

October 8, 2019

Brevard County Board of County Commissioners

*2725 Judge Fran Jamieson Way
Viera, FL 32940*



Minutes

Tuesday, October 8, 2019

5:00 PM

Regular

Commission Chambers

A. CALL TO ORDER 5:00 PM

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

B. MOMENT OF SILENCE

Chair Isnardi called for a moment of silence.

C. PLEDGE OF ALLEGIANCE

Commissioner Lober led the assembly in the Pledge of Allegiance.

D. MINUTES FOR APPROVAL: September 5, 2019, Zoning Meeting

The Board approved the September 5, 2019 Zoning Meeting Minutes.

Result: Approved

Mover: Rita Pritchett

Second: Bryan Lober

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

E.1. Resolution Recognizing Eagle Scout Cameron Ruch, District 1

Commissioner Pritchett read aloud, and the Board adopted Resolution No. 19-190, recognizing and congratulating Cameron Ruch for achieving the rank of Eagle Scout.

Chair Isnardi asked what instrument he played in the band.

Cameron Ruch replied the French horn.

Chair Isnardi advised she knows how much time and effort is put into that.

Mr. Ruch expressed his appreciation to the Board for the Resolution, to his troop, and to his family.

Commissioner Lober inquired what the blue Saturn patch is for.

Mr. Ruch replied the Astronomy Merit Badge.

Result: Adopted

Mover: Rita Pritchett

Second: Bryan Lober

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

E.2. Resolution acknowledging White Cane Day, District 4

Commissioner Smith read aloud, and the Board adopted Resolution No. 19-191, proclaiming October 15, 2019, as White Cane Safety Day in Brevard.

Camille Tate stated they can never express how important the white canes are to them; it is their most ambiguous symbol of freedom and independence; and it is a reminder to all of those

who operate motor vehicles that there are also pedestrians who are walking on the sidewalks and crossing the streets. She went on to say they hope that each year they have these White Cane Proclamations and their annual events that it brings home to all who do drive the streets of Brevard County that they follow the rules of the roads and so should others; their lack of eyesight does not excuse a drivers lack of insight; many times they have heard that blind people should not walk the streets; and when people start saying that, the next thing they are going to say is blind people should not work, blind people should live in institutions and have people take care of them, so they celebrate this every single year. She added in fact, October is Meet the Blind Month with the National Federation of the Blind and their chapter, the Melbourne Space Coast Chapter, and they are having a car and bike show at the Fountains of Melbourne at Stack Boulevard on Saturday the 12th from 9:00 to 2:00; they are going to have classic cars, muscle cars, and motorcycles; they will have barbecue and cupcakes as well so people can eat and drink; it is free for the public; it is \$15 if a person wants to display their car; and she expressed her appreciation to the Board for the Resolution.

Chair Isnardi expressed her appreciation to Ms. Tate for all she does for the National Federation of the Blind.

Commissioner Smith asked what her education is and where she works.

Ms. Tate responded she is currently unemployed; she lost her vision to diabetic retinopathy in 2005 at which time she was working at Space Coast Credit Union; now, at the age of 43, she is back in college; and she is hoping to obtain her Bachelor's Degree in the spring of 2021. She went on to say she hopes to go then to law school; there is not actually a school currently in Brevard County, so she would have to end up leaving the County at that point; she has actual college experience as she attended Florida State University and Cornell University in New York when she was in high school for a special summer program; and she has also attended Barry University.

Joseph Naulty stated he just had a birthday and he is 86 years young; he began losing his sight with retinitis pigmentosa and Usher syndrome with the hearing aid; he is a deafblind; the car show they are going to have Saturday is a big deal, he is very happy about it; and he is an antique car nut. He dreamed this up some years ago; it is an opportunity for the blind community to mix with the sighted and people who have passion for classics and antique automobiles; he has the little red express; and if people come to their show, he or she will see the little red express.

Arlene Naulty expressed her appreciation to the Board for its acceptance; she stated it has been five interesting years; they appreciate all the Board has done; her husband is the founder; and because of their advancing years, they are trying to step back and get more people involved. She went on by adding they anticipate they will be able to provide even more for people who are blind to live the life he or she want to live.

Chair Isnardi thanked Mr. and Mrs. Naulty, and she wished Mr. Naulty a Happy Birthday.

Result: Adopted

Mover: Curt Smith

Second: Bryan Lober

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

E.3. Resolution acknowledging Real Men Wear Pink, District 4

Commissioner Smith read aloud, and the Board adopted Resolution No. 19-192, recognizing October 9, 2019, as Real Men Wear Pink Day.

Michelle Oesterle, Real Men Wear Pink of Brevard County, stated Real Men Wear Pink is a campaign that involves all of these wonderful guys, and some who were unable to be here today; she noted she is grateful to them and to the Board for helping raise money for the American Cancer Society; and she advised this year is it going to be held on the 10th because the 9th is a Jewish holiday.

Tom Neidert, District Chief for Brevard County, stated these guys are firefighters and lieutenants from Station 47 in Viera by the Zoo; they have about 600 people in their department; and about 70 percent of them have bought shirts in solidarity of this campaign.

Michelle introduced Michael Ayers, with Melbourne Chamber of Commerce, Peter Mannino, with Merrill Lynch, Brett Peoples, with Raymond James, Todd Pokrywa, with The Viera Company, Joe Mayer, with Lockheed Martin, Kenny Johnson, with City of Palm Bay, John Frazier, Attorney with Widerman Malek PL, and Mark Mullen, Superintendent of Schools is involved, and he involves all of the students.

Commissioner Smith recognized Donny Dedonatis with USSSA.

Chair Isnardi pointed out and Commissioner Smith.

Commissioner Smith asked all of the County staff to come down and to get everybody involved in the picture.

Result: Adopted

Mover: Curt Smith

Second: Bryan Lober

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

E.4. Resolution acknowledging World Polio Day (Rotary International), District 2

Commissioner Lober advised there are people present from the different Rotary Clubs; he does not want people to think he is too attached to the resolution; but it is going to be presented at an event later. He read aloud, and the Board adopted Resolution No. 19-193, proclaiming October 24, 2019, as World Polio Day (Rotary International).

Dick Charpentier, Cocoa Beach Rotary Club, introduced Peggy Russell from the Merritt Island Rotary Club; he stated the two Merritt Island and two Cocoa Beach Rotary Clubs are sponsoring this; he expressed his appreciation to the Board for the Resolution as this been declared World Polio Day by the United Nations (UN); and he stated in fact, there are only two countries in the world in which polio is a reality. He pointed out the Rotary Club is responsible for beginning this effort, and has raised a lot of money; when he grew up polio was a problem; and they have members of their group who had polio. He noted that is only one thing the club does. He stated he appreciates what the Board does.

Commissioner Smith stated he remembers polio when he was a child; and they had to take a sugar cube as immunization.

Mr. Charpentier stated his mother made him wear a mustard patch to prevent polio when he was a child.

Commissioner Smith pointed out that is a wives tale.

Mr. Charpentier agreed with Commissioner Smith, but he stated he did wear it.

Result: Adopted

Mover: Bryan Lober

Second: Curt Smith

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

F.1. Project Reimbursement Contract Template with Private Grantees for Save Our Indian River Lagoon Project Cost Share Funding for Wastewater Treatment Improvement Projects

The Board approved and authorized the Chair to execute the Private Grantee Reimbursement Contract with DHY, LLC and CJY, LLC; authorized the Chair to execute any future reimbursement contracts of \$100,000 or more; and authorized the County Manager, or his designee, to execute future reimbursement contracts less than \$100,000 with private grantees.

Result: Approved

Mover: Bryan Lober

Second: Rita Pritchett

F.2. Indian River Lagoon National Estuary Program (IRL Council) Grant Agreement for Brevard County's Micco Sewer Line Extension - Contract # IRL2019-09 (District 3)

The Board approved and authorized the Chair to execute Contract IRL2019-09 with IRL Council for the Micco Sewer Line Extension; authorized the County Manager to execute future contract amendments subject to the approval of the County Attorney's Office and Risk Management; and approved any associated budget change requests.

Result: Approved

Mover: Bryan Lober

Second: Rita Pritchett

F.3. Final Plat and Contract Approval, Re: Adelaide Tracts C, C1 & Z Replat

The Board granted final plat approval for Adelaide Tracts C, C1, and Z; and approved and authorized the Chair to sign final plat and Contract with The Viera Company, subject to minor engineering changes, as applicable, and developer responsible for obtaining all other jurisdictional permits.

Result: Approved

Mover: Bryan Lober

Second: Rita Pritchett

F.4. Acceptance, Re: Binding Development Plan - Clark and Patricia Simms (18PZ00130) (District 2)

The Board executed Binding Development Plan Agreement with Clark and Patricia Sims for property located on the west side of North Tropical Trail, north of Lucas Road, Merritt Island.

Result: Approved
Mover: Bryan Lober
Secunder: Rita Pritchett

F.5. Approval Re: Public Utility Easement from D.R. Horton, Inc., in connection with the Adamson Creek Phase One - B Subdivision - District 1

The Board accepted the Public Utility Easement from D.R. Horton, Inc. for the Adamson Creek Phase One-B Subdivision.

Result: Approved
Mover: Bryan Lober
Secunder: Rita Pritchett

F.6. Approval Re: County Deed, Resolution and Release of two Temporary Construction Easements for the Florida Department of Transportation (FDOT) State Road 500 (US 192) Hollywood Boulevard / Evans Road Intersection Widening Project - Districts 3 and 5.

The Board adopted Resolution No. 19-194; and approved and authorized the Chair to execute County Deed and two Releases of Temporary Construction Easement for the SR 500 Hollywood Boulevard/Evans Road Intersection Widening Project.

Result: Approved
Mover: Bryan Lober
Secunder: Rita Pritchett

F.7. Approval, Re: Execution of the FY2019-20 Agreement with the State of Florida Department of Health in Brevard County and the associated Health Department Fee Resolution

The Board adopted Resolution No. 19-195, renewing certain fees and charges for all Brevard County Health Departments and Health and Environmental Services, as authorized by the State of Florida Administrative Code or Policy; approved and authorized the Chair to execute the annual Agreement with the State of Florida, Department of Health for operation of the Brevard County Health Department for FY 19-20; authorized the County Manager or his designee to execute the Agreement, and any future agreements, amendments, or modification contingent upon approval of Risk Management and the County Attorney; and authorized the County Manager to execute all necessary Budget Change Requests.

Result: Approved
Mover: Bryan Lober
Secunder: Rita Pritchett

F.8. Appointment, Re: Community Action Board

The Board acknowledged appointment of Juanita V. Barton to the Community Action Board, with term expiring October 8, 2023.

Result: Approved
Mover: Bryan Lober
Secunder: Rita Pritchett

F.9. Approval of the FY 2019-2020 Sports & Events Grant Program Guidelines and funding of FY 2019-2020 Sports & Events grant applications.

The Board approved the Tourist Development Council FY 2019-2020 Sports and Events Grant Program Guidelines; approved funding of the following FY 2019-2020 Sports Grant applications as well as make the necessary legislative findings: Space Coast titans Fastpitch Softball "Witch's Brew Spell-A-Thon", Tropical Sports and Wellness Solution 2019 Chiro Games, Men's Senior Baseball League Holiday Classic, Smooth Running 5th Annual Cocoa Beach Half Marathon, and Smooth Running Cape Canaveral Lighthouse Foundation 1/2 Marathon; authorized the Tourism Development Office Director to negotiate and sign all necessary grant agreements and related documents contingent upon approval of the County Attorney and Risk Management; and authorized the County Manager to execute all necessary budget change requests.

Result: Approved
Mover: Bryan Lober
Secunder: Rita Pritchett

F.10. Amended Procurement Policy BCC-94 to update originating department, remove language in paragraph (II.A.1.b.4.b) a local preference factor, and update signature blocks.

The Board approved and authorized the Chair to execute Policy BCC-94, External Auditor Selection Procedures.

Result: Approved
Mover: Bryan Lober
Secunder: Rita Pritchett

F.11. Request for Executive Session: In Re: National Prescription Opiate Litigation Case No.1:17-MD-2804..Title

The Board approved the cost of advertising for, and the scheduling of, a private attorney-client meeting to be held on October 22, 2019, at noon or at the end of the Board meeting, whichever comes first, for the purpose of discussing litigation strategy and settlement negotiations in the National Prescription Opiate Litigation Case No. 1:17-MD-2804.

Result: Approved
Mover: Bryan Lober
Secunder: Rita Pritchett

F.12. District appointments and re-appointments

The Board appointed/reappointed Willie Taylor to the North Brevard Commission on Parks and Recreation, with term expiring December 31, 2021; Theresa Barger to the Parks and Recreation South Service Sector Advisory Board, with term expiring October 7, 2021; Laura Petruska to the Suntree/Viera Public Library Advisory Board, with term expiring December 31, 2019; and Puneet Kapur to the Tourist Development Council, with term expiring November 30, 2023.

Result: Approved
Mover: Bryan Lober
Secunder: Rita Pritchett

F.14. Space Coast TPO First Amendment to the Intergovernmental Coordination and Review (ICAR) Agreement.

The Board approved and authorized the Chair to execute the First Amendment to Space Coast TPO Intergovernmental Coordination and Review (ICAR) Agreement, the Amendment adjoins Central Florida Expressway Authority (CFX) as a participant in the TPO transportation planning process.

Result: Approved

Mover: Bryan Lober

Second: Rita Pritchett

F.13. Approve At-Large appointment(s) to the Melbourne Tillman Water Control District

Frank Abbate, County Manager, stated under Florida Statute for the Melbourne-Tillman, the Board has three at-large appointments and they are three-year appointments; the Board did receive four names from various Commissioners with his or her nominees; and he asked the Board to move forward with whoever he or she feels should be on the advisory board for a three-year term.

Commissioner Pritchett stated she would probably go with the recommendation of District 2, District 3, and District 5. She corrected herself by saying District 3, District 4, and District 5.

Commissioner Lober stated the individual he put on there has been on there for a while; he spoke with one other individual who served on that board to ascertain how the board works, who contributes, and who does not contribute; and he does think there should be someone one there with institutional knowledge. He went on to say some of the people on there have some tenure there and some do not; this is not a tremendously important issue to him; and he will defer to the folks who this is a bit more local for in terms of what he or she thinks. He noted he thought the individual he put forth could help.

Chair Isnardi stated her reappointment has been her appointment one other time; she thinks he served under Commissioner Infantini; but she appointed him when she was elected; and he asked for a reappointment, so that is why she went with him. She advised she heard he is a valuable member of the board, she would like him to stay on, and his name is Drew Powshok.

Commissioner Smith stated he would like to give some input regarding his recommendation; Mr. Hale has been on this board for 17 years; and he came up with John Woltering; he has a tremendous background in Marine Science, grew up on the Cincinnati River; and is very in tune with water issues.

Commissioner Lober pointed out if Commissioner Smith vetted him, he is happy; he looked and saw there was one more opening; all things equal, he thinks there should be fresh blood in there; but at the appointment there was one spot; and he reiterated he has no problem with that.

The Board appointed/reappointed Eric Blount to the Melbourne-Tillman Water Control District, with term expiring October 8, 2022; Drew Powshok to the Melbourne-Tillman Water Control District, with term expiring October 7, 2022; and John (Jay) Woltering to the Melbourne-Tillman Water Control District, with term expiring October 8, 2022.

Result: Approved
Mover: Bryan Lober
Second: Curt Smith

J.1. Banana Riverfront , LLC. Extension, District 3

Chair Isnardi asked the Board if it would mind moving Item J.1. to after the Consent Agenda; she stated Kim Rezanka has another appointment after this; she does have another Item on the Agenda; but she thought it would be appropriate to do this now.

Commissioner Tobia stated this came to his attention, and after speaking to the County Attorney and counsel for Banana River, LLC, this simply would formally extend the deadline for completion of improvements for a short period of time, and issue a temporary conditional occupancy permit; this hopefully will provide some finality and clarity; and he would like to make a motion so everyone knows where they are on this.

Motion by Commissioner Tobia to direct staff to restrict any additional extensions to six months pending no declared State or Federal emergencies; during this period the County will provide temporary conditional occupancy permit and extension for completion of the improvements outlined under the settlement agreement; all improvements shall be completed to staff's satisfaction per the applicable requirements; and staff should call a performance bond without further action from the Board should these actions not be met with the time period specified.

Commissioner Pritchett seconded the motion for discussion.

Commissioner Lober advised this is kind of an odd one for him, because he saw it was put on by District 3, and he thought to himself when he first saw it that it was in his District; he did speak with staff with regards to this to try to get a little background in so far as to why it was on the Agenda to their knowledge really, and what if any issues had taken place; and rather than him essentially regurgitating it again, he would like to ask staff some questions.

Tad Calkins, Planning and Development Director, stated he understands the question as what is waiting to be done.

Commissioner Lober asked what makes this atypical, and could he give a little background on prior extensions, any agreements, or stuff like that.

Mr. Calkins replied the agreement was because Squid Lips was a non-conforming structure; they came in to do an expansion and the settlement agreement was part of that expansion; the Board agreed to certain terms in the agreement to allow them to move forward, build a deck, and expand that non-conforming use; in that agreement there were provisions that would allow them to obtain a temporary Certificate of Occupancy (CO); the temporary CO could be utilized while they did the improvement, such as improve parking and stormwater; and those have been extended beyond, there was also a provision for a performance bond to be provided, which has been done and ran its years course. He went on to add they have utilized all of the extensions provided in the agreement; now they are in an area that in the agreement it does not specifically say they can have another extension; but it does say it can be extended for certain reasons or for good cause. He noted if he understands Commissioner Tobia's Item he wants to ensure that there is just one more extension to get it completed.

Commissioner Lober inquired if it is the fourth or fifth extension.

Mr. Calkins advised this would be the fifth extension of the temporary CO.

Commissioner Lober asked in terms of extensions, how much if any administrative burden is involved in processing an additional extension request; and if it is five minutes or five hours.

Mr. Calkins responded a 30-minute to an hour long process, because they look at it through the Building Department; but there is coordination with other Departments, so he cannot speak to say Public Works' part of that of how much involvement or what it requires for them, because there is a concern they have all of the life/safety aspects of the site and the building covered before a temporary CO is issued; sometimes what staff gets is someone will want to move in and occupy the building and perhaps they do not have the landscaping complete so they will ask for a temporary CO knowing they will have the landscaping scheduled to be done; and that is not actually the case here, but that is where they typically see it used.

Commissioner Lober inquired if it is substantially in compliance, and if there is a lot left to be accomplished; and he asked how long should they need from the point they are at right now.

Mr. Calkins stated his understanding is they have a considerable amount of site work to do; there are stormwater ponds that need to be constructed or reconstructed; there is some parking that needs to be looked at; he believes the building side of things has been completed; and so it is just the matter of the site work.

Chair Isnardi stated she thinks this started before Commissioner Lober was elected; it was quite a lengthy discussion.

Commissioner Pritchett stated she knows Commissioner Lober has a lot of time and is looking for something to do, but he may want to go back and revisit some of this; she will definitely defer to Commissioner Lober with what he wants to do with this; but she understands Commissioner Tobia's motion; there has been a lot of leniency here with a lot of problems; she thinks something needs to change; and she hopes it comes together soon, but there has been a lot of grace and mercy put towards this project.

Commissioner Lober stated he knows it is not staff's favorite thing to start jumping in on policy decisions, but they really have a good idea in terms of how inconvenient, if at all, some of these things would be in terms of the impact it would have on their workers; and he advised he may at the end of this ask staff if they have a strong inclination one way or the other or alternatively and see where things go.

Kim Rezanka, Law Firm of Cantwell and Goldman, representing Banana Riverfront, LLC, stated she was taking down notes; she was unaware this was on the Agenda; she had talked to Commissioner Tobia; and she was surprised it was on tonight's Agenda. She went on to say she understands the reason for the motion, but unfortunately this as written actually amends the settlement agreement without the consent of her client, Banana Riverfront, LLC; the agreement, which the Board does not have in front of it, and she does not have in front of her, she is doing it from memory, allows for extensions of the temporary CO and times for performance and good cause shown; in the past they have submitted emails saying why they need additional time; and staff has granted those. She added the agreement said they could get two temporary CO's and they could get extensions for good cause shown; there have been issues, there have been discrepancies between what the engineer believes and what staff believes and what the surveyor believes, so they are working through it; it has taken longer than any of them had anticipated, but it is a very low, difficult site; she came before the Board one time because of impact fee credits, he had to remove a building; there is a retention pond issue that is outstanding still; the engineer says all of the retention is complied with; and staff says they need to look at it. She stated there is also a parking issue because it is a little ambiguous because what would happen if they do A or B, there were no C options; and they

are now working through option C without it being in the settlement agreement. She pointed out the agreement does provide for extension of all deadlines for good cause shown; the request for a temporary CO was submitted before the extension of the last one; the request included the good cause reasons; and as she stated it was the parking issue, retention issue, and she has not seen the comments that came out on Friday. She noted also the problem with only allowing one more extension, as she said she believes it amends the settlement agreement without consent, they do not know what might happen; this does say something about disasters, natural disasters, but she is not sure what that means; she inquired is it like Irma or Matthew, or is it like what happened in the Bahamas; and it is unclear with that. She stated her client cannot control what staff does, and staff has been responsive, she is not saying they have not, but there are times, especially with this site, because it is such an old site; they are working with an old site and trying to retrofit, and remove 100 percent of the nutrients going into the Indian River on the new improvements; and so it is novel, unique, and took some design issues. She went on to say they have requested an extension for six months, they have provided another performance bond for another year through October 2020, so the request to the Board is an extension of six months and of the temporary CO, and of time for performance; if that does not happen and they do not ask for a request, to pull the bond, she does not have any problems pulling the bond at that point if they cannot get it done in six months they will come back before the Board; she will have the engineer with her this time; and he will tell the Board what the good cause is. She reiterated she would ask for the six-month extension, just not limited to one because that changes the settlement agreement.

Commissioner Tobia stated his intent was certainly not to step on Commissioner Lober's toes; this certainly began before him, and in all honesty it began before him, but he does have a couple of questions for counsel. He went on by saying this all began in 2017 when Ms. Rezanka's client constructed a platform on the river without a permit; and he asked if that is correct.

Ms. Rezanka replied affirmatively.

Commissioner Tobia stated without this permit her client was illegally polluting the river with such items as stormwater; and he asked if that is correct.

Ms. Rezanka responded that is not correct, he had an underwater storm system engineered, it just was not permitted, so he was not polluting.

Commissioner Tobia asked staff without a permit whether any type of design work was done, the fact that the County did not see it, did not sign off on it, would that be liable for any type of penalty that they are aware of.

Mr. Calkins responded there was no permit issued for the construction it was an after-the-fact permit.

Commissioner Tobia inquired if that individual who built the structure, whether they had any type of material prior would they be liable for any type of penalty for potentially polluting the Lagoon.

Mr. Calkins asked if Commissioner Tobia could restate that question.

Commissioner Tobia asked if staff had checked off on the work that Squid Lips had done absent of that permit, was Mr. Calkins aware of the engineering that went into that.

Mr. Calkins advised not at the time of construction.

Commissioner Tobia stated the Board then cured this illegal behavior with conditions such as stormwater treatment and noise restriction; and he asked if that is correct.

Ms. Rezanka replied that is correct.

Commissioner Tobia questioned if it is accurate to say at this time the business also became delinquent in their taxes.

Ms. Rezanka responded she has no idea. She noted she does not see the relevance of it either.

Commissioner Tobia pointed out the relevance goes to what Commissioner Pritchett said that quite often the Board blames staff, and staff has bent over.

Ms. Rezanka stated she was not blaming staff, she was just saying they were working with them.

Commissioner Tobia stated the default is it is staff's fault; if Commissioner Lober saw the amount of paperwork, there is more paperwork that has gone into this than would have went into the illegal structure that was built on the back of this building; and he asked if Ms. Rezanka's client voluntarily entered into a settlement agreement with the County, and if that is fair.

Ms. Rezanka replied affirmatively.

Commissioner Tobia stated but they failed to meet the deadlines they voluntarily agreed to once, twice, three, four times, this will be the fifth.

Ms. Rezanka stated no, the temporary CO's were provided for in the agreement; the time for performance included those temporary CO issuances; and they have not failed to meet the time for performance that many times.

Commissioner Tobia advised this is the fourth if not fifth that the Board is extending it; and he thinks that has been stated twice.

Ms. Rezanka stated there are two different extensions; there is a temporary CO extension; there is a time for performance; and they are two different things based on two different site plans.

Commissioner Tobia explained he is aware, he is also aware her client was in arrears in taxes on this one.

Ms. Rezanka advised a lot of people are in arrears in taxes that does not have anything to do with the agreement, it was not part of the agreement.

Commissioner Tobia stated he understands; the point goes back to Commissioner Pritchett that the Board has bent over backwards for Ms. Rezanka's client; he talked to staff about this; he wants to pull his motion, and ask what alternatives the Board has based on the settlement agreement to pull the performance bond on this.

Eden Bentley, County Attorney, replied yes.

Commissioner Tobia asked to pull his motion, and seeing that Ms. Rezanka is not happy with six months because it could go another time, he would like to ask that the Board direct staff to pull the performance bond based on the settlement agreement.

Commissioner Lober stated he can tell Commissioner Tobia he does not know that he is in a position where he is at all ready to pull a performance bond tonight; down-the-road it may be something he is happy with or at least content with; but given what was put on the Agenda for tonight that is a little extreme at this juncture, not to say that it will not be even in two weeks if things change. He went on by saying he said before with respect to Commissioner Tobia's initial motion that if he was ambivalent, and he still is, that he would be inclined to refer to staff; and he does not know that he wants to put Mr. Calkins in that position, so he will put the County Manager in that position instead to see if he has a strong impression in terms of whether there is one route that can be taken versus another that will make things a little bit easier for staff, and it will hopefully reduce the burden they have in the future.

Frank Abbate, County Manager, stated if the Board, and he understands it would rather not do it, he does believe staff was trying to work with Banana Riverfront and that is why they looked to get an additional performance bond which would allow the additional six months to occur; the other option would have been at the end of the last one that was approved if it was not done to the County's satisfaction, and they believed they had not met the terms, that by pulling that performance bond is what was just requested, the performance bond, the company, would have the ability to remedy the situation and that is the action they were seeking to do; it did not happen because they were looking at this additional six months opportunity as one more chance; Commissioner Tobia's action was really to say that from the Board's perspective if it did this that it has given them as many, so when this last opportunity occurs to not come back because they will have the right to do what they could have done if in fact, the Board at this time did not work with them to get the performance bond extended for this additional six-month period; and he thinks that is a fair assessment.

Commissioner Lober stated he is sorry to try to pin Mr. Abbate down on something if Mr. Abbate was sitting in this seat and he had a strong impression; and he asked because this is something that has been going on far longer than he has been around the block.

Mr. Abbate stated internally speaking with staff and the County Attorney's Office, they all thought that this was a fair and appropriate way to move forward if the Board saw that as something it wants to do.

Commissioner Lober inquired restricted of the extensions.

Mr. Abbate advised as this being the last extension and that staff at the end of this period would be able to, if the Board approves this motion, to call the performance bond if in fact they did not have the substantial compliance at the end of this additional six-month period.

Commissioner Lober questioned if there is anything magical about six months; and could the Board make it eight months or 10 months.

Mr. Abbate replied he thinks the performance agreement was actually up to October, so they have up to that period of time.

Mr. Calkins stated the temporary CO's are for a six-month period so that is why the six months is in there.

Chair Isnardi stated because this was a very complex issue, and obviously an emotional one, she would suggest Commissioner Lober sit with Ms. Rezanka and maybe the client since this is his District, talk to them and find out if he is comfortable actually giving them that extension, and sit with staff, because obviously he feels a little blindsided because he does not know what happened in the beginning; it was pretty arduous; and it was a tough experience for all of the Board Members. She went on to say she does not want Commissioner Lober to be tempted without having all of the information; Ms. Rezanka can provide some of that now; but she thinks because this is a complex issue, maybe if she sat with Commissioner Lober; as far as building that deck without a permit, she thinks he just replaced a deck that was there; and she asked if that was how it started.

Ms. Rezanka advised it was infill; they took out trees and they put out infill decking; yes, he did it without a permit; and they tried the re-zoning so he could get a permit because it was non-conforming. She added instead of filing lawsuits, they did the Bert Harris Mediation Act, got a resolution, and had been working on it. She noted she cannot excuse what has not happened, she does not know enough about what has not happened or what has happened; she just firmly believes if the Board limits it to one more six-month extension, it is changing the settlement agreement that clearly provides for unlimited extensions with good cause shown; perhaps the Board does not think they have shown good cause; and she thinks it has the right to not grant extensions.

Chair Isnardi asked if her client is making forward movement.

Ms. Rezanka replied he is, but there again, and she thinks staff has been wonderful on this, please to not get her wrong, everyone who has been involved, the issue is it is a hard site to put retention in because it is so low; he had to remove a building to put retention in; where he was going to put retention there were utilities, so they made the other retention pond larger; staff wants to make sure, rightfully so, that it is holding the water it is supposed to and reducing the nutrients it is supposed to; and she just learned of that Friday and Monday. She went on to say she knows about the parking issue because it had millings, then they could put shell, but they did not like the shell; part of it is a dirt parking lot; staff is trying to make sure it is retaining as much water as it should and not dumping into other retention; and that is as much as she knows about what has to be done. She explained it should be easy, but she is not an engineer either, and it is difficult with that low site, that is part of the problem they did not think they could put the retention on they were looking off site to put retention, so it has been a very long process; and yes, staff has worked with them.

Chair Isnardi explained many of the Board Members have formed opinions and then maybe those opinions would be changed on new information given; she guesses staff at some point spoke with Commissioner Tobia; she does not know who initiated what; but obviously Commissioner Tobia wants to move forward on this, but she thinks it would only be fair and right for Commissioner Lober to sit down with Ms. Rezanka's client at the very least, because she, at this point, has not talked to her client today, she is sure.

Ms. Rezanka pointed out not about this wording; Commissioner Tobia had sent her similar wording that she had spoken to her client about; and he said he was concerned because of the design constraints and the back and forth with staff and their engineer that there may be some circumstances that it cannot be done in six months. She added she does not know what they would be.

Chair Isnardi mentioned it may be that this Board ultimately is to impose the six months but she thinks in order for Commissioner Lober to make an educated decision he probably needs all of the information.

Ms. Rezanka noted she had every intention to call Commissioner Lober before this got back to the Agenda but she did not realize it was going to be on tonight's Agenda.

Commissioner Tobia inquired who Ms. Rezanka's engineer was.

Ms. Rezanka replied Bruce Moia.

Commissioner Tobia stated there may be part of the issue there. He went on to say he thought the six months extension for the fifth time was very fair; he spoke with staff about it; he thinks staff was a little uncomfortable for allowing for pulling of the performance bond; and that is why he has spoken about this because he had met with staff when he first got elected about this issue. He went on to add he had mentioned it as something that was coming back and he had it on a board to ask where it was in this whole process; and that is the genesis of he putting it on the Agenda. He stated he does not know what the middle ground is; he certainly thought the extension of six months was a very generous middle ground; but clearly Ms. Rezanka's client did not, so he thought this was binary, but clearly six months is not enough. He noted six months plus a declaration of a national or State wide emergency is not enough; he is guessing that nothing is going to be enough when it comes to this, so he will certainly wait to hear what suggestions other folks have on this one; but he thinks it is unfair to put staff in a position to have to make the determination on something the Board probably should be doing.

Commissioner Pritchett stated she does not know how much relevance the beginning history of this might have to the situation the Board is in now; but right after she got elected is when the Board had to deal with the Squid Lips situation; there was a lot of information; and from what she remembers, it is not so much he expanded a deck, he built an outside restaurant that was not ADA compliant, there was no parking, the neighbors were having a fit, and the stormwater was not there. She added she talked to him and he kind of said he thought he could get permission; actually it was she and Commissioner Barfield who voted against him getting it to move forward; but it won with a 3:2 vote on it. She advised she struggled with it because it was not ADA compliant; that is all in the past with this; but she can almost not believe the County is still dealing with this two years later, so this seems to be the personality of this situation. She asked when looking at this are there any safety issues right now, and if the Board is violating its own principals by extending this; she stated it is the Board's duty to make sure things just do not stay prolonged if it is causing harm; and that would be her question. She noted she thinks it may be worthy for Commissioner Lober to go back to that meeting; and she thinks it was about a two-hour time period to just listen to all of the information the Board was given at that time.

Commissioner Lober stated what he would like to do between now and as soon as possible is to set up a meeting with Ms. Rezanka, her client, Bruce Moia, and he will volunteer Attorney Bentley and himself to figure out what is reasonable; at first blush this evening, saying that one six-month extension may be in breach or non-compliance with the agreement that was struck out earlier, if that is the case the only alternative is to pull a performance bond, it is one of those things he thinks there needs to be a little flexibility in terms of how this is dealt with; he is not necessarily opposed to a six-month limitation; he is not necessarily opposed to a 12-month limitation; but he would like to sit down with Ms. Rezanka and try to figure out something where really the burden, in terms of getting some additional extension is something beyond merely intractability; and impossibility would be what he would be looking at, at that point, not that it was horribly inconvenient and they would have to pay twice as much, there has to be an end in sight, whether it is six months or a year, if it is really imperative to tie it into a CO, that can be looked at. He added if not, maybe there is some middle ground between six months and a year, he does not know; he asked, if Ms. Rezanka did not mind, if she would reach out and kind of coordinate this, that would be helpful; he stated maybe she could reach out to his office to try

to set up a time; and if Mr. Abbate and Mr. Calkins want to attend he has no problem with that, but those folks he identified earlier are really crucial for it. He added maybe this can be set for a Zoning meeting in a three-week timeframe. He advised he would like to move it to October 22nd; he thinks at least they would know where they were and where the flexibility lies if there is any; and maybe it could be put on the Consent Agenda and put to rest without any heartache.

Commissioner Tobia withdrew his motion. He added he would ask for Ms. Rezanka's sake that barring a natural disaster, State-wide declaration of a hurricane, or some other ridiculous situation that it be on the October 22nd Agenda be added to the motion.

Commissioner Lober stated he is fine with the 22nd, but in terms of his limitation for performance, he reiterated he thinks there are two different standards, impracticability and impossibility, so if a hard and fast deadline is going to be set, maybe the Board can explicitly have them waive impracticability so that the only exception would be a physical impossibility for them to perform; but that can be sorted out.

Chair Isnardi stated Commissioner Lober may meet with them and not be satisfied at all and he may be in a place where he wants to pull the performance bond, but he should be a part of that at least in part of what he wants in his District only because he needs all of the information so he can make an educated decision. She added she hopes there is a reason for this being so long other than time back and forth because she would like to see it done as well because it was so awful for this Board to have to deal with.

The Board tabled consideration of the Banana Riverfront, LLC Extension to the October 22, 2019, Board meeting.

Result: Tabled

Mover: Bryan Lober

Second: Rita Pritchett

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

G. PUBLIC COMMENTS

Charles Tovey stated he almost wore his pink shirt today, and he will wear it next time if he is able. He went on to say he wrote on his card about the derelict boats that they cannot get rid of; just take their boat like him, take their boat inadvertently, give them a fine, make them pay a fine, put a lien against their house, put a big hole in it, tell them to buy a trailer and put the boat on the trailer, and then sanction them because it is eight foot away from the full pool; he almost lost his finger, but thanks, and the lien against his house, so all of these derelict vessels, or any boat because they do not like it or it is an eyesore, and just take it and do what the County did to him; and everybody agrees that was okay and legal. He stated that is one of the liens, the other one is for the arson of the house. He noted he will go on and finish his budget statement that was from last week, and he thought he was going to get five minutes; but the other half of Sheriff Ivey's organization, as well as the other County and State agencies, they get benefits and there are other people that fund them; like the Economic Development Corporation, they should list all of their payments and things; and he asked how many new cruisers were totaled. He asked if this is being done on purpose; he stated a person never knows; no disregard to the Fire Department or anyone else of service to the nation, country, and the people, but they caught a fireman lighting fires out in California; and he has found things that are deliberate problems with the Lagoon. He pointed out they were manmade and he could not have done it; and that is why he did not tell all his information about his route, because he does something and they come and destroy it. He inquired if the low crime rate is a reflection of the great

President and the great Governor providing jobs so people do not have to go out and commit these crimes, and is it not a reflection on the people who go out and teach these people what is right and what is wrong and giving them alternatives to crime; and he has a whole bunch of things. He advised he came to his property and found his dead dog, his two dead turtles, and five dead cats all at the same time; he had only been gone a couple of hours, as well as the burnt house, the cars, and all of the other stuff; and nobody has any consideration.

Commissioner Lober stated he did want to touch on the derelict vessel issue; he can say that both Natural Resources Management and Brevard County Sheriff's Office (BCSO) has been prioritizing really well, in particular Matt Culver of Natural Resources Management Department and Byron Keck in the east precinct, which is in the other side of the building where his office is located; the problem with simply going and snatching boats as enticing as that may be is there is a due process requirement and it is partially dependent in terms of how it actually works through on whether it is BCSO or State authorities that originally find that boat and tag it; one of the issues they have had is if they are unable to locate the individual there is a process they have to go to in order to get to a point where they are even essentially able to do something; and they have on at least one occasion that he is familiar with, an individual who is incarcerated who is entitled to a hearing in Florida, but he is not in a position where they are going to take him for a hearing or he is even able to be transported, so there are a lot of issues that come into play with respect to that. He went on to add if there are local individuals often times it is easier, but it is simply not the case that everyone is able to be served properly and that they are either willing to waive or they go and participate in the hearing in a timely fashion, so there is really a lot that goes into it; he thinks BCSO and Natural Resources Management really is doing everything that they possibly can to try to get them taken out; and he thinks the fact that the Board has been seeing less and less of them over a span of time is indicative of the fact that they are doing a good job. He noted anytime there is inclement weather that is substantial, whether it is a hurricane or otherwise, that number will probably creep up again, but he thinks if the overall trend is the County is having fewer and fewer there is something right that is being done.

Gary Helton stated he appreciates the Board putting up the funds repaving the two-mile stretch of South Tropical Trail, it was certainly in need of it, lots of pot holes, and it was in pretty bad shape; as the Board was probably aware, the speed bumps were eradicated in order to patch the road; and after the paving was complete, they were not installed. He went on by saying that after several calls from residents on South Tropical Trail they got the answer that they were waiting for a 30-day cure period for the asphalt in order to reinstall the speed bumps; a couple of months went by and they started asking what was going on and it turned out maybe they are not going to be reinstalled or they will be installed at some point, but it is a new design and the County cannot reinstall the old design for the bumps they used to have, it has to be a hump under some new ITE guidelines; and one day in the mail they received a response form from the traffic engineer seeing if the residents vote for or not for humps. He stated it created a massive amount of confusion in the neighborhood; one, they had a bump that was short and tall, and now speed humps are being proposed; they were not provided a definition of what a hump is or how it differs from a bump, so the few handful of residents who were opposed reinstalling anything, which is what this vote asked for, they were thinking back to the old bumps which were five or six inches tall that motorcycles and low profile sports vehicles had to almost stop to go over; and when they go over, on the other side they accelerate and a lot of that is in the middle of the night or late in the evening and it is pretty disruptive to the residents and to the flow of traffic. He added instead of 25 miles per hour, they slow down, go across, take off, speed up before the next one, and slow down again; fortunately, the traffic engineer had adopted the new IT guidelines for humps; Cynthia Morris passed that on to him; and he distributed it to the neighbors trying to explain. He advised they do not know what they are voting for, but the vote was supposedly going to be the final decision as to what goes on;

through the process they did get hold of the Policy on bumps and humps and Administrative Order; they realized the whole process of removing them really has not been followed as far as they understand the Policy; it has been five months; it is a dangerous road; and something needs to be done sooner rather than later.

Commissioner Lober stated he appreciates Mr. Helton coming today; in terms of a particular location, often times there are some extenuating circumstances, but his understanding in the way that it works in practice is if they have folks in an area where there were not existing humps, and that may change the dynamic a little bit, the reason they sent that out is to determine that they have a high percentage of folks that want them; and it would be 85 percent that wants them. He went on to say because there is a certain percentage that do not, there is no reason for the County to spend that resources to put something in that is simply not wanted by residents that live nearby; he knows that another consideration that might have come into play, and he is speculating with respect to this, is over a period of time the trip count changes; he does not know if it is a situation where it was being approached at different levels of trips simply because there is that much more traffic which would bode against putting in speed humps, for instance Wickham Road; and he knows there have been requests to put them on very high traffic roads like Wickham. He added he appreciates people's concern, but the problem is when there is over a certain number of vehicles traveling over that road per unit time, it just does not fit with the policies and guidelines the County has. He noted with respect to his office, when he got in they had a number of speed hump applications that simply had not had action taken on them; they did at the onset, based on the fact that some had been sitting there for a very long time, try to get to those and determine whether to deny or approve them; he has never approved one that has not hit that threshold where staff at least says it is in the gray area where it would qualify for being approved; and he has had folks upset about this. He stated if there is a substantial percentage of folks that do not want them, he cannot justify putting them in; he is not going to tell Mr. Helton he is wrong standing here saying that folks may not have understood the difference between a hump and a bump versus a speed table, versus any of the other terminology that may exist here or elsewhere in the country; but the County only has its standardized way of polling folks in determining if they want it. He went on by saying if he wants to discuss this further, rather than doing it with a five person Commission, he is happy to sit down with him to discuss this a little further; it would be helpful if Corrina Gumm, Interim Public Works Director, would sit down and go over exactly what happened, because the part that kind of is out of his usual wheelhouse is that they were previously there and they were taken out to repave or repair the road; that mixes things up; there may be some peculiarities with respect to that, that he has not had a chance to come across up to this point; he asked Mr. Helton to reach out to his office and set up a meeting for them to sit down; and it may be done in Viera so it will be easier for Ms. Gumm.

Chair Isnardi asked which section Mr. Helton is talking about.

Mr. Helton replied a two-mile stretch from Mathers Bridge to two miles north of the bridge.

Chair Isnardi advised she thinks it is Commissioner Smith's District.

Commissioner Lober stated he stands corrected.

Commissioner Smith stated he did not document all of what Mr. Helton said, but four of five things he said were incorrect; the speed humps were removed; the original speed humps were put in, in the 1990s; County Policy has changed since then; and he follows County Policy. He added staff sent the mail out, did an extensive study on it; and they did three trips not just one.

Chair Isnardi asked if the traffic count was too high.

Commissioner Smith responded no, it is just that people were given the opportunity to vote; he insisted that they take a rubber stamp and use red ink on the envelope saying 'speed hump information enclosed' or something of that nature so people could not say he or she never saw it; the process has played out; and now it is up to him to make a decision.

Chair Isnardi stated she knows how controversial speed humps are.

Commissioner Smith advised all of Mr. Helton's comments have been duly noted; he has spent hours on the telephone with the residents; and the decision has not been made yet.

Chair Isnardi stated her District had Pennsylvania; new speed humps had to be put on when Pennsylvania was repaved; and it was sort of a nightmare in her office because two or three residents did not want the County to put the humps back in.

Commissioner Smith pointed out it is not anywhere near 85 percent.

Chair Isnardi noted the Board has the option to waive that.

Commissioner Smith stated that is why he said that decision has not been made yet; and he expressed his appreciation to Mr. Helton for being here.

Mr. Helton asked if he could comment.

Chair Isnardi asked if Commissioner Smith asked Mr. Helton a question.

Commissioner Smith replied he did not ask a question.

Chair Isnardi advised Mr. Helton he could not speak, and if there is going to be a discussion to wait until after the meeting.

Mr. Helton stated Commissioner Smith said what he said was not true; and for the record, there have been a number of requests for a meeting and a return telephone call from Commissioner Smith.

H.1. Public Hearing, Re: Code Revision to Chapter 62, Article VI, Division 1, Providing for Cargo Shipping Containers as Residential Storage Sheds. (First Reading)

Chair Isnardi called for a public hearing to consider Code revision to Chapter 62, Article VI, Division 1, Section 62-1102, providing for cargo shipping containers as residential storage sheds.

Rebecca Regain, Assistant Planning and Development Director, stated Item H.1. is the first public hearing for a Code revision to Chapter 62, Article VI, Division 1, definition of rules of construction regarding cargo shipping containers; the Board approved legislative intent on April 9, 2019, and directed staff to prepare a Code revision to allow shipping containers for use as residential storage buildings with restrictions and conditions; and to require building permits as required for any other accessory. She went on to say staff was provided with a list of possible restrictions and conditions which were presented to the BCA and LPA; and the final LPA recommendations are listed in the Board's Agenda.

Commissioner Pritchett stated she believes her office was kind of the ones that brought this forward, District 1 has an overwhelming amount of citizens in the Canaveral Groves area, some in Scottsmoor and some in Mims, that are using all these; she needed to find a way to be able

to allow them; she brought this up at the last meeting and she was actually a little bit more hard headed about she wanted to have them and how to have them arranged; after the other Board Members put in a lot of input, and she actually listened to Commissioner Tobia about this, he said it should be more like a shed and not so many criteria put on it; and she really came to the conclusion that she thought that was a good idea, so some of them she likes and some she does not. She noted she does not want to restrict lot sizes, because if the Board did it like a shed, she went through and studied it and she liked it, they do not have a maximum lot size, but it is all within good parameters; it cannot be bigger than half of the house, and she thinks that is a good idea, so if someone has half an acre she does not know why they could not have one of these on it, it is the same as a large shed. She added she really likes going with the shed requirements, so on these she does not want to do A, if the rest of the Board would not mind to get rid of that; B, she thinks the County has to do a building permit, it is just responsible to have the right footers and those things; C might be a good idea but the Board can come back to it, because some people are starting to build houses with these and they are getting quite creative; but that might need to be under another category other than using storage sheds. She stated F needs to go; as far as the wording on the container, she thinks that might be okay except since these are going into neighborhoods some people ask that maybe the Board would request that they paint them so there is no freight name or something on them; she thinks no stacking, she thinks that has to be; G, she thinks is important, same as a shed that it is located behind a home; but other than that she thinks staff has got some good framework going. She expressed her appreciation to Tad Calkins, Planning and Development Director, and his staff for putting in the long hours on this. She advised if the rest of the Board is okay with it, she is real comfortable using the same parameters as a shed, but throwing in no stacking; and it may be appropriate that if they have railroad stuff on it, maybe they paint it so that it looks more like a neighborhood shed or something.

Commissioner Lober stated he looked at this realizing the LPA had already looked at it and made their recommendations; it is not to say that he always agrees with everything the advisory committees and boards do, but this is one of them where he thinks that all else equal, the Board should give them a little bit of deference as the Board reasonably can; he really likes the idea of restricting it to one acre; but that said he does not want to be inflexible; if it is really important to District 1, he would ask maybe to consider three-quarters of an acre as a compromise on that; and he really does not want to go below one acre, but he will go to three-quarters of an acre if that is acceptable. He stated as far as Item G, which deals with location of the Conex container, it says it should be located behind the principal building, he agrees with that, but he does not know if perhaps there is a way to better specify that; he knows in the ordinance it is worded a little better; but he just wants to be sure that at least from a departmental standpoint that there is not anything the Board can do to improve on how clearly that is worded. He went on by saying otherwise he thinks it is a good proposal overall; it is also going to be important whatever the Board does with this, is that it authorizes staff to deal with any ending or frozen Code complaints to exercise appropriate discretion, keeping in mind what the Board ends up doing, if anything this evening with respect to this proposed ordinance; and he is flexible, he just wants to hear what other folks have to say.

Commissioner Tobia stated Commissioner Pritchett is in favor of F and G; and he asked what she said on B, if it is thumbs up or thumbs down.

Commissioner Pritchett replied she thinks the Board needs to permit it just like the sheds are permitted.

Commissioner Tobia inquired if the County does or does not require a building permit for a shed right now.

Mr. Calkins replied building permits are required.

Commissioner Tobia asked if the County allows stacking of sheds.

Mr. Calkins responded no, sheds are not necessarily stacked.

Commissioner Tobia questioned if they are not allowed to be stacked.

Mr. Calkins replied no, they are not allowed to be stacked; but staff does not necessarily regulate that.

Commissioner Tobia asked if the County has height requirements.

Mr. Calkins responded affirmatively.

Commissioner Tobia inquired if he has to keep a shed behind his principal structure right now.

Mr. Calkins replied there are setbacks for sheds; and he believes they have to be in line or behind the principal structure. He continued by saying what staff looked at in creating this is they mimicked the sheds but there was a little more emphasis on trying to screen these Conex boxes because of the aesthetics of them, and the concerns with the aesthetics.

Commissioner Tobia advised he thinks the aesthetics of the Conex structures are nicer than sheds he has seen; but when judging aesthetics based on the Board's clothing, he is probably not the best judge; and the only thing he can say is it is better than Jim Liesenfelt, Assistant County Manager. He asked if the Board were to go with B, F, and G, if it would be fair to say it is treating them no different than sheds.

Mr. Calkins replied he believes the answer is yes, they would be considered a shed at that point.

Commissioner Pritchett stated B, F, and G she is good with that as well.

Commissioner Tobia stated he thought that was Commissioner Pritchett's suggestion.

Commissioner Pritchett advised she did not mind C, but a person cannot live in a shed anyway, it has to be used for storage. She pointed out she likes the shed, and a shed is a maximum of 600 square feet as well, which is more lenient than this; and she reiterated she likes B, F, and G.

Commissioner Lober stated he wants to make a last ditch effort to recover or salvage what he can out of A, so maybe three-quarters of an acre if folks are not opposed to it.

Commissioner Pritchett stated the only problem with that is most of her properties that brought this up and are already doing it, some of them on like half an acre, and they have those Conex boxes on them; and what she likes about getting rid of the size is if it is a shed it has to be 50 percent or less of the house size, so she thinks it kind of takes care of it.

Chair Isnardi stated for her she was more concerned with, like Commissioner Tobia said, the location of the shed, because some properties may not be conducive with what they have existing on their property so they may not be able to locate it right behind their property; as much as maybe some neighbors do not want to look at it, if the Board is going to allow these cargo containers it probably, at least to her, does not matter where it goes in the yard; she

agrees on the one-half acre, most people have a half, it is usually not three-quarters; and she is okay with one-half an acre.

Motion by Commissioner Pritchett, seconded by Commissioner Tobia, to move this forward doing the same criteria as a shed requirements and B, F, and G.

Commissioner Tobia expressed his appreciation to Commissioner Pritchett; he stated once again she has identified and created a solution to an issue, not only in her District, but he is sure it is in other Districts as well, that has as little government intrusion as possible.

Chair Isnardi inquired if the container has to be directly behind the structure.

Ms. Regain advised she thinks the idea is not in the front yard, and she is pretty sure they draw a line parallel to the back of the house; and it can be anywhere in the back yard.

Chair Isnardi stated so right, left, corner that was her only hold up.

Mr. Calkins stated he was going to suggest, depending on how the vote goes, perhaps staff can redo what they proposed and align it better with sheds for the Board and then some of the locational criteria may come out, and they would look at them as a shed, so staff can bring it back from that standpoint. He noted it may be a little cleaner. He stated the motion is okay, but for clarification what comes back, what he is hearing the Board say, is it wants to look at storage containers the same as sheds, so staff already has criteria for sheds, it may just be modifying the definition of a shed to include the storage containers; and that may be the only Code revision needed.

The Board conducted the first public hearing to consider revisions to Chapter 62, Article VI. Division 1, Section 62-1102, Definitions and Rules of Construction, regarding cargo shipping containers used as a residential accessory storage structure/shed, to include requiring a building permit, no stacking of containers, and containers shall be located behind the principal building.

Result: Approved

Mover: Rita Pritchett

Seconded: John Tobia

Ayes: Pritchett, Tobia, Smith, and Isnardi

Nay: Lober

H.2. Petition to Vacate, Re: Public Utility and Drainage Easements - "Wingate Estates, Phase Two" Plat Book 48, Pages 64-66 - Rockledge - Hamid Hafizi - (District 4)

Chair Isnardi called for a public hearing to consider a petition to vacate part of the public utility and drainage easements - Wingate Estates, Phase Two - Plat Book 48, Pages 64-66, as petitioned by Hamid Hafizi.

Corrina Gumm, Interim Public Works Director, stated this Item is a petition to vacate part of the public utility and drainage easements along the side lot lines of Lot 45, Block B of the Wingate Estates, Phase Two Subdivision; this will remove an existing residence that is encroaching into that easement; notices were sent to County agencies and utility companies; and staff has received no objections.

There being no comments or objections, the Board adopted Resolution No. 19-196, vacating part of the public utility and drainage easements along the side of lot lines of 45, Block B,

Wingate Estates, Phase Two, located in Section 27, Township 25 South, Range 36 East, as petitioned by Hamid Hafizi.

Result: Adopted

Mover: Curt Smith

Seconded: Bryan Lober

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

H.3. Public hearing Re: A 180-day moratorium on any new applications of biosolids to lands within Brevard County.

Chair Isnardi called for a public hearing to consider an ordinance for 180-day moratorium on any new applications of biosolids to lands within Brevard County.

Virginia Barker, Natural Resources Management Director, stated this is the final public hearing for a 180-day moratorium on any new applications of biosolids to lands within Brevard County; and the proposed moratorium was approved by the LPA, and has already been through the first public hearing.

Commissioner Lober expressed his appreciation to staff for putting this together and pushing this through the way that they have; he stated he thinks this is a good step; obviously, down-the-road when the Board has the results back from the soil samples it will be in a better position to see what really, from a science-based perspective, is necessary and appropriate; he does not know if this will be the ultimate outcome down-the-road; but he thinks in an abundance of caution, given the amount of resources and the effort that the County and a lot of local governments have been putting into the Lagoon, this is something that is unfortunately necessary and appropriate at this juncture. He noted for the folks who are skeptical to understand that this is truly going to be revisited once the soil samples come back; and beyond that, if anyone has any questions Rocket in his office has been a great resource, she has put together a pretty incredible memorandum that is multi-paged and fancy, so if anyone wants a copy of that, to shoot her an email and have her send that to he or she.

Commissioner Pritchett stated she wants to give kudos to Commissioner Lober for putting this forward; she thinks it was a good idea; and she asked when is the County going to start doing the soil sampling.

Ms. Barker replied staff is trying to put the finishing touches on that; the USDA, the Soil and Water Board, the Water Management District, and IFAS Extension Services staff have all been working with County staff and working with the property owner to come up with a sampling plan that meets the interest of multiple agencies; the Soil and Water Board has voted to help fund the sampling effort as well, so staff is taking their time to make sure the sampling plan meets everybody's needs; and they hope to get out in the field in October or November timeframe, and they plan to chase some storm events, so that will be rainfall driven.

Mike Holmes asked how the County processes its sludge, what the plan is for the future, he cannot find anything. He expressed his appreciation to the Board for its work. He advised he wanted to find out what was the plan; and there are many different methods of getting rid of sludge.

Commissioner Lober stated he did not know if maybe Ms. Barker wants to have a conversation with the gentleman or if the Board should set him up with Eddie Fontanin, Utilities Director; the two of them have a lot more precise knowledge than he does; and if not, he is happy to sit down with Mr. Holmes and give him an overview.

Ms. Barker advised all of the County's sludge goes to the lined landfill at this point in time.

There being no further comments or objections, the Board adopted Ordinance No. 19-20, authorizing a temporary County-wide Moratorium for 180 days from the effective date; prohibiting the land application of Class B Biosolids except existing permitted activities; providing for exhaustion of administrative remedies; providing for severability, repeal of conflicting provisions, resolution of conflicting provisions; and area encompassed and an effective date.

Result: Approved

Mover: Bryan Lober

Second: Curt Smith

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

H.4. Approval Re: Exchange Agreement and Resolution Between Redfish Ranch LLC and Brevard County, Florida for the Benefit of the Mims Launch Ramp - District 1.

Chair Isnardi called for a public hearing to consider exchange agreement and resolution with Redfish Ranch, LLC for the benefit of the Mims Launch Ramp.

Corrina Gumm, Interim Public Works Director, stated Item H.4. is a request to approve an exchange agreement with Redfish Ranch LLC who owns the property adjacent to the County-owned Mims Launch Ramp; they would like to exchange .09 acre of their property for the County's; that would provide the County with a turnaround area on its boat ramp; and it would grant them ingress and egress to Jones Avenue. She went on to say this is a request for the Board to approve and authorize the Chair to execute the exchange agreement with Redfish Ranch LLC, and to also execute the resolution that is related to the county deed in accordance with Florida Statutes.

There being no further comments or objections, the Board adopted Resolution No. 19-197, related to the County Deed, for exchange of property as required by Section 125.37 F.S.; and approved and authorized the Chair to execute Exchange Agreement with Redfish Ranch, LLC.

Result: Approved

Mover: Rita Pritchett

Second: Curt Smith

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

I.1. Interlocal Agreement between Brevard County, City of Palm Bay, and the Bayfront Community Redevelopment Agency

Commissioner Tobia stated this is the Palm Bay CRA; his staff sent a suggestion for the interlocal agreement to the City of Palm Bay; it was not met with the greatest intent, so he was a little perturbed with that; and he thinks that frustration was felt by the Chair what has happened in Palm Bay going back and forth. He went on to say it gave him appreciation for the County Manager's Office; he is frustrated with one CRA; and the County Manager has done this with multiple CRA's. He noted he has met with multiple members of the Palm Bay City Council, he was asking them what the most important parts are of the CRA; he took an unusual tact here and that would be a compromise; the backdrop is very important that the Board have the ability to supplant the CRA board with the Board for non-performance; and he thinks there is a great deal of cause for the Board to do that. He advised before the Board goes through that nuclear option, he would like to hand out an olive branch; it is all in the email and it is all in

the packet; but he wants to give the Board the heads up of the four different provisions that he did not have last time. He added one would provide the CRA to meet all contractual obligations until its original sunset date; two, and this was met by a number of folks on the CRA, was to provide with the continuance of the North Shore Agreement between the City and the CRA; he wants to make light of this to spite the fact the parties signed which would give the County the ability to step aside from that, so that is certainly a big compromise; number three is this principal of land banking, the CRA had appropriated about \$330,000 that they were interested in purchasing and an attempt of redevelopment of that area; that was important, so that was included in here to be very clear that when that land is sold proceeds would be returned to the City and the County in the percentage in which it was purchased, so he thinks that is pretty darned fair; number four, there was some administrative expenses that were necessary for not only the land banking but the administration of the North Shore Agreement, he certainly did not want those expenses to fall on the general fund of Palm Bay, so there is a \$20,000 expense for this fiscal year; and there was some things in the 2020 plan that he had some heartburn with. He went on by saying in their 2020 plan there were things such as façade grants, beautifying streetscapes and medians, beautifying private properties, creating flashy newsletters and brochures, underwriting private consulting services for businesses, and there were a lot of things so he was not comfortable, so the four things he put there; this is just him, but he was extremely clear each and every time that he met with either a City Council Member or the Mayor that he was speaking on his behalf, he certainly was not speaking on the behalf of this Board; he spoke that multiple times; but he thinks the Commissioners spoke loud and clearly when it was sent over there; however, this is truly as far as he is willing to go. He stated so this Board adopts this but it is either rejected by the CRA or the City Council, the next action he will propose to take is to exercise the authority and take over the CRA; this is not a conclusion that he wanted; if this was the conclusion that he wanted he would have announced it at the last meeting; in addition, he thinks that the Board needs to exercise Option 4; Option 4 is merely an interim measure; and this would prevent the Board from having to take more drastic action as it moves forward. He advised his motion is to adopt the proposed ILA, which was distributed by his office, and additionally adopt the resolution delineated as Option 4 in the staff report to be instituted indefinitely until such a time as the City and the CRA ratify the proposed ILA as written with no amendments.

Commissioner Lober seconded the motion. He pointed out whatever way Commissioner Tobia was going to go, within reason, he thinks he would have had the support of the Board; he thinks the tolerance has certainly ran out with respect to the City; he hopes that this really does serve to resolve all of issues; if it does not, as Commissioner Tobia said, the other alternative would be less palatable to the City; and he reiterated he hopes this will do it.

Chair Isnardi stated rather than rehash the promises made by the City of Palm Bay as far as what they were going to do with the CRA, what their plans were, and the complete lack of cooperation from some of those officials; Commissioner Tobia's office came up with this agreement; it is not because County staff did not submit something to them, it was because it was not getting much of a response; Commissioner Tobia had to go to the Council directly to try to get this done; and at least, that is the rumor. She went on by saying she does not think this is the way the Board should be doing business, but she understands Commissioner Tobia's frustration, because she dealt with it six, eight, 10 months while she was told this is what needs to be done and what she needed to ask the Board for because it was trying to get an interlocal agreement; she does not like this agreement but she is going to support it, because she knows the Board has to have them support it as well if it wants an amicable solution; and the only reason why she is agreeing to extend this CRA, which is what she dislikes most about this agreement, is because she believes that North Shore, this company that is investing millions of dollars in the Bayfront, which is about time because the Bayfront sat dormant for so long, they

were made promises and they are probably not even getting everything that they were promised originally. She noted she does not want to see the Board as a party to something that they should have been entitled to based on what they were told when they agreed to develop there. She reiterated she does not like it, but she will be voting for it. She expressed her appreciation to Commissioner Tobia; she stated maybe this is what her office should have done a long time ago; but they told her they wanted to do x, y, and z, and then they said that they did not, and they wanted to extend many years ahead, then it was no they do not, then the Council did not know what was going on, and she is glad Commissioner Tobia was able to get it done. She advised this is in Commissioner Tobia's District, she just thinks they first came to her because she used to serve on the City of Palm Bay and was familiar with the history of the CRA and their business administrator at the time believed the City was moving in a different direction, because that is what he was directed to tell the Board.

Frank Abbate, County Manager, stated the only item he would add is speaking with the County Attorney's Office he does believe that once an agreement is executed, that Palm Bay accepts this agreement, staff would have the Board revisit the resolution, because it would return to the status quo where they would continue with some of the things they will need under that agreement would have to be returned, so that would be consistent.

The Board considered all options presented relating to an Interlocal Agreement with the City of Palm Bay and the Bayfront CRA; adopted Resolution No. 19-198, revoking authorizing to issue bonds, pledge funds, incur debt, obtain loans, and limiting other financial activities for the City of Palm Bay and the Bayfront CRA; and approved and authorized the Chair to execute Interlocal Agreement with City of Palm Bay and the Bayfront CRA in order to work toward assisting with the County's goal of enhancing activities towards road maintenance, construction, and reconstruction.

Result: Approved

Mover: John Tobia

Second: Bryan Lober

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

I.2. Ordinance No. 2019-07 (Puppy Mill Ordinance), District 1

Commissioner Pritchett stated the Board had discussed after the Ordinance was passed that it would come back to the Board after six months to make a few tweaks; the discussion was to get the Sheriff's Department to gather all of the information on what needed to be changed because the Board was dealing with the penalties and how to redo this; she thinks from talking with the County Attorney, the changes the Sheriff thought were appropriate, also this will need to be re-advertised, and have a discussion on what needs to be changed; Commissioner Lober is on top of this as well; and she knows as she brings out a couple of suggestions that she brought up to the Sheriff, she is sure Commissioner Lober is aware of some of these as well, because he has been researching it himself. She went on by saying on the violations the Board wanted them to have documentation as far back as 48 months; they and the Sheriff's Department went back and tried to, and they only found 24 months, so she asked the Sheriff and he said they need to change that because if the data cannot be found, the Board cannot impose it on people; she would like to change page seven from 48 months to 24 months, and that does not put a burden on the pet stores either because they just cannot find them; the other one is on page eight; this is her fault, she wanted to put on the cage the name of breeder, the USDA license number; and the problem with that after researching it is that the USDA redacted the breeders names because they were getting harassed by activists, so she made a recommendation to the Sheriff that the Board just put the name of the breeder on there, and he

said not to put anything on the cage, just put on the cage that the information on this puppy can be provided by the owner. She added they can request and get information, so the Board can kind of get rid of that problem moving forward; the only other thing is they were looking at the type of penalties; she did some research on that; on page seven also, it has no documented violations, and they were going to put in there, their direct violations, because those are the bad ones; but she thinks if it says no direct violations, and for care of the puppies to put in or four indirect violations; and that would be fair because more than four there is also a problem with the indirect violations. She pointed out Commissioner Lober put out a very good piece of work, but this is what she researched for the last six months and she thinks it is solid.

Commissioner Lober stated he had a few thoughts; he thinks some of those items are a little more palatable than others; with respect to a general thought beforehand, he knows the Board did intend to revisit this roughly six months down-the-road, but he thought the Board was mostly focusing on how to categorize different levels of offenses, so if for instance there was a breeder and they had an exit sign that a bulb had blown out, the Board would not say they could not sell to Florida because there is something that really does not go toward the welfare of animals; he sees there are a few comment cards; and before he has a position with respect to direct versus indirect violations, there are people here who know a heck of a lot more about that than he does, so he would certainly want to hear from them before he takes a position for or against that. He pointed out Theresa Clifton knows more about that. He went on to say another item with respect to the 48 months versus the 24 months, if Commissioner Pritchett tells him she spoke with either the Sheriff or Deputy Hillebrand and they said they could only find 24 months, he will go with that as he has no reason to disbelieve her. He added there is not much more he can say but that it would look pretty to say 48, so that is probably unfortunately what it is. He went on to say with the cage card information, if he remembers correctly, and he is not trying to give her a hard time, but he thinks she had actually brought that up, which he thought was a great idea; he thinks there has been a total lack of any testimony or any evidence that there has been harassment of breeders; he has heard that; he does not know how much of that is urban legend, or so tertiary or tangential there is really no way to verify it; however, he thinks saying that if someone wants that information he or she can go to the shop keeper or the owner to get it, they may give it to someone from BCSO but if it is just someone asking for it he is not sure there will not be any gamesmanship there. He noted he knows BCSO has the ability to send in plain clothed individuals to check but that does not thrill him; if there is generally a concern over harassment he would think at dead minimum, the County could get some information on the side of the cage; one of the concerns he thinks from a lot of people who are familiar with where these animals are often being sourced, is what state are they even coming from because if they are not coming from Florida the bill skyrockets; he would feel more comfortable if there really is that level of harassment and there really is a need to get that information behind the counter; he is still struggling to see if someone's intent on harassing and they are going to do something either in violation of the law or pushing-the-limit, he does not see why they would not just ask for the information on the animals and go harass people anyways; at a minimum he would really like to see the state of origin on the side of cages even if they do not have some of the identifying information and focus because to him it was a huge win giving that information to consumers so they could say look people have the ability to research this animal and the animal is highly likely to have come from a business that has had issues in the past or the alternative that it is coming from a great source; however, he does not know that he would be flexible to the extent that he would be supportive of removing or at least having at a dead minimum the state of origin on the side of the cages. He stated with that said, he would definitely like to hear the thoughts from those who put in public comment cards because he has a few things where he is fine moving on and there are some things he is not really fine moving on, and there are some areas where he is just not sure yet.

Commissioner Pritchett stated she is fine if the USDA license number was left on the side of the cage so people could just go to the USDA and research the breeder and the state, that would be fine with her because it just takes their name out of the equation; people could find out if there were any violations in the past; the Sheriff just brought up if they are a hobby breeder, and she does not know if there are a lot of them; she thinks maybe if it is a hobby breeder and the state is placed on the cage then that would be fine also; and she is absolutely fine with keeping everything on the cage except the person's absolute name, keep their identification number, people can look it up, the breed of the animal she thinks is a good idea too, if Commissioner Lober is good with that.

Commissioner Lober advised he does not know if that would require readvertisement if the Board is removing restrictions as opposed to making them more onerous.

Eden Bentley, County Attorney, responded it would need re-advertised because there is an ordinance in place and the Board is going to change that ordinance.

Commissioner Lober noted then the Board may want to address the effective date if that is the case so it is not being kicked back another year; and he reiterated he does not know where he is with respect to direct versus indirect violations.

Commissioner Pritchett stated she is fine if Commissioner Lober just wants to throw in the words in "no documented direct violation" because those are the ones that would bother her, the indirects are like Commissioner Lober said, with a light out or something of that similar nature. She continued by saying if Commissioner Lober wants to say something like no documented direct violations, she thinks that would do it for Commissioner Lober.

Commissioner Lober stated he would really like to hear from public comment because he does not have that level of familiarity with the jargon.

Commissioner Pritchett responded, okay.

Theresa Clifton, Brevard Humane Society, stated she is extremely happy the County has this Ordinance; she would like it to be a little more stringent, but she is happy to see it; she noted there is a difference between direct and indirect violations and she thinks in all fairness that it is something that should be categorized accordingly; as far as information on a cage, for her personally, as long as it can be linked back to where the animals came from, she does not have a problem with it, even though there are many who believe that it all should be posted; and she understands people's privacy especially for a private breeder. She went on to say the Humane Society does not have anything against private breeders because most of them are very responsible and they are taking care of the animals that they are breeding; obviously the ones that are running puppy mills are the ones that they are concerned with, the ones that are coming from outside of the State; that does not mean that there are not animals that come from outside of the State are a bad thing; at the Humane Society they bring dogs in from Puerto Rico, the Bahamas, South Carolina, and Sumter County, so they understand that people want to know where they come from; and they are more than happy to share that. She commented she is always suspicious of anyone who wants to hide information or just not divulge it but she understands the right to privacy for people that are private breeders. She noted if there is a USDA number that can be traced back to it she does not have a problem with that; she has been into an establishment that she had asked where the animals came from and she was escorted out the door; she personally thinks there should be something on the books that gives a definite so people can find out where the animal came from because Brevard County is enjoying the ability to not kill healthy adoptable animals; and there are not a lot of states that

can say that. She mentioned the Humane Society works very closely with the Sheriff's Department and now they are partnering with Pet Supermarket in taking cats from the County when they have too many; they are put into Pet Supermarkets so they can find homes for them; and it has been very successful, so for her she does not think they need the puppy places. She stated categorizing levels of violations is also important because it makes people stay in the right lane; and she would be more than happy to spend time discussing it in more depth and detail.

Commissioner Lober stated he has the utmost confidence that Ms. Clifton knows a lot more about this than he ever hopes to know; he asked if it is reasonable to have four indirects or one direct or is there something that should be tweaked; and he asked in general what her thoughts were with respect to that.

Ms. Clifton commented it depends on the level of the violation; indirects are things like lighting or space, but directs can also have to do with space, so it depends on what it is because people are housing the animals until they find a place to sell them; if they are in a small enclosure or if there are too many in the enclosure that would be a direct, keeping the room air conditioned, or something like that, but to have an emergency light out would be more of an indirect; the care and the welfare of the animal would be a direct violation, the building up to code would be an indirect violation; and if the animals themselves are cared for, sickly, whether the living conditions were kept clean, but a chipped tooth on a puppy that kind of thing happens, but if the puppy was in pain it should be seeing a veterinarian and there should be medical records on them and that type of thing.

Commissioner Lober asked if Ms. Clifton thinks, in terms of just a raw number, he knows it is probably situation specific, but understanding that the Board has to cover everything in a fall swoop, if four is a reasonable number or is it high or low; and he stated he understands there may be breeders who pump out puppies left and right or one that has twenty puppies in a year, but he has to try to figure out what is reasonable to put in place as essentially a baseline standard for everyone.

Ms. Clifton inquired four what.

Commissioner Lober explained as far as saying that a maximum of four indirect violations would be permissible or that the fourth one would be impermissible, so maximum of three is permissible for indirects.

Ms. Clifton stated for her an indirect violation does not directly affect the care or the welfare of the animal.

Commissioner Lober stated that answers it for him and provides him with what he needs to know.

Ms. Clifton reiterated a direct violation directly affects the care and wellbeing of the animal and the indirect has no real presence, if an emergency light is out it is a violation of the Code but the animal itself is not uncomfortable, in pain, or being harmed by it in any way.

Commissioner Lober responded that gives him what he needs.

Commissioner Pritchett stated she agrees with them both and she thinks it would be cleaner to put just direct violations; people should probably mow their lawns and do all of those things, but they will just have to pay the fines on all that stuff; and she reiterated she thinks it should be

just direct violations. She added Ms. Clifton clarified the rating so that makes sense to her too; since Ms. Clifton has a level of comfort that makes her more comfortable too; and she thinks that is the way she is going to go.

Commissioner Lober stated he had another thought in relation to that, since the Board is dealing obviously with one variety of violation, he would like to add, regardless of striking the other, that any criminal violations regardless of whether or not adjudication is withheld, that if someone is torturing animals or having sex with them or doing something else that is patently criminal.

Commissioner Pritchett commented that is direct.

Commissioner Lober stated he does not know if that would be categorized as direct, because something like that in all likelihood would be in State court.

Commissioner Pritchett noted they would be in jail and lose their USDA license.

Commissioner Lober commented he would just feel more comfortable while that is pending, if they have a criminal or withheld adjudication or an adjudication of guilt, anything but essentially having been not filed or dismissed.

Commissioner Pritchett inquired if that would be any criminal thing on a pet.

Commissioner Lober advised anything animal related criminal whether it is a misdemeanor or felony and regardless of whether or not adjudication is withheld.

Commissioner Pritchett inquired if someone just robbed a bank.

Commissioner Lober stated they may be wonderful to their puppy if they robbed a bank.

Commissioner Tobia asked what the decision was on the adjudication withheld.

Commissioner Lober asked if that was for him or for someone else.

Commissioner Tobia responded it was to whoever brought it up, he is trying to figure it out.

Commissioner Lober stated his preference in what he was putting together that the Board will see in a little while, in the next weeks with respect to that animal abuse registry, if someone does pretrial diversion, he is not looking at shaming them for life; and if the charges are dropped or they never filed he is not looking at holding that against them, if they get a withhold of adjudication, he wants for the purposes of this ordinance to treat it the same as a conviction.

Commissioner Tobia stated, just out of clarity, this Board just appointed a member to a board that had adjudication withheld so he thinks that may go a step further than what he would be comfortable with; and if the Board is appointing people who have that on their record or do not have that on the record, whatever that is, but either way when doing a background check of some of the nominees for the Melbourne-Tillman, someone had that on their record.

Commissioner Lober stated if it is adjudication withheld on loitering, he thinks that is perhaps unrelated; he does not know who it was or what the particular charge was, but if it was a 30-year-old loitering where they had a withhold of adjudication that is not a concern nor would it be with this; but if there is something that would suggest that they have done something

criminal, mainly abusing an animal or neglecting an animal or having sex with an animal, he would really rather not give them the benefit of the doubt when it comes to that. He added when looking at withholds, folks do not generally get withholds because they have been doing everything right, they have put themselves in a position where there may be a weakness in the State's case, but the defense is concerned enough that they still want to resolve it or alternatively there may be an adjustment often times between the actual sanctions in order to get that withhold. He noted it is really important for the folks to get the withhold, at least at the predominant reason so they can check that they have never been convicted.

Commissioner Tobia stated he is not an attorney he just thinks it is a little weird how the Board is allowing people who have had adjudication withheld give the Board opinions, but not allow them to breed or deal with dogs; and in his perception, the advice the Board is provided with is far more important than who is breeding a puppy.

Commissioner Lober stated they are not going to have a withhold on account of breeding a puppy because there is nothing illegal in State statute about breeding puppies; he can pull up the statute and provide a list, but really the Board is talking about things that would be objectively unacceptable to anyone; and if there is a concern that someone has a withhold on some serious charge, whether now or in the future, they can certainly let him know because that would potentially play a part in terms of whether or not he would vote to put he or she on a board because it does matter to him. He continued depending upon the age and the severity of the what the individual was accused of having done certainly plays a part; he does not have a problem if someone had possession of paraphernalia 40 years ago because it does not have any bearing on whether or not they would be good on a water district board; however, if someone had a withhold of adjudication for having had sex with a puppy a year ago, he does not want them having anything to do with dogs.

Commissioner Pritchett noted she agrees with Commissioner Lober; she stated she thinks that is just disgusting; she thinks if Commissioner Lober were to look under the USDA, what people even have to do to get to become a licensed breeder, she is not really sure they would even get anywhere near close to this; and she thinks to keep it cleaner on this document would be to have no documented direct violations; and she thinks what Commissioner Lober is about to bring is going to help the other situation tremendously. She commented she thinks the Board is going to end up really complicating this when the USDA already has a lot of criteria before they even license a breeder; and she thought it looked very extensive when she was studying their web page.

Commissioner Lober stated if Commissioner Pritchett is not comfortable with withholds for purposes of tonight's consideration, he would still ask in abundance of caution, given the subject of what is being dealt with, to at least include those folks who have adjudication on animal related crimes.

Commissioner Pritchett stated she thinks that is already in the USDA if Commissioner Lober would check that out, she does not think the USDA would give a license to breed to anyone with felonies on an animal, so she thinks it is already covered.

Commissioner Lober explained they could if there was a misdemeanor; and the other thing is they could change what their requirements are today, tomorrow, or in a week.

Commissioner Pritchett advised Commissioner Lober said a felony with that; they are not going to make it a misdemeanor on that bad stuff; she thinks Commissioner Lober is going to find that it is already covered; she agrees with him on having to protect the pets that way; and she

noted when Commissioner Lober put this together she thinks he already had it in there. She noted right now on this to just make it direct she thinks it will clean that up; and she thinks what he is about to bring is going to be very good.

Barbara Justice stated she is in support of this Ordinance and for as much as the Board can tighten the laws; given the conversation on the bench, and she is certainly not an attorney and she could not give the Board better information than what Ms. Clifton had, but she knows there are problems in this County that need to be corrected; and she encouraged the Board to please close the loopholes and to please give the Sheriff what he needs to be able to stop some of the stuff that is going on. She continued by saying one thing she would encourage the Board with from the information she has received, is to talk to some of the licensed veterinarians in this County and talk about the issuance of health certificates and the challenge they are having and the things they are seeing in their offices; she thinks that would be very useful for what the Board is discussing; she thinks it would be much better for it to come from them instead of second hand; she believes it would open some eyes as to what they are dealing with; and she thanked the Board for considering this and for caring about the animals.

Commissioner Lober stated in the time Ms. Justice was speaking he was pulling up some of the statutes just because there are some things people may intuitively think was a felony and they may not be; looking at 828.12 Cruelty to Animals, there are at least some provisions or some portions of that which are first degree misdemeanors; looking at 828.126 which is sex acts involving animals and they are also first degree misdemeanors depending on the particular portion of that which is violated; there are things that are objectively abhorrent that do not rise to the level of felonies; and he thinks it is important, the Board can even say a conviction of a criminal statute within Chapter 282 of Florida Statutes, if Commissioner Pritchett really wants to narrow it down. He added he would be a little reticent to say the Board should not do that at all because the USDA may not care if it is a misdemeanor, he does not know what their criteria is and they could change it; if Commissioner Pritchett does not want to include withholds that is one thing, but he certainly thinks if someone is convicted of having been cruel to an animal or having had sex with an animal it should be; and cruelty to animals when looking at what they actually use for the definition in the statutes, it talks about tormenting and depriving of sustenance, shelter, mutilates, kills, or causes that to essentially be done, so these are things he does not think anyone would be okay with, and the ones involving sex with animals are pretty rough too. He went on to say he does not think that is something the Board should say is okay just because it is a misdemeanor.

Commissioner Pritchett stated her concern is the Board may be adding so much to this that it is going to start changing the Ordinance a lot; she was just trying to tweak the one the County has; if the Board needs to start making some substantial changes then maybe it needs to bring this back up and work through some of those things; she thought it was a pretty decent Ordinance, she just found a couple things that were not able to happen from what it already had; and with that, she has not really had a chance to look through all of it. She continued by saying not that she does not believe Commissioner Lober, but she is going to have to question people to tell her what that really means; she knows Commissioner Lober knows what he is saying, she just does not know how it will fit into this right now without the time to process it; she would be willing to do the direct violations right now; and she thinks that is what Commissioner Lober wanted to happen. She went on to say she does not think throwing in more criteria right now, is necessarily a bad thing to do; Commissioner Tobia brought up something that caught her attention and she does not want to do something that the Board is not meaning to have happen with this; she does not know if there would be support for that; and she is probably going to need more time to do that. She mentioned she thinks the few

minor things will be easy to do tonight and Commissioner Lober is already comfortable with that; therefore, she is not adding to it, she is just tweaking it.

Commissioner Lober stated he does not disagree that Commissioner Pritchett is not adding to it, his concern is that she is subtracting from it; the way it was written before was that essentially any violation of law that would impact the wellbeing of an animal; and if the Board is going to scale that back to a degree, he wants it to be as little as possible.

Commissioner Pritchett explained that the violations was the topic of conversation; she previously stated if someone were to leave a wet towel, they cannot sell a puppy and Commissioner Lober responded at the time of course they can, and then the Sheriff came out and said the Board needs to find out what these different levels of violations are; and that is why she spent a lot of time studying them. She mentioned she found out there were direct and indirect violations, the direct ones directly affect the puppy's wellbeing and the indirect does not; obviously, the intention of this was the harm to the puppies, therefore, she thinks direct violations fit perfectly so the Board is not pulling away from it; and she believed that was Commissioner Lober's intent. She stated the difference was that the 48 cannot be enforced because there is no information out there for the Sheriff to enforce, and all the puppy people will be saying what if someone finds something and they become afraid of being arrested; she thinks that could be a problem; and she thought if the Board makes it 24 months then everybody is happy.

Commissioner Lober stated he thinks Commissioner Pritchett is close, but his concern is if the Board has to readvertise because he does not want to have to do that again; he advised he is okay to scale it back to 24 months based on Commissioner Pritchett's conversation with BCSO; as far as no documented indirect violations, on a federal level that is fine, but not on a State level because often times the feds will not prosecute if the State is going after someone and vice versa; he thinks it is important not to have a huge glaring loophole; if Commissioner Pritchett does not want to include withhold adjudications he is fine with that, however, he prefers to include them; he thinks if someone is having sex with animals, causing other people to do it, or somehow arranging it, it is not okay; and he is not okay with someone intentionally tormenting animals to the point they are convicted of it.

Commissioner Pritchett asked if people should be in jail if they were to do that.

Commissioner Lober advised they may be in jail but they could still be able to operate the business.

Commissioner Pritchett stated she is an accountant not a lawyer so when Commissioner Lober says a couple of these things, she has no idea what that is.

Commissioner Lober stated if it is a misdemeanor or felony there is nothing that says someone doing something of this nature would have to do even one day in custody.

Commissioner Pritchett noted with something of that nature, she cannot imagine someone not going to jail for that.

Commissioner Lober advised there are some bad folks out there and they would not want him on the jury for something of that nature.

Chair Isnardi interjected to say the State of Florida views animals as property that is why people can do really awful things with animals because they have no value according to the State, which is really sad.

Commissioner Pritchett asked if someone would come up with some language, while being advertised, to give her time to figure it out.

Attorney Bentley and Commissioner Lober both replied affirmatively.

Commissioner Lober asked if the Board could cover everything and then address it when it comes back.

Commissioner Pritchett stated if Commissioner Lober wants to put in the Ordinance that no one can do that really bad stuff to the dogs she is fine with that.

Commissioner Lober agreed.

Commissioner Pritchett mentioned the Board is just going to have to figure out how to put that in there; and she noted she has a concern with what Commissioner Tobia said as well so it cannot be too general.

Chair Isnardi explained actually convicted as opposed to something else.

Commissioner Lober commented if Commissioner Pritchett wants it to actually read, had been adjudicated guilty that is fine, he prefers it to say withholds as well; and again he is not saying withhold for anything under the sun like prowling or trespassing where it has nothing to do with an animal.

Commissioner Pritchett advised she cannot imagine people doing stuff like that.

Commissioner Lober noted he hates to say it, but there are reasons these laws are on the books; even if some are less frequently used than others it does not mean there was not a reason for them; hopefully they do not have much use; and if there is no one who falls under this category then it is not restricting anyone at that point.

Commissioner Pritchett stated if Commissioner Lober wants to figure something out, then the Board will take a peek at it and see if it fits in.

Commissioner Lober replied, sure. He noted he is good with what Commissioner Pritchett said as far as redacting the name off the cage cards if she is okay with leaving everything else that would make him a lot happier.

Commissioner Pritchett responded she is good with that.

Commissioner Lober stated he thinks that was pretty much it.

Commissioner Pritchett stated she thinks that is the whole thing; and she believes everything else is ready to go.

Commissioner Lober commented he knows of several decent attorneys that practice animal law and he can provide Commissioner Pritchett with some contact information if she would like, but he cannot have any conversation with her outside of the meetings.

Attorney Bentley inquired if the Board wanted to address the 48 months to the 24 months.

Commissioner Pritchett noted it is 24 months.

Commissioner Lober agreed to scale it back to the 24 months.

Commissioner Pritchett stated her and Commissioner Lober need to make sure the rest of the Board is good with it as well.

Commissioner Lober stated Commissioner Pritchett could make the motion and he will second it; and the Board can go from there.

Commissioner Pritchett stated she would like to make a motion to go forward with readvertising the Ordinance and that Attorney Bentley would bring back a draft with some changes in the language for the Board to consider.

Attorney Bentley asked if the Board wants her to come back for legislative authorization to advertise first or just come directly to the Board.

Commissioner Pritchett advised Ms. Bentley could just come forward with this; and she inquired if that is correct.

Commissioner Lober mentioned whatever Commissioner Pritchett wants to do.

Commissioner Pritchett stated she thinks they are minor changes and Attorney Bentley could just come back directly.

Commissioner Lober inquired how to keep the effective date tied into the date that it went into effect; and if the Board could keep the effective date.

Attorney Bentley advised this Ordinance is in effect, the Board would only be slightly modifying it so it would have the same effective date for the majority of the terms.

Commissioner Lober seconded the motion.

Commissioner Smith noted his opinions and feelings about this Ordinance have not changed a bit since it was brought up last time; he does not think this has anything to do with puppy mills; he does not believe it is going to stop or close down one puppy mill; he stated it is not going to protect one dog from a puppy mill; and he advised he will be voting against it.

The Board directed staff to amend Ordinance No. 2019-07, Puppy Mills, to include language regarding breeders to include "no direct" violations of the USDA regulations and animal related statutory abuse violations; and in addition, the information posted on the cages is to be amended to remove the requirement of the breeder's name.

The Board voted 3:2, with Commissioner Tobia and Commissioner Smith voting nay.

Result: Approved

Mover: Rita Pritchett

Second: Bryan Lober

Ayes: Pritchett, Lober, and Isnardi

Nay: Tobia, and Smith

J.2. Approval; Letter thanking the Congressional Delegation's efforts regarding South Patrick Shores

Frank Abbate, County Manager, stated staff has submitted as a part of this Agenda Report a recommended letter for the Chair to sign, if the Board approves it, to send to the Congressional Delegation thanking them for their efforts on South Patrick Shores.

Commissioner Lober stated he supports this but he wants to thank the folks that live in that area, he does not want to specify individuals by name because the Board had so many folks come up to discuss this over a period of time, if he starts naming he will forget someone.

Chair Isnardi noted Sandra Sullivan.

Commissioner Lober stated and Karen Colby, there were a slew of folks; there were folks who had some health issues potentially as a result of some of the concerns that they have expressed; he thinks everyone has done his or her part, the County, the residents have, the Congressional Delegation has, and this Board has gone above and beyond to make staff available to provide any information that the County has or can easily obtain; and he certainly supports it and hopes other people will as well.

Chair Isnardi advised she is really glad these folks got resolution, and she does not know who got what, she just knows Congressman Bill Posey's office is amazing; any time she has ever had to send someone there because it was out of her area, his office has been awesomely responsible; she expressed kudos to them for helping Ms. Sullivan and the other people affected by this; and she stated she is impressed with Ms. Sullivan. She went on to add Ms. Sullivan is very passionate when she comes before the Board; she is right and she is glad the Congressman listened.

The Board approved and authorized the Chair to sign letters to members of the Congressional Delegation thanking them for their efforts regarding South Patrick Shores.

Result: Approved

Mover: Bryan Lober

Second: Curt Smith

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

1. Frank Abbate, County Manager
2. Eden Bentley, County Attorney
3. Rita Pritchett, Commissioner District 1
4. Bryan Lober, Commissioner District 2, Vice Chair
5. John Tobia, Commissioner District 3
6. Curt Smith, Commissioner District 4

Commissioner Smith expressed his appreciation to all who supported Real Men Wear Pink; it is a great campaign, a worthy cause; and he is glad to see so many people with County staff and the public who have gotten behind it and supported it.

7. Kristine Isnardi, Commissioner District 5, Chair

Chair Isnardi stated her District has an FDOT project on Highway A1A; she does not know if a lot of people watch the Board meetings, but she figured if she reaches two people and it gets to them; obviously, there are issues with cones and traffic; after talking with FDOT and Georgia Gillette, they got them to scale down this project that was supposed to take a year, and they scaled it down to 136 days, which is like four months; and they will be out there today looking at those cones to try to figure out how to make it a little less painful. She went on to say they are doing a minor drainage project, doing asphalt, putting in sidewalks and crosswalks, so it has got to get done; it is unfortunate that everybody is put out a little bit; but at least they were able to get the contractor to complete the project in one-third of the time, so they are really excited about that in District 5. She added she wants to ask John Denninghoff, Assistant County Manager, to find out where the County is with the City of Palm Bay and the Babcock Street agreement; she does not know how much background she wants to get into, but basically when Commissioner Anderson was on the Board he got the Board to agree to commit \$1.5 million to an intersection for the Parkway on Babcock; the County at the time was trying to get an interlocal agreement with the City of Palm Bay; this is \$1.5 million that the County obviously has road projects, and obviously has things it wants to do; but she understands how important that intersection is. She pointed out it is this lack of cooperation with the City of Palm Bay; she has talked to Council Members and County staff has tried; and she does not know what to do at this point; but she does not want that money sitting there anymore, so if by October 22nd there is not something that staff can bring to the Board as far as an interlocal agreement with the City of Palm Bay, she would like those funds reallocated to another needed area in Palm Bay since those monies were supposed to go there. She noted there are other places on Babcock where those monies can be used; she does not want to play games with the developer or with the City that does not want to come to the table and get this interlocal agreement done; they already know how frustrated she is; but she figures it is better that she brings it up here than at their City Council meeting. She added she is lucky that three Commissioners did not vote to swipe that money right out of her District since that money is just sitting there doing nothing when roads could be paved.

Commissioner Pritchett stated whatever Chair Isnardi wants to do is fine with her; she has realized after being up here long enough and watching; when those decisions were made they were equitable throughout the Districts; and she loves having the equitable distribution throughout the Districts with the County funds.

Commissioner Lober advised the Sykes Creek Bridge in his District they did finally get the FEMA determination not too long ago, and it was shot down; he has spoken with Mr. Denninghoff and other staff with whether they agree with determinations or not; they do not; it is going to be appealed; but that said, out of the last three requests his District has only been partially successful with only one, and the employee who handled that at the time is no longer with the County, so he is not terribly optimistic that will turn out the right way. He stated it is still something that needs to be addressed; it is going to be between \$2 million and maybe \$4 point some million; the marina there is suffering tremendously; the longer this goes the worse the impact is on the County as a whole; he spoke with some of the folks over at the Port, he is trying to hopefully get a little bit of help from them in terms of financing this; he has spoken with Merritt Island Redevelopment Agency (MIRA) staff to see if something can be done with this, there are restrictions in terms of the enabling legislation where the Board may have to get creative with respect to how they can help it, it is in their strategic area, so it is something that is possible; and he has met with Lynda Weatherman, Economic Development Commission Director, to see if she is familiar to any degree, so the County can make use of either the State or more likely the federal level. He noted he is going to see what he can do to offset the County's cost; but there is going to be a seven digit expense that is going to have to be taken

care of; and it is totally shut for vehicular traffic as it has been for some time, but that is coming up.

Chair Isnardi asked to go back to her item, and if the Board is okay if staff brings back options for that \$1.5 million; she stated she would still like to use that money in the City of Palm Bay as she believes that is the right thing to do; she still wants to be able to improve something that has been overdue to be improved; and she knows they talked about expanding the existing Babcock project that the County started that is closer to Malabar Road, it may even be in Commissioner Tobia's District. She noted she does not really care whose District it is in as long as it is in Palm Bay because she thinks it is probably the right thing to do. She requested staff bring back options for that, and notify the City of Palm Bay.

John Denninghoff, Assistant County Manager, stated he can give the Board an update if it would like; staff has a draft version of an interlocal agreement that would achieve a number of good goals that would allow them to access the \$1.5 million based on those other goals being combined as part of the interlocal agreement; he had a meeting today with internal staff to sort of finalize the draft version of this; he intends to provide that to the City staff; and he will try to schedule a meeting he believes on Friday, a week from now. He pointed out he is hoping to get it to the point to where the City can take something to their Council; they understand, and he has made it abundantly clear to them, that he does not speak for the Board, and the Board may not find it desirable to agree to that interlocal agreement; and at a point the money will certainly be allocated to something, and it may be allocated to something else anyway. He stated he certainly can bring back some options on the 22nd, but he probably will not have their final position on the interlocal agreement by the 22nd.

Chair Isnardi stated she gives staff all of the credit in the world, because they know how angry she is about this; but this has just been going on for so long; and she did not want to bring it here, but she knows they understand her frustrations. She noted she does not think it is on the Board's or County's part; they kept putting the County off because the money was already committed; they know the Board needs to have a good intersection there; and they know the Board will not commit to something that is substandard, which is what they were trying to throw at it before. She advised she is not blaming anyone specifically, but it is their impact that is affecting that intersection; a \$4.5 million intersection is being built for the developer and the City; the City does not have the money for the intersection; and if they do, it is news to her. She added it was a Council Member who said they do not have the money for it; she asked is it going to be a \$3 million intersection because they are not going to be able to chip in; she noted she does not like games; she does not want that money sitting there for even a day longer, that is why she told staff six months ago 30 days, then changed to 60 days; and she knows staff is doing their part, it is not them. She pointed out she wants to see options by the 22nd because if the management or administration cares enough about getting that intersection and getting that interlocal agreement done, they will get it done.

Mr. Denninghoff advised they have gotten much further along in the last 30 to 45 days.

Chair Isnardi stated but that could change because look what happened with the BCRA; and they went from one plan and did a 180 and did something else.

Mr. Denninghoff stated staff has seen this through this process as well.

Chair Isnardi stated she is over it, and she reiterated she would like to see some options by the 22nd.

October 8, 2019

Upon consensus of the Board, the meeting adjourned at 7:36 p.m.

ATTEST:

SCOTT ELLIS, CLERK

KRISTINE ISNARDI, CHAIR
BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA