

Brevard County Board of County Commissioners

*2725 Judge Fran Jamieson Way
Viera, FL 32940*



Minutes

Tuesday, January 21, 2020

9:00 AM

Regular

Commission Chambers

A. CALL TO ORDER 9:01 A.M.

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 Lober called for a moment of silence.

C. PLEDGE OF ALLEGIANCE

Commissioner Pritchett led the assembly in the Pledge of Allegiance.

D. MINUTES FOR APPROVAL

The Board approved the October 22, 2019 and November 19, 2019, regular meeting minutes.

Result: Approved

Mover: Rita Pritchett

Second: Bryan Lober

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

E.1. Resolution verifying Brevard County's Continuing Commitment and Efforts to Uphold and Adhere to the Principles Embodied in the Constitution of the United States of America

Commissioner Pritchett read aloud, and the Board adopted Resolution No. 20-004, verifying Brevard County's continuing commitment and efforts to uphold and adhere to the principles embodied in the Constitution of the United States.

Sheriff Wayne Ivey, Brevard County Sheriff's Office, stated the Constitution is the strongest fabric of the Country; when people start cutting out pieces of it, he thinks it weakens the Constitution; this Resolution stands that the citizens of Brevard County are well protected by the Constitution; and this is doing nothing but telling people that the Constitution is the law of the land and the County is going to stand strong with it. He went on to say he is honored to be there because he believes that law enforcement officers are the first line of defense for the citizens and their rights; to have this Resolution brought forward not only means a lot to the community, it also means a lot to the law enforcement officers; people see what is happening across the country where certain aspects of the Constitution are under attack and he thinks it needs to be altogether one document; it is the strongest document this country has and quite frankly the reason people want to come a part of this country; and he applauded Commissioner Isnardi for bringing this forward.

Result: Adopted

Mover: Kristine Isnardi

Second: Bryan Lober

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

*Commissioner Tobia pulled Item F.10., referencing appointments and reappointments.

F.1. Approval of Resolution and Real Estate Contract for Sale of Property in County-Owned Commerce Park in Titusville

The Board adopted Resolution No. 20-005, and approved a Real Estate Contract permitting the sale of approximately five acres of land in the County-owned Spaceport Commerce Park for \$180,000 to the company known as Milton J. Wood First Protection, Incorporated; and authorized the Chair to execute all documents in connection thereof.

Result: Adopted

Mover: Rita Pritchett

Seconders: Bryan Lober

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

F.2. Approval RE: Transportation Impact Fee Technical Advisory Committee for the South Mainland Benefit District Project Funding Recommendations

The Board approved the project funding recommendations in the amount of \$4,771,832.16 as prepared by the Technical Advisory Committee for the South Mainland Benefit District on December 5, 2019; authorized the Chair to execute Transportation Impact Fee Distribution Agreements with the Town of Grant-Valkaria and the City of West Melbourne; and authorized the Budget Office to execute any budget change requests necessary for implementing these appropriations.

Result: Approved

Mover: Rita Pritchett

Seconders: Bryan Lober

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

F.3. Approval Re: Task Order No. HB-008 for Engineering Services for the Hollywood Boulevard Widening from U.S. 192 to Palm Bay Road

The Board approved and authorized Task Order No. HB-008 in the amount of \$3,847,902 for engineering services for the Hollywood Boulevard widening from U.S. 192 to Palm Bay Road; and approved any necessary budget change requests associated with this action.

Result: Approved

Mover: Rita Pritchett

Seconders: Bryan Lober

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

F.4. Approval Re: Local Agency Program Supplemental Agreement No. 1 for the St. Johns Heritage Parkway Corridor Planning Study from Malabar Road to Babcock Street

The Board approved and authorized the Chair to execute the Local Agency Program Supplemental Agreement No. 1 with Florida Department of Transportation (FDOT); adopted Resolution No. 20-006, for the St. Johns Heritage Parkway Corridor Planning Study from Malabar Road to Babcock Street; and approved any necessary budget change requests associated with this action.

Result: Adopted

Mover: Rita Pritchett

Seconders: Bryan Lober

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

F.5. Approval, Re: Construction Manager Contract with Core Construction Services of Florida, LLC for Gymnasium Floor Replacement at the South Mainland Community Center

The Board approved and authorized the Chair to execute the Construction Manager Contract with Core Construction Service of Florida, LLC; and authorized the County Manager to execute the necessary budget change requests related to the gymnasium floor replacement at the South Mainland Community Center.

Result: Approved

Mover: Rita Pritchett

Seconders: Bryan Lober

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

F.6. Request to Write-Off Uncollectible Ambulance FY 18/19

The Board approved the Fiscal Year 2018-2019 uncollectible Emergency Medical Services (EMS) accounts receivable write-off.

Result: Approved

Mover: Rita Pritchett

Seconders: John Tobia

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

F.7. Board approval of Brevard County Public Safety Answering Points (PSAPs) Interlocal Agreement Between Brevard County First Responder Agencies

The Board approved the Brevard County PSAPs Interlocal Agreement between Brevard County First Responder Agencies, identified as, Brevard County Sheriff Office on behalf of unincorporated areas in Brevard County, Cities (on behalf of their Police and Fire Departments) of Titusville, Cocoa, Rockledge, Cocoa Beach, Satellite Beach, Indian Harbor Beach, Melbourne, Palm Bay, and Town of Indialantic, and Fire Rescue providing Emergency Medical Services and Fire Services for unincorporated Brevard County, and fire dispatch for Cities of Rockledge, Cape Canaveral, West Melbourne, and Towns of Grant-Valkaria, Malabar, Melbourne Village, and Palm Shores.

Result: Approved

Mover: Rita Pritchett

Seconders: Bryan Lober

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

F.8. Approval of High Bid for Public Sale of a Surplus Property and Authorization for Chair to Execute All Necessary Documents

The Board approved the sale of a surplus parcel of property pursuant to Florida Statute 125.35(1)(a); authorized acceptance of the high bid in the amount of \$5,000 from Jonathan Bostic; and authorized the Chair to execute all necessary documents.

Result: Approved

Mover: Rita Pritchett

Seconders: Bryan Lober

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

F.9. Request Permission to Issue a Request for Proposal (RFP) for Bond Counsel Services for Brevard County

The Board granted Central Services Director permission to develop and release for advertisement an RFP for bond counsel services for Brevard County; approved the Selection and Negotiation Committee consisting of Gerard Visco, Katherine Wall, and Abby Jorandby; authorized the Chair to execute all resulting contracts, contract amendments, and contract renewals upon review by County Attorney and Risk Management; and authorized the County Manager to approve any necessary budget change requests.

Result: Approved

Mover: Rita Pritchett

Seconder: Bryan Lober

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

F.10. Appointment(s) / Re-appointment(s)

Commissioner Tobia stated this is concerning Board appointments; he asked for a couple of them to be pulled upon review; he advised his office spent a little time and dug through the legal proceedings and found that an appointee to the Historical Commission was voluntarily dismissed without any findings by a judge or law enforcement, so there are no issues with that one; however, Commissioner Smith's appointee to Planning and Zoning Board still leaves him with some deep concern. He went on to say there is an accusation of domestic violence against women and he takes that extremely seriously; he is not prepared to vote for someone who has had a finding related to that without detailed information about the circumstances; and he asked Commissioner Smith if there is any additional information regarding the circumstances of this individual's history before he votes.

Commissioner Smith stated the circumstances on this one are very similar to the one Commissioner Tobia stated was okay; it involved a domestic dispute where charges were dismissed two weeks later; when couples get divorced they start throwing accusations at each other and make the other one look bad; and that is exactly what happened in this case as did the other case in question.

Commissioner Tobia stated Commissioner Smith's understanding of court documents and his are completely different; the individual Commissioner Smith spoke with has an injunction issued against them based on evidence presented to the court, while the other was voluntarily dismissed; under Florida law for an injunction to be issued a judge must find that it appears to the court that the petitioner is either the victim of domestic violence or has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence; and the evidence to support the injunction must be strong and clear, therefore, the statement Commissioner Smith just said is patently false, they are dissimilar.

Chair Lober stated the burden of proof, and he is not saying the Board Members should vote one way or another, but just to be clear the burden of proof for getting an injunction issued is far lower than it is in a criminal case; he is not saying that there are not concerns or that there may not be valid concerns with respect to someone having an injunction issued against them; however, that is a far cry from saying that someone was convicted or even received a withhold of adjudication on a criminal charge. He continued by saying he thinks everyone is entitled to a degree of due process and as this is not dealing with something that is criminal in nature he is going to go ahead based on Commissioner Smith's comments in respect to him being satisfied

with this appointee and his understanding of how the criminal case was disposed of, he is going to support appointment; and he noted the Board Members are entitled to vote as they wish.

Commissioner Tobia stated he could not find any record of the injunction being lifted; and he asked if Commissioner Smith knows anything about it.

Commissioner Smith stated he does not; he called the gentleman involved and he was advised the circumstance was as he just stated; he did not go any deeper than that because he knows that there has not been any adjudication; he has not been found guilty of anything; and he advised if he is found guilty, he will withdraw his name. He added at this point it is just an accusation.

Commissioner Tobia stated unfortunately according to State Statute, it is quite a bit different, and for that reason and the fact that he takes domestic abuse extremely seriously, the standard of innocent until proven guilty is one thing in a criminal court, but this is not that; and he noted O.J. Simpson was not found guilty but he would not appoint him to any of his boards, so he will not be voting in support of this nominee.

Chair Lober stated he wants to reiterate the fact that he takes the aspect of Domestic Violence seriously; he has done more pro bono work for Brevard County legal aid specifically representing petitioners in the domestic violence injunction venue than for probably any other agency including the animal causes that he has represented; he takes the constitutional protections and the entitlement to due process even more seriously than anything else whether it is due process, right to bear arms, or freedom of speech; and for that reason he is going to support this.

The Board appointed/reappointed Joe Denaro to the Personnel Council, with said term to expire December 31, 2021; Mark Wadsworth to the Planning and Zoning Board, with said term to expire December 31, 2021; and Margaret Goudelock to the Historical Commission, with said term to expire December 31, 2021.

Result: Approved

Mover: Curt Smith

Second: Bryan Lober

Ayes: Pritchett, Lober, Smith, and Isnardi

Nay: Tobia

G. PUBLIC COMMENTS

Charles Tovey thanked Commissioner Tobia for his work on the Community Redevelopment Agency (CRA); he stated had Commissioner Tobia not done that, the County would probably still be dealing with CRAs; and he thanked Commissioner Smith for his help in that matter as well. He mentioned he has started work on the north Lagoon; by the end of spring he should have it all straightened out; regardless of everybody else's employment on the Lagoon and its recovery, he still thinks that his work is the most impactful to the recovery of the Lagoon; and he will disclose all of his secrets after he finishes the north part. He went on to say his speaker card is on Code Enforcement on his property; he thinks it was 2005 when he got a Federal Emergency Management Agency (FEMA) trailer then Palm Shores called Code Enforcement on his FEMA trailer; he asked if there is anybody else that has had Code Enforcement called on their FEMA trailer; he added if someone has a FEMA trailer then he or she had to have some kind of damage from the hurricanes; and he noted that he had nothing to do with it. He

continued by saying they came along and put the trailer on it, he did not want it, and they took it whenever; he had nothing to do with the FEMA trailer; then they went to his tree, the biggest tree in Florida, and the tree falling because of his neighbor excavating his property and the deputies not doing anything, he asked for a no trespass but they would not do it; and still to this day he is destroying his property. He mentioned from the tree, it went to his boat that was inadvertently taken and he paid the fine for all of them and complied with all of them; he never had a code enforcement complaint, his house was not collective of things until people did it and they are left to do it; and he would not have these problems if it was not for other people. He stated from the boat it went to them trying to burn him out of his house; after the house it went to repeat violence; he does not even know the lady but she enforces it with south precinct and the rest of them; he has lived outside of his house for 10 years now, since the arson; the County is collecting monies on him and it took everything he has, to employment and a life; and they expect him to pay fines and comply. He thanked the Board for its time.

Chair Lober stated with respect to the Code Enforcement question, he asked Assistant County Manager, John Denninghoff, if Brian Locke would be someone for Mr. Tovey to reach out to find out if there has been other similar complaints.

Mr. Denninghoff stated Mr. Tovey could certainly start there if he wishes and he noted he thinks there has been contact there previously, but it would not hurt to try again.

Sandra Sullivan stated over a year ago there was testing done for the Perfluorooctane sulfonate (PFOS) at her request; the County did some testing of some shallow wells, where in one of those three shallow wells, trichloroethylene (TCE) was detected; she talked to a PHD expert that was involved in it and she asked if it was his child in Franklin, Illinois, where they have a lot of cancer cases and other health issues; and he explained to her TCE is like a big chocolate cookie, and in some areas there are high concentrations where those chocolate chips are and other areas this level might be in the dough; TCE is a plume; and two of those sites that were tested are on the drainage channel coming down from Patrick Air Force Base which was known, just like her disposal site, to have 55 gallons of oil which was mixed with TCE back in those days. She commented to look around the country in air force bases, TCE is a very common contaminant; in her yard the Environmental Protection Agency (EPA) found, and they did some games with the testing, but they found dioxane in front of her bedroom along with chloroform and dichloromethane; those are called tracers; the dioxane and research are done in 96 percent of cases they find that there is TCE; and when they are doing TCE testing with BOCs they have to do it by the EPAs own rules, 58 samples. She went on to say she believes there are two separate issues here; one is the disposal site and the other is where the TCE location was because who the responsible party is depends on where this was tested; two of the sites were on the drainage channel; one is on the Corp of Engineers disposal area and one of them is on neither; and she believes that has to be disclosed to the Florida Department of Environmental Protection (FDEP) in order to know who is responsible party to do the testing, whether it is the County, Patrick Air Force Base, or the Army Corp of Engineers. She advised she is requesting this data which is being held by Applied Ecology be released to FDEP so they can determine who the responsible party is.

Chair Lober inquired if Ms. Sullivan knows if the County has that information or if it is something that has not yet been transmitted to them.

Ms. Sullivan stated she does not know if the County has it or not; on the chain of custody document it just lists an acronym for each of those locations; the County may not have that location; Applied Ecology certainly could; and the County could direct Applied Ecology to release that to FDEP to Ashley Gardner.

Chair Lober stated the Natural Resources Management Director is shaking her head in the negative as to whether or not the County has it; and he mentioned he would be happy to give any information that the County has.

Virginia Barker, Natural Resources Management Director, stated the issue is when this concern came up they had just installed water quality monitoring wells throughout the County and there were three north of the Satellite Beach area; staff went to those folks who had allowed the County to put wells on their private property and they explained they would also like to test for these chemicals that are of emerging concern, potential contaminants from the military dump; however, their identity would be protected by labeling the bottles in such a way so staff could tell they were from the vicinity of South Patrick Shores but would not be able to tell which house was which. She noted there were three samples and the data is from the three samples in the general vicinity; she does not know which sample came from which house; and the consultant was specifically directed to double blind label the equipment in such a way as if would protect peoples private property.

Ms. Sullivan stated for one clarification she has email confirmation that these are existing wells, not monitoring wells that were put in; even if it was three, that narrows it down from four; two of those are on the drainage channel, two of them are not on the disposal site; this has been handed off to the Army Corp of Engineers which is not necessarily their responsibility; and she thinks it is the County's responsibility and liability at this point.

Chair Lober asked if there is any data that the County has not yet released in the format that redacts the specific property owner's information.

Ms. Barker responded all the data that staff received was immediately released to the press, they did press releases, they sent it to the Board, and the reports are posted on the website.

Chair Lober asked if the data itself is on the website.

Ms. Barker advised she would have to check to make sure it was not taken down in the past few weeks, but yes the data has been posted.

Chair Lober stated if it has been taken down, we can have a Board vote if need be, and he asked if Ms. Barker would mind putting it back up.

H.1. Adoption of an Ordinance to create the North Merritt Island Transmission System - Phase 2 Capital Recovery Fee

Chair Lober called for public hearing on the adoption of an ordinance to create the North Merritt Island Transmission System, Phase 2 Capital Recovery Fee. He stated he spoke with the Utility Services Director about concerns with this Item; one is that the residents have adequate notice before they get hit with what basically amounts to a mortgage payment, about \$1,300, to connect; he was advised that the information was provided at the time of the request to connect was put through; and he asked if that is correct. He went on to say the only other concern he has is to make sure there is some option for people to be able to pay over time because of the amount; and he noted if that is something the Utility Services Director is not prepared to address today, he would like for him to bring something back before the Board once he has figured out some options to let people have a little time to pay it.

Eddie Fontanin, Utility Services Director, stated procedurally this is the approval of the ordinance; the next step would be to come back with the resolution that has the pay amount that gets approved by the Board; and that discussion can be held at a future Board meeting.

There being no further comments or objections, the Board adopted Ordinance No. 20-02, establishing capital recovery charges for connection to wastewater collection and transmission facilities, to be known as the North Merritt Island Transmission System – Phase 2, prescribing the boundaries of said system to consist of certain property contained within Township 23, Range 36, Sections 25-27 and 34-36; authorizing the collection of charges in substantially the same manner as provided in Chapter 67-1145, Laws of Florida (1967); prescribing the procedures for the fixing of an initial schedule of capital recovery charges for the use of the facilities to be furnished by said system; and providing for an effective date.

Result: Adopted

Mover: Rita Pritchett

Seconded: Curt Smith

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

I.1. Wetlands Protection - Comprehensive Plan Amendments

Darcie McGee, Natural Resources Management, stated the Board has seen this information before so she will go through and highlight some of the more important points then she will have two additional options to present; the first thing she wants to address is the County's role versus the State's role in wetland regulation; there are distinct protection requirements to the State for permitting and to the local governments for planning; the State permitting agencies do not consider whether wetland impacts should or should not be allowed, the planning function is the responsibility of the County; and the bottom line is the Comprehensive Plan Policies are consistent with the planning standards set by the State for County wetlands protection. She continued on by saying Option 1 is looking at the 1.8 percent, staff can conduct analysis of the billing department and Property Appraiser data to determine if typical single-family home sizes have increased since 2011 and modify the 1.8 percent which is at 4,000 square feet of impervious area over five acres and see if it can be adjusted accordingly; Option 2, staff could look at something like what Palm Bay has done where they have one unit per three acres where there is centralized sewer and one unit per five acres where they are on septic; Option 3 addresses the issues the County has had recently with the older subdivisions where wetlands are appearing where they did not use to be, and that is causing a problem for the County when people come in to develop those lots; and staff would like to address that issue. She went on to say Option 4 is new; the conservation element establishes a requirement of no net loss of functional wetlands in Brevard County; as development continues, it is quite robust right now, the State is sometimes not able to find mitigation credits within the County so they are going outside the County; it can also be assumed that maybe some mitigation credits coming into the County but staff cannot quantify that now; and staff would like to look at that issue and address it. She stated staff has done some additional research and they have found another option that would really help with County mitigation; until about eight years ago, the private sector could do mitigation projects on public lands and then there was a State prohibition on that; Governor Ron DeSantis has undone that so thanks to him the County can now establish some in County mitigation opportunities on public lands for private developers; this sets the County up to reconnect the relationships with the develop community for some wins; and staff can encourage in-County mitigation and help fulfill the accounting of no net loss, Environmentally Endangered Lands (EELs) will get restoration and monitoring for five years, it provides a less expensive mitigation option for developers, and staff would like to look into establishing this opportunity again. She added there is no prohibition on it now at the County level, staff would just need to look at the process and reestablish that; and she mentioned when in-County mitigation is not available, staff has allowed both public and in private entities to go out of County and they have not been applying that Policy inconsistently. She advised Option 5 was to analyze Mr. Moia's proposal; since the Agenda Report staff has been able to do a lot of research; she does not have a report for the Board but she can provide some of staff's initial

thoughts; staff agrees with the concept of the basin lines, County lines, and would like to explore the new language; she thinks it is mentioned in the staff report about doing inventory of what is going in and out; she is not sure if that is going to be relevant or not but staff can do it if the Board would like; and she advised what she is doing is going through the different points submitted by Mr. Moia so there might be some overlap of some of the stuff she talked about. She mentioned recommendation of a County-wide wetland inventory was in the proposal; staff agrees that it is a valuable thing to have and the County actually has a GIS data layer with that information that is available to the public; the County has the natural communities including wetlands were mapped throughout unincorporated Brevard County in 2000 to 2002 with the layer being completed in 2002; and other GIS data layers related to wetlands that the County uses in its review for development are the National Wetlands Inventory, the St. Johns Land Cover Codes, the NRCS soils map, FEMA's Special Flood Hazard Areas, and the aerials for many sources going back for decades. She noted if the Board wishes staff can update the natural communities layer, however, that would be quite extensive from what she hears, she was not with the County in 2002, but apparently there were helicopters involved and ground trooping all over the County, it was apparently a big effort. She stated there is discussion in this email regarding the 1.8 percent and whether it should have been applied Countywide and the lack of data analysis; as previously discussed the 1.8 percent was derived from the 4,000 square feet applied over the density of one unit per five acres; the Countywide application of the 1.8 percent language was definitely intentional as the Board adopted the 1.8 percent countywide relaxing the prior wetland standards for all residential not just The Viera Company; staff's response regarding the 1.8 percent that Mr. Moia references was taken out of context; the comment pondered whether the 1.8 percent was appropriate when there was a lack of alternative compliance standards that result in environmental benefits, i.e. cluster development and preservation of large wetland areas; and the standards that were included for Viera, the rest of the County did not have to abide by. She went on to say prior to the 2010 amendments, the existing amendments from 2004, there was only one residential policy, no diminutive impact allowed, so the intent of applying the 1.8 percent was to provide flexibility, pre-2010 it had one unit to five acres, or they could be pre-1988 or pre-Comprehensive Plan to impact wetlands and then had access to wetlands. She explained on the map the purple line that runs down the middle of the County divides it into two areas, one where the water drains west to the St. Johns River and one where the water drains east to the Indian River Lagoon (IRL); the lime green is the conservation areas and the wetlands are in blue; it shows the significant amount of conservation lands are out by the St. Johns River providing a lot of protection out there; there is some lime green in Merritt Island, a little less protection for the IRL; when staff talks about the EELs lands they have always prioritized the upland scrub from the beginning, at the time of the program, wetlands already had protective measures in the Comprehensive Plan and the uplands did not, so they prioritized upland acquisition, and the Scrub Jay Habitat Management Plan required by an Endangered Species Act is implemented through the EELs program and the management of those uplands; and that is not to say they do not have wetlands, they do, but their priority of acquiring lands was uplands first and developing corridors. She advised staff went through, and they look very simple, they are just modifying number seven, so they are not sure the overall intent of the proposals, the 1.8 percent is stricken and number seven, both amendment options have internal inconsistencies within the Comprehensive Plan; they still have the residential density of one to five, they still have the requirement for sufficient uplands for intended use, and for buffering; there is still the allowable uses in number eight; therefore, if the intent is to defer all residential development wetlands in wetlands to the State and remove all planning aspects of residential wetland policies, it is staff's opinion that the data analysis is not sufficient and staff questions whether either proposal would meet the requirements of Chapter 163. She noted there is likelihood of it being challenged. She added she is personally unaware of any residential development being denied due to the 1.8 percent or the wetland mitigation issue; and staff went back and looked at subdivisions since 2010 and the percentage that had wetlands.

Tad Calkins, Planning and Development Director, stated staff went back and looked at several subdivisions and they focused on the Res 4 land use which is four units to the acre; when getting into larger developments, they found that there was a yield of 3.5 units to the acre; what is important to note on that is those properties did have wetlands but a lot of the yield that they are not obtaining is for infrastructure, so there are roadways and stormwater and all of that comes into account; and that can vary from 25 percent of the overall property up to 35 percent depending on the design and the impervious areas. He asked the Board to take that into consideration when thinking about this.

Ms. McGee stated she wants to make the Board aware that depending on the options that the Board selects today, there are concerns regarding the timeline of the fall submittal deadlines that the full package would be due to Planning and Development on June 30th so depending on the level of changes that the Board would like to investigate, staff may need some additional time; and she has some more data that can be discussed if the Board would like, but she has tried to hit on some of the bigger topics. She noted staff has more research on the other jurisdictions regulations more that is in the packet and there is additional information on mitigation banks if the Board would like.

Chair Lober asked the Board if it would like to briefly discuss where it is at with this before public comment, it may help the public gear their comments a little more directly, but if that is not the consensus he will go right into public comment.

Commissioner Pritchett stated she is still on the studying stage; the book that was provided is a little overwhelming; she read through all of that and it is interesting to hear Commissioner Ellis and Commissioner Scarborough's comments back and forth; she will be listening because she knows staff knows there needs to be some changes and they are ready to deal with that; Mr. Moia had some good ideas; she mentioned the County is being consistent and having the same guidelines as the State of Florida; and she asked Ms. McGee to explain.

Ms. McGee stated the County's role is different than the State's role; the County's role is planning and the State's role is permitting; and the County is currently consistent with the State standards for planning through the Comprehensive Plan policies and the associated land development regulations.

Commissioner Pritchett stated staff told her that the State does not do that, they expect the counties to do it and submit it; from what she was sent by Ms. McGee it was sent one time and it was denied then staff had to go back and work on it for some criteria; and she inquired how Brevard County aligns with some other counties as far as rules are concerned. She noted her goal is going to be maximum amount of growth with the least amount of impact to the wetlands which believes should be the County's goals; developers who are trying to do this, they are not bad they are just trying to develop, so that is okay; the County is trying to protect the wetlands because of the importance of them; and those will be her criteria as the Board moves forward and starts making some changes. She advised she is going to be looking for what the County can do to allow them to develop that is not going to be a big impact to wetlands as far as trying to keep the wetlands and the uplands; and that is where she is at.

Commissioner Tobia stated Ms. McGee presented one through four to the Board two or three months ago and clearly she has done quite a bit of work on that one; it is both friendly to developers that takes into consideration the importance of the wetlands, and he thinks it strikes a balance; he would like to look at Option five a little more and certainly hear where some of the residents are on that option; he greatly appreciates the approach that was presented three months ago; and he asked if that was correct.

Ms. McGee stated it was November.

Commissioner Tobia mentioned his office has done quite a bit of research on this one; they were comfortable to support one through four then and still comfortable supporting one through four; and should there be a motion, he definitely would support that. He added he would like to hear what residents have to say about Option 5 since that is a new option; and at the end of public comment he may have some follow up questions.

Commissioner Smith stated he would just like to mention the fact that he like the rest of the Board, he is very property rights oriented but at the same time he understands that the Board has a duty to the present citizens and those in the future to bring responsible growth to this County; he has said over and over again that he does not want this to become Broward County; the Board has to walk a fine balance; he knows if someone owns property they should have a right to sell it; at the same time there has to be some responsibility and responsible development done at the same time; and that is where he is at on this one.

Chair Lober stated the question is striking an appropriate balance which they not only have between property owners rights and not doing harm to the neighbors; it is always a balance and he does not think there is an objective way of really getting this to perfection; and with that said, and where he is today, because he has received lot of emails even from some of those in the audience, when he looks at property issues he understands that a lot of them do have overlap from one District to another, but his general feeling is one where unless there is an exceptionally compelling reason to let each Commissioner handle their District as they deem appropriate because their constituents are the ones they have to answer to, they are either going to be happy or unhappy with their Commissioner and they will either retain the seat or not. He continued by saying he checked over the past several days to see whether or not, and he is not saying this is appropriate or inappropriate to do, but to see whether or not it is logistically feasible and lawful to have different standards based on the District; at this point, unless he hears something unbelievably compelling today, he does not anticipate changing his position at this point; and he noted he is basically fine at where it is at with the 1.8 percent. He added he is not saying that is a perfect number, he has some concerns with how it was arrived upon, and he is not saying he is inflexible with considering other options, but as of today if he had to vote and that vote would apply in his District he would be voting no. He went on to say the County can have a system where it retains the existing evaluation process for those Districts that want it while implementing something totally different in other Districts, so if someone wants to move to do something that changes the system if it entails his District as well, he is a going to vote no for it today; and he is not saying in the future once he has had an opportunity to digest some more of this that there might not be some flexibility but he is just not convinced with everything that he has seen in writing at this point. He asked the County Attorney if she knows if it is feasible to do this by District.

Eden Bentley, County Attorney, stated if the data and analysis supports it, so it would need further examination by staff and more analytics.

Commissioner Pritchett stated she would probably leave it alone for her District; she was opening up the thought if there were other Districts that have substantial things that a particular Commissioner wants to change; and she reiterated she thinks it is appropriate for her District.

Chair Lober stated he knows Commissioner Pritchett has a chunk of North Merritt Island as well on the north side of the Space Center; in particular in his District, the barrier islands are what causes him the greatest concern; he lives in Rockledge and he does not think it has the same concerns as Merritt Island; however, with the barrier islands making up a substantial part of his District he just cannot see changing it with what he has seen so far. He commented it is just

something for the Board to keep in mind while listening to public comment.

Jerrad Atkins placed a picture on the projector and he advised it is a picture of his wife's aunt about 45 years ago kayaking in the Indian River, it is beautiful and looks like the Bahamas; a couple years ago he voted, along with the majority of people, to give the government more money to work towards cleaning up the river and preserving what is left; it goes against everything he believes in to give the government more money because a person never knows what is going to happen; however, he had to give it a shot because looking at pictures of what it used to look like and what it could potentially look like again he had to take the shot. He went on to say personally he feels eviscerating more of the protection on the wetlands are not going to work towards the goal that the County is working towards; he feels it will counteract it; he thinks if the County allows mitigation credits to go in other counties, it does not do the Lagoon here any good; and he mentioned as a taxpayer and resident of this County he would like to see them stay as they are, the protections that the County has right now. He advised he brought a more recent picture of someone kayaking in the river and placed it on the projector next to the other picture.

Chair Lober stated the side by side is pretty telling.

Mr. Atkins agreed and stated the County needs the wetlands. He commented he is not an expert but a picture is worth 1,000 words and this equals 2,000 words.

Richard Ceballos stated he is a grove owner and has owned the citrus grove for the past 17 years there; the grove is one mile inland from the Mosquito Lagoon; his concerns are about saltwater intrusion; he has evidence that saltwater intrusion on his grove and to his business with 300 dead trees so far; and he is concerned if the County does not protect the wetlands it is going to get worse. He went on to say it will not only affect his grove, but more importantly the wells; not only his well but everybody's wells, including the developers who intend to put more wells out there; and he stated he hopes the County will not make it worse.

David Laney thanked staff for the work they have done; he spent most of yesterday afternoon and evening reading the package for this meeting; and with the work that the staff has done, the requirements for something to be submitted for an amendment to the long range Comprehensive Plan include under Brevard County Ordinance that submit the following information to Planning and Development Service Department in order to get a requested change into the system requires identification of the element, citation of the existing language, the proposed revisions in a written statement explaining the rationale and appropriate data and analysis necessary to support the proposed change; and from what staff has said, they were provided none of that. He continued by saying staff only received the change request proposal as a result of one of the Board Members who submitted it to them; having said that, Brevard County long range Comprehensive Plan objective 5, preserve, protect, restore, and replace wetlands to achieve no net loss of functional wetlands in Brevard County after September 1990; one of the changes that were first addressed here that was requested is allow mitigation of wetlands loss in Brevard County to be conducted across basins which travel the County line; this is actually included in the staff report which he is sure all the Board Members stayed up late last night reading; and he noted if that were allowed it would allow mitigation across seven different counties in Central Florida. He added wetland mitigation for wetlands lost in Brevard County could be Osceola County, Orange County, Seminole County, Okeechobee County, and Indian River County, none of that which lends itself to support and comply with objective five of the long range comprehensive plan of Brevard County; no net loss wetlands in Brevard County; and what it also would not do is allow for effective wetlands functioning on the east side of Brevard County as the way the basin drains, not water that goes to the St. Johns River, water that goes to the Lagoon. He stated the request for the 1.8 percent and to change the Section

587, what is not noted and staff touched on it, is that actually cascades back through the entire Comprehensive Plan and where the restrictions are on the development of wetlands; Policy 5.2.e.1. Residential and Wetlands Parcel, that references back to that limitation; 5.2.e.2a, Residential Land Use, is not part of a formal subdivision, and references back to that limitation; and the complete eradication of that section eviscerates wetlands control and planning in Brevard County's Comprehensive Plan.

David Botto, Marine Resources Council, stated he thinks the Marine Resources Council has made its position very clear over the years that they considered wetlands crucial to the long term health of the Lagoon; that is given more urgency now because of the estimated population growth which if following the 2070 plan is estimated to go to 32 million in the State; they are coming in at a rate of over 600 per day; every single one of those represents about a little over 500 square feet and that is a conservative estimate, every one of them over 500 square feet of impervious surface, as the County struggles to maintain that proper balance of pervious to impervious surfaces for the Lagoon; the wetland is not just another pervious surface a wetland is the perfect pervious surface as it provides storage for water and allows it to the percolate none of which ends up as runs off into the Lagoon; and they believe the Comprehensive Plan is designated constitutional law it should not be easy to change the Comprehensive Plan, it should be difficult with strong clear evidence that is in the public interest. He continued by saying they believe wetlands are definitely in the public interest if the Board is concerned about the future of the Lagoon; they believe the County should not change that plan unless there is that clear evidence; in regard to the interesting yet political divisions mentioned, John Muir is the guy that convinced Teddy Roosevelt to establish Yellowstone National Park, the first national park in the world, and he said every single human in the United States lives in a drainage basin; and that is where the division should be made for representation and it should be by drainage basin. He added he thinks that is an interesting aspect. He went on to say this drainage basin for the Indian River Lagoon belongs to all of the residents and any change that will weaken the ability to manage wetlands development is not a good change; and he recommends the Board hold its state.

Jack Ratterman stated this is a fascinating place to him, there is no other state that captures the utopic and qualities of modern American life, the light, the dark, the dream, the nightmare better than the sunshine state; at the harbinger of the America to come it is not surprising that the dynamics of American culture occur more vividly here at the edge of the continent where people come to reinvent themselves, start over or just retire in the sunshine; nowhere is this complex state better reflected than in the Florida Wetlands; the wetlands are a biological community of unique interacting organisms, a complex ecosystem that highlights the surrounding health of the fauna and flora of the diverse Everglades State; and he explained they prevent flooding, they filter and purify water, their vegetation feeds marine life in the rivers, lakes, and lagoons for food, migration, and reproduction. He mentioned they are not isolated or independent, to the contrary wetlands are valid to the health of all the bios, wildlife, and humans; wetlands directly improve the ecosystems because of its many cleaning benefits; and they are often compared to kidneys which control water flow and clean the system. He stated Greg Warmoth at Channel 9 featured the IRL in their Central Florida spotlight and their guest included Virginia Barker and a clip from Governor Ron DeSantis stating the key to the economic well-being is the good health to the water, it is the foundation of making Florida the top fishing and boating destination in the world and to enhancing the property values. He went on to say being a good steward to this environment, the Lagoon, the tourist industry, and the everglade state are the wetlands and they must be preserved and retained for good environmental and economic health; Florida kidneys are organs that the residents cannot do without or live without; and once damaged or removed the demise will soon follow with this ill-advised decision. He continued by saying in the past year everyone here has gotten together at this government center to plan and coordinate the future of the County and the State; he

hopes it is a special moment this year when the vote is taken that the County protects and preserves the wetlands making the correct decisions; when other concerned citizens, crackers and mosquito beaters alike look upon what was achieved here they will give a standing ovation; they will be joined by the likes of Rachel Carson, Theodore Roosevelt, John Muir, Marjorie Stoneman Douglas and look down upon this meeting; and he asked the Board to deny the Comprehensive Plan Amendment.

Darlene Hillers stated she just recently learned of the proposed change and she is very much about the environment and she believes the wetlands are extremely important; she is a little confused about the wording of these amendments because to her it sounds like the developers want to build on the wetlands, but because of the mitigation process they will be moved somewhere else; from talking with some people that she knows, it sounds like the developers are wanting to push it a little further out of Brevard County which to her does not make sense because how is that going to benefit this County if they were to take one of the wetlands and put it in another County; the wetlands are very vital to this environment as they protect people from flooding and the natural flow of water and where it goes; and she asked the Board to please vote no on the proposed amendments.

Michael Myjak stated the Lagoon and the St. Johns River are two of the most precious water sources the County has; they are the reason Brevard County has this garden paradise and the residents are here; if wetlands continue to be removed from the County, the people in the County end up with a net loss and that net loss is not quantified; it is far greater than people can put numbers to; between the species and the animals that live here, the bio-diversity, one of the strongest and if not the highest in the nation with over 4,000 different species living here; and to take away the wetlands most of those will be gone. He went on to say the wetlands are vital to clean the water, and for people's health and well-being; the County to save them, save more of them not less of them; and he asked the Board to vote against them.

Bill Debusk stated he is with the Turtle Coast Sierra Club and they are asking the Board to vote no on the proposed amendments as to the wetlands protection and Comprehensive Plan; as many have already said wetlands are vital to the health and environment here in Brevard County; they prevent flooding events; they act as filters to protect the IRL; and they act as areas to pool water so it can go back into the aquifer for the fresh water. He stated there is a recent event he would like to highlight today that kind of shows why it is needed for flooding; his wife's sister lives in Surfside, a community just north of Miami Beach, where less than a month ago they had heavy precipitation and their home was flooded not far away from where their son lives in Hollywood, Florida, and his car was flooded and they temporarily closed the airport because of the flooding; and he believes these events are going to continue with greater frequency. He mentioned there is an organization called the U.S. Global Change, a research program mandated by Congress to study things like this and they have essentially concluded that there is going to be more and more of these types extreme rain events in the United States as time goes on; the problem is clear, it is at the County's doorstep, that the County needs these wetlands to help among other things, protect the County from flooding that will probably increase as time goes on; and the County needs these wetlands to safeguard Brevard County citizens which is less than 200 miles south from where this recent rain event occurred less than a month ago. He asked the Board to vote no and maintain these vital protections for the wetlands.

Jo Shim stated sustainability is very important issue to her; she is a member of the City of Cocoa Sustainability Advisory Committee but she is in attendance because she is the current president of the League of Women's Voters of the Space Coast; the League has a very deep interest in sustainability conservation and preserving the natural resources of the County with a strong commitment to protecting natural wetlands; members of the League are deeply

concerned about the proposed amendment to the Brevard County Comprehensive Plan that would start the process of dismantling the County's residential wetland policy; these proposed changes do not seem to be in the interest of good sustainability practices for the County; and sustainability means that a process of state can be maintained at a certain level for as long as is wanted with sustainable development being development that meets the needs of the present without compromising the ability of future generations to meet their own needs. She continued by saying some of the changes that can be expected if these amendments are introduced, there will be increased flooding as was heard by many other speakers, flooding of homes, properties, and streets, and consequentially increased expenses for the County; wildlife adapted to wetland environments will be threatened; increased development around the IRL will negate all the clean up work that has been done to date and paid for by County residents; it will also negatively impact tourism and quality of life for all who live in this County; and the bottom line is that she does not want to see changes to the current wetland policy and she urges the Board not to pass the proposed amendments.

Commissioner Pritchett stated Mr. Severs was the City Attorney for hundreds of years and he is just a wonderful person.

Dwight Severs stated he has been a resident with Brevard County for more than 50 years; he served as a City Attorney for Titusville for 40 years; in any event he has handled numerous cases involving local government issues; he has handled many issues involving the drafting, reviewing, and preparation of Comprehensive Plan litigating their enforcement, etcetera; after retirement for the last five years he decided to join the Planning and Zoning Commission of Titusville, and they are in the process of reviewing the 2040 Plan and that is an interesting experience for him; he has served more than 50 different council members, six different managers, and one of the unique experiences as a city attorney is he got to observe the political process in the development process and the pressure of those in favor and those against; and he noted he lives on the IRL and has observed firsthand the degradation of the IRL and the current pressure to develop marginal lands and the impact it continues to have upon the Lagoon wetlands etc. He went on to say, as a resident and taxpayer he has supported taxing himself in an effort to try to improve the water quality; many problems in his mind could have been mitigated or avoided with proper planning and development; deferring to SJRWMD is a part of the problem not the solution; and that is based on personal review of plans and what they require and what they did not require. He noted his life experience as an attorney, his personal belief, and his faith tell him that the people need to become better stewards of the environment and protect God's creation, and he really believes that; he asked why he should support any amendment to the Comprehensive Plan that has the potential for allowing more development of wetlands and degrade the functional value thereof; and he inquired how the idea of buying mitigation lands in Volusia County is going to protect the IRL. He stated the proposed change should be denied and the Board should move forward with more important business of the County and not in any way degrade or change the wetland regulations so as to cause potential harm; he asked if the County has not learned something from all this permitting process and the history behind with the consequences of previous permitting and such; and he asked if the Board really wants to cause further degradation of this environment. He stated he would respectfully suggest the Board leave things as they are and not to change the regulations.

Phil Bennardo stated he has been a resident of Brevard County and North Merritt Island for the past 32 years; he is opposed to all of the proposed changes to the Comprehensive Plan, in other words any change to the 1.8 percent limitation and he is proposed to the mitigation changes; he thinks he understands the 1.8 percent was some time ago a recommendation from the Sierra Club; and he is opposed to these changes for three main reasons. He went on to say first of all he believes it is going to contribute to flooding problems in the County and in

North Merritt Island in particular; he thinks it is going to impact his property value; and he believes it will have a negative impact on the environment. He continued on by saying as the Board knows North Merritt Island has been seeing growth in housing densities at an ever-increasing rate; quite a bit of the land on North Merritt Island is low and a lot of it is designated as wetland whether it is poor quality or not; as these low-lying areas are being filled in he is seeing there is more and more flooding, and he is seeing homes that never flooded in the past starting to flood now; filling in existing wetlands is only going to make this worse; and during any major storm event the wetlands help absorb storm surges. He noted his house has never flooded in all the time he has lived there but there are flood prone areas nearby and a hammock behind his house; if the flooding continues to get worse in these areas North Merritt Island is going to be labeled as a flood prone area and people are not going to want to move there and his property values are going to go down; he believes wetlands are beneficial to both plants and wildlife, but they are also good for the IRL; on North Merritt Island there is a river on either side of it; and during a major storm event wetlands help to filter the runoff before it enters the river. He stated he does not believe the rights of developers should take priority over these environmental concerns; and he reiterated he is opposed to the proposed changes because they will contribute to existing flooding problems, they will impact his property values, and most importantly they are detrimental to the environment and to the IRL.

Chair Lober stated he knows there are a lot of folks who have a lot of intense feelings with respect to this subject; he asked the audience to give Mr. Moia his three minutes as he has been respectful in giving everyone their three minutes; and he advised if anyone is disruptive he will ask the deputies to do what they need to in order to maintain order, but he is sure everyone will conduct themselves appropriately.

Bruce Moia thanked Chair Lober for his sentiment. He stated he is hoping he can put a lot of minds at ease because the real reason he is there is because direction by the Board after the March 7, 2019, hearing where the direction was to make sure he was consistent with the minimum standards set forth by the State and the SJRWMD; Brevard County has a lot of different parts of its Code and its Comprehensive Plan that is way more strict than SJRWMD requires; it is actually one of the few municipalities that requires this; and he is unaware of any other municipality in Brevard County that has requirements over and above that of the St. Johns. He went on to say what he wants to do is just really address two of them; he thinks now one of them is just a house-cleaning item; the 1.8 percent was part of Viera substantial deviation where they agreed to go 1.8 percent of the wetland impact because they have a Planned Community and planned all their mitigation and impacts and it was adopted Countywide; he is not really sure why but he has his suspicions; and that was submitted to, at that time known as the DCA, the Department of Economic Opportunity (DEO); and it was passed. He continued by saying this was not part of any stipulated settlement agreement, it was just a requirement that they were going to do that; as he has been meeting with the Board and talking about this he has obtained a memo from the Natural Resources Management Department to basically say that the 1.8 percent does not mean someone cannot mitigate for that; if someone mitigates for any impact of wetlands, it still meets that no net loss; therefore, the 1.8 percent really does not apply to keep someone from doing wetland impacts on a subdivision like a Planned Unit Development (PUD) or something larger, it is really more for if someone has a single-family home where say it is 100 percent wetland, they would have to minimize their impact to that wetland. He noted with that memo being provided he thinks it is for clarity of the Code; how people read it, how it is interpreted, and how it is handled through the staff, should be clear; and he wanted to get that fixed. He stated the other thing is water does not know political boundaries, it only knows basins so if someone is in a basin and they mitigate in that basin then they should be able to mitigate in that basin regardless of where the County line falls; if it is half in and half out like Farmton is then they should be able to mitigate in that basin as opposed to just saying here is the County line; and he mentioned other Counties

mitigate in Brevard County as well because if they are in the basin, then they are in that basin. He went on to say it is just those two things; it is very simple, housekeeping of that 1.8 percent and allowing, and this is not just for private development it is also for public development, that will allow the County to be able to mitigate for anything like a road project where they would have to mitigate outside the County.

Anne Briggs stated she is the secretary of the Micco Homeowners Association and is speaking on behalf of the homeowners; and she read a letter that was sent to the Board, "Micco Homeowners Association is opposed to any Comprehensive Plan or Policy change regarding residential wetlands. We are opposed to the destruction or filling in of any natural wetlands in any residential area in Brevard County. The job of wetlands is to filter pollutants like Nitrogen, Phosphorus, Pesticides, etc. before the water flows into the creeks and canals and rivers that ultimately flow into the IRL. Wetlands provide habitat for a wide variety of native plants and wildlife. Wetlands serve as nurseries for salt and freshwater fish that eventually support commercial, ecological, and tourist needs. Wetlands recharge ground water which benefits us all. Wetlands act as a sponge to prevent flood damage to residential homes. Please do the right thing for Brevard County and vote no for the proposed residential wetland Comprehensive Plan change."

Mary Sphar stated she is speaking on behalf of the Sierra Club; the Sierra Club opposes the amendments proposed by Mr. Moia and Mr. Buchanan; due to the three minutes time limit she will stick to their strong opposition to the second of Mr. Moia's amendments intended to get rid of the residential wetlands impact limitations of 1.8 percent except within the Viera DRI; it appears that those who propose this amendment want an applicant to be able to fill as many wetlands as the SJRWMD or the Army Corp of Engineers will let them; and she asked what that would do to North Merritt Island and the IRL. She continued by saying they realize that the 1.8 percent limitation may be working too well in some people's minds; some may think 1.8 percent is arbitrary and something cooked up just for The Viera Company but the truth is it is an old requirement going back to before 1995; before 2009 it was expressed as one dwelling unit per five acres; and since this requirement now expresses 1.8 percent predates the 1995 Burt Harris Act, no Burt Harris litigation can be brought against this application; and she asked the Board to think about that. She went on to say The Viera Company negotiations were very challenging since at first The Viera Company wanted its own wetlands policy not the limitations imposed on all other developments; some people saw a way for The Viera Company to follow the existing County rules and convinced The Viera Company it was possible; and then all parties began the task of expanding the policies to cover every situation with the same meaningful and predictable standards. She stated the expression of one unit per five acres as 1.8 percent was the final breakthrough; now the Board is faced with a proposed amendment intended to rip the heart out of the residential wetlands policy; this amendment aims to eliminate the 1.8 percent limitation except within the borders of the Viera DRI; and it is so ironic after all the work during the Viera negotiations to ensure a consistent and predictable 1.8 percent wetlands impact limitation that would apply to all residential development. She noted the Sierra Club urges the Board to please stop this amendment in its tracks today.

Linda Behret stated the Board has already heard that the County needs its wetlands to help stave off further flooding; North Merritt Island is a prime example of this but there are other areas as well and the County needs to stave off worse pollution to the IRL that the County is working so hard to un-pollute; the only way to keep the wetlands strong and to keep them doing this is to keep the residential wetlands language that is already in the Comprehensive Plan, limiting the development to 1.8 percent of the property and not allowing mitigation in other counties; she does not know, perhaps that rule was put in as a proposal before the governor re-allowed in-County mitigation on public lands, that is a possibility but this is Brevard County and this County needs the mitigation to stay in this County if the wetlands must be built upon;

and basically what she is asking is for the Board to vote against these proposals and let the language stand.

Stuart Buchanan stated there are four items he would like to touch upon; the first one, he heard staff talk about it, and it is in his report, is that the wetlands inventory is over 18 years old, from 2002; he absolutely agrees that the inventory needs to be updated similar to what has been done in North Merritt Island where the County has asked for a study to be done so the Board can have better data to base decisions on; he agrees with staff 100 percent that the inventory needs to be updated; and secondly, there was talk about mitigation banks and how basins straddle County lines. He continued many people talked about how they do not want mitigation for Brevard County projects across those County lines; he would encourage the Board to ask staff when these comments are done to explain how the reverse is also true; projects in those seven counties perform mitigation to the benefit of Brevard County; the reverse is true and that does not seem to be taken into account; he agrees completely that some clarification which is on the screen right now, needs to take place in the Comprehensive Plan simply to clarify the basin lines cross County lines; as mentioned the Natural Resources Management Department provided an interpretation letter which was incredibly helpful and immediately sent out to all the civil engineers in different environmental consulting firms in Brevard County; and that interpretation letter cleared up many years of misunderstandings in the private sector. He went on to say that brings him to the last slide; the Board has heard a number of people talk about how they do not want to get rid of the 1.8 percent in as it affects residential properties, and he noted that is not proposed; in fact, that language is not touched in the report that was submitted to the Board; the change submitted was in fact the exact opposite; the only change is within the Viera DRI boundaries; he wants to make it extremely clear to the public, they did not touch the 1.8 language as it represents residential development, they only went back to the Viera substantial deviation; and that being said updating, updating the wetlands inventory, clarifying language on the mitigation banks, and the interpretation letter. He stated he absolutely agrees with staff on these three items; he thanked staff for the letter that they issued; and he noted the only item they wish for the Board to consider is the effect within the Viera DRI boundaries..

Sandra Sullivan stated she has been before the Board a few times about the wetlands; she brought a book called Mirage that she recommended the Board read; it is basically all about how in Florida no matter how many laws that are passed to protect the wetlands, people can see them being destroyed at a faster rate than what they are being put elsewhere and the artificial ones that they try to create costs billions of dollars; the net effects are a big negative; that book has a lot of information and it was actually part of the FAU curriculum on a fourth-year course; and she would highly recommend the Board read that book. She continued by saying she comes from Broward County, she still has a home down there, and on the 23rd both their carport and their Florida room flooded; what she has seen down there, and she sees Brevard as being like Broward was about 25 years ago, when she first went to Broward people go out to Davie and it was like horse country and now it is developed 30 miles further out west than that; the weather has changed to where they used to have afternoon showers every afternoon and now they do not have it, now when there is rain there are heavy downpours; every time there is a heavy downpour there is flooding; and that is just the nature of South Florida. She went on to explain these wetlands are very crucial and the Board is in a position, and she wants it to look at Broward very carefully because Brevard is like Broward was 25 years ago, where the decisions it is making are going to have consequences down the road; she wants the Board to look at what happened during Hurricane Irma; those flood plains were three feet under water; and she wants everyone to look at the back of their chairs because it says The Viera Company on there; and she noted she looked at the detailed plan a few months ago and they are destroying areas that are very high-diversity areas of wildlife. She stated even more importantly than that, is the quality of water; relating to the protection of wetlands, what is put on it meaning the biosolids and the muck that is being put out there right now, which is up

to the commercial level of arsenic; new research is coming out showing that arsenic feeds the algae blooms, the cyanobacteria, and the research about BMMA which is causing Alzheimers, Parkinsons, and ALS; all of this research is coming out; there are so many, and not just the environmental issues but also the health issues coming out; and those wetlands need to be protected at all costs.

Chair Lober stated he is going to make Darcie McGee and Virginia Barker either the bad guys or the good guys, he is not sure which just yet; and he asked if there is anything they have heard through public comment that they think needs to be addressed that was either incorrect or stated in a peculiar way from either side on this issue.

Virginia Barker, Natural Resources Management Director, stated the only question she has is Mr. Buchanon said that there appeared to be a misunderstanding what was proposed by the changes to the 1.8 and she does not know if the Board wants to try to get clarification on what that meant; while the line that includes the 1.38 percent is not stricken through, the language that follows that, that is stricken through is how that 1.8 is applied to all the other residential and mixed use developments; and so somehow staff is not on the same page in understanding the intent of the changes.

Chair Lober asked Mr. Buchanon to return to the podium and briefly address that.

Ms. McGee stated she would like to add they just presented one, the second option that was in the packet they submitted, but there was two options proposed in the documents they initially sent to the Commissioners.

Mr. Buchanon stated staff is absolutely correct; they had presented two different options and then when they prepared their presentation for the Board they went with option two which had the least amount of impact to the Comprehensive Plan; that is why it was in their presentation to make in front of the Board and the residents today; the first one he does not believe staff needs any clarification on the basin lines; and he commented he would encourage the Board to ask staff how other counties also perform mitigation in this County across basin lines.

Chair Lober stated he does not mean to cut Mr. Buchanon off but asked if he could keep it tightly reigned in.

Mr. Buchanon explained the actual adoption package filed with the State of Florida for this amendment is 109 pages long; there are two pages in particular which are the data and analysis that can be pulled from the State webpage as it relates to this; this actual Policy was written and was part of the substantial deviation for number two for The Viera Corporation; and the actual amendment was submitted by The Viera Corporation and the staff and the County Commission at the time chose to apply it Countywide, and that was the County Commission at the time's decision. He mentioned this is a new Commission and the Board has the ability to amend that and go back to the original amendment as proposed by Viera Corporation; and it is confusing because this is a whole new Commission, and there is different staff, but hopefully that provides the clarification on how this was put together.

Chair Lober asked Ms. McGee if there was anything else she would like to ask Mr. Buchanon.

Ms. McGee asked if staff were to go back to the residential Policies, other than Viera, prior to the Viera amendment it is one to five and it is pre-88, and access to uplands, that is it, there is no diminimous at all, so that means going back and making it even more strict.

Mr. Buchanon stated no, and if anyone noticed they did not propose any changes to the other

Policies; there is no reason to do so; the 1.8 percent on the five acre parcels makes perfect math; he completely understands that which is why they did not touch it; staff's letter and its interpretation had a huge part to play in that; there was a lot of misunderstanding in the private sector and staff's letter corrected that; and what the Board does not have the benefit of is to be able to see the entire Chapter in front of it. He added in other words, see the Sections that are not being changed and he apologized for that. He reiterated this is not an amendment that has been filed this is simply the Board asking staff to provide information, then they provided information on behalf of the development community; and he noted there is no amendment application that has been filed, this is all for the benefit of the Board.

Commissioner Tobia stated going over the options, Options one through four, it appears it is just research that would be brought back before the Board for decision making process, whether or not the size of homes have changed and whether or not the Board wants to go in one direction or another; he was in favor of it but clearly he does not want to put staff in a position where they have to do a whole bunch of extra research above what they have already done to come back to the Board to make a decision, that is probably not the best direction to go with a Comprehensive Plan change; and should he not hear from anyone else that does not want to look at that research of things that might have changed since it was done, then he certainly would not want to place any more of a burden than what the Board has already placed on staff.

Commissioner Pritchett advised she agrees with that unless staff has something that they feel they need to make some changes and research on because they did come back with some ideas and recommendations; she really likes Chair Lober's idea if the Board can divide this out to Districts because she is pretty comfortable with where her District is; and she mentioned she is interested in where Commissioner Isnardi is because she thinks there is a lot of growth going on in her area and Option 2 with Palm Bay is interesting to her. She continued by saying Commissioner Isnardi's District really does have less impact on the Lagoon than the other Districts do and that is why she has been real hesitant here because she does not want to do anything that is going to harm her District; and she would like to hear what Commissioner Isnardi needs done because if the Board could pull these out she would leave District 1 alone.

Commissioner Isnardi stated obviously there needs to be some changes made because sometimes applying the rules that are in place do interfere and incorrectly so, with people's property rights; the 1.8 percent is just a little over-the-top; it may be applicable to somebody on a barrier island where there are definitely some concerns about flooding; that is why the Board is doing that study; however when there are people who cannot even develop on a smaller piece of property it seems aggrevious to her. She went on to say she definitely wants to see some changes; she wants the Board to be at least in the majority agreement of those changes; she does not know that splitting up the Districts is the way to go; she agrees all the Districts are unique; moreso Commissioner Pritchett's District and her own District are probably more alike than anything close to District 2 with Merritt Island; and she hesitates to make a whole bunch of different rules for different Districts. She continued by saying she thinks the least restrictive is the smart way to go; while the Board defers to SJRWMD and the Army Corp of Engineers, and with the State regulations are, the planning portion is the County's job, however, over doing it is not; and she thinks the Board has to be careful it is not over doing it because everything affects the Lagoon but not everything affects the Lagoon, if that makes any sense. She stated as much as the County is investing and as much as it is doing to compare what has been done that took decades to do, modifying a wetlands Code that will benefit people with smaller areas and smaller subs is the smart way to go; people only have to listen to Mr. Moia or go back and look at some of those minutes from the Planning and Zoning and see how he may be an engineer, work and develop, but he definitely cares about the environment; he is probably on the odd side of the developer where people can see him fighting things that are sort of

surprising that are more environmentally friendly than most developers or engineers would be; she trusts him and often goes to him to ask questions because she believes he is a good balance between smart and responsible development; and that is why she takes his recommendations seriously. She mentioned she not go without some sort of evaluation by staff, but she definitely thinks the Board needs to fix this wetland Code because Mr. Moia is not the only one who complains about it he just offers his input.

Commissioner Smith stated he is having a problem because Brevard is a very diverse County being 72 miles long; Brevard County has everything here so he finds it difficult in his mind, because he is not an engineer, on how to get one size fits all; that is a dilemma he sees; personally he came with an open mind; he has read these things and from his particular District he does not see any changes that are needed; however, he sees what other Commissioners are talking about, so that is his quandary. He asked how does the Board get there.

Chair Lober state if this is put to a vote to approve it Countywide or nothing he is not going to support it today; if there is a request to have staff come back with some proposals that involve Options 3 and 5 and exempt 1, 2, and 4 and essentially leave it be if the data supports doing that, he will happily support that; and he does not really see any other way that the votes would be there to make it go through.

Commissioner Isnardi stated because Chair Lober said that, perhaps the Board needs to look at Districts; she knows that is going to make a little extra work for staff; but maybe some of those issues that can be addressed in there are the length of an area to the Lagoon, that kind of stuff, not an individual study like a Comprehensive Plan or a tens of thousands of dollar study but like her and Commissioner Tobia split Palm Bay and people only have to attend a meeting once to see that they do not always agree.

Chair Lober stated for the County Attorney to help him out because she is better with this than he is; he asked in terms of the data supporting it, would she want data to support the change in those areas where change is warranted or would she want data to support leaving it alone if the Board were making those changes in areas where it is appropriate to leave alone; and he mentioned he figures the former, but he just wants to make sure.

Attorney Bentley stated yes the existing regulations have already been approved by the State so it is for the change and the Board would need new data and analysis.

Chair Lober asked for clarification if one, two, and four are not interested right, wrong, or indifferent as it may be, if three and five want to make this happen, the study if there is one, would only have to apply to Districts three and five.

Attorney Bentley stated she thinks the Board is going to have to look at the entire County; she understands that there are two major basins so it needs to be looked at comprehensively; maybe then it can be broken down and the experts would have to tell the Board that; the theory is one thing; however, the application and the application of the facts to this situation is a little different so the Board would have to see how the analysis comes back from staff.

Chair Lober stated to continue the discussion a lit bit however, it comes back there is nothing that obligates the Board to change the areas that the Board does not want to change; the only question is within three and five, which portions if not the entirety are able to change; and he asked if that is fairly accurate.

Attorney Bentley agreed.

Chair Lober stated it maybe some small portion or the entirety of that area, the Board would have a basis to change without having any sort of a liability that would be incurring as a result of the change.

Attorney Bentley responded if there is data and analysis.

Commissioner Tobia stated breaking up into mini fiefdom is flawed for countless reasons; from a practical reason this is looked at when a certain County wants to ban an additive in a sunscreen it gets complicated for businesses to exist in various jurisdictions; a more practical one, every 10 years the line is redrawn so what is now County Commission District 3 six years from now may be part of District 5; setting this stuff up arbitrarily is capricious and ill-warranted; he thinks much of this needs study but if only two members on the Board believes it needs to be restudied, he does not think it is fair to put staff through that massive amount of research; and he noted he would support one through four, but he would only support one through four if there were at least two other Board Members that were willing to go in with an open mind and look at such things that have been laid out like has the average house size increased, where are the mitigation lands being placed, and is there more being sent out or more coming in. He added if the outcome of the data is not going to change an individual's mind it is okay in the prerogative of that but it does not make any sense say do this in District 2 and this in District 4 because those lines are going to change.

Chair Lober stated his concern for his District is, not that it is special because it is District 2 or because it happens to be his District, but it is because there is so much water in the District and there are barrier islands; where he lives in Rockledge, if he had a better arm he could probably throw a baseball into the water; Cocoa is the same there is a huge chunk of Cocoa that is right on the water; he has the same concerns even with North Brevard looking towards Titusville and the areas east, there is a ton of it on the water; and his concerns are based upon that not because it is a particular District. He went on to say if what Commission Tobia is saying is that he will only support something that applies Countywide then it is clear that he will have no more than two votes; if he is willing to look at something that may not apply Countywide, he has no problem supporting something without negatively impacting those in his District, knowing full well that it may and almost certainly will be redrawn to some extent in the coming years; but it is really up to Commissioner Tobia because he could go either way with this, he is not going to lose sleep either way.

Commissioner Tobia stated he thinks it is pretty clear here, he is not willing; he thinks Chair Lober has a wonderful District and the fact that he is so proud of it is admirable; however, the District he represents is pretty amazing. He went on to say he does not know if Chair Lober knows this but Ponce DeLeon may have landed there; and this is ridiculous.

Commission Pritchett stated she thinks if staff could give the Board an idea of what they want to come back with because she thinks any time the Board gets factual knowledge it helps in its decision making process; she thinks staff has already touched on some things they think they would want to take a look at; she does not think that is a bad idea for staff to come back with some recommendations that they think are equitable to the County; and she has no problem with that but again, she is pretty comfortable in North Brevard with what they have going on. She added she agrees they have a lot of water and a lot of wetlands too, so she would be comfortable with that; however, she would ask staff for recommendations right now of what they think would be the direction they would like to go; and that is putting staff on the spot but that would be her question.

Ms. McGee stated staff does not necessarily have a problem with the 1.8 percent, they have had dozens of subdivisions get permitted through the last 10 years with wetlands on them; they

do have concerns with the people of the older lots that are coming in to put them through an administrative process for them to impact their wetlands when they have a plotted subdivision approved by the County; that is something staff would like to address; and she thinks they need to address the mitigation because sending it out of County is not consistent with Comprehensive Plan, so they need to figure that out. She continued by saying she thinks the opportunity with the public lands is a fantastic one; they would like to revisit that and work with Mike Knight, EEL Program Manager, on that; it could help the situation greatly as they can look into what is going in and out; and she noted staff does not have that quantified.

Commissioner Pritchett stated that is what she would support.

Chair Lober stated that sounds like a motion to have staff research that and come back with recommendations, and he asked if that is correct.

Commissioner Pritchett replied affirmatively.

Chair Lober seconded the motion.

Commissioner Tobia asked Ms. McGee how these recommendations are going to be any different than the four that staff has already provided the Board in this staff report and the one two months ago. He stated staff has done a lot of work and he appreciates that; he thought those were great recommendations; and he reiterated his question is if the Board sends a motion to staff, does staff have other ideas up their sleeve.

Ms. McGee stated she thinks staff would take the research that has been done and try to actually develop some language that they could send for transmittal, therefore next time they come back they could narrow the scope down to two options, if that is what the Board would like; they could research the mitigation, research the old lots, and they could come back with specific language as opposed to a concept because staff does need to do more research; and staff needs to do the data and analysis that would be submitted to the State.

Commissioner Tobia stated he thinks people are a little hesitant to say which options they want; he went out on a limb and said Options 1 through 4; and he asked if Ms. McGee could explain which one of those the Board would actually be sending to staff, so it would all be on the record.

Ms. McGee stated Option 3 is the one that addresses older lots and Option 4 is the one that addresses the mitigation.

Chair Lober stated he thinks the mitigation opportunity for government on lands is something that is rather smart; he does not have an initial objection to it; he will obviously have to look into it a little more prior to voting on it; however, it sounds smart.

Commissioner Tobia stated he feels bad sometimes, when he watches the meeting, with the ambiguity that the Board leaves staff with so it sounds like make a motion to accept further research into Options 3 and 4.

Chair Lober stated he thinks Commissioner Pritchett's motion essentially gets across what Commissioner Tobia is trying to do; and he asked if staff is comfortable with what Commissioner Pritchett moved to do as far as coming back with options.

Ms. McGee explained she is unsure if the Board wants staff to come back after researching all of the options or just those two that were discussed.

Commissioner Pritchett advised it would be just the ones that Ms. McGee mentioned that she felt needed to be investigated.

Ms. McGee stated in her opinion that is a good idea and then staff can bring it back for specific public comment.

Commissioner Pritchett stated then the Board can have discussion.

Ms. McGee stated she is clarifying it is Options 3 and 4.

The Board directed staff to gather and analyze data and bring back legislative intent for potential revisions to address the issues brought forward in Options 3 and 4. Option 3, directed staff as they encountered development proposed within wetlands on parcels less than five acres in platted subdivisions approved by the County, to conduct an analysis of the potential impacts to wetlands not previously identified in existing platted subdivisions. This would put the County in better alignment with the State, and since the Comprehensive Plan requires no-net-loss of wetlands, that mitigation be provided for any permitted impacts. Option 4, directed staff to further research the extent of out-of-county mitigation, and potential options to ensure consistency with Comprehensive Plan mitigation policies; and to bring a report back to the Board at a future meeting.

Result: Approved

Mover: Rita Pritchett

Second: Bryan Lober

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

J.1. Motion Requesting Approval of Public Safety Summit

Chair Lober stated this is a request to approve a Public Safety Summit at a cost not exceeding \$1,800; he has attached an email sent by Matt Wallace with respect to this; and if everyone has had a chance to review it, it is pretty self-explanatory but he would be happy to jump into it and address any concerns anyone might have, otherwise he would be happy to accept a motion.

Commissioner Tobia stated just a couple quick questions before the Board engages anything; he thinks it would probably be good to have a measure of success; this may be an absolutely wonderful idea or a tragically horrible idea; and he asked how many members of the public are expected to attend this, so he has some marker or not of whether the Board wants to make this an annual event or not.

Chair Lober stated he does not know that he would want apply in advance how many people will show up; he thinks if it is essentially empty that it just is not done again in the future; and if it is standing room only then do it again in the future and find a bigger room.

Commissioner Tobia explained his office rarely, if ever, has received questions that Chair Lober mentioned in the Agenda Report; and he asked if that is just the nature of the District in which he represents or has he received many questions like the ones mentioned in the Agenda Report.

Chair Lober stated he has received a number of them; many is a subjective term and he does not know if there is a difference between the Districts in terms of what the interest of individual constituents is; he can say he thinks it is something that a good number of his constituents would appreciate; he cannot say them appreciating it means that every single one, by any means, will show up; however, he thinks it is something of interest and it is worth giving the de

minimis cost. He continued by saying it has already sunk cost that the County is paying staff anyway to be there, unless it is going to preclude them from doing something else that they could be working on; part of staff's core mission is outreach; and he does not know that the cost to taxpayers is high enough to justify not doing it when it has not been done in the past. He mentioned if it is something that is done every year then that is great but he is not necessarily looking to do that; if it is something the County does every two years, four years, or 10 years that may be fine as well; he just wanted to see how it goes with an initial try; and if it is successful it can be repeated.

Commissioner Tobia stated Colonel Wallace's email states the \$1,800, and he inquired Chair Lober if that is the total cost of staff time to best of his knowledge.

Chair Lober responded yes, including the sum cost that the Board is paying them anyway; he wants to qualify that by saying if this does not preclude them for doing something else they would be doing; and there may well be some overlap.

Commissioner Tobia commented he did not see in Colonel Wallace's estimate that there were any Constitutional Officers or their staff that would be included so the perception would be that is not part of \$1,800; and he asked if that is fair to say, because this Board declared a critical need for Sheriff's MSTU. He went on to say he is curious to know if they will be included in that or not.

Chair Lober stated he respectfully differs, the way that he reads, "Our estimated staff cost to host the Public Safety Summit are less than \$1,800." and the next sentence reads, "This cost includes up to 14 staff members from BCSO, Public Health, Mosquito Control, and Public Safety"; therefore, his reading of that in just plain English is it does include BCSO costs as well.

Commissioner Pritchett stated she thinks it is kind of interesting that the County is doing this; she thinks public safety, infrastructure, and economic development was her core focus on the things she does so she likes that the County is doing this; she thinks the ability to get information out for \$1,800 is good; and she is excited to see how the community responds. She noted if this gets information into people's hands that makes the Sheriff's life a little easier, she thinks it is a great idea.

Commissioner Smith stated he thinks any time the County can get information out to the public is important, but he is not sure that this is the way to do it; he thinks it is kind of redundant; that is his own personal opinion; however, he does not have a problem giving it a try once. He added he will be very surprised if it is worthwhile doing it.

Chair Lober commented he hopes Commissioner Smith is wrong but he does not claim to know everything.

Commissioner Smith stated it is worth a try.

Commissioner Isnardi stated if a Department cannot absorb \$1,800 in their budget they have bigger issues because she thinks it is great what Chair Lober has suggested; she thinks the Sheriff just had something out about some new identification cards to help identify people who have autism and that sort of thing; and she thinks that would be a great event for stuff like that to get to people that do not peruse Facebook and Instagram. She went on to say at the same time \$1,800 should not have to come back to Board for approval; maybe approval of the program if that is what staff feels comfortable with; however, if there is any County Department that cannot absorb \$1,800, then the County has bigger issues.

Chair Lober stated if they have a need certainly he can have the Department come to his office and see if there is some other source that it would not come out of the General Fund to address it; he would be fine with that as well; and he commented he does not know if Commissioner Pritchett wants to incorporate that into her motion.

Commissioner Pritchett agreed to make that part of the motion.

Chair Lober stated his second will stand with that.

The Board approved the setting of a Public Safety Summit at a cost not exceeding \$1,800, in late March or early April, with the exact date dependent upon which particular date is logistically easiest to implement; and additionally as County Departments should be able to absorb \$1,800 for staff time, they should not have to come to the Board to request the funds.

Result: Approved

Mover: Rita Pritchett

Second: Bryan Lober

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

J.2 Class Action Lawsuit Seeking Damages Associated with Alleged Price Fixing on Government-Sponsored Enterprise (G.S.E.) Bonds.

Chair Lober advised this next Item is dealing with alleged price fixing and whether or not Brevard County should participate in a class action lawsuit; he stated his understanding, he will jump in and do a little of the County Attorney's job, is that there is no identifiable gap on the downside to participating; and he asked the County Attorney if she is in agreement to that.

Eden Bentley, County Attorney, responded affirmatively.

The Board authorized filing a proof of claim by the County in the pending class action lawsuit seeking damages for alleged price fixing on Government-Sponsored Enterprise bonds; and authorized the County Manager to make decisions and execute documents as necessary to exercise the County's rights/options in the class action litigation process.

Result: Approved

Mover: Rita Pritchett

Second: Bryan Lober

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

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

Commissioner Smith stated he has had several constituents express concern to his office about the Specimen Tree Ordinance that he knew nothing about; he has looked into it and had some staff members get back to him; it appears the concerns are that the Ordinance itself is too lax and apparently 93 percent of property owners are exempt; he does not know if that is a good or bad thing but that is why he wants to look at it; Natural Resources Management Department is compiling information for him; and he just wanted to let the Board know that sometime in the future he may be bringing back some legislative intent to address this issue.

L.7. Kristine Isnardi, Commissioner District 5

Commissioner Isnardi stated she just wants to ask if it is okay to have staff provide an update at the next meeting, even if it is during Board reports, for the renaming of the Parkway.

Frank Abbate, County Manager, noted staff would be happy to provide an update.

Commissioner Isnardi stated she knows staff is working on it, but she would like an idea of the timeline.

L.4. Bryan Lober, Commissioner District 2, Chair

Chair Lober advised he has a few things. He stated he will be directing a lot of his comments in this first part towards Commissioner Pritchett because this pertains mostly to her District along with his; it came to his attention months ago when he was trying to get an air show brought back to Brevard County in 2021; since that time it appears that Valiant Air Command out of Titusville Airport has essentially all of their funding, including the City of Titusville, for their show this year; they are not going to have a show this year, which will be the first time in like 50-plus years; and he thinks the last time this County did not have an air show was prior to men stepping foot on the moon. He continued by saying that is unfortunate but he has, at least in concept, lined up at this point, and he is pleasantly surprised that it seems to be working and will keep his fingers crossed that it continues to work, Brian Lily who puts on the Melbourne show, he spoke with him along with Matt Wallace of Public Safety, the City Manager and the Mayor from Cocoa Beach, one of the reps from Patrick, the Tourism Office, and a whole bunch of stakeholders to see if the County could conceptually get support for a Cocoa Beach Air Show; he looked at this probably eight months ago and the answer was yes, at least in theory it would work for everyone; and the concern is the date that was carved out to work towards. He went on to say there was a conflict in the sense that it would be within a week or two of Valiant Air Command would have their show; he and those folks he originally spoke with ended up in a situation where those two shows would have been so close together in time and relatively close in geography that he thinks it would have been a concern; some of the teams that were being applied for by one were being applied for by the other so one ended up with the Thunderbirds and the other end up with something like an F-35 or F-22 demo; and the thought was if some ground work could be established in combining the two shows such that everyone is at least content if not happy that may be in everyone's interest. He stated they could combine the teams, the sponsors, and alternate the locations which was a really big deal for a lot them; what seems to be, with the higher-ups in each of the two groups that put on the air shows, conceptual is that in 2021 it could be done in Cocoa Beach and in 2022 it could be done in Titusville, with the idea being that it will basically bounce back and forth; he knows Melbourne Airport put out either an RFP or something similar to solicit an air show to come in but his understanding is that document is so onerous that they will probably not have anyone who will be able to accept and fulfill those terms; and he just wanted to put that out there. He stated he knows everyone has seen, heard, and used their other senses to observe what has been going on with respect to Clerk's lawsuit against the County; his objections to waiving the Board's

executive session today essentially amount to, and he is not a poker player but he has seen people play poker and they try not to show each other their hands, his concern was that if the Board has a situation where one side is showing their hand and the other hand of the other side is not reciprocating that it is undeniably a bad move; he appreciates the comments from Commissioner Tobia and Clerk Ellis insofar as this being a little different in a sense that it is a government entity suing another government entity which basically means tax dollars are being spent all around; since that vote was taken where it was 4:1 in favor of maintaining this executive session at the last meeting, Clerk Ellis has agreed and he believes the Clerk sent in writing to Ms. Bentley and Mr. Abbate that he will reciprocate, and if the Board were to keep its discussions in the open he will keep his discussions in the open and waive confidentiality which as an attorney, he has a hard time getting a grip on because he would never ordinarily do this, but he thinks the unique circumstances are such that if the Clerk is willing to show his hand, he does not know that it is a problem for the Board to show its hand; and he thinks that with respect to what the Board does today, there are a couple things that he thinks the Board needs to figure out. He continued by saying whether the Board is going to have the executive session and whether it wants to reciprocate, which he thinks it really ought to at this point and he will discuss why to whatever extent folks desire; whether the Board reciprocates waiving confidentiality insofar as the attorney client communications are concerned, as far as the executive session, if it boils down, and he does not think any of this is earth shattering for anyone, he thinks there are four options; inside or outside of executive session, one of the Board's options is to simply stipulate to what the Clerk wants, he does not think anyone except maybe one Commissioner would be willing to do that; another option is to settle it; one of the ways to settle it is potentially to have a referendum and agree to put this on the ballot, he does not know but he would presume that there is probably only one Commissioner who would support that; the Board can certainly discuss that further; another option is to resolve this or push it toward resolution is essentially fast-tracking this by not making use of the full time lines that the Board has available to it to file pleadings and to potentially waive different motions to dismiss to get this kicked out before it ever gets to trial; and the fourth option is, he thinks the smartest option but certainly the most involved option, is using every meritorious or potentially meritorious defense that the Board has including filing motions to dismiss where it is appropriate. He went on to say his understanding is that is what the County Attorney's position is in recommendation of, to go ahead and essentially explore all meritorious or potentially meritorious motions to dismiss and to defend this thing to the teeth; he thinks if the Board makes that decision for purposes of what it otherwise would be discussing in executive session, that it really would suffice what the Board would need to discuss; what he can tell others, as an attorney, and generally speaking, the strategic decisions are best left to counsel; when folks try to micromanage how they resolve it, that becomes a problem; he thinks the Board needs to indicate, however, where it wants it resolved; and the manner it is seeking to get this resolved should be left to Council. He stated if the Board is inclined to push in one direction, then let them know and if it is inclined to push in a different direction to let them know, but he thinks the Board has to decide between those four options unless someone has another option; obviously the Board needs to discuss the confidentiality aspect which it may want to do ahead of time if it is discussing these different options; and he mentioned if Commissioner Tobia were to make a motion to waive attorney client privilege in reciprocity with the Clerk's Office he would second it and hopefully there would be at least one more Commissioner out of the remaining three whom would support it.

Commissioner Pritchett thanked Chair Lober and advised him she is really glad The Board has him; and she asked the County Attorney what her recommendation is on that because the Board has never done it this way before.

Eden Bentley, County Attorney, stated the executive session is an opportunity for the Board to talk to one another about its legal situation and it is a very limited form of attorney client privilege because the Board is protected from the Sunshine in that instance; a blanket waiver of attorney client privilege which is a different question, so she thinks it has two questions today as it has been presented; first does the Board want to proceed to the executive session and talk about this case in private; the Board could waive that, it is the Board's right, it is not the County Attorney's right; it is the Board's right to have that protected discussion and as a collegial body it is possible to waive that protection; it could speak in public if the Board chooses to do so; she is an attorney and she would never tell the Board to waive its rights, so she would recommend the executive session; however, if the Board were to choose any one of those options she would certainly understand that direction. She continued on by saying she thinks attorney client privilege needs to be defined more precisely for future issues, so she would suggest that one needs a little more flushing out; and to proceed to executive session or not is a limited question.

Commissioner Pritchett asked Chair Lober what is the advantage of the Board doing this.

Chair Lober commented he thinks the spot the Board finds itself in is one where unfortunately it has had individuals, and not all elected officials, in fact that have suggested that the Board doing things in a way that quite frankly is routine, is somehow inappropriate and he would like to dispel that; he always looks at it as a risk versus reward question; if he or she knows what the risk of discussing something in the public versus the reward he thinks the risk, is knowing what he knows in terms of having had discussions with both Abby and Ms. Bentley from County legal; and he does not know that there really is any glaring risks to the Board by having this discussion.

Commissioner Pritchett stated okay.

Chair Lober advised if the Board had some major weakness in its case that it did not want to get out, then he would have the opposite position.

Commissioner Pritchett replied, okay.

Chair Lober stated in terms of the other question about waiving privilege, where he contemplates that to include, is any discussions that any of the Board Members have with County Legal about this particular issue, whether it is a settlement question, or a litigation strategy question, he would contemplate that as being included, but he does not contemplate that as being included; what he thinks is outside the scope of attorney client, is the internal work product, so if there are documents that have been drafted for the attorneys own purposes that they have not given to the Board then he does not believe that is something that should be included in that; he thinks that is totally inappropriate to include; and he feels it would be rather inappropriate were legal not to compel the Board in the same manner.

Commissioner Pritchett acknowledged Chair Lober's statement.

Chair Lober went on to say he thinks from the Board's positioning for the benefit of the public to understand there really is nothing that it is hiding, it is just simply a question of interpreting what a finding of a critical need being valid for only a year means and whether or not the motions to dismiss or motion to dismiss is valid; and he thinks that is something that is a different question altogether, and wished Counsel the best of luck.

Commissioner Pritchett commented okay.

Chair Lober noted that is his recommendation; he will acknowledge it, it is a-typical in where if he were the attorney for this body he would be very skeptical about waiving anything just as Ms. Bentley said; he thinks that given what he knows of the County's position and he has made a point to know as much as he can about the County's position; and he thinks if there were ever a time in which it would be appropriate to waive privilege or take a step back, to waive the executive session, this would probably be about the safest case to do that in.

Commissioner Pritchett thanked Chair Lober.

Commissioner Isnardi stated she definitely does not have a problem with it only because she thinks that the Board at least stated its position publicly already that it believes that it has made a good solid legal decision; just because another elected official disagrees with that decision, so be it; what is sad is that she thinks that the County Commission or, at least the Board's position, will prevail and it will have costed the County double because it is taxpayer money that is paying for these attorneys; and she has no problem with that. She noted she is being transparent about it; and she did not realize it was discussed that the Board would be getting information as well on the Clerk's strategy.

Chair Lober asked if the County Attorney wanted to jump in.

Commissioner Isnardi stated the whole thing is a circus and that it is political but that is beside the point, so the County will take it to court and it will be judged there.

Chair Lober stated he apologizes; and he asked the County Attorney to chime in and just kind of give everyone a recap of the email she received from the Clerk.

Attorney Bentley stated it was very brief asking that the attorney to start to disclose emails and that sort of thing; and she does not know the extent of the disclosures.

Chair Lober stated if the Board can get to the point where it makes a motion, putting the executive session to the side for a moment, about waiving confidentiality and make it clear in that motion that this is done only if the Clerk's Office agrees to reciprocate, otherwise, the Board would be just giving them the benefit with no gain whatsoever on its side.

Commissioner Pritchett inquired if the Board is now going to discuss what it wants to do as a strategy or if it is going to take a vote on this first.

Chair Lober commented he thinks the logical way to handle this is to determine whether or not the Board is going to go into executive session.

Commissioner Pritchett agreed.

Chair Lober advised he invited Commissioner Tobia, since he thinks his motion was the closest to what he is proposing at this point and he figured he would be the most supportive of it, to make the motion to waive executive session which he would support.

Commissioner Tobia stated this may be a formality but the Board just increased the amount of costs that are associated with public record requests; he would like to waive all associated public records request fees when sharing information with the Clerks, with the Clerk's Office; and hopefully they reciprocate with that but goodness gracious this could get even more expensive as things went on.

Chair Lober stated he certainly does not have any objection to the Clerk making his own

decisions in terms of public record requests, but he thinks that would kind of set the opposite example of what the Board is looking, or the opposite impression that it was looking to do before; essentially the Board is trying to wipe out its cost so he appreciates it; but he does not know that this is necessarily more or less valuable for taxpayers to have access than any other business that the County deals with. He advised he would oppose that, but certainly if Commissioner Tobia has a majority of the Board he is welcomed to make a motion.

Commissioner Tobia explained he is just trying to understand this; he asked if taxpayers are on both ends of this; and if the Board is going to charge the taxpayers on the other end of this for an hourly rate of looking up those public records.

Chair Lober stated it takes staff time that would otherwise be devoted to something beneficial to every taxpayer or a bulk of taxpayers, for a small handful that want to make a requests, therefore, yes.

Commissioner Smith advised he agrees with Commissioner Tobia so if he wants to make a motion he will second it and see where it goes.

Commissioner Tobia commented he is having trouble with the accounting on this; it sounds like the Board is taxing itself; in an effort to be transparent as possible, he certainly would hope the Clerk would raise his, but in a gesture of good will, he would ask that the Board forego its public records fees when it comes to sharing information with the Clerk; and that would be his motion.

Chair Lober stated he apologizes he thought Commissioner Tobia meant in terms of with the public; and he noted we would support that as well.

Commissioner Smith seconded that motion.

Commissioner Pritchett stated she is fine with that too, but just for an understanding, when there's a charge for a public records request, the County does not make money off of that; there is staff time that is involved in researching these things and getting the items together, and actually it is still probably going in the hole some; all Chair Lober did was bring it up just a little bit; there is still no income from public records; and as far as doing this with the Clerk, it would not matter, there is still going to be costs involved either side getting public records together and the taxpayers are going to absorb it regardless so whether it is charged to one taxpayer entity or to the other, it is a wash and it would not make any difference to her. She reiterated she is fine with that too because it is just all taxpayer costs no matter what is done.

Chair Lober stated he would not do it as a public records request to begin with, he would subpoena it because it is much easier with much more serious set of ramifications that can be used as a remedy if the County or Clerk does not produce it; and he does not know that they are going to send the County a single public records request with anything on this lawsuit when it can just subpoena it and get everything anyway.

Commissioner Pritchett asked Chair Lober to repeat the motion.

Chair Lober advised this is to waive costs to the Clerk.

Commissioner Pritchett thanked him.

Chair Lober stated it is for production with respect to public records pertaining to this case.

The Board approved waiving public records request costs with the Clerk, not the public.

Result: Approved
Mover: John Tobia
Second: Curt Smith
Ayes: Pritchett, Lober, Tobia, Smith, and Isnardi

Commissioner Isnardi advised she is now going to make a motion that the Board cancel the executive session until it decides further what it is going to do and discuss it later; if the Board wants to go back or if it decides ultimately not to have a fully open and transparent system, then that is fine; she agrees with Commissioner Tobia and that this is a unique circumstance; she inquired what happens when the County has a different elected official that is not as honorable as Mr. Ellis or not as much of a good person as Mr. Ellis; Mr. Ellis fundamentally disagrees with what the Board has done, however, County legal says the County is on solid ground; and she asked what happens if the Board has some partisan hat that gets elected that just constantly sues the County and the Board has now set a precedent that it does all this in the public. She added all she is saying is that the Board needs to weigh each situation carefully.

Chair Lober seconded the motion.

Commissioner Pritchett inquired what was seconded.

Chair Lober advised it was for cancelling the executive session for today.

The Board approved cancelling the executive session in the case of Scott Ellis, in his official capacity as Clerk of the Court and Comptroller v. Board of County Commissioners of Brevard County, Florida, Case No. 05-2019-CA-058736-XXXX-XX.

Result: Approved
Mover: Kristine Isnardi
Second: Bryan Lober
Ayes: Pritchett, Lober, Tobia, Smith, and Isnardi

Commissioner Isnardi asked if she could do a follow up.

Chair Lober replied affirmatively.

Commissioner Isnardi stated she heard a rumor from one or two people that the Clerk's Office was allocated \$750,000 for software for their office, that they desperately need and the total software costs is \$1.5 million, but that the Clerk's Office has not spent the money this budget cycle and they may not possibly spend it this budget cycle.

Frank Abbate, County Manager, commented it is his understanding that the Clerk's Office did a Request for Proposal (RFP); he does not believe he has heard directly from the Clerk, but he thinks he heard from some of the Clerk's staff say that they were not going to be moving forward with that particular purchase at this time.

Commissioner Isnardi stated that probably could have been some pretty important information to find out before the Board raised the MSTU.

Mr. Abbate advised that would not have been before the MSTU, that it has happened as part of this Fiscal Year.

Commissioner Isnardi noted she would like to know what the plans are for next year; and asked

if Mr. Abbate could find out.

Chair Lober stated he has a question on that same topic; and he inquired if that was not allocated to the Clerk's Office, would the County have had to exceed that three percent cap to raise the Sheriff, if it had that \$750,000 still in play.

Mr. Abbate noted that would have been up to the Board, while that is General Fund money, not MSTU money.

Chair Lober added if the Board offset the change.

Mr. Abbate responded yes, it could.

Commissioner Isnardi asked if the Board could have raised the MSTU for the General Fund as opposed to the Sheriffs; and she inquired if she is correct in saying that.

Mr. Abbate explained that money was in the General Fund budget and it is in the General Fund budget so the Board could have allocated that to a different purpose; and that purpose could have included additional dollars to the Sheriff's Office.

Commissioner Isnardi stated she is not pointing fingers but it is just funny how things just sort of work out.

Mr. Abbate stated he thinks the Board was trying to be helpful to the Clerk; the Clerk had indicated, during the development of last year's budget that, that software was, to his understanding, rather important that is why he was going out for RFP; that is why staff came back to the Board and suggested that it fund that and put the \$750,000 in the budget for this Fiscal Year; and then staff would have followed up with the \$750,000 for the following Fiscal Year.

Commissioner Isnardi inquired if they do not spend it this year, does it just get bumped to next year.

Mr. Abbate noted that is going to be up to the Board and what the Clerk is going to do; his understanding is the Clerk is not running and there will be a new Clerk; he does not know that the need is going to go away; it is hard for him to predict, but he would venture to say that if the current Clerk thought that this was an important enough purchase to make because he needed it, he is rather frugal, then he would venture to say that a future Clerk will think that it is equally important if not more; and he noted that is just a professional best guess on his part.

Chair Lober stated this last item he would like to have someone hopefully either Commissioner Tobia or anyone who feels so inclined to make a motion that the Board in reciprocity with the Clerk's Office doing the same, waive attorney client privilege only as to this case with respect to any litigation strategy or anything pertaining in some way to settlement; and he suggested that to be interpreted broadly so essentially, he would contemplate that anything that any of the five of the Board Members send to or receive from Attorney Bentley or anyone else in County legal about this, that it be waived if the Clerk's Office does the same.

Commissioner Tobia stated he is going to have to ask the County Attorney's Office a question.

Chair Lober responded affirmatively.

Commissioner Tobia stated this is getting a little complicated for him with Mr. Berman's intrepid

reporting, it seems as though the Sheriff's Office may have gotten outside counsel on this.

Attorney Bentley replied in the affirmative.

Commissioner Tobia asked someone to explain to him how that would work; and he inquired if would those strategies, notes, and all that good work product would then be available to everyone as well.

Attorney Bentley stated that is a good question; she advised she thinks the portion that is in her office would be; she does not know that the attorney client privilege between the Sheriff and his counsel would be waived; that is a separate issue, but once it gets into the public record with the County's items there is a potential that it would be waived; and she would need clarification if the Board means everything in writing or anything that is filed with the court is public anyway.

Chair Lober advised anything that would ordinarily be covered by the attorney client privilege between any of or all of the five Board Members and the County Attorney's Office pertaining to this case; that is the cleanest and broadest way that he can put it, with the expressed understanding that they reciprocate and do the same; and until they agree to do that, he would not release anything that the Clerk is not already entitled to.

Commissioner Pritchett stated she is starting to struggle a little; she is kind of in agreement, pretty strongly in agreement with what Commissioner Isnardi spoke over, the situation; the thing is when she came on this Commission she has the duty to do the job as Commissioner; it is not that she does not like Mr. Ellis, she does, she enjoys all the stuff he does; however, she does not have a duty to the Clerk of Court Office and this is even on a future event. She continued by saying she does not know how comfortable she is with getting in this now because she has a duty to protect her position of protecting taxpayer dollars right now; she is not a legal expert, so sometimes when the Board gets alone in these meetings, it is time she can hear the Board Members speak, she can hear counsel, and she starts getting a better understanding; and she believes what the Board did was correct. She went on to say she is not sure now with after what Commissioner Isnardi said, it is starting to sink in her head; she does not know that the Board should not maybe have a separate meeting because there are some other entities involved is this now also; and it is a pretty important subject.

Chair Lober stated as far as the Sheriff's Office, the Sheriff and his counsel are going to do whatever it is they are going to do; the Board does not have control one way or the other; whether it chooses to coordinate with them to some degree or a great degree, certainly that is up in play; the Board cannot, nor would he suggest that it even broach the subject with the Sheriff's Office of waiving privilege, that is up to him; he would probably advise that the Sheriff not to because really this is kind of an odd maneuver that he thinks quite frankly is something he has never seen before; and it goes back to the risk versus the reward. He went on to say he thinks the reward is that the public knows that there is nothing being done in the shadows; there is no real secret; the Board is being open and transparent about everything; and obviously, with the limitations of sunshine, he does not know what his four colleagues have said to County legal but he knows what he has said; he knows what he has received from County legal; and he knows, based upon conversations he has had with County legal, what the general strategy would be with each of the four options that he has discussed. He continued by saying he does not see any glaring weaknesses; he does not know if the Clerk has any glaring weaknesses, they may; he does not know whether there are emails from counsel to the Clerk saying this is an up hill battle and the County is never going to win, they are going to find X,Y, and Z which would be great for the County to know because the Board could potentially use something like that in a motion to dismiss to get rid of this quickly and save taxpayers a

tremendous amount of money; he does not know that opening it up would really do much apart from generating additional public records requests which the Board might otherwise not have, apart from speeding it up; and he thinks this might speed it up quite a bit, again with the exception of public records requests which might take a long time to fulfill depending on how extravagant they may be.

Commissioner Pritchett inquired if the Board were to decide on this today, because she would like for the right legal thing to happen; she believes no matter what route the Board goes through the courts have a way of coming back with the right legal opinion; she trusts this Commission up here, they have good hearts; she knows it is doing this for the right legal outcome at the end of it; and if the Board could have time to make this decision as far as it continuing in the shade, then she would like a meeting to think about that, because she wants to make the best decision for her constituents.

Chair Lober inquired when is the next meeting whether it is Planning and Zoning or regular.

Mr. Abbate advised February 6 is a Zoning meeting, and the next regular Board meeting is an evening meeting on February 11.

Chair Lober asked Attorney Bentley if she has any deadlines that are coming up that would be problematic for her if the Board has a deadline proceeding the sixth or immediately following the sixth that this might influence in some way.

Attorney Bentley explained she thinks there are three things on the table here, the executive session is one.

Chair Lober explained that has been scrapped.

Attorney Bentley continued by saying that has been scrapped but if the Board wants to it could change its mind and want to have one, then it would need to readvertise; if that is the question for the sixth, the Board can bring it forward and then it can come at the next meeting, if the Board directs her to do this; she needs to respond to the complaint if the Board's direction is to proceed with all applicable legal arguments; however, if that is where the Board is going, that is a different question. She inquired if the Board wants to waive attorney client privilege, noting that is a yet a third question.

Chair Lober stated as far as directing the County Attorney to pursue any and all meritorious or potentially meritorious defenses including, if applicable, motions to dismiss, to go ahead and get a motion for that, unless there is discussion on that point, basically telling the County Attorneys Office to fight tooth and nail and not to give up on anything; that is the simplest way to put it; anything it can use to defend against this it should do as long as it is not frivolous; and he asked if he could have a motion for that.

Commissioner Pritchett made the motion.

Chair Lober seconded it.

Commissioner Tobia advised he has a quick question for County Attorney's Office; he inquired if the Board were to go down that route, as far as staff time, the time of the attorneys that are on the other side, that being Mr. Ellis' attorneys, and the Sheriff's attorneys, if the County Attorney can provide a ballpark what that would potentially cost taxpayers because they are on all sides of this; and if the County is going to go down that route he would like to have some sort of estimate of what that cost would be.

Attorney Bentley stated she is in-house so she has not estimated how much it would cost, because she is going to do it no matter what.

Commissioner Tobia asked if she could give him some sort of hours; the County did that with the public safety and received a cost for the staff time on that; and he mentioned he values the staff's time.

Chair Lober asked Ms. Bentley if she could jump in because she may be able to help-out as well; he thinks that what the Clerk is paying for their outside counsel, they have inside counsel, their outside counsel, he thinks is \$320 an hour at the highest rate and \$200 an hour for associates; and he thinks paralegals are \$100 an hour.

Attorney Bentley stated that is correct; and they have estimated about \$60,000 to \$80,000 to try this case for six weeks.

Commissioner Tobia clarified that is \$60,000 to \$80,000 on the Clerks; and he asked how he would ballpark that with the Sheriff.

Attorney Bentley stated she thinks it should be about the same; they are intervening, so they may have a few more steps, they may go up; it is very hard to determine, it may be less because her office will be able to do the heavy lifting on that in-house; therefore, they may not use as much time, but they may have different arguments. She noted she has not talked to them about that yet.

Commissioner Tobia inquired how many hours she is expecting it to take.

Attorney Bentley advised she expects it will be several hundred hours.

Commissioner Tobia apologized to her knowing her office does not get a fraction of that; and he advised he is just trying to get a total number.

Attorney Bentley stated she does not know that number off the top of her head.

Commissioner Tobia inquired if she has done a public record request yet.

Attorney Bentley advised she has not done those numbers yet.

Commissioner Tobia asked if it would be \$75 an hour.

Attorney Bentley stated it would not surprise her.

Commissioner Tobia commented that she said ballpark; and he inquired if it is a couple hundred hours.

Attorney Bentley responded yes.

Chair Lober stated if it does not survive a motion to dismiss because if it fails at a motion to dismiss and it is kicked out, then it is not going to have 600 hours into it.

Attorney Bentley advised that is correct; if it is cut off quickly that is one thing; if it goes to summary judgment that is another thing; if it goes all the way to trial it is even more time, so it just depends; it could be much shorter; it could be longer; and appeals take even more time.

Commissioner Tobia stated so Ms. Bentley said \$60,000 to \$80,000 on two sides; if he splits that down the middle, the \$70,000 and \$70,000 is \$140,000; \$75 an hour times 200 hours is \$15,000; conservatively, this decision will cost taxpayers no matter the outcome, \$150,000; and he asked if that is a fair estimate.

Attorney Bentley stated if the lawsuit triggers that expenditure of funds, yes.

Commissioner Tobia stated it could go either way.

Commissioner Isnardi stated she thinks she hears circus music in the background; let the Board not forget no matter what decision it makes, whether it is unorthodox or whatever, the Clerk sued the County; the County did not ask for this law suit; it made decisions based on the best legal advice that it had, whether the Clerk likes those decisions or not; choosing to sue the County over that decision was the Clerk's decision to do; and as far as cost goes, as far as the County defending its positions, defending its own legal staff that says it is within its own legal right to raise the MSTU; and the Board has to consider that. She continued by saying the Board did not ask for this; it is not like it signed up and said oh please sue the County, because the Board is going to violate the law knowingly and oh by the way, it does not mind paying for it; and yes, it is costing taxpayers but it was not by any fault of the Board.

Commissioner Pritchett noted she wants to piggy back off that; Commissioner Isnardi said that the last time the Board had this meeting and that kind of hit her too; the supermajority of the Commissioners believe that the Board did the appropriate vote when it did it; the Board has legal and each Board Member has the same interpretation that the County is in a correct position; and as far as the Clerk suing, he has got the right to sue, God bless America. She went on to say that is part of the process and if he has that belief and it is in his position to do it; he knows the taxpayers are paying for it; and it is what makes the Constitution strong, so that is okay; most of it is going to be staff time, but it is a good process to make sure the County comes out in a right and correct position as far as the taxpayers; she does not even have a lot of heartburn over that; and by the end of this, when it gets through the courts, everyone will know what the legal position is and that is good for everyone.

Chair Lober stated he would tend to agree; this is something that potentially has ramifications in perpetuity and could last, well it is likely it could last forever unless the law is changed; this is the only County in the State of Florida, out of 67, that has a three percent cap; no other County has that so there really is not going to be a huge amount of case law, if any, on this subject; it is something where it is going to have to be sorted out sooner or later; and at some point in time the fight is going to have to be had whether it is with this Clerk and this Commission or another Clerk and another Commission. He added it is a legitimate question. He went on to say he does not know if Commissioner Tobia and Attorney Bentley rightfully said it could go either way; anything can go either way; he explained if someone bought a scratch-off ticket for the lottery he or she could win it, that could go either way, and that is a factually accurate statement; however, he thinks the County's chance of prevailing on this is substantially higher than the Clerk's chance of prevailing. He continued by saying he does not like necessarily escribing numbers to things like this; he thinks that the County's arguments are the more solid arguments; he thinks if someone wanted to ask Attorney Bentley which way she thinks this is going to go, whether it is a greater likelihood that the County would prevail or Mr. Ellis would prevail, that is a different question than could this go either way; of course it could go either way someone could get struck by lightning as soon as he or she walks out of the building, that is a possibility; however, it is not a likely possibility but it is something that could happen.

Commissioner Tobia stated the guild statement is past performance is a good predictor of future events, and he just thinks back to the last time, and again, the County Attorney was

different at that time, but the last time the County tangled with the Clerk of the Court, he thinks the County ended up on the short end of the stick; he knows he had spoken with the County Attorney's Office, again, the County had a different County Attorney at the time, but he was fairly certain, and he thinks the words he used was that the County would end up on the right side of it; Chair Lober is right, buying a scratch-off could go either way, but in this situation the County does not have to buy a scratch-off, there are other options out there; however, there is a charter amendment process, where the County could put it out to the citizens and see what their intent was and forego the \$60,000 to \$80,000 on the Sheriff's, \$60,000 to \$80,000 that Mr. Ellis would be spending, and the \$15,000 that the County would be spending. He continued by saying this is not binary decision; this is one that the Board could leave to the voters or it can accept the Clerk's position on this one; and he does not know that there would be \$150,000 in legal fees accepting the Clerk's position on this one, so it is not that \$150,000 is the County's only option, there is certainly other avenues to pursue as the Board moves forward.

Chair Lober stated just to jump on that, as far as past performance being indicative of how things go in the future, yes that may be with certain things, the Board is not talking about a stock or a bond though, it is talking about a fluid set of circumstances where each case is totally unique; he can say that the County Attorney's Office has had cases that it has won and cases that it has lost; as an attorney, he has had cases that he has won and cases that he has lost, it really depends; he was not on the Commission then, there was a different County Attorney at the time, and he believes the County has a more risk-versed County Attorney now than it did in the past; when she says something is more or less likely, he would take it into account with that in mind; and he mentioned he agreed with Scott Ellis when he sued the County last time in terms of the solidity of his position, and no one will ever say that he said otherwise because he never did, but he does not agree with him on this. He commented he thinks that Mr. Ellis has it right sometimes and he has it wrong other times; the question is not whether he is well intentioned, it is whether he is right or whether the County is right; and the problem if the County settles this, is the next time it has to do something that involves exceeding that cap, it is going to have the same situation again; and this is going to be something that is going to haunt the County for perpetuity, indefinitely until it is resolved. He stated he thinks the County can get rid of it easily this way, but truth be told, he does not think Commissioner Tobia is even going to get a second on a motion either to just stipulate to what the Clerk wants or to really settle it out unless there is a very creative settlement that is proposed; and he does not think there is going to be one that he will get a second on, quite frankly. He added he does not mean to say that pejoratively, or to denigrate him in any way, he just does not think that is the will of the Commission.

Commissioner Tobia stated he does not expect one; the intent of this was to hold taxes at a minimum; and he absolutely does not expect one from this Commission.

Chair Lober stated he is going to go ahead with this since it is getting a little circular here; and he called the question as to whether or not to direct County legal to pursue each and every meritorious or potentially meritorious, non-frivolous defense in defending against the lawsuit.

The Board directed the County Attorney to fully litigate each and every meritorious or potentially meritorious, non-frivolous defense in defending against the lawsuit.

Result: Approved

Mover: Rita Pritchett

Second: Bryan Lober

Ayes: Pritchett, Lober, Smith, and Isnardi

Nay: Tobia

Chair Lober stated the last item, and he apologized to Attorney Bentley, he just wants a little more clarification in terms of her response deadline because his concern is potentially something that the County may get as a result of opening up confidentiality and having that reciprocated; the County could potentially incorporate in response to the complaint and he does not know if she would have enough time if the Board were to address this on the sixth; he would be happy to kick it to that point; however, if she would not, he would rather address it now and see which way it goes. He continued by saying the other thing, if Commissioner Tobia and Commissioner Isnardi would be supportive of that motion there would be three votes to get it taken care of today.

Commissioner Isnardi asked Chair Lober to restate it.

Chair Lober advised the the crux of it, and he will just make it broad so that no one is playing games and there is not a question as to who is hiding what or misclassifying what; he would propose that, that if and when the Clerk agrees to do the same, the Board will waive attorney client privilege insofar as any written communications between any and all of the Board Members and County legal, with respect to this specific lawsuit; what he really sees that entailing is settlement, settlement questions, litigation strategy, things of that nature; he will phrase it broadly so that he does not have to reference settlement or litigation strategy, simply anything that any of the Board writes to County legal or have written to the Board Members by County legal, any communications they have be it a text message, a written document that is printed out and handed over, be it an email, anything in writing that the Board gives them, anything that is tangible that they can produce, crayon on a napkin, they would produce that if and when the Clerk's Office does the same.

Commissioner Pritchett asked if Chair Lober wants to provide a time period.

Chair Lober stated he thinks he will turn it around pretty quickly; he trusts Mr. Ellis; he just wants to be clear about what the Board is doing; and he does not think Mr. Ellis is going to play games with the County by holding on to things and providing it to the Board in six months when the case is resolved.

Commissioner Isnardi stated she thinks the Board needs a whole meeting just on this because this is getting a little ridiculous; and she advised she will be in support of that.

Chair Lober stated it sounds like he has three so if Commissioner Tobia would go ahead and make the motion.

Commissioner Tobia inquired if this is including work product.

Chair Lober advised not the internal work product, it is just anything that the Board Members discuss with them; if the Board Members have notes internally, he does not expect the Clerk to produce theirs and he does not think the County should be producing theirs. He mentioned noted just attorney client so the Board is only one-fifth of the client and the body represents the client, so anything with any of the five Board Members and the County Attorney's Office on this particular suit, and that is it.

Commissioner Tobia stated he thinks it may be amended in the future but it is a good first step.

Chair Lober inquired if that is a motion.

Commissioner Tobia commented that motion was too diverse and long winded for him so he will vote for it if someone else will make the motion.

January 21, 2020

Chair Lober inquired asked if Commissioner Isnardi would mind making that motion.

Commissioner Isnardi made the motion.

Chair Lober seconded the motion. He added the Board has hashed that out 10 times, and asked if there was any further discussion.

The Board waived attorney/client privilege in this specific case, including written communications between the County Attorney and the Board, excluding work product, if the Clerk reciprocates.

Result: Approved

Mover: Kristine Isnardi

Second: Bryan Lober

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

Upon consensus of the Board, the meeting adjourned at 11:48 a.m.

ATTEST:



SCOTT ELLIS, CLERK



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

As approved by Board on March 24, 2020.