

**VERBATIM TRANSCRIPT OF ITEM V.B., RESOLUTION AND INTERLOCAL AGREEMENT
BETWEEN THE NORTH BREVARD ECONOMIC DEVELOPMENT DISTRICT AND
BREVARD COUNTY RELATING TO THE PAYMENT OF DEBT SERVICE ON FINANCING
OF BLUE ORIGIN GRANT AGREEMENT, RE: BLUE ORIGIN VALIDATION – DECEMBER
19, 2017 BCC MEETING**

Pritchett: Okay, we'll move into the time certain, Item V.B. County Attorney are you wanting to lead us into this sir?

Knox: Yes, ma'am. This is a request from the County Attorney's Office for a series of actions by the Board relating to the Blue Origin arrangement that we have for ah, and I'll through a little bit of the history so everybody understands what the context is. Sometime ago, the last Commission that saw the Blue Origin Project come before it, Blue Origin is an aerospace company that is building rockets, they're building a facility up in the Exploration Park area, District 2. They were given a grant by the County Commission in the amount of \$8 million. It was approved that they move forward with building that. It was supposed to be a 250,000 square foot building, which has now turned into a 630,000 square foot building, and complete that, and at the time they got a CO (Certificate of Occupancy) for that building, then the County had promised to give them \$8 million. That time was approaching, and my office, along with Troy Post from the North Brevard Economic Development Zone, which is the District was responsible for actually paying the grant from their funds, met with the Blue Origin people and discussed the possibility of borrowing the money; and if that was going to happen, then they would have to probably delay the receipt of their \$8 million to the time they got the CO to sometime a little bit into the future. Blue Origin didn't have a problem with that as long as we proceeded, and we explained to them we would have to proceed to a validation of the bond issue, which is really not a bond issue, it's just the borrowing issue, but that means we would have to go to court to get the judge to say it was okay to give this private company \$8 million, which we believe to be legal and very appropriate given the fact that we have a contract with them that says that's what we're going to do; and the reason we wanted to do that is because we have to make a good faith effort under the terms of the contract to go forward to pursue some kind of a loan, and if we can't get that loan, then we have to back off and pay them \$1.3 million over six years. The County and the District were both parties to that contract, and at the time the contract was signed, I think it was evident to everybody the District was too new to have any credit, and that was, certainly turned out to be true there was another deal that the District got involved with where the banks would not loan to the District specifically. So, we, when everybody signed that contract, it was pretty apparent that the District wouldn't be able to pull a loan themselves. So, it was our feeling that in good faith we would have to go forward with a County borrowing, which is what we are presenting to you today. So, what we're looking for today is approval of the authority to move forward with a bond resolution that would allow County to seek validation in front of a Circuit Court to determine whether or not it's appropriate to borrow, and legal to borrow funds for the purposes of giving a grant to the Blue Origin organization. I would point out that Florida Statutes 125.045 does allow you to do that, specifically it says it is a public purpose for the County to give money to corporations in order draw them into the County, which is what happened in this case because the original deal when Blue Origin came to the County was they were seeking opportunities in other states as well. I think in Alabama, and if I remember correctly it was Virginia as well. So divert to the fact that the County agreed to give the \$8 million dollars to them, they came here, they built their facility, it's now bigger than they said it would be, I think they'll be more jobs than they said there would be; and on that basis, we are coming before you and asking for the approvals we have identified in the memo.

Pritchett: Thank you Mr. Knox. Any questions from the Commission before I call Mr. Ellis up? Commissioner Tobia.

Tobia: I just had one quick question. When, and I know we weren't party to the loan, but it's my understanding that Titusville didn't go through the same validation process with Titus Landing, can you tell us why we are going through this validation process, and Titusville did not for the Titus Landing Project?

Knox: Well, Titusville didn't have a, the, Titusville had the same, I think had the same bond counsel we have. Our bond counsel was concerned about the issue of there's a Constitutional requirement that the County can't use its credit to put benefit of a private company unless there's proof of an overriding or paramount public purpose, and the way you establish paramount public purpose, other than opinions of lawyers, which would be the bond counsel and myself, is to go before a court and get the court to say it's a paramount public purpose which validates the bond, which means you can go forward with it. The bonding companies typically when they get millions of dollars like this will like to have some assurance that what they're doing is legal; and our bond counsel was hesitant to render an opinion without having a court say it's okay. So that's why we're doing it in this case.

Tobia: Madam Chair.

Pritchett: Yes, sir.

Tobia: Can you help me with the difference? My understanding is Titus Landing is in the neighborhood of \$6 million, this is \$8 million. My understanding is this is a private company and Brevard County has no stake. Is Titus Landing the ownership of Titus Landing a private company or does Titusville or Brevard County have any stake in that? I'm just trying to understand the difference.

Knox: Yes, there's, there is a distinction between this deal and the deal in Titus Landing. Titus Landing, the \$6 million went to putting in infrastructure, stormwater improvements, drainage facilities, roads, turn lanes that the County would take control of and ownership of at the end of the day.

Pritchett: Thank you, sir. Mr. Ellis.

Ellis: Scott Ellis, 2811 Breeze Ridge Road, Eau Gallie, Florida, I'm here to talk about the Blue Origin issue. I would agree with Mr. Knox, it is lawful to give away the money. I don't appreciate it, I don't like it, it doesn't matter, it is lawful; however, it is unlawful for the County to borrow money for operational expenses. If you were allowed to borrow money for operational expenses as a local government, you can fundamentally run in the red year after year after year like the federal government until you reach a point where your debt service overtakes your revenue source. In the School Board's case that happened on their capital facilities, but at least it was for capital. Local government cannot borrow money for an operational expense. It has been mentioned about the contract signed by NBEDZ. The contract is unlawful. NBEDZ agreed to borrow money that they cannot by law borrow, and it's not hard to do an unlawful contract. For example, I can do a contract and I could sell Mr. Knox's house with a contract. I could even give you a quit claim deed to move the property. None of it matters, it is a useless contract. I don't have the ability to sell a house I don't own. NBEDZ does not have the ability to borrow money. The County cannot borrow money to back NBEDZ up. It's unfortunate that the loan showed up, but during the two public hearings that we had here, there was never a

mention made of getting a loan. Each meeting discussed making 10 payments of \$800,000 a year. Our belief, the only dispute we had, we felt that would be subject for an annual appropriation by the Board. There was no mention made of getting a loan. There was a secret contract held by the Commissioners and no one else in the public was allowed to see. So, you can go through bond validation. Our belief is it is unlawful, and we will intervene in the bond validation. There are very sound reasons why you should not borrow money for operational expenses, and this is truly an operational expense. It's not a capital expense. You have no property interest in what's being done. It's not a stadium, it's not a road, it's not a sewer plant. You have zero property interest in this facility, so therefore, our belief is it is totally unlawful to borrow money for that grant.

Barfield: I have a question.

Ellis: Yes.

Barfield: You said a secret contract?

Ellis: Yes.

Barfield: What are you talking about? I don't know if I was here then or not, but I don't remember seeing a secret contract.

Ellis: When the two Blue Origin votes came before this Board, the contract was not released to the public that you were voting on. Mr. Knox will back me up on that one.

Knox: Yeah, I'll explain the two. Like all companies who are seeking to locate in Brevard County, they have the right to ask for confidentiality of the business arrangement and their business dealings, and one of the things they requested was confidentiality. So, when it came down to working out the details of the business arrangement and what their plans were, we could not reveal that by law because if we do there's a criminal penalty that goes along with it among other things. So, we didn't, we had that information available to the County Commission. They all signed non-disclosure and confidentiality agreements, and each one of them had access to those agreements and they knew what was in them. So, consequently they voted based on what they saw in front of them. The public didn't know about it because we couldn't tell the public.

Ellis: But also, Scott, what the public couldn't know was about the fact that the loan was being promised. The confidentiality for the company name is very common, we see that all of the time, but the fact that money was to be borrowed for this project is not something that we've ever done before.

Knox: That's true, Scott, but the provision about the loan was in the contract that was before the Board when they voted, on it, which couldn't be revealed to anybody.

Ellis: You could always redact the company name.

Knox: It wouldn't make any difference, they were under Blue Origin, it was under Project Panther at the time, you couldn't . . .

Ellis: I mean it's not like it was a great secret truthfully who it was.

Knox: Well, you know, that may be true, but still the details of the arrangements and the details of the business plan weren't. That's confidential.

Ellis: But the disturbing thing was that the Board was choosing to borrow money, issue debt, without a public discussion on issuing debt.

Knox: That may be true, but there is a confidentiality requirement. I'm sure if the Board had the opportunity to do that without violating it and going possibly being fined and going to jail for it, they would have done it.

Ellis: Anything else?

Pritchett: Thank you, sir.

Ellis: Thank you.

Pritchett: Mr. Barfield, did you have any?

Barfield: No.

Pritchett: Okay. Mr. Post, did you want to weigh in?

Post: I would just mention that the narrative that we passed out came from the company and they wanted to distribute that information to show what was in the agreement and also what they had achieved to date at the signing. You'll note on that first page it calls for the company to create 36 jobs, full-time jobs, by this time next year. They're actually on a pace to grow much faster. They already have 90 positions employed over that at this facility. They also have grown the square footage to a much larger footprint. Requirement was 250,000 square feet. They're grown it to over 650,000 square feet. So, the company is meeting the benchmarks that were set forth in the agreement, and we are very excited about their prospect for growth.

Pritchett: Thank you, sir. I've spent a little time reading through this, and I read Mr. Ellis' comment in the paper, so I started trying to process through it, and what I was thinking, it looks like it is funding of a contractual obligation, and so I called Mr. Knox. There was a contract made to Blue Origin. Whether you agree with the process or not, we're not approving whether we're doing the incentive or not, but we're trying to fund it; and there was a promise made to them that when they reached benchmarks we would supply them with 'X' amount of dollars. And I believe you also said, and I asked you this, you called up Blue Origin and asked if they would take it over time and they said no, they agreed to up front and that is what they want. So you have Mr. Besos, head of Amazon, and he wants us to abide by our promise, but even on this, if we're looking at what we're trying to do today, you said all we're doing today is we're going to send this off to an entity of people that go ahead and will tell us if it's legal or not to do this, correct?

Knox: Yeah, it'll go to the Circuit Court, and the court will rule on whether it's legal or not. Mr. Ellis brings up points that he has a position. We don't agree with that position. I don't think this is an operational expense at all, it's a contractual agreement, and we are required to pay our contractual agreements. So, I don't think that's going to be the prevailing position.

Pritchett: So, if we vote to move this forward, it'll go to Circuit Court, and we'll kind of have an answer?

Knox: Yes.

Pritchett: Yeah, and then also we're doing due diligence as we promised Blue Origin of what we would try to do as a County also, so we're abiding by our promise.

Knox: Right.

Pritchett: Okay, and one other thing. I just have to say this for Blue Origin. They were going to build a 250,000 square foot building, and it's over 650,000 square feet, and they did it in like nine months. I got to go out and tour it, and it's just amazing; and it's Blue Origin, and all of them are kind of like flips, they call it Blue, so I think they're just really neat. They're creating 330 jobs of \$89,000 a year, and they've also started venturing into new projects. So, this is really blowing up out there, and it's just, it was just, I'm so glad we have it. It's just a wonderful thing. So, Commissioner Isnardi, you have your light on.

Isnardi: Yeah, I'm sorry. I read through this contract and I don't claim to be an attorney but aside from the legal concerns of our Clerk, which I, you know, given his history, I respect, and I know he knows what he's talking about; and aside from the fact that \$8 million to a guy who is the richest man in the world worth over \$90 billion. I mean, beside all of that, I mean this contract reads, the District may apply for financing from a bank or another financial institution in an attempt to provide the in total grant; however, if the District cannot obtain financing, or if the financing terms and requirements proposed to the District for the provision of the award to the company in total are determined to be unfavorable by the District and the County, then such events shall not relieve the District of its obligation to pay the award amount of \$8 million. Now the repayment schedule on here shows years one through six, so what am I missing? I mean, we have the option to pay it over time according to this contact.

Knox: No, you missed the part about good faith.

Isnardi: Okay, but where is that in the contract?

Knox: Hold on a second, I'll find it for you.

Isnardi: I mean, good faith financial decision, if our Clerk, who is the financial auditor of the County, tells us that it's not legal to pay for these types' expenses, and . . .

Knox: Well, let me tell you, the Clerk I believe is wrong on that, dead wrong. So, that shouldn't be your determining factor here today, so I don't think the Clerk is right about that. And I think we have agreement from bond counsel on that, but the fact that the Clerk does think that that's the case, is what warrants the filing of the suit for validation; and we knew that Mr. Ellis would have a problem with it because he's had a problem with this since the day that it started. Yeah, use best efforts to seek out and utilize . . . I'm sorry, I've got the wrong one. I can't put my eyes on it right now, but there's, there's always a good faith obligation in every contract. So, I mean, we have to make an effort to at least get the money, and the District, you know, the District can go out to banks and say, and they're going to say no to the banks, they've got to go elsewhere to the . . .

Isnardi: But the argument to me made by the District was that they wanted to have those funds available now for other projects . . .

Knox: That's correct.

Isnardi: . . . it wasn't, and that's fine, but you know, whether or not you agree with the North Brevard Economic Development Zone getting \$3 million of tax increment per year, I don't think that that's a valid reason to try to take out a loan for \$8 million for the payment, and to pay over a million dollars in interest so they can do more projects and provide more incentives for billionaires. I just have a hard time swallowing that.

Knox: Well, I guess Commissioner, the only other option you have is to come up with \$8 million and pay them.

Isnardi: Or be sued, right?

Knox: Pardon me?

Isnardi: Or let them sue us?

Pritchett: Amazon.

Knox: Yeah, which is not . . . that may be something you want to do, but I don't think it's a great policy to let people who come down here do that.

Isnardi: Of course not. I don't think it's a great policy to give \$8 million to a billionaire either, so.

Pritchett: Mr. Post.

Post: Oh, I was just going to say, Madam Chair, to answer the Commissioners question. Section 3.2.2, the first sentence speaks to providing the incentive in total.

Pritchett: Thank you, sir. Commissioner Tobia.

Tobia: You're referring to a bad faith suit if we don't meet that. My question is knowing that we have a homestead exemption coming down the pike that'll cost us in excess of \$7 million in General Fund, and an uncertain housing market, what is your legal opinion of a bad faith suit coming about instead of going forth with a loan, we went with the payment schedule that is laid out in the document itself.

Knox: Well, I think the District has to make an effort to get the loan, and I think the County who is a party to the contract is certainly in a position to help do that. In fact, that's the only party who is going to be able to get a loan. They can do that in one of two ways. They can go out and seek a loan or they can take money from their reserve accounts and borrow the money from that and pay Blue Origin, and then let the District pay them back. That's another way to do it, but that's something the County Manager is I think a little bit shy about doing because he's got other issues that relate to Reserve accounts like hurricanes and the like.

Pritchett: Okay, Commission, what's your pleasure?

Barfield: What is, okay, the exact motion, does it come back to us again?

Pritchett: It does.

Knox: After it does through validation the actual contracts for the bond issue itself will have to go out for RFP first and will come back to you for the award of that.

Barfield: So, we'll only see it at the award?

Knox: Yes.

Smith: Madam Chair.

Pritchett: Yes, sir.

Smith: I've been listening to them. Not only Commissioner Isnardi, I have a great deal of respect and faith in our esteemed Clerk of Court Mr. Ellis, but I think what we're doing here is simply making an effort to make good on our promise that we would pay them in lump sum; and we are simply taking the opportunity for the Circuit Court to tell us that we can or we cannot. If we can, then we will. If we can't, then we have the option of paying Blue Origin over six years; and so I think that's the bottom line question here. So, I would be in support of letting the court make the decision.

Pritchett: Thank you, sir. Is that a motion?

Smith: Yes, I would like to make that motion that we move forward and allow the court to make that decision.

Pritchett: Thank you. Commissioner Barfield.

Barfield: Yes, I know Commissioner Tobia brought up about the homestead exemption, and the payment schedule they have here, at basically about \$1.38 million a year for six years, well, the last year is a little bit less, how does that relate to what the payments would be if it was financed?

Post: Is that a question for me? Okay, of course, I have to qualify by saying I'm not the County's financial advisor, but my understanding is that the type of interest rate range we would likely be looking at would probably put the repayment of the principal and interest each year of just under \$1 million. In the pro forma that we generated on the Zone, which I think I had a chance to share with each one of you during your briefings, we able to show that we can very comfortably cover that amount and still have some additional monies to use for new projects. So, this would be a change or swing of about \$400 to \$450,000 more each year that would have to be allocated towards this project.

Pritchett: Thank you, sir.

Tobia: Sorry, a quick . . .

Pritchett: Commissioner Tobia.

Tobia: Sorry, and thank you Mr. Post, that sounds like a . . . just very important to talk about the difference real quickly. The \$1.38 million is a course of six years, is that correct?

Post: I think the number you're referencing is in the agreement, and that's essentially dividing the \$8 million over a six year period of time and coming out with what the costs would be to pay that \$8 million. No interest charge at all, just the \$8 million.

Tobia: But just to be clear here, I don't want to say you sound like a used car salesman, but to get the lower price of under a million dollars we would have to extend that loan. First of all, get away from the zero percent unless we know an area where we're going to get zero percent loans. We had the discussion, I think we were looking at three, you said somewhere in the three, three and one-half percent range potentially?

Post: We were projecting between two and 3.5 percent, somewhere within that range.

Tobia: And again, from six to 10 years. So, adding four years onto this re-payment, plus interest, to get below that million dollar threshold that you spoke of, is that correct?

Post: Yes, sir, in our assumptions we were using 10-year amortization and a 10-year term.

Tobia: Thank you.

Pritchett: Okay I have a motion on the table. Do I have a second?

Barfield: I'll second it.

Pritchett: I have a second. All in favor say Aye?

Pritchett, Barfield, Smith: Aye.

Pritchett: Opposed?

Tobia, Isnardi: Nay.

Pritchett: Passes 3:2, with Commissioners Tobia and Isnardi in opposition.

Abbate: Madam Chair?

Pritchett: Yes, sir. Commissioner, I mean . . .

Abbate: One issue that Mr. Knox brought up that I once again would like to get clarification on is that if this validation went forward that we would go ahead and make the first year payment, which is what Blue Origin had requested?

Pritchett: Yes, sir. Mr. Knox.

Abbate: Not to hold that up.

Knox: Yeah, when we talked to Blue Origin they were concerned about the length of time it would take to get the validation done. If there was no opposition to it, it is typically a 60-day process, and that would have been within the 120 days, and we could have done the full payment. So, they requested that we at least make the \$1.3 million payment for the first year if it goes longer than that 60-day period. Since the Clerk has indicated they are going to

intervene, that probably is going to extend the date for resolution by the court beyond the 60 days.

Pritchett: Thank you. I want to just, the one thing I just have to say is I've been up here since before the Zone was put into place and after, and the economic driver from the Zone's abilities up in District 1, it was really bad before we had an ability to drive in some businesses; and people weren't going to come to a place that had nothing going on, and everybody moving out, this things starting to work. We're starting to get the businesses in. Blue Origin's got the building built. They're going to start manning it now and bringing in the employees. OneWeb brought in RUAG, all kinds of new companies. They're space oriented but, you know, you don't build a 675,000 square foot building just to leave it and not to do what you're going to do, and what's exciting too, is he's got new things he's started to put out in publicity, what he's going to do out of that building, and it's pretty exciting what's coming into the area with the space opportunity and jobs and families. Even the housing market up in District 1 is taking off. It puts a lot of smiles on our faces up there because a while ago it was tough for people to even put food on their table. So, I really appreciate everything we're doing and the way the money's spent, it's all for jobs and economic recovery; and I just think it was a brain storm. So, it's benefiting the whole County, and Blue Origin's actually in District 2, so thank you all for that. Oh, Commissioner Tobia, did you . . .

Tobia: Thank you. I think the County Attorney's Office is looking for a motion here, and this was not in our packet. So, I just had a couple of points of clarification, questions.

Pritchett: Which motion, sir, were you talking about?

Tobia: I think he's going to have to look for one for the first year's payment. So my questions are . . .

Pritchett: Which would . . . oh, sorry. Go ahead.

Tobia: With your indulgence. Okay. Where would the 1., the first year's payment of 1.3, almost \$8 million come from if we were to pay this out in the first 60 days?

Knox: Here comes Troy back to answer that question for you.

Post: I thought I was concluded. We did consider this as a possibility. Last year in our fiscal year we had monies actually budgeted for making a full year's worth of principal and interest payments on the Miracle City Mall Project, Titus Landing. Because of the benchmarks that were required on that project, it didn't actually qualify for the incentive until this most recent fiscal year in May. So, that means we're carrying forward a pretty large balance coming into the current fiscal year. So, our plan was to take some of that, or some of those proceeds and apply towards this Blue Origin plan.

Tobia: Follow up. So, just to be clear, you do have \$1.379 million in the bank to satisfy that first year, first year of payment, is that correct?

Post: We do have the allocation, yes, sir. It will require a BCR to come back before the Commission, but we could do that.

Tobia: And then, one quick follow up. If this does receive validation and a bond does come back to the County, would we then be looking at instead of an \$8 million bond, an \$8 million less the \$1.38 million?

Post: Yes, sir, that would be correct, yes.

Tobia: Thank you.

Pritchett: Mr. Knox, are you needing a motion?

Knox: Yeah, we needed a motion to go forward with the payment if it's required.

Pritchett: Okay, do I, can I have a motion?

Smith: Yeah, I would like to make that motion.

Pritchett: Motion by Commissioner Smith. Do I have a second?

Tobia: I'd like to second it.

Pritchett: Second by Commissioner Tobia. All in favor say Aye.

Pritchett, Barfield, Tobia, Smith, Isnardi: Aye.

Pritchett: It passes 5:0. Thank you. Thank you, Mr. Ellis, for coming out, and Mr. Burdett.