

# Brevard County Board of County Commissioners

*2725 Judge Fran Jamieson Way  
Viera, FL 32940*



## **Minutes**

**Thursday, December 5, 2019**

**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 Isnardi

**B. MOMENT OF SILENCE**

Chair Lober called for a moment of silence.

**C. PLEDGE OF ALLEGIANCE - District 2**

Commissioner Isnardi led the assembly in the Pledge of Allegiance.

**H.2. Bonnie Douglas, Trustee (Connie Douglas) requests a change of zoning classification from RU-1-9, BU-1, and TR-3, to all TR-3. (19PZ00108) (Tax Accounts 3006458 and 3010260)**

Chair Lober called for a public hearing on a request by Bonnie Douglas for a change in zoning classification from RU-1-9, BU-1, and TR-3, to all TR-3.

Jeffrey Ball, Planning and Zoning Manager, stated this Item is a request by Bonnie Douglas for a change in zoning classification from RU-1-9, BU-1, and TR-3 to all TR-3; and the applicant is requesting to table to the February 6, 2020, Board Meeting.

There being no comments or objections, the Board continued the request by Bonnie Douglas for change in zoning classification from RU-1-9, BU-1, and TR-3 to all TR-3 to the February 6, 2020, Board of County Commissioners Meeting.

**Result:** Continued

**Mover:** Kristine Isnardi

**Secunder:** Rita Pritchett

**Ayes:** Pritchett, Lober, Tobia, Smith, and Isnardi

**E.1. Resolution Recognizing Annette Melnicove**

Chair Lober stated he wanted to recognize some special people in attendance for this Item, Judge Davidson, Judge McCluan, Judge Atkin, and some people from the BCA, the Bar President, Brian Onek, Ashley Hardee, and Kim Rezanka; and he thanked them all for coming.

Chair Lober read aloud, and the Board adopted Resolution No. 19-239, recognizing Annette Melnicove for her dedicated service to the citizens of Brevard County.

Annette Melnicove stated it has been a privilege serving government, Brevard County residents, and members of the Court.

Chair Lober stated as a previous Florida Bar President, he has never had anything but good experiences with Ms. Melnicove in the years they worked together; it is rare that there is someone in the legal profession in any capacity where there are no complaints ever, Ms. Melnicove is probably the only one who comes to mind; and he thanked Ms. Melnicove.

**Result:** Adopted  
**Mover:** Rita Pritchett  
**Secunder:** Kristine Isnardi  
**Ayes:** Pritchett, Lober, Tobia, Smith, and Isnardi

**F.1. Permission to Accept a Grant from the Florida Fish and Wildlife Conservation Commission and Matching Fund Donations for Artificial Reef Construction**

The Board of County Commissioners, in regular session on December 5, 2019, executed and approved the Artificial Reef Construction Grant Agreement with the FWC; accepted the matching fund donations; authorized staff to competitively bid and the County Manager to execute a construction contract with lowest responsive and qualified bidder; and authorized the associated budget change requests.

**Result:** Approved  
**Mover:** Kristine Isnardi  
**Secunder:** John Tobia

**H.5. Ray L. Colgin (Chad Genoni) requests Adoption of the 2019-2.1 Large Scale Comprehensive Plan Amendment to change the Future Land Use designation from Residential 1 to Residential 2. (19PZ00075) (Tax Account 2441237)**

Chair Lober called for a public hearing on a request by Ray L. Colgin for adoption of the 2019-2.1 Large Scale Comprehensive Plan amendment to change the Future Land Use designation from Residential 1 to Residential 2.

Commissioner Tobia stated he received an email in addition to those he has pre-disclosed, from Mr. Botto on December 5, stating his belief is that the approval of this Item would be more than double the impact.

Commissioner Isnardi pointed out she has that same disclosure by David Botto, Marine Resources Council, and he is against this request.

Commissioner Pritchett stated she has already pre-submitted all of hers except for those she handed out right before the meeting.

Chair Lober advised he has the same disclosure with respect to Mr. Botto and he has a second disclosure from Mary Sphar on the same date expressing concern through email about this particular proposal.

Jeffrey Ball, Planning and Zoning Manager, asked to read the Item into the record.

Chair Lober responded affirmatively.

Mr. Ball mentioned Item H.5. and H.6. are companions, so he will read them both into the record. He stated Item H.5. is a request by Ray L. Colgin for adoption of a Large Scale Comprehensive Plan amendment to change the future land use designation from Residential 1 to Residential 2 and it is located in District One; Item H.6. is a request from Ray L. Colgin to change zoning classification from AU to RU-1-7 with a Binding Development Plan (BDP) limiting it to two units per acre; and it is located in District 1.

Kim Rezanka stated she is there on behalf of Beachland Managers, LLC, represented by Chad Genoni; this is a rezoning and Comprehensive Plan amendment for Ray Colgin on a very

narrow strip of land that is 52.53 acres on State Road 520; this came before the Board on the Comprehensive Plan amendment on September 25, 2019, for a transmittal; it was approved unanimously and sent to Florida Department of Economic Opportunity (FDEO); comments came back from all the agencies and none of the comments had any substance; and it is now before the Board for adoption. She added nothing has changed since she was there on September 5. She continued saying this is for a rezoning to RU-1-7 with a BDP to make it compatible with a Residential 2 rezoning request; it is about 232 feet wide and it has had the same configuration since at least 1990; there has been very little development near this property or in the area; there are a few homes with most of them being modular homes or trailers; and that is because it is hard to develop out there because there are no roads. She went on to say there is no sewer, no water, or drainage in this area and it was a two-lane road for many years, so the circumstances have changed substantially to make this more developable; the property around the area is Residential 1, but to the south it is all Residential 2; also two parcels to the east, there is a pending PUD zoning in the City of Cocoa for 50-foot lots; and that shows how things are developing and moving in the area. She mentioned the map that was in the packet she provided to the Board, shows three other developments in the area that are all small lots, 50-foot lots, because in this area that seems to be what is desirable and what the market is demanding; and there are public facilities and services available out to this property now and a school capacity exists. She stated staff concluded that the change would not cause a deficiency of adopted levels of service and that the Comprehensive Plan analysis meets Policies 1.8.a. and 1.2, it also meets the Comprehensive Plan amendments she has discussed in the past given the variety of housing units; there are not a lot of housing units out there that are new and of this size but for what is being developed; and as to the rezoning, it has been asked for RU-1-7 to allow the design of this property so it can be used for homes. She continued the BDP would limit the units to 105 units at Res 2; the only issues she was aware of was the issues raised by the owner of Sterling Stables which is immediately adjacent to this property; that was at Planning and Zoning at the transmittal stage; he had no problems with the rezoning or the Comprehensive Plan, he was concerned about putting environmental constraints on the property which Mr. Genoni has spoken to him and is going to resolve and help him; and there was an issue with others regarding stormwater and that will be determined during site plan, and she noted there is no way it can impact others when they have to maintain the historical drainage patterns. She went on to ask for approval of the Comprehensive Plan amendment 2019-2.1 from Res 1 to Res 2 and the zoning change to RU-1-7 with the BDP.

Commissioner Pritchett asked Ms. Rezanka if the homes are moving over from septic to sewer right now.

Ms. Rezanka affirmed that.

Commissioner Pritchett inquired if that was going to be an availability or if the Board is going to have a little bit of time; and she stated she thinks there is probably a little bit of space to go ahead and put in septic.

Ms. Rezanka advised with those size lots she does not think they are allowed to have septic; and the development she discussed in Cocoa, is bringing sewer.

Commissioner Pritchett asked for clarification that Mr. Genoni is having sewer.

Ms. Rezanka noted it is her understanding that he will bring sewer out there because of the size of the lots.

Mary Sphar stated she stumbled across this Comprehensive Plan amendment and associated

rezoning request for density increase when she was looking on the Agenda for the Micco Item; this property is a little west of State Road 520 from her neighborhood but like her neighborhood near the St. John's River at Lake Poinsett; the issues on this property are complex and the Board needs to take the time to make a decision for any future homeowners of this property and for the health of the St. John's River to which the property drains; the Comprehensive Plan amendment adoption decision does not need to be made tonight; and the State of Florida only requires the adoption hearing to take place within 180 days of receipt of agency comment which would put the deadline around the middle of April. She continued on by saying this property has problems to the extent of which are not readily known; the problems result from the use of the site to process and spread septage which is septic tank pump-out; this activity occurred over 20 to 30 years; the problems include illegal wetland damage that needs to be addressed, furthermore, this needs to be evaluated to determine whether any health risks remain on this site, and finally there is no stipulation in the BDP to connect to sewer; according to staff report, the current site owner has been processing septic tank waste with lime and spreading the resulting biosolids on the property for approximately 20 to 30 years; those biosolids have been deposited on tight wetlands; and St. Johns River Water Management District (SJRWMD) determined that impacts to two of the wetlands were unpermitted and will require restoration or mitigation for the loss of wetland functions. She went on to explain staff then noted that the Brevard County Ordinance requires that the situation be fixed; the language staff is referring to states both in the Ordinance and the Comprehensive Plan, "If an activity is undertaken which degrades or destroys the functional wetland, the person authorizing or performing such an activity shall be responsible for repairing and maintaining the wetland; in the event it is not feasible or desirable for the responsible person to perform the repair and maintenance of the wetland then the responsible person will mitigate for the wetland laws"; the staff report then states, "However it is unknown at this time the amount of wetlands that may be mitigated and the amount that will be required to be restored;" and before any density changes are granted she would like the damage resulting from the unpermitted wetland impacts to be fixed, and the property to be evaluated for health concerns and be cleaned up as appropriate. She stated on another subject, septic or sewer, she realized that the applicant is claiming this will be worked out at the site plan level but that is too late since Brevard County does not outlaw new subdivisions on septic; she believes septic is inappropriate on this property; she advised actually the property owner told Florida Department of Environmental Protection (FDEP) in an email dated December 2, 2017, "The phosphates were too high in field one but the hurricane put me under two feet of water;" that should tell the Board the property is not a good place for septic; yet the applicant told the LPA at the transmittal hearing on August 19, he was planning on septic but was not totally sure; from the P&Z LPA minutes, Ron Barcher asked if Mr. Genoni said he would not connect to sewer and Mr. Genoni replied at this point he is not 100 percent sure if they are going to connect to sewer; and he said originally they were planning on septic tanks but they were hoping to get through to the Zoning phase to determine what would be allowed. She continued by saying the applicants attorney noted at that the LPA adoption hearing that there is sewer availability, and she asked if that is the case why not put in the BDP a stipulation for connection to sewer; and she stated the Board may want to ask about the details of where the newest sewer connection point is.

Chair Lober asked the County Attorney in the terms of folks who submit for two Items on the same card, is it the best practice to double the time or how would she suggest that be handled.

Eden Bentley, County Attorney, stated that could be done or the Board could let them make their presentation and if they need additional time to reach the 10 minutes, they would be allowed 10 minutes.

Ms. Sphar stated her husband will speak on the health aspect for questions concerning this

property; in conclusion, please make sure the wetlands are cleaned up before deciding whether to increase density with the Comprehensive Plan amendment and rezoning request; also make sure that any future subdivision on this property connects to sewer; and she mentioned the Board has time to make the right decision, so please take advantage of it.

Douglas Sphar stated he is a long-time property owner and resident on the St. John's River west of Cocoa, not too far from this property; given the long history of the use of this property there should be no residential development permitted until the property is cleaned up and health concerns are laid; according to a query he made a FDEP Circle C has engaged in land spreading of septic tank pump outs since the early 1990s; he provided a Google earth photo that he found from 1994 showing the property in full operation and appearing much as it does in a recent photo in staff's package; in Circle C septic pumping by trucks that drove in and off-loaded septic into a large tank where the septage was mixed with lime; and the purpose of the so-called lime stabilization is to help prevent vectors, which vectors are an Environmental Protection Agency (EPA) term that includes rats, birds, and flies, that could carry pathogens off-site to slow down the propagation of pathogens, but this lime stabilization does not sterilize the septic. He went on to explain after being stabilized the septic is carted out and spread out upon the property and this has been going on for somewhere around 30 years; it even challenged the FDEP people to find out how far back; over the years Circle C was operated under various Department of Health (DOH) permits that allowed the spreading of up to 10,000 gallons per day; and he mentioned maybe over 10,000 gallons per day if FDEP takes over the permitting of septic. He noted the Florida Legislature decided to ban the land spreading of septic, enacted Florida Statute 381.065 (6), to ban land application of septage effective January 1, 2016; evidently some people felt some pain because DOH issued an extension variance that allowed the land application site to continue operating until December 31, 2017; and at that point, December 31, 2017, Circle C would have had to suspend septic operations. He stated wanting to continue in business Circle C on June 23, 2017, applied for an FDEP permit; FDEP denied the permit application for several reasons, the main one being that Circle C would have to be permitted under rules for a domestic wastewater treatment facility that would output Class B or higher biosolids as the spread of septic was banned by statute; Circle C informed FDEP they could not meet the conditions of the applicable rules; FDEP also had an issue with the elevation of the water table; and as his wife had mentioned, Circle C noted in its FDEP response that the property was under two feet of water after Hurricane Irma. He noted he has a copy of this confirming all these findings. He asked with regard to residential development, would the Board Members want their grandchildren playing on ground that experienced over 25 years of spreading of pathogens containing septics; he stated before any development, there should be some program of testing and remediation to ensure the property is safe for habitation; and one final point, there is a photo in staff's package that shows numerous piles of a white substance stored on the south end of the property and he would recommend the County inquire what this material is and what the purpose of it being there is because it was not there in 2017 but it appeared between then and 2019. He mentioned he would like the health aspect of this property be considered before people live on it.

Ms. Rezanka stated Beachland Managers does not own this property yet, therefore, they have not done any remediation and they have not fixed any wetlands; until they receive the zoning they are not going to purchase it; Mr. Genoni intends to remediate the wetlands as will be required during any site plan or any review by FDEP or County Natural Resources; both Mr. and Mrs. Sphar talked about health concerns and health risks, but there is nothing in the County Code that she is aware of or Comprehensive Plan amendment that has any bearing on that issue; and in fact, Mr. Sphar stated there should be some program to ensure safety, but to her knowledge there is not. She added this is a business decision of Beachland Managers that they will have to do environmental testing, they will have environmental level one and

environmental level two; if there are biosolids that would impact health they will have to remove them; there will be policies all the way as they go along; just like flooding, the County Code has requirements about how high the floor elevation of the houses have to be; and Hurricane Irma was a bad situation as many people were flooded, especially North Merritt Island, for months and months, so that was a unique situation. She mentioned whatever the requirements are going to be, they will be met at site plan; regarding the December 17, 2017, email that Ms. Sphar referenced, again that was the owner of the property, Mr. Colgin, not the applicant; as to the septic versus sewer issue, her understanding is that there is going to be a sewer connection just three properties to the east and she knows that because her client owns that property and they were granted an easement for that purpose; it is preferable and Mr. Genoni has been before the Board before, all of his projects go on sewer, and the one up in North Merritt Island he is going to be bringing sewer; and she noted he is not in attendance for her to ask that he put that in the BDP and she does not know if he will or will not do that. She continued by saying he will do whatever the Code requires; she does not believe a small lot of RU-1-7 is allowed to have a septic tank but she could be mistaken on that; she does not believe there has been any evidence other than what she presented as to the size of the lot for the reasons of the rezoning and nothing to prevent this Comprehensive Plan and rezoning from going forward; and she commented this is the Comprehensive Plan amendment cycle which others are involved with, and she would ask for this to not be delayed. She went on to say this was heard on September 5 and she does not believe the Sphar's were there at that time to raise these issues so they could be further looked into; the Board has already heard this once and she reiterated she is asking the Board to approve this Comprehensive Plan amendment and the rezoning request so the Comprehensive Plan amendment can go up; she will have to come back to the Board with the BDP; and if Mr. Genoni is willing to put in the sewer stipulation, it can be done at that time.

Commissioner Pritchett stated when looking at this land there is not a whole lot that can be done other than this because of the length and the width of it; the things she looks for is if they do this project is it going to negatively impact the surrounding residents which she does not think it is; there is a road that goes directly to the property, so that is taken care of; as far as there being adequate stormwater, that is the next step for them and they have to get through staff with all of that; and she thinks that would be wonderful. She mentioned there are all of these properties already out there on septic, so that is not unusual for the area either. She continued by saying there is different criteria to do that; she heard the argument on what used to be on the property, but she thinks from being around people, they have been trying to build in the past and they have to go through a lot of hoops with FDEP and everybody making sure everything is appropriately safe before being able to build that anyway or it is a nightmare for the developer when they go to sell; and she thinks as far as the Board approving this right now to make the change and just change the rezoning she is comfortable with it, unless the rest of the Board has something to add to it.

Chair Lober clarified this is for Items H.5. and H.6. and he asked the County Attorney if the Board can do them together or if it needs to separate them.

Attorney Bentley advised it should be the Comprehensive Plan first and they should be done separately.

Commissioner Isnardi stated if there are any biosolids or any kind of hazardous material out there or any health concerns, they will not be addressed unless this place is developed; it makes sense to her to look at this as a positive thing if they are going to address the wetland issue through Planning and Zoning and Permitting; and for her it is an easy support.

There being further comments or objections, the Board conducted the public hearing and executed the Letter for 2019-2.1 Large Scale Comprehensive Plan Amendment; and adopted Ordinance No. 19-25, amending Article III, Chapter 62, of the Code of Ordinances of Brevard County; entitled "The Comprehensive Plan", setting forth plan amendment 2019-2.1; amending Section 62-501, entitled "Contents of the Plan"; specifically amending Section 62-501, Part XI, entitled Future Land Use Element and Future Land Use Map Series; providing for internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date.

**Result:** Adopted

**Mover:** Rita Pritchett

**Seconder:** Kristine Isnardi

**Ayes:** Pritchett, Lober, Tobia, Smith, and Isnardi

**H.6. Ray L. Colgin (Chad Genoni) requests a change of zoning classification from AU to RU-1-7, with a BDP limited to two units per acre. (19PZ00118) (Tax Account 2441237)**

Chair Lober called for public hearing on a request by Ray L. Colgin for a change of zoning classification from AU to RU-1-7, with a Binding Development Plan (BDP) limited to two units per acre.

There being no further comments or objections, the Board approved a request by Ray L. Colgin for a change of zoning classification from AU to RU-1-7 with a BDP limiting two units per acre, on property located at 6500 State Road 524 in Cocoa.

**Result:** Approved

**Mover:** Rita Pritchett

**Seconder:** Kristine Isnardi

**Ayes:** Pritchett, Lober, Tobia, Smith, and Isnardi

**F.2. Chair Lober pointed out Item F.2. was mistakenly added to consent when it should have been under Public Hearings; and he asked if staff would prefer to address it after Item H.1. or simultaneously with H.1.; and the Item will be discussed as Item H.1.B.**

Jeffrey Ball, Planning and Zoning Manager, stated he would read them both into the record since they are companion applications, however, he advised the Board would need to have a separate vote.

**H.1. Think Green Brevard, LLC (Stuart Buchanan) requests a CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a restaurant and wedding venue, in the IU zoning classification. (19PZ0066) (Tax Account 2104639)**

Chair Lober called for public hearing on a request by Think Green Brevard, LLC for a Conditional Use Permit (CUP) for alcoholic beverages (full liquor) for on-premises consumption in conjunction with a restaurant and a wedding venue in the IU zoning classification.

Jeffrey Ball, Planning and Zoning Manager, stated Think Green Brevard, LLC requests a CUP for alcoholic beverages for on-premises consumption for a restaurant and wedding venue, in an IU zoning classification located in District 1; and Item F.2. (H.1.B.) is a waiver request for a wall

requirement for the Think Green Brevard Business Complex. He mentioned staff has received four letters of support for the CUP application.

Stuart Buchanon stated he is speaking on behalf of Think Green Brevard, LLC; the owners are in attendance as well as many members of the community to show their support for the application; the application is a CUP to allow alcoholic beverages; the property is just under eight acres, 7.86 acres; he pointed out the applicant also owns an additional seven acres to the west; and the additional seven acres to the west is vacant and helps provide buffering between the venue and the residential neighborhood to the west. He went on to say the property is located on the northwest corner of U.S. 1 and Parrish Road so it is on an arterial roadway; they have several letters of support; he mentioned all alcoholic beverage consumption is in limited areas which are designated on the site plan; and recently the North Brevard Economic Development Zone (NBEDZ) awarded the applicant a grant of \$250,000 to go towards this project. He continued by saying this is a shutdown citrus plant that the property is located on; the redevelopment and repurposing of the citrus plants is one of the number one priorities in the North Brevard Economic Development strategic plan; and he stated they fully agree with staff's special conditions. He asked the Board to vote favorably upon this application.

Commissioner Pritchett stated she thinks this is a good project; she talked to Jason Reichman earlier and they had a couple concerns; and she asked if he is still good with what is on the email. She went on to say she would like to approve this with conditions; and she inquired how to do that.

Mr. Ball explained there is one condition in the staff report which is, provide documentation as to the site meeting County parking, Section 62-306 of the Code prior to the approval of the alcoholic beverage license, therefore, if Commissioner Pritchett would so indulge and add that to the motion.

Commissioner Pritchett added also on site consumption of alcoholic beverages will be limited to the tasting bar, chapel reception hall, and the patio.

There being no further comments or objections, the Board approved a request by Think Green Brevard, LLC, for a Conditional Use Permit (CUP) for alcoholic beverages (full liquor) for on-premises consumption in conjunction with a restaurant and a wedding venue, located at the northwest corner of Parrish Road and U.S. Highway 1 intersection in Titusville, in the IU zoning classification with conditions that the owner/applicant provide documentation as to site meeting County parking standards, per Section 62-3206, of the Brevard County Code, prior to approval of alcoholic beverage license for on-premises consumption and on-site consumption of alcoholic beverages will be limited to the tasting bar, chapel reception hall, and the patio.

**Result:** Approved

**Mover:** Rita Pritchett

**Secunder:** Kristine Isnardi

**Ayes:** Pritchett, Lober, Tobia, Smith, and Isnardi

#### **H.1.B. Waiver Request, RE: Waiver of Wall Requirement for Think Green Brevard Business Complex 19WV00017**

Chair Lober called for public hearing on a request by Think Green Brevard, LLC, for a waiver of the wall requirement to the property.

There being no further comments or objections, the Board approved the waiver for the wall

requirement for the property located at the northwest corner of Parrish Road and U.S. Highway 1 intersection in Titusville.

**Result:** Approved  
**Mover:** Rita Pritchett  
**Secunder:** Kristine Isnardi

**H.3. Kim Fischer and Brian Scott Hall request a change of zoning classification from BU-1 and BU-2 with a BDP, to all BU-2 and removal of the existing BDP. (19PZ00113)**

Chair Lober called for public hearing on a request by Kim Fischer and Brian Scott Hall for a change in zoning classification from BU-1 and BU-2 with a Binding Development Plan (BDP), to all BU-2 and removal of the existing BDP.

Commissioner Pritchett inquired how to address this; she stated she likes the project, but the residents had a concern with possible outdoor storage; and she does not know how to go about it without them in attendance. She added she was going to request that they keep outdoor storage on the south side of the property.

Jeffrey Ball, Planning and Zoning Manager, stated he would like to read the Item into the record before discussion. He went on to say Item H.3. is a request by Kim Fischer and Brian Scott Hall for a change in zoning classification from BU-1 and BU-2 with a BDP to all BU-2 and removal of the existing BDP; and the project is located in District 1.

Commissioner Pritchett inquired how to approve this and limit the storage.

Kim Fischer stated they do not have an issue with the storage being in the back.

Commissioner Pritchett thanked Ms. Fischer; she stated that would be perfect; and she made a motion to approve this and limited the outside storage to the south 200 feet of the property.

Tad Calkins, Planning and Development Director, asked if that would be placed in the BDP; and he asked that the applicant submit a BDP to that effect.

Commissioner Pritchett advised the applicant agreed.

There being no further comments or objections, the Board approved the request by Kim Fischer and Brian Scott Hall for a change in zoning classification from BU-1 and BU-2 with a BDP to all BU-2, with approval of a BDP limiting outdoor storage to the south 200 feet of the property.

**Result:** Approved  
**Mover:** Rita Pritchett  
**Secunder:** Kristine Isnardi  
**Ayes:** Pritchett, Lober, Tobia, Smith, and Isnardi

**H.4. Laura Kimberley Miller requests a change of classification from RR-1 to AU and removal of an existing BDP. (19PZ00099) (Tax Account 2106652)**

Chair Lober called for public hearing on a request by Laura Kimberley Miller for a change of classification from RR-1 to AU and removal of an existing BDP. He advised he has some disclosures; he inquired if anyone else on the Board had any disclosures; and he mentioned

there was one that was handed out and it will be added to the minutes of the meeting from Commissioner Pritchett with dealing with Kimberley Miller, Laurilee Thompson, and Darrell Higginbotham.

Commissioner Isnardi disclosed she received an applicant email from Ms. Miller with letters of support on December 4; her office also received a letter in the mail from David and Joyce Kraig dated November 26, and she received it on December 2; her office received an additional email with a copy of that letter and a letter they submitted to P&Z; and she believes she thinks that is all she had, but if she missed any the rest of the Board submitted the emails it received.

Chair Lober advised he only has a couple as well; it looks like on November 28 his office received an email from David and Joyce Kraig expressing some concerns about the proposal; the subsequent day, November 29, his office received an email from Laura Kimberley Miller with a new opening statement replacing the prior one; and she provided some letters of support in a subsequent email.

Jeffrey Ball, Planning and Zoning Manager, stated this is a request by Laura Kimberley Miller for a change in zoning classification from RR-1 to AU and removal of an existing BDP; the subject property is located in District 1; and staff has received 20 letters of support and two letters of objection.

Laura Kimberley Miller stated there is one big goal associated with her plan and that is agriculture but she needs to remove the RR-1 and switch over to AU so she can operate her farm; her long-standing goal is to build her own agricultural operation; she has always loved working with plants and she is in the process of setting up organic hydroponic farm that reduces herbs and microgreens, and green leafy vegetables; and she noted this will be a wholesale hydroponic organic growing operation that does not involve these of machinery, pesticides, fungicides, or heavy water; the growing uses tiny amounts of water; and everything is planted without soil, the water is circulated from the holding tank across the plant roots back into the same tank. She continued the additional water is added to the tank only as the plants use it; all the nutrients and pest control is organic only; the herbs, microgreens, and gourmet lettuce produced will be delivered to restaurants, stores, and farmers markets; and she mentioned she is not planning on having people come to the farm to shop. She noted the entrance to her nine acres is at the end of Eola Avenue and being the new neighbor on the block she has gotten to know 20 or so homeowners on her street; she feels as though some of them are her extended family; as the Board can see by the letters of support that they are very happy and supportive of her plans to continue on with the agriculture status; and she hopes to have the support of the County and to be given the same property rights as every other agricultural nursery in the State of Florida and in Brevard County. She commented the bottom line is she needs the AU zoning to move forward with her organic farm; she needs to produce income to maintain the ownership of this beautiful natural gem; and she reiterated she would very much like the support of the Board.

Commissioner Pritchett stated she has been struggling with this for a bit; not due to the fact that Ms. Miller might be able to grow some nice fruits, vegetables, and those types of things on it; she spoke with Ms. Miller a few times and Mr. Higginbotham who came to her office; she believes residential is really a better fit on this property as it is surrounded by houses, they might be zoned agriculture but they are really all houses; but she does think that growing crops there may possibly be a good fit; and as she discussed with them, her biggest concern would be traffic going back there, but as Ms. Miller just stated her goal is not to have people back there shopping, she would be bringing the items out. She continued by saying she spent a little time with staff and they said the zoning probably would be better as AU(L) which is exactly what

Ms. Miller is looking for; she explained what that does is it puts the constraints on it not becoming an actual business back there where she has to become concerned with the surrounding neighborhood with traffic; and she advised if Ms. Miller is good with that, she would be comfortable with giving her AU(L). She went on to say she had talked with Ms. Miller about a BDP and she was good with that; that letter L already encompasses that and staff helped her with this; and she advised Ms. Miller there would be no selling of agricultural products on the property. She mentioned another thing staff said would probably be a bad fit would be that she would not have any big events without going through the process for permitting; there would not be any camping or overnight stays for commercial purposes, the same with resort capabilities; Ms. Miller will not be allowed to do anything commercial back there except what she is planning on doing; and if she is comfortable putting that in a BDP, she thinks Ms. Miller would enjoy the AU(L).

Ms. Miller stated she does not know the rules on AU(L), she has not seen those so she assumes they go along with what Commissioner Pritchett is saying.

Commissioner Pritchett asked Mr. Calkins to explain.

Mr. Ball asked George to brief Ms. Miller what the differences are.

Chair Lober stated that was one he had spoken to staff about as well; and he mentioned he tends not to interfere with zoning items that are outside of his District, but the AU(L) struck him as a good fit as well.

Mr. Calkins suggested to the Board that Ms. Miller speak with Kimberly just for a moment and move on to Item H.7; and then come back to it and give her the opportunity to hear what the proposed uses are or what the permitted uses are; and then Ms. Miller can make a decision.

Chair Lober stated he also has several speaker cards on this Item as well so the Board will revisit those when it comes back to this Item; and he does not want Ms. Miller to go off and not have the opportunity to hear whatever testimony may be given.

Mr. Calkins agreed with Chair Lober.

Commissioner Isnardi asked if the Board has to officially table it if it is moving on to the next Item.

Mr. Calkins responded he does not believe so.

**H.7. Lazy River Investments, LLC (Bruce Moia) requests a BDP limited to a maximum of 8 lots, in an RU-1-13 zoning classification. This item was tabled from the October 3, 2019, meeting. (19PZ00093)**

Chair Lober called for a public hearing on a request by Lazy River Investments, LLC, for a BDP limited to a maximum of eight lots in an RU-1-13 zoning classification.

Commissioner Tobia disclosed on December 4, he received an email from Chelle Woods who copied him on an email from Commissioner Pritchett where she thanked the Commissioner for her thoughtfulness and expressed concern with the number of lots and the water; also on December 4 he received an email from Bruce Moia; a criticizing email from Mary Sphar in the record; and today, December 5, he received an email from David Botto stating that this could be additionally hard for the aquatic preserve and that putting fill in the Coastal High Hazard Zone has a potential to harm the Lagoon.

Commissioner Pritchett stated she placed her disclosures in the book already.

Commissioner Isnardi stated she has the same correspondence as Commissioner Tobia, at least some of it from David Botto and Mary Sphar and they are both opposed to it; and she does not know if she got any emails today.

Chair Lober stated he has several from Mr. Botto; he has one from October 3, one from October 29, and another from December 5, all expressing concern about this or alternative approaches; and he also has an email from December 4 from Ms. Sphar expressing concern about it.

Jeffrey Ball, Planning and Zoning Manager, stated Lazy River Investments, LLC, requests a Binding Development Plan (BDP) limited to a maximum of eight lots in RU-1-13 zoning classification; the project is located in District 3; and staff has received 12 letters of objection.

Bruce Moia stated the Board is familiar with this project as it has been discussed before; there were a lot of issues that came out in a past meeting so his client submitted a new BDP bringing back a lot of the things he was proposing when they had asked for the full 20 lots; some things his client has conceded on are there will be no more than eight lots total on the property, there will be 2,000 square feet per home, number four was changed because of some issues on lot size so there will be no lot less than one acre minimum, and no lot located in the Coastal High Hazard Area will be less than 2.5 acres; he noted they will not only comply with the current flood management criteria, they will also comply with the future flood map criteria which means they will compensate for sea-level rise and climate change; they will make every effort to preserve every Specimen Oak on the property and they will preserve every Specimen Oak within the current Coastal High Hazard Area which is all but two; and they will comply with the upgraded septic tank requirements, so if they build within that setback, not that they were proposing two but they would if they did. He added where it states they would not impact the wetland shoreline fringe they will modify that to add except for a dock, they are still committed to one access connection to Grant Road, and they are still committed to providing a 15-foot buffer on the north, east, and west. He went on to say he would like to save the rest of his time for rebuttal.

Chelle Woods stated she is speaking on behalf of all the people of Micco who are not in attendance; Micco Homeowners Association (HOA) really likes the fact that there will be development of eight homes on this 20 acres, they are not arguing against the development; they believe this could be an exemplary development, something they could point to and say every developer on the coastal areas needs to do exactly what this developer has been held to; and that is the problem because the BDP says a lot of things but it is still inadequate. She noted it does not tell the people anything; most of this stuff is required and that is fine she likes that they will be doing what is required, however, the people do not know what is really happening; she and Mr. Moia had a conversation on November 27 and he disclosed that they are planning on doing four homes in the Coastal High Hazard Zone; the HOA's position has been to please stay out of the Coastal High Hazard Zone; and she pointed out objective seven of the County's own Coastal Management Element says to please stay out of the Coastal High Hazard Zone and limit the density by moving it outside of the Coastal High Hazard Zone. She continued by saying the Coastal High Hazard Area is approximately four to five acres; if the developer puts four homes on the river in that spot and they are going to be 2.5 acres each, there are specimen trees in there that need to be taken care of, it is an AE flood zone which requires fill on the pad of the home, and this is a big problem; she commented the fill is going to destroy the trees, it has to because the trees are way down here and the fill will be up here;

she talked to an architect friend of hers and he said that while each home to be on 2.5 acres they would have to be like flag lots, 150 feet wide all the way back, to create the 2.5 acres; and they are having a little trouble with this because it sounds like the Coastal High Hazard Area is going to be filled in with homes and things. She went on to say she feels like in the BDP there needs to be more clarification on that; she is really concerned about it as is the HOA because of the fill, the trees, and mostly because her focus is on the health of the St. Sebastian River and the Indian River Lagoon (IRL); there is a lot of development real close to the St. Sebastian River, there are all types of contaminants going into it and they are moving out into the IRL; and she noted the County has spent lots and lots of money trying to improve the health of the Lagoon. She stated there is advanced septic nowadays and she thinks the developers need to be using it especially on the coastal properties, it is very important to preserve natural resources because that is what brings the tourists; she hopes that some kind of agreement can be worked out; she believes she could handle the one home on the Coastal High Hazard Area which was proposed May 30; and she noted the people really need the Board's help to do the right thing here.

David Montgomery advised he has been following this all year and was surprised that the new BDP submitted was significantly different than the previous one; he objects to the approval of the BDP until more detail can be provided on a conceptual site layout that addresses the sensitivity and subject to hazard that this property has so close to the Indian River; there are issues with sensitivity in the environment; the Plan does not have any conceptual layouts that would address how the septic fields would be laid out, there is no talk of any retention ponds or stormwater management, and Mr. Moia has stated several times he would be using advanced stormwater management techniques but there is no information provided as to what those are to mitigate stormwater run-off and pollutants into the St. Sebastian River; the protection of trees is not really addressed, and he agrees with Ms. Woods about adding all that fill; he really cannot imagine someone building in the Coastal High Hazard Areas to begin with so that is one of his main objections consistent with the Brevard County Comprehensive Plan, people should not be building in these Coastal High Hazard Areas; and he thinks that would be an issue that would be addressed in a BDP as to how the Coastal High Hazard Area would be developed. He mentioned he worries about risks to the homeowners that are buying this property as low as it is and with sea-level rise and severe stormwater events causing a great deal of water intrusion; and having some sort of conceptual plan could assure that the future homeowners will not be held to a high hazard risk due to lack of attention to stormwater and severe weather considerations during the construction of this site.

Mary Sphar stated she is speaking for Sierra Club; the subject property appears to be the most vulnerable, at least one of the most vulnerable to storm surge and associated flooding in the area of Grant Road and the river; the Coastal High Hazard Area which is the area of storm surge from a Category 1 hurricane is about five acres in size; this area basically overlaps Federal Emergency Management Agency (FEMA) flood zone AE, in other words this property has more serious constraints than almost all the properties in that area; and to complicate matters, any clear cutting of fill that is added will allow more stormwater run-off carrying pollutants to St. Sebastian River and the IRL; in order to raise pads in the coastal High Hazard Area to 6.3 feet North American Vertical Datum (NAVD) a huge amount of fill would have to be brought in; placing several feet of fill on the roots of trees would kill them losing their service of absorbing stormwater run-off; and she believes there is no good way to develop as usual, clear, cut, and fill in the Coastal High Hazard Area and protect the IRL at the same time. She stated the Sierra Club is asking for three improvements to the revised BDP to protect the water quality of the IRL which includes no residences in the Coastal High Hazard Area, advanced septic, and rewording of the language about the Specimen Oaks; this is not some outrageous demanding fact Palm Bay considers it to be so reasonable they put the requirement in the Coastal

Management Element of the Comprehensive Plan; Palm Bay's Comprehensive Plan Policy CZM-1.6C states, "The City shall not permit any new septic tanks to locate within the High Hazard Areas of the coastal zone nor permit habitable structures within any High Hazard Zone"; and right now the applicant is placing no restrictions on the number of homes in the Coastal High Hazard Area, yet in the May 30, BDP for 16 homes he limited the number of residences to one in the Coastal High Hazard Area. She added with eight homes he has more flexibility and he should be able to cite all homes out of the Coastal High Hazard Area; the second request for advanced septic throughout the property, in comment letters Florida Department of Environmental Protection (FDEP) and St. Johns River Water Management District (SJRWMD) recommended this; the applicant agreed to put this in his May 30, BDP; and the third improvement is to change the wording in the BDP about the specimen trees back to at least to the wording of the May 30, BDP as the current wording suggest that the applicant is looking for excuses to cut down these Specimen Oaks. She went on to say surely with 20 acres to work with he does not have to put any house pads, On-site Sewage Treatment and Disposal System (OSTDS), driveway, roadway, stormwater management system right where a specimen Oak tree is located; and the County is spending millions of tax dollars on public safety related to storms and investing \$500 million on Lagoon clean up over a period of 10 years. She stated the Sierra Club would urge the Board to make a responsible decision that is not counter-productive to the economy's huge investments; and she asked the Board to please ask the applicant to revise the BDP to protect the health of the precious IRL.

David Botto stated he serves on the Marine Resources Council; he mentioned they wanted to congratulate the Board and let it know they appreciate the careful management on this issue; this is a very sensitive piece of property and it is very important to the impact on the Lagoon; they were quite disappointed in the new BDP because there is really no indication of concern or coordination of how to do this job without impacting the Lagoon; and that is really what the Marine Resources Council's purpose is. He added there should be no additional homes to an already impaired aquatic preserve; the Marine Resources Council's main objective at this point is developing in the Coastal High Hazard Area, even with a 50-foot buffer; there is no way the developer can prevent harm from the Lagoon if it is allowed to develop in that High Hazard Area; and he noted there is no indication in the BDP on tips to do something with the very simple and very proven items of low-impact development which he really expected in this second submittal. He continued by saying in light of that he would ask the Board to disapprove this again; and he knows that is a problem for the Board but he believes this is too sensitive and too important to the Lagoon to let it go as it is now.

Jacob Zehnder stated this project seems to have some good and bad that keep coming in and out of the proposal; over time protection of the wetland fringe seems like a great idea, protection of the Specimen Oaks also seems great, but as everyone knows the devil is in the details and there are quite a few caveats that have been stated in the draft plan that was submitted; allowing for removal of the Specimen Oaks if it is convenient for the development of the property if it is in the way at the pad it is going to be covered in fill, that does not sound exactly like going out of the way to protect the Specimen Oaks which are all the majority as Mr. Moia stated are in the Coastal High Hazard Area where he is adding multiple feet of fill; he advised he thinks this is slowing moving in the right direction so he would like to stay optimistic that this development can have a plan that works for Mr. Moia and his client; however, the three things that are really needed is to get the houses and the fill out of the Coastal High Hazard Area, advanced septic across the board for all the units, and protection for Specimen Oaks primarily in the Coastal High Hazard Area.

Mr. Moia stated there were some things he agrees with that were said, mostly by Ms. Woods; when she said pollution from what is going on there is running right into the river, it is, and that

is what he is trying to prevent with this development; this would be the only development that would have a stormwater system that complies with the current regulations which requires not exceeding the levels of nitrogen and phosphorus leaving the site once it is developed compared to what it is now; and currently everything south of Fleming Grant Road all the way up to U.S. 1 has no retention and flows directly into the river. He mentioned there are dozens of homes that are built still within the Coastal High Hazard Area and flood zone still existing today between this property and U.S. 1; what he would do is build and if they did encroach in the Coastal High Hazard area, they would be subject to all the current rules and regulations that would dictate the elevation, the type of construction and everything that would address the concerns associated with building in a Coastal High Hazard Area; there are properties on the river that are completely within the Coastal High Hazard Area that could not be developed with a single-family home if those rules were not in place; and he reiterated those rules are in place so that people can develop in the Coastal High Hazard Area and it will cause no significant detriment. He added if everything is directed away from the river there is no effect on the river. He continued to say he thought he was clear about the trees, that they would preserve every tree in the Coastal High Hazard Area as it sits today; he will put that in the BDP right now; he advised there are only two Oaks that are not in the Coastal High Hazard Area; and he noted the way he understands it, and he could be wrong, is the Comprehensive Plan says that the density should not be increased within the Coastal High Hazard Area; the Comprehensive Plan for that property is one unit per every 2.5 acres, so by providing that in the BDP he would be complying with that intent of Comprehensive Plan. He commented those lots would be limited to one per 2.5 acres. He went on to say the previous BDP presented last time he was in front of the Board had one condition on it, that people did not want eight lots, this one has 10; he could have put a whole lot of stuff in there that was already in the Code, but they did not think that was really necessary like the stormwater requirements; that is all per Code, it is County Code for St. Johns requirement; they have to abide by that so they did not see the reason to place that in the BDP; and he advised he thinks this is fair and reasonable and he hopes the Board does too. He stated they have talked about this for a while; he is not meeting everything the people want, but they have come a long way; based on the development of how that area is developed now, this is more than fair and reasonable because what is out there right now is just the wild wild west; and he noted there is no treatment of stormwater going into that Lagoon; and he feels like the new guys are being penalized for sins of the past, where they are actually providing the treatment and preserving the IRL a lot better than what is going on out there. He commented he thinks he can make this work with all the technology that is out there and all the requirements that the County has in its Code that he believes he can make this a very good development; and he is hoping for the Board's support and approval.

Commissioner Isnardi asked Mr. Moia to explain what is happening on other properties that are not developments versus someone buying a lot and building in the Coastal High Hazard Area.

Mr. Moia advised the way that works is if it is just a single-family home, and they are building on one lot, they are exempt from subdivision Code requirements, exempt from the stormwater requirements, and they are exempt from the SJRWMD permitting; if someone does a Subdivision development like he is doing, he is subject to all the requirements in the Land Development.

Commissioner Isnardi stated she noticed the land and the zoning is not compatible; that is the step that is supposed to follow; and she asked if he were to split those up into single-family lots, if he would have to come before the Board.

Mr. Moia responded he would not.

Commissioner Isnardi stated she does not think people realize, it looks beautiful, it feels right,

and no one wants development but when the water is actually managed, any wetlands, and any issues on that property it is actually doing better; the run-off is managed better that would run into the Lagoon; and she knows Mr. Moia has made some compromises as far as what he is requesting for. She advised unless she hears some new information, she does not really have an issue with it; she stated she thought the big issue was they did not want Mr. Moia to put anything different that one per one, and that was something Mr. Moia's client agreed too, and now the issues just keep getting more and more and they are not even requirements that the Board is demanding of other people who are building properties. She went on to say she thinks the Board either needs to change the rules and apply them to everybody, not punish one individual because the County did not have rules in place for so many years and caused so many problems; she wants Mr. Moia to follow the rules, she does not want him doing anything that is going to hurt the water or the land; and she thinks those rules are in place and if they are followed that is the right way of doing it.

Commissioner Pritchett asked Mr. Moia how many acres are in the High Hazard Area.

Mr. Moia responded approximately four.

Commissioner Pritchett asked if his development is going to be one house per every 2.5 acres.

Mr. Moia advised when looking at density it does not look at the actual structure, it is the lot itself.

Commissioner Pritchett stated it is going to be hard to put more than a couple houses in there anyway.

Mr. Moia stated it would be difficult and probably expensive so some people would probably not even want to; when a person buys a lot they may not want to bring truckloads of fill, or they may decide to build on a stem wall to try and protect the trees; and there may end up being no houses in that area.

Commissioner Pritchett asked if there would be a 50-foot buffer.

Mr. Moia stated there is a 50-foot buffer required.

Commissioner Pritchett stated she remembers going through this last time, trying to get the density changed; she thinks the Board got to where it is comfortable with one per every 2.5 acres; she is glad Mr. Moia is working with the Oaks; she remembers giving Mr. Moia a hard time at the last meeting about the septic tank and Commissioner Tobia stated that was not fair, and she thought about it, she thinks he was right. She continued by saying the Board has to do what is fair for the Lagoon; she is still listening but she has gotten a little more comfortable with the project; in the Coastal High Hazard Area, that is mainly for flooding; and she looked into this piece of property and it is tucked into a little waterway with land all around it, and if someone were to build on it they would have to hold onto their own storm water and build a home that is not going to flood. She continued by saying she is not good at this but she is trying to learn it; Commissioner Isnardi has gotten her attention a few times when she talks about bringing in development that the requirements fix a lot of the problems; and she mentioned she is still listening and she is probably getting a little more favorable to this now than she was in the past. She mentioned she did not think Mr. Moia could fit too many on that front because it is only four to five acres.

Commissioner Tobia stated he has some concerns with building in the Coastal High Hazard Area, but he does not know if they were grounded in anything other than basic thoughts; and

he asked Darcie McGee for a summary of her education.

Ms. McGee stated she has a bachelors Degree in applied technology, and a Masters in Environmental Engineering both from Florida Institute of Technology (FIT).

Commissioner Tobia asked how long she has worked in these fields really to the impact of the environment and specifically water bodies.

Ms. McGee stated from 1993 to 2004 she worked in engineering consulting firms with her primary job functions being environmental assessments, remediation, and permitting; since 2004 she worked for the County, Natural Resources Management; she started as an urban forester and she is now assistant director of environmental protection programs which is environmental remediation and compliance, and environmental resources management; and they regulates flood plains, wetlands, surface water bodies, the Atlantic coast, and the IRL.

Commissioner Tobia asked if it would be fair to say Ms., McGee is an expert in determining impact to developments with regard to water quality and flooding specifically on the IRL.

Ms. McGee stated she feels she is an expert in the areas that she regulates; she mentioned she works with a lot of other professionals that she can collaborate with when she needs to fill in the gaps of her knowledge; and their regulations are based around mitigating, potential impacts of development on their natural resources.

Commissioner Tobia stated when he asks these questions he is really astounded by the quality of expertise that the County has on staff. He went on to say he understands that the County has not had the opportunity to study the specific impacts of how having septic tanks in the Coastal High Hazard Area; she stated during the last meeting that they had asked whether the variable Coastal High Hazard Zone represents additional risks to the Lagoon, and that "There could be concern," and he inquired if that was based on Ms. McGee's experience or personal subjective opinion.

Ms. McGee advised that was based on her education experience; and if Commissioner Tobia needs additional data to quantify the average range and impacts of septic tanks in the Coastal High Hazard area.

Commissioner Tobia inquired that based on Ms. McGee's knowledge and expertise does the directive in the County's Comprehensive Plan to "limit densities within the Coastal High Hazard Zone in the direct development outside the area" require the County to consider whether the installation of septic tanks in this area is necessary.

Ms. McGee stated she believes so.

Commissioner Tobia asked at minimum is there reasonable alternatives to design and is the County obligated to restrict the development in order to limit the impact on the development consistent with the intent of the Comprehensive Plan.

Ms. McGee advised she believes so.

Commissioner Tobia inquired if it is an objective opinion of an expert witness based on the experience and education competent of substantial evidence.

Eden Bentley, County Attorney, responded affirmatively.

Chair Lober stated he really does not want to step on anyone's toes; this is certainly an issue that disproportionately impacts that area, but to say it does not have meaning in the other areas around the Lagoon; and his inclination would be to support whatever Commissioner Tobia would like to do with respect to this since it is an issue that falls within his District.

Commissioner Isnardi asked regarding the upgraded septic tanks is it a possibility, in the right location even if it is in the Coastal High Hazard Area, that they would have little to no impact on the Lagoon, if they are newer and the updated type septic tanks.

Ms. McGee stated the septic overlay is meant to reduce the nitrogen by 65 percent; the distances chosen by the Board for the cut off for that overlay was never meant to completely eliminate nitrogen impacts to the Lagoon; there are still nitrogen impacts as it goes further away, it is just that it is kind of a breaking point looking at the costs to remove the nitrogen from the system versus the property rights and people's pockets; there was that tipping point that was chosen by Board, so there are still nitrogen impacts even from the advanced treatment unit, it is just that it is being reduced by 65 percent.

Commissioner Isnardi asked if Ms. McGee would be able to gauge or say with certainty that not developing and not managing other run-off that current exist, if that would be greater or less than a high tech minimal nitrogen releasing type of upgraded septic system.

Ms. McGee stated she spoke with Virginia Barker, Natural Resources Management Director, about that trying to figure out if there was some way to quantify this before the meeting and there would have to be that delta in there which would take some time and money to really quantify it which she has not been directed to do; right now there is no run-off coming off that property that has nitrogen in it; and the trees are there treating stormwater that enters the property so there is no additional loading from septic on the property at this time.

Commissioner Isnardi stated there are a lot of other properties, single-family residences, that do not have BDPs and do not have any sort of plan or limitations to acreage right now that are being built that do not have to come before this Board or adopt those new rules.

Ms. McGee stated that is correct unless they are building in the septic overlay then they would need to have the advanced treatment.

Commissioner Isnardi pointed out even if they were a single-family residence having the septic they would just have to have advanced septic system; and she inquired if that is correct.

Ms. McGee advised that is correct; and of course, they would have to meet the flood plain.

Commissioner Isnardi stated when Commissioner Pritchett brought it up that the Coastal High Hazard Area has a lot more to do with flooding than it does environmental impacts, as far as impacting the property more than it does; she understands both sides of it; she thinks there needs to be a balance of property rights versus responsibility; however, someone cannot expect one development, who appears to be trying to do everything responsibly, appears to be trying to work with neighbors, they cannot be denied or expected to fix all the problems of the past, and the problems that still exist today that are being allowed. She went on to say she does not know how that can be put on the developer and asked them to go above and beyond when the County does not have those same expectations of people building houses right now in the Coastal High Hazard Area; she advised she does not know how the rules can be changed for one; this client could easily break up those properties; and she thinks it is the County's responsibility to make sure the land use is compatible with the zoning which should have been done in the past, and that was a question she had forgot to ask.

Mr. Moia stated he is willing to add another condition to the BDP that no septic systems be placed in the Coastal High Hazard Area; to correct one thing that Ms. McGee said, the existing vacant properties do have nitrogen and phosphorus that comes off the property and naturally occurring based on the criteria established by the University of Florida; there is no such thing as zero, there is some; and what he has to do is match whatever that is or less so it is never zero. He added even vacant properties contribute nitrogen and phosphorus.

Commissioner Pritchett thanked Commissioner Tobia for going through that with Ms. McGee; she agrees with Commissioner Lober; she does so much research on things in her District trying to figure out what to do; she knows Commissioner Tobia is putting in that time, so she thinks the key is to figure out what is going to make Commissioner Tobia think that it is appropriate in his District; and she will be listening to what he will be negotiating here. She went on to say even on the sewer and the septic, the sewer lines leak too; it is good to have the high end ones but even if it is sewer there is going to be problems, there is no perfect thing; she will be interested in hearing if Commissioner Tobia is agreeable to that; she really wishes Mr. Moia could have worked this out with Commissioner Tobia before today to see what he thought was appropriate for the property; and she reiterated she is not as much against it as she was in the past.

Commissioner Tobia pointed out he had three concerns, first of all, with trees, and it looks as though Mr. Moia has done a good job ameliorating those to his standards for the first one; the second one was the septic tanks located in the Coastal High Hazard Area and he was concerned though 65 feet or 60 meters, or whatever it was, that Mr. Moia would go with Anaerobic; he knows that was not agreed to at the meeting he had with him, but he just said he would not place any septic tanks in the Coastal High Hazard Zone, which means Mr. Moia has gone above where he was on that; and the third one is the number of homes. He added he is not an engineer and he is not all that bright when it comes to layout but he is trying to figure out the number of homes that could be placed in the Coastal High Hazard Zone; Mr. Moia had said there is a possibility of no one wanting homes in that high hazard zone; and he is just trying to get a comfortable number, zero would be the best but his client may think otherwise. He continued by saying when it comes to doing flag lots and extremely narrow lots, he thinks there could be at least six lots, and he is just drawing this in his head based on what was drawn in the past in that Coastal High Hazard Area; even if the septic tanks were not in there he would certainly be a little hesitant with the amount of fill and other things that would go on; and he asked Mr. Moia if there is a number he can provide.

Mr. Moia stated no more than four.

Commissioner Tobia stated he would be a lot more comfortable with two; he heard the testimony from what sounded like a pretty darn good expert to him that said there could be an impact on the Lagoon's health by building in the Coastal High Hazard Zone; there is no evidence to state that it is not an impact so he wants to keep that as diminutive as possible; and in all honesty two is where he is at. He noted Mr. Moia stated it could be zero and he hopes it is zero, but there are four other Commissioners and he does not see this just as his area because the health of the Lagoon is something that impacts all of the Board and the 80,000 people in Brevard County so he appreciates the deference his fellow Commissioners lay on him; he also appreciates the two of the three things that were of concern to him; even the third because Mr. Moia came down quite a bit; however, he just cannot give his support until it comes down to two.

Mr. Moia stated the way he sees it is developing the Coastal High Hazard Area is an impact, he could see two ways of it being an impact; one is reducing the flood area or flood volume; the other would be stormwater run-off; and if he addressed the stormwater run-off because he

cannot just directly discharge to the river, it has to be treated to the standards of the County and SJRWMD so it is less than or equal to what is happening right now and he is limited to the fill being an impact. He went on to say the IRL is an estuarine flood plain; the County does not have any regulation for compensating for fill in an estuarine flood plain; he thinks Ms. McGee would verify that; and so if filling it is not an impact and the drainage pollution is not an impact, he does not know what other impact might be of a concern.

Commissioner Tobia stated he appreciates Mr. Moia's expertise, however, that is why he spent quite a bit of time qualifying Ms. McGee on this on because it is outside of his scope; his question was very simple; clearly there is a possibility but he does not have the ability to answer that; however, he is sure staff has that ability.

Mr. Moia inquired if an additional building set back from the river be something Commissioner Tobia would be interested in entertaining, more than 50 feet.

Commissioner Tobia stated he does not know how much further it goes off because the High Hazard and he asked how much further from the 50-foot buffer is it.

Mr. Moia advised in parts it is about average of 400 feet which is way more than anything existing on the river right now; the average is from as little as 10 feet to the river for a home out there now to as much as about 200 with a lot of the homes at about 150 foot setback from the river's edge; and he mentioned he has the authority to make that a condition that he would not have any homes closer than 150 feet from the river's edge which would make it very compatible with a majority of the homes out there right now which would be minimum impact to the Coastal High Hazard Area should someone decide to build in it.

Chair Lober stated Commissioner Smith has been waiting awhile so he is going to let Commissioner Tobia mull over that for a while.

Commissioner Smith stated if Mr. Moia decided to sell the lots to eight individuals and not build on them, they could pretty much do whatever they wanted with those properties; and he inquired if that is correct.

Attorney Bentley responded yes.

Commissioner Smith interjected by asking if they would be restricted by the restrictions the Board is trying to impose on Mr. Moia.

Attorney Bentley responded that is a little bit if a yes and no answer; she explained individual lots do have fewer regulations than subdivision developments not because there is a restriction of three lots before someone would have to follow the subdivision regulations, the creation of eight lots does not work the way it was just described by Commissioner Smith; and she noted they would have to go through the subdivision planning process to have eight lots.

Commissioner Smith commented he is thinking if the developer just placed these lots up for sale and eight individuals came along over a period of two years to buy the eight lots, they are still subject to that.

Attorney Bentley explained if it was not captured by the regulations as they should be, it could happen; however it should be captured by regulation.

Commissioner Smith stated that is his first point; at this point, there is some control; and he has a map where he pointed out there is one foot here, two feet here, three feet here, and all the way back to here is three feet; all the way up here is 18 feet; whatever water that is coming in

here by the way of rain wants to come this way and whatever rain is on the surface is going to wash down into the river; therefore, from his perspective he really wants to go with the direction Commissioner Tobia wants to go because this is in his District. He noted he would personally like to see no houses built in this area because it is so low; if Mr. Moia is saying he would restrict an advanced treatment unit back here then it would have to be a pretty deep hole to cause it to run downhill; and he asked Mr. Moia if that is correct.

Mr. Moia responded they would pump it or do whatever they had to do, but it would be out of the Coastal High Hazard Zone.

Commissioner Isnardi asked why the zoning and future land use was not fixed a long time ago; and she asked if he knows the history of that.

Mr. Moia stated he does not know the history of that; he was told there was a history, that County staff was aware of it a while ago under a previous Director; getting incompatible zoning with the land use is unheard of in any of the cities within the County; this is not the only property there are plenty of properties within the County that have incompatible zoning and land use; the effort was abandoned so it is now up to the lot owners to come to the Board and make it compatible; and that is his understanding, there may be more to it, but that is what he was told.

Commissioner Isnardi asked staff if they know or if that was before current staff's time.

Tad Calkins stated he is not aware of staff proactively going out, administratively zoning properties since he has been there; he cannot say it has not happened; there are provisions in the Comprehensive Plan for that, but he does not believe that administrative authority has been granted to him as a zoning official, he believes that lies with the Board; and if the Board were to tell staff to administratively rezone properties, there are provisions in the Comprehensive Plan to allow that to happen.

Commissioner Isnardi stated that is probably a discussion for a later date; maybe it is something that can come back to the Board and look at the possibility of it; if it is something of concern maybe it comes back to the Board; and she thinks this is part of the problem.

Mr. Moia stated that is where his number four comes from because if he had compatible zoning on this property he could build four lots and he would not be here; he could throw the subdivision rules out the window and he could build four lots if they had that compatible zoning; he thinks they have jumped every hurdle except for one; and he thinks he has come far enough.

Commissioner Isnardi stated she thinks the 150 feet is acceptable; he agreed not to place any septic tanks in the Coastal High Hazard Zone; and to her that is pretty awesome.

Commissioner Tobia thanked Commissioner Smith for bringing the map up; and he asked for clarification that there would be no septic systems on this entire property.

Mr. Moia stated there will be no septic systems in the Coastal High Hazard Area.

Commissioner Tobia inquired that is different than what Commissioner Smith just said or did he misunderstand him.

Commissioner Smith responded that was what he was going for.

Commissioner Tobia pointed out Mr. Moia has already conceded to that so it was not added.

Commissioner Smith stated he was confirming that.

Commissioner Tobia stated he does not know where this is going; he can say where he is at; he appreciates the additional setback; he is willing to go to three homes in the Coastal High Hazard Area; it may not work, but three homes in the Coastal High Hazard Zone, no septics in that zone, and the provisions Mr. Moia made with the trees; and he would be amenable to that.

Chair Lober asked Commissioner Tobia when he said no septic tanks, he means none in the Coastal High Hazard Area.

Commissioner Tobia affirmed that statement.

Mr. Moia stated he spoke with both applicants and they are sticking with four, so he cannot go with anything lower than four; he is trying to do backflips here but that is the one thing; the river is this whole property and that is why everyone is there; the property does not have any value if it cannot take advantage of the riverfront in some form or fashion; and as he mentioned before if they already had the compatible zoning they would have that.

Commissioner Smith asked if Mr. Moia is saying, if people are interested that he wants to place four houses in this area on the map.

Mr. Moia responded affirmatively; he mentioned if he does that it will not look like that map any longer; and they will file with the State and the Coastal High Hazard Area will be reduced.

Commissioner Smith asked if he will bring in a lot of fill.

Mr. Moia responded they could build it on a stem wall; there are ways to do it but it would no longer be in the Coastal High Hazard Area once he does the development.

Commissioner Smith asked how high he thinks the stem walls would be.

Mr. Moia stated he does not know.

Commissioner Smith continued by saying because he is looking at one to three feet of land that is above the sea level here on the map.

Mr. Moia stated the finished four based on this would be a minimum of he thinks it has to be 12 inches above the 5.3, which would be the new flood elevation when they come out with the new maps next year. He explained almost none of those houses are going to comply with the new rule once it comes out; that flood plain is going to go farther towards the road; and the existing homes are going to be in the flood plain.

Ms. McGee stated she wants to clarify one thing, the fill can take him out of the flood plain, but the Coastal High Hazard Area remains the Coastal High Hazard Area; and she clarified it cannot remove that designation.

Mr. Moia stated he thought that was not true.

Ms. McGee advised she confirmed with the flood plain manager and that is what he relayed to her.

Commissioner Pritchett asked Ms. McGee if fill dirt is brought into the area what impact would that have on it as far as the flooding.

Ms. McGee explained Mr. Moia is going to have to do engineering to deal with the stormwater so flooding should not be an issue; it is the other impacts of fill when going to 6.3 feet when it starts at two feet; and that causes impacts to the trees, etcetera.

Commissioner Pritchett stated her question is if he brings in the fill and they take care of the flooding and maintaining their stormwater, then what is the downside of developing on that; and she asked what the problem is with this piece of property.

Ms. McGee advised from a safety standpoint, if they are filling to a height that is going to be above the Hazard Area, keeping in mind it is a category one storm surge, so looking at it from 2010 it was further back towards the water, in 2017 when they revised the model, it has now moved inwards, so theoretically in the future people could see the Coast High Hazard Area creep towards land; and then it gets into climate change stuff, but that is long term.

Commissioner Pritchett stated if they bring in the fill dirt and raise the level of the land, what have they done to cause harm that makes this a problem if he fills it, builds on it, and contains the stormwater.

Ms. McGee stated the problem, depending on each person's perspective of fill in environmentally sensitive land that is vulnerable to storm events as it goes through the decades here in Florida, what is safe in 2020, is that safe in 2050, she does not know; and that is just something the Board may want to think about.

Commissioner Pritchett asked if she is saying this still remains a flood area.

Ms. McGee stated it is complicated; the flood zones are based on elevations so the County knows now that FEMA is increasing that base front elevation; she explained using her hands, here is where it floods now and when the new maps come out they decide they will make that higher; and people should be higher. She asked the Assistant County Manager to help her explain.

John Denninghoff, Assistant County Manager, explained the Coastal High Hazard Area is based on a mathematical model of what happens with a storm surge during a hurricane and/or other types of events; it is based on water that is driven by wind; when the area that can be flooded by those waters, is altered then it stops it from going to those locations but the water tends to want to go to another location; and what winds up happening is the surging water from the hurricane winds up seeking other areas to go. He went on to say filling up the Coastal High Hazard Area induces changes to the behavior of the water or the storm surge occurring and the danger is not necessarily to the project that is being developed, but to other properties that have either already been developed or remain to be developed; and it can alter the conditions they would experience during a storm surge; and it is a little different than a regular flood, it is basically moving water due to the wind that comes from a hurricane.

Commissioner Pritchett asked if he is saying this could cause harm to other areas.

Mr. Denninghoff confirmed that statement.

Commissioner Pritchett asked if instead of bringing in fill dirt if he built them on stilts; therefore, it would not be changing the ability of the water to go there during hurricanes.

Chair Lober asked Mr. Moia's client to come to the podium.

Commissioner Pritchett stated she will have to ask Commissioner Tobia if he is comfortable with this, if it was placed in the BDP that they were built up on stem walls.

David Starkey stated being a builder for 37 years, he lives right next door for 16 years, the water has never come up higher than about maybe about 10 or 15 feet into his backyard during storms; stem walls can accomplish not having to fill around the pad, there would be steps up to the house and they would not have to give the trees and the vegetation around the house with the amount of fill that is put in; it is a very common practice to limit the amount of fill; it is an individual's determination whether they want to spend money on filling a pad; and it happens all the time. He mentioned he does it all the time and he has built hundreds of homes in Brevard County.

Chair Lober stated he wants to get things moving along on this and he asked Commissioner Tobia his thoughts.

Commissioner Tobia stated he is comfortable where he is at, a little less comfortable after Mr. Denninghoff explained the impact on the neighbors; and even Mr. Starkey's house right next door.

Mr. Starkey advised he is planning on selling house and moving right next door.

Commissioner Tobia stated that does not help his argument.

Mr. Starkey commented there are numerous houses along the river right now that are being built.

Chair Lober stated he has to cut him off because Commissioner Smith has his light on.

Commissioner Smith stated he has one more thought for Commissioner Tobia to consider; there are four houses in this High Hazard Zone, the Florida dream is lush green lawn, lots of fertilizer, lots of nitrogen and this is not much above swamp land here; and he asked if these people are going to want nice big, fancy green lawns with phosphorus and nitrogen. He went on to ask what that is going to do to the condition of the river.

Chair Lober stated the Board is basically at the juncture where there needs to be a motion to approve it, disapprove it, or no action taken; and he asked Commissioner Tobia how he wants to drive the vote.

Commissioner Tobia stated his position has been made clearly; and he is willing to affirm it if the set back is offered and there are no more than three homes in the Coastal High Hazard Zone; if that is not made as a concession, he will be voting against it; however, there are four other Commissioners on this Board and he respects everyone else's opinions should they vote differently. He advised he will sit back and let Commissioner Lober drive the vote.

Chair Lober stated Commissioner Isnardi is next up so she can drive the vote.

Commissioner Isnardi stated this is nothing against Commissioner Tobia but the 150-foot setback, the no septic tanks as Commissioner Pritchett and a lot of the Board were concerned about, and the difference between three and four houses when talking about 2.5 acre lots, is really insignificant; if Commissioner Tobia is willing to support three she will make the motion to support it with four, with conditions nothing is built within the 150-feet, that there be no septic

tanks in the Coastal High Hazard Area, and that they obviously go through the County's process with the stormwater management; and she cautioned Mr. Moia that if Mr. Denninghoff has concerns about stormwater run-off, there is going to be run-off anywhere whether it is a single-family residence on 10 acres or 2.5 so she would just ask that he create areas for stormwater retention. She went on to say she thinks it will be very nice for that area because there are developments close by that are much smaller than that who did not have to come before the Board because their stuff was compatible with the land use.

Commissioner Pritchett added she likes what Commissioner Tobia brought and she feels if they were brought up on stilts they may be able to accomplish this; she would second the motion if Mr. Moia and his client would agree to the houses in the front being built on stilts with less impact from the fill dirt.

Chair Lober asked Mr. Denninghoff if there is any information he would like to give on stilts versus stem walls.

Mr. Denninghoff stated one thing has not been said, ancillary facilities accessory structures associated with a home are supposed to be built outside of the 100-year floodplain, above it so he is not sure how exactly they would do that with a stem wall or with a stilt-type construction; it would be interesting to see how it goes; the only other thing he would offer is the geometry of the lots that staff does not know and does not understand right now because it has not been presented to them; and he noted it is not required at this time, but that is leading to a lot of the questions and concerns that people have.

Chair Lober asked for a second.

Commissioner Pritchett asked with the changes or no changes.

Chair Lober stated it depends on if Commissioner Isnardi is amenable to those changes.

Commissioner Isnardi stated it depends on what the applicant would want.

Chair Lober advised the Board the applicant is motioning in the negative, so it looks as though they are not amenable to those changes.

Commissioner Isnardi stated if she does not get a second, she finds that odd because considering that Commissioner Tobia was okay with three, so the difference is one house.

Chair Lober stated if this were Commissioner Isnardi's District he would support the direction she wanted to take.

Commissioner Isnardi stated if Commissioner Tobia was contesting her motion she would pull it, but he is not.

There being no further comments or objections, the Board denied the request by Lazy River Investments, LLC, for a BDP limited to a maximum of eight lots, in an RU-1-13 zoning classification, on property located on the Southwest corner of Fleming Grant Road and Seabird Lane in Micco.

**Result:** Denied

**Mover:** Kristine Isnardi

**Second:** Rita Pritchett

**Ayes:** Pritchett, and Isnardi

Nay: Lober, Tobia, and Smith

**H.4. Laura Kimberley Miller requests a change of classification from RR-1 to AU and removal of an existing BDP. (19PZ00099) (Tax Account 2106652)**

Laura Kimberley Miller stated there are a couple things in AU(L) that she would like to try to write out but she does not know when that would happen; to her it is confusing because it states for non-commercial use under Agricultural pursuits, but according to staff non-commercial use does not mean that she is not selling commercially just that she is not selling commercially from the property; and those types of things need to be spelled out for her because to her she is selling commercial.

Mr. Calkins explained Ms. Miller is suggesting that in the BDP there would be an allowance for her to have a wholesale sales there through the property, not retail sales off of the property, because a commercial aspect is allowed in the AU zoning allows for sales on the property, like a farm stand and things like that; and those would be the things staff would be looking in from what he understood from the Board and why the suggestion was to go to AU(L) would be to not allow that kind of activity.

Commissioner Pritchett stated if Ms. Miller had a wholesaler who wanted to come see if he wants to buy her product that is not going to be a troublesome aspect for the property, and then Ms. Miller could take it off the property and sell it.

Ms. Miller commented that is considered wholesale.

Commissioner Pritchett inquired if that works in AU(L) because that is still her struggle; AU can open up a whole thing in an area that is really residential; and she inquired if Ms. Miller is allowed to have people come in and look at the product and then she would move the product to where it is going.

Mr. Calkins stated he believes that she would be allowed to have someone come in and look at product depending on the sales; what he heard Ms. Miller say earlier is that she was going to be doing herbs, microgreens, and things like that; that activity would probably be a package to sell to restaurants so that activity is allowed to happen in the AU(L); if she were to get into a tree farm it is harder to move the tree to somebody if it is planted in the ground; therefore, with that activity she would have someone come look at the tree, then they would maybe be purchasing several trees to be dug up and transported to wherever they needed to be. He added he believes that activity would be allowed under AU(L) as well.

Ms. Miller advised she does not anticipate people coming back there to look at herbs anyway, but commercial needs to be defined for her because she feels like it needs to say commercial.

Commissioner Pritchett explained if she is allowed to do all the things she is wanting to do there then the AU(L) is going to fit, and she will be completely in compliance with what she is doing.

Ms. Miller commented when it says non-commercial to her it says she is doing it as a hobby, so what she is saying is it is personal and hobbyist even though that is not what she told by staff; and she inquired if down the road people will read it the way she is reading it.

Chair Lober stated to make this a little easier, this is audio and video recorded so there is no question with what the Board is telling her; and when there is a motion made he would be happy to include that staff interprets any concerns that may be brought up in the future in light

of the discussion today.

Attorney Bentley advised in light of the Code Mr. Calkins as the zoning official is authorized to interpret the Code and she believes he has just done so.

Chair Lober stated he feels comfortable with that; he is not giving Ms. Miller advice to take it or not; however given the fact that there is video and audio recording and staff is telling her the same thing; and the other thing is if she were to suggest that she was not amenable to the AU(L) he does not know one way or the other if she would get anything. He went on to say he does not foresee Code Enforcement coming after Ms. Miller for doing what has been discussed.

Ms. Miller asked if she should discuss the rest of it later or if the Board wants her to finish.

Commissioner Pritchett stated the Board is going to make a motion on it, if she is agreeable to AU(L) with a BDP and the things the Board talked about.

Ms. Miller responded she is agreeable to it; and she stated in AU it allows for plant nurseries and in AU(L) it is not listed.

Commissioner Pritchett stated staff just specified that she can do the plant nursery.

Mr. Calkins advised the plant nursery in the AU zoning would be where everyone could go and look at plants and purchase them if so desired, but Ms. Miller is not doing that; and under AU(L) it would be that she could have the nursery and grow the plants but she would relocate the plants for sale.

Ms. Miller said one of the pages it said something about storing equipment and machinery there; in the definitions of plant nursery it says on-site storage of commercial vehicles or heavy equipment shall be prohibited in the BU-1 agricultural zoning classifications; and she is looking at maybe having a tractor, not a forklift or anything like that.

Mr. Calkins explained under the definition of the AU(L) zoning classification which Ms. Miller is concerned about, where it talks about agricultural pursuits of personal non-commercial nature he explained if she had a tractor there for personal use as agricultural that would be fine, if she were storing tractors for others or if she had tractors and other equipment for commercial production then it would not be allowed.

Ms. Miller asked what a tenant dwelling is.

Mr. Calkins explained it is associated with short term rental and items like that.

Ms. Miller stated she understands.

There being no further comments or objections, the Board approved a request by Laura Kimberley Miller for an AU(L) zoning classification with a BDP to include no selling of agricultural products on the property, no outdoor events without a Special Event Permit, no camping or over-night stays for commercial purposes, and no resort or tenant dwellings on the property, located at 4200 Eola Avenue, Titusville.

**Result:** Approved

**Mover:** Rita Pritchett

**Secunder:** Bryan Lober

**Ayes:** Pritchett, Lober, Tobia, Smith, and Isnardi

**H.8. Second Public Hearing for Amendments to Chapter 62, Article X, Division 5 (Floodplain Protection) and Article XIII, Division 4 (Land Alteration) for Floodplain Protection in North Merritt Island**

Chair Lober called for public hearing for an amendment to Chapter 62, Article X, Division 5, Flood Plain Protection and Article XIII, Division 4, Land Alteration, for Flood Plain Protection in North Merritt Island; he disclosed his office received an email from David Botto on December 5 stressing his concern about the project; and he asked if there are any other disclosures.

Commissioner Isnardi stated she has one with clarification of subsection IV, regarding properties demonstrating discharge of run-off directly into the Indian River Lagoon being exempt from compensatory storage from David Botto; and she noted she just wanted to clarify what is meant by what is in there.

Jack Ratterman stated the house he has butts up against or faces this area of concern; he respectfully requests that the Board approve the ordinance; he has one concern and that is with the determination of the elevation of the sea level; this year is the first year that he has water still remaining in the Savana behind his house up to four inches; and he called the guy ahead of Road and Bridge for Merritt Island and he also stated that the water level from Merritt Island and the river was extremely high this year and it was not until this last week that the water level is going down a little bit. He went on to say each year it appears that the water level keeps rising; God forbid the County would use sea level rise; with each year the County would use the most current data; and he asked the Assistant County Manager how would that data be achieved.

John Denninghoff, Assistant County Manager, stated he is not sure he can give a clear answer to that, but he will try; the model that he expects is going to be generated by this effort will take into account many factors and a lot of it is associated with ground water levels, rainfall, and other factors; the ease with which staff would be able to modify the model based on a sea level rise sort of factors; and he is not sure they can do that in a reasonably easier and quicker fashion, they might be able to; and that is something he could speak with the consultant about and see if there is way to do something like that, but he just could not say it right now. He mentioned this is a huge effort and it takes quite a long time to generate and that is the best he can say.

Mr. Ratterman asked if that elevation would have to be approved by the Board if it was re-evaluated.

\*Commissioner Isnardi left the meeting at 7:13 p.m.

Mr. Denninghoff responded staff's anticipation is that when the model is completed they would be bringing it back to the Board for implementation acceptance by the Board; and if staff were going to make a change to that model he thinks staff would have to do that.

Chair Lober asked Mr. Ratterman if he has any other questions, he would like them directed at himself and if need be he would field them out to staff.

Mr. Ratterman advised that is his only concern about the ordinance.

Tami Dabu stated she is in support of this ordinance, she believes it is long overdue and they need something to add protection, especially from a compensating storage to North Merritt

Island, and technically all of Brevard County; it would have been prudent on the prior thing the Board was thinking about with the stem walls versus footers, it is a distinct difference; but from compensating storage, this is what Merritt Island is going through, it would have been what the development at elevation two would be putting the adjacent people in, just a perspective. She continued, going back to North Merritt Island she is in favor of this; the only thing she had a concern about was throughout the ordinance is that it specifically states that it starts from Hall Road and goes north; technically north Merritt Island starts from the Barge Canal which is a little further south and goes north; she is not sure why it was worded like that, but at the very least she believes it should reference Barge Canal north or Smith Grant Road north, or something like that; and that would be something for the County to think about.

Chair Lober stated he will address that a little bit and if Mr. Denninghoff wants to jump in he can; he knows he spoke with Mr. Denninghoff when this was initially being drafted and he asked where would be an appropriate demarcation point and it was simply decided administratively by staff that would be an appropriate point; he is not saying that it might not be beneficial elsewhere, but the concern he has at this juncture, is he believes it would require re-advertisement were staff to expand the scope to include an area south of Hall Road; and he advised he is not opposed to that if the County ends up going to that in the future, but he thinks at this point to get protections in place as quickly as possible for the area that has been identified which encompasses substantially all of Merritt Island. He added it is not everything, but given where the County is at with what has been put forward he would like to move forward with what he has and see how it goes because the other thing is when the County ends up next year in a position where it has that drainage model back, the County may have so much more information that enables them to move things and really tweak them almost to a degree of perfection that he just does not have now; and he stated he would happy to revisit it next year when they have that model back. He advised he would meet with Ms. Dabu and go up to the Barge Canal and he will go over what is appropriate once he has more data.

Phil Bennardo, vice president of the North Merritt Island HOA, stated he appreciates the Board's continued concern and interest in addressing the flooding problems in North Merritt Island; growth has been a real issue as land is being developed at an ever increasing rate; increased density comes with that and all of that is adding to the flooding problems; and it is getting progressively worse. He continued by saying he supports the proposed amendments to the Ordinance; he thinks it should be approved without exception; and he also thinks it should be done without delay because this is a problem that continues to get worse at an ever-increased rate. He noted he likes what Ms. Dabu just said; he noticed when he read it, that it goes Hall Road north and he knows Smith Road which is just over the Barge Canal, it floods periodically and he thinks it should be looked at as well; he thinks there is a proposed development behind the Moose Lodge there, so it is something in the future to look at; but he agrees with Commissioner Lober and would rather not delay that; and he thinks it should be looked at in the very near future, but for now he says go forward with what is being proposed.

Darlene Hunt stated she is just respectfully requesting that the Board approve this proposed Ordinance to require both compensatory storage and certification by engineer, that there be no adverse impacts due to development changes to land on North Merritt Island from the area that was outlined; water tables have been rising on the barrier island and people need to do everything they can collectively for the residents and the future residents that will help with their quality of life in Brevard County; and she added she noticed in the paper this morning that there was reference made to Beach Management article about rising sea levels and North Merritt Island is definitely experiencing them. She went on to thank the Board for its support for the wetlands protection.

David Botto, Board of the Marine Resources Council, stated they are very encouraged by this

change that the Board is dealing with; he understands its intention was to strengthen wetland protections in North Merritt Island so that near and redevelopment does not adversely impact private property, federal lands, and Brevard County's waterways; they try to track these kind of changes because they are progress and as everyone knows there are a lot of old rules and current regulations that are outdated and do not protect the waterways the way they need to; and they need to be changed. He went on to say he hit one sentence that made the red flags come up and he just needs clarification; the movement for strengthening depends considerably on what is called compensatory storage which is actually a very good idea; he read a Section of 62-3723, subset 4, "Properties demonstrating discharge or runoff directly to the Indian River Lagoon (IRL) are exempt from compensatory storage requirement"; of course they do not think that is a good idea that there is nothing to be done to prevent discharge directly to the IRL, of runoff; and he noted their hope is to prevent any discharge to the Lagoon from runoff. He went on to ask for clarification of why that is in there.

Chair Lober stated he had spoken to Mr. Denninghoff about that; basically this is not creating an additional right over what exists now to have that sort of runoff; the purpose of this particular ordinance is almost exclusively, if not exclusively, to address flooding so water quality issues while they are important they are not contemplated by this particular ordinance or the changes to this particular ordinance; if there is something that is proposed in the future, he certainly would consider it; however, that is not doing anything to worsen or to better water quality insofar as that section is concerned, but it simply was not the goal of this particular ordinance.

Mr. Botto asked so the answer is there is no change to the existing.

Chair Lober advised as to the direct runoff that is correct. He mentioned he spoke to the County Attorney and staff earlier in Planning and Development with respect to this because there was a question that had come up to his office that he was not absolutely certain as to the answer and he wants to share this with everyone so everyone is on the same page; for those who have already had their pre-app meeting will be grandfathered in based upon the date of their pre-app meeting; that means that if depending upon that date they may fall under the new or they may fall under the old, but once this is passed anyone that has not already had a pre-app at that point will fall under the new; and he inquired if that is a good summary.

Eden Bentley, County Attorney, stated it is.

Chair Lober noted with that, he would love to have a motion.

There being no further comments or objections, the Board conducted the second public hearing and adopted Ordinance No. 19-26, amending Chapter 62, Article X, Division 5 (Floodplain Protection) and Article XIII, Division 4 (Land Alteration) requiring compensatory storage and written certification from engineers of record that proposed development and redevelopment on North Merritt Island from Hall Road, north to State Road 405, excluding federally owned lands, will not have negative or adverse impacts on adjacent property, and will protect private property, public facilities and County waterways from flooding due to new development and redevelopment.

**Result:** Adopted

**Mover:** Rita Pritchett

**Second:** Curt Smith

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

**Absent:** Isnardi

**J.1. Request for Executive Session: Waters Mark Development Enterprises, LC, vs. Brevard County, Florida, Case Number 05-2014-CA-041947-XXXX-XX**

Chair Lober stated unless the County Attorney insists that the Board have something read into the record he will entertain a motion to approve the request for an executive session in Case No. 14-CA- 41947-XXXX-XX.

The Board approved the cost of advertising for, and the scheduling of, a private session on December 17, 2019, at noon or at the conclusion of the Board meeting, whichever comes first, pursuant to Section 286.011(8), Florida Statute, for the purpose of discussing litigation strategy and settlement negotiation in the case of Waters Mark Development Enterprises, LC v. Brevard County, Case No. 05-2014-CA-041947-XXXX-XX.

**Result:** Approved

**Mover:** Rita Pritchett

**Seconded:** Curt Smith

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

**Absent:** Isnardi

**K. PUBLIC COMMENTS**

Sandra Sullivan stated Brevard County purchased High Tower Park back in 1993 for \$180,000 and then in 1999 there was an agreement reached as a co-applicant with the City of Satellite Beach to create an oceanside wildlife and habitat preserve to help protect endangered species, most notably endangered and threatened sea turtles; that area of beach is the highest aggregate of Loggerhead Turtle nesting in the world; and the reason it was chosen by the State to invest \$8.5 million into a preserve with State funds was because Satellite Beach area had 87 percentile in terms of population density out of 401 municipalities so the State funded the acquisition of lands of the P2000 grant; the High Tower Park in 2012 was put in the City's name; and what she would like to know is it says to be solely as a public beach park in any purposes providing public and the definition of public beach park and being used as by the public, the Oxford dictionary describes that as an ordinary person. She continued to say she would like clarification if used by a hotel, as a corporate entity, with a skyway over to that park, would that be permitted with its use being open to the public.

Chair Lober stated he is not going to force the County Attorney to apply this to something but if one of the other Commissioners would like to ask, he would certainly not have any issue with them doing that; he does not know if this is something the other Commissioners would prefer to look into and make a decision at some point in the future.

Ms. Sullivan went on to say the other aspect she wanted to discuss is as co-applicants and the P2000 grant, there was terminology in there that says the adjacent lands were restricted in height to the comprehensive plan that was amended at that time; and she would like to request the County Attorney's help in ensuring that agreement is enforced given the intent of the State.

Chair Lober stated he will chime in as diplomatically and carefully as he can with respect to this; he has nothing but respect for the concerns that Ms. Sullivan has brought up with respect to that particular municipality, but there is a fine line to be threaded with respect to that concern where the Board remains respectful of the autonomy of those municipalities; he is still trying to grapple with exactly where that line is; he saw earlier that there was a call to his office from Ms. Sullivan; and he advised he has not yet had a chance to sit down and think about it with this meeting having occurred tonight, but he would be happy to speak with her about that because

he thinks she raises some good points. He went on to say he is not saying they are legally wonderful or legally terrible, he has not delved into it at this point; and he mentioned he will look it over this weekend.

Ms. Sullivan thanked Chair Lober and she advised the Board she is not really talking about the municipality but enforcing the preserve agreement that the County and that another entity entered into to ensure that agreement is met.

Chair Lober stated he respects that but he thinks the two are inextricably intertwined so it is tough; he respects that he thinks being tied together so tightly, it is not really possible to view that without addressing the municipality in some substantial way; and he advised that he can talk to Ms. Sullivan about that later. He went on to say Commissioner Pritchett thinks maybe that is something Ms. Sullivan can address with Satellite Beach directly; he is not saying she should or should not but that is another possibility; and he reiterated he would be happy to speak with her about it.

Ms. Sullivan explained she has exhausted everything in avenue.

- L.1. Frank Abbate, County Manager**
- L.2. Eden Bentley, County Attorney**
- L.3. Rita Pritchett, Commissioner District 1, Vice Chair**
- L.4. Bryan Lober, Commissioner District 2, Chair**

Chair Lober stated he has a couple things, one of them he is going to check with the County Attorney to see if it is permissible to discuss; the easy one is the Board did address in Item J.1. for the executive session request; there is going to be another executive session coming up; he does not want to discuss too much at this point in time apart from saying that individually the entire Board should really meet with legal to discuss an upcoming legal executive session request; he does not think it would be in the County's interest or in its fiduciary duty to discuss why that needs to be discussed individually but suffice it to say he has not asked anyone to do that in the year he has been on the Commission; and he thinks it is imperative that each individually have a conversation with Ms. Bentley or a designee of hers on that upcoming executive session request.

Commissioner Pritchett asked if Ms. Bentley would please make arrangements with each Commissioner to meet.

Eden Bentley, County Attorney, agreed.

Commissioner Lober stated Ms. Bentley will go ahead and make arrangements to meet with the individual Commissioners. He went on to say the other question is there is an Item on this Tuesday's Agenda and he wanted to make a brief comment on it this evening, but if Ms. Bentley does not feel that is appropriate he will hold off and wait until Tuesday.

Ms. Bentley advised he should wait until Tuesday.

**L.5. John Tobia, Commissioner District 3**

**L.6. Curt Smith, Commissioner District 4**

Commissioner Smith stated he has needs for some appointments and several Board Members have mentioned in the past that they have lots of folks who have been willing to volunteer for appointments, so if they could reach out to him or his staff he would be happy to hear from them.

Chair Lober asked what Board.

Commissioner Smith advised primarily the Planning and Zoning Board.

Chair Lober stated with the Sunshine Law, if Commissioner Smith could let the Board know what committees they are he could put something on the Agenda or to figure out a way to do this at a publicly noted meeting.

Commissioner Pritchett advised she may have an extra person too.

**L.7. Kristine Isnardi, Commissioner District 5**

Upon consensus of the Board, the meeting adjourned at 7:32 p.m.

ATTEST:



A handwritten signature in cursive script that reads "Scott Ellis".

SCOTT ELLIS, CLERK



A handwritten signature in cursive script that reads "Bryan Andrew Lober".

BRYAN LOBER, CHAIR  
BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA

As approved by the Board February 11, 2020.

## Kimberly Powell

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**From:** Kimberly Powell  
**Sent:** Friday, January 31, 2020 1:58 PM  
**To:** Commissioner District 1; Commissioner District 2; Commissioner District 3; Commissioner District 4; Commissioner District 5; Eden Bentley; Sally Lewis  
**Cc:** Tammy Rowe  
**Subject:** 12-05-2019 Zoning.docx  
**Attachments:** 12-05-2019 Zoning.docx.rtf

All,

Attached are the minutes of December 5, 2019, which will be considered by the Board on February 11, 2020.

If you discover any changes that need to be made please advise before the meeting date.

Thank you and have a great day,

*Kimberly Powell*  
Recording Secretary  
Clerk to the Board  
(321) 637-2001  
Kimberly.powell@brevardclerk.us

