



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.11.

8/5/2021

Subject:

Code Amendment Re: Chapter 98, Article V, North Merritt Island Dependent Special District Board, Section 98-145.

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a proposed ordinance amending Brevard County Code of Ordinances, Chapter 98, Article V, North Merritt Island Dependent Special District Board, Section 98-145.

Summary Explanation and Background:

On March 23, 2021, the Board of County Commissioners (BCC) granted legislative intent and permission to advertise amendments to Section 98-145. The proposed change allows all zoning actions and Comprehensive Plan applications, regardless if there is a potential for an increase in residential density, to proceed to the Planning & Zoning Board and/or the Local Planning Agency for a recommendation to the BCC whether there is or is not quorum for the NMI meeting, allowing requests to move expeditiously through the review process.

The North Merritt Island Dependent Special District Board (NMI Board) was created in 1998, per Ordinance 1998-59, for the purpose of providing the citizens of North Merritt Island a formal means of establishing an elected advisory board to review and provide the Board of County Commissioners with recommendations on particular matters affecting property in the NMI Special District boundary. The NMI Board also reviews and provides the BCC with recommendations on matters such as priority, location, maintenance, and the use of public improvements or infrastructure.

On April 14, 2021, the Building Construction Advisory Committee heard the proposed ordinance and unanimously recommended approval.

On July 15, 2021, the North Merritt Island Dependent Special District Board heard the proposed ordinance and unanimously recommended approval, with the following additions and amendments:

- Section 2, (4), the addition of a force majeure clause in the event the dependent special district does not provide a recommendation due to force majeure, an item may be rescheduled to the next available

meeting;

- Section 2, (4), allowing for the dependent special district to have an item rescheduled to the district's next regular meeting one time in the event there is no quorum;
- Section 2, (1), reinstatement of the stricken language, 'when such application, if approved, would not increase residential density on the property that is subject of the application';
- Reinstatement of Section 2, (2) in its entirety.

On July 26, 2021, the Local Planning Agency heard the proposed ordinance and unanimously recommended approval with additional language of adding two alternate members. Staff to research implications regarding elected versus appointed bodies. Please note the addition of alternate members to NMI will require legislative intent and permission to advertise amendments to Section 98-144.

If approved by the Board, implementation will begin with the August 6th application submittal deadline for the October/November rezoning cycle.

Clerk to the Board Instructions:

Please return a copy of the ordinance to Planning and Development once filed with the State.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001

Fax: (321) 264-6972

Kimberly.Powell@brevardclerk.us

August 6, 2021

M E M O R A N D U M

TO: Tad Calkins, Planning and Development Director

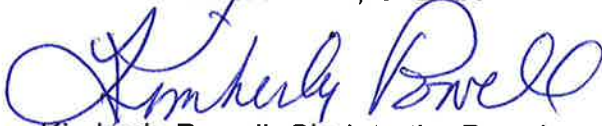
RE: Item H.11., Code Amendment for Chapter 98, Article V, North Merritt Island
Dependent Special District Board, Section 98-145

The Board of County Commissioners, in regular session on August 5, 2021, conducted the public hearing and adopted Ordinance No. 21-19, amending Code for Chapter 98, Article V, North Merritt Island Special District Board, Section 98-145. Enclosed is the fully-executed and a certified copy of the Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/cld

Encls. (2)



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

August 9, 2021

Honorable Rachel M. Sadoff
Clerk
Board of County Commissioners
Brevard County
Post Office Box 999
Titusville, Florida 32781-0999

Attention: Deborah Thomas

Dear Ms. Sadoff:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 21-19, which was filed in this office on August 9, 2021.

Sincerely,

Anya Grosenbaugh
Program Administrator

AG/lb

ORDINANCE NO. 21-19

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, AMENDING BREVARD COUNTY CODE OF ORDINANCES, CHAPTER 98, ARTICLE V, NORTH MERRITT ISLAND DEPENDENT SPECIAL DISTRICT, SECTION 98-145, "POWERS, FUNCTIONS AND DUTIES" TO ADDRESS BOARD REVIEW PROCEDURES; PROVIDING FOR SEVERABILITY, CONFLICTS, AREA ENCOMPASSED, PROVIDING FOR AN EFFECTIVE DATE AND INCLUSION IN CODE.

WHEREAS, Section 98-145, Brevard County Code of Ordinances, enumerates the powers and duties of the North Merritt Island Dependent Special District; and

WHEREAS, it is in the public's interest that properly noticed planning and zoning issues be resolved expeditiously; and

WHEREAS, providing a process to allow items to move forward when multiple advisory boards exist; and

WHEREAS, the Board of County Commissioners now desires to amend Section 98-145, Brevard County Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. Recitals. The foregoing recitals are incorporated by reference into this Ordinance.

SECTION 2.

Section 98-145, Code of Ordinances of Brevard County is hereby amended as follows:

The governing board of the dependent special district shall have the power and duty to:

Sections (1)-(4) shall remain as previously adopted.

(5) In the event the dependent special district does not provide a recommendation on an item noticed for regularly scheduled meeting of the dependent special district due to a hurricane, tropical storm or tornado and/or any event that causes a mandatory
OFFICIALLY FILED WITH THE SECRETARY OF STATE ON AUGUST 5, 2021.

evacuation, an item may be rescheduled to the next available meeting of the dependent special district.

The provisions of this section establishing a review process shall supersede and replace any conflicting review procedure set forth in any other ordinance.

SECTION 3. Severability. If any section, subsection, sentence, clause or provision of this Ordinance shall be declared invalid, the remainder of this Ordinance shall be construed as not having contained said section, subsection, sentence, clause or provision and shall not be affected by such holding.

SECTION 4. Conflict. All resolutions, ordinances, and agreements or parts thereof that may be determined to be in conflict with this ordinance are repealed.

SECTION 5. Area Encompassed. This ordinance shall take effect only in the unincorporated area of Brevard County, Florida.

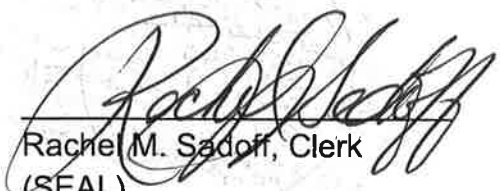
SECTION 6. Effective Date. A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This Ordinance shall take effect upon adoption and filing pursuant to law.

SECTION 7. Inclusion in Code. It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida; and that the sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

DONE, ORDERED AND ADOPTED, in Regular Session, this 5 day of AUGUST, 2021.

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ATTEST:

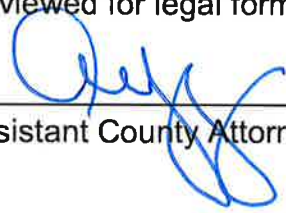

Rachel M. Sadoff, Clerk
(SEAL)

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA


Rita Pritchett, Chair

As approved by the Board on 8/5/2021

Reviewed for legal form and content:


Assistant County Attorney



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Kimberly.Powell@brevardclerk.us

March 24, 2021

M E M O R A N D U M

TO: Commissioner John Tobia, District 3

RE: Item J.7., Legislative Intent and Permission to Advertise an Ordinance Amending Brevard County Code of Ordinances, Chapter 98, Article V, North Merritt Island Dependent Special District, Section 98-145

The Board of County Commissioners, in regular session on March 23, 2021, approved legislative intent and granted permission to advertise an ordinance amending Brevard County Code of Ordinances, Chapter 98, Article V, North Merritt Island Special District, Section 98-145.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

/ds

cc: County Attorney
Planning and Development

NMI MEETINGS 2015 - 2021

2015

5 meetings total / 5 items

- 01/08/15
- 02/12/15
- 03/30/15
- 04/15/15 - NMI Ordinance
- 11/12/15

2016

5 meetings total / 5 items

- 01/07/16 - Sunshine/Florida's Public Meetings Law presentation
- 05/12/16
- 07/14/16
- 10/13/16
- 11/10/16

2017

8 meetings total / 13 items

- 01/12/17
- 03/09/17
- 04/13/17
- 05/11/17
- 07/13/17
- 08/10/17
- 10/12/17
- 11/09/17 - No quorum
 - Tabled to 11/09/17 PSJ
12/07/BCC

2018

7 meetings total / 10 items

- 01/11/18
- 03/08/18
- 04/12/18
- 05/10/18
- 07/12/18
- 10/11/18
- 11/08/18

2019

3 meetings total / 5 items

- 02/14/19
- 04/11/19
- 07/11/19

2020

3 meetings total / 6 items

- 06/11/20
- 07/16/20
- 10/08/20

2021

2 meetings total / 3 items

- 03/11/21
- 05/13/21

North Merritt Island Current Membership Attendance
2018 - 2020
12 Meetings

Mary Hillberg	11 Meetings = 92%
Chris Cook	9 Meetings = 75%
Ted Balke	11 Meetings = 92%
Jim Carbonneau	11 Meetings = 92%
Catherine Testa	9 Meetings = 75%
Gina Lindhorst	10 Meetings = 83%
Jack Ratterman	12 Meetings = 100%

NORTH MERRITT ISLAND

DEPENDENT SPECIAL DISTRICT BOARD MINUTES

The North Merritt Island Dependent Special District Board met in regular session on **Thursday, July 15, 2021**, at 6:00 p.m., at the Merritt Island Service Complex, 2575 N. Courtenay Parkway, Merritt Island, Florida.

Board members present were: Mary Hillberg, Chair; Gina Lindhorst; Catherine Testa; Jack Ratterman; Jim Carbonneau; Chris Cook; and Ted Balke.

Planning and Development staff present were: Jeffrey Ball, Planning and Zoning Manager; and Jennifer Jones, Special Projects Coordinator.

Approval of May 13, 2021, Minutes

Motion by Jim Carbonneau, seconded by Gina Lindhorst, to approve the minutes from May 13, 2021. The motion passed unanimously.

An ordinance amending Brevard County Code of Ordinances, Chapter 98, Article V, North Merritt Island Dependent Special District, to address review procedures.

Jeffrey Ball - The proposed ordinance is to change the requirements for a quorum. What this language changes is that when an application comes before you, you provide a recommendation to the Board of County Commissioners; these changes would allow your recommendation to go to the LPA (Local Planning Agency). The other significant change is that if for some reason that this board cannot meet because of a lack of quorum, this would move forward onto the LPA without your recommendation.

Mary Hillberg - As it is now, does everything that we vote on, every type of issue that we vote on, will all of them now go to P&Z (Planning and Zoning Board) first, or do some of them now go directly to the Board?

Jeffrey Ball - The only time an item goes in front of the LPA is if there is a residential density increase.

Mary Hillberg - So, it's a density issue that goes before the LPA?

Jeffrey Ball - Yes, currently.

Ted Balke - Who is on the LPA?

Mary Hillberg - They are all appointed by the Commissioners.

Jeffrey Ball - There are two from each district.

Ted Balke - Can I get a list of those sent to me?

Mary Hillberg - They are online, you can get them. Just look up the P&Z board and they are listed. It is odd to think that we are elected by the people in our district and we would recommend to an appointed board who then recommends to an elected board. It seems backwards, and it seems elected boards would recommend to elected boards and not go to an appointed board first, but this is the way it is.

Ted Balke - Appointed boards do not have knowledge of the area in particular that we have.

Mary Hillberg - Sometimes staff fills them in if they have questions during the meeting.

Ted Balke - They don't know the physical location of North Merritt Island and the particulars of the area. We may show 14% available space, but that 14% available space is probably the worst space that you could ever imagine. It's not fillable, it's not workable, it's flood lands, it's all grass lands, it's all poor soil, and that's an issue that is not understood by everybody other than the locals that are coming to this meeting that should be recommending what happens.

Mary Hillberg - I agree with you and it's good that we have our board here so that those people can provide their feedback.

Ted Balke - I don't know why it's stagnated by a second board; this needs to be looked at directly.

Gina Lindhorst - It seems redundant, doesn't it?

Jim Carbonneau - It seems like the Planning and Zoning Board is the board that should be eliminated.

Cathy Testa - But we only handle North Merritt Island, there is still the rest of the County that is not incorporated.

Ted Balke - That's where the North Merritt Island zoning board itself should report directly to the Commissioners as opposed to the other areas.

Mary Hillberg - The other question I would have, Jeff, is that you said in your opening that this was addressing the issue of quorum, but you're not changing our quorum in any way, right?

Jeffrey Ball - No, we're not changing the quorum, we're not abolishing this board, all we're doing is changing the procedure if for some reason this board does not have a quorum when there is a meeting.

Ted Balke - We've only had one occurrence of that in the last seven years.

Mary Hillberg - It's more than that. I've been on this board since 2008 and the only time we've ever not had a quorum was in November 2017, which was four years ago, so if this was a major issue it has taken four years to come up. My understanding is that this is more of putting us in the same category as Port St. John. Evidently, they have had difficulty having quorums and then it seems there isn't anything in the rules or in the policy that says if this meeting doesn't happen it can go on, and things can get stuck if there is no meeting. So, in light of that they wanted to make sure that things would continue on in case we don't have a quorum, but we always have a quorum and North Merritt Island is very active except for November 2017.

Gina Lindhorst - I understand the legislative intent agenda report said the intent was to make sure there was a policy just in case, for any reason, not just quorum, that we don't meet, that the process can continue on. That's all it was.

Ted Balke - Wasn't November 2017 after a storm?

Mary Hillberg - No. I don't remember what the cause was, but it happened that we didn't have a quorum. What we did was, there was no problem with going to P&Z because we asked the applicant when they could come back and assured them that we would all be here. They were able to come back a couple of weeks later and they stayed on track with the Commission meeting. It was a misunderstanding and everybody thought everybody else was coming. That's all this is, is saying that if we don't have a quorum that it goes on, and also everything goes to P&Z, which doesn't make a lot of sense to me.

Ted Balke - It's illogical that elected people are reporting to nominated people who don't know anything about the area.

Mary Hillberg - It's just a formality, I think. The P&Z does read our minutes and they do take into consideration what we say.

Ted Balke - They need to come out and look at the area, though, and I don't think that's happening.

Mary Hillberg - They get more information from reading our notes than they do at their meetings, because frequently there are not a lot of people there to give them input, so they do read our minutes, and I've been to P&Z meetings that have referenced them. I was worried also that this was some sort of way that we wouldn't be able to vote on density or something.

Jack Ratterman - What about the Section (2) clause? I'm assuming that the lines going through there on Page 1 of the ordinance, where it says, "Section 98-105, Code of Ordinances of Brevard County is hereby amended as follows", and then when you get to the bottom there is a line through "...application is approved would not increase residential density on the property that is subject of the application." Are you going to cross that out now? Is that not going to be in the ordinance anymore?

Jeffrey Ball - Anything that is crossed out will be eliminated and anything underlined would be added.

Ted Balke - I have a major problem with it then, being removed.

Jennifer Jones - It's not being removed, it just changes who you would be making recommendations to.

Gina Lindhorst - It says something different on this, and it's confusing.

Jack Ratterman - Where does it replace residential density? On Page 2 it says, "review and provide the P&Z Board with an advisory recommendation upon rezoning applications made for property located within the district when such application, if approved, would increase residential density on the property that is subject of the application." So, we're not going to worry about residential density? The only thing I'm worried about is residential density.

Mary Hillberg - Can you explain why this would be marked out, ".....would not increase residential density"?

Jeffrey Ball - I'm going to read this to what it is going to be with the new language. "Review and provide the Planning and Zoning Board with recommendations upon rezoning applications made for properties located within the boundaries of the dependent special district". Rezoning, whether it is an increase in densities or not, you're still going to hear it. On Page 2, if you look at the new Paragraph

(4), "Review and provide the Local Planning Agency with an advisory recommendation upon site specific applications requesting a change in designation on the County Future Land Use map." Those are land use changes.

Mary Hillberg - That's not new.

Jeffrey Ball - Correct, but as a board, you will review any zoning changes and any land use changes regardless of density issues.

Ted Balke - You're saying that we can't say that we reject it because of the density problem.

Mary Hillberg - No, that's not what he's saying.

Jeffrey Ball - No, that doesn't change anything.

Gina Lindhorst - That's not what it says.

Ted Balke - The interpretation on this is showing that the HOA is going to continue developing the area regardless of the density. That's why it's crossed out. This starts back with W.K.&R. and the small area study, which shows that the most important factor from the small area study was the increase in density and the impact it has to all of the environmental things that are there.

Jeffrey Ball - I understand that. This ordinance says that you will review all rezonings and all land use changes.

Ted Balke - That doesn't say that includes density.

Jack Ratterman - It doesn't exclude it either, right?

Jeffrey Ball - Correct.

Ted Balke - It doesn't exclude it, but you are definitely excluding it, there is a line through it.

Jeffrey Ball - You cannot increase density unless it is a rezoning or a land use change; that's why it was taken out as residential density, because in both cases, you can increase the density either by zoning or by land use.

Ted Balke - And because of the fact you've had lawyers come in here and have taken the RR-1 and they have converted it into, you know, for the entire overall space, that now it conforms to one house per acre. If you have 110 acres and you're going to put 110 houses on it, that's fine, but when it's a wetlands, when it has ponds in it, and when there is retention water in it, you can't put 110 in there.

Jeffrey Ball - I understand, but I think we're getting a little off topic here.

Ted Balke - The lawyers have come back and said it's a cumulative number that they are using.

Mary Hillberg - That's true.

Ted Balke - They are using cumulative numbers, which is for business purposes, for the amount of space, and that is what the problem is. That's where this all started and that's where....when you arbitrarily.....just think, you're removing density.

Mary Hillberg - That isn't what we're looking at here.

Ted Balke - I know.

Jim Carbonneau - It all plays together.

Ted Balke - It all plays together. It's one game, and maybe this is chess and you're looking at strategic plans, but this is what started.

Mary Hillberg - I think this is, from what I can determine, this is more of an initiated thing for the Port St. John group, and because.....

Ted Balke - This does not apply to us, then. Make something for Port St. John and their committee, and leave us to do what we need to do.

Mary Hillberg - They were not having a quorum.

Ted Balke - I know that, and Port St. John looks like Port St. John now because of what they've done.

Gina Lindhorst - You've got to use the same policy, is what they are trying to do, make everybody the same.

Ted Balke - Port St. John does not have the same issues as North Merritt Island has, so it is not conforming to PSJ's area code, it's not like Viera, it's not like Titusville, it is unique unto itself, and that needs a unique way to designate us.

Mary Hillberg - Getting back to this, just looking at this, this isn't taking anything away from us, it's just having...

Ted Balke - When you remove that word, it takes something away.

Jennifer Jones - Currently, when there is a Future Land Use change, or an increase in residential density on a rezoning application, it comes to you and then it goes to LPA. Anything else that is not an increase in residential density or if it is a CUP, it comes to you and then straight to the County Commission. Everything is still coming to you, increases in residential density or not, and also going to the LPA and the County Commission. Rezonings that are not an increase in residential density are coming to you, then P&Z, and then the County Commission. Everything is going to have an extra board between you and the Commissioners. You're still going to see everything, and the administrative policies still apply.

Mary Hillberg - I don't think that this is going to impact what we do and how we do it. It says here on the front that the fiscal impact is none, but I disagree because I think the P&Z and LPA will be spending more time discussing our topics, so in effect it will kind of increase it.

Ted Balke - W.K.&R. approached us and wanted a change from AU to SR with a binding development plan because of what they were going to put on that property at the end of E. Crisafulli. That was rejected. It went to the Board and the Board approved it. They immediately sold the property to somebody else that wasn't going to maintain that binding development plan, and now they're putting whatever they want on that property, which is density, and that's the issue.

Mary Hillberg - I agree with you.

Ted Balke - And that is going along with you accepting that we're changing from an AU to something else, an RR-1 or whatever, I don't remember what it was.

Mary Hillberg - Ted, we don't have control over what the Board of County Commissioners decides.

Ted Balke - I understand that, because two months later it was immediately sold. It's like Egrets Landing, they were going to put a specific number of houses in it, and it was sold three times before they started building, and you ended up with the land use and you ended up with the use of the septic and sewer system that we are not really capable of handling a greater influx. They just sold the Foosner property and now all of a sudden that is combined in with W.K.&R., the banana company, because they couldn't grow anything on the land and they sold it off, and immediately they went to Coldwell Banker and sold off that property. Now if you ride out there there are big signs on the whole section that Moderna [sic] is developing it.

Jeffrey Ball - I will research it because I'm not familiar with it, and I'll give you a report the next time we are here so we can get down to the bottom of what is true and what is not true.

Ted Balke - Have you seen the small area business study?

Jeffrey Ball - I've seen the small area study.

Ted Balke - You've read that?

Jeffrey Ball - Yes.

Ted Balke - And you read all of work that is in there?

Jeffrey Ball - Yes.

Ted Balke - Do you know the environment that we are dealing with?

Mary Hillberg - Ted, the most recent small area study was accepted by the Board of County Commissioners, but they never approved it, and they never implemented it, they just said, "thanks", and that was it.

Ted Balke - That's exactly what the problem is.

Mary Hillberg - I know that, but we can't force anyone to do.....

Ted Balke - But he's saying he's going to go out and he's going to look at what I've just spoke about, right?

Jeffrey Ball - I'm going to look at the file [W.K.&R Groves], and I'll have a report for you.

Ted Balke - They're running sewer lines in the street already and nobody approved any of that work, either, and that was a commitment made by W.K.&R in their binding development plan, that they were going to pay for the whole thing and now all of a sudden it ends up that the County is going to pay for the increase in the size of the piping that's going to be used. Nobody ever agreed to that. That was exclusively for them and they said that if anyone on the street wants to hook up...there are 75 people on the street, but they are restricted, and only if you're in the HOA can you connect to that sewer pipe.

Cathy Testa - Right, we are not allowed to connect.

Ted Balke - We're not allowed to connect to that pipe. We're paying, or the County is paying for the increase in pipe.

Mary Hillberg - You have to have a pipe that goes to that pipe.

Cathy Testa - Not just that, you have to have a certain pump and grinder that pushes the stuff into the sewer, and they only allow commercial grade, which requires an HOA of 15 homes or more that can actually attach to their system. Because of the way they developed the system, the average homeowner can't go into the sewer.

Mary Hillberg - You mean the people on Crisafulli can't connect to the sewer if they want to?

Cathy Testa - Correct.

Ted Balke - Correct, unless you are in the HOA and that gives the Foosner property on the end that's now coming up for development, they want to make sure that the density doesn't go through, that's why they want to make sure it's not on our requirements.

Gina Lindhorst - I don't think this limits that.

Ted Balke - This is the game, I could see it coming because it was in the paper and it was written up that we can connect to it. Did you also know they are putting grates in there so that the sewers can vent in certain areas along E. Crisafulli Road? Can you imagine what the smell is going to be like? We already have enough of a problem. The canal is caving in because they decided that they can't go adjacent within 10 feet off a water line, so the water mains changed sides of the street. So, they came over and they are starting to dig along the ditch, along the canal, and the edges of the blacktop on the street are already caving in. The dirt that is the canal is caving in. Nobody is looking at that and nobody wants to look at that. When they dug a hole in the front they drilled a hole into the street, the water came up because there is a river underneath there. There are underground springs there and nobody has looked at that at all, and they approved that back in 2018, the County Commission did that and nobody at that point had looked at any of the conditions that exists, and that's the same thing that's going to happen on every other property. The first thing that happened when we did the small area study is that you got a letter excluding one family from meeting any of the zoning because they were exclusive.

Cathy Testa - I remember that well.

Ted Balke - And that's the worst properties.

Mary Hillberg - Ted, what we're looking at tonight.....

Ted Balke - I don't want density removed.

Gina Lindhorst - That's limiting what we do. Taking that out does not limit us.

Ted Balke - It limits you on what you're going to be able to vote against. One of the items is density.

Gina Lindhorst - It's taking it out so we can vote on everything. You have to read it carefully.

Ted Balke - I did read it carefully, it is an issue that is one of the items that Kim [Smith] comes and objects to every time.

Mary Hillberg - It says, "would not" increase density.

Jeffrey Ball - For the record, this legislation is not going to take away your ability to make recommendations on density. When there is a rezoning you will make a recommendation, when there is a land use change you will make a recommendation. Those are the two mechanisms to increase density.

Ted Balke - And if the zoning is going to be impacted by density, it doesn't count.

Jeffrey Ball - What do you mean?

Ted Balke - You just eliminated it.

Jeffrey Ball - No, any rezoning, any land use change, you are going to hear. That is the mechanism to increase density.

Ted Balke - Then explain to me how all of these changes have taken place and we haven't had a meeting on them.

Jeffrey Ball - If you want to give me specifics I will take a look at it.

Ted Balke - W.K.&R. at the end of E. Crisafulli Road.

Jeffrey Ball - I will take a look at it and have a report for you at the next meeting.

Ted Balke - They have been bringing in truck loads and truck loads of dirt because of the fact that if you go to the FEMA maps it is all flood land.

Jeffrey Ball - I'm not going to be able to tell you how many truck loads of dirt they brought in, but I can tell you what the BDP says, I can tell you what the land use says, and I can tell you what the zoning says, and how many units are allowed based on those three things.

Ted Balke - And you approved it based on, he just wanted to make the change and he didn't have to provide any of the zoning or soil tests that are typical of your development group. Do you want to read the minutes of the 18th? They didn't check anything.

Mary Hillberg - Ted, can we finish? Jeff is going to do a report. Can you send it to all of us?

Jeffrey Ball - I can do a board report and I'll send it out with the agenda.

Ted Balke - I think he needs to do it before then. The street is caving in. As I drove down the street tonight it's caving in.

Jennifer Jones - Your next meeting is August 12th, so those agenda packets will be going out soon with the staff report in them.

Ted Balke - Where they dug the holes.

Mary Hillberg - Ted, he can't stop them from doing stuff.

Cathy Testa - I would suggest calling Bryan Lober. I've been in contact with him.

Ted Balke - I saw the letter you got back, he doesn't remember. That was the answer you got, isn't it?

Cathy Testa - No, I was questioning the construction and the holes and the traffic problems. It took me hours to get information, but he eventually got me the information I needed.

Ted Balke - The letter you sent around to the neighbors said that he doesn't quite remember the facts. Read that specifically. There is another one again where there is one little word in there that covers everybody's behind.

Cathy Testa - All I know is I had questions, he got me answers, and he got results because there were a lot of traffic issues related to that construction.

Ted Balke - They sent a cop out and he sat in his car at the end of the street and didn't do anything, he just sat in the car with the lights flashing.

Cathy Testa - The day I called they did fix the issues.

Ted Balke - Have you driven down the street? The guy doesn't even turn the signs.

Mary Hillberg - Lets come back to the subject here. We need to have a motion. Does anyone else have any input on this ordinance.

Chris Cook - I guess I don't understand what the whole purpose is, because the Commission is going to do what they're going to do. Are they looking for a recommendation from us? It's not a zoning issue.

Jeffrey Ball - This is affecting this board.

Mary Hillberg - So we have a right to recommend approval or not.

Jeffrey Ball - Yes, correct. If there are any changes that you want, you can approve it with those changes.

Mary Hillberg - Is there anyone in the audience who would like to speak?

Kim Smith - Kim Smith, 5390 Judson Road, Merritt Island. I'm on North Merritt Island. Can I ask everybody here what is procedure before I make my comment? If an item is scheduled to be heard by the Planning and Zoning Board or the Local Planning Agency, and that board, or either of those boards, do not meet or they don't have a quorum at a meeting, are those meetings then tabled and rescheduled?

Jeffrey Ball - If this board does not meet for lack of a quorum, the items are tabled to the next scheduled meeting.

Kim Smith - That's the Planning and Zoning Board and the LPA, not this board?

Jeffrey Ball - It's this board as well.

Kim Smith - What about the Commissioners? Has this ever happened with the Commissioners?

Jack Ratterman - No.

Kim Smith - There's always been a quorum - I guess a quorum would be three.

Jeffrey Ball - Yes.

Jack Ratterman - But they can do a Zoom, too, if somebody is sick.

Jeffrey Ball - They have to have an in-person quorum.

Kim Smith - In Section 2, paragraph (4), on the underlined addition, what I was wondering was in this item, does this board recommend that a force majeure clause be added to it, to protect this board from being bypassed in the event of a natural disaster, such as earthquake, hurricane, war, labor strikes, terrorists, epidemic or pandemic, or other unforeseen events that would naturally excuse anyone's normally scheduled performance. Is that something you folks would consider?

Mary Hillberg - We're not necessarily going to be answering questions for you. It could be something we could discuss, but if that's your input, I think that's a valid input. Are you representing the North Merritt Island Homeowners Association, or just yourself?

Kim Smith - Myself. I just looked at it and wondered what would happen if there was a hurricane. Would this board be skipped?

Mary Hillberg - What did you call it?

Jeffrey Ball - Force majeure, the definition is an act of god.

Mary Hillberg - Is it possible to add something like that?

Jeffrey Ball - If that's what the board decides to do, to add that as a recommendation, we can bring that forward. My understanding is that if something like that were to happen, the Governor would issue a state of emergency like he did with the pandemic, that would cover items such as acts of god. What we can do is add that as part of your recommendation, to add that language to paragraph (4).

Kim Smith - Keep in mind that sometimes acts of force majeure only affect local areas and not statewide. Just in case there is another hurricane that comes through and threatens the County.

Chris Cook - What if we all go to Washington just to avoid having to vote?

Jennifer Jones - In the past, when there has been a hurricane, all items get rescheduled to the next regularly scheduled meeting.

Gina Lindhorst - I thought, during Covid, we had meetings that were postponed and the Board of County Commissioners still had theirs ongoing. I don't recall. Is that what happened?

Jennifer Jones - We did postpone all advisory board meetings last April, but no one was skipped, those items were just moved to the next meeting.

Mary Hillberg - And the Commissioners didn't hear it until after we did.

Jennifer Jones - The Board had their regular meetings, but they did not have any zoning meetings until after the advisory boards were able to meet.

Gina Lindhorst - That was because the policy was a standard, and this is making it clear that they would not worry about us anymore, they would just skip us and go on. That's what this is saying.

Jeffrey Ball - If there is not a quorum.

Cathy Testa - If we can't have a meeting how can we have a quorum?

Jeffrey Ball - The only way that you would not provide a recommendation is if you didn't have a scheduled meeting, because it doesn't have a quorum. Let me read (4), because there is other language in there. "In the event the dependent special district does not provide a recommendation on an item noticed for a regularly scheduled meeting of the dependent special district, the item may move directly to the Planning and Zoning Board provided notice of the Planning and Zoning Board meeting has been previously given. After an item has been heard by the Planning and Zoning Board, the Board of County Commissioners may hear the item at a properly noticed meeting."

Gina Lindhorst - It says the Planning and Zoning Board won't be skipped, they have to have their meeting before it goes to the Commission.

Jeffrey Ball - Correct. Even this meeting is not skipped, it has to be a regularly scheduled meeting. If there is a hurricane or other act of god, it will be postponed and that would not constitute not providing a recommendation because it has to be an item noticed for a regularly scheduled meeting.

Gina Lindhorst - Who is allowed to reschedule our meetings?

Jennifer Jones - Staff would reschedule it to make sure it could be re-advertised accordingly.

Mary Hillberg - Thank you, Kim. Are there any more comments?

Cathy Testa - Obviously, this is to move things along, but I also think just because Port St. John - and I know they want to keep us together - had an issue and they may have intentionally missed meetings, or just accidentally missed meetings and didn't have a quorum, I still think, because things

happen in our lives, especially with all the new stuff that's going on, what if three of us came down with Covid at the same time? We wouldn't have a quorum and we shouldn't be punished, our area shouldn't be punished. I think the way it should have been written was, if we miss one because we don't have a quorum, then it must be the following scheduled meeting. I don't think it should immediately bypass us. I think we should be allowed one missed meeting and then they can skip us if we don't show up for the second one. That's my opinion. I don't think it should be, "you don't have a quorum, we're just skipping you." Again, we're being punished because another area has done whatever.

Gina Lindhorst - This is made to suit the developers, I think.

Cathy Testa - Of course.

Gina Lindhorst - Without anybody saying anything, that's what it's for.

Chris Cook - This is a solution in search of a problem.

Gina Lindhorst - For us.

Chris Cook - I would think that after that fluoride fiasco that they had, that the Commissioners would actively be seeking more input from the community instead of less, which is what this is doing. That's just my thoughts on it. That can go on the record, too.

Mary Hillberg - Is there a motion?

Cathy Testa - I motion that it should be modified to allow for one non-quorum meeting to be postponed to the following meeting. I don't know how to properly word it. We should be allowed one miss and then it must be heard at the next scheduled meeting. If we don't have a quorum for two meetings in a row, then we get bypassed.

Mary Hillberg - Does that involve moving the P&Z meetings and the Commission schedule, too?

Cathy Testa - If they missed their meeting it would get postponed as well. Why should we be treated any different? They aren't going to be bypassed. The Planning and Zoning Board is not going to be bypassed if they don't have a quorum. Why should we? They should at least give us one chance to make up for the fact that we didn't have a quorum.

Jeffrey Ball - If for whatever reason, if it's this board or the P&Z board, if you do not have a quorum you cannot meet, you cannot take action on any item, so it's not if you don't have a quorum you don't meet, it's that everything on that agenda gets tabled to the next scheduled meeting.

Cathy Testa - But not anymore based on this, they're just going to skip us.

Jeffrey Ball - For this board, yes.

Gina Lindhorst - It is punitive, yes.

Cathy Testa - It shouldn't be that way. We should be given one chance and if we don't make up for it, then they can skip us.

Jack Ratterman - But if we had a history of that, I can see doing that, but one meeting in 10 years, I'm not worried about making quorum.

Cathy Testa - True, but it could happen.

Jack Ratterman - Then let's vote on it.

Jeffrey Ball - Is that approval with additional language to allow up to one meeting to be tabled for lack of quorum?

Ted Balke - That's only one comment, one item. It's not approval of anything, we're just adding one issue.

Jeffrey Ball - The recommendation is approval with additional language to allow for one meeting without a quorum.

Gina Lindhorst - One meeting per year?

Cathy Testa - Per zoning request. What I'm saying is if the homeowner of this property is coming to us and we don't have a quorum, next month we come in we have a quorum and we vote. If this man comes in and has two properties at this one meeting, same thing, they go to the next meeting if we don't have a quorum. If at this meeting we don't have a quorum, then obviously these two items go on their merry way without our approval or review or anything. But if at this meeting you've added a third item, this item should be heard here because we've had one miss for this person, we've had two misses for the other person, so this goes on to the County Commissioners or to the Planning Board.

Jeffrey Ball - I think it would be much cleaner if you just recommend denial of it and we'll move forward.

Cathy Testa - I'd still like to recommend the additional change because whether we approve, deny, agree, or whatever, I think we need to let them know that we should be given a second chance to hear stuff because unfortunately things happen.

Ted Balke - Because we've already asked people to come back. We made a recommendation for them to change what they were looking for, zoning, and they came back to the next meeting with a different request.

Mary Hillberg - How about if we add the force majeure language to (4).

Gina Lindhorst - In place of (4)?

Mary Hillberg - Add it to (4). Would that be difficult to do?

Jeffrey Ball - No. "In the event the special district does not provide a recommendation due to force majeure....."

Gina Lindhorst - Strike through, "the item may move directly", or that "the item will be rescheduled to the next available..."

Mary Hillberg - "It may be rescheduled to the next special district board meeting."

Jeffrey Ball - "In the event that the dependent special district does not provide a recommendation due to force majeure, an item noticed for a regularly scheduled meeting for the dependent special district, the item may be re-scheduled to the next available meeting". And we'll strike out "the item may move directly to the Planning and Zoning Board provided notice....."

Cathy Testa - That's one of the two items, I think we still need to have a second chance to hear.

Mary Hillberg - Let's vote on this first one first.

Jeffrey Ball - It has to be all part of one motion.

Mary Hillberg - What we're going to vote on is adding the force majeure language, and then what Cathy wants is to also say we get to move on to our next meeting.

Ted Balke - And I want to remove density, so there's three things. I want to remove, "does not increase density". Just those words. You're looking to make changes and he wants to vote on everything unanimously and make it one approval.

Jeffrey Ball - That's not what I want, I'm just trying to get you to the finish line.

Ted Balke - Finish line.

Mary Hillberg - The force majeure thing would be one item. The second one would be the.....

Cathy Testa - A second chance when we don't have a quorum per zoning request. It's fairly simple.

Mary Hillberg - Per agenda item.

Cathy Testa - It should be rescheduled one time due to lack of quorum. Just once.

Mary Hillberg - Once a month, once a year?

Cathy Testa - It's just once. If this request has come before us in August and we don't have a quorum in August, our next scheduled meeting being September, we hear it in September.

Jack Ratterman - You could have a bunch of moves in a year, you could have that done two or three times in a year.

Cathy Testa - No, if we don't have a quorum in August, it then gets heard in September. If we don't have a quorum in September then it goes on to the Planning board.

Jack Ratterman - But what if somebody else comes up and says they want an item approved and we don't have a quorum on it? Then you have to move it again, another month later.

Cathy Testa - Just once. If this is going to be heard in August and we don't have a quorum, it gets heard in September.

Ted Balke - I don't think we have a quorum problem, we've all been here.

Cathy Testa - But there may come a time, and I think we need to cover our bases. We don't have a quorum issue, but what if we do have one on a really important topic? We need to hear it the next time.

Ted Balke - If another hurricane comes through here, we're not coming to the meeting.

Gina Lindhorst - They just won't schedule the meeting, and that's covered under the force majeure.

Mary Hillberg - So, that will cover that, and as far as the other, you're saying it's for just one item, but at the next meeting there is another item that shows up.

Cathy Testa - These two items are supposed to be heard in August. We don't have a quorum in August, so they go to September. In September we have those two items, plus the third item. In September, if we don't have a quorum, these two, which have already been postponed once, go straight off to Planning, totally bypassing us. But the other item, only being heard the first time in September goes to October.

Gina Lindhorst - That's more complicated.

Cathy Testa - It's very simple.

Mary Hillberg - The force majeure would be one change and with what Jeff related, and the second one is that, and the third.....

Jeffrey Ball - Can you be a little more specific?

Cathy Testa - You still don't understand this?

Jim Carbonneau - I make a motion that we discount Cathy's proposal about the second meeting.

Cathy Testa - So, they are just going to bypass us and you're willing to let them....

Jim Carbonneau - We've already discussed, if it's not going to be heard because of a quorum issue, then it's going to rescheduled to the next meeting.

Cathy Testa - No, it's not, not according to that. They are bypassing us. If we miss our meeting in August.....

Jim Carbonneau - We're talking about one time, your suggestion of moving it one time. Moving it again? No.

Cathy Testa - I'm not suggesting to move it again, I'm suggesting moving it once.

Mary Hillberg - I think it will complicate things.

Jim Carbonneau - I agree.

Mary Hillberg - And I don't think the Commission will want it this complicated.

Cathy Testa - We get one pass. Right now, according to the new document, if we don't have a quorum they just bypass us. I don't think that's right. We shouldn't be bypassed.

Jack Ratterman - Well, either you want to be on the board or you don't.

Cathy Testa - Sometimes things happen. My husband had Covid, did you want me to come to the meeting with Covid?

Jack Ratterman - You need to think about that before you run for the office. You have to make up your mind and if you want to do something, you can do it. That's all I'm saying.

Ted Balke - You walked about the building once because the door was locked.

Jack Ratterman - Then you can call.

Cathy Testa - Who do you call?

Jeffrey Ball - Is there a motion on the floor?

Mary Hillberg - Jim made a motion to not consider Cathy's suggestion.

Cathy Testa - So, you just want to bypass our board altogether?

Ted Balke - No.

Jim Carbonneau - No, all I said was that we discount the second bump.

Cathy Testa - I wasn't suggesting a second bump. I suggested one, and I gave an example.

Mary Hillberg - Okay, we'll just vote on all three of these. The first one is the force majeure, the second one is Cathy's suggestion. What is the third one?

Ted Balke - Eliminate the cross off of the....

Jack Ratterman - You want to keep in density, right?

Ted Balke - Yes, regardless of how you want to word it, it stays in, because.....

Mary Hillberg - You realize this says, "If approved would not increase density", it doesn't say increase it, it says not increase it.

Ted Balke - Leave that whole thing in. Do not take that line out. Why take it out? There's no reason to take that out.

Jim Carbonneau - I'd leave it in.

Mary Hillberg - Okay, leave in the last line.

Ted Balke - Leave in the last line.

Jack Ratterman - What page?

Ted Balke - Page 1, Section 2, Item 1, last line.

Mary Hillberg - "When such application, if approved, would not increase residential density on the property that is subject of the application".

Ted Balke - Leave that in.

Mary Hillberg - We need a motion for the first thing, the force majeure.

Jack Ratterman - I make a motion we do the force majeure.

Mary Hillberg - Do you want to add to that?

Gina Lindhorst - Yes, to (4), "In the event the dependent special district does not provide a recommendation", and add "due to force majeure on an item noticed for a regularly scheduled meeting of the dependent special district, the item may be rescheduled to the next available monthly date only once".

Cathy Testa - The only once applies to everything.

Gina Lindhorst - And then, "After an item has been heard by the Planning and Zoning board, the Board of County Commissioners may hear the item at a properly noticed meeting". Strike only once.

Ted Balke - Second.

Mary Hillberg - Who made the motion?

Jennifer Jones - Jack did.

Ted Balke - You added to it, so between the two of you.

Gina Lindhorst - I clarified it.

Ted Balke - I second what Gina clarified.

Mary Hillberg called for a vote on the motion as stated, and it passed unanimously.

Mary Hillberg - The second item is what Cathy said, we're allowed to not have a quorum once and not be.....

Cathy Testa - The item on the agenda should be rescheduled for the following meeting to allow for a review and vote. If we don't have a quorum for the rescheduled meeting, then the item would bypass our board and go directly to the next level, which would be the Planning and Zoning Board.

Mary Hillberg - Before we go on with that, we had a motion on the floor that Jim said....

Jim Carbonneau - I agree with what she said.

Mary Hillberg - You withdraw your previous motion?

Jim Carbonneau - Yes.

Mary Hillberg - Is there a motion for what Cathy said?

Cathy Testa - I thought I just made the motion.

Mary Hillberg - Okay, Cathy made a motion for that.

Jim Carbonneau - Second.

Mary Hillberg called for a vote on the motion as stated, and it passed 4:3, with Jack Ratterman, Gina Lindhorst, and Mary Hillberg voting nay.

Mary Hillberg - The third one is to leave in the last line of Section 2, Page 1, Paragraph (1), the last line that is struck that says, "....when such application, if approved, would not increase residential density on the property that is subject of the application." You want to re-insert that.

Ted Balke - Yes.

Mary Hillberg - Is there a motion?

Ted Balke - I make a motion to leave it in.

Jim Carbonneau - I second.

Mary Hillberg called for a vote on the motion as stated and it passed 4:3, with Chris Cook, Cathy Testa, and Gina Lindhorst, voting nay.

Ted Balke - Where did you say density was in here again?

Jack Ratterman - Page 2, the third line down, it says, "...when such application, if approved, would increase residential density on the property that is the subject of the application." I think one time is enough.

Gina Lindhorst - it's unnecessary, it's redundant.

Ted Balke - That's redundant, but that can be removed, too, right?

Jack Ratterman - Okay.

Ted Balke - It's simple enough just to say if approved would increase the residential density.

Jeffrey Ball - The whole entire paragraph (2) is being removed, and it has to do with the Planning and Zoning Board; it has nothing to do with your board.

Mary Hillberg - I don't think we need to remove it, do we?

Ted Balke - You don't look at density because you don't review plans because you don't require plans to make zoning changes. You make zoning changes without site plans. The planning commission, that's what you've always said, you've always brought up the fact that you don't have to see the site plan to make an approval to make a zoning change.

Jeffrey Ball - Correct.

Ted Balke - And that is a problem when you're not looking at a site plan, because then you don't know what the density is going to be and what they're going to put on that property.

Jeffrey Ball - Sure we do.

Ted Balke - You have always made the same comment that P&Z doesn't look at a site plan.

Jeffrey Ball - That is true.

Ted Balke - You don't look at sewage plans, you don't look at any other plans.

Jeffrey Ball - We're getting off-topic here, but when we evaluate a rezoning request we look for two things; we look at consistency with the comp plan and compatibility with the surrounding area. That is it. It is not based on a site plan; that is a separate process that is done administratively. If you don't know what the density is, we do, because it is set up by the land use and zoning.

Ted Balke - That is a problem because you can have density which is still land use and zoning codes. Density is the problem. Your zoning code can still have excessive density where the lawyer the last time did the same thing, she used the RR-1 by overall property development size based on how many houses you can put on it.

Jeffrey Ball - When there is a discrepancy between the land use and zoning, as far as residential density, then we use a BDP to cap that density so it does not go over the land use. The land use is the overall map, and that is what determines the density.

Ted Balke - Which is what you're doing all the time, though, because you're calling it RR-1 and it is not because of the fact that you're taking the overall property size and then taking the density off of it, which is incorrect.

Jeffrey Ball - The density is set by the land use.

Mary Hillberg - Under Section 2, (1), it says, "when such application, if approved, would not increase residential density", and then in (2) it says exactly the opposite. "...if approved, would increase residential density".

Jennifer Jones - What that pertains to is to whom you make recommendations.

Cathy Testa - Paragraph (1) used to be to the County Commissioners if there was no increase in density. Now we're directing our review to the planning board when it increases or decreases density. That's basically what (1) and (2) is saying. Whether it's an increase or decrease in density, it's all going to the planning board. The way they've written it, technically, is right, by taking our (2) in its entirety and changing (1) the way they have it changed is accurate.

Mary Hillberg - Yes, that simplifies it, right?

Jeffrey Ball - Yes.

Cathy Testa - We just un-did (1).

Jeffrey Ball - Yes.

Mary Hillberg - We just un-did (1), so if we un-did (1), we have to un-do (2) in order to make this even, right?

Ted Balke - That would be normal.

Cathy Testa - Yes.

Ted Balke - That's logical.

Mary Hillberg - So, why are we un-doing....

Cathy Testa - We shouldn't have.

Mary Hillberg - Should we have a motion to....

Ted Balke - No, I think we should take both of them out. There is no way that anything should go through with density not being an issue, especially on North Merritt Island.

Cathy Testa - Everything is still going through us, it just has to go to the planning board and not directly to the County Commissioners.

Ted Balke - It's going to the planning board without looking at the density that's impacting us. It impacts the schools.....

Cathy Testa - But we're looking at it before it goes to the planning board.

Ted Balke - Correct, and we should make them look at exactly what's being put in there. The number of homes and everything that justifies.....

Cathy Testa - This is saying that everything we do, whether it increases or decreases, or stays the same, as far as density, everything we review, we report to the Planning and Zoning Board, as opposed to the County Commission.

Mary Hillberg - It doesn't change anything else.

Cathy Testa - The way they have written it.....

Mary Hillberg - The way they have written it is okay, taking out this and taking out (2), that last line, is okay.

Ted Balke - Think about that.

Mary Hillberg - Can we have a motion to un-do our third motion.

Jack Ratterman - It's Ted's motion.

Ted Balke - No, I'm saying to take both of them out, because the fact that the planning board has always stated that there is so many houses permitted on an acre, and if you take 110 acres and you have a smart lawyer and she does the commercial ratio, which is what they do all the time, the commercial ratio is what kills us with density.

Mary Hillberg - These both come out or they both stay in, that has to be the way it is. If they are both out, or they both stay in, it really isn't going to be necessarily affecting us as far as what we recommend. Is that correct? We recommend to approve or disapprove something, we recommend to the P&Z board that something is approved or disapproved, whether or not density is the issue that we have, or something else is the issue, it doesn't matter.

Jeffrey Ball - How the ordinance is written, this board will review all rezonings and all land use.

Mary Hillberg - Yes. So, this taking out of (1) and (2) is just saying whether it has increased density or not.

Jeffrey Ball - My recommendation is leave it the way it is written.

Ted Balke - Of course you would, because of the fact that you don't care about our density.

Mary Hillberg - No, Ted.

Gina Lindhorst - We've already voted.

Cathy Testa - Ted, the way it's written it doesn't matter about density, whether it increases, decreases, or stays the same, rather than giving some of our recommendations to the County Commissioners versus the planning board, now it's all going to go to the planning board. We're still going to review increases, decreases, and what stays the same.

Ted Balke - You're correct. They're going to do whatever they want to do anyway.

Mary Hillberg - If we re-vote on the (2) part and just leave things the way they are in terms of density.

Ted Balke - How about you leave that one in so we can argue it later when it comes up in an actual situation.

Mary Hillberg - No. So, (1) and (2), if we can go back and if there's a motion to review this third one here. We voted on the first one, which was the force majeure; the second one was Cathy's; and the third one, to re-insert the one about not increasing the density. Is there a motion to reconsider that? Okay, so these are the three motions that we're going to have.

Cathy Testa - The third one, unless we also re-instate (2), which basically.....

Mary Hillberg - do you have a motion to re-instate (2)?

Cathy Testa - No, I'm still discussing it. If we leave.....

Ted Balke - We've already voted on it, there's no discussion. We're not discussing it anymore. Nobody did anything about (2).

Cathy Testa - Logically speaking, if in Section 2 (1), we re-instate the words, then we have to reinstate Section 2 (2) in its entirety.

Mary Hillberg - Correct.

Cathy Testa - Otherwise, we only have half of the apple pie.

Mary Hillberg - Are you making a motion to reinstate (2) also?

Cathy Testa - Yes.

Mary Hillberg - Cathy makes a motion to reinstate (2) because we reinstated (1).

Ted Balke - I agree with that, leave both of them in.

Mary Hillberg - Ted seconds the motion.

Mary Hillberg called for a vote on the motion as stated and it passed unanimously.

Upon consensus, the meeting adjourned at 7:15 p.m.

LOCAL PLANNING AGENCY/PLANNING AND ZONING BOARD MINUTES

The Brevard County Local Planning Agency/Planning & Zoning Board met in regular session on Monday, July 26, 2021, at 3:00 p.m., in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order by Vice Chair Peter Filiberto, at 3:07 p.m.

Board members present were: Ron Bartcher (D1); Brian Hodgers (D2); Ben Glover (D3); William Capote (D3); Ron McLellan (D4); Joe Buchanan (D4); Peter Filiberto, Vice Chair (D5); and David Bassford.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; George Ritchie, Planner III; Kyle Harris, Planner I; Abby Jorandby, Assistant County Attorney; Tad Calkins, Planning and Development Director; Virginia Barker, Natural Resources Management Director; and Jennifer Jones, Special Projects Coordinator.

Excerpt from Complete Minutes

4. Code Revision to Chapter 98, Article IV, Port St. John (PSJ) Dependent Special District Board, Section 98-105.

Jeffrey Ball stated what the proposed ordinance does is allow rezoning applications to move forward to the P&Z (Planning & Zoning) Board or LPA (Local Planning Agency) if the PSJ (Port St. John) board is not able to meet due to a lack of a quorum. He said the applications would move along in the process without delay.

Peter Filiberto asked how often has the PSJ board not had a quorum. Mr. Ball replied four times in the past seven years, with the most recent being in February.

Mr. Filiberto stated he has some concerns even though residents can come to this board to voice their opinion.

Ben Glover stated if the PSJ board doesn't have a quorum the items come to this board, and asked, if they do have a quorum, do the items go directly to the County Commission.

Jeffrey Ball replied no, under the current ordinance, if they do not have a quorum the items are tabled until the next meeting. The proposed ordinance states that for any reason they are not able to meet, the items would move to either the P&Z board or the LPA, depending on the schedule. In the past, there were some delays in hearing those applications and getting them to the County Commission for the final decision.

Ron Bartcher stated there are two issues involved in this change. One is that it makes all of the special board recommendations come to this board rather than some of them coming to this board and some going directly to the County Commission. Some board members think that is a reduction in the power of the local board. The other thing it does is that it allows some items to skip the local board if the local board doesn't have a quorum. Since these local board meetings provide an opportunity for public input, that's really what this board's job is and that's what their job is. He said he would hate to see at some time in the future language like this added to the Planning and Zoning Board's rules. He stated as a representative of the public, the board should be more concerned with allowing public input than sticking to a schedule.

Mr. Glover asked if an item comes to the P&Z Board, does staff notify them, or are they already notified as far as the 500 feet radius of the subject property. Mr. Ball replied all of the meeting notices would be included on the courtesy cards that are mailed to property owners within 500 feet of a subject property.

William Capote asked if the proposed ordinance is being created because there is an issue with those boards meeting. Mr. Ball replied yes, and on March 23, 2021, the Board of County Commissioners gave staff legislative intent to make the changes.

Mr. Bartcher stated the second change about quorums appears to be primarily aimed at the PSJ board, as they seem to have more meetings without quorums than the NMI board. He said it has been his experience that the NMI board is very active and very dedicated. According to one of their board members, they have only had one meeting in the last 10 years that did not have a quorum. He noted the NMI board said they would like to have a second chance rather than just being skipped if there is no quorum, and if they don't have a quorum a second time, the items can be moved forward without their recommendation. He stated the Port St. John Board had a comment that he believes was worthwhile, and that is that their board doesn't have alternates. He noted the P&Z board has five alternates, but their board has none. He stated the PSJ board recommended that they be allowed two alternates, and he believes that could solve the problem of no quorums.

Motion by Ron Bartcher, seconded by Ben Glover, to approve the proposed ordinance with an additional change to Section 98-104 to add the appointments of two alternates to the Port St. John Dependent Special District Board.

Mr. Ball clarified that the motion is for the Port St. John board item, not the North Merritt Island board item, which is the next item on the agenda.

William Capote asked, with alternates, if there is a meeting and the person doesn't show up, is the alternate supposed to sit in the audience waiting to see whether the person shows up or not. He said being on standby means that person would have to come to the meetings accordingly and wait to see if someone shows up or not in order to meet the quorum.

Mr. Ball stated alternates would have to show up at the meetings just in case, because although staff makes sure there will be a quorum, there is no way to make sure that everyone who said they would show up, shows up. If that's the outcome of what happens at the meeting, those alternates would have to attend the meeting in case there was a lack of a quorum.

Mr. Capote stated that's what makes it difficult because the board members are not paid, and for them to come and then not even participate, after a while they are probably not going to show up at all and then you don't have a quorum.

Ron McLellan stated what they will have to do is what this board has done for many years, and that is that the alternates can attend the meeting and participate, but they cannot vote. The only time they are able to vote is when someone is out. He said perhaps instead of having five alternates they could have three that could go anywhere and be chosen at any time. They can participate in all of the discussions, but they can't vote. They have to have a voice or they are not going to show up.

Mr. Bartcher stated he agrees, because he attended these meetings as an alternate for three years and participated in the discussions, but the only time he voted was when there wasn't enough other members.

Mr. Capote stated if that wording gets added, then it's a different story, but that wasn't the wording that was added.

Mr. Glover stated alternates can participate in every meeting.

Mr. Bartcher stated the way the P&Z Board works and the way alternates work, is in the rules for this board, and he would expect that they would need to take that same kind of language from the P&Z Board's rules and put it into the rules for the other boards.

Mr. Capote stated that will be the motion at hand, that the board wants to have an alternate, that the alternate then participate with the PSJ board. He said if they are going to make changes, it should be a uniform change.

Brian Hodggers asked if there is a staff member for PSJ that does the same thing for the P&Z board.

Jennifer Jones replied yes, she coordinates both boards. Mr. Hodggers asked if she makes sure the Port St. John Board has a quorum. Ms. Jones replied yes. Mr. Hodggers asked if the PSJ board had alternates, would she be able to get them to the meeting. Ms. Jones replied yes, she would attempt to get them to the meetings.

Mr. Filiberto asked if the alternates are included in the emails Ms. Jones sends to the P&Z board for a quorum. Ms. Jones replied yes, they are.

Mr. Hodggers stated if staff is already doing that, and the board adds alternates, he doesn't see where there is going to be a big issue. Mr. Capote state it is not a problem as long as the wording is in there.

Mr. Filiberto asked if the P&Z rules of the alternates participating but not voting unless a regular member is not present, carries on to the PSJ board.

Abby Jorandby stated if the board makes that change to the alternate language, that can be a proposal. She said her concern is that the legislative intent staff received is for Section 98-105, which does not pertain to alternates, so there may be an advertising issue. She said the board may make this recommendation to the County Commission and staff may have to re-advertise to actually make the changes to Section 98-104. She said this board can vote to recommend approval of the proposed ordinance as it is, recommend denial, or recommend approval with a modification. She cautioned the board that if it does have the modification there may have to be another hearing because of the fact that Section 98-104 was not advertised.

Mr. Bartcher said he feels it's important that the board and make that recommendation and if the County Commission chooses to ignore it and ignore the Port St. John Board recommendation as well, then so be it.

Peter Filiberto called for a vote on the motion as stated, and it passed unanimously.