

May 5, 2022

Brevard County Board of County Commissioners

*2725 Judge Fran Jamieson Way
Viera, FL 32940*



Minutes

Thursday, May 5, 2022

5:00 PM

Zoning

Commission Chambers

A. CALL TO ORDER 5:03 PM

Present: Commissioner District 1 Rita Pritchett, Commissioner District 3 John Tobia, Commissioner District 4 Curt Smith, and Commissioner District 5 Kristine Zonka

ZONING STATEMENT

The Board of County Commissioners acts as a Quasi-Judicial body when it hears requests for rezoning and Conditional Use Permits. Applicants must provide competent substantial evidence establishing facts, or expert witness opinion testimony showing that the request meets the Zoning Code and Comprehensive Plan criteria. Opponents must also testify as to facts, or provide expert testimony; whether they like, or dislike, a request is not competent evidence. The Board must then decide whether the evidence demonstrates consistency and compatibility with the Comprehensive Plan and the existing rules in the Zoning Ordinance, property adjacent to the property to be rezoned, and the actual development of the surrounding area. The Board cannot consider speculation, non-expert opinion testimony, or poll the audience by asking those in favor or opposed to stand up or raise their hands. If a Commissioner has had communications regarding a rezoning or Conditional Use Permit request before the Board, the Commissioner must disclose the subject of the communication and the identity of the person, group, or entity, with whom the communication took place before the Board takes action on the request. Likewise, if a Commissioner has made a site visit, inspection, or investigation, the Commissioner must disclose that fact before the Board takes action on the request. Each applicant is allowed a total of 15 minutes to present their request unless the time is extended by a majority vote of the Board. The applicant may reserve any portion of the 15 minutes for rebuttal. Other speakers are allowed five minutes to speak. Speakers may not pass their time to someone else in order to give that person more time to speak.

C. PLEDGE OF ALLEGIANCE

Commissioner Pritchett led the assembly in the Pledge of Allegiance.

D. MINUTES FOR APPROVAL

The Board approved the February 3, 2022 Zoning Meeting Minutes.

Result: Approved

Mover: Curt Smith

Second: Rita Pritchett

Ayes: Pritchett, Tobia, Smith, and Zonka

H. PUBLIC HEARINGS

Abigail Jorandby, County Attorney, advised the Chair that the emails that are usually sent for disclosures were not received by staff; she noted at this time if anyone has any disclosures with any applicants regarding these applications, if the Board members would declare them at this time, as best it can, she understands there are emails, but apparently they have not been uploaded to the system; and they just need to be on the record.

Chair Zonka responded she will start with the first one; she stated there was an email from Ed Johnson that was up here; she has given a copy to the clerk; it is basically a letter of support after some modifications to the BDP were made; and they live in the neighborhood and just wanted to inform the Board of that information.

Commissioner Pritchett advised her office also received one from Mr. Byrd; she was just informed by her staff that they emailed that to the clerk for her; she had received a call from Mr. Oliver and he just asked that the Board really pay attention to District 2 Items because he lives in that area and we wanted the Board to pay extra careful attention to that since they no longer have a Commissioner; and that is all she has.

Commissioner Smith noted he has one from Ed Johnson.

Chair Zonka announced she believes all of the Commissioners have received the copy of the email.

Commissioner Tobia noted he believes the entire Commission received an email on May 4, from Fritz VanVolkenburgh in regards to Items H.1.; no opposition to H.2., suggests regarding the Binding Development Plan (BDP); and H.6. no opposition.

H.1. Storsafe of Rockledge, LLC (Nathan Lee) Requests a Small Scale Comprehensive Plan Amendment (21S.03) to Change the Future Land Use Designation from RES 4, NC, and CC, to all CC (21PZ00083) (Tax Accounts 2511096, 2511103, 2511119)

Chair Zonka called for a public hearing on a request by Storsafe of Rockledge, LLC (Nathan Lee) for a Small Scale Comprehensive Plan Amendment (21S.03) to change the Future Land Use designation from RES 4, NC, and CC, to all CC.

James Sayagh stated he is the Principal and the Chief Development Officer at Elmdale Partners which owns Storsafe; and the address is 5301 Dempster, Suite 300 in Skokie Illinois.

Ryan Clark stated he is with Kimley-Horn, the civil engineers; and the address is 1115 East Twigg Street, Tampa, Florida.

Mr. Sayagh thanked the Board for hearing the petition; he mentioned he thinks one of the reasons they have prevailed unanimously at Planning and Zoning is because they came with their ears opened and listened to their neighbors; entered into evidence is the letter of support; he remarked to Ed Johnson that he greatly appreciates that; he has been doing this for 25 years and a letter of support from your neighbor is about as good as it gets in this business; he noted underlying that support is they immediately removed from their plan the notion of any outdoor parking whatsoever; therefore, they will not have any outdoor buildings. He continued by saying they were thoughtful with Kimley-Horn from the onset about using the rear of the site as an appropriate buffer from those beautiful homes along the Indian River; they think taking the Agricultural parcel and the natural topography of the land and putting the storm retention where it is, with a nice vegetative buffer really makes for an ideal buffer used from the highway; and their goals as they have said, and storage, having built one or two of these in his time, is really an ideal buffer used in residential, particularly with a highway. He added it is a low intensity use; it is not used nearly as intensely as any other commercial use that he can think of; it does not require much in the way of operations, such as scavenger service; and there is not a big amount of garbage that is created or trash pickups, so it is a pretty peaceful use. He went on to say they tried as best they could to listen to all the very specific granular concerns they had, like lighting; the Board will see in the Binding Development Plan (BDP) that they agreed to things like having down lighting that lights the aisle as opposed to things that shine

right at people is memorialized; there were some conversations back and forth with staff about the fence or the you know, masonry barrier; even walking in here, he is going to go ahead and agree to it and not ask for any relief from what is drafted; it is important to our neighbors, they made it clear it is important to them, it is probably the most sustainable thing, it is not going to get blown over like a vinyl fence would, and so they are agreeable to everything as drafted; one way or the other the portion of the site they would like to immediately develop is all BU-1 now anyhow; and some version of this can be developed by right, but he is left with the problem of this bizarre patchwork of zoning that is on this site, that does not really make any sense. He stated a lot of this is cleaning up kind of what is a little bit of a mess; they feel that BU-2 made sense with conditions and the Planning and Zoning advisory body resoundingly agreed; and he is in hopes that the Board will as well.

Jeffrey Ball, Planning and Development Manager, asked the Chair if he could read the two Items into the record.

Chair Zonka responded affirmatively.

Mr. Ball stated Items H.1. and H.2. are companion applications. He will read them into the record together but they will have to have a separate vote; item H.1. is Storsafe of Rockledge, LLC requests a Small Scale Comprehensive Plan Amendment, 21S.03 to change the Future Land Use designation from RES-4, NC, and CC to all CC; application number 21PZ00083; and it is located in District 2. He continued on by saying Item H.2. is Storsafe of Rockledge, LLC requests a change of Zoning classification from AU and BU1 to BU2; application number 22Z00004; it is located in District 2; the Planning and Zoning Board recommended approval for both of these applications; and with the rezoning application it recommended a BDP with eight conditions which are identified in the Agenda Report.

Chair Zonka inquired if anyone has any questions for the applicant.

Commissioner Smith responded he does. He commented there was something he did not ask staff during his briefing; he inquired what kind of retention is there for stormwater runoff: and he inquired if there is a swale or something there.

Mr. Ball responded the Item of drainage will be addressed at the site planning stage where the engineers will all get with staff and design an appropriate stormwater management system; whether that is a wet retention pond in a swell, he does not know, that is beyond his expertise; but they will have to meet the County's land development regulations in the Code.

Tad Calkins, Planning and Development Director stated to add to that, the Code requires that they outfall into a legal positive outfall discharge area so they will not be able to put water on an adjacent property owner unless there is that legal positive outfall there.

Chair Zonka advised she has one card and she will call the applicant back up if there are additional questions or if he wants to respond.

Ed Johnson stated he lives directly behind the old Harvey's Grove; he is representing eight of his neighbors, so there is eight residences that are all abutted, bordering this property; they went to the advisory board meeting and there was a little bit of back and forth but those guys did a wonderful job working out something for all of them; they had a two hour and three minute meeting, and 55 minutes was spent on getting this worked out; he is there to say that he, his wife, and his seven other neighbors, as long as the things in the BDP, the property will be used for self-storage only, outdoor storage prohibited, buildings limited to one story, lighting shall not face the residential properties, a 20-foot landscape buffer, and he thinks those last two are

required anyway, and then a finished eight-foot masonry wall, which he talked with the applicant about earlier and he believes he has agreed to, they are all in agreement with the way it is written. He mentioned the BDP says shall enter to the benefit of successors or signers, and he asked if the BDP goes with the property, and does not change with ownership.

Chair Zonka responded affirmatively.

There being no other comments or objections, the Board adopted Ordinance No. 22-14, amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, entitled "The 1988 Comprehensive Plan", setting forth the eighth Small Scale Comprehensive Plan Amendment of 2022 (22S.03), to the Future Land Use Map of the Comprehensive Plan; amending Section 62-501 entitled, Contents of the Plan; specifically amending Section 62-501, Part XVI(E), entitled, The Future Land Use Map Appendix; provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; providing for an effective date.

Result: Adopted

Mover: Curt Smith

Second: John Tobia

Ayes: Pritchett, Tobia, Smith, and Zonka

H.2. Storsafe of Rockledge, LLC (Nathan Lee) Requests a Change of Zoning Classification from AU and BU-1 to BU-2 (22Z00004) (Tax Accounts 2511096, 2511103, 2511119)

Chair Zonka called for public Hearing on a request by Storsafe of Rockledge, LLC, for a change of zoning classification from AU and BU-1 to BU-2.

Commissioner Pritchett commented she is really glad Mr. Johnson showed up and said that because she was really struggling with doing anything in District 2 and it is good to hear the neighbors are at a place where they are comfortable.

Chair Zonka thanked the applicant for working with the neighbors; and she stated it does not ever go quite this smoothly, so she appreciates it.

There being no other comments or objections, the Board approved a request by Storsafe of Rockledge, LLC for a change of zoning classification from AU and BU-1 to BU-2 with the BDP containing the following conditions: the use of the property shall be for self-storage only; outdoor storage shall be prohibited; any buildings on the property shall be limited to single-story; no lighting elements shall face the residential properties; a 20-foot landscape buffer shall be required in accordance with the code requirement; and a finished eight-foot masonry wall shall be required along the edge of the improvements in accordance with code requirements.

Result: Approved

Mover: Curt Smith

Second: Rita Pritchett

Ayes: Pritchett, Tobia, Smith, and Zonka

H.3. Rotation Holdings, LLC, Requests an Amendment to an Existing BDP in a BU-2 Zoning Classification (3640 N. U.S. Hwy 1, Cocoa) (22Z00007) (Tax Account 2411214)

Chair Zonka called for a public hearing on a request by Rotation Holdings, LLC, for an amendment to an existing Binding Development Plan (BDP) in a BU-2 zoning classification at 3640 N. U.S. Highway 1, Cocoa.

Jeffrey Ball, Planning and Zoning Manager, stated Rotation Holdings, LLC request an amendment to an existing BDP in a BU-2 zoning classification; the application number is 22Z00007; and it is located in District 1.

There being no other comments or objections, the Board approved a request by Rotation Holdings, LLC, for an amendment to an existing BDP in a BU-2 zoning classification for application number 22Z00007, located at 3640 N. U.S. Highway 1, Cocoa; and the BDP will contain the following conditions: developer/owner will provide a 50-foot buffer on the east property line and increase vegetation by adding Bald Cypress trees every 25 feet, Wax Myrtle every five feet, and Muhly grass every three feet; developer/owner shall construct an eight-foot tall concrete masonry unit (CMU) wall along the east property line; and automobile repair on the property shall be limited to minor automotive repair only, as defined in 62-1102.

Result: Approved

Mover: Rita Pritchett

Second: John Tobia

Ayes: Pritchett, Tobia, Smith, and Zonka

H.4. Michael P. Buono and Charles T. Calhoun Request a Change of Zoning Classification from GU to RR-1 (21Z00051) (Tax Accounts 2000791 & 2000796)

Chair Zonka called for a public hearing on a request by Michael P. Buono and Charles T. Calhoun for a change of zoning classification from GU to RR-1.

Jeffrey Ball, Planning and Zoning Manager, stated this is Michael P. Buono and Charles T. Calhoun request to change a zoning classification from GU to RR-1; the application number is 21Z00051; and it is located in District 1.

There being no other comments or objections, the Board approved the request by Michael P. Buono and Charles T. Calhoun for a change of zoning classification from GU to RR-1.

Result: Approved

Mover: Rita Pritchett

Second: John Tobia

Ayes: Pritchett, Tobia, Smith, and Zonka

H.5. Robert F. Erario and Jeremy Sothea Sun Request a Change of Zoning Classification from BU-1 and AU to all AU (22Z00008) (Tax Account 2001826)

Chair Zonka called for a public hearing on a request by Robert F. Erario and Jeremy Sothea Sun for a change of zoning classification from BU-1 and AU to all AU.

Jeffrey Ball, Planning and Zoning Manager, stated Robert F. Erario and Jeremy Sothea Sun request a change of zoning classification from BU-1 and AU to all AU; the application number is 22Z00008; and it is located in District 1.

There being no other comments or objections, the Board approved the request by Robert F. Erario and Jeremy Sothea Sun for a change of zoning classification from BU-1 and AU to all AU.

Result: Approved

Mover: Rita Pritchett

Seconders: John Tobia

Ayes: Pritchett, Tobia, Smith, and Zonka

H.6. Tyler M. and Cristina N. Boucher Request a Change of Zoning Classification from AU to RR-1 (22Z00009) (Tax Account 2316242)

Chair Zonka called for public hearing on a request by Tyler M. and Cristina N. Boucher for a change of zoning classification from AU to RR-1.

Jeffrey Ball, Planning and Zoning Manager, stated Tyler M. and Cristina N. Boucher requests a change of zoning classification from AU to RR-1; the application number is 22Z00009; and it is located in District 2.

There being no further comments or objections, the Board approved the request by Tyler M. and Cristina N. Boucher for a change of zoning classification from AU to RR-1.

Result: Approved

Mover: Rita Pritchett

Seconders: John Tobia

Ayes: Pritchett, Tobia, Smith, and Zonka

H.7. Rushing Wind, LLC (Steven Austin) Requests a Small Scale Comprehensive Plan Amendment (22S.02) to Change the Future Land Use Designation from RES 1 to RES 4 (22PZ00003) (Tax Account 3008616)

Chair Zonka called for public hearing on a request by Rushing Wind, LLC, (Steven Austin) for a Small Scale Comprehensive Plan Amendment (22S.02) to change future land use designation from RES 1 to RES 4.

Jeffrey Ball, Planning and Zoning Manager, stated Items H.7. and H.8. are companion applications; they will be read into the record but you will need to have a separate vote for each of them; Item H.7., is Rushing Wind, LLC request a Small Scale Comprehensive Plan Amendment 22S.02 to change the future land use designation from RES 1 to RES 4; the application number is 22PZ00003, located in District 3; Item H.8., is Rushing Wind, LLC, request a change of zoning classification from RR-1 and IN(L) to RU-1-11; the application number is 22Z00001; and it is located in District 3.

Commissioner Smith stated he has a question; he was looking at this and the way the waters would flow down to basically Sebastian River and then out into the Indian River, he inquired if the Board is comfortable with the septic systems that would have to be in place in this particular instance with the density.

Commissioner Tobia advised he will explain why he is comfortable with going from RES 1 to RES 4; it is because the neighbors immediately to the north are RES 6, so they have adjacent neighbors that have a higher density than what they are currently asking for; as a quasi-judicial body, he thinks that it is important that the Board offer some level of consistency; and they have gone for less than whatever a neighboring property is, so for that reason he is

comfortable.

Commissioner Smith noted he was just a little uncomfortable.

Commissioner Tobia advised he understands Commissioner Smith's concerns.

Chair Zonka noted they are going to have to be compliant with the County Ordinances and Rules.

Commissioner Smith responded okay.

Chair Zonka inquired if Commissioner Smith was comfortable.

Commissioner Smith noted he is.

There being no further comments or objections, the Board adopted Ordinance No. 22-15, amending Article III, Chapter 62, of the Code of Ordinances or Brevard County, entitled, "The 1988 Comprehensive Plan", setting forth the seventh Small Scale Plan Amendment of 2022, 22S.02, to the future land use map of the Comprehensive Plan; amending Section 62-501 entitled, Contents of the Plan; specifically amending Section 62-501, Part XVI(E), entitled, The Future Land Use Map Appendix; and provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date.

Result: Adopted

Mover: John Tobia

Second: Curt Smith

Ayes: Pritchett, Tobia, Smith, and Zonka

H.8. Rushing Wind, LLC (Steven Austin) Requests a Change of Zoning Classification from RR-1 and IN(L) to RU-1-11 (22Z00001) (Tax Account 3008616)

Chair Zonka called for public hearing on a request by Rushing Wind, LLC (Steven Austin) for a change of zoning classification from RR-1 and IN(L) to RU-1-11.

There being no further Comments or objections, the Board approved the request by Rushing Wind, LLC for a change of zoning classification from RR-1 and IN(L) to RU-1-11.

Result: Approved

Mover: John Tobia

Second: Rita Pritchett

Ayes: Pritchett, Tobia, Smith, and Zonka

L.2. Abigail Jorandby, County Attorney, Re: Board Report

Abigail Jorandby, County Attorney, stated she has a brief report; at the meeting on Tuesday, the Board had directed her to seek an Attorney General Opinion (AGO); she realized once she got out of the meeting the Board did not actually take an affirmative vote and the Attorney General will require minutes from this meeting directing her to do so; therefore she needs a motion and vote on that item to include in the packet so she has the minutes.

Commissioner Smith made a motion.

Chair Zonka asked if it needs to be more specific.

Attorney Jorandby responded she just wants to make sure that she is seeking the correct information for the Board.

Commissioner Tobia interjected stating he has a quick question for Attorney Jorandby, he commented maybe she can answer it altogether; and he asked if she is concerned there is any way the Board potentially may not get an answer back.

Attorney Jorandby advised she did review the Attorney General's website and the requirements; she has to do a certification; they basically say they will not answer questions for local Codes or Charters, they are not; they are supposed to apply state law to the local charter and the codes, so typically they will not answer that, therefore, there is a possibility that they will decline to actually answer this Attorney General's request; and she would like clarification that the question is: what does the term supermajority mean as far as the County charter and County code. She reiterated typically, they will not answer if it is a local Code; it is actually a part of their packet online; it just essentially says they do not typically enter interpretations of local codes, ordinances, or charters; and without really a State connection that could be a problem.

Chair Zonka inquired who the Board would turn to, to ask that.

Attorney Jorandby responded essentially, it would be her as the County Attorney; if they decline it would be up to her to make that determination; she knows the Board was seeking that, but there is really no entity; she explained typically if there was an issue between another municipality the County could do a declaratory action, but it does not have anything to take to court, so the avenue would be the AGO; and her understanding is they will most likely decline it, because it does not involve a State issue.

Commissioner Pritchett stated the question would be what if the Board interprets it in a way that is not the same as maybe how it is written or whatever; she provided an example, if the Board was doing something and maybe that is not what the Board should be doing; and if the Board does not go to the Attorney General, she asked, who is ever going to say what is being done is not correct with how it is interpreted.

Attorney Jorandby explained if the Board took action that, and it would be up to an individual public member, so if for some reason the Board took a vote and it was an individual who disagreed with what the Board has done, they could file a lawsuit; and that would be up to a court to decide whether it followed the County Code or Charter, and whether the interpretation the County took was reasonable under those definitions.

Commissioner Pritchett questioned what if the Board already moved forward.

Attorney Jorandby noted that is the issue; it could jeopardize the results; and for some reason, like a couple of the issues that one was putting something on a referendum for a charter amendment, if the Board took a different position and said three members was a supermajority so we can do this and it went to a referendum, if someone challenged that, a court could reverse the referendum and the Board would have to redo that.

Chari Zonka asked if the County Charter clearly states four members.

Attorney Jorandby responded affirmatively. She commented she was just providing an

example.

Chair Zonka mentioned she thinks her concern was more of what is considered a supermajority when there is a vacancy.

Attorney Jorandby responded she thinks the one provision she is thinking of is like the Charter cap; that says supermajority of the Board, so she thinks a reasonable interpretation is to start with what the definition of the Board is and that is a five-member board; even with a vacancy, at that point it does not change the fact that the Board is a composition of five members; and so a super majority would still be four.

Chair Zonka noted the Board is not five members when there is not a fifth member.

Commissioner Smith interjected that he thinks the County could argue that the supermajority then is the remaining Board; and if there are four members then three is a supermajority.

Commissioner Pritchett commented if the Board only has three members and there are only two votes that would be a supermajority at that time, too.

Attorney Jorandby stated it is her position that there is very little case law on this issue; she has been looking; she did find one statute that does not apply to anything that the Board would be doing to special districts, the State of Florida Legislature has defined supermajority is half plus one, so at that point its majority plus one, so majority by definition is over 50 percent.

Chair Zonka noted majority plus one, there is not an odd number of members so that probably would not apply to this Board.

Commissioner Pritchett inquired if that is in the Florida Statutes.

Attorney Jorandby responded that was just one section, but it is about taxes, it is not even really relevant; she was just trying to find examples.

Commissioner Pritchett responded she was doing some research on supermajority and she found some 66 percent; and she asked what if the Board went ahead and got just another person's opinion that did this, so the Board would have two opinions moving forward on it.

Attorney Jorandby responded affirmatively.

Chair Zonka commented another expert legal opinion.

Commissioner Pritchett stated the Board could show due diligence.

Chair Zonka responded if anything it is going to validate attorney Jorandby's opinion on it; and it is going to at least give the Board some security that it is acting appropriately and properly.

Attorney Jorandby responded she thinks at that point there is a difficulty because the Board is insulated by qualified immunity as long as it is following the Board's legal counsel's advice; she thinks at some point when there is additional counsel, the Board at that point would have to enter into a contract with that attorney and actually hire them; she would have to look at the County's Charter as far as how the County would go through that process; and at that point the Board has counsel, therefore, it has to be cognizant of that.

Chair Zonka stated she thinks it is really important that the Board is absolutely 100 percent certain that it is doing it correctly.

Attorney Jorandby stated she thinks she talked with Chair Zonka; and she had been down this road with a separate town in her past.

Chair Zonka noted that was a little different; she believes the circumstances were slightly different; and she asked if that was correct.

Attorney Jorandby explained it was a five member board and only four were able to appear for a meeting where a supermajority vote needed to be taken for their budget item; at that time it was a 3-1 vote; they moved it forward; the Department of Revenue actually kicked it back and said that they did not recognize that as a supermajority vote; and they actually had to redo the budget hearing in October. She noted it was just kind of a painful experience for attorneys to remember to be doing something so out of sync; and that is her personal experience that she can bring forward.

Chair Zonka asked if there was an absent member or a vacancy.

Attorney Jorandby responded it was an absent member.

Chair Zonka noted this Board has a vacancy, it does not have somebody that is on the Board, there is nobody in that seat, there is no elected official in that position.

Commissioner Pritchett mentioned she interprets that the same way.

Chair Zonka commented to her this is a little bit different than somebody who does not come to a meeting because he holds that seat.

Attorney Jorandby advised she has not found anything that is specifically about vacancies.

Commissioner Smith remarked he agrees with Commissioner Pritchett and Chair Zonka; he would like to introduce another thought that comes from the former Clerk of the Court who is fond of saying, if someone wants three opinions ask three attorneys, so getting one more attorney to give an opinion or two more, if there were three, maybe two of them would be the same, but it could be two attorneys and both give an opposite opinion; and he asked then where would the Board be.

Chair Zonka stated she wants to make sure the Board is doing the right thing.

Commissioner Smith stated he knows and he thinks what Attorney Jorandby is saying is the Board is going to have to make a decision on its own and either accept or reject what she recommends.

Commissioner Pritchett commented that sounds like a reasonable thing because that is what the Board does; the Board does its best to do what it can; it is Attorney Jorandby's job to find a way to defend it or let the Board know if it has really done something; and she thinks right now there is an interpretation that could go both ways.

Chair Zonka stated okay.

Commissioner Pritchett asked for everyone's thoughts.

Chair Zonka noted she does not feel comfortable with any of it.

Commissioner Pritchett replied she does not feel comfortable either; she noted this is a new experience for her and she does not know if the Board would go back to opinions of other Attorney's that have sat in this position; maybe they could get a consensus together; and that might be a little bit more, at least there would be a consensus of everybody in agreement that might help the Board. She advised she does not want to do all that though.

Attorney Jorandby noted she will facilitate whatever the Board wants to do; at this point to hire another attorney she would have to, she thinks there may be a provision in the Charter, but she would have to look into it to see how to do that, if the Board wanted a separate opinion.

Chair Zonka asked if she could put somebody on some more research to see if they can find something that at least gives her a little more comfort; she does not want when somebody does not come to a meeting, it is more when the seat is vacant; and that is the prime difference.

Commissioner Smith stated he thinks chair Zonka makes a good point with that; it is not of someone's choosing that they are not there, it is the Board working with what it has, and that is a deficit; and the Board has no choice.

Chair Zonka stated if the Governor would appoint the Board would not be having this conversation.

Commissioner Smith agreed. He stated if the Board were in a position where it had to make a decision that requires a supermajority, the way he would look at it, and he does not know what his fellow Board members would say, but a supermajority of four is three.

Commissioner Pritchett stated it should not be unanimous, that is too hard to ever get a unanimous vote.

Chair Zonka responded especially with Commissioner Tobia.

Commissioner Pritchett commented well the minorities rule too.

Chair Zonka commented she has to harass him a little bit.

Commissioner Smith stated that is a point, it does not say anywhere that it has to be a unanimous decision, it says it has to be supermajority; in this case since there is not a fifth member, to get four has to be unanimous; that is not in any statement, it says supermajority; and supermajority with four members as opposed to five is three.

Attorney Jorandby commented in just the brief research she has done, there is a definition of majority of Commissioners is three, so to her, that is a majority, therefore, a supermajority has to be more than a simple majority; that is where she is looking at it from; she knows Chair Zonka is talking about a vacancy; however, she has not found anything in reference to vacancies at this point. She advised she can keep looking.

Chair Zonka remarked she is sure it is out there.

Commissioner Smith asked if the County could reach out to the Attorney General.

Attorney Jorandby advised she did speak to the Attorney General briefly on it just about what

she needed to make sure to submit with the packet, but they will not give anything official unless she submits something.

Commissioner Smith commented so the Board is on its own.

Commissioner Pritchett stated maybe reaching out to other counties to see if they have been in this predicament and see what they have found.

Attorney Jorandby mentioned she knows Osceola County has, she believe pretty recently; she can reach out to them; she believes one of her attorneys in her office might have done some research on that as well; but she cannot recall how that occurred and what kind of vacancy that was.

Chair Zonka added anything additionally that Attorney Jorandby can find out just to make sure exactly, that the Board is doing exactly the right thing.

Attorney Jorandby responded okay.

Commissioner Smith asked Commissioner Tobia what he is thinking.

Commissioner Tobia mentioned he tries to stay out of these issues that are steeped in legal opinions as he has not attended one day in law school; he would defer to the County Attorney on this one and go from there; if the Board decides to send this up to the Attorney General he is more than willing to do that; he just thinks the County Attorney has been pretty clear that she will get no answer back; and he just wants the Board to be prepared for that.

Chair Zonka noted that is the first she has heard of it, is in this public meeting; and no one has told her that information until Commissioner Tobia asked the question.

Commissioner Tobia stated he did not know; he just wanted to make sure that there was not only the time frame and that she got that; and he just totally wanted to make sure.

Chair Zonka commented well if they are not going to answer the question it seems like a wasted effort.

Commissioner Smith stated that boggles his mind that they would not because that puts the Board on the hot seat; all it is looking for is some direction; and to him it should be a simple answer, otherwise the Board is left to make the decision.

Chair Zonka stated it would be nice if there was some case law.

Commissioner Pritchett commented there has to be some case law somewhere.

Commissioner Smith responded one would think.

Attorney Jorandby advised there is limited case law; there was one particular case that she has that is essentially an old case from the 50's and it involved a statute that actually involves zoning, where they required three-quarters of a vote by the Board; the attorney of record at the time took it to mean the members present and the case law was no it has to be three-quarters of the actual Board as it was constituted; that was the one case; but once again it was an old statute that has been long overturned and they are just not clearly on point.

Commissioner Pritchett mentioned once again that is somebody missing again and not just a

four member Board at that time; and she asked if that is correct.

Attorney Jorandby stated she does not honestly recall if it was a vacancy or if it just said there were four members present instead of the five and then they did not have the full three-quarters vote.

Chair Zonka stated that she can understand because there is somebody that is filling that seat, like there is an elected person that is fulfilling that role; when it is vacant there is no choice in the matter; she thinks maybe Attorney Jorandby should just keep digging; and she would not recommend that she ask for an Attorney General's Opinion if she does not believe that they will give a response.

Attorney Jorandby commented they would not say one way or the other but it was indicated to her that it could be considered totally a local issue; and they really want to see something addressed with a State statute or some State-wide issue, is really what their purview is under their State authority.

Chair Zonka commented there is not much the Board can do.

L.6. Curt Smith, Commissioner District 4, Vice Chair, Re: Board Report

Commissioner Smith stated he just wanted to report and asked if Ian Golden, Housing and Human Services Director, wanted to fill the Board in on the lady that was here the other night, Ms. Barbara Perry.

Mr. Golden stated his department has had contact with Ms. Perry and she submitted an application for rental assistance program; she has been assisted as of about an hour ago they have gotten her into, through the program funds, into a hotel; and they will cover her for approximately the next month while she works through trying to get disability.

Commissioner Smith thanked Mr. Golden for doing that for her; he noted she really seemed to be somebody that was desperate for an answer and a good person; she was just caught in a vice kind of; and Mr. Golden came to her rescue. He pointed out that there was a big thing with the Brevard Justice Ministry Monday night; the article wanted to throw the Board under the bus because the Board members each had different reasons for not being there; and he wants to point out in public that he made Mr. Golden available to them if they wanted answers. He went on to say, he will go on the record when they asked for low income housing information, what he knows about low income housing could fit in a thimble and there would probably be some room left over for the Miami Dolphins; he knew nothing so, had he been available, he might have gone but he would not have been any use to them because he has no knowledge; Mr. Golden had all the answers; they were not interested in answers; and it seems to him, in hindsight, they were looking to point fingers. He added he does not know if the media is here but that is a stark report on his part because he was annoyed.

Chair Zonka commented that was the same what she felt; she had already agreed to meet with those folks in her office weeks earlier; the appointment was scheduled; they were meeting with Jordan Chandler who is her Charter appointee who is putting forth the work force housing initiative; but instead of working with the office they took the opportunity to say nobody came. She noted some of the Board has to work; some of the Board members have three kids in college and they want to make sure they are paying their bills as well, just like them; and the Board Members cannot just go to everything, but that does not mean they do not care. She mentioned that was not fair to the Board; if she did not care about workforce or low-income

housing, she would have cancelled the meeting; her office had been working on it for months; but she would guess they were not interested in that.

Commissioner Pritchett commented she works at a church and her church does outreach too; she thinks when these churches come together it is wonderful; something her church did was buy an apartment complex, so they are responsible for housing groups of people and if these churches want to help, that might be something they can do, apply funds and be directly housing people; this group from the emails and responses she saw, became a very big political thing; and if people pickup projects, she hopes they run with them and do well; personally she does not pick up other people's projects, as she has enough of her own, unless people want to help with some of her projects, that would be good; but the overall goal is to help people and get them in homes. She went on to say when people start getting political and they start doing all of this mess then nobody's going to get any help; and it was just so inappropriate.

Chair Zonka responded it is inappropriate because the person that kind of went on the attack has never once asked for a meeting in her office, or a phone call.

Commissioner Pritchett noted if they want to talk to us and they want the five of the Board Members to show up, they are at these meetings.

Chair Zonka interjected this person never wants to talk about ideas and never wants to have a sit down discussion; it is sad when there are members of other political parties that are afraid to talk to you because they will get chastised by the so-called leaders for working with Republicans; the Board will get the work done in spite of the misinformation that is out there; and it will prove to them it can still get the work done.

Commissioner Pritchett reiterated if churches want to do it, it is a really good idea; it is what her church has done; it does not take a whole lot of funds, just buy an apartment complex that is empty and house people; that is what they can do; and it is a good thing to do. She stated unless they want to bring the Board all their money and it will find places to put it, she would be glad to help with that administrative act too.

Chair Zonka stated on a more positive note, she has called Mr. Golden after work hours and he has been helpful to her in different personal situations with people that have come into her life either through her other job or just members of the public; she appreciates him and she hopes he knows that; and she hopes that she says thank you enough.

Commissioner Smith commented he thinks the entire Board appreciates Mr. Golden; he goes above and beyond; and he is a real asset to the community.

L.5. John Tobia, Commissioner District 3, Re: Board Report

Commissioner Tobia stated he is the only one that met with these folks; he met with them twice for an hour and one-half; they recognized a problem which they do not get any credit for; it is everywhere and none of the Board is denying this; he tasked them with looking at the County's budget; he provided them with a copy of the County's budget six weeks ago and asked them to please identify things in the County's budget that they would prioritize less than affordable housing, because he does not think the Board is going to pass a tax increase; and he explained to them this is how he comes to the Board, like let's pay the employees more money, but he does not say that, he says here is a way in order to do that. He went on to say he does not want to say just flat out raise taxes, they are more than welcome to do that, but at least they could come to the Board and say they want to raise taxes and this is where they want them to

go; they said they did not want to do that; he tasked them with going through the budget and they came back five weeks later to my office; he was ready for how they were going to find that \$10 million; they had a plan and it was to find a staff member and have the staff member go through the budget and do that; and he asked if that was the work product they had in six weeks. He noted he was absolutely disgusted with their lack of empathy that they claim to have, but they do not want to work and that is disgusting to him; then they get to this meeting and they claim that the Board Members do not show up; it is very easy to show up, what is hard is to do the work; and they just did not want to do the work. He continued by saying his office is open but they have to do one of two things, either say they want a tax increase, there is nothing wrong with that, he will not vote for it, but at least be honest; or say parks are not that important, he apologized to Mary Ellen Donner, Parks and Recreation Director, but they want to cut parks budget in order to do this; he added there will people who will come up and say parks are more important; he thinks the Board will agree that low-income housing is very important; there is an influx of more than \$20 million that can help right now; and he reiterated, there is more than \$20 million that can help right now for housing. He commented the County is not going to buy anyone a house; the Board has no control over the market; he will task them or anyone else please go through the County's budget, it is online; he is more than willing to send anyone a copy and have anyone come to the Board and tell them anything, not just low-income housing, what they think is more important or what they would prioritize more; it may not be the Board's priority but at least they would come prepared and provide a suggestion, he thinks the Board will listen; and what they will not listen to is, get staff to do that, because quite frankly that is not staff's job, it is the Board's job as policy makers to make those decisions. He advised if something is a priority to someone, then they can go through the work and do it themselves; he mentioned again that he was the only one who wasted an hour and one-half; and the best part of that time was the four minutes that they prayed, but everything else was unfortunately an absolute waste of time. He stated he was absolutely disgusted that they got up there and said the Board did not care and that it did not show up; the reality is they did not show up; he reiterated his office is always open if people come in with a plan; he actually told them what they needed to do and they neglected to do that; shame on them; and if they want to run to the paper instead of doing the work they are more than willing to do that but they will not get much sympathy the Board. He went on to say he has two things real quick and then one that may be a bit longer; this was dealing with the North Brevard Public Library Advisory Board and the South Central Brevard Public Library; these are both the ones that Commissioner Pritchett asked the Board to increase the membership from 10 to 12; he made a mistake and did not say where those extra two were coming from so he is going to make two motions to say that those two extra individuals go to District 1; and he motioned to amend Resolution dealing with North Brevard Public Library Advisory Board when it was said 10 to 12, those extra two are assigned to District 1. He noted there are no changes other than saying the extra two go to District 1.

The Board adopted Resolution No. 22-043, amending Resolution No. 22-042, creating the North Brevard Public Library Advisory Board, consolidating the Port St. John Public Library Advisory Board, Mims/Scottsmoor Public Library Advisory Board, and the Catherine Schweinsberg Rood Central Library Advisory Board into the newly created North Brevard Public Library Advisory Board; rescinding Resolutions 90-081, 90-082, and 97-249; approved increasing the total number of members/appointees from 10 to 12; and approved assignment of the additional members/appointees to District 1.

Result: Approved

Mover: John Tobia

Second: Rita Pritchett

Ayes: Pritchett, Tobia, Smith, and Zonka

Commissioner Tobia continued on by saying he is not going to ask for a motion but Commissioner Pritchett brought up some very worthy issues when it came to an extra board so he has a couple options that his office worked on so as the Board moves forward at the next meeting, it will go a little more smoothly; and it would not be a meeting if he did not have any handouts so he has some handouts with option one. He stated option one expands the number of seats from the 10 to 18; the reason he chose 18 is this takes everyone that is currently on the board and allows them to transfer directly over to that new board so no one is left out whatsoever; on the handout it shows the distribution of seats; he has two more options; what the Boards argument for that is going to be those members on the board, the Cocoa West Recreation Board, while they have a majority of votes on that one that would be diluted when it came to the larger board; and he provided another handout for option two. He went on to say option two says, with anything dealing with specifically the Cocoa West Recreational Complex requires all five Board members to come together and if they vote unanimously then it does not matter how the rest of the board votes; in other words, as seen in this one, if one through five say they want X and all the remaining 13 say they want something different, it does not matter that Board would get their way; therefore it does not dilute any of the members. He advised he even went to an option three because there are issues hitting the unanimous mark, therefore, he spent a little time and provided an option; this option does not need unanimous support; any three of those members would have the ability to enact any sort of change; this would not dilute the votes and would certainly, in fact for the Cocoa West Recreational Advisory Board, it would empower them to have more votes when it came to things dealing with, not only their individual complex, but those of the District 2, Merritt Island Couth Beaches, as well as the Parks and Recreation South Area Advisory Board; and he reiterated he is not looking for any motion he is just throwing out options that would consolidate all these boards but leave voting autonomy for those groups.

Commissioner Smith inquired if in other words, with District 2, if it was their issue they would need four votes and it would not matter what the other two entities voted; and he asked if that was correct.

Commissioner Tobia replied no; he explained Commissioner Pritchett was very concerned and rightfully so, with the Cocoa West Recreational Complex Board; when it comes to issues pertaining just to the Cocoa West Recreational Complex Board they would vote, everyone would vote, but if they got any three of the five it would not matter how everyone else voted; the thought is if the Board through everyone together all 18 votes together, they could vote unanimously and lose; and he does not want to dilute their vote, but he wanted to make sure that it was consolidated to save resources.

Commissioner Smith asked if the same reasoning would go into District 2 and/or Parks and Recreation South area.

Commissioner Tobia noted he is more than willing to do that.

Commissioner Smith noted he like the thought pattern and he is just saying why not use that for all three groups.

Commissioner Tobia remarked he wishes he would have thought about this before because he would have used that same logic and created one Parks and Recreation Board; he would have said they would meet 12 times per year at this office and basically like the United Nations, there is a council that has the ability to veto anything, and done it that way; the problem with that is this issue did not come up until Commissioner Pritchett mentioned it and he took it to heart because he thinks it is valid; he was just trying to find a way to meet the needs she enumerated

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as well as fit the goals by having a single consolidated board; and he thinks any one of the three will do it. He noted these are just options that he could come up with in the last 48 hours; he is not asking for a vote; he just wanted to throw out options and if anyone has any other options, he is just letting the Board know he is willing to work with any of these three; he is willing to work with other things as well; and this is just a starting point.

Upon consensus of the Board, the meeting adjourned at 5:52 P.M.

ATTEST:


RACHEL M. SADOFF, CLERK


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

As approved by Board July 12, 2022.