

## PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, May 7, 2018, at 3:00 p.m.**, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

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

Board members present were: Henry Minneboo, Chair, Robert LaMarr, Vice Chair; Ron Bartcher; Bruce Moia (Bruce Moia was not sitting as a member during Item IV.A.); Rochelle Lawandales; Andy Barber; Brian Hodgers; Mark Wadsworth; Ron McLellan; and Robert Solito;

Staff members present were: Erin Sterk, Interim Planning and Zoning Manager; George Ritchie, Planner III; Christine Valliere, Assistant County Attorney, and Jennifer Jones, Special Projects Coordinator II.

Henry Minneboo, Chair, announced that the Board of County Commissioners will have the final vote on the recommendations made by the Planning and Zoning Board on Thursday, May 24, 2018, at 5:00 p.m.; and May 8<sup>th</sup> and 22<sup>nd</sup>, for the Septic Tank Moratorium Ordinance.

### APPROVAL OF APRIL 9, 2018, MINUTES

Motion by Rob LaMarr, seconded by Rochelle Lawandales, to approve the minutes of April 9, 2018. The vote passed unanimously.

### CHAIRMAN REPORT

Henry Minneboo stated over the many years of being on the board, he cannot remember ever getting a letter of thanks for something the board has done, and he thinks it is important to mention as it's a great reflection on the board, and on County staff who try to keep the board on track. He also mentioned School Board member, Jeff Holleran, has resigned from the board; he appreciates his two years of service and wishes him luck on his new career.

IV.A. Watermark Investors, LLC, and Diocese of Orlando, John G. Noonan, Bishop (Bruce Moia) request a change of zoning classification from GU, BU-1, BU-2, IU, and IU-1 to PUD, and waivers for 40-ft. lot width and 4,800 sq. ft. lot size. The property is 129 +/- acres, located on the west side of U.S. Hwy 1, approx. 0.22 mile south of Broadway Blvd., Cocoa (18PZ00014) (District 1)

Bruce Moia, President, MBV Engineering, stated the board might remember the project a while ago when it was under different ownership; the land use was changed, and the zoning was changed, but the BDP was never recorded, so the zoning request was considered withdrawn. He said the reason for the request is that based on additional environmental research on the property, there are some areas on the property that are not developable; specifically, on the west side of the property there is a significant amount of lime rock there that is thick and almost at the surface. He said the proposal is to cluster the development and have 40-foot lots, and where the lime rock is on the west side they are proposing a very large common open space, with a clubhouse and recreation, along with other amenities. He stated he is asking the board to approve the PUD zoning with the waivers that are requested.

Rochelle Lawandales stated in the agency correspondence, there is a comment from Natural Resources about specimen and signature trees on the property, and asked if Mr. Moia looked at those and evaluated building placement. Mr. Moia replied Packard has been hired to do the survey; a boundary survey was done for the submittal of the application; and right now, surveys for the topography and trees are being finished, and he will be looking at those. He stated in the open space exhibit that was submitted, most of the wetlands will be saved. And he doesn't know if the trees are in the wetlands, but he will be looking at that as soon as he gets the survey, and if he needs to modify the lot locations he will. Ms. Lawandales noted staff referenced some potential clusters within the recreational area, and asked if he will work with staff and move things around if he needs to. Mr. Moia replied yes.

Kelly Brandenburg, representing C2 Holdings, at 5885 Industrial Drive, Cocoa, stated C2's tenant does environmental contracting services and they have a used-oil processing permit that is granted by the State of Florida; it is heavy industrial work; and they are a 24/7 emergency response company, so they have big trucks coming in and out of the property 24/7. The owner is concerned that if the subject property is zoned for residential use, that his company will be a nuisance to the residents of the new development. She said her client's property was developed in 1942, and it was an asphalt company prior to its current use.

Mr. Minneboo stated anyone moving to the proposed new development would see the industrial use to the north, and he thinks the issue might take care of itself. Ms. Brandenburg stated she wants it on the record for people to consider that the area is heavy industrial.

Mr. Moia stated the subject property already has the land use for what is being proposed, but on the west side is some industrial property, and that's where the recreational open space area will be located.

Ron Bartcher stated Phase II is where the amenities are located, and asked how long it will be until they develop to Phase II. Mr. Moia replied, hopefully right away; the development will be marketed to a homebuilder, so it depends on how fast they can build and sell. Mr. Bartcher asked if there is a percentage of houses in the first phase before Phase II is started. Mr. Moia replied typically, the construction for the entire project is permitted, and then the platting is phased. In each phase, as they near completion, the next phase will be platted.

#### NO PUBLIC COMMENT

Motion by Rochelle Lawandales, seconded by Mark Wadsworth, to approve the change of zoning classification from GU, BU-1, BU-2, IU, and IU-1 to PUD, and waivers for 40-ft. lot width and 4,800 sq. ft. lot size. The vote was unanimous.

IV.B. Michael N. Malegiannakis (Steve and Penny DeFillips) requests a CUP for a Private Boat Dock Accessory to a Single-Family Residential Lot in RU-1-13. The property is 0.03 acre, located at 300 Ross Ave., Melbourne Beach) (18PZ00016) (District 3)

Steve DeFillips, East Coast Docks, stated his client is trying to build a dock; the house is on a separate property; the dock will meet the required setbacks, projections, and square footage.

Andy Barber asked what will be done with the mangroves that are on the property. Mr. DeFillips replied there are a couple of mangroves on the corners, but trimming is allowed within reason, and he will get approval from the state before doing any trimming. He said there is a walkway on the proposed dock that they will try to shift to minimize the impact on the mangroves, but there may be some small trimming required.

#### NO PUBLIC COMMENT

Motion by Ron McLellan, seconded by Rochelle Lawandales, to approve the CUP. The vote was unanimous.

IV.C. Panorama Mobile Home Park, Inc. (Cole Oliver and Joe Mayer) requests a Small Scale Comprehensive Plan Amendment from NC to CC. The property is 5.94 acres, located at 225 S. Courtenay Pkwy., Merritt Island. (18PZ00017) (District 2)

IV.D. Panorama Mobile Home Park, Inc. (Cole Oliver and Joe Mayer) requests a change of zoning classification from RA-2-10 and BU-1 to all BU-1. The property is 7.16 acres, located at 225 S. Courtenay Pkwy., Merritt Island. (18PZ00032) (District 2)

Erin Sterk advised the board that the applicant submitted a BDP prior to the start of the public hearing.

Rochelle Lawandales asked what the BDP stipulates. Ms. Sterk replied the individual signing the BDP does not own the property, so she is not sure of the validity of the BDP, because it is not authorized by the property owner, and the person authorized to act cannot sign the BDP. She further stated there are provisions to limit the use of the property to a self-storage mini-warehouse, to limit the building coverage to 40% of the site, which is already in the Land Development Regulations, and to provide a 25-ft. wide landscape buffer and public sidewalk easement along the west property line of the subject parcel, adjacent to the right-of-way of S. Tropical Trail.

Joe Mayer, President/Owner, Bussen-Mayer Engineering Group, 100 Parnell St., Merritt Island, stated adjacent uses to the subject property include condominiums to the west, an FPL substation to the north, a medical office to the south, and a Dollar General to the east. He stated the BDP that was submitted just before the meeting is to address the traffic concerns; that staff comments suggest traffic is an issue on S. Courtenay Pkwy., and the BDP was submitted to assure the board that the proposal is for a self-storage mini-warehouse facility, which is a reduction in traffic from the projected traffic that could exist today with RA-2-10 zoning. He stated the traffic numbers under RA-2-10 would project 644 trips per day, based on the ITE manual; and the average daily traffic for the mini-warehouse would be 169 trips per day, which is a 74% reduction. He further stated the site will be fully enclosed, with 112,000 to 120,000 square feet, and the BDP stipulates development will not exceed 40% coverage; a 25-foot buffer is proposed on the west side, so the development can stay on the east side. He noted no unit will be used as a place of business, and there will be no outside storage of commercial vehicles or heavy equipment; storage of hazardous material will be prohibited; and no overhead doors will be visible from the street. He pointed out that the Dollar General driveway is set up with a joint use driveway at the south end that will provide access into the subject property, as well as the Dollar General; and there will not be another driveway onto S. Courtenay Pkwy. He said there are no known drainage issues, and the project will meet all the code requirements for drainage.

Andy Barber asked if the building will be one-story or two-story. Mr. Mayer replied it will be a one-story building. Mr. Barber asked if the office will be on sewer. Mr. Mayer answered yes. Mr. Barber stated the parking is more than sufficient for an office. Mr. Mayer stated the County codes very much restrict the parking because there is not a lot of parking required; it will be a small office building and it will be the only plumbing facilities in the building. Mr. Barber asked if there will be landscaping. Mr. Mayer replied yes, there will be landscaping that meets code at a minimum. Mr. Barber asked what will be on the west side of the property. Mr. Mayer replied, on the west side they are proposing a 25-foot buffer along the right-of-way line, and there is a ditch that runs through the property that accommodates historical drainage, and they might have to pipe it or shift it around, but he is aware the nice trees on the property are on the west side, and as many of those as possible will be saved.

Erin Sterk stated she would like to hear on record whether or not the property owner agrees to the binding development plan. Mr. Mayer replied yes, and if staff and the board are okay with the binding development plan, he will bring back an owner-signed copy for the County Commission.

Henry Minneboo stated it was noted in the staff comments that a traffic impact study would be required, and he hopes that is not the case, as those are very expensive. Ms. Sterk responded, and stated staff did an analysis of the site limited to just the use proposed and came up with a number of 279 trips per day, and that still trips the level of service on S. Courtenay Pkwy. She stated at some point there has to be some analysis of what the impact is on S. Courtenay.

Ron McLellan stated mini-warehouses don't generate much traffic, so the trips are being cut down tremendously. Mr. Mayer stated there is no possible use of the property that will create less traffic than mini-storage.

Ms. Lawandales clarified that Mr. Mayer stated the mini-storage will generate 169 [sic] trips per day, and asked what staff's 200-plus trips per day was based on. Ms. Sterk replied it was based on the plan submitted. Ms. Lawandales asked if that was based on any uses. Ms. Sterk replied it was square footage and the mini-storage use.

NO PUBLIC COMMENT

Motion by Ron McLellan, seconded by Brian Hodgers, to approve the Small Scale Comprehensive Plan Amendment from NC to CC. The vote was unanimous.

Motion by Andy Barber, seconded by Rochelle Lawandales, to approve the rezoning request from RA-2-10 and BU-1 to all BU-1, with a BDP limiting the use of the property to a self-storage mini-warehouse, limiting building coverage to 40% of the site, and providing a 25-ft. wide landscape buffer and public sidewalk easement along the west property line of the subject parcel, adjacent to the right-of-way of S. Tropical Trail. The motion passed unanimously.

Bruce Moia stated he appreciates the BDP. In looking at the surrounding land use and zoning, the proposed use is a substantial reduction of the potential development on the site.

Rochelle Lawandales thanked Erin Sterk for taking the time to call her on Sunday evening, knowing what her day was like today, and she took considerable time with her to go over the agenda package. She also noted for the record the ex-parte disclosure that she provided to staff, and a signed copy to staff, and a copy was also left for the board members.

IV.G. Indian River Behavioral Health (Scott Glaubitz) requests a Binding Development Plan to allow for a wall 12 ft. in height in a BU-1 zoning classification. The property is 10.11 acres, located at 2355 Truman Scarborough Way, Titusville. (18PZ00025) (District 1)

Ken Ludwa, BSE Consultants, stated he represents the applicant.

Staff advised the board that Mr. Ludwa, did not have authorization from the property owner to represent the request, and therefore, the item could not be heard.

Motion by Rochelle Lawandales, seconded by Bruce Moia, to table the item to the May 21, 2018, LPA/PZ meeting. The motion passed unanimously.

IV.H. Schacht Family Holding Company, LLC (Hassan Kamal) requests a change of zoning classification from PUD to BU-2. The property is 2.34 +/- acres, located on the south side of Viera Blvd., approx. 250 ft. west of Murrell Rd., in the Viera area. (18PZ00031) (District 4)

Kim Rezanka, Cantwell & Goldman Law Firm, Cocoa, Florida, stated she represents the Schacht Family Holding Company, LLC. She said the request is by Matthew Development to build a quality, climate-controlled three-story self-storage facility on Viera Blvd. In order to build three stories, the parcel must be taken out of the Viera North PUD and rezoned to BU-2. She stated the development will be called CubeSmart, and she provided the board with renderings of the development. She said the proposed development is at Viera Blvd. and Murrell Rd., facing Long Doggers, and then there is the Mobil station, and the plaza that has Richards Paints and the old Goodings. It is next to Florida Eye Associates and a home loan company, which is a two-story building. The reason for the rezoning is because the Viera North PUD, in a plat note, limited all of the uses to the BU-1 uses, and although the mini-storage is a BU-1 use, there's a special section of the Code that says it can only be the same height as the building next to it, and the proposed use needs to be three stories.

She said CubeSmart will be required to comply with the architectural guidelines of the Viera East, and with the County Code, which has specific design standards for self-storage/mini-storage. She stated the property owner and Matthew Development have offered a binding development plan, which restricts the use to mini-warehouses, or any BU-1 use. She said the staff comments state that the request is consistent with the Future Land Use designation and will maintain the acceptable level of service. She advised that Mike Renfro contacted all of the neighbors, and there were no questions or concerns from anyone he contacted. She concluded by requesting approval of the requested BU-2 zoning with a binding development plan.

Rochelle Lawandales asked if it was easier to request BU-2 than amend the PUD. Ms. Rezanka replied it is much quicker; the developer wants to build as soon as possible; they will still need minor amendments to the PUD, but that does take more time.

#### NO PUBLIC COMMENT

Motion by Rochelle Lawandales, seconded by Robert LaMarr, to approve the request with a binding development plan. The motion passed unanimously.

1. Ordinance Establishing a 150-day moratorium on new conventional septic systems, or any system which does not provide a minimum of 65% total nitrogen reduction on the barrier islands, including Merritt Island, and within 50 meters of the Indian River Lagoon and connected waterways countywide.

Virginia Barker, Natural Resources Management Director, stated the proposed ordinance would establish a 150-day moratorium on new conventional septic systems, or any septic system that does not provide a minimum of 65% total nitrogen reduction, in an overlay area that consists of the barrier island, including Merritt Island, and within 40 meters of the Indian River Lagoon and all connected waterways countywide. She stated nitrogen is a contributing pollutant to the Indian River Lagoon and septic drain fields are a recognized source of pollution. The Board of County Commissioners were looking at the annual update to the Save Our Indian River Lagoon project plan, which is funded by the half-cent sales tax, and that plan includes hooking people up to sewer in neighborhoods that are having the biggest impact on the Lagoon, and for isolated septic systems that are the highest risk, upgrading them in place. She stated there are just under 4,000 septic systems that would be addressed through the half-cent sales tax. Staff obtained information from the State Department of Health that they permitted over 200 systems in the first quarter of 2018, so the pace of new development of new septic systems is double the nutrient removal benefit is being funded by the half-cent sales tax.

Henry Minneboo asked, of the 200 in this quarter, how many would be affected by this moratorium. Ms. Barker replied Commissioner Tobia did the research on that and told the Board it was about 5%, but that was for a 50 meter setback, and she doesn't know if that included the barrier islands.

Mr. Minneboo asked, north of the Barge Canal, how much of that area is referred to as the Indian River Lagoon. Ms. Barker replied the Indian River Lagoon system includes the Banana River, Banana Creek, and the Indian River Lagoon side as well. Mr. Minneboo said North Merritt Island is encapsulated with dykes all around it, and water is pumped, and asked how much of an impact that will be on the area. He further stated that the vast majority of houses on North Merritt Island are on septic tanks, and he's not sure those people can be stopped because they are not in the Lagoon system. Ms. Barker stated the Judson Road canal and Pine Island ditch would be connected waterways that directly connect to the Indian River and Banana River. Mr. Minneboo said they don't connect unless they're pumped, and the County has taken North Merritt Island for granted. He asked if the moratorium was for six months. Ms. Barker replied it would be in effect for 150 days, unless an ordinance is adopted sooner. Mr. Minneboo asked what would be accomplished by the moratorium. Ms. Barker replied the concept is to reduce the amount of nitrogen going into the groundwater, to reduce the amount of nutrients making it to the Lagoon or feeding algae blooms. She stated she does not know what the

pace of development is in the overlay area, but if staff knew that, they could calculate the amount of pounds of pollution that don't make it to the lagoon system.

Mr. Minneboo stated it is difficult for him to understand what the board is really doing with the moratorium. He stated he handles his own water on his property and doesn't discharge anywhere, so he doesn't contribute to the Lagoon, and yet if he needed to put another house in there, he can't do it.

Virginia Barker stated a key factor that she may have left out is that it's not a moratorium on all septic systems; it's a moratorium on conventional septic systems that do very little to reduce nitrogen. There are dozens of advanced systems that are currently certified permitted for use that people would still be able to develop on septic, but they would have to use advanced septic, or performance-based septic technology, and not conventional.

Andy Barber asked if there is a desire to change the rules, to make everybody have to do something that's more of enhanced types of systems, or are people going to be punished for six months to save a little bit of time, or is there a game plan to do something different after the moratorium. Ms. Barker replied there is a plan to come back with an ordinance change within the 150 days of the moratorium. Mr. Barber asked if it would be a more intense type of septic system. Ms. Barker replied it would probably require some sort of nutrient reduction performance. Mr. Barber stated when there have already been 200 in the first quarter of the year, it's hard to say how many people would be affected.

Brian Hodgers asked the difference between a conventional septic tank and a high performance septic tank, and what the cost differential to a homeowner would be. Ms. Barker replied the cost of a conventional system is around \$8,000, and the cost of the more advanced systems range from \$12,000 up to \$25,000 - \$30,000. There are a number of systems that are in the \$12,000 to \$16,000 category that would meet the 65% nutrient reduction performance standard.

Rochelle Lawandales stated on the maps that were provided, the blue represents the 50 meter overlay area, but there's a lot of blue on the maps. Ms. Barker said it follows all of the canals, tributaries, and ditches that are directly connected to the lagoon system. Ms. Lawandales asked, of the 200 permits that have been issued in the first quarter, are they all built. Ms. Barker replied she does not know. Ms. Lawandales asked if those people already have permits, will they be allowed to construct. Ms. Barker stated the proposed ordinance has dates of how that would work, so if your permit is already in place you would be covered.

Christine Valliere stated if someone has a permit before the date, they are not affected by the ordinance; and if someone has a completed permit application before the ordinance is effective, they are not affected by the ordinance. Ms. Lawandales asked if that is just for conventional systems, or if someone wants to come in and apply for an advanced system, they are not affected by the ordinance. Ms. Barker replied that is correct. She further stated not all advanced systems meet the 65% reduction requirements, but there are a lot of technologies out there that meet the standard.

Robert LaMarr asked, if the board is going to establish a 150-day moratorium, does it apply to new home construction as well as existing, and what happens if someone has a septic system failure. Ms. Valliere stated it does not apply to failing systems, it only applies to new construction and renovations.

Mr. Minneboo asked if the ordinance only applies to unincorporated Brevard. Ms. Barker replied it is written as countywide; the cities can opt out with their own regulation.

Bruce Moia stated renovation of an existing structure is a broad term and it's not very well defined, and asked what constitutes a renovation. He stated he would like to see more specific language on renovations. Ms. Valliere stated the ordinance is written in reverse; the exemption is for repairs and maintenance, so if it's not a

repair or maintenance it would be caught in the moratorium. She stated the Health Department will issue the permits according to State regulations; if the State reviewer sees a permit within this area, they will advise the applicant that they need to be aware of the County's moratorium. Mr. Moia asked how the 50 meters is measured to the waterbody. Ms. Valliere replied staff used the definition in the State Septic Tank regulations, which is the mean annual flood line.

Mr. Minneboo asked if there is a grace period, such as if someone is currently under construction. Ms. Valliere stated they would already have a permit if construction has started. Mr. Moia stated the people who will get caught in the middle are the people who have signed a contract for a house, but haven't pulled a permit yet.

Mr. Minneboo asked if the ordinance will shut down septic tank companies for five months. Ms. Valliere replied no, they just have to use different systems. Ms. Barker noted the County already has a requirement for advanced septic within 100 feet of river shoreline.

Mr. Moia stated he is in favor of doing things to protect the Lagoon, but he wants to look out for the people who are going to get caught in the middle.

Mr. Barber stated the effective date of May 22<sup>nd</sup> doesn't give people a lot of time to prepare, and he doesn't think the ordinance will make much difference; it will create havoc in the building world. He said he thinks the ordinance is too much, too soon, and a little on the vague side, so he is not in support of it. Mr. Minneboo asked if Mr. Barber has another date that would be more suitable. Mr. Barber said normally, moratoriums are for six months. He stated for some people, another \$5,000 or \$6,000 is a lot of money, and it will create conflict when somebody has a signed contract. He said he does want to see a benefit to the Lagoon, and he thinks it's a great idea to make the standards more difficult, but it should not be done so quickly.

Ms. Lawandales asked if an ordinance can be approved during the 150 days. Ms. Barker replied yes, that is the plan. Ms. Lawandales asked if that can be done, then what does the moratorium do. Ms. Valliere said it's an opportunity to take time to study the issue, and there may be other regulations that are appropriate, or different, than what is in this temporary time period.

Ms. Barker stated a new conventional septic system, at best, removes 30 – 40% of the nitrogen, so they are not designed to address nitrogen, they are designed to address human pathogens.

Mr. LaMarr stated he is involved in the Lagoon and has attended meetings, but he is concerned about the community marketplace, and the industry. Ms. Valliere stated staff has been in close communication with Environmental Health and provided them with the draft ordinance, agenda reports, and meeting dates.

Mr. Hodgers talked about the half-cent sales tax applying to anything within 100 feet or 150 feet would be put on sewer within 10 years. Ms. Barker replied that is not correct; there are over 15,000 septic systems that are within 50 meters of the Indian River Lagoon, and it would cost hundreds of millions of dollars to address those. She said staff prioritizes the 15,000 systems based on risk factors for pollution, and it was only the 4,000 worst systems that are funded through the plan to either be connected to sewer or be upgraded to an advanced system. Mr. Minneboo said it will be easier to upgrade the septic tank to a much more advanced system than it's going to be to put them on a sewer system.

Motion by Rochelle Lawandales, seconded by Ron Bartcher, to approve the septic tank moratorium ordinance. The motion failed 8:2, with Minneboo, Barber, Hodgers, Solito, McLellan, Wadsworth, Moia, and LaMarr voting nay.

Motion by Bruce Moia to deny the moratorium ordinance until the board gets further data.

Mr. Minneboo agreed more data is needed.

Mr. Barber added that staff can use the next six months to craft a new ordinance, but a moratorium is not needed. He stated the community needs to be aware of what is coming, with the new regulations.

Mr. Solito commented that the moratorium ordinance is too selective on new construction only.

Brian Hodgers seconded the motion.

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

Upon consensus of the board, the meeting adjourned at 4:25 p.m.

## Deborah Thomas

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**From:** Jones, Jennifer <jennifer.jones@brevardfl.gov>  
**Sent:** Thursday, May 10, 2018 12:52 PM  
**To:** Newell, Marcia; Mascellino, Carol; Alward, Elizabeth M; Minnick, Bridget; Williams, Sharon; Furr, Christine; Iliff, Bethany; Prasad, Billy; Woodard, Patrick; Tice, Molly; Valliere, Jennifer; Stern, Danielle; Luebker, Vic  
**Cc:** Christine Mulligan-Willey; Deborah Thomas; Donna Scott; Kimberly Powell; Tammy Rowe  
**Subject:** 05-07-18 P&Z Board Minutes

Attached are the minutes of the May 7, 2018, Planning and Zoning Board meeting. The items will be heard by the BCC on May 24<sup>th</sup>.

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