall analyze an application for consistency or compliance with comprehensive plan policies, zoning approval criteria and other applicable written standards.
- B. Staff shall conduct site visits of property which are the subject of analysis and recommendation. As part of the site visit, the staff shall take a videotape or photographs where helpful to the analysis and conduct an inventory of surrounding existing uses. Aerial photographs shall also be used where they would aid in an understanding of the issues of the case.
- C. In cases where staff analysis is required, both the applicant and the staff shall present proposed findings of fact for consideration by the Board.
- D. For re-zoning applications where a specific use has not been proposed, the worst case adverse impacts of potential uses available under the applicable land use classification shall be evaluated by the staff.

Administrative Policy 3

Compatibility with existing or proposed land uses shall be a factor in determining where a rezoning or any application involving a specific proposed use is being considered. Compatibility shall be evaluated by considering the following factors, at a minimum:

Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foresee ably be affected by the proposed use;

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:
 - 1. historical land use patterns;
 - 2. actual development over the immediately preceding three years; and
 - 3. development approved within the past three years but not yet constructed.
- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

Administrative Policy 4

Character of a neighborhood or area shall be a factor for consideration whenever a rezoning or any application involving a specific proposed use is reviewed. The character of the area must not be materially or adversely affected by the proposed rezoning or land use application. In evaluating the character of an area, the following factors shall be considered:

Criteria:

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.
- B. In determining whether an established residential neighborhood exists, the following factors must be present:
 - 1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.
 - 2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.
 - 3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

Administrative Policy 5

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the use(s) shall be considered. In evaluating whether

substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following criteria:

Criteria:

- A. Whether adopted levels of service will be compromised;
- B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;
- C. Whether the surrounding existing road system is of sufficient width and construction quality to serve the proposed use(s) without the need for substantial public improvements;
- D. Whether the surrounding existing road system is of such width and construction quality that the proposed use(s) would realistically pose a potential for material danger to public safety in the surrounding area;
- E. Whether the proposed use(s) would be likely to result in such a material and adverse change in traffic capacity of a road or roads in the surrounding area such that either design capacities would be significantly exceeded or a de facto change in functional classification would result;
- F. Whether the proposed use(s) would cause such material and adverse changes in the types of traffic that would be generated on the surrounding road system, that physical deterioration of the surrounding road system would be likely;
- G. Whether projected traffic impacts of the proposed use(s) would materially and adversely impact the safety or welfare of residents in existing residential neighborhoods.

Administrative Policy 6

The use(s) proposed under the rezoning, conditional use or other application for development approval must be consistent with (a) all written land development policies set forth in these administrative policies; and (b) the future land use element, coastal management element, conservation element, potable water element, sanitary sewer element, solid waste management element, capital improvements element, recreation and open space element, surface water element and transportation elements of the comprehensive plan.

Administrative Policy 7

Proposed use(s) shall not cause or substantially aggravate any (a) substantial drainage problem on surrounding properties; or (b) significant, adverse and unmitigatable impact on significant natural wetlands, water bodies or habitat for listed species.

Administrative Policy 8

These policies, the staff analysis based upon these policies and the applicant's written analysis, if any, shall be incorporated into the record of every quasi-judicial

review application for development approval presented to the Board including rezoning, conditional use permits and vested rights determinations.

- B. Regulating subdivisions to address bicycle and pedestrian pathways; and
- C. Regulating land clearing and landscaping regulations to augment passive cooling by trees.

Policy 2.2

Brevard County shall continue to implement the Florida Energy Efficient Code for new construction and substantially rehabilitated structures.

Policy 2.3

Brevard County should continue to implement waste reduction, reuse, recycling and conversion of waste to energy as part of its waste management strategies.

Policy 2.4

Brevard County shall consider energy conservation in the development and implementation of County ordinances.

Policy 2.5

Brevard County should pursue transportation options that would decrease per capita energy consumption.

Policy 2.6

Brevard County should coordinate with the East Central Florida Regional Planning Council, the Economic Development Commission of Florida's Space Coast, and the State to encourage development and use of energy efficient and renewable technologies to enhance economic development while conserving energy.

Surface Water

Objective 3

Improve the quality of surface waters within Brevard County and protect and enhance the natural functions of these waters.

Policy 3.1

Brevard County shall cooperate with the Florida Department of Environmental Protection (FDEP) to require small package treatment plants adjacent to surface waters to comply with existing federal, state, or regional rules and regulations, and to ensure that the necessary renovations to achieve compliance are completed in a timely manner.

Policy 3.2

Brevard County shall continue to prevent negative impacts of development in and adjacent to Class I waters by implementing and revising, as necessary, the Surface Water Protection Ordinance including the following minimum criteria:

Criteria:

- A. Maintain a two hundred (200) foot surface water protection buffer from the ordinary high water line or mean high water line as determined or approved by the FDEP Bureau of Survey and Mapping. In lieu of an approved ordinary high water line, mean high water line, or safe upland line, an alternative buffer establishment line that approximates the land-water interface may be approved administratively as defined in ordinance. The use of the alternative buffer establishment line shall only be applied to shorelines with a clearly defined land-water interface.
- B. Acceptable uses within the surface water protection buffer are passive recreation, hunting, fish and wildlife management, open space and nature trails, and similar uses.
- C. Require discharges of any substances into Class I waters to meet or exceed applicable receiving water quality standards.
- D. Prohibit dredging and filling, except for permitted utility crossings, publicly owned recreational projects which do not degrade water quality, and necessary maintenance of existing projects.
- E. Regulate development and mining operations within the hydrologic basin of Class I waters. Prohibit mining operations within the 10-year floodplain of Class I waters.
- F. Prohibit alteration within the surface water protection buffer unless it is in the public interest and does not adversely impact water quality and natural habitat.

Policy 3.3

Brevard County shall continue to make efforts to prevent negative impacts of development in and adjacent to the Indian River Lagoon and its tributaries designated as Class II waters, Aquatic Preserves and Outstanding Florida Waters by implementing and revising as necessary, the Surface Water Protection Ordinance, including the following minimum criteria:

Criteria:

- A. Maintain a fifty (50) foot surface water protection buffer from the ordinary high water line, mean high water line, or safe upland line as determined or approved by the FDEP Bureau of Survey and Mapping. In lieu of an

approved ordinary high water line, mean high water line, or safe upland line, an alternative buffer establishment line that approximates the land-water interface may be approved administratively as defined in ordinance. The use of the alternative buffer establishment line shall only be applied to shorelines with a clearly defined land-water interface.

- B. Except as allowable under Policies 3.3.C and 3.3.D, primary structures shall not be permitted within the surface water protection buffer. The County shall establish allowable uses within the surface water protection buffer. Stormwater management for all alterations associated with allowable uses shall be required to protect water quality of the receiving water body. Provisions for the alteration and/or removal of non-native invasive plants, mitigation projects, and the planting of native species shall be established by the County .
- C. For residential lots platted or established by deed on the official record books of Brevard County prior to September 8, 1988, an alternative to the fifty (50) foot surface water protection buffer described above shall be available for those lots which have insufficient lot depth to construct a primary structure. In the case where there is insufficient lot depth to construct a primary structure, this alternative shall allow the surface water protection buffer to be reduced to twenty five (25) feet if additional measures are taken to preserve water quality and natural habitat within the adjacent surface water body. These additional measures shall, at a minimum, prevent the first inch of stormwater runoff from entering surface waters; and may include, but not be limited to, a stormwater retention system or native shoreline revegetation. Where applicable, stormwater management measures shall be consistent with DEP 62-25, as amended and FS 373, as amended.
- D. Within the surface water protection buffer the maximum amount of impervious surface is thirty (30) percent.
- E. Prohibit shoreline alteration other than that allowed by ordinance, unless the alteration is in the public interest and does not adversely impact water quality, natural habitat, and adjacent shoreline uses.
- F. Prohibit channelization, dredging and filling, and impoundment of natural waters of the State unless the activity is clearly in the public interest and does not adversely impact water quality, natural habitat, and adjacent shoreline uses. Dredging shall not be permitted in or connected

to Class II Waters, Outstanding Florida Waters (OFWs), Aquatic Preserves, areas that contain ten percent (10%) seagrass or more, and conditionally approved shellfish harvesting waters unless the activity is a federal navigation project, in the public interest, such as approved maintenance dredging of existing public or private navigational channels, or where dredging may improve water quality by removing accumulated silt or improving circulation, or for maintenance of existing structures and utility structures and utility crossings, or for shoreline hardening as allowed by this element.

- G. Prohibit discharges of any substances below ambient water quality standards.

Policy 3.4

Brevard County shall continue to prevent negative impacts of development in and adjacent to Class III waters (except Outstanding Florida Waters and Aquatic Preserves) along the St. Johns River and Indian River Lagoon and its tributaries by implementing and revising as necessary, the Surface Water Protection Ordinance including the following minimum criteria:

Criteria:

- A. A twenty five (25) foot surface water protection buffer from the ordinary high water line, mean high water line, or the safe upland line as determined or approved by the FDEP Bureau of Survey and Mapping shall be established. In lieu of an approved ordinary high water line, mean high water line, or safe upland line, an alternative buffer establishment line that approximates the land-water interface may be approved by the director. The use of the alternative buffer establishment line shall only be applied to shorelines with a clearly defined land-water interface.
- B. Except as allowable under Policies 3.4.C and 3.4.D, primary structures shall not be permitted within the surface water protection buffer. The County shall establish allowable uses within the surface water protection buffer. Stormwater management for all alterations associated with allowable uses shall be required to protect water quality of the receiving water body. Provisions for the alteration and/or removal of non-native invasive plants, mitigation projects, and the planting of native species shall be established by the County .
- C. For residential lots platted or established by deed on the official record books of Brevard County prior to September 8, 1988, an alternative to the

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 August 4, 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	

INVOCATION

The invocation was given by Father Demetri Tsigas, St. Katharine Greek Orthodox Church, Melbourne.

PLEDGE OF ALLEGIANCE

Commissioner Fisher led the assembly in the Pledge of Allegiance.

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.

ITEM III., PUBLIC COMMENTS

August 4, 2016

Cindy Fox, Planning and Zoning Manager, stated this is a request for a change of classification from RU-1-9 to RU-2-10 on 0.26 acre located on the north side of Roosevelt Avenue, the area nestled between Cape Canaveral and Cocoa Beach an incorporated area of the County; the majority of the property in the area is zoned multi-family; and the site itself was currently zoned single-family. She continued that the applicant wants it to be zoned multi-family for the purposes of having a resort dwelling on the property.

There being no further comments or objections, the Board approved a change of classification from RU-1-9 to RU-2-10 on 0.26 acre, located on the north side of Roosevelt Avenue, approximately 150 feet east of North Atlantic Avenue (104 Roosevelt Avenue, Cocoa Beach).

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

ITEM IV.B.8., (16PZ00053) - RALPH S. (SR.) & CYNTHIA L. PERRONE, CO-TRUSTEES - (JIM KISER) - REQUEST 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 .033 ACRE, LOCATED ON THE SOUTHWEST CORNER OF N.COURTENAY PKWY., AND BUTLER AVE. (2137 N. COURTENAY PKWY., MERRITT ISLAND)

Cindy Fox, Planning and Zoning Manager, stated this is a Conditional Use Permit (CUP) for the on-premise consumption of alcohol, beer and wine, for an existing restaurant and the consumption would be in conjunction with the restaurant;

There being no further comments or objections, the Board approved the request for alcoholic beverages (beer and wine only) for on-premises consumption in conjunction with a restaurant, in a BU-1 zoning classification,, on 0.33 acres, located on the southwest corner of North Courtenay Parkway, and Butler Avenue (2137 North Courtenay Parkway, Merritt Island).

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



ITEM IV.B.9., (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 AVE., APPROX. 415 FT. NORTH OF CRESCENT BEACH DR. (2200 S. ORLANDO AVE., COCOA BEACH)

August 4, 2016

Cindy Fox, Planning and Zoning Manager, stated this Item will have to be tabled until the September 1, 2016, Board meeting.

There being no further comments or objections, the Board tabled this Item to the September 1, 2016, Board meeting.

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

ITEM IV.B.10., (16PZ00061) - COCOA EXPO SPORTS CENTER, LLC - (STEPHEN BURCH) - REQUESTS AN AMENDMENT TO AN EXISTING BDP IN A BU-1 ZONING CLASSIFICATION, ON 47.88 ACRES, LOCATED ON THE EAST SIDE OF FRIDAY RD., APPROX. 490 FT. NORTH OF S.R. 520. (500 FRIDAY RD., COCOA)

Cindy Fox, Planning and Zoning Manager, stated the owner is looking to amend the existing Binding Development Plan (BDP) for the east side of Friday Road; the west side, he is requesting to bring in a small parcel, only 0.34 acre into his total holdings; and to add all the rest of the approvals that the property had that is adjacent to this. She continued that Item 11 is an actual re-zoning of property and Item 10 is just a discussion about amending the BDP.

Chairman Barfield commented that this has been in front of the Board several times and asked Ms. Fox to provide a summary background on all of it.

Robin DiFabio, Planning and Development Director, stated that this project has a unique and complex development history, and it is important to understand the history as it relates to the current application; she went on that in 2012 Cocoa Expo applied for re-zoning and Conditional Use Permits for an outdoor entertainment and amusement enterprise for their properties on the east and west side of Friday Road; at the onset of the process, the development proposal did not meet the Zoning Code requirements for a 75 foot perimeter setback for structures and uses that are intended to be used for the entertainment and amusement enterprise; and that the Board amended the code to enact a wavier provision that allowed for the zoning request to move forward. She continued that additionally the applicant expressed an inability to comply with the Landscape Code requirements because there were no waiver provisions in that Code; another Code change was enacted by the Board that provided an avenue for implementing alternative landscape requirements if a property was undergoing redevelopment and could not comply with landscape buffer requirements; and the Alternative Landscape Enhancement Plan (ALEP) must demonstrate sufficient visual and physical screening and buffering to mitigate for the lack of, or reduction of buffers; therefore, in addition to facing the two Code-related issues associated with the project, the applicant and his design team were aware of the historic traffic management and parking challenges associated with the site, due to large crowds that attend events on the property. She stated that since the Board must evaluate zoning applications for such factors as compatibility with adjacent properties and adverse impacts on adjacent and nearby properties, the applicant's design team submitted evidence for the Board's consideration, including a parking evaluation and a traffic management study, both prepared by a professional engineer licensed in the State of Florida; the analysis examined parking and traffic impacts associated with the variety of activities that could be held on the property ranging from the normal training and event operations to minor day events which would be held one-third of the days throughout the calendar year and involve 50 teams and 500 spectators at a

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**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 September 1, 2016 at 5:00 PM in the Government Center Commission Room, Building C, 2725 Judge Fran Jamieson Way, Viera, Florida.

CALL TO ORDER

5:00 PM Meeting called to order on September 1, 2016 at Board Room, Board Room, Viera, FL.

Attendee Name	Title	Status	Arrived
Robin Fisher	Commissioner District 1	Present	
Jim Barfield	Chairman/Commissioner District 2	Absent	
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 Reverend Brad Fink, Cross Bridge Church, Rockledge.

PLEDGE OF ALLEGIANCE

Commissioner Curt Smith led the assembly in the Pledge of Allegiance.

PUBLIC HEARINGS

Vice Chairman Smith called for a public hearing to consider Planning and Zoning recommendations of August 8, 2016, and Port St. John recommendation of August 10, 2016.

ITEM IV.B.1., (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)

Cynthia Fox, Planning and Zoning Manager, stated there are several of the Items that need to be tabled by the Board since they were not heard at the Planning and Zoning meeting. She went on to say Item IV.B.1., IV.B.3., and IV.B.5., could be done in one motion to be tabled until the October 6, 2016, Board meeting.

There being no comments or objections, the Board tabled consideration of request of Edward A. (III) and Jennifer J. Ostopovich for a change of classification from GU to AU to 2.89 acres, located on the east side of International Avenue, north of Golden Shores Boulevard, to the October 6, 2016, Board meeting.

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

✦ **ITEM IV.B.3., (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 AVE., APPROX. 415 FT NORTH OF CRESENT BEACH DR. (2200 S. ORLANDO AVE., COCOA BEACH)**

There being no 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, north of Crescent Beach Drive, to the October 6, 2016, Board meeting.

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

ITEM IV.B.5., (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 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)

There being no comments or objections, the Board tabled consideration of the request of 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 Elkcarn Boulevard and Manth Avenue, west of U.S. Highway 1, to the October 6, 2016, Board meeting.

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

ITEM IV.B.2., (16PZ00046) - EDWARD A. (III) AND JENNIFER J. OSTOPOVICH - REQUESTS A CHANGE OF CLASSIFICATION FROM GU TO AU ON 2.89 ACRES, LOCATED ON THE EAST SIDE OF INTERNATIONAL AVE., APPROX. 700 FT. NORTH OF GOLDEN SHORES BLVD. (5175 INTERNATIONAL AVE., MIMS)

VERBATIM TRANSCRIPT FOR ITEM IV.A.2. (16PZ00055) – BANANA RIVERFRONT, LLC – REQUESTS A SMALL SCALE PLAN AMENDMENT (16S.05) TO CHANGE THE FUTURE LAND USE FROM RESIDENTIAL 15 AND CC TO 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., FROM THE NOVEMBER 3, 2016 BOARD MEETING

Barfield: Okay, we are moving on to VI.A.2.

Fisher: Four.

Barfield: Oh, I'm sorry, IV.A.2. I get my Roman numerals mixed up.

Fox: Commissioners, I'll introduce this Item for you. This is a request for a piece of property in the Cocoa Beach area, the west side of South Orlando Avenue, and just north of Crescent Beach Drive. The current zoning on the property is RU-2-15; they have a Future Land Use from Residential 15 and Community Commercial. It was rezoned to Multi-family from Commercial in 2006, as part of the, you know, the wave at the time was to go Multi-family and so many, many properties in this area, during that time period it went from Commercial to Multi-family, and the area has transitioned more now to a multi-family area. The request in front of you is dealing with a nonconforming restaurant that is sitting on a... it was a Commercial property and now it's multi-family. They are still a restaurant. They need it at this point because now they are nonconforming, if they want to continue and expand and grow their business they need to no longer be nonconforming, they need the zoning change. So that is why they are here in front of you today. In addition, the nonconforming status limits any expansions and when the property changed hands this past fall, there were some expansions that had been done to the nonconforming structure which are illegal. So we have nonconforming structures and we have illegal structures on the property now. So, in addition to considering the Future Land Use, the rezoning, and the request for the re-establishment of the CUP for alcohol that was originally approved in 1974, they are also asking for you to consider this property for a public interest determination pursuant to the Natural Resources Management Office, and the impacts in surface water protection buffer. That is actually Item C. So if we could please consider these Items all together in the same discussion and then do four different motions on those Items that would be the clearest and best way to do it.

Barfield: Okay.

Fox: And please, if you have had any communication with the outside, please express that.

Infantini: I was just ready to fess up. I have spoken with Kim Rezanka and I have spoken with property owners.

Smith: I, I would like to say that. Oh. I would like to say that I've spoken and met with Ms. Rezanka. I've spoken to by phone with Henry Minneboo and Malcom Kirshenbaum, and I've spoken to a number of the folks that came into my office. And I've had numerous emails which Ms. Fox has copies of, both for and against.

Barfield: As we're moving down the line here, I've also met with Attorney Kim Rezanka, property owner Buzz Underhill, on numerous occasions. I've also met with Magnolia Bay

residents and I have all their names here. Of course we've received a lot of emails and correspondence, and I think that is all documented, too.

Anderson: And I have met with Kim, Ms. Rezanka, and numerous emails have been sent to my District 5 email.

Fisher: And I have met with Ms. Rezanka. I've had emails and messages, and I think some of my staff has also talked to some of them, property owners.

Infantini: Alright, I got emails too. I didn't know you wanted to share it. Okay, I got emails also so.

Fisher: Yeah.

Barfield: Okay.

Bentley: And typically your staff forwards those emails to the Zoning staff. They did that in this case as well. Correct?

Fisher: Yeah.

Anderson: Correct.

Barfield: Okay, we got all that out of the way now? Okay. Ms. Rezanka, would you come on up.

Rezanka: Good evening, Chairman Barfield, and members of the County Commission. My name is Kim Rezanka. I'm here representing Banana Riverfront, LLC also known as Squid Lips, Cocoa Beach. I'm with the Law Firm of Cantwell & Goldman in Cocoa, Florida. We have actually asked or recommended that we, we have asked that the tabling, the PID be tabled and that is because when we first met with the engineer, the engineer first met with Jake Wise, the engineer Jake Wise met with staff and the idea was that they would only need to bring the new permitted deck and canopy up to the 25-year storm. It's now become apparent that the Lagoon is such an issue, we need to bring up it to the whole, the whole property to the 25-year storm, and we are struggling to make that happen. Jake Wise has told us right now, we can't do it. We are going to have to take out buildings and look at offsite storage for drainage. So, we are asking that be tabled. Jake is working on it; he says he has been working on it. So, we are asking for the Public Interest Determination be tabled, and just the zoning, the CUP, and the Comp Plan to be addressed at this time. So, that is what I plan to address.

Barfield: Okay, Let's go ahead and do IV.A.2., and then we'll discuss that afterwards.

Rezanka: Thank you. There are three motions before you today, as Ms. Fox had mentioned to you. The reason that we are seeking this is to keep the existing use of the restaurant and the alcoholic beverage use, which has been there since 1952, possibly as early as 1920s. We have presented a binding development plan to limit commercial use to only a restaurant, as Ms. Fox stated it is a nonconforming use, it has a nonconforming structure, and it now has illegal structures. He made mistakes. He put in infill decking and a canopy without permits and he is trying to fix the problem. There's also an illegal use because we cannot have a Conditional Use Permit for alcoholic beverages in RU-2-15. This was an oversight in 2006 and now he can't have alcohol even though it has been there since the 50s as well. The purpose of zoning

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ordinances, as you know involving nonconformities is to end or remove nonconformities, and so that is what he is trying to do is put this back into a conforming status, conforming use, and conforming structure. The nonconforming use Ordinance, which is 62-1182, clearly states that a nonconforming use cannot be enlarged, extended, increased, or expanded at all, nor can the structure be enlarged, extended, increased, or expanded. Nothing contained in this Section shall be construed to prevent ordinary repair and maintenance, so long that it does not increase the cubic content of the structures result in enlargement, extension, increase, or expansion of the nonconforming use. There's a misconception that he could do some of these works if he only decided to put it in a site plan. It's not true. He can't increase that depth by one cubic square inch, now he has increased it by almost 1,900 square feet, and that is what we are trying to fix. So, we can't do anything with a nonconforming use and the nonconforming structure unless the rezoning and Comp Plan amendment is approved. I provided a packet to you. The first page of the packet is just the what, I mean, this is what is the property, this is what's there when he purchased it 2015. It talks about the buildings, the two outbuildings, the deck 2,280 feet, the dock and things like that, and just basic, practical information for the record. I recently attended a seminar where Simon Sinek from TED Talk was presented and he teaches to start with why and so, I am here to start with why we're doing this.

Infantini: May I ask a question?

Rezanka: Sure.

Infantini: I'm sorry; you said that he can't keep his same square footage?

Rezanka: He can't, he, he can't add, he can't keep what he's added without a permit.

Infantini: Oh, okay.

Rezanka: Unless he gets zoning and then he has to also get a permit.

Infantini: Okay, so, but, but he can keep . . .

Rezanka: What he had before.

Infantini: Okay. Okay. All right, because I was like, I started thinking.

Rezanka: Yes, I apologize.

Infantini: Wait a minute, I thought I missed something and so I'm asking Stockton, and I thought I might as well ask you.

Rezanka: Well, I was confused when everything got put together, so I'm a little disjointed myself. Why? Because Florida law and the County Comp Plan recognizes the importance of waterfront access for the public. I provided to you, the Comprehensive Plan Policies of this County dealing with water dependent land uses. Policy 5.15 states, during rezoning and other development order approval reviews, the Brevard County should give immediate shoreline use priority. This is a shoreline use. This is a water related and a water enhanced use, which takes priority over uses such as Residential, provide adequate public access to the rivers shorelines, promote and protect public access to marine and coastal waters, and encourage private waterfront property owners to make their properties available for public use. There's a whole section on recreational and commercial working waterfronts that of being an important State

interest of maintaining ability of public access preserved recreational working waterfronts. So, that is why your Comp Plan supports what we are doing and it is very important that, that be recognized. We're also doing this because the restaurant is a historical use and has been there for at least 64 years. Again, the Conditional Use Permit for alcoholic beverages is no longer valid so we have a none, we have an illegal use on the property for alcoholic beverages.

Infantini: Can he keep the alcohol if he keeps the building the same size?

Rezanka: No.

Infantini: So.

Rezanka: He, he can't because it's the wrong zoning.

Infantini: He can't get rid of the deck?

Rezanka: It's the wrong zoning.

Fox: Mr. Chair. Mr. Chair, I think we need a point of clarification there.

Infantini: I'm sorry.

Barfield: Yeah.

Infantini: I'm sorry.

Fox: No, that's okay.

Infantini: But I don't know why he can't keep the alcohol with the nonconforming building as long as he gets rid of his deck.

Fox: That's correct. He can. He can.

Infantini: Okay. Thank you. Okay.

Rezanka: Ms. Fox, I misunderstood because I thought you said at zone at P&Z, that he couldn't.

Infantini: Okay, so I just wanted to make sure.

Rezanka: He couldn't have a CUP in RU-2-15 for alcoholic beverages.

Fox: We're not, we are not giving a new CUP, we are continuing the nonconforming . . .

Rezanka: Okay.

Fox: . . . CUP for alcohol.

Rezanka: That's, that's not what I understood. So, I appreciate that.

DiFabio: Just as a clarification, the new CUP for alcohol would be required if the deck is used to

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serve beverages. So, that, that's correct. That would be, it is not included under the current CUP for alcohol that dates way back.

Rezanka: Thank you, Chairman Barfield. Also, we're doing this because it's compatible. It's been there for the past 64 years, the use is compatible. The binding development plan as proposed and the conditions imposed by use willingly to limit music and things like that, and the conditions put on by the Planning and Zoning Board make it more compatible. Right now there are no limitations. He could have bands on the deck that he has legally with, you know, the deck that was there any time he wants. There are no conditions on his use right now, so this actually is a benefit to the neighbors... because there are no restrictions. If... even if, because he had the deck and he had outdoor areas where people could gather, so this deck was just to make it more comfortable for the people to use the deck. It's also a benefit to the public because the Stormwater Management Plan that has been recommended by Planning and Zoning. Right now there is less runoff into the Lagoon than there was previously because they are now French storm drains under the deck where there was none before. It's a preservation of a historical restaurant. It's enhanced water use availability, its increased water access for all. Increased jobs and increased tax revenue. So there is a benefit to the public and to the neighbors. Why? Also, because many of the public seek this type of venue. One said they are desperate for what they offer. There were... as we counted at least 67, the County said 70 that they were in favor of this in the emails. There were 15 against, because there were many duplicates Mr. Cook... There are a number of people that put in two letters to you all, or two emails. There were nine that were concerned, but those that were interested said we're, that they were in favor of this because it is a better alternative to other restaurants in the area. It's a great addition to Cocoa Beach. Offers water views and boat access, including kayak and canoes. They're not even planning to put in a kayak facility, it's just so people can come up and use the facility by kayak. So they're not putting in a kayak rental place. The second component from Simon Sinek is what? This is an old established restaurant that has served alcohol since the 1950s. There is the deck and outside grass area that has existed for a long time. In your package is a 1992... 1982 site plan, which shows some of this. It also shows 123 parking spaces. It shows that the parking was on shell. There are not asphalt millings where the shells were but it was approved for shell parking back in eight, 1982. There is three hundred and sixty-seven feet of a walkway and observation deck. There is two hundred and ninety-four foot long deck that boats can utilize for the restaurant. There is indoor and outdoor seating. There is actually less now than when it was a Lobster Shanty. There were four hundred and fifty-nine seats at Lobster Shanty. One hundred and one outside, with Squid Lips there are only three hundred and eighty proposed with a hundred and fifty-one outside. What this is not. This rezoning request is not granting an expansion. It's only giving Squid Lips the opportunity to fix the safety violations which you've seen in your package to seek the permits, including the site plan, and to seek the public interest determination to allow the expansion of the deck and the canopy. Without the public interest determination, there is no need. Without the deck, there is no need for any increase in stormwater. This is a very low site it hasn't had stormwater since it was built in the 1920's. This is not a public safety problem. Mr. Underhill has installed the no left turn sites and he's entered into parking agreements which are in your package. There's 57 additional parking spaces offsite that he has entered into. We're not going to bring in popular headline bands, let alone week after week. This does not set a precedent. This is a historical use. There are very unique circumstances, not weird. I think the word you were looking for was unique, Commissioner Barfield. This is unique. This can only be a restaurant that will never be anything else commercial. Everyone will know if the restaurant goes under. There is going to be no boat rentals. The opposition is catastrophizing they are using the five week period that this was opened in February and March to say this will always happen. They are judging Mr. Underhill. He has met with many of the residents. He is willing to work with them. He is willing

to limit the music. And he's made the conditions. He's going to spend a lot of money on the sound curtain and anything else he needs to do. He will meet with them again, if there are continuing problems. At P&Z there were only four people that spoke. Now all of the sudden there are a multitude of here to speak. Most seem to be related to the lack of trust because of the Code violations which have been way over stated and should not be a consideration he's trying to get this fixed so he can fix the Code violations. He made mistakes. How are we going to do this? We have the binding development plan. We have the conditions to the CUP. We have the County Performance stand. The nor, knows, noise Ordinance... none of that was ever tested during the five weeks that Mr. Underill was open with his deck. No one called Code Enforcement and Code Enforcement did come out, and make any measurements. The owner has committed to meet with the residents over any complaints of violations. He cannot foresee every complaint but he will meet with them. The Code violation's also in your packet, there is a citation to Section 489.1039. This is because Mr. Underill was cited for a Code for fixing drywall in the bottom part of his building, which had water damage, and under that reading of that Statute he did not need a permit. He was cited for it. That was the second Code violation because it was less than a thousand dollars. So, he did not, he chose not to fight it because we're going through this process to fix every Code violation.

DiFabio: Mr. Chairman, just for the record in case the Board needs additional information regarding that Code violation, we do have somebody from Contractor Licensing here, available to explain the Florida Statutes and how it applies to this property, and the actions by the owner.

Barfield: Okay. Thank you.

Rezanka: And this is only to the Code violation regarding the changing of the, the, the...the wallboard inside the building. There was no damage from Hurricane Matthew to the new construction, the unpermitted construction to spite what you might think from those pictures. There was not a...the seawall was not damaged either. We want to move forward with these applications. Please, don't judge Mr. Underill on five weeks of operation. He made mistakes, he wants to fix them. He wants to get back open, his deck to be back open. We need to stop pointing fingers. We need to come to a resolution that helps all parties, and find a solution to allow public access to the riverfront. Mr. Underill is going to speak for a few minutes, as well.

Barfield: First, you're walking pretty good; he just had a knee operation.

Underill: Yeah.

Barfield: Name and address for the record, please.

Underill: Buzz Underill, 490 N. Harbor City Boulevard, Melbourne. Just a. Just a couple quick little things I want to address. You know, I've looked, I had an opportunity to look at the timeline for the violations and I've chose not to not to contest some of it even though some of that information is inaccurate. I think, I just want to clarify a few of the items because I think because of that there is some misconceptions as to who we are and how we got to where we are on this particular property in there. First thing is that if you look at the timeline it says that there is about 6,000 square feet with the deck that was replaced. That is not true. We added about sixteen hundred and seventy square feet, all of that was infill decking. We didn't add any decking up by, by the riverfront at all, that was existing decking that was there. We replaced some of the deck boards that were rotted. Some of the boards were actually damaged when we were coming in and putting the pilings to put the roof structure in, but we didn't add the net increase and the actual decking was only sixteen hundred and seventy feet, and that was, and

that was all to the east of, of the existing deck. The other thing there was a comment that was made a few minutes ago is that was, that we, that we... that we couldn't... we wouldn't be able to sell alcohol on the deck. The previous folks sold alcohol on the deck, they had an outside bar on the deck for those who might remember it down, closer to the water than the bar we have now, plus they had a bandstand out there, and they had live music on that. So, that was preexisting. You know, they've been doing that for as far back as we can remember. The 80's they might have been doing it, you know, earlier than that, on that, on that timeline the, the, you know, I'd we did not pull any permits but that was not my intent to not pull a permit. We had signed engineering. We had the application and it was signed, and notarized on October 29th it was given to the individual whose going to go ahead and do the construction for me. And we moved ahead with the, with the project. And as we started to put the roof on, I asked if we had passed our, our...our inspection for the foundation and that's when he told me that he had not pulled the permit, he had not found somebody that would pull the permit. So we got rid of him. I went to... MAI Build and MAI Construction. MAI engineering did the...did the design. Went to them and talked to Carlos Alvarez of their building section, and asked if they would go ahead and he would pull the permit, and finish the job for us. He came out and looked at it and he said it was too far along, he didn't want the liability and they didn't want to do it. I then went to Bobby Chacon with Archangel Construction asked the same thing. He went out and he looked at it and he said you're too far along, we don't want the liability. Said the best thing to do is complete it. When this happens, what happens is you end up paying the permit. It is twice the permit fees on it. You pay your fines. You go ahead and you submit your application as you're, as built, she pulled your permit, and you move ahead. And that's exactly what we did and that's where we are. So, I don't want, I don't want you to think that I'm a bad actor and that what I did was to, to thumb my nose to County and to regulations, and not attempt to...to pull any permits. And I showed a copy of that, of that permit application with emails to the County folks that came out on the initial inspection of when they shut us down. And so, they've seen it. They have it. We have it here in case anybody is interested in it. So, I just wanted to clarify that a little bit to put things in perspective. You know, I've. I've also understand and, and recognize that we opened up. We had the perfect, perfect storm if you would...typically our season runs from, from Valentine's Day through Mother's Day. That also corresponds with the, with the spring break. We opened up the last week or the last day or two of February. We had tremendous amount of interest from people in the local area. People that were excited that we were going to move this, have a Squid Lips up in the Cocoa Beach area. Looking forward to us to come and then on top of that we had spring break and we had the season. So we just got crushed. We had a lot more people showing up than, than we had anticipated. We probably didn't execute as well as we should have executed. And we didn't have the control on the bands that we should have had. We had one band in particular that was popular that we didn't do a good job to, to unplug them. So, these are things that, you know, that I've represented to the neighbors that we want to be good neighbors. We're going to...we're going to work diligently to be sure that that does not happen, certainly not on a consistent basis. We had the same problem in Melbourne originally. We've got condos that are closer to us than Magnolia Bay is at the one in Cocoa Beach. We have resolved those issues. We don't have problems with them. We've installed a sound curtain, our representation to the Magnolia Bay folks that we'd be willing to get the same thing. We have the engineering ready on that. We're ready to go once we get approval from the County to move forward. We'll put the sound the sound blanket sound curtains up and if we continue to have problems we'll do something else to, to mitigate the problem, because we don't want to be bad neighbors. So, that, that being, that being said, one of the other things looking through the packet our, our target group is a little different group than some of the other places over in Cocoa Beach. Our ideal customer base is 55 to 75. That's, that's who we shoot for. If you go to our, to our restaurant you'll see it on both sides of that spectrum, but you're going to see that in the middle of that bell curve is going to be that 50 to 75 people. We do not have a lot

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of 60, 65 year old guys getting drunk and getting in fights in our bars, and so we don't have a lot of problems. Now, I did see that there was some comment that I have found out about five minutes to five today, and haven't had a chance to figure out if it's one, accurate, or two, what it really constitutes in that number. But one of the letters that came in said they called the Melbourne Police Department and said that 72 police calls in 24 months. I would be very, very surprised but there needs to be an understanding what the breakdown of those calls were. We do have...being next to the Library on Eau Gallie Boulevard right there at the Eau Gallie Causeway we have a number of homeless folks and we have people that panhandled into our parking lots, and so we do call from time to time to give us some relief for these folks that are harassing our customers on it. We also had some problems with this Pokémon deal. I still don't understand Pokémon but, but they got something next door at the Library where between 11:00 and 2:00 or 3:00 in the morning they'll have three to five hundred people that would show up, and they would be coming onto our property. And so, we had some issues trying to keep some of those some of those folks off. But we don't have, we just don't, we don't, we're not, you know, we quit, our bands usually quit at 10:30, 10:30, 11:00. We're not a late night operation. We just don't have a lot of, you know, testosterone and alcohol combinations. We just don't have a lot of problems there. Yes, ma'am?

Infantini: I'm just really a little bit confused because you, you said that there was a couple of bands, one in particular, that you neglected to pull the plug on. But then you also said you're appealing to a 55 to 75 year old crowd.

Underill: Yep.

Infantini: And I'm maybe a young characteristic of a 58 year old, so I may not be your demographics that you're appealing to, but I can't see me trying to go to a facility that has a band that you're having a hard time unplugging because the band that I'm typically going to be listening to is probably quite not that loud. So, I'm just, it, it seems a tad inconsistent with what? Wait, either you're going for this group and which you may have a band that's a little bit louder or you're going for the group that is kind of sitting behind you, and then the band may be a little bit lower.

Underill: We, we, the group that I'm talking about is a group called Hot Pink and it's a group we had never had before. They're a very popular band, very well followed band. We have not had them before but they were they were Hot Pink, and when we brought, when we booked them and brought them in they had never played at our facility before. They won't play again. But they had never played in our facility before and they brought in a younger crowd, louder and they wouldn't respond to managers. We had, we have these decibel meters that we use every 30 minutes. My managers go out and we hit that to be sure that they are staying within the zone that we need to have. We do that at our restaurants and these are the people that, that refused to, to reduce the noise level, you know, we had problems with them, and so we will not have them back at any of our facilities. And that was, it was a band we had never used in the past and like I said, we won't do it again. Most of our other ones we don't have a problem with. If you were to come to Squid Lips in Melbourne, you will see you will see people 60, 70, 80 years old out there dancing, and having a great time. And that we all get tired by about 9:30 or 10:00 and we go home. But, you know, its.

Infantini: It's a great facility.

Underill: Yeah.

Infantini: I've been there and you've done a lot of fabulous things there.

Underill: Yeah.

Infantini: It was just trying to figure out that that that.

Underill: Yeah. That's what it was and that.

Infantini: Specifically seemed inconsistent with what you were saying the, the age demographics with the bands.

Underill: Yep. And that was, and that was the one band from talking with, with the folks of Magnolia Bay. That was the one band that one time when we had the most problem and that was it. It was just a band we hadn't used before and they wouldn't respond to us, and it created some issues along and so. But, but again, with the, you know, sound curtains we should, we should be able to minimize some of that.

Anderson: Sir, your, so your concept is to replicate what's in Eau Gallie basically?

Underill: It's identical, just got a, you got a sunset view west of you rather than any other view. Same thing, same bands.

Anderson: Yeah, I've been there many times. It's a great operation there.

Underill: Yeah, thank you.

Anderson: In fact, you find out older people like my 86 year old neighbor goes there and dances once a week.

Underill: Yeah. And those are our kind of people, you know, we wanted to be a family place where, you know.

Anderson: And I guess that's where if, if you're keeping that same ambiance and atmosphere then I'm I, I, I . . .

Underill: Everything's the same.

Anderson: With the exception of that one issue.

Underill: Yeah.

Anderson: And I'm familiar with that band. It probably was outside of your demographic.

Underill: Yeah, it is. It was.

Anderson: A lot, so. Okay.

Underill: Yeah. Okay.

Barfield: Okay. Thank you. Okay, I have start on the comments. Barbara Schluraff. Good evening, name and address for the record please.

Schluraff: My name's Barbara Schluraff. My address is 2022 Julep Drive 203. I'm a resident of Magnolia Bay. I'm broker/owner of Century 21 Ocean. We have an office in Cocoa Beach and Melbourne, new office opening next week, and the only reason I mention that is because of my real estate background and the current position. So, I wrote, my phone's off, I'm just reading some notes I made. We have a lot of other speakers so, I mean, I'll just keep to my list. They have other points to make. I want to state that we were excited to have Squid Lips open and have the restaurant nearby to walk to and enjoy, and so I, you know, I seek a win/win and a good neighbor situation; but there's been, besides the one band, you know, we're talking about one band for instance . . . the point I want to make are the noise levels were out of control, there was much more than one band it was almost night after night, probably five or six nights a week, very loud music to the point where I stopped going out on my patio, and I told my immediate family would tell you and my friends, I said I'm going to have to sell if this is the case, it's not enjoyable. You felt like you're inside the band shell, and we had a meeting with the owner at our complex and the 55 to 75 target market, we were told actually at that meeting 40 to 60, so somehow, I don't know if things have changed but I just wanted to point that out it is a discrepancy. So it seemed like they were going for the party market. The atmosphere, and again, so one of the impacts that's had is on sales. I list pretty steadily when a homeowner in the complex, I get quite a few of the listings there because of my, you know, my position, and a lot of the buyers and buyers agents that come through are very concerned about the noise issues; and it's been real tough for me lately to have a clear answer for them. All I can say is that it is coming before the Board, before the Commissioners. So, the noise issue is of grave concern. One of the homeowners wants to speak about the tax base. All these condos, we have 57 units, and they're all from \$400,000 to over \$600,000 in value, so that's a large property tax base there. So, I'm going to let the others speak. There's quite a few of us, but that's of great concern. We, we would like to see it remain non-conforming restaurant use with light music, and we're afraid if that changes, that it's going to be a party type atmosphere. So, thank you very much.

Barfield: Thank you. Tony Cook, and then if Dave Couch could get ready, too. Good evening.

Cook: Hi, Tony Cook, 2022 Julep, and that's Cocoa Beach, and before I start I'll talk about the emails. I did send two emails, one was to Planning and Zoning prior to their meeting, and the second was to you guys before this meeting, so that's why there are two. My wife and I bought this condo back in 2011 after we'd lived here most of my adult life anyway, and we, as we near retirement we were wondering like where we could live; and we decided we would stay here because it's a great place to live. So, we searched out a condo because we wanted to be able to just lock the door and go when we go on vacation, so we sought out a nice, quiet, tranquil place; and that's what we found there. And we knew when we moved in that Lobster Shanty was there, and I've lived here my adult life, I went to high school here. So, I can tell you I knew exactly what I was getting and I knew Lobster Shanty was moving next to me. Their rush hour was 5 p.m. and they were dead at 8 p.m., and they were quiet, you never heard a peep out of them. And I realized that, at best, they would keep going for another 50 years and I'd never hear from them. And at worst, it gets bulldozed and I get some town homes as neighbors, but it wouldn't be the end of the world, but I knew that was what was next door. Now, when Squid Lips took over we were, like everybody else, we were excited. We kept waiting, are they open, are they open, and we went there the first week, we love the place. But all of that peace and tranquility and good will came crashing down when the noise came throughout the condo. I'm not talking about outside on the deck, I'm talking in our house with the doors and the windows closed you could hear it. Now, we did go over there and we talked to them. Yep, yep, it was our bad, sorry we'll take care of it, but it was never taken care of. So, that is not compatible with our neighborhood. It's not consistent with that neighborhood. That is a very peaceful and quiet

section of the river. And that'll bring up my next point; we have a conservation easement behind our condo that we take care of. It's controlled by the St. Johns River Water Management District. Those trees have grown since we've been there. So, we worked with the district to get a permit. It took us two years to get a permit, we counted 23 months, so two years to get a permit, and once we had the permit, it's going to take us three years from that point to get them down to the level that we can, because you have to stage them down to make sure the trees maintain their viability. Now, we could have gone in with a chain saw and hacked them down and said oops sorry but at least we get our view, but we wanted to do the right thing. We want to be good stewards of the environment. We know that river is sensitive. We even had some of our neighbors participate in the Oyster Baby Program with the Brevard Zoo. We offer up our dock for that. So, it's very frustrating when we go through that when literally 100 feet away somebody just does what they want to. No zoning, no permits, no inspections, just do what they want to. Okay? So, I realize that when you have these decisions before you, you play a what if game. What if I approve this? What might happen if I approve this? You don't have to wonder in this case. We've seen what will happen, and I can tell you it's not pretty, but most importantly, it's not consistent, it's not compatible. And then that is about all that I have to tell you is that it's a very peaceful place, and our requests for help have gone unanswered; and the only thing that gave us any relief was when you guys shut them down. So with all that, I would kindly request that you deny all these changes. Thank you.

Barfield: Thank you. Dave Couch, and then Sam Shake will be right after that.

Couch: Hi, my name is Dave Couch. Live at 2022 Julep Drive, Unit 102, which is the building adjacent to the property in discussion. Been a resident at that unit since 2011 and a resident and property owner in Brevard County since '91. Also, I've been to Lobster Shanty for over 30 years come visiting my in laws, and so I knew what I was getting into when I bought the property. It was a repeatable restaurant. It did well, and they had great food, great salad bar, and we loved it. Squid Lips, we were excited about Squid Lips coming, and then all of a sudden the noise hit us and we weren't so excited anymore; and I don't want to go into what Tony just went through. The Zoning Board required that the petitioner come and speak to us, which he did, and with his attorney, and they promised they would keep the noise to 60 decibels. Well, that's all well and good, 60 decibels is basically your conversation volume. Well, it's like you go out on your patio and you have an uninvited guest who is speaking insistently at the rate of 60 decibels and you're doing this for three to four hours at a time, seven days a week, it isn't really too satisfying to have a peaceful visit on your deck to watch your backyard, your river, whatever. So, from that standpoint the 60 decibels doesn't cut it. The other thing that concerns me is whether or not this petitioner would actually live up to what he's saying he's going to do. We've already seen that he bought this property a year ago and went ahead and did what he wanted to do without a permit. He had unlicensed contractors, he had Code violations, he also, he hasn't even paid his property taxes for 2015, and of course, 2016 is due now. So, he's in arrears for, he's in arrears for his County property value, property taxes to the extent of \$20,661. So, I don't know if I can trust a man to do what he's saying he's going to do. The other thing is that, as it relates to property taxes, Magnolia Bay property owners pay Brevard County approximately \$300,000 a year in property taxes. If you look at that from the standpoint of normal growth, three percent a year for the next 10 years, property taxes then we would be paying \$400,000; however, now that this, if this goes through, and we have this noise problem and as Barbara pointed out, it's going to delve into the, or have a cause effect on the marketability of our particular units, and therefore, the value of those units and vice versa the per diem, not the per diem, the ad litem, is that what it is called? The property tax that's associated with the value.

Fisher: Ad Valorem.

Couch: So, saying that, we'd live to see the restaurant continue, because we like the restaurant, and we don't want to see the guy go out of business, but in the same token, you know, let's be fair neighbors here and be compatible to what we're doing and what they're doing and have the restaurant operate like he used to operate. You know, he was saying that there have been bands before, but I don't ever recall hearing bands. I recall hearing some music now and then, but nothing to the extent that he had. So, thank you very much.

Barfield: Thank you. Sam Shake and then Carol Shake would be after that. Is that a coincidence?

Shake: Oh, no, not related. I'll be brief. Sam Shake, 2022 Julep Drive. Most of what I was going to say you've heard so far, but I do want to pick up on a couple of things. I was given Ms. Rezanka's card some time before the Planning and Zoning Commission. I can't remember who gave it to me, but I called and said hey, I know what's going on, could we get together, cause we've got some people here based on what happened with Spring Break, they're pretty upset. She said, sure. She brought Mr. Underill with her. He told us vertically what he said tonight about what happened, about how other people in his employ messed up the permitting system, but they went ahead and did it. Then we heard that, and he gave us, it was little higher altitude fly by that he did that night. It was very sincere, it seemed very sincere, and he also told us about the bands and the music and that one off band that was real loud, and we explained no, it was a little more, that was a bad evening. I'll tell you what, that was a bad evening, but it's more than that, and we talked about sound curtains and other things we could do. Again, we believed him. Then we go to the Zoning meeting and I was one of four people that talked, and I mentioned that I thought it took a lot of guts for him to come and face this, these pitchforks and torches that we all had, and Chairman Minneboo said I told him to, I made it a requirement. And at that instant I thought they didn't tell me, they didn't tell us that. They came to our place because they were required to, and we thought what a great gesture to come, what integrity these people had. That was gone with me the minute I heard that. Then I was privy to the list of violations, and more specifically how they were handled after the first visit, the second visit, and I got to tell you, my attitude changed. I thought sound curtains and roof, big thick vinyl roof things, get that noise down, I'm okay, but I don't trust it. I do not trust that he can pull that off. You know, I'm not the kind of person that disparages other human beings, but you know, I got to tell you it won't be a nice place to live. It's incompatible with our neighborhood. There's another high-end condominium going up just to the south, which is for sale now on realtor.com. Some of them are seven figures. They're not going to be real happy with that noise. It's totally incompatible with our neighborhood. The note that Mr. Underill saw citing police action, police service calls at Eau Gallie was in my email that I sent you folks. 72 calls in 42 months. I have seen that report. Those are real. And the way that I put it in my email was, if we scanned our area, I haven't done that yet or haven't asked for that review, what would we have, two maybe, if that many? I don't know. Going from two to 75 or whatever in two years is not good. It will ruin our neighborhoods, so I respectfully, respectfully ask that you vote to not re-zone. Thank you.

Barfield: Thank you.

Rezanka: Can I cross-examine?

Barfield: Wait until we go through all of it. You say cross-examine?

Rezanka: Yes.

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Barfield: You can rebut at the end.

Rezanka: (Unclear).

Barfield: Carol Shake, and after that it'll be Heather Couch.

Shake: Hi, I'm Carol Shake. I live at 2022 Julep Drive, Apartment 105, and we are in the building right next to the property there for Lobster Shanty, now Squid Lips. I'm just going to cite one of my last experiences at the restaurant, which was very disappointing because I went there at lunch time and we've been talking about bands. This was the type music, and we were adjacent to the main patio, seated at a table, and the music piped was so loud we couldn't even talk with the other six people that were there having lunch; and I asked the waiter if, could you just turn it down, because he had to actually get his face down next to us to listen to what we were ordering, which three of the orders were wrong anyway. And, you know, this is just something that I found very annoying and I live right next door, and I was excited about visiting this restaurant; but there was, there was no compassion to the fact that the noise was so loud that you couldn't even talk to the people you were there having lunch. And I later heard, you know, that they could have turned it down but there wasn't the willingness to do this. And so, these noise issues, even with sound curtains when they got the piped music out on the further part of that whole patio area, sound curtains help when they have bands, but not necessarily when they have the piped music going all day long. But that's all I really wanted to say at this point. Thank you.

Barfield: Heather Couch, and then Mark Holloway will be right after that.

Couch: My name is Heather Couch. I live at 2022 Julep Drive, Magnolia Bay. I moved into Magnolia Bay five years ago. Lobster Shanty was next door and had been there for many years. I am very much in favor of small business and enjoy having the restaurant so close. It was part of the character of the neighborhood. We never had a problem as they were compatible with, and mindful of, surrounding condos and homes. When I learned that Squid Lips had purchased Lobster Shanty, I was looking forward to their opening thinking that would be consistent with the Lobster Shanty venue. However, we quickly learned that Squid Lips was more of an entertainment establishment catering to a very young demographic. The impact of this immediately affected our way of life. Due to the excess noise of the bands and the patrons, we could no longer enjoy the peacefulness of the river from our patio. The traffic and parking problems became a safety issue. Cars were parked on the median of A-1-A, as well as on the side streets and into our own Magnolia Bay parking. I would like to see Squid Lips become a successful restaurant and being next door would be a real plus. We all love going to a good restaurant. I believe you had it right with the non-conforming restaurant as was Lobster Shanty. I do hope you leave it and deny the zoning change. This is our home.

Barfield: Thank you. Mark Holloway, and then Susan Suplee.

Holloway: Mark Holloway, 2012 Julep Drive, resident of Magnolia Bay. First of all I'd like to thank the Commission for putting the Save the Lagoon five cent sales tax on the ballot. We hope that goes through, and that leads to me to one of my points of emphasis, and I don't have to live at Magnolia Bay to talk about this, but it is the Lagoon. The developer seems to be under the impression that begging for forgiveness is more profitable than asking for permission. What we're doing here with the Lagoon involves a lot of stuff. It already has expanded. Maybe not as far west as it could have, but he certainly has expanded the deck. This involves more, even though French drains are there, that is going to discharge into the Lagoon. There's also a real

concern about increased traffic providing more problems for the Lagoon. We have a delicate situation here. We have a very fragile Lagoon, and it's a great benefit, as you know, economically and in other ways to our area. Now, he doesn't have any regard for this. I have seen that. That is a major concern for us, all of us who live here. How do we keep our Lagoon clean? How do we make it better? This is not making it better. The expansion of this facility . . . it's already expanded it, it's already expanded, they've expanded it, and there's no stormwater position right now. They're saying, oh, we're going to get to that or we're going to approach that, we don't know how to do it, we're going to table that. That's not good. That's like saying let me do what I want to do and then it'll be okay. It's not going to be okay, because there's no trust involved. The best . . . I know my Merrill Lynch advisors tell me the performance of your stocks are not based on past performance, but I'll tell you what, the performance of your developer, proprietor is based a lot on past performance. That's what we have to go by, and that's what I have to say. I think it's a danger to the Lagoon to have this expansion. There's going to be an increased affluent discharge there. There's no plan to resolve that. There's nothing there that is going to be viable right now. We have to go forward in protecting this Lagoon, not backward or not the same, it's got to be better; and this plan for expansion is going to make it worse. Thank you.

Barfield: Thank you. I'll tell you what, we're going to take a short break, and then we'll get right back to it.

*The Board recessed at 6:58 p.m. and reconvened at 7:07 p.m.

Barfield: Okay, we can go now.

Suplee: You would have to pause before I get and speak. I'm a little bit nervous.

Barfield: Oh, don't be nervous, don't be nervous. Just say what you think.

Suplee: Anyway, my name is Susan Suplee and I live at 2022 Julep Drive, 306. I retired from a local government in Pennsylvania and I'm very familiar with Comprehensive Plans, as well as zoning, and my stance on the whole issue is, you know, how do we allow somebody to continue to violate our Comprehensive Plan and our Codes that we've put in place? When is somebody going to stand up for the hard work that we did to develop, codify, advertise, and put these rules and regulations into place? You have someone who has a total disregard for, for the community, for you as Commissioners, for the Planning and Zoning representatives, and he had every opportunity to develop this property from his, from their expertise. I retired to a quiet community. I planned to reside there, but if the zoning goes through, I am going to be forced to move. The zoning negates every element of the Zoning Code, safety, traffic, parking, noise, odors. I can't even walk out my front door without inhaling the wafting smoke from a wood smoker. I've almost been hit by someone pulling out of the parking lot trying to find a parking space and riding around the triangle. I find that there's a lot of inconsistencies with numbers, and unfortunately, because of the way this whole thing has been approached, we do not have the, we are not afforded a preliminary plan. We have no idea what the actual square footage is. I've heard 1,900 square feet. I've heard 1,600 square feet. I've read the Fire Marshall's report that says the total capacity of the, of the outdoor deck is 375, with an existing capacity of 396. Where are we putting 771 people on a 1.44 acre property? Where is everybody parking? How do we open up a restaurant with no fire, fire . . . how do we open up a restaurant with any, without permits and no fire safety in place? Our lives have been jeopardized here. He conditions that were submitted by Buzz and Kim were not consistent with the total community. They met at a time when most people were at their summer homes or away on vacation, it was

the middle of July. It was a handful of people, and the noise, you can't sit down on your deck. You can't read a book. The music, why do we need music seven days a week? If you go on Squid Lips website for Melbourne there are days where there are two to four bands a day. You're talking from 9:00 in the morning to 10:00 at night. I just strongly oppose to any zoning change, and, and I also request and hopefully hope you would consider upholding the Comprehensive Plan and the Zoning Codes to be put in place. Thank you very much.

Barfield: Thank you. Okay, Karen Frustaci and James Suplee will be next. You're up.

Frustaci: Sorry. Hi, I'm Karen Frustaci. I live at 2012 Julep Drive. I am here with my husband this evening, and unfortunately I drew the short straw, so I'm standing here talking to you. At the end of 2014, my husband and I had decided to move to Florida to be near our son and grandchildren. Our decision to move to Cocoa Beach was based on some very dear friends of ours that had also moved there two years prior. After looking for over six months in Cape Canaveral, North Cocoa Beach, and South Cocoa Beach, we decided on Magnolia Bay as it was primarily a residential area. We had inquired about the Lobster Shanty. Being so close to Magnolia Bay we were assured that they were in fact respectful of the area and its neighbors. We finally purchased our condo in April 2015, and moved in October 2015. We love being across from the ocean and having the river behind us. Our first night in the condo we sat on our balcony with a glass of wine and enjoyed the peacefulness it brought, hearing the waves of the river slap against the shoreline. Then in February 2016 that totally changed. Our quiet and peaceful environment had turned into a nightmare. The age group of the patrons at Squid Lips had changed from the Lobster Shanty older crowd to spring breakers. If we sat on our balcony we could hear the band playing, the noise of the crowd that was sitting on the illegal deck, and we could no longer hear the waves against the shore and could no longer enjoy sitting on our balcony. If we wanted this noisy environment, we would have purchased a condo at Park Place, which is next to Coconuts on the Beach. While the illegal (unclear) was operational we experienced not only noise but cars were parked illegally all over the area, there were near accidents of people turning left out of Squid Lips rather than right onto A-1-A. If Mr. Underhill gets his way he will make Squid Lips a hangout for a younger crowd and a place for spring breakers to party. I could go on, but I do want others to speak from our community. My husband and I have no objection to Squid Lips remaining open as a restaurant as long as they adhere to the original zoning required for this area. As this is a primarily residential area, we hope that you will leave the current zoning in place so that we all once again can enjoy the tranquility of the area being the prime reason we all came, purchased our condos there. Thank you.

Barfield: Thank you. James Suplee, and it'll be Joan Friedman after that.

Suplee: Hi, my name is James Suplee, and I live at Magnolia Bay, 2022 Julep Drive, just north of Squid Lips. I have been in Brevard County since 1951. That's a long time. Older than, longer than most of you have been here I guess. I graduated Florida Air Academy. I'm also a businessman in Brevard County, as well as my wife. We own an art gallery in Eau Gallie, now Melbourne. My feelings towards Squid Lips run a little bit differently than most of my neighbors. As a businessman I don't want to see any business fail, and I don't know Buzz personally but I'm sure he is a fine person. My question is why, when you come into a neighborhood like ours where the existing restaurant has been for 50 something years, would you try to change it into an entertainment complex? Why not think about making it a better restaurant, upgrade what Lobster Shanty was, and make it a destination restaurant for the people that live in the neighborhood? It would be a place that people would come from Canaveral or from Palm Bay, or, I mean, we certainly run to River Rocks. Why not make it like a River Rocks restaurant? I'm

not going to be redundant about the noise and stuff, but that's my opinion of, it was a missed opportunity to make it a better restaurant. Thank you.

Barfield: Thank you. Joan Friedman and then Randy Berner. Good evening.

Friedman: Good evening Commissioners. I'm Joan Friedman. I reside at 2022 Julep Drive in Cocoa Beach. I have many concerns regarding the request for zoning change from Squid Lips, however, a lot of them have been covered. So, I'm going to focus on trying to explain to you and give you sort of a picture of what life was like when Squid Lips was open, because apparently Mr. Underhill and I live in two different worlds. When we bought here two and a half years ago we bought with the full knowledge that we had the Lobster Shanty sitting next to us and that it was a restaurant, nothing else. It wasn't a bar, and I tell you now, if I had thought it was going to be a bar or was a bar rather, I would have never, ever have bought there. We, like everyone else, looked forward to the new restaurant when we heard that it was, that the Lobster Shanty had been sold and we were going to have a new one there; but what we expected, and what we got, were not the same. What did we get? Number one, traffic and parking problems. I won't go into them because you've already heard them. Number two, we had loud noise emanating every single night and every single weekend day for the five weeks that they were open. Not just one band, a band every day, or very loud vocalists. Sometimes I thought the vocalists were trying to compete with the band to see which would have the higher volume. It was, I just, in fact, I have to say now, I can still hear the throbbing of the base instruments for many of those bands and sometimes I feel them. We could hear them in our condo with the doors closed, without even trying. It was, my feelings, and I'm starting to get upset thinking about it, my feelings went from frustration to anger to helplessness, because I didn't know what to do. Our neighbor had called or contacted Squid Lips several times, talked to the management there, and the management supposedly had talked to the owner, and we were given, or he was given lip service, but there was never any action on the noise level, it continued to go on; and I felt at that point almost hopeless of whether anything was going to come from this. The noise level inside our condo upon several occasions with everything closed was very annoying. We often had to turn up the television just to hear what was going on because of the noise coming from the outside deck next door. My husband is a reader, he loves to read, and he's slightly hard of hearing even though he won't admit it. He couldn't concentrate many times on reading because of the music coming from next door, and in desperation, he went out and purchased a pair of padded ear pieces to shut out the sound. Now, I ask you, is this any way for a person to live? I doubt if anybody in this room would be able to live under these conditions for any length of time. It's very, very debilitating. It's really with a very heavy heart that I contemplate the future of our community and of our condo group itself if the zoning request is approved. I do believe that a good restaurant would be a wonderful asset, not only to our neighborhood, but to Cocoa Beach itself; but I do not believe that what the Squid Lips owners plan to do is compatible with our location and our community. Thank you for listening.

Barfield: Thank you. Randy Berner and then Sheryl Berner.

Berner: Good evening, Commissioners. My name is Randy Berner. I live at 2012 Julep Drive, number 208 in Cocoa Beach, and a Magnolia Bay resident; and while I had quite an agenda here to speak to you about, most of my neighbors stole my thunder, and I appreciate that, because everything that they have spoken about, I can attest to as an eye witness. You know, Mr. Underhill, he approached us at our condo, because he was directed to do so, and he made some concessions and spoke about all the mistakes, tried to put the (unclear) on his manager, tried to tell us that he was catering to a demographic of, I think it was either 40 to 60 or 45 to 65,

and now he presents and even older demographic. I can assure you that the music that he was playing was, the manager was booking, had a much younger group in mind, and right then and there, every moment after that, I pretty much suspected that when his lips moved he wasn't going to be completely forthcoming. And I think that if we look at how the neighborhood is zoned, and most everything along the river is RU . . . on both sides of it, on, all the way up and down the river as far as the map that we were provided clearly indicates. So, changing that designation to a CU we think would be even, have a more detrimental affect than having a non-conforming RU in our neighborhood. We're also fearful that changing it to a commercial would set a possible precedence for vacant parcels that are still left in our immediate neighborhood. The reason why we moved here was because it had so many things to offer. We knew that when we bought we were buying into a residence that would be next door to a restaurant, and, however, we also knew that it was going to be not a problem; and it hasn't been a problem until it changed ownership. We believe that the business model that the applicant has put in place is totally inconsistent with the neighborhood. When he opened for business, he did so with a totally illegal structure. The difference between Lobster Shanty and Squid Lips right off the bat, it was night and day, and you would have had to have been there to understand the difference. In addition to the noise, geographic, loud patrons, you know, we even heard, we were out walking our dog one night about 10, 10:15, and there were gun shots that emanated from the south of Magnolia Bay. We think they came from his parking lot. We called the Brevard County Sheriff's Department. They did come, but they cleared with an unfounded report because any perpetrators had already left the area. We also are concerned about his dedication to the Lagoon and the environment in that area. When Hurricane Matthew came and left its print on us, his parking lot was like a lake, and it stayed that way for a good number of days. So, he has water and stormwater management issues. We're fearful that much of the runoff from his parking lot ends up in the Lagoon, and I just think that environmentally that's a challenge for what we're trying to accomplish in the future. He's been in business long enough in Brevard County to know and understand that there are rules and regulations when running or upgrading a business, permitting, ordinances, Codes, etc., however, his past practices have demonstrated that he has little to no regard for rules and regulations, so why should we take anything that he has or is promising to not only us, but to you as Commissioners of Brevard County, that he's going to be long on his word? Rezoning to a commercial property would make it totally non-conforming with the existing neighborhood. There was a vacant partial across from Magnolia Bay that a couple of years ago it was sold and one of the owners requested a change from Residential to Commercial, the matter was denied by this Commission on a 4:1 vote. So, in my opinion, why would this be an exception to the rule if a property right across the street was denied a Commercial Zoning Application? So, I respectfully request that you deny the applicants request for any changes and that what's left in place should stay in place.

Barfield: Where was the property you described, mentioned again?

Berner: It would be between Summer Street on the south.

Barfield: Okay.

Berner: And 20th Street on the north.

Barfield: Okay.

Berner: And the two splits of A-1-A.

Barfield: Okay, thank you.

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Berner: Okay.

Barfield: Thank you.

Berner: Thank you kindly.

Barfield: Okay, Sheryl Berner and then Robert Sullivan.

Berner: Hi, Sheryl Berner, 2012 Julep Drive, number 208. I am, on behalf of one of our neighbors that's unable to attend has already sent a letter to the Commissioners; however, I would like to highlight some of the excerpts from this. For all the reasons set forth below, I write to record my strong objection to the application Banana Riverfront. The area affected by the proposed changes is primarily multi-family, residential is scattered, non-conforming small business commercial land uses. There are some single-story eating establishments in the area, virtually each of which abuts a single-family or multi-family residential structure. All of the current commercial uses appear to have been acquired prior to the non-conforming designation because they were built or operating before the Comprehensive Plan was established. Until the applicant Squid Lips acquired the subject property, the prior owner operated a nice restaurant that seemed to comply with our area for decades without incident. The Lobster Shanty never operated in a way that would threaten the quiet enjoyment of the neighboring residents including ours, which many of our residents have already spoken of. The applicant now begs your forgiveness and seeks to legalize an expansion of that restaurant which he has already achieved without licensed contractors and without permits, inevitably transforming his business into a new spring break venue. I, and more than 50 percent of the unit owners who occupy Magnolia Bay Condominium, believe and know that the blessing this expansion will change the character of our neighborhood in a way that the Comprehensive Plan sought to prevent when it re-zoned the area in 2006 to encourage the residential development, and it will also set precedence that will encourage other land owners in the area to seek similar zoning changes. When you deliberate this application, please evaluate the following issues of relevance to this application and the Comprehensive Plan, many of which you have heard. One of the key things my husband just talked upon is that you cannot approve this expansion without changing the zoning for the parcel an act that cannot be taken likely and may contradict a relatively recent action on your part to deny change of zoning for a parcel of land that is located to the north, which my husband just spoke of, that parcel with the five lots. This would be inconsistent with the Comprehensive Plan and the development of funds. The proposed expansion would also encroach upon the current 50-foot surface water protection area for the Lagoon, which Mr. Mark Holloway spoke of recently, which is very near and dear to all of us in Brevard County. And if this would be voted on, it very well could make front page news because it is such a vicarious situation and going to vote in a few days. He also goes on to mention that the Highway A-1-A abuts the subject property to the east. Ingress and Egress to the property is confusing at best. Since Squid Lips commenced its illegal operations, the volume of traffic entering and exiting the restaurant had picked up significantly, and to lack of add, to add to that, the lack of property, it became a major safety issue, not only for the patrons but also for the residents of the community that might be out walking and about. You had to really pay attention as to traffic going up and down the roads. There are also situations where traffic was noted going the wrong way. It hasn't happened yet, but with the impairment of drinking and without any changes to the infrastructure to the egress and ingress, there is a potential that eventually there will be a fatality at that intersection. There is overwhelming support for denial of this application from the Magnolia Bay owners. You mentioned earlier, I don't know if it was Buzz or Kim that mentioned that at our previous meeting there were only about four people that got up to speak

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on behalf of this matter, and now there is a litany of us. One of the reasons is that a lot of us were gone, and there were a lot of postponements, so we had people here and then there's a postponement, and there's another postponement; and at some point is this strategically being done so that the owner's finally surrender and put up their hands. The conditions that were mentioned again were from the community, they weren't on behalf of the board members, and with a recent poll, we had more than 50 percent of the owners are against you changing these permits. Thank you.

Barfield: Thank you. Robert Sullivan and then Courtney Yecze.

Rezanka: Chairman, can we have the name from the letter she was reading?

Berner: James Szymanski.

Barfield: Oh, what was the . . .

Rezanka: Szymanski.

Barfield: Oh, yeah, James Szymanski. Good evening.

Sullivan: Hey, how's it going? My name is Robert Sullivan. I live directly across the street at 2205 South Atlantic. I live in the old Driftwood House; it's been in Cocoa Beach for over 100 years. I can see how you all can sort of take a lighter look at this. I understand you're paid to do this, but when it sits in your backyard, I'm sure you might have slightly different feeling for what's going on. Everybody wants to have to be able to eat on the river, eat on the ocean, I understand that. I understand that Brevard County needs more of that but that's not what we're trying to explain what we're upset about. That's not the issue. You can still run a restaurant. People can still come and enjoy a nice sunset on the river there and have a great time, and we're all for that. The address you asked for earlier is 2000 South Orlando. It's owned by a man named Don Dismore. The previous owner, this is the one that was not allowed to be re-zoned. The previous owners were Jason Uvaro, Carl Uvaro, Mike Duffield, and another guy name Hoskins. They came to your Board. They were previously zoned commercial. When the residential boom hit they decided, you know, maybe we need to make more money with this property, and so they had it re-zoned residential. When they then, they decided they wanted to go back to commercial, they were denied at a 4:1 vote, which is to me, exactly what we have going on here. Lobster Shanty was zoned commercial. It got re-zoned residential 12 years ago. Buzz seems like a great guy, I got no problem with that. He bought the property knowing that. Now, here we are . . . Honestly I would have been at the first meeting but I didn't see any reason why it would even get this far. If previous owners that wanted to have this re-zoned and they were denied by your Board, three of you were on that Board when you made that vote, I don't see how you could possibly deny those people who wanted to have that re-zoning, they didn't break any rules. Now we've got a guy who comes through a litany of reasons why he did this, this, this, and that, but you can't tell me that he didn't knowingly know what he bought, and he knows he bought property that could not have its footprint changed by one inch, that's what it was grand fathered for. So, excuses about, oh, I thought this, I thought that, it's absolutely, it's ridiculous. He knew exactly what he was doing, he just hoped he would get away with it; and I know how he didn't get away with it because I had a conversation with Bob Baugher who is his neighbor to the south. He had made some conversations with Bob. Bob was very upset because there was tons of overflow parking on his property, which is directly to the south. He had a conversation with Buzz, as relayed to me from Bob, and they had come to an agreement. Unfortunately, Buzz did not adhere to that agreement and he told Bob that it was his problem.

Bob got extremely upset. You probably, you guys know Bob; you know he's quite established here, holds a lot of political clout. He told Buzz, well, if you're not going to handle it, and you think it's my problem, then I'm going to handle it; and the reason we're here is because Bob had that shut down, because he let him know, because he knows the rules because he's had many buildings here. He saw the violations and he called the County, and he took upon himself to stop what he saw was an injustice. I'm here not only representing myself but I'm representing Marco Villas. I spoke to Sue Mallett today; she's been there for 25 years. I spoke to Barb Fleming. Unfortunately, I didn't, it's very difficult to speak to more people over there at Marco Villas, because most of them are snow birds and they're not around, and they've got some construction going on over there. Anyways, people I did speak to are very much against this, and they do not want to see this happen. I also represent Malcolm Kirschenbaum, Jim Swann, Kit Knots, and myself, combined we have 450 feet of beach front. My concern and our concern is this is the first crack in the dam. I spoke to Bob concerning this, Bob Baugher concerning this as well. If this re-zoning is allowed to happen and is successful, there's nothing that you all would have precedence to stop Bob Baugher from re-zoning, which would make it two restaurants on the river, two riverfront restaurants and with all due respect, the 50 to 75 thing is a joke. I mean, let's be honest, it's, it's about just making the most money, and I think everybody can agree to that. So, if he's successful with spring breakers, then spring breakers it is. If Bob Baugher sees spring breakers are coming, then spring breakers it is. If it's 30 to 40, 50 to 100, it doesn't matter, it's who's coming the most often and paying the most money. He'll bring the bands in that he can. He'll do everything that he can to be as successful as he possibly can. This will lead to people at 10:00 at night who have had too much to drink, who will, there will be police cars out front, and people will get in, see the police cars and they'll say, well, I don't think I want to get in my car and get a DUI, I think I'll go across the street and spend some time on the beach. It's a natural place that people will go. It's what I would do if I was in that situation. There'll be loud noise on the beach. There'll be partying on the beach. There'll be trash left on the beach. I don't need to go into what will happen, I think we all know what happens down at Coconuts and Beach Shack. Those people who are neighbors at Coconuts and Beach Shack, they have defense and security situations which can help them through that. Our neighborhood doesn't have that because we've never had this problem. So if this situation begins and starts to move to a Beach Shack, Coconuts type thing, us as neighbors can expect we'll all have to put in a security system, because it's only natural people coming from long distances won't want to get in their cars and want to hang out until they feel they won't surpass the DUI limit. So, really this is the first crack in the dam. I think you could all understand if you lived in my situation if you lived near me, you wouldn't be for this because, again, I've had someone watching this on television right now. Buzz is a very likable guy, but he's proven through his actions to not do what he says he's going to do, and so the whole idea that this is for 50 to 70, I mean, it's just a mockery; and he'll do what he can to make it as successful as possibly, and successful breed more success. Other businesses, if you give them this opportunity, they'll take the same route, and this neighborhood, which you guys have said is your priority to make it a neighborhood and to move it away from commercial to a neighborhood, will be, it'll be on its way to going that direction. I've lived there for 22 years now. I remember the trailer parks across the street. I've had theft of my property. I've actually caught and apprehended robbers, they've put them to jail, and they spent time in jail. There used to be a lot more problems in this area. Moving in the direction we have its gotten better. The whole community has gotten better. Prices of our property have gone up. The beach re-nourishment program has helped. Everything has gotten better. This has a potential to move in the wrong direction. I'm not saying that would definitely happen, but by allowing this re-zoning, you only open the door for that to happen. That's why I'm against it, and that's why people I'm representing are against it as well.

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Barfield: Thank you. Courtney, and then Zach Potter. Good evening.

Yecze: Good evening. I'm Courtney Yecze. I live at 2001 Julep Drive, 204. Been there for nine years, and I've loved being a neighbor to Lobster Shanty. Lobster Shanty really was a place that we'd go frequently, and my wife and I enjoy the peace and quiet, and the tranquility of what's there all these many years. Who's to prevent, if this goes commercial, who's to prevent anyone from putting in a Jet Ski water park out there next to, next to the water? It's in a Manatee zone nearby, slow speed, but yet the trust has been broken, and I think that we need to continue to follow all of what these folks have done ahead of my being here; and I support them heavily. Thank you.

Barfield: Thank you. Zach Potter and then Robert Love. Good evening.

Potter: Hi, how are you? I'm Zach Potter. I live at 1550 Bay Shore Drive, and I'm here representing the residents of Snug Harbor, which is just north of Squid Lips. There are a lot of issues at stake tonight; a lot of it's been already covered. I think it's important for you guys to realize this is a lot more important than just some grumpy old people, not about some noise. I mean, this is, this is really a critical issue that we feel is really important to not only our quality of life but our property values, and the direction our community heads. From Cocoa Beach, I grew up in Cocoa Beach. I went to Cocoa Beach High School. I have an MBA from Florida Tech, so I guess that matters, for what it's worth. I'm a real estate investor. I feel like, I feel like I have a lot of experience in this for someone who's young, and I don't quite fit the demographic of everyone who is here, but I'll do my best to try to, try to relate to them. But I think, you know, sorry, anyways I'm really hoping, you know, most of you haven't already made up your minds on this because I think it's really critical, you know. The attorney for the other side made mention to the fact that it's new that, you know, all these people are showing up; and when a lot of the residents of Snug Harbor came to me asking me about what I felt about this, you know, if I'd look into it, you know, I kind of, I looked it up, I did some research. I saw the re-zoning issue that was discussed by a few of the last speakers and I told them, hey guys, this is not a problem. This guy's already proven they're not going to do this, set precedent, you know, don't worry about it. So, we kind of thought it would all go away. I mean, here we have a guy who's, you know, he's got a lot of experience in the restaurant industry. Obviously, have multiple facilities in the area that are very successful, and he clearly, you know, should know what he's doing, and obviously broke a lot of rules. So, the fact, you know, that, that this committee would consider rewarding such dangerous behavior by essentially giving him a get out of jail free card by hey, you messed up, but you know, we'll shift the zoning around, now you guys are cool, you can do whatever you want, to me is a really dangerous precedent. You know, I'd hate to see that for the area. So, yeah, I'm here for Snug Harbor to say that we are strongly against this. The sound barrier that he's proposed, while it may slightly help Magnolia Bay, will only deflect sound at South Snug Harbor, so the residents who live on the water there will have more of an issue with sound than they already have. I'm open to the due process that she asked for. I know she wanted to cross-examine some of the residents. So, if she feels that, you know, some of the other patrons aren't will to answer her questions, I certainly will; but I think it critical that we stick to the precedent that this committee, this Board, has already set, and, you know, maintain the current zoning as is, and yeah, I think it's pretty clear we all want a restaurant. We all want him to be successful, but we don't want a concert venue in our backyard. You know, and that's what he is proposing. We had a restaurant, it was great. There was acoustic music, there were small bands, whatever, but his, if you look online at his website, his other Squid Lips locations have bands and concerts big enough that he actually advertises buying tickets for them. So, this is not simply, you know, a few people on the back porch listening to some music. I mean, this is a serious thing where he scheduling big events every day, all hours of the day,

trying to draw people in. You know, I get that. I'm a young person. I enjoy loud, you know, enjoy music, but there's a place for it, and that place is not right in our backyard. So, thank you very much.

Barfield: How many residents are there in Snug Harbor? How many homes, do you know approximately?

Potter: Over 100. I mean, it's a large community. There were about 10 that were; we were all carpooling together for the last meeting when it got tabled. So, I was the only one able to represent tonight, but there's a substantial constituency. It's a little younger demographic, not quite my age, most of them, you know, I was lucky enough to move to Cocoa Beach younger than some others have. But, yeah, I mean, there are a lot of business age people, 30's, 40's, 50's in the neighborhood, and we all want a great place to go but we don't want a concert band in our backyard, hundreds and hundreds of people, you know, it's a serious issue. So, thank you very much.

Barfield: Thank you. Robert Love and then Yane Zana.

Love: Robert Love, I live at 2001 Julep Drive, Cocoa Beach, and I used to be younger than him, but I don't want to hear about it anymore. Okay? I appreciate what Commissioner Anderson said earlier how you can go to Squid Lips and enjoy yourself, and I'm glad that they have a Squid Lips there that's in the zoning position that it's in, but I appreciate a Zoning Board that is there to zone things to protect people; and our place and our area is residentially zoned, and I bought my condo there knowing that. And it surprised me tremendously, I live in the north in the summer, come down here in the winter, and I was very surprised when I came down in January, February, whenever they opened up, and I went to sit down on my terrace, which I love to sit on by the river there and listen to the waves come up, and I heard somebody's radio on, like if it was my next-door neighbor where I live in Cleveland I would have to go next door and knock and say, hey, would you turn your radio down? But it was playing music I didn't want, radio on all of the time, every night. So, I started coming inside. I love to sit on my patio, now I sit inside and I just hope I have my TV on and I won't have to listen to that music. Now, I appreciate it, but Ms. Infantini said also about inconsistency of what this very intelligent man, apparently, said about wanting to go to demographic use of 55 to 75 year olds. Now, I think the first thing you do when you want to reach that demographic is get a band call Hot Pink, because I know we all want to go listen to Hot Pink. Okay? No we don't. We don't want to listen to Hot Pink. Now I got a friend, my friend Mike, I'm not going to say his last name, who also lives in Ohio, and he bought a place down here; and I said Mike, what have you been doing now? He said, oh there's a great place that opened up. It's the hottest place in town now. Great bar, great place to hang out, and everybody's coming there. I said, where's that. Squid Lips. Where's that? It's right down next to you. So, now Mike doesn't see this as a nice restaurant that is catering to 55 to 75 year olds, he sees it as the hot place, this is where I'm going to party. You gotta go there, man. I was just with him this weekend Sunday night to watch the (unclear) game, because I'm from Cleveland.

Anderson: I'm from Cleveland, too. I don't want to talk about it.

Love: I know, I know how you're voting then, Mr. Anderson. But, anyway, we went there, and guess what? We went to the sand bar. That's what Mike likes to go to. I don't know if you guys have been to the sand bar, but it was fun to sit there and drink a lot of beer and watch the game and have all these girls going like this, and music playing, but it was inside. Okay, it wasn't in my backyard, and I know if each one of you had to sit there all night and listen to somebody

else's music, and when your guests came over you'd go outside, and then you'd say, no, let's go back inside. So, now you can't sit there. I spent a lot of money for a condo on the river so you can sit there and look at the moonlight on the river and talk to your friends and drink wine, not listen to somebody else's music all night seven days a week. And, you know, if this zoning passes, you're condemning all of us who own property around here to lose hundreds of thousands, hundred and some thousand, you know. I just met with John, and we're looking at his, you know, thinking that maybe I'd want to look at a condo over at his place, and maybe wanted a penthouse, it's over six figures. I would never buy that, I would never buy that if that music was there, and all those people are going to spend over six figures over there, they're going to have to sit on their patios, and they're going to shut their doors too every night, and they're going to go inside, and they're going to say, why did we ever buy this place? And when I go to the realtor that talked earlier and I go with her to buy a place there, and I say, is that rumor about it being loud you can't sit outside true? She says, well, I don't know. I said, I'm not buying it. So, you're going condemn all of us to lose hundreds of thousands of dollars because of the zoning change. So, I appreciate it if you stick to the zoning, stick to what's there, that's why we're there. We're not there for this.

Barfield: Thank you. Yane Zana. I don't know if I said that right. How are you doing? Name and address for the record, please.

Zana: I live in Vero Beach, Florida, 956 Surf Lane. I also represent a group that owns the Cocoa Beach Hub and Marina, its two properties to the south of Squid Lips, it's where the old Fisherman's Wharf used to be. So, we have been buying properties in Cocoa Beach for quite some time, in South Cocoa Beach primarily. We did so because we felt that it was such a really nice area. I mean, really natural setting, ocean, river, very tranquil, and through good times, bad times, we've invested here and kept investing. Ocean Cove, Ocean Paradise, the Carlyle, Garden by the Sea, those are all projects that we have completed in that area, projects that had residences sell from \$600,000 to over \$1 million, and they keep re-selling for that, and people keep coming back to that. We just completed a condominium, Cocoa Cabanas, maybe a fifth of a mile from the subject property, and we're about to start pre-selling, we are pre-selling, and we want to start a new condominium near that subject property, you know, a couple of doors down. So, when the issue with Squid Lips came upon me, you know, I kind of live in a little bit of a bubble, I worry about building and selling my condominiums and I'm not really seeing what's happening, per se, at night I'm not here. I don't live in the community. When Rob Sullivan brought this to my attention I was a bit concerned. What I'm mostly concern about, the noise abatement and those issues, they're obviously very important and everybody's talked about them. I'm really concerned about the precedent about re-zoning the properties to commercial. When we purchased it, it was a trailer park. We re-zoned it to multi-family. Same reason that Squid Lips was re-zoned to multi-family. Same reason that probably Mr. Baugher's property was re-zoned to multi-family. This is primarily a residential neighborhood. Everyone wanted to develop it into either high-end condominiums or single-family homes, primarily because that was the use. So, to then revert back to commercial to me is concerning. If we do so, and, you know, there are concert venues and so forth, and those issues come up, that is obviously a detriment. You just heard the gentleman there. I just met with him today. We were talking about selling a property there. If this situation persists or worsens, it's likely that you wouldn't buy, others wouldn't, and then what am I faced with? Do I come back to you guys and ask you guys can I please re-zone to commercial? Do I do a hotel? I'm not really sure, you know. So, to me it's really, the neighborhood and the residents here have already voiced their concerns as to the impact on the enjoyment livability of their neighborhood. I'm coming from a different perspective, I'm coming from a property owner that's looking to develop here. It's going to be a big project, probably 35 condominiums. It's going to be \$17 million in construction, jobs, and

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materials spent over the next two to three years, another tax base to the tune of \$400,000 a year, very similar to Magnolia Bay. That's what that area is about. It's tranquil, it's serene, it's like a little oasis, and that's what people have been moving there to. It's nice to have a restaurant there are really not many restaurants in that area. You've got Fat Snook, you've got the Capé Codder, you know, they're nice places. It's nice to have a bigger place, somewhere where you can enjoy sunsets, but, and I'm all for economic activity, you know, but it has to be moderated, I think, you know. It has to be done in a controlled fashion. The traffic is concerning to me there, you know, God forbid somebody comes out of there, you know, you can't preclude someone from having too many drinks and possibly getting out there, but when people come around that corner from Cocoa Beach with that 35 mph speed limit and as soon as they're out of there, they feel that they can just go really fast, and that's concerning. If somebody's disoriented and comes out, comes the wrong way, I mean, that's a dead on accident. I would like us to be able to stay within the changes that have been made to the zoning. I think that commercial is not really what this area needs. If people really want to enjoy commercial, they can drive five miles, four miles north and they have all the commercial that they want there. So, really, that's kind of the jest of it, you know. I'm requesting that we not approve the re-zoning, and with respect to the continued use of the restaurant, I would really appreciate it if it would be moderated, thought about well, and that some of the issues as to noise and so forth really be addressed. You know, we talked about a sound curtain to the north, but are talking about a sound curtain to the south? Is all the noise going to come over to our side of the property or to Snug Harbor as well. So, those are basically my comments. Thank you.

Barfield: Thank you. Okay, that was my last card. Ms. Rezanka, would you like a rebuttal?

Rezanka: Thank you, Mr. Barfield, Chairman Barfield. I was just curious with Mr. Shake as to what were the contents of those 72 police reports. So, I don't know if that can be asked through the Chair or not, but that's, that's what I was asking about because we have no evidence what those are, although you do have comments from Mr. Underill regarding the contents. He doesn't believe, and if it is, it's homeless or other activities outside of his venue. As you are aware, Planning and Zoning approved this eight to one. Staff reports appear to support this. This is not an expansion this is re-zoning to cure a non-conforming use, which is the purpose of zoning. This is completely consistent with your Comprehensive Plan and your Land Development Ordinances, and your Administrative Policies. They're consistent because this is an enhanced, water enhanced use. This has been in existence for 62 years. This is not a vacant lot. This is not Mr. Densmore's lot this is not any of the vacant lots around there. This is an existing, historical landmark use. It's way different and has no precedential value whatsoever. When you look at your Administrative Policies regarding re-zoning, you do look at whether the use would have impacts on the other neighbors, but that's why the conditions have been in place, that's why the binding development has been in place. So, it can never be anything more than commercial. So, you have that in your back pocket. Even if you do re-zone it to make it conforming, you can say, you know what, you can't have commercial use there because they're not allowed to have anything but a restaurant, and the only reason they got that is because it's been there forever and ever. It's a historical land use pattern. It does not result in material violations of relative Policies it is part of the character. You have heard them talk about the restaurant being part of the character. They don't like the change. I get that, we get that. He is trying to make it right. Yes, he did explain what happened, but he ultimately at that meeting at Magnolia Bay, if they were honest with you, would say he took responsibility. He said it was my problem, it's my, it's my restaurant. So, Mr. Underill did take responsibility for what, what happened, and he's trying to make it right. He's not begging, he's seeking land use approvals. As I said, this is not an expansion this is just fixing a non-conformity. So, any expansion is still going to have to go through permits, double permit fees, probably quadruple

now that the fees have raised. So, there's going to be some problems that he's going to have. He may never get the expansions. He may never be able to get the stormwater. So, he still has to go through everything. This is not an expansion. We met with the HOA board at the request of Mr. Shake on August 23, 2016, not in July. There were 20 to 30 people there. Mr. Minneboo never told us to meet with them. Planning and Zoning never told us to meet with them. Mr. Minneboo said at Planning and Zoning, we made them do it. Well, that's what Henry does, but we all know that you're supposed to meet with the residents when there are objections. So, Mr. Shake just beat me to it, and I appreciated that. I'm actually extremely surprised by the hostility that we've seen tonight, especially when I got an email from Mr. Shake before the Planning and Zoning Board meeting said, hey, we appreciate you coming to us, and we like what you're doing. We've asked for a few more changes. He said we. We assumed he meant the homeowners, because he represented the homeowners. He invited us to meet with the Board and the homeowners. So, we believed the community has agreed with the conditions, it appears they've changed their minds. We trusted the Magnolia Bay President that he represented the community. You know, trust is a two-way street. They don't trust Mr. Underhill, and frankly he doesn't trust any of them right now, and that's unfortunate, because he was trying to be a good neighbor. We had worked out these conditions, Planning and Zoning put on new conditions, which would make it more compatible, more to their liking. We've heard no evidence of Code citations for noise or parking. Yes, we understand it was loud, but he was never cited. It was five weeks. We had a couple of people say they came over, but it wasn't an ongoing issue that was raised to the level of calling the police about the noise or Code Enforcement. You've heard parade of horrors. You've heard to me what borders on slander here tonight. We know he doesn't do what he's saying he's going to do. There's no evidence before you. He hasn't said I'm going to do something and do something different. Now he's saying he's tried to fix the problem, he's trying to fix the non-conformity of historical use, and all we're hearing is, oh, well, because he acted bad we can't ever, ever trust him. Glad my parents never said that to me. The rest, the French drains discharge to the east not to the Lagoon. If this is not approved and he has to go back to what it was before, there will be no treatment and the water will drain into the Lagoon. The capacity issue, you've heard what the capacity is, that can be a condition of any approvals, conditions of Conditional Use Permit. Mr. Underhill has said he'll limit it to 380 when before it was almost 460. The concerns that caused the shutdown of the deck were fire/safety concerns on the deck, not the entire restaurant, that's a misconception. They needed a sprinkler system, an alarm system, and an access. There were some exposed electrical wires, but it was not a complete, the whole restaurant didn't meet Code. That was a complete misstatement, misrepresentation. He's not trying to make this a hangout for the younger crowd. He's not trying to change it to a recreational complex. He would love it to be River Rocks group. River Rocks has live music every single day. Perhaps the website, that's the website that the Snug Harbor member was looking at because this is not on Mr. Underhill's websites. He does not sell tickets to any of his venues, any concerts, that's a flat out, blatant misstatement with no evidence before you. Again, this is not a precedent, this is an extremely difficult, a different, unique situation because this has been an existing use since 1952, its part of the character of the neighborhood, as one of the residents tonight said. The postponements were not to wear them out. The postponements, two were from the County, one was from us based upon Mr. Underhill was initially supposed to have surgery, and then because we were told we needed to stormwater the entire site. We still don't know if that's possible. Sound curtains absorb, they don't deflect. Regarding Hot Pink, I've never heard them, but I know it is John and Carol Craig's favorite band and they're 50 something. So, it is a demographic that might fit. I know it's not important, but it is, everyone has different taste; and that's just it, these residents have different tastes. They don't like the change and we understand that and we're trying to make it so it will be more compatible. Property values will drop, there's absolutely no evidence of that. There's been nothing before you that said oh, when they open for five weeks property

values dropped, here's the evidence, that's not before you. These are opinions and speculations you heard before you and we understand why, they were unhappy. So, we're simply asking you to make this a conforming use. This is not a request for an expansion at this point. If this is not approved, he won't be able to expand, he'll have to take the deck down. The new deck comes out, the new canopy comes out, there will be no stormwater drainage improvement. There is the option of a Conditional Use to mitigate a non-conformity, which Mr. Kirschenbaum's in favor of, but no one at staff level is, or it's going to end up in a court challenge, because you have no competent, substantial evidence before you. This is consistent with your Land Development Code, your advisory board has recommended it, and we've made conditions to make it compatible. With that I request that you approve the Conditional Use, the re-zoning, and the Comprehensive Plan Change. Thank you.

Barfield: Thank you.

Rezanka: Oh, one more thing. Mr. Baugher is actually in support of this even though he did say, he did report him; but if you look in your emails, Mr. Baugher thinks this is great for tourism, and he is a tourist expert.

Barfield: Thank you. Okay, I have a question for staff to start out with. What were the violations?

Castellano: Commissioner Barfield, my name is Investigator Maggie Castellano I work with the Brevard County Contractor's Licensing Regulation Office. I was asked to come out to site by the Building Official, as well as, invited to the site with the Fire Marshall's Office. Upon arrival, the illegally built deck with the unlicensed contractors and without any engineering and permitting was validated. We did not shut down the restaurant, we did shut down, with the approval between the Building Official and the Fire Marshall's Office, the decking only. It was not, according to the Fire Marshall's Office, it did not meet the proper fire sprinkler and exits for Building Department. It did not meet the requirements for the Building Code, as it had no permits. From Mr. Underill's discussion with myself it was he and his employees and a labor staff that he used to construct the decking and the roof system. He did use a licensed plumber and a licensed electrician, however, as no permits were in place, none of that work was verified that it was met to Code. Subsequently, several weeks later, Mr. Underill continued to do work, continued to use unlicensed contractors, and continued to not do it with any permits. Additional citations were issued both for work without permit again, and with unlicensed contractors.

Rezanka: May I clarify?

Castellano: One of the staff, the . . .

Bentley: You need to let her rebut.

DiFabio: Ms. Rezanka made reference to, and it's included in her package, that the property owner feels that he was exempt under Statute 489.103, specifically Section 9. Maggie, can you address that?

Castellano: Is that about the \$1,000?

DiFabio: Yes.

Castellano: There is a Code within the Florida Statute that talks about the exemption, any work

or operation of a casual minor, or inconsequential nature in which the aggregate contract price for labor materials and all other items are less than \$1,000. The reason this exemption does not apply is because this is not a selective individual small portion of work that was being done, it was a part of a larger, the construction, the major operation, which is directly under the exemption. This exemption does not apply if the construction, repair, or remodeling improvement is part of a larger or major operation, which all of it was included together with the decking. In my May visit, the . . .

Fox: I'm sorry we have a lot to say over here.

Castellano: I can kind of read my timeline if I need to.

Fox: One of the things that I wanted to make sure that everyone understood is that when the property opened, there was knowledge that Squid Lips was coming. Obviously, they were, they came to us in the County and they actually got their alcohol permit signed off on, and there were other things that they did, but as soon as these, as soon as everything started up, these things started, we were called and the citations happened; and Maggie went out there. The reference to the Statute, I just wanted to make sure, is that Ms. Rezanka made the statement earlier that those were things that he would not need a permit for, and what Maggie has just stated from the Statutes is that he's not eligible for the exemption that they stated; and he would have needed a permit for those things that he even states today that he believes he did not need a permit for. So . . .

Barfield: Have a question.

Anderson: No, that's fine.

Barfield: You? Okay. One point, do we have all these in the record don't we, all these violations? Okay.

Fox: Yes, we do.

Rezanka: And is it Castellano?

Castellano: Yes, it is.

Rezanka: Ms. Castellano, isn't it true that on the March 31st violation was because Dan Heller had come out to do a business tax receipt inspection, correct?

Castellano: Is not, unfortunately I'm not clear as to why they were originally there; however, I had, earlier that morning actually had speaking with the Building Official, and was asked specifically by him, unrelated to the Fire Marshall's Office, to make a visit to that site. There was a complaint that came in to him directly. There was a Code case opened as well through the Code Enforcement Office. The fact that I happened to be leaving the office at the same time when I got a call from Mr. Heller, actually I didn't get the call from Mr. Heller, I got it from Mr., from Tony, from Tony Mills, another Fire Inspector. He asked me could I meet him on site. The proprietor was on property at the time I said, actually, I'm on my way.

Rezanka: You didn't prepare that timeline which said that this is all participated by Dan Heller coming out for business tax receipt inspection?

Castellano: It talks about that I was asked to come out by them. I was already on my way out.

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Rezanka: And isn't it true the next violation was in May, two months later, not several weeks later?

Castellano: It was . . .

Rezanka: May 24th.

Castellano: . . . from March 30th it was to May 24th, so approximately eight weeks.

Rezanka: And then the things that were being done in May, wasn't part of it this little drywall area in a downstairs room?

Castellano: That was a part, a small portion of it. When I got out onsite, I was asked to go back onsite because they were constructing a, what was being deemed an ADA exit ramp on the south side of the structure. Inconsequentially, also being built directly on the property line, which would have needed to have . . .

Rezanka: Isn't it true there's only form boards up, there's no construction going on? There was . . .

Castellano: No, ma'am, there was stringers and there were posts.

Rezanka: But no concrete?

Castellano: A raised deck doesn't use, there's concrete in the posts, yes there was.

Rezanka: Okay, but that one interior area, you don't need a permit, just if he was replacing the drywall? In that one interior area?

Castellano: Yes, the, the, the rule of thumb with the drywall, the Building Department, whether it be County or most of the city municipalities, is anywhere between 36 and 48 square feet. He has beyond that, which is approximately one sheet and a half.

Rezanka: Square feet or square inches?

Castellano: Square feet.

Rezanka: Okay, All right.

Castellano: So, 48 square feet is approximately a sheet and a half.

Rezanka: How much would he have inside there?

Castellano: Probably three sheets at minimal.

Rezanka: Okay, and that's reflected in your pictures?

Castellano: Yes.

Rezanka: Okay, thank you.

Castellano: May I add also with that, the exterior of the wall was having stucco repair done, and

all of this work was being done by Mr. Underill's maintenance employee not by a licensed contractor nor did they have permits.

Fisher: I have a question. There was something made reference to, three of us was on the Commission when a zoning was denied before. What was, what was that? My memory, I'm not young like that kid back there anymore. So . . .

Anderson: That wasn't this case it was down the road or something. I remember the . . .

DiFabio: Your question is where was the property?

Fisher: Well, someone said that we denied . . .

DiFabio: Yes, it was, it's approximately a block north of the subject property. It is just north of the gas station and storage facility. It's a vacant lot. It had been historically BU-1 zoning. In the mid-2000s when the real estate market was, condos were becoming very popular beachside, that property was re-zoned for multi-family residential. Obviously, the market did change after 2009 and the property owners did come back in, in, I'd say about 2012 and asked to re-zone that property back to BU-1. At that time during the public hearing, the Magnolia Bay residents, as well as other residents in that area, had pointed out to the Board how this area has changed in character from the commercial area it might have been back in the 50s and 60s because of that condo boom. All along A-1-A in this area, multi-family housing has gone and replaced what were formerly commercial lots. So, accordingly, this Board voted to deny the re-zoning back to commercial, and that property remains multi-family residentially zoned right now.

Fisher: Thank you.

Infantini: Wasn't that the five of us? That wasn't a different Board, that was us five.

DiFabio: Yes.

Anderson: No. Was it us?

DiFabio: Well, there's two of you that may not have been here.

Infantini: Oh, okay, I thought it was the five of us.

Anderson: No, it was, it was when Commissioner Nelson and Commissioner Bolin were here.

Fisher: In 2012 it would have been. Okay.

Barfield: I thought I was losing my mind. I'd like to ask Virginia Barker, do you know how much of the illegal deck is impacting the Surface Water Protection buffer approximately?

Barker: No, we don't have plans that show quantities.

Barfield: One other note I would like to make, we've had a number of emails in favor of this, but I don't think any of them are the neighbors. They're mostly people wanting to come to Fish Lips. And I didn't send one, but, you know . . . Squid Lips, I'm sorry, gosh, I get all my lips mixed up, so, but Squid Lips; but these were emails, not, not neighbors. There's a lot of them.

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DiFabio: Mr. Chairman, I also would like to clarify for the record that Ms. Rezanka represents that this, the purpose of this re-zoning and Comp Plan Amendment is to cure a non-conforming use. The non-conforming use, which is the restaurant structure itself can remain there. There isn't a need to cure that. The need for the zoning here and the Comps Plan Amendment is to allow an expansion, and that particularly in this case was the deck that was added on. This Board cannot consider approval or allowing that deck to continue unless they were to approve the re-zoning and the Comp Plan Amendment, as they would be an expansion of the non-conforming use.

Barfield: All right, so let me just go through this. I've been making a lot of notes. I hope I can read it. So, in 2006 the property was re-zoned to RU-2-15, which is multi-family. The restaurant continued to operate as a non-conforming, as non-conforming, and continue to do that even now. So, without County approval, the current owner expanded, added asphalt, covered outside patio, etc., but since non-conforming structures cannot be expanded, the property has to be re-zoned commercial, BU-1, that's the reason, to continue and to expand. As Robin said, it can still operate as it is. No permits have been requested, and as it is now, it's an illegal structure. No site plans have been provided, which that hasn't happened, it doesn't have to yet. But many complaints of parking issues, and there was a five-week period there. There's outside music complaints. Magnolia Bay will be impacted, as will any other areas around there, and what amazes me is that Snug Harbor, too, that's a number of different homes. And one of the things that they are proposing and that's off-site parking; and the off-site parking with agreements. I don't think there's any way you can commit to that because those properties can change and that can be used somewhere else. They may want change and not, they may sell the property and not allow it, and the main thing is that it is incompatible for expansion; and I think we've heard that tonight from the neighbors, the ones that are important. So, what I'd like to do is I want to pass the gavel, and I want to make a motion that we, number one, deny the small scale plan amendment, Comp Plan request. I want to make sure we go ahead and do that. We have to do three different things. I make the motion that we deny.

Infantini: Second.

Smith: We have a motion to deny.

Infantini: For discussion.

Smith: Do we have discussion?

Fisher: I mean, I, I, with this motion, they can, can eventually get back to where they were before, they put the deck and the canopy on, correct?

Barfield: Absolutely. We have to . . .

Fisher: I know we gotta go different steps, but, okay . . . so we're going down the road here is . . . okay, I'm good.

Barfield: They can be back to where they were.

Fisher: And keep a restaurant and be that . . . no canopy and no . . .

Barfield: Has to go back to what it was originally.

Fisher: No canopy and no deck. Okay, go back to, okay, I got you.

Smith: So, we have a motion to deny by Commissioner Barfield.

Barfield: Small scale plan amendment.

Smith: Small scale plan amendment, second by Commissioner Infantini. All those in favor say Aye.

Fisher, Barfield, Infantini, Smith: Aye.

Smith: All those opposed?

Anderson: Nay.

Smith: Vote was 4:1. Commissioner Anderson is the nay here.

Infantini: Can I make a comment now?

Smith: You have the floor.

Barfield: I've got two more to make, too.

Infantini: Okay, all right, I like Squid Lips. I've attended events there in Melbourne, Eau Gallie one, and they've been a great community partner all along; and so, I'm not happy to say that I'm not in favor of your expansion. I've been taking notes. I was a little, the music thing, that kind of seemed a little inconsistent, and then when you bought the land you knew you had a non-conforming use, which would then tell you that you couldn't expand. So, I think you probably already knew that. Every piece of adjacent property that I could find is currently zoned RU-2-15. So, it would be incompatible to have commercial zoning there, and we've already established that he could keep the restaurant, because I didn't want you to have to get rid of your restaurant or stop selling alcohol; but you could keep it as long as you kept it at the original footprint. So, it's not going to preclude you from that. The other thing that I did before I came in tonight, I looked up, it was verified by the maps, that every single property owner in Magnolia Bay bought the property after it was re-zoned to residential. So, there was not one opportunity for a single property owner to have purchased when it was zoned commercial. So, I thought, okay, if they'd done their due diligence. Well, if every one of them had done their due diligence, they would have seen it's zoned residential. So, the worst case scenario, as the first speaker, Tony, okay, as he said, anyway, you knew about the sound barrier because you put it up at the Squid Lips in Melbourne but you didn't put it up before there, and we've got a huge stormwater tax that's probably going to pass, so we could use that to make the improvements that you're not required to make, and for that reason, I'm in favor of all three motions.

Anderson: I just want to explain my vote. There was no substitutive, expert testimony given by the opposition side as to why this should be denied. That's being consistent to what I've done every time I've voted on things. If there's not an expert provided, like the applicant had experts, then I can't vote in favor of it, and I won't support the findings of fact.

Infantini: I disagree, because you and I typically, typically consistently . . .

Anderson: Which expert did they, which expert did they present today?

Infantini: No, we didn't need an expert. You can look at . . .

Anderson: You do need an expert.

Infantini: You can look at a zoning map and see . . .

Anderson: Well, Ms. Rezanka and the judge will decide what that expert, lack of expert testimony means later on.

Infantini: Okay, but it's completely inconsistent in the, in the compatibility with the whole neighborhood.

Anderson: And that may be true, but nobody provided an expert to that effect.

Infantini: There's a map. There's a map, I mean, I don't need an expert.

Anderson: Well, I'm sure a judge is going to hear this later on.

Barfield: Okay, let's move on.

Anderson: Let's move on.

Barfield: Okay, I still passed the gavel here.

Infantini: Go ahead.

Barfield: Mr. Smith. I make a motion that we deny the zoning request because of incompatibility with the current zoning in the area, and change of classification from RU-2-15 to BU-1, and deny that.

Infantini: Second.

Smith: Okay, we have a motion by . . .

Infantini: Commissioner Barfield.

Barfield: To deny.

Smith: Commissioner Barfield to deny the conditional use . . .

Barfield: No, the zoning.

Smith: Deny the zoning request, and a second by Commissioner Infantini. All those in favor say Aye.

Fisher, Barfield, Infantini, Smith: Aye.

Smith: Passes 5:0.

Anderson: Nay, you didn't ask me.

Smith: Nay, I'm sorry.

Anderson: 4:1.

Smith: 4:1, Commissioner Anderson voting nay.

Barfield: Okay, I have a, I'd like for Cindy to explain if we deny this CUP what that means.

Fox: I believe I've just broken the microphone. It's really weird when you have too many people over here sharing this desk with you. The Conditional Use Permit originally was approved in 1974, and that we, you know, long after the restaurant actually came into existence. So, in 1974 they were given the alcohol Conditional Use Permit. Today it remains non-conforming. If we deny this request, we are denying the expansion of the Conditional Use Permit that they've had since 1974 to include the on-premises consumption of alcohol on the deck. So, if we deny the CUP, we're doing the same things we've just done with the re-zoning. The Conditional Use Permit, we've let them go back to keeping what they have and they will still be able to serve alcohol.

Barfield: Okay, so it'll be just like before?

Fox: Just like before, but no deck, no exterior deck like they have.

Fisher: I've got a question. I thought that they served alcohol on the deck before.

Barfield: Additional deck.

Fisher: You talking about the additional deck or the current deck that they had before the expansion?

Fox: Well, that's very interesting that you bring up that point, and I'm going to add this in for clarification sake and prosperity I suppose. This is a 1982 copy of the site plan that was given to us tonight by Ms. Rezanka. It shows that in 1982 under the name of the Pelican Point Restaurant, and I'm sure this was a little hard to obtain, because they probably had to go back and dig through some boxes. There is a proposed seating and dining addition that is for 64 seats. It appears in 1982 we approved that. That's all I have to show what we had approved for outside seating at this location. That's fine, that's under cover. This 1982 site plan is very close to what it was recently. It's not exact, but there were 60, so at this, in 1982 there were 64 seats outside.

Fisher: And so we approved . . . I thought I saw another picture on the old deck with drinks being served.

Fox: There's no doubt there has been alcohol served outside the restaurant.

Fisher: And that was before, that was before Mr. Underhill built it, right?

Fox: That is before he came in and expanded, the 1,900 square feet.

Fisher: My goal is not to kill the man, but to allow him to get back to where he was before the expansion, and if that, if this action doesn't allow him to do that, then I would prefer that he has the ability to still serve alcohol on the deck. I mean everybody wants to have a drink on the water.

Fox: He was, I mean he can. It's the deck area that he has expanded. We just want him to go back to what he had before the re-zoning to RU-2-15, and that, and so in denying this application, that's what he would have.

Fisher: And that would be the same as, what was the other place called?

Fox: Lobster Shanty.

Fisher: Lobster Shanty. Okay, so he's back to where he was when he bought the property. Okay, good.

Barfield: Okay, so my motion is to deny the CUP for alcohol beverages in conjunction with the restaurant with the P&Z recommendation.

Infantini: Second.

Barfield: That's my motion.

Smith: Okay, we have a motion by Commissioner Barfield to deny the Conditional Use Permit, second by Commissioner Infantini. All those in favor say Aye.

Fisher, Barfield, Infantini, Smith: Aye.

Smith: All those opposed?

Anderson: Nay.

Smith: The vote is 4:1, Commissioner Anderson voting nay.

Bentley: Do you wish to direct the County Attorney's Office to bring back findings of fact on all three items?

Barfield: Yes.

Bentley: Thank you, on December 20th?

Barfield: Okay.

Anderson: Yeah, I have to correct that. I don't have to worry about voting for that. I'm done.

Barfield: Okay, so.

Fox: Commissioner Barfield, we did not take action on the request of the applicant to continue the public determination. In light of the recent motions, is there a desire to act on that?

Smith: Excuse me.

Rezanka: I want to withdraw the public interest determination request at this time.

Barfield: Okay, thank you.

STATE OF FLORIDA
COUNTY OF BREVARD

This is to certify that the above is a true and correct transcript of Item IV.A.2. from the Board of County Commissioners of Brevard County, Florida, regular meeting of November 3, 2016, to the best of my knowledge.

Witness my hand and the seal of said Board of County Commissioners this 2nd day of December, 2016.



BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

By: Tammy Rowe
Tammy Rowe, Deputy Clerk

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**Brevard County
Board of County Commissioners**

November 3, 2016

IV.A.2

BANANA RIVERFRONT, LLC

(16PZ – 00055)

Small Scale Amendment (16S.05), Rezoning with Binding
Development Plan, and CUP for on-site consumption
of alcoholic beverages

PRESENTED BY:

Kimberly Bonder Rezanka, Esq.
CANTWELL & GOLDMAN, P.A.
96 Willard Street, Ste. 302
Cocoa, FL 32922

CR

Dana Blickley, CFA
Property Appraiser
Brevard County, FL



**Property
 Details**

This website is scheduled for retirement and receives only limited updates.
PLEASE VISIT OUR NEW WEBSITE FOR THE MOST CURRENT PROPERTY INFORMATION.

General Parcel Information

Parcel ID:	25-37-26-28-00000.0-0001.00	Millage Code:	2600	Exemption:		Use Code:	2100
Site Address:	2200 S ORLANDO AVE , COCOA BEACH 32931					Tax ID:	2520254

Site Address is assigned by Brevard County Address Assignment for E-911 purposes and may not reflect the postal community name.

Owner Information

Owner Name:	BANANA RIVERFRONT LLC
Second Name:	
Mailing Address:	490 N HARBOR CITY BLVD
City, State, Zipcode:	MELBOURNE, FL 32935-6858

Abbreviated Description

Plat Book/Page:	Sub Name:	ALL SUBD
0010/0061	COURT SUBD	

Value Summary

Roll Year:	2013	2014	2015
Market Value Total: ¹	\$918,050	\$972,800	\$972,800
Agricultural Market Value:	\$0	\$0	\$0
Assessed Value Non-School:	\$918,050	\$972,800	\$972,800
Assessed Value School:	\$918,050	\$972,800	\$972,800
Homestead Exemption: ²	\$0	\$0	\$0
Additional Homestead: ²	\$0	\$0	\$0
Other Exemptions: ²	\$0	\$0	\$0
Taxable Value Non-School: ³	\$918,050	\$972,800	\$972,800
Taxable Value School: ³	\$918,050	\$972,800	\$972,800

Land Information

Acres:	2.44
Site Code:	102

1: Market value is established for ad valorem purposes in accordance with s.193.011(1) and (8), Florida Statutes. This value does not represent anticipated selling price for the property.

2: Exemptions are applicable for the year shown and may or may not be applicable if an owner change has occurred.

3: The Additional Homestead exemption does not apply when calculating taxable value for school districts pursuant to Amendment 1.

Sale Information

Official Records Book/Page	Sale Date	Sale Amount	Deed Type	Vacant/Improved
7480/0302	10/16/2015	\$2,300,000	WD	I
2330/0221	10/1/1981	\$664,000	WD	I
1806/0220	10/1/1977	\$350,000		I
1465/0580	8/1/1974	\$1,600,000		I

Sale screening and sale screening source codes are for assessment purposes only and have no bearing on potential marketability of the property.

Building Information

PDC #	Use Code	Year Built	Story Height	Frame Code	Exterior Code	Interior Code	Roof Type	Roof Material	Floors Code	Ceiling Code
1	2100	1952	12	03, 04	03, 09	03	09	04	03	03
3	1700	1955	10	03	05	03	09	03	03	03

Building Area Information

499

11/3/2016

BCPAO - Property Details

PDC #	Base Area	Garage Area	Open Porches	Car Port	Screened Porches	Utility Rooms	Enclosed Porch	Basements	Attics	Bonus Rooms	RV Carport	RV Garage	Total Base Area
1	10,286	0	506	0	0	44	0	0	0	0	0	0	10,286
3	1,144	0	130	0	0	0	0	0	0	0	0	0	1,144

Extra Feature Information

Extra Feature Description	Units
FENCE	57
PAVING	28,235
SEAWALLS	240
PAVING	399
WOOD DECK	2,280
DOCK	1,240
DOCK ROOF	379
DOCK	379
LIGHT POLES	3
GAZEBO	194
OUTBUILDING	420
FENCE	64
OUTBUILDING	484
COVERED PATIO	170
WALL	3,000

Data Last Updated: Thursday, November 19, 2015- Printed On: Thursday, November 03, 2016.

500

comment on all Outer Continental Shelf (OCS) and off shore drilling leases proposed for waters adjacent to the county. This policy does not discourage OCS sand and gravel mining conducted as part of Brevard County's shore protection and restoration strategy.

Water-Dependent Land Uses

Objective 5

By 2010, Brevard County shall develop and adopt guidelines which direct the location and management of water-dependent, water-related and water-enhanced facilities, giving highest priority to water-dependent uses along the Indian River Lagoon System in order to provide for the increased demand for these facilities.

Policy 5.15

During rezoning and other development order approval reviews, Brevard County should give immediate shoreline use priorities (in descending order of priority) to:

Criteria:

- A. Water-dependent uses such as fish, shellfish and wildlife production, recreation, water dependent industry and utilities, marinas and navigation;
- B. Water-related uses such as certain utilities, commerce and industrial uses;
- C. Water-enhanced uses such as some recreation uses;
- D. Non-water dependent or related activities such as residential; and
- E. Of lowest priority are those uses which are non-water dependent, non-water enhanced and which result in an irretrievable commitment of coastal resources.

*

Coastal Access

Objective 11

Provide adequate public access to the beach, estuarine and river shorelines consistent with public needs and the shoreline's natural resource requirements.

163.3178(2)(g)) Further, coastal counties must amend the future land use element of their comprehensive plan to create "regulatory incentives and criteria" that encourage the preservation of recreational and commercial working waterfronts. More specifically, the purpose is to protect and promote Brevard County as a recreational and commercial working waterfront community; protect and improve public access to the shorelines and waters of Brevard County; preserve and protect the cultural heritage and physical character of the area as a working waterfront community; and enhance the aesthetic character of the area by directing development in a manner that maintains the working waterfront identity of the County.

Objective 13

To establish a comprehensive program to promote and protect public access to the marine and coastal waters of the County, and to ensure the economic viability of recreational and commercial working waterfronts.

Policy 13.1

The County shall identify, inventory and characterize all existing publicly-accessible recreational and commercial working waterfronts in Brevard County on a parcel-by-parcel basis, including but not limited to parking facilities for beach and shoreline access, coastal roads, facilities providing scenic overlooks, public lodging establishments, docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water and shall continue to maintain this inventory.

Policy 13.2

The County shall identify, inventory and characterize all private facilities that would otherwise qualify as recreational or commercial working waterfronts because they provide access to the marine and coastal waters of the County and shall continue to maintain this inventory.

Policy 13.3

By 2013, the County shall identify, inventory and characterize all parcels suitable for future development as publicly-accessible recreational and commercial working waterfronts in Brevard County. Suitable for future development includes vacant parcels and developed parcels not currently being used for water dependent activities which, because of their proximity, biophysical nature or other factors, could become recreational and commercial working waterfronts through a change in land use.

Policy 13.11

By 2013, the County shall develop incentives for encouraging private waterfront property owners to make their properties available for public use for purposes that are consistent with the uses permitted in recreational and commercial working waterfronts.

**Port Canaveral
Objective 12**

Brevard County will continue to identify provisions of the Port Master Plan which it considers inconsistent with the Coastal Management Element of the County Comprehensive Plan and will continue to offer to coordinate with Port Canaveral in resolving any inconsistencies. Brevard County shall continue to request copies of proposed plan amendments submitted for transmittal to the Department of Community Affairs and shall continue to review and comment on such amendments to the Port Master Plan consistent with the County's procedure for reviewing plans of other jurisdictions and Chapter 163.3177 (6) (g).

Policy 12.1

Brevard County shall continue to cooperate with the Port Canaveral Authority and the Florida Inland Navigation District in the identification of suitable spoil disposal sites within unincorporated Brevard County.



**Recreational and Commercial Working
Waterfronts**

In 2005 and 2006, the Legislature recognized that there is an important state interest in facilitating boating and other recreational access to the state's navigable waters. This access is vital to recreational users and the marine industry in the state, to maintaining or enhancing the \$57 billion economic impact of tourism and the \$14 billion economic impact of boating in the state annually, and to ensuring continued access to all residents and visitors to the navigable waters of the state. The Legislature recognizes that there is an important state interest in maintaining viable water-dependent support facilities, such as public lodging establishments, boat hauling and repairing and commercial fishing facilities, and in maintaining the availability of public access to the navigable waters of the state. The Legislature further recognizes that the waterways of the state are important for engaging in commerce and the transportation of goods and people upon such waterways and that such commerce and transportation is not feasible unless there is access to and from the navigable waters of the state through recreational and commercial working waterfronts.

The purpose of the Brevard County Working Waterfront Objective is to implement the relevant and mandated provisions of Chapter 2005-157, and Chapter 2006-220 of the Laws of Florida. The Legislature requires that local governments, through their comprehensive plans, address development activities that diminish access to the state's navigable waters. The recreation and open space element of all local comprehensive plans now must include waterways. (F.S. § 163.3177(6)(e)) In addition, all coastal counties and municipalities in Florida now have a legislatively-mandated duty to include, in the coastal management element of their Comprehensive Plan, strategies that will be used to preserve recreational and working waterfronts. (F. S. §

45 Spaces

June 20, 2016

Hamilton Diggs, Pastor and President
Living Bread Christian Fellowship Church, Inc.
1801 S. Orlando Avenue
Cocoa Beach, FL 32931

Dear Pastor Diggs:

This will confirm the parking agreement between Banana Riverfront, LLC, the owner of the Squid Lips Restaurant at 2200 S. Orlando Drive, Cocoa Beach, FL 32931 ("Restaurant") and Living Bread Christian Fellowship Church, Inc., located at 1801 and 1811 S. Orlando Drive, Cocoa Beach, FL 32931 ("Church"), on the following terms.

In consideration of the sum of \$10.00 and the mutual premises contained herein:

1. The employees and customers of the Restaurant may utilize the Church's parking lot for offsite parking on an as-needed, non-exclusive basis during times when the Church is not holding services or some other Church-sponsored event.
2. The Restaurant agrees to indemnify and hold the Church harmless from and against any and all liability for damage to any person or property that may arise from or as a result of this agreement. The Restaurant shall further cause the Church to be named as a loss co-payee on the Restaurant's casualty and liability insurance policies.
3. In the event that the Church intends to hold an event on its premises other than the usual services or weekly fellowship meetings and requires the use of the parking lot for the Church's own purposes, the parking lot shall be closed and unavailable to the customers or employees of the Restaurant. The Church will provide reasonable advance notice to the Restaurant of any such intended event so that the Restaurant may plan accordingly.
4. This agreement may be canceled by either party upon 30 days' written notice.

If you are in agreement, please sign and date this letter where noted below and return it to me.

Thank you,
H. J. Underhill, Managing Member

AGREED:
Living Bread Christian Fellowship Church, Inc.
By: Hamilton Diggs
Hamilton Diggs, President
Date: 6/27/2016

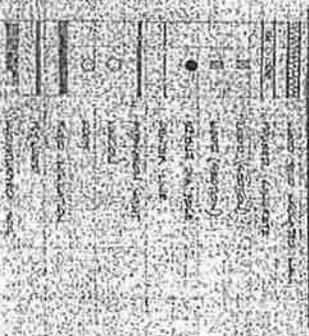
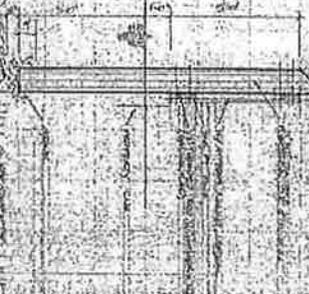
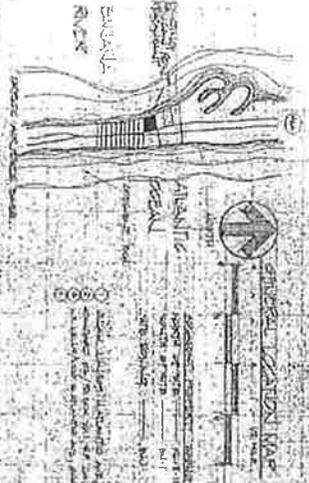
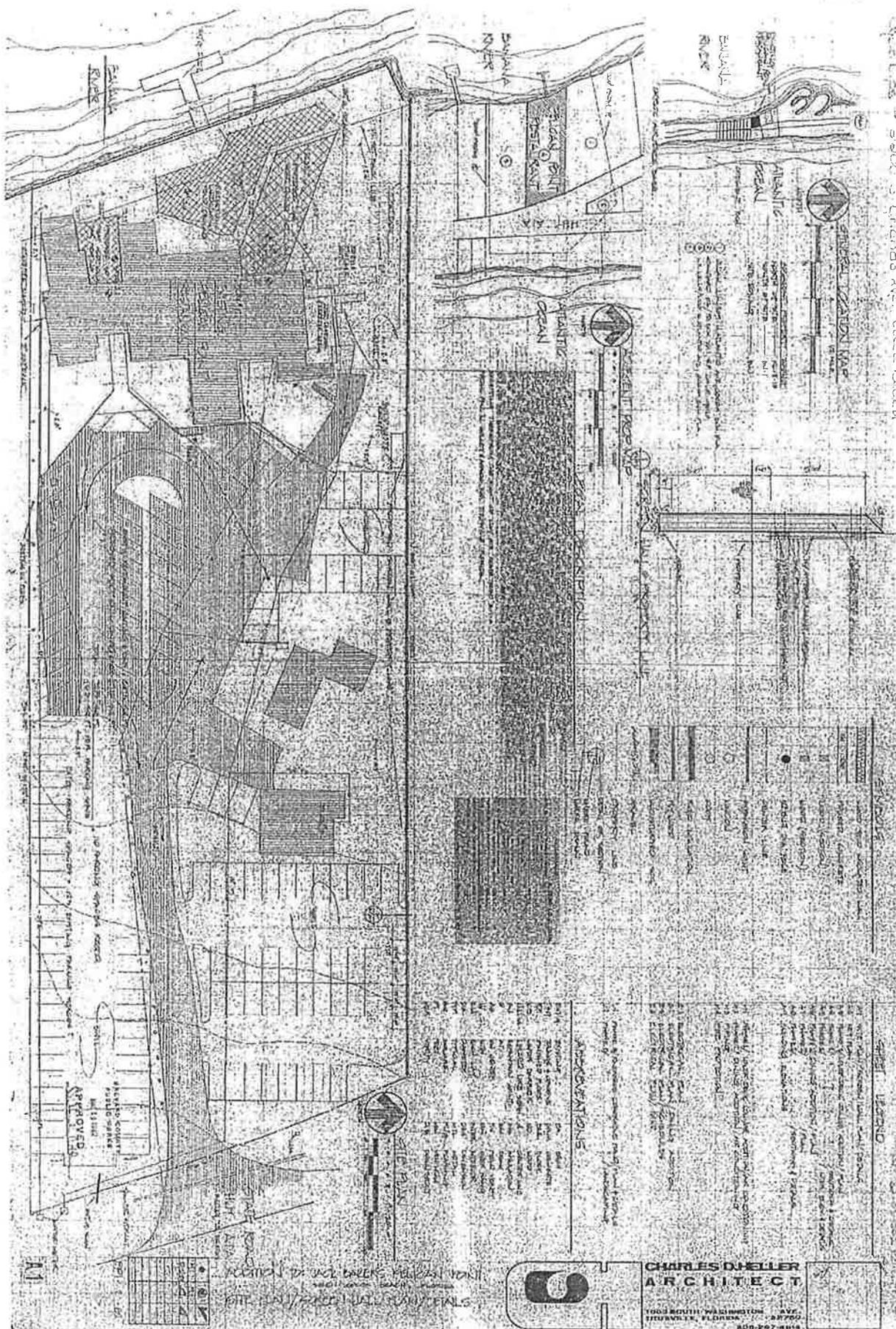
AGREED:
Banana Riverfront, LLC
By: H. J. Underhill III
H. J. Underhill III, Managing Member
Date: 06/20/16



(CORPORATE SEAL)

(SEAL)

EXHIBIT "E"
Conditional Use Application



CHARLES O'NEILL ARCHITECT
 1003 SOUTH WASHINGTON AVE.
 MIAMI, FLORIDA 33136
 305-367-8888

APPROVALS
 [Signature area with lines for approval]

NOTES
 1. ALL WORK TO BE ACCORDING TO THE LATEST EDITIONS OF THE B.C.A.C. CODES.
 2. ALL MATERIALS TO BE APPROVED BY THE ARCHITECT.
 3. ALL WORK TO BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
 4. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LOCAL ORDINANCES.
 5. ALL WORK TO BE DONE IN ACCORDANCE WITH THE NATIONAL BUILDING CODES.

APPROVED
 [Signature area with lines for approval]

12 spaces

August 5, 2016

Sohel M Ahsan
2100 S. Orlando Avenue
Cocoa Beach, FL 32931

Dear Mr. Ahsan:

This will confirm the parking agreement between Banana Riverfront, LLC, the owner of the Squid Lips Restaurant at 2200 S. Orlando Drive, Cocoa Beach, FL 32931 ("Restaurant") and Sohel M Ahsan., located at 2100 S. Orlando Drive, Cocoa Beach, FL 32931 ("Convenience Store"), on the following terms.

In consideration of the sum of \$10.00 and the mutual premises contained herein:

1. The Restaurant may utilize the Convenience Store's parking lot for offsite valet parking for no more than twelve (12) vehicles at any one time for employees and customers of the Restaurant on an as-needed, non-exclusive basis.
2. The Restaurant agrees to indemnify and hold the Convenience Store harmless from and against any and all liability for damage to any person or property that may arise from or as a result of this agreement. The Restaurant shall further cause the Convenience Store to be named as a loss co-payee on the Restaurant's casualty and liability insurance policies.
3. At no time will Restaurant park cars in a manner which may impede reasonable access to Convenience Store's fuel dispensers or to the Convenience Store during Convenience Store's hours of operation.
4. This agreement may be canceled by either party upon 30 days' written notice.

If you are in agreement, please sign and date this letter where noted below and return it to me.

Thank you,
H. J. Underhill, Managing Member

AGREED:
Sohel M Ahsan

By: [Signature]
Sohel M Ahsan

Date: 8/8/16

AGREED:
Banana Riverfront, LLC

By: [Signature]
H. J. Underhill III, Managing Member

Date: 8-5-16



The 2016 Florida Statutes

Title XXXII REGULATION OF PROFESSIONS AND OCCUPATIONS

Chapter 489 CONTRACTING

[View Entire Chapter](#)

489.103 Exemptions.—This part does not apply to:

(1) Contractors in work on bridges, roads, streets, highways, or railroads, and services incidental thereto. The board, in agreement with the Department of Transportation, shall, by rule, define "services incidental thereto" for the purposes of this subsection only.

(2) Any employee of a certificateholder or registrant who is acting within the scope of the license held by that certificateholder or registrant and with the knowledge and permission of the licenseholder. However:

(a) If the employer is not a certificateholder or registrant in that type of contracting, and the employee performs any of the following, the employee is not exempt:

1. Holds himself or herself or his or her employer out to be licensed or qualified by a licensee;
2. Leads the consumer to believe that the employee has an ownership or management interest in the company;

or

3. Performs any of the acts which constitute contracting.

(b) The legislative intent of this subsection is to place equal responsibility on the unlicensed business and its employees for the protection of the consumers in contracting transactions.

(8) Any construction, alteration, improvement, or repair carried on within the limits of any site the title to which is in the United States or with respect to which federal law supersedes this part.

* (9) Any work or operation of a casual, minor, or inconsequential nature in which the aggregate contract price for labor, materials, and all other items is less than \$1,000, but this exemption does not apply:

(a) If the construction, repair, remodeling, or improvement is a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than \$1,000 for the purpose of evading this part or otherwise.

(b) To a person who advertises that he or she is a contractor or otherwise represents that he or she is qualified to engage in contracting.

(10)(a) Any construction or operation incidental to the construction or repair of irrigation and drainage ditches;

(b) Regularly constituted irrigation districts or reclamation districts; or

(c) Clearing or other work on the land in rural districts for fire prevention purposes or otherwise except when performed by a licensee.

(11) A registered architect or engineer acting within the scope of his or her practice or any person exempted by the law regulating architects and engineers, including persons doing design work as specified in s. 481.229(1)(b); provided, however, that an architect or engineer shall not act as a contractor unless properly licensed under this chapter.

(12) Any person who only furnishes materials or supplies without fabricating them into, or consuming them in the performance of, the work of the contractor.

(13) Any person who is licensed pursuant to chapter 527 when such person is performing the work authorized by such license.

(14) Any person who sells, services, or installs heating or air-conditioning units which have a capacity no greater than 3 tons or 36,000 Btu, which have no ducts, and which have a factory-installed electrical cord and plug.

(15) The installation and maintenance of water conditioning units for domestic, commercial, or industrial purposes by operators of water conditioning services. No municipality or county may adopt an ordinance, rule, or regulation which requires such an operator to become licensed, certified, or registered as a plumber or which otherwise prevents the installation and maintenance of such water conditioning units by an operator.

11/3/2016
 IV (A2) Banana Riverfront, LLC



2016 Roll Details — Real Estate Account At 2200 S ORLANDO AVE, COCOA BEACH
 Real Estate Account #2520254

Pay All: \$44,657.04

2016	2015	2014	2013	...	2005
\$20995.78 due	\$23661.26 due	PAID	PAID		PAID

Apply for the 2017 Installment Payment Plan

Get Bills by Email Pay this bill: \$20,995.78

Owner: Banana Riverfront LLC
 480 N Harbor City Blvd
 Melbourne, FL 32935-6868
 Situs: 2200 S ORLANDO AVE
 COCOA BEACH

Account number: 2520254
 Alternate Key: 2520254
 Millage code: 2600
 Millage rate: 14.6740
 Assessed value: 1,017,420
 School assessed value: 1,017,420

Parcel details Latest bill Full bill history

OBJECTION
III.A.2

Alward, Elizabeth M

From: Deborah Wright <thegoodnesswithin@gmail.com>
Sent: Wednesday, November 2, 2016 5:23 PM
To: Barfield, Jim
Subject: Squid Lips rezoning

To whom it may concern:

I am absolutely against the rezoning of Squid Lips to commercial. I have lived in Snug Harbor for over 10 years. I moved to the south end of town for the quiet life it has provided since the neighborhood was built.

I believe their intention is to have bands, 7 days a week, 365 days a year with multiple bands daily. If successful, our end of town will look like Beach Shack/Coconuts. If successful, neighboring businesses will have the precedence to also apply for rezoning their properties for commercial zoning. This has the potential not only to disrupt our peace, but, effect our property values.

It has effected wildlife near the restaurant and that could also reach our neighborhood. I do not believe any amount of sound barrier could reduce the noise to an acceptable level. This is open space as it was meant to be. However, I am concerned that a noise barrier for one set of neighbors could in fact be a megaphone for another.

I don't believe that the peace of the majority should be disrupted for the benefit of one person.

I do not agree to any proposed agreement between the neighborhood and Squid Lips as it will be difficult to enforce. They have also not exhibited their ability to follow the rules.

I am aware that this is not the first issue between other Squip Lips locations and their neighbors.

I believe I have the right to know the area around my family and its zoning and expect it not to change. The owner of Squid Lips knew the zoning when he purchased the property. I am sure he also knew not to build a deck without a proper permit.. and that Brevard county respects and cares for its wildlife and property owners. Any bending of the rules--sets a wide door to be opened for lack of respect for the laws that have been placed for the majority. The precedence should be in favor of the laws, zoning and codes...not the breakers of such.

Respectfully,

Deborah A. Wright
1539 Bayshore Drive
321-693-7116

FYI
IV. A. 2.

**Commissioner Barfield met with Attorney Kim Rezanka and Buzz Underhill
Re: Squid Lips on the following dates:**

August 1st, 2016

September 27th, 2016

October 3rd, 2016

October 31st, 2016



DISTRICT 2 COMMISSION OFFICE MEETING SIGN-IN SHEET

Meeting date: Oct 24, 2016

Subject: Squid Lanes

Name:	Organization:	Phone Number:	E-mail:
<i>Suzanne Suplee</i>	MAGNOLIA BAY E-3010	321-613-3905	SUZJAM-92@AOL.COM
JAMIE SUPLEE	MAG BAY E-300	321-613-3905	SAME ↑
KAREN THURSTON	MAG BAY C-309	321-613-0128	KAR624@AOL.COM
WEATHER LOVEH	MAG BAY E-102	321-613-3251	dnhcom4@earthlink.net
David Couch	"	"	"
Jean Friedman	E301	321-779 4614	JeanFriedman2@gmail.com
<i>E. Pina</i>	E304		
TONY COOK	MAGNOLIA BAY	724-2366	tonycook797@yahoo.com
SAM FRIEDMAN	"	321 779 4614	JOAN FRIEDMAN 2 AT GMAIL - COM
Randy Berner	Magnolia Bay	321-613-5856	slapshot10@att.net
Eloise Yelle	Magnolia Bay	321-783-3992	eyelle@aol.com
A Courtney Yelle	Magnolia Bay	321-783-3992	acyelle@aol.com
Sheryl Berner	Magnolia Bay	321-613-5856	shermes28@gmail.com
ROBERT SULLIVAN	NEIGHBOR ACROSS THE STREET	321 432 6165	RMSSULLIVAN@YAHOO.COM
JAMES SZYMANSKI	ci L 307	516 531 4133	JESZYMANSKI@AOL

Alward, Elizabeth M

From: Barfield, Jim
Sent: Thursday, November 3, 2016 10:10 AM
To: Joe.French
Cc: Alward, Elizabeth M
Subject: Re: Squid Lips Rezoning

Mr. French,
Thank you for your email! I fully agree with your assessment of the impacts and will continue protect your interests.

Sent from my iPhone

On Nov 3, 2016, at 9:45 AM, Joe.French <Joe.French@expressbadging.com> wrote:

Mr. Barfield,

As the Past President of the Snug Harbour Home Owners association, and a resident and good neighbor of unincorporated south end Cocoa Beach since 1999, I have recently received many concerns over the owner of Squid Lips new agenda. He is requesting to rezone his property allowing for a live music venue all days of the week. I speak for about 220 homes in our unincorporated Cocoa Beach neighborhood that having a live concert-like music venue in our nature preserve-like backyard setting is just wrong on many levels. Common sense must prevail here and their request must be denied.

Not to mention the overflow parking issues caused when they do book a good band, and then add on top of that, it being held on a beautiful beachside day at sunset. Who would not want to enjoy that? I can tell you who would; everyone in Orlando will be in our backyard! Most of us love music. I'd like to enjoy a sunset meal and beverage listening to a good band just a couple blocks from my house. However, not at the expense of the noise pollution that bounces off our intra-coastal waterway directly into our neighborhood and other surrounding residents that are closer. We are a beachside small community, on a very thin strip of land as well as being a barrier island. We do not want our way of life disturbed, as it is currently protected by the current zoning codes and licenses. On occasion, live music is played at local South End beachside venues for weddings and small parties, and you can hear it over a half a mile away, and still being able to make out the songs. Wind and water magnify it on certain days. This is tolerable, but rarely occurs. I do not want this level of noise pollution going on 3-, 4, 5 or more days a week; during all hours of the day and evening. I hope I have painted a good picture here.

If you are even leaning towards changing the zoning for Squid Lips, I personally invite you all to come to my house on a Friday, Saturday or Sunday evening when we are out on our back patios enjoying why we moved here. You'll understand the dilemma Squid Lips is up against. Please understand we spent our hard earned money to live out here, paying more taxes than the same square footage on the mainland, all in an effort so we are not bothered by this level of business in-your-face life style. Their restaurant is in our backyard, and they are promoting it to those outside our backyard. We can boycott them, but with no effect due to the fact that most of their customers do not LIVE HERE. However, you can help us keep our way of life preserved, so I ask you all not to allow the rezoning period. No exceptions!

Mr. Barfield, I also ask that you personally respond to this correspondence so we know it has been received and will be appropriately addressed in today's meeting which I cannot attend. I am serious about the invite to my house, actually we can do a tour of houses to get a better picture; regardless of

which way your team is leaning. Our fate is in your hands, and we trust you'll do what is best for our community. Have a great day and thank you for your service representing our community.

Regards,

Joe and Laina French
1649 Bay Shore Drive
Cocoa Beach, FL 32931
Mobile: 321-258-9868 Email: joe.french@expressbadging.com