

November 4, 2021

Brevard County Board of County Commissioners

*2725 Judge Fran Jamieson Way
Viera, FL 32940*



Minutes

Thursday, November 4, 2021

5:00 PM

Zoning

Commission Chambers

A. CALL TO ORDER 5:00 PM

Present: Commissioner District 1 Rita Pritchett, Commissioner District 2 Bryan Lober, Commissioner District 3 John Tobia, Commissioner District 4 Curt Smith, and Commissioner District 5 Kristine 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 Lober led the assembly in the Pledge of Allegiance.

F.1. Approval, Re: Transportation Impact Fee Technical Advisory Committee for the South Mainland Benefit District Project Funding Recommendation

The Board approved the project funding recommendation in the amount of \$35,000 as prepared by the Technical Advisory Committee for the South Mainland Benefit District on September 30, 2021; and authorized the Budget Office to execute the Budget Change Request necessary for implementing this appropriation, Budget Transfer from Fund 1213 to Fund 1232.

Result: Approved

Mover: Kristine Zonka

Second: John Tobia

Ayes: Pritchett, Lober, Tobia, Smith, Zonka

F.2. Resolution, Re: Honoring Anne Gorman on her 102nd Birthday

The Board adopted Resolution No. 21-155, honoring Anne Gorman on her 102 birthday.

Result: Adopted

Mover: Kristine Zonka

Second: John Tobia

Ayes: Pritchett, Lober, Tobia, Smith, Zonka

G. PUBLIC COMMENTS

Charles Tovey handed Commissioner Lober a stack of two dollar bills; and he stated he values those more than two dollars.

Chair Pritchett advised she does not think the Board Members can take money.

Charles Tovey explained it is a contribution; and he asked if he can donate \$25 per year to the Board members. He continued on by saying it is about the picture on the back, not the \$2 or the amount of the money, it is about the priceless moment in history of the people signing the Declaration of Independence and coming together and putting all their differences aside so they can have a better life and country; he reiterated he gets \$25 per year to donate to his people; if people would remember Veterans Day; and he read a note that was left to him a couple of months ago, "To whom it may concern, I have heard about Code Enforcement has asked you to clean up your property, I have a truck and can help you." He went on to say no he stole his Acura that was full of all the women's stuff that he was donating; he has all this stuff outside now that is for other people and to donate; he has barricaded around his house and it is halfway empty now; that is why he is there at the Zoning meeting because Zoning has on top of the letter, the Board of County Commissioners; he is addressing the Board of County Commissioners, and not only that but the individual offices; and last year they robbed his house while he was at a meeting; and these people know it, and it has been continual crimes against him and destruction of his property. He mentioned the house and the garage are separate even though they are not attached; he has help and witnesses that he will be submitting; all of his stuff is a defense from the criminals taking their tractors to his property and stealing everything; they walk into his house any time they want; he found his legal file which he has mandatory hearings on each one of the people he listed; and he had to take last year off for his own recovery. He noted Infantini and staff were great because they listened to him and discussed things prior to the meetings; Pepper trees are caustic; he still needs some time with Mr. Abbate to discuss the river solutions; he's about out of time; he is sorry he missed the Board; and his roofing contractor was supposed to mail each of the Board of County Commissioners with the explanation of why there is a delay, and it was because of waiting a year for materials.

Chair Pritchett stated it is good to see Mr. Tovey again; and she thanked him for the kind gesture.

Mr. Tovey advised he should be able to donate to each of his people; he has pictures of all that; and he will be submitting everything.

Chair Pritchett asked Mr. Tovey to take the money and know that the board is thankful for the gesture.

Mr. Tovey took the money.

H.1. Public Hearing, Re: Comprehensive Plan Text Amendment Adoption to Include a Property Rights Element as Required by House Bill 59

Chair Pritchett called for a public hearing on a Comprehensive Plan text amendment adoption to include a property rights element as required by House Bill 59.

Jeffrey Ball, Planning and Zoning Manager, stated this is a public hearing for a Comprehensive Plan text amendment adoption to include a property rights element as required by House Bill

59; and it was requested that the Board table the adoption of the text amendment due to the Comprehensive Plan to add a property rights element and change the table of contents to include this element, to the December 2, 2021, Zoning Meeting, due to lack of a quorum for the Local Planning Agency (LPA).

There being no further comments or objections, the Board continued the adoption of the Comprehensive Plan text amendment to include a property rights element as required by House Bill 59, and change to the Table of Contents to include this element to the December 2, 2021, Zoning meeting.

Result: Continued

Mover: Bryan Lober

Seconded: John Tobia

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

Commissioner Tobia stated he was a little concerned about this and how it all played out; those who do not know or have not been following it, he is sure people heard the State passed a law requiring certain types of stuff to come before the Board of County Commissioners dealing with the Comprehensive Plan; before, the Board was reviewing certain requests, however, when this required text change went before the LPA, as required under County Ordinance, there was a failure of quorum; as a property owner, one can imagine how bad that is; he personally had this happen to himself when he was looking at building a home; and it makes one feel bad, not only for the members that show up, but should they have an attorney as he did, paying those types of fees; there is one member on the LPA that has not shown up once this year; and he had to look it up to see if his members had shown up.

Chair Pritchett advised she did too.

Commissioner Tobia stated this has nothing to do with anyone on the dais; he is sure the Board Members screen all their people; they are asked if they are going to do it, however, babysitting is probably more outside of the Board Members' scope; he does not think that lets the Board members off the hook; he thinks there need to be some changes; he spoke with staff and he has three recommendations that are partially out of his office, through guidance with staff; and he is going to have a motion coming up, but not to take any of these actions, it is just to ask staff to formally put this stuff together so the Board can look at it. He went on to say these are 20 percent District Three and 80 percent guidance from staff; the Board will find out nothing is too radical, but it is to consolidate the LPA and Planning and Zoning (P&Z) meetings; this suggestion came from Mr. Calkins, and it is his understanding that Mr. Calkins is already working on this Agenda Item; the boards are already made up of the same members, and this is simply allowing them to meet once a month as both boards instead of twice a month; other counties do this so it is not all that radical; number two is reducing quorum requirements for the LPA and P&Z under County Ordinance, as currently County Ordinance says at least six members must be physically present for a quorum, State statute has no such requirements, and neither does Roberts Rules, and as such the Board could reduce the number to three be required to reach quorum; again this is just starting and staff would bring this back to the Board; and finally he asked that staff research whether it be possible for certain items to come directly to the Board, in the event that there is a failure to reach quorum. He advised it appears that there is slightly some ambiguity when it comes to this under State statute; he asked the County Attorney's Office (CAO) to investigate this; at first glance, it was thought that it may require an Attorney General Opinion (AGO), but very recently, the County Attorney said there might be a way they can do that without going to an AGO; the motion for this would be to direct staff to bring back to the Board, at the December 7 meeting, and this was a date the CAO gave him, so he is not putting any pressure on staff, for consolidating the LPA options regarding

amending County Ordinance to reduce quorum requirements for the LPA and P&Z and to submit an AGO request for an opinion regarding the ambiguity under Florida Statutes, Chapter 163, unless CAO can find an alternative; and he advised that would be the motion.

Commissioner Lober stated one thing he would ask, and he supports the motion, when the Board has staff look at that, he believes in the Code as well, another potential issue is the County count for purposes of quorum, not just those that are in attendance, but those that are there and voting, so if there is a conflict for some reason, there could theoretically be a quorum for everything but one particular item, which seems a bit much; he asked that the Board also have staff take a look at that in the code as well; and if the Board is comfortable with that, he is good any which way.

Commissioner Tobia stated he would have no problem amending his motion to include that; and if the County Attorney had more options to make sure that citizens do not get in this predicament, he is certainly willing to add it, this was just at first glance.

There being no comments or objections, the Board directed staff to bring back to the Board information on the options for the following items at the December 7, 2021, Board meeting:

- consolidating the LPA and the P&Z Board meetings into one meeting;
- amending County ordinances in order to reduce quorum requirements for the LPA and P&Z from six members to three voting members including a review of the current ordinance language defining a quorum as "present and voting"; and
- directing the County Attorney's Office in reference to any ambiguity under Florida Chapter 163 to research whether it is possible for certain items to come directly to the Board of County Commissioners, in the event that there is a failure of the LPA or P&Z to reach a quorum, either by submitting an Attorney General's Opinion (AGO) or by other alternative measures.

Result: Approved

Mover: John Tobia

Second: Curt Smith

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

H.2. Timothy and Diane Lystlund Request a Small Scale Comprehensive Plan Amendment (21S.03) to Change the Future Land Use Designation From RES 1 to RES 2 (21PZ00026) (Tax Account 30009665)

Chair Pritchett called for public hearing on a request by Timothy and Diane Lystlund for a Small Scale Comprehensive Plan Amendment (21S.03) to change the Future Land Use designation from RES 1 to RES 2 on property located in District Three.

Jeffrey Ball, Planning and Zoning Manager, stated Items H2., and H.3., are companion applications; he mentioned that he will read them together for the record, however, the Board will need to take separate votes on them; Item H.2., is Timothy and Diane Lystlund requesting a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from RES 1 to RES 2; the application number is 21PZ00026; and the tax account number is 3009665 located in District Three. He went on to say Item H.3., is Timothy and Diane Lystlund requesting a change of Zoning classification from RU-1-7 to SR; it is application number 21Z00014; and the tax account is 3009665, also located in District Three. He pointed out that this is a Small Scale Application that the applicant requested this Item be tabled so it can be heard in conjunction with a previous Item; and since then DEO has changed its position and allow Small Scale applications to move forward as long as they were submitted on or before July 1.

There being no further comments or objections, the Board adopted Ordinance No. 21-25, amending Article III, Chapter 62, of the Code of Ordinance of Brevard County, entitled "The 1988 Comprehensive Plan", setting forth the third Small Scale Plan Amendment of 2021, 21S.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; and providing an effective date.

Result: Approved

Mover: John Tobia

Seconders: Bryan Lober

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

H.3. Timothy and Diane Lystlund Request a Change of Zoning Classification From RU-1-7 to SR (21Z00014) (Tax Account 3009665)

Chair Pritchett called for a public hearing on a request by Timothy and Diane Lystlund for a change of Zoning classification from RU-1-7 to SR.

There being no further comments or objections, the Board approved the request for a change of Zoning classification from RU-1-7 to SR.

Result: Approved

Mover: John Tobia

Seconders: Bryan Lober

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

H.4. Rodney F. McConkey Requests a Change of Zoning Classification From GU to AU (21Z00023) (Tax Accounts 2312740, 2312741, 2312742, 2312743)

Chair Pritchett called for public hearing on a request by Rodney F. McConkey for a change of Zoning classification from GU to AU on a property located in District One.

Jeffrey Ball, Planning and Zoning Manager, stated this is Rodney F. McConkey requesting a change of Zoning classification from GU to AU; application number is 21Z00023; and tax account 2312740, 2312741, 2312742, and 2312743, located in District One; he pointed out this is a rezoning request and when the Board is evaluating the request it should be evaluated on consistency with the Comprehensive Plan and also compatibility with the surrounding area; and the subject property does not have access to a County-maintained property, therefore, in order to get a building permit the applicant will have to suffice the Code to allow for that permit.

Commissioner Lober advised the Board the first tax account number is 2312740.

Chair Pritchett commented that Mr. McConkey was at the P&Z meeting, and he said he was okay with doing a Binding Development Plan (BDP) as far as the agritourism.

Rodney F. McConkey responded affirmatively.

Chair Pritchett advised if he will do that she will be very comfortable with it; she knows from what Mr. Ball said that Mr. McConkey understands he will have to work with staff on access issues.

Mr. McConkey responded in the affirmative.

Chair Pritchett asked for someone to make a motion to approve it.

There being no further comments or objections, the Board approved a request by Rodney F. McConkey for a change of Zoning classification from GU to AU, with a BDP stipulating that agritourism be prohibited and the applicant understands he will need to work with staff on access issues to be resolved under separate process, prior to obtaining building permit.

Result: Approved

Mover: Bryan Lober

Second: Kristine Zonka

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

H.5. Julia A. and James W. Garrison Request a Change of Zoning Classification From AU to RU-1-11 (21Z00024) (Tax Account 2419400)

Chair Pritchett called for public hearing on a request by Julia A. and James W. Garrison for a change of Zoning classification from AU to RU-1-11 on a property located in District One.

Jeffrey Ball, Planning and Zoning Manager, stated this Item is Julia A. and James W. Garrison request a change of Zoning classification from AU to RU-1-11; the application number is 21Z00024; tax account number is 2419400; and it is located in District Two.

There being no further comments or objections, the Board approved a request by Julia A. and James W. Garrison for a change of Zoning classification from AU to RU-1-11 on a property located in District Two.

Result: Approved

Mover: Bryan Lober

Second: Kristine Zonka

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

H.6. Scott Minnick Requests a Change of Zoning Classification From AU to SR (21Z00026) (Tax Account 3023195)

Chair Pritchett called for public hearing on a request by Scott Minnick for a change of Zoning classification from AU to SR on a property located in District One.

Jeffrey Ball, Planning and Zoning Manager, stated Scott Minnick requests a change of Zoning classification from AU to SR; application number 21Z00026; tax account number 3023195; and it is located in District One.

There being no further comments or objections, the Board approved a request by Scott Minnick for change of Zoning classification from AU to SR on a property located in District One.

Result: Approved

Mover: Bryan Lober

Second: Kristine Zonka

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

H.7. Robert F. Erario and Jeremy Sothea Sun Request a Change of Zoning Classification From BU-1 and AU to all AU (21Z00027) (Tax Account 2001826)

Chair Pritchett called for 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, on a property located in District One.

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; application number 21Z00027; tax account number 2001826; and it is located in District One.

Chair Pritchett asked that one of the applicants come to the podium. She stated she thinks this would be a good fit for some of the activities the applicants are wanting to do; she is going to request that the applicant agree to keep a 25-foot natural buffer where there is residential; and she thinks when the applicants were at Planning and Zoning (P&Z) they were talking about maybe wanting to do weddings and those types of things.

Robert F. Erario stated it is a pipe dream; and really they are just focused on the nursery right now.

Chair Pritchett stated she thinks this would probably be a good fit as long as it protects the neighbors; and she asked if they would mind doing a Binding Development Plan (BDP) saying they will keep that natural buffer that is already there, next to the residential.

Mr. Erario stated that is no problem, they like it natural.

Tad Calkins, Planning and Development Director, asked if the motion included the BDP for the 25-foot buffer.

Chair Pritchett responded affirmatively.

There being no further comments or objections, the Board approved a request by Robert F. Erario and Jeremy Sothea Sun for a change of Zoning classification from BU-1 and Au to all AU, with a BDP agreeing to keep a 25-foot natural buffer around the property where there is residential.

Result: Approved

Mover: Curt Smith

Second: Bryan Lober

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

K. PUBLIC COMMENTS

Sandra Sullivan stated she wants to play a short snippet of a video from the last County Commissioner's meeting.

Chair Pritchett advised the Board cannot do that unless it is received prior to the meeting.

Sandra Sullivan advised all it says is all of it is in compliance. She noted in front of the Board there are three letters from St. Johns River Water Management District (SJRWMD) showing it is not in compliance; she showed a picture and explained this is an aerial taken on October 30, via aircraft, of the site; clearly one can see there is work on view two; a member of the community called the State offices and Congressman Posey's Office and Commissioner

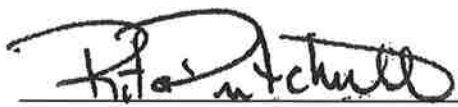
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Smith's office today, asking why it was allowed to have work still continuing on this site, while there was no permit; and the response the party received by Mr. Alward is that site has a permit and it does not. She noted when she left this location after the last meeting, the first thing she did was call SJRWMD and asked if there was a permit, she was told no; she went down to the site, stood on a right-of-way, three police cars came from Satellite Beach, and she was issued a no-trespass issue; she was detained by almost two hours in order to look for another so-called alleged warning that was given to her that did not exist, so they could arrest her; her right to freedom of speech and her right to movement, and her right to redress government was imposed upon; if that was not bad enough, two days later she went down and stood on the side of the pavement of A1A which is a Florida Department of Transportation (FDOT) road, and 15 minutes after she got home there were three Satellite Beach police officers at her door, in which she lives in unincorporated, not even in their jurisdiction; she did a 9-1-1 call and she would not come out of her home until the Brevard County Sheriff Office (BSCO) got there; she is very grateful to Brevard County's constitutional Sheriff; she believes they were there to arrest her in response to that issue; and they told her husband three times that she had trespassed on A1A.

Upon the consensus of the Board, the meeting adjourned at 5:25 p.m.

ATTEST:



RACHEL M. SADOFF, CLERK

RITA PRITCHETT, CHAIR

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

As approved by Board November 16, 2021.