

October 3, 2019

Brevard County Board of County Commissioners

*2725 Judge Fran Jamieson Way
Viera, FL 32940*



Minutes

Thursday, October 3, 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

Zoning Statement

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

B. MOMENT OF SILENCE

Chair Isnardi called for a moment of silence.

C. PLEDGE OF ALLEGIANCE

Commissioner Tobia led the assembly in the Pledge of Allegiance.

H.7. M&R United, Inc. (Carmine Ferraro) Requests a Change of Zoning Classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial), with a BDP (Binding Development Plan) (18PZ00156)

Chair Isnardi stated she would move this one to the front, because there is a request to table. She called for a public hearing for a change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial), with a Binding Development Plan (BDP).

Tad Calkins, Planning and Zoning Director, stated this is a request to withdrawal Item H.7.; and he will have Jeffrey Ball the new Planning and Zoning Manager read that into the record for the Board, and then the applicant can come up and withdrawal the Item.

Jeffrey Ball, Planning and Zoning Manager, stated Item H.7 is for M&R, Inc. (Carmine Ferraro), the applicant is requesting a change of Zoning Classification from BU-1, General Retail Commercial, to BU-2 Retail Warehousing and Wholesale Commercial with a Binding Development Plan (BDP), and the project is located in District 1.

Chair Isnardi inquired if the applicant was present.

Carmine Ferraro stated they are present at the meeting to withdrawal the application; he would like to take a minute to recognize and thank Commissioner Pritchett for all of her help trying to make this a reality, and her staff was amazing; and everyone worked really hard, but in the end, it is best to withdrawal the request, so they are withdrawing the application.

Commissioner Lober inquired if the Board has to make a motion for the withdrawal.

Eden Bentley, County Attorney, replied no.

Mr. Calkins stated he does not think a motion is necessary; this is a little confusing having it happen here at the meeting.

There being no further comments or objections, the Board consensus to withdrawal request by M&R United, Inc., for a change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial), with a Binding Development Plan (BDP).

Result: Withdrawn

F.1. Supervisor of Elections funding requisition, Re: Requisition of Fiscal Year 2020 Budget

The Board approved the requisition for 25 percent of the Supervisor of Elections' Fiscal Year 2020 budgeted funds at the first Board of County Commissioners meeting in October 2019, and 6.82 percent of the total budget on the first of each month thereafter, unless otherwise notified.

F.2. Brevard County Sheriff's Office, Re: Requisition of Fiscal Year 2020 Budget

The Board approved the requisition of one-twelfth of the Fiscal Year 2020 budgeted funds at the first Board of County Commissioners meeting in October 2019, and one-sixth of the budget in January 2020, and equipment (capital) budget.

H.1. Public Hearing, Re: Rocco J. Citeno Requests a CUP for a Private Boat Dock Adjacent to a Single-Family Residence in an RU-1-13 Zoning Classification. (19PZ00046)

Chair Isnardi called for a public hearing for a request of Rocco J. Citeno, for a CUP for a Private Boat Dock Adjacent to a Single-Family Residence in an RU-1-13 zoning classification.

Jeffrey Ball, Planning and Zoning Manager, stated the applicant is Rocco J. Citeno, is requesting approval of a Conditional Use Permit (CUP) for a Private Boat Dock Adjacent to a Single-Family Residence in a RU-1-13, zoning classification, and to grant a waiver from development standards; this is located in District 3 at 425 Ross Avenue, Melbourne Beach; and on September 9, 2019, the Planning and Zoning Board heard the request and unanimously recommended approval, and no public comments were provided.

Rocco Citeno stated he purchased the boat dock in January, he realized this particular permit was not in place, so he applied for it, and that is what brings him to the Board; it is adjacent to a single-family house he owns in Crystal Lakes; and the house has been in existence since the '90's, and he does not intent to do any construction or change anything, he intends for it to stay the way it is.

There being no further comments or objections, the Board granted approval for the Conditional Use Permit (CUP) for a Private Boat Dock Adjacent to a Single-Family Residence in a RU-1-13 zoning classification, and granted a waiver of development standards, at 425 Ross Avenue, Melbourne Beach, as requested by Rocco J. Citenò.

Result: Approved

Mover: John Tobia

Seconders: Bryan Lober

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

H.2. Think Green Brevard, LLC (Stuart Buchanan) Requests a CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) for On-Premises Consumption in Conjunction with a Restaurant and Wedding Venue, in an IU (Industrial Use) Zoning Classification. (19PZ00066)

Chair Isnardi called for a public hearing on a request of Think Green Brevard, LLC for a change of zoning classification from RU-2-10 to BU-1-A.

Chair Isnardi inquired if Item H.2. was withdrawn.

Tad Calkins, Planning and Development Director, stated this Item is the one that will be tabled until December 5.

There being no further comments or objections, the Board continued the request for a change of zoning classification from RU-2-10 to BU-1-A, to the December 5, 2019, Board meeting.

Result: Continued

Mover: Bryan Lober

Seconders: Rita Pritchett

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

H.3. Scott Merson Requests a Change of Zoning Classification from RU-2-10 to BU-1-A (19PZ00090)

Chair Isnardi called for a public hearing on a request of Scott Merson for a change of zoning classification from RU-2-10 to BU-1-A.

Jeffrey Ball, Planning and Zoning Manager, stated Scott Merson is requesting approval of a change of zoning classification from medium density multifamily residential to BU-1-A, restricted neighborhood commercial, located in District 4 at 2565 Sellers Lane, Melbourne; and on September 9, 2019, the Planning and Zoning Board heard the request and unanimously recommended approval limiting it to the office uses only, and there were no public comments provided.

Scott Merson stated he is the applicant and the owner of the property, and he also owns the produce place at Suntree, which abuts the property; and he is requesting a rezoning for professional office services, nothing retail, and no major traffic.

There being no further comments or objections, the Board approved the change of zoning classification from RU-2-10 to BU-1-A, limited to office uses only, located at 2565 Sellers Lane,

Melbourne, as requested by Scott Merson.

Result: Approved

Mover: Bryan Lober

Secunder: Rita Pritchett

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

H.4. Monica Ellis Requests a Change of Zoning Classification from AU to SR (19PZ00092)

Chair Isnardi called for a public hearing on a request of Monica Ellis to change the zoning classification from AU to SR.

Jeffrey Ball, Planning and Zoning Manager, stated Monica Ellis is requesting a change in zoning classification from Agricultural Residential to Suburban Residential, located in District 2, at 950 North Tropical Trail, Merritt Island; on September 9, 2019, the Planning and Zoning Board heard the request and unanimously recommended approval.

Monica Ellis stated she is the owner and the applicant of the subject property and she would like to change from AU to SR.

Commissioner Lober stated he has a question for staff, because he did not get a firm answer when he looked at the briefings; he inquired if staff had a chance to convey his question with respect to Natural Resources Management, and whether the wetland delineation that was spoken about is sufficient for their concerns to address them.

Tad Calkins, Planning and Development Director, stated Darcy McGee, Natural Resources Management, would come up and address that.

Commissioner Lober stated to get the Board up to speed, he was happy with this, the only thing that caused him any concern at all was a section on page two of the attachment stating "Natural Resources Management highly recommends a wetland determination and delineation be conducted before subdividing the parcel"; but he noted it looked like it had already been done.

Ms. Ellis stated she has that and there were no wetlands on that parcel at all.

Commissioner Lober stated as long as Natural Resources is happy, he is happy to move to approve.

Ms. McGee stated yes, they did receive the report; one thing they would do at the time of permitting is ground-truth it and make sure that it is accurate, so any delineation that is not approved by the State is always open for revision, hopefully not, but she would like to have it on the record.

Commissioner Lober stated any time he sees that staff highly recommends something, it causes him to make sure he has his i's dotted and his t's crossed; and with that he is happy to move to approve it.

Commissioner Pritchett stated she has a quick question, but she will abide by what he wants;

she added she does not know if they are hooking up to sewer or not and they are really close to the Lagoon; and she inquired if the applicant needed to have an enhanced septic system put in. She added if she is incorrect on that, she would like staff to jump in.

Commissioner Lober stated he is guesstimating based on the scale, it says one-inch is 2,000 feet, it looks like it is about three quarters of an inch off, and he does not know if that is close enough to cause concern for Natural Resources, and he would defer to staff on this.

Ms. McGee stated it is in the Septic Overlay, so she would have to do the advanced treatment septic at the site.

Commissioner Lober stated the other thing that he noticed was when it went before the Planning and Zoning Board, it was unanimously approved as well, so he is still happy with it.

There being no further comments or objections, the Board approved the request for a change in zoning classification from AU to SR on 0.95 acres located at 950 North Tropical Trail, Merritt Island, as requested by Monica Ellis.

Result: Approved

Mover: Bryan Lober

Seconder: Rita Pritchett

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

H.5. Lazy River Investments, LLC (Bruce Moia) Requests a BDP Limited to a Maximum of 8 Lots, in an RU-1-13 Zoning Classification (19PZ00093)

Chair Isnardi called for a public hearing on a request of Lazy River Investments, LLC for a Binding Development Plan (BDP) limited to a maximum of eight lots, in a RU-1-13 zoning classification, located on the southwest corner of Fleming Grant Road and Seabird Lane.

Commissioner Lober stated he has some disclosures on this Item.

Chair Isnardi stated she did as well; and she inquired if Commissioner Tobia had some as well.

Commissioner Tobia responded yes. He stated other than the ones that he put in the package, he met with Chelle Woods this morning in his office at 10:00 am, and they discussed some community concerns with this proposal.

Commissioner Lober stated he has a handful of disclosures; on September 15, he received an email from Anne Briggs and Henry Beck opposing the proposal as presented; on September 25, they received an email from Richard and Susan Currier, expressing concerns about the proposal; on September 30, they received an email from Mary Sphar, on behalf of the Turtle Coast Sierra Club, expressing concerns and asking for additional BDP conditions, he responded to that; on the same date, he received an email from Chellie Woods, President of Micco HOA, supporting eight homes if certain provisions are included; also on September 30, an email from Ron Bartcher rejecting the proposal and expressing concerns with it in its present form; shortly thereafter on October 2, an email from Leesa Souto of Marine Resources Council (MRC) requesting the adoption of low impact development designs; and lastly on October 3, the day after, he received an email from David Botto of MRC, requesting low impact development approach.

Chair Isnardi inquired if there were any further disclosures that were not already submitted. She

advised she would go through her list quickly, because her and Commissioner Lober were copied on many of those same emails; she added her disclosures were mostly by email correspondence; she read aloud Leesa Souto and David Botto with Marine Resources Council expressed their concerns, Chellie Woods, Micco HOA President requested a coastal high hazard area declaration, as a conservation easement, Mary and Doug Sphar, requesting BDP conditions, Susan and Richard Courier, and Anne Briggs and Henry Beck.

Jeffrey Ball, Planning and Zoning Manager, stated this is Item H.5., Lazy River Investments, LLC, applicant Bruce Moia, requests approval of a Binding Development Plan (BDP) to limit to a maximum of eight lots in an R-U-1-13 Zoning classification, located in District 3, at the southwest corner of Fleming Grant Road and Seaburg Lane; and the Code allows for zoning with smaller lots and the land use allows for it as long as the BDP caps the density to the FLU designation. He added on September 9, 2019, the Planning and Zoning Board heard the request and voted six to one to recommend approval, comments were provided, and the proposed BDP does not address those concerns; the DEO comments that were received express concerns about the nutrient loading and the impacts to the Indian River Lagoon; a portion of the property is within the Flood Zone AMX; and a portion of the property is within the Coastal High Hazard Area.

Bruce Moia stated he is present representing the applicant; he is sure the Board remembers the last time they were before it, the applicant wanted 20 lots on the property, and the Board room was packed; they withdrew the application at the end; now they are back, only because they have to be; they are not asking for anything, there is an existing zoning already on the property with a land use that is existing on the property with a land use that is existing on the property that is incompatible as designated by whomever designated it; and it was by no action of this applicant, at all. He went on to say the only way to develop it under the most restrictive, which is the eight units, from what he understood, was the main topic of that long meeting, where everyone wanted it kept at eight units; and they are proposing to keep it at eight units. He explained they are not going to change the zoning, or the land use, they just have to submit a BDP, so they can actually develop the land with the current zoning and that land use; and that is what is what is required by Brevard County Code, he is not sure why, but they are not asking for anything, and they are hoping that they are going to comply with the request to keep it at eight units. He pointed out he is very surprised there is any opposition here at all; he understands there are some challenges on this property; it is on the river, there are wetlands, aquifer recharge, flood plains, coastal high hazard area, surface water classification as an aquatic preserve, they are in the septic overlay, and they have heritage specimen trees; there are issues that they have to overcome in the development phase, because there will be a lot of additional requirements to comply with, but they will be the only development in that whole area that complies with any Brevard County Code right now; they will be the only one with a retention system, the only one that meets all of Brevard County's rules, everything in that area has been developed a long time ago with basically no rules, direct discharge to the river; and for eight lots, they believe they can overcome the requirements if they can get the approval to move forward. He added he was looking at that area, and along the river from just a little bit west of the subject property to the railroad tracks, there is eight undeveloped, vacant parcels that can build with basically no regulation; they would like to build to regulation, they are only abutting one zoning classification on this property, which is the same as they have to the west, there is a right-of-way to the north and east, and the river to the south. He reiterated they are only abutting one property with the same zoning and land use that they have; they would like to develop the property based on Brevard County Code and Land Use Designation; he believed there would be some issue about lot size coming up, even though Code says one can build a smaller lot, they cannot, not because of Brevard County Code, but because of State Code; and the State Code requires that if they have well and septic, which they would have to be, because there is no water or sewer in the area, they have to have a minimum of one-half of an acre minimum, so they will comply with that as well as all of Brevard County Codes and they feel that they are compatible. He added they will

be developing just like everybody else, except they will actually be able to treat the water and build systems that are up to current standards as opposed to what is happening there now, and he does not know what the comments will be so he will let them talk and then he will respond.

Commissioner Tobia stated he is not surprised people are in attendance because he listened to what was said by Mr. Moia and he has some questions; obviously it ended in such a way that Mr. Moia was not all that happy walking out; his questions have to deal with Mr. Moia's previous comments; and he mentioned that Mr. Moia had stated on behalf of the prior applicant that with four lots or eight lots the Board would not have any choice but to grant it to him and that he was going to mow down the property and that he was going to get rid of the trees. He asked if this is granted if he would still mow down the property and get rid of the trees or has that changed.

Mr. Moia stated that has changed; he does not know if that was taken out of context because he does not think he said they were going to do that; and he thinks what was said was they could or it was possible if they had just pulled a building permit because they would not be subject to a lot of land development requirements.

Commissioner Tobia advised Mr. Moia does not want him to pull the transcript on this one.

Mr. Moia explained if he said that he had misspoken.

Commissioner Tobia thanked Mr. Moia for that; he continued on by saying Mr. Moia had stated if the Board did not give it the way he wanted then they would have no drainage system whatsoever; those were Mr. Moia's words; and he inquired if he agrees that in the site plan they would have to have drainage and retention to show that this development will not cause any harm to the neighbors or does he still stand by his previous statement that they will have no drainage system whatsoever.

Mr. Moia responded no, they will be required to have a fully-compliant stormwater management system.

Commissioner Tobia noted so that too has changed. He went on to say the next statement that concerned him was he had said that they could fill the wetlands in too; and he questioned if the Board were to grant this request would he be filling in the wetlands too.

Mr. Moia answered no, they would be limited to the amount of wetlands they could fill; they would be limited to 1.8 percent of the property; and whatever 20 acres times 1.8 percent would be the maximum amount.

Commissioner Tobia interjected by stating he is familiar with Code he just did not think Mr. Moia was with these quotes. He inquired if Mr. Moia were to do any of the plans he brought forward last time, filling in the wetlands, having no drainage system whatsoever, and mowing down trees and property, that he would be subject to significant penalties.

Mr. Moia responded affirmatively; and he stated he is not proposing that any longer.

Commissioner Tobia asked when the current property owner purchased this property, did they do that knowing that the Future Land Use (FLU) map would limit development absent a decision of this Board.

Mr. Moia stated he probably did not they probably bought it knowing that they had a one unit per two and a half acres, but he does not think anyone would know that the zoning on the property was inconsistent with the land use, therefore, requiring this meeting to have to happen in order

to build eight units. He mentioned that seems a little in the gray area of what someone buying property would know or not know.

Commissioner Tobia inquired if they had become Mr. Moia's client after they purchased the land.

Mr. Moia confirmed that.

Commissioner Tobia inquired if Mr. Moia would be willing to commit to advanced septic for all eight units given that this land is environmentally sensitive and close to the Lagoon.

Mr. Moia commented he does not think that would be fair; that ordinance came up and it was passed deciding what properties have to have more and what properties do not; if it is in that zone they would be happy to comply; however, if no one else in the County has to comply, but he does and the property is not in the overlay district and those other properties do not have to, he does not think that would be fair. He went on to say he does not know if he is willing to say that at this time because if the County is not going to make everybody, from a certain distance from the river, put in that type of a system, and he asked then why would the County make this one.

Commissioner Tobia stated no would have also worked; and he inquired if Mr. Moia would agree to only put one unit in the coastal high hazard area zone.

Mr. Moia responded no.

Commissioner Tobia stated the County's Comprehensive Plan clearly has high levels of scrutiny for development in the coastal high hazard zone; and he asked staff from Natural Resources Management in their opinion if unfettered development in those types of zones, could there be impacts on the Lagoon.

Darcie McGee, Natural Resources Management, stated the coastal high hazard area designation is more about flooding and risks; it is the storm surge from a category 1 hurricane so that is more related to vulnerability of development in that area; and in terms of the Indian River Lagoon (IRL) quality, she is not sure how to answer that question.

Commissioner Tobia stated that coupled with the non-advanced septic systems; he does not know how septic systems work; but he inquired given the designation of that being an area which flooding could take place coupled with the fact that there are non-anaerobic systems, if Ms. McGee has any concerns with Lagoon quality water coming in that proximity, given those flood concerns that are on the map.

Ms. McGee responded with regard to the septic systems that Mr. Moia said, a portion of the property is located outside of the overlay; the Board directed staff to come back when it first established the modeling for the overlay; they have been collecting sampling to confirm these distances so they could come back further out but she does not know how accurate they are; they are hoping they come back fairly accurate; and this property is outside of the designation right now. She continued as to the Lagoon quality, depending on how close they get, there is a surface water protection Ordinance with a 50-foot buffer; and if there are any impacts within that buffer he would be required to provide treatment of one inch of water that drains to the buffer.

Commissioner Tobia stated he clearly understands the distance from the Lagoon, his question is there is an added variable with this piece of property, being the coastal high hazard area; when the County took in to consideration the generic distance to require the advanced septic system it was not within the variable of the coastal high hazard zone; the fact that there is more likelihood

of flooding of that area than others; and he inquired if that added variable caused additional risks to the Lagoon. He explained if there was no coastal high hazard area this would be a moot point and it would be taken off the table, but he is concerned with the added risks that could be an added concern, a variable that the Board had not taken into consideration when it passed the blanket prohibition.

Ms. McGee stated the coastal high hazard area looks to be further out than the septic overlay so yes, that could be a concern but without additional information she would hate to make a blanket statement like that; however, she will say there could be a concern.

Commissioner Tobia commented he appreciates Ms. McGee saying she would wait for the data; and he inquired if they will get that data back.

Ms. McGee responded affirmatively.

Commissioner Tobia asked when she expects those assumptions to be validated.

Ms. McGee advised they have been collecting data all long since they initiated the new overlay ordinance; she thinks the timeline was to come back to the Board to report in August; and they could certainly provide an interim report if Commissioner Tobia or the Board wanted to look at something like that to see how the distances are shaping out from what they had initially modeled.

Commissioner Tobia asked if Ms. McGee took into account the variable of the likelihood of flooding or if it was just merely the distance from the Lagoon. Ms. McGee explained the modeling was done by a subcontractor and they took into account groundwater, flood plains, and there were a lot of other factors in there; and she mentioned it is still modeling with the best available data and they are collecting more data to confirm the distances.

Commissioner Tobia asked for confirmation that the Board would have an answer one way or another definitively whether or not that would impact the water quality, but not until August.

Ms. McGee responded yes unless there is additional modeling in that area already and unfortunately, she does not know that; she could talk with Natural Resources Management Director and find out if she has more information on that.

Commissioner Lober stated he is just trying to get a better grasp on the septic issue here; and he inquired with respect to the septic tanks is Mr. Moia willing to move them further up the property to get them further away from the coastal high hazard area, and if that is something that is possible.

Mr. Moia stated absolutely; he does not foresee placing any septic systems within that zone; and obviously they would do everything they could to avoid that because it is costly, cumbersome, and it is not some desirable, so they would design to avoid that just as they are going to design to avoid the coastal high hazard area along with all the other things on this property that they have to comply with.

Commissioner Pritchett advised she has some of the same concerns that Commissioner Tobia does because Mr. Moia gave the Board a Binding Development Plan (BDP) the last time and it has listed in there about the enhanced septic, no more than one structure in the coastal high hazard area, and something about the trees, it really was a very responsible BDP; and in fact that night she thinks he had the votes to go ahead and do this zoning with the BDP, so she is probably favoring what Commissioner Tobia was going through with him as well. She went on to

say maybe Mr. Moia has time to think through that because he was already willing to do a lot of these things before; as far as the septic she gets all that but if they are enhancing the density on the property, and if she had her way she would want everybody to have enhanced septic right now because she thinks a lot of the money the County is paying right now is because of the leaking septic systems; people can see that evidence because it is the places closest to the water that has the most problems; and she thinks moving forward, the Board started with this step, the Board has a lot of work to do. She acknowledged she is interested to hear public comment and what everyone has to say about Mr. Moia's argument; she mentioned she really had hoped he would come back with the last BDP and she was going to be happy; she knows he had a hard emotional time last time, but it looks as though everyone is trying to get somewhere with this; however, she is still favoring what Commissioner Tobia has said.

Mr. Moia apologized for the last meeting; he stated he does not think he was thinking clearly by the end of that last meeting; there was a lot to absorb; however, back then he was asking for a lot and willing to give a lot to get a lot. He went on to say he really feels as though they are not asking for anything.

Commissioner Pritchett advised they are taking their density dots and going from two to eight so that is quite an ask; and she thinks they may end up some type of compromise maybe tonight but does not know. She reiterated in all fairness he kind of threw out the BDP.

Chair Isnardi announced there are several comment cards and asked the public to keep in mind the rules of public hearing and quasi-judicial that people's evidence has to provide valid claims to the testimony.

David Montgomery stated he does not recommend approval of the BDP based on lack of information of an approach for compliant stormwater management; zoning meetings in February and May discussed having state of the art stormwater systems for the property but among multiple methods or a combination of them, none have been identified and no concept has been suggested; there are many ways to do stormwater management; and whether it is a retention pond or a combination of several other things, it is not clear to him. He went on to say he is concerned about the process going further and then variances being requested because of the way the property is laid out having to account for the trees, the coastal high hazard easement, and preserving; he cannot see building in a coastal high hazard zone because there are clearly going to be floods there; they can fill that in but people are going to be in trouble 10 years from now when the Sebastian River levels will be eating into the properties up to four feet by 2040; and it is true that many properties in the area have stormwater flooding and septic tanks on the river, but it does not make it okay for this property to not address those issues. He reiterated he does not see any concept plan in the BDP; previous BDPs and the one proposed in the May 24th zoning meeting talked about a number of things; Commissioner Pritchett brought up there was quite a number of advanced septic things identified, preserve the wetlands, and a number of things, but they seem to have disappeared in this new BDP; this may be just as a matter of unhappiness with the last results; however, in his case he is worried about the stormwater management not being defined and if the Board passed this BDP he is not sure they will be able to be compliant without some sort of concept presented.

Robin Carroll stated she understands that the 20-acre property can support eight homes if all of those acres were buildable; with this property that may not be so; two and a half acres is a prudent average to build a home; and the County needs to keep any development and all future development on sensitive waterfront properties or not to meet the low-impact development criteria. She went on to say in today's world where the natural waters and environment are suffering from self-inflicted developmental wounds; the County must put the brakes on to preserve the neighborhoods for the future; if environmental issues cause some of the land to stay

undeveloped so be it; being in a flood zone and having acres of high coastal hazard area, the prudent need to contain storm runoff may reduce the build ability on this property; and she does not know how they plan to situate eight homes on this acreage and how a decision like this can be made today is questionable. She continued by saying she knows that advanced septic systems is a must and requires a minimum of half an acre; she does not have a problem with that lot size in her community, however, the arrangement must fit a low-density impact development; not one home in her neighborhood has been built on less than an acre in 30 years; and this needs to move forward for the environmentally challenged waterfront area. She commented the County must consider climate change, environmental preservation, and any future development plan; she noted violating land use may not be a good idea; that plan was set for a reason in 1988; and she asked what makes this development so special and so important. She stated no matter what the technology in septic is today it does not justify a change to the land use plan; soil is key, as sandy soil allows for seeping directly into the river; septic is the smoking gun on lagoon quality; advanced treatment units will still fail if waters flood the drain field; old homes in the existing neighborhoods will be flooded with each rain as modern homes are built up on mounds these days and all properties will drain onto the lower, older homes; and she asked if the County thinks it can control all the stormwater runoff as water seeks its own level, and it is arrogant to think it can be stopped. She commented the neighbors will be flooded no matter how these homes are situated; there needs to be enough permeable land surface to absorb the runoff; this alone should be enough to keep the 1.2.5 requirement or better; and even better she advised they have a plan to show how they plan to deal with this because the neighbors know nothing of how this is going to get done.

David Botto, Marine Resources Council, stated he just wants to elaborate on some of the correspondence the Board has received the Council; this County has a population growth that is unbearable, there needs to be development it is necessary; the development that is taking place now is being done under requirements that they could follow but they do not address the Lagoon; an example of this was discussed a few minutes ago about the high hazard area; the high hazard area regulations do not directly address surface water quality; and that is true of many LDRs and those need to be changed. He continued business as usual will continue to harm the Lagoon; those changes have to be made and low-impact development (LID) is the answer; it is a fairly simple concept that is based on holding the stormwater at the site, by reducing and minimizing impervious surfaces, providing storage and capability for percolation and evaporation of water on the site, so there is no need for costly stormwater transportation and storage infrastructure; it is quite widely used in Florida now, but globally it has been used for years; several communities in Florida have adopted it; Sarasota, Pinellas, Duval, Orange, Jacksonville, and Cocoa Beach are adopting low-impact development; and they have written and published Best Management Practices for the low-impact development approach. He went on to say he knows it is going to take a while to do it here, but he is asking the Board to adopt that; in this case, this Micco property is critical to the Lagoon; he was there before when the Board denied an increase density request; he advised it drains directly into the Sebastian River as it empties into a Lagoon aquatic preserve of impaired water; and it is at this time impaired. He stated at least five State agencies in writing have indicated to the Board the criticality of this property and the Board took action the last time he was there before the Board; it is in the development now which will be done and should be done, must be done in a way that does not harm the Lagoon, and runoff is a problem; runoff remains one of the primary sources of pollution in the Lagoon; he reiterated there needs to be low-impact development to prevent that further harm; and actually it would be in violation of federal and State mandates as indicated in Basin Management Action Plan, if the Board allows new development to add to the pollution in the Lagoon. He mentioned there are some low-hanging fruit that apply to this property that would be fairly simple and easy to apply; and locating the property close to the main transportation artery so that it reduces the street impervious surface access road into the area of development, compacting the development to reduce the footprint, the impervious surface footprint is important,

on site vegetative swales, and the retention of trees, they all help and work to that final objective that when the development is finished the runoff from the property is no more than it was before they started. He advised that is the first objective of LID. He went on to say he realizes he has recommended a pretty dramatic thing, maybe it is naïve, but they would not recommend this if it was an out-of-state developer, but this is a local developer who lives here with his family and they are counting on the fact that he is as interested in restoring the Lagoon to its beauty as they are; and he noted they are recommending that the Board negotiate a LID with this developer to apply reasonable low-impact Best Management Practices to this development. He added the Marine Resources Council offers their assistance to both parties if the Board carries through with this.

Chelle Woods, President of Micco Homeowners Association, stated the reason she is in attendance is because the May 30th BDP was pretty good, but there no longer is one; all this says is eight homes, so they are worried and concerned because their focus is still the IRL through the Saint Sebastian River and they want to limit contaminants; they have some issues and one of them is being the coastal high hazard area and they suggest that perhaps there would be no homes there because of the fact that it is an intake of the category one storms; and anyone who has lived here for a while knows that Brevard County gets a lot of storms and there have been some categorized as twos and threes so they do not know what would happen to the homes there. She continued on by saying the objective seven of the Brevard County coastal management says to limit the densities in coastal high hazard areas; in fact directs development outside of a coastal high hazard area; they would also like to see no fill dirt in the AE flood zone which is also the coastal high hazard area, basically; and the North American Vertical Datum (NAVD) Basic Flood Elevation says that it needs to be 5.3 feet but to her that sounds like a mound, she is 5.5 feet, so right up to her shoulders would be a big mound of dirt and then the house needs to sit above that even, and she cannot imagine several hills of these mounds in the AE flood zone. She went on saying their next concern is advanced septic is needed; there is advanced septic nowadays, it is available, and there is no reason not to use it especially because this is in such close proximity to the Saint Sebastian River and the IRL; St Johns Water Management made that statement in their comments, so did the Department of Environmental Protection, and the Department of Economic Opportunity; she mentioned stormwater is a big problem as well, obviously stormwater cannot be right there in the coastal high hazard or the flood zone so it would have to be uplands somewhere; she hopes that there is a viable stormwater management system going to be in place on this BDP; and she noted rarely does she come up with complaints when she does not come up with a solution so her solution to the whole thing is to keep the homes upland, clear the coastal high hazard area and perhaps create boardwalks that go through there so that all the eight residents that own all the eight homes can enjoy coffee in the morning and cocktails in the evening on the way down to their docks that will probably be there so they can get into their boats. She stated this way it would be preserving the trees, it would give the residents a beautiful place to visit, it is only about five acres and it would make a nice little conservation area; that way this development might become a wonderful thing and everybody would say what a good job they did; and she would rather have that happen.

Mary Sphar, Sierra Club, stated on the chart she handed out there is a comparison of the proposed BDP and the BDP from May 30th which the Board has been discussing, along with the Sierra Club's recommendations for the current BDP; the current proposed BDP does not limit the number of residences in the coastal high hazard area, it has conventional septic except in the overlay, and there is no preservation of the Specimen Oaks required by the BDP; on May 30th the applicant agreed to only one primary residence in the coastal highhazard area, advanced septic throughout, and reservation of the Specimen Oaks; and Sierra Club is recommending no residences in the coastal high hazard area because this time he only has eight homes to fit on the property not 16, so he has that much flexibility, and they also recommend advanced septic.

She continued by reading from the DEP writer, "Conventional septic systems near coastal estuaries remain a significant contributor of nitrogen and phosphorus to these water bodies, in order to avoid the exorbitant cost of restoring nitrogen and phosphorus pollution problems in the future, any new nearby septic systems, especially those clustered on small lots, one acre or less, should be built to remove nitrogen before discharge. The Department supports the use of the nitrogen reduction overlay and strongly encourages the County to require these types of enhanced treatment OSTDS on the entire site due to the proximity of the IRL;" she noted there are similar comments from the Water Management District; and she read, "The District recognizes the County's implementation of the NRO and encourages the County to require enhanced treatment OSTDS on the entire parcel because of the proximity to the IRL," and that is the State speaking. She went on to say the final priority the Sierra Club would like is the preservation of the Specimen Oaks; she mentioned they have chosen their primary recommendations carefully based on the Comprehensive Plan and the State's comments; their three BDP additions confront and address a crucial fact that there is no good way to develop as usual by clear cutting, filling in the coastal high hazard area, and protecting the IRL at the same time, it cannot be done; and she noted in order to raise house pads in the coastal high hazard areas to 6.3 feet NAVD, a huge amount of fill would have to be brought in. She noted even if the Specimen Oaks and other trees were not victims of clear-cutting, putting several feet of fill on the roots would kill them and their service of absorbing stormwater runoff would be gone; and they are asking the Board to please add these conditions and to remember it does not have to approve an inadequate BDP.

Terry LaPlante stated she is speaking on behalf of Trees for Life Brevard; their mission is preserve, protect, and plant native trees in Brevard through direct action and education, to create an awareness of trees is a vital environmental resource for the community and quality of life; they call upon the Board to take responsibility for the long term health of the IRL by protecting the trees within the coastal high hazard area; by protecting the trees it protects the Lagoon; and the protection of the coastal high hazard area it will also protect the most important trees, the Specimen trees. She went on to say the subject property is located on the St Sebastian River which is part of the IRL; the shoreline of trees and other plants prevent erosion, reduce stormwater runoff, reduces the nutrients and contaminants being washed into the river, and provide a living shoreline for sea life and wildlife; additionally, tree canopies provide shade to cool the river and thus reduce the potential for algae blooms; trees take up hundreds of gallons of water reducing the potential for flooding and reducing the damage caused by major storms; and the National Arbor Foundation cites studies that for each dollar invested into a city's trees yields \$5.50 in economic benefits and the cost benefits to a community are most visible as concerns the cost of stormwater management and the prevention of flooding. She continued there is also sufficient evidence to support the case that green neighborhoods not only enhance the quality of life for the residents but that these properties sell at premiums giving the developer an incentive to take the extra time and effort to develop a green low-impact community; as indicated in their mission statement, it is their intention to educate the community on the value of preserving and protecting trees, especially Specimen trees; Specimen trees need to be kept as there are not any sufficient ways to mitigate the loss to community and to wildlife, especially birds; and Specimen trees are sometimes referred to as untouchable, for certain species like the Live Oak provide food and habitat for over 500 types of butterflies and moths which are the food source for 96 percent of the bird population. She stated what has been seen time and time again when builders have attempted to keep trees, they often do not survive; sometimes they are fatally damaged by the heavy equipment rolling over the roots, sometimes it is the building being placed too near the trees, and then there is the issue of trees being doomed when fill is needed to raise elevation of the property; there are other reasons to protect trees besides protecting the River and the Lagoon; tree canopies prevent heat islands, trees sequester carbon dioxide reducing the heat associated with

climate change, they improve water quality by intercepting pollution; and clear-cutting denies the homeowners the health benefits provided by trees. She added trees provide shade that cools the neighborhoods making it safer for being outdoors and being physically active, they reduce air pollution and provide oxygen critical for life, and shade trees also reduce energy costs to clean a home. She mentioned there have been many studies including one provided by the U.S. Forest Service citing the positive effects trees have on mental health, calming, reducing stress, increasing the ability to focus, increasing energy levels, and improving moods; and other health benefits include reducing blood pressure, boosting the immune system, and improving sleep. She went on to say the County has allowed clear-cutting for the sake of growth for too long and have destroyed the key tree canopy of Brevard and the health of the IRL; it is time to consider the needs of the people, their health, and their quality of life by keeping the trees that protect them; according to the St. Johns River Water Management District (SJRWMD) the IRL is an economic energy engine generating \$7.6 billion to Florida's economy annually; and she requests that the coastal high hazard zone be protected and preserved from any development other than hiking paths, bike paths, playgrounds, fishing docks, kayaks, launch areas, and etcetera. She added she would urge the Board to protect the Specimen trees and the IRL.

Jacob Zehnder stated he is not going to try to cover much of what has already been said; he thanked the Board for allowing him to speak; he mentioned Commissioner Tobia has already stated a number of concerns that have been addressed by speakers; he went on to say just to remind everyone what is being talked about, this is at the very south end of Brevard County; and he pointed out on the map where Sebastian Inlet is located and stated it has nice saltwater access and that is where the nice fresh water tributary is with location with the St. Sebastian River. He continued the parcel in question is outlined in red; it is a nice 20-acre parcel adjacent to the St. Sebastian River Preserve State Park; to look at some of the resources in that area, the Florida Fish and Wildlife Conservation Commission (FWC) put on a report in 2007 talking about where there are existing oyster reefs; the SOIRL Project Plan is spending potentially \$10 million over 10 years to restore oysters; he showed on the map where there is an area that FWC has identified is one of the last indoor only places in Brevard County with existing oyster populations; and he pointed out where the South region is and he explained that it is identified in yellow, and the partial is identified in red. He stated all the little yellow shapes on this portion of the St. Sebastian River are portions of oyster reef; oysters are a brackish water species, they like the mix of fresh and salt; they get the saltwater during high tide when the ocean water comes in from Sebastian Inlet and then they get a nice freshwater flush from the Sebastian River when that is up and the tides are down; one of the reasons why there are probably still oysters there is because of the low development along the St. Sebastian River; and he noted the May proposal had that concern of adding too many units but relatively good environmental considerations, now it has flip-flopped and it is kind of on the right path again for density but threw all the environmental stuff to the wind. He went on to say it is fun to look at aerial maps but this actually is what the site looks like from the water; there are some nice, big, and old live oak trees; there are white mangroves along the edge, one of the things that is funded by the SOIRL Plan, there are some native grasses, and Sable Palms is the State tree of Florida; he pointed out on the map that there is a beautiful riparian edge at the end of the property which could be protected and made as a beautiful center piece to these eight units; and he mentioned he is in line with the other speakers, limiting this to the eight units that are proposed with advanced septic so that the County is not just running nutrients down into the St. Sebastian River, keep the Specimen Oaks and stay out of the coastal high hazard area.

Chair Isnardi inquired if Mr. Moia would like to rebut anything that was said, and she asked if the Board had any questions.

Commissioner Lober stated he has a couple questions that were brought up by Mr. Botto; Mr. Botto had indicated that if the Board allowed new development to add pollution to the Lagoon that it would be violating some federal mandate; and he inquired if the County Attorney was aware of that.

Eden Bentley, County Attorney, stated she does not know which Code he was referring to.

Commissioner Lober stated is unaware as well; and he inquired if the particular locale of the developer a factor that the Board can lawfully consider in approving or denying a request.

Attorney Bentley responded the Board has to consider the land use only.

Commissioner Lober asked for clarification that it is not a lawful request.

Attorney Bentley responded no.

Commissioner Lober stated his final comment is for Mr. Moia; he advised he does not know if he is going to support this or not today; he thinks that obviously the last meeting was frustrating for Mr. Moia and visibly frustrating for a lot of people; the problem is the BDP proposed at the prior meeting is now, right, wrong, or indifferent, forming the basis that a lot of folks feel entitled to; he is interested to see how it works its way through the discussion; however, it is unfortunate because he does think Mr. Moia went above and beyond for the prior meeting. He noted he thinks there were some good things suggested by people; but one thing that comes to his mind is any time the Board is doing something for the benefit of the Lagoon or the benefit for a particular area, he does not like subjectivity, he does not like things being done in an arbitrary fashion, and if there is an overlay that says a particular area needs advanced and another area does not, he tends to agree with Mr. Moia that it is not fair to start imposing requirements arbitrarily on him with respect to that; and he noted if Mr. Moia went ahead and volunteered to do that it would be lovely, and he would love to see that. He added he thinks it would increase Mr. Moia's chances of getting this passed tonight to an extreme degree, but he does not think it is fair to force him to do it. He continued by saying there are a lot of things that people have identified that they want to see remain constant with this land and that is great; he noted there is an undeveloped lot next to him, between him and the river and he would love if it never gets developed but it is not his entitlement and it is not his place to say that it cannot be developed; therefore, he is empathetic to Mr. Moia's position. He stated all he can say is regardless of how this goes he hopes it works out in some fashion for Mr. Moia that this is developable, he just does not know if there is anything Mr. Moia could have said this evening would have been acceptable to some people; he thinks other people have more reasonable concerns, but some folks just want to let this be, hands off, and it is for the benefit of humanity, but fortunately or unfortunately, people have a right to do what they want to do with their land, to a degree. He wished Mr. Moia the best of luck.

Mr. Moia stated after hearing all that he does not know if he could support it either; he does not agree with a lot of it; he does not believe that a lot of that was completely factual, as Commissioner Lober mentioned, as probably some of his testimony the first time he came up, and he apologized for that, and for being out-of-line; he admitted he is clearly not prepared for this level of opposition as he did not expect it; he only received an email a couple days ago that there were even any complaints out there; only three people showed up at the Planning and Zoning Board Meeting and the Planning and Zoning Board approved it; and he had not heard anything that he thought was of concern, it was mostly talk about lot size. He continued by saying he is here prepared to talk about lot size and maybe some type of compromise with that, but no the kitchen sink is being thrown in there; all the comments are applicable to all development in Brevard County; it is hard for him to say that he can do this or that because the

Code applies to every development in Brevard County; he is more than willing to adhere to all the Codes and even those above it, that is why he thought when this was submitted, it was only submitted with what he thought they were entitled to; and he noted when the applicant bought the property he bought it fully believing and being told that he could get eight units on it because it had a land use, and he is not changing the land use, he is keeping it the same because that was what the request was and he was entitled to eight units. He advised he does this every day, he used to work for the County, and he had no idea that if a zoning was inconsistent with a comprehensive Plan that it would limit how many lots could be placed on there; he thought the land use prevailed or whichever one was stricter would prevail; usually the land use is more strict and the zoning is more lenient which is the case here; and he thought that if he compiled the land use that he would not even need to be in front of the Board to get a BDP to build on a lot that has a land use as he has with this one. He went on to say he has a lot of concern about this property, and to be honest he really does not understand it; for eight properties that he was going to put, there are eight other properties that are going to do worse than what he is going to do, if someone ever buys those lots and build houses on them; they will not have any retention, and they will have conventional septic tank system because they are not in the overlay district; to go to the other side of the railroad tracks within the same distance he is from the river, there are countless vacant lots that can be developed on conventional septic with no stormwater treatment system; and he inquired who it is that is really hurting the river, will it be them with their eight homes who will comply with the latest and greatest standards with state-of-the-art stormwater management system that has to, by Code and by law, reduce the amount of pollutants to the water. He noted that is what is required, that is what the Code reads, that is the way the SJRWMD makes it happen, so they would be the only development in this area that would actually reduce the amount of pollutants going to the river; he commented he is really stunned; if they are only limited to one structure in the coastal high hazard area, so be it, if that is the Code they have to comply; he mentioned he is not that familiar with that requirement; and when Commissioner Tobia mentioned the one unit, one unit to him means the lot itself, to keep the lot out of it, and to him that is not fair, because obviously people want lots with the river frontage; whether they build a structure in there or not, or if they are not allowed, then they will not. He added they do not design structures when they do subdivisions, that is all done at the building department level with the home buyer, it is not what they do through the land development regulations; and he mentioned that comes after the fact. He went on to say all he is asking for is what he feels they are entitled to; they were going to offer a lot as they were asking for a lot, 12 more units, so to make the project viable they needed the 12 units to offer everything they were willing to offer; however, now they are just complying with doing it exactly the way the Code says, avoid the land use as it says it has to be done, the way the Code says it has to be done; he added they just want the right to build and do what everybody else in the County does, nothing different; for the Board to impose different requirements for meeting the County's requirements, he does not think that is right or fair; this whole septic thing is really new, the science was brought to the Board, it made a good decision, that this was good for the whole County, and if it is good for the entire County he hopes it is good them too; and they would be more than happy to comply with that. He continued by saying if the Board is at an impasse and they need to go back to the drawing board he would appreciate the opportunity because this level of opposition was a complete surprise to him, and he really does not understand it.

Chair Isnardi stated she knows there was discussion when Mr. Moia talked about the advanced septic systems; and she inquired if that was when he was asking for 12 units.

Mr. Moia corrected her by saying they were asking for 20 units back then.

Chair Isnardi corrected herself, stating 12 additional units; she thinks it would be very difficult to go back and explain it all now, but they had talked about a stormwater management system and how it can actually be more efficient with the higher density; she explained she is not

suggesting that Mr. Moia go back and ask for higher density, what she is saying is that Mr. Moia is able to put in the proper stormwater management because he does not have random lots at 2.5 acres; she believes the concession was at 2.5 acres, but it actually can be more detrimental and more difficult to manage water with those sparse units; and she inquired if that is correct.

Mr. Moia responded it has to meet the requirements, but Chair Isnardi is correct that 2.5 acres is hard because getting the water to get somewhere, except for raiding the entire lot and start tearing trees down.

Chair Isnardi stated that has a lot to do with retention to because they would be able to place more retention ponds, canals systems, and things like that, things that are denser.

Mr. Moia responded that is correct; and he added with zoning tied to the land use they could create a lot of open space that they would not even build in it because they would have that flexibility.

Chair Isnardi explained it would be like an entire engineering class to explain how stormwater works, but she gets it; and she thinks maybe that is where some of the discussion got lost. She explained people do not like to look at it this way, but the profit made on 20 units compared to the eight units, the investor would have been able to afford those units; and to her that makes sense.

Mr. Moia agreed.

Commissioner Tobia commented he rarely comes to a meeting without an idea of which way he was going on a vote; he met some folks from the area today as he disclosed, but after testimony he will explain where he stands on this; he respects everyone for their opinions; the County's Comprehensive Plan says that the Board has to pay special scrutiny to any construction that happens in the coastal high hazard area; he just pulled up the coastal high hazard area in Florida Department of Economic Opportunity, and it clearly states that the County needs to limit development in coastal high hazard areas, Section 163; and the Board has heard from the Natural Resources Management Department that there is a lack of research on septic tanks that are in the coastal high hazard area and that it may be detrimental. He noted the County is going to get an answer to that, but he thinks it would be premature for the Board not knowing that and spending millions of dollars on the Lagoon, even a little bit would set a very bad precedent; he understands where Mr. Moia is coming from when he stated treat him like every other area is treated, but unfortunately this is not every other area, this is unique, it is specific, and it is within the coastal high hazard area as not only he has presented but also the home owners have; in short of no commitment for advanced septic, he thinks it would be premature for him to grant the request by Mr. Moia at this juncture; and he advised he would be more than willing to look at this again when the research comes through in August or if there is any preliminary data that was found reliable he would be willing to do it then. He added without any research and hearing from the County's Natural Resources Management Department that it could potentially be hazardous, he is not comfortable supporting it at this time.

Commissioner Pritchett stated if other people build they do have to manage their own stormwater when getting their permitting done through the county, so it is not like other people can build on lots and just have a heyday with not taking care of their own stormwater; and that is just a couple things she wanted to say in case the community is listening and think that the Board does not have any kind of ability to help with the projects it is trying to do. She mentioned she really feels for the builder having to go through all this; from everything she has

heard tonight, she does not think there was a lot of opposition; she thinks everyone is agreeable to the eight, it is just some of the parameters that wrap around it; she thinks Mr. Moia should spend a little time and meet with his Commissioner to work on some things; the goal is to cause no harm; Mr. Moia stated the applicant bought this property thinking he could do this, but he should always know that when someone buys something and signs a contract that is what he/she is buying; and they can hope to come along and change it but everyone is smart enough to know that. She went on to say if Mr. Moia would have done this with the eight units last time, it would have been a done deal because the Board had negotiated all through it with him and everyone was at a place where they thought it would be responsible at that time; it is not so much that she is holding him to his BDP, but they all beat this dead horse at the least meeting and she had gotten to a place of comfort or so she thought; a few things in the BDP might not be necessary like forming a homeowners association; with the additional septic and these \$400,000 and \$500,000 homes, she is not sure that an extra \$10,000 to upgrade the septic is going to be that bad; and when he builds that one home on the coastal high hazard area it could be put on stilts. She added she does not know if he can do more than one, he might be able to put more than one, she does not know but there are ways to come back with some creative thoughts; there were a couple things in the other BDP that she realized might be good things like the base flood elevation is changing to the 5.3 which Mr. Moia brought up last time and she thinks that might be something he would want to look at; the coastal high hazard area is something that needs to be worked through; the Oak trees seem to be a big deal but Mr. Moia had that in the BD Plat time, so that was significant to Mr. Moia at the time, to help preserve them; and she mentioned he also had in the BDP about the wetlands and that he was going to take care of the impact as to not impact more than .37 acres. She noted she thinks if he works through this he will find some things that might be okay again; she reiterated she did not hear a lot of opposition because no one said to make it stay at two like they heard the last time; and she thinks there is an agreement on the eight, she thinks they will be beautiful homes, and she thinks that he will make a lot of money because it is such a nice place to live. She stated she is going to wait to see what Mr. Moia's Commissioner comes back with because he seems to have a few things he has worked through at this meeting; therefore, she thinks the Board is going to get to a place where Mr. Moia is going to be able to build, and some of those things in the BDP probably are not necessary with only eight homes, that were with the 16 to 20 homes.

Commissioner Lober stated he does not want to see Mr. Moia get shot down this evening; his thought is, if Mr. Moia is amenable, he would be inclined to move to continue this out; and he inquired if a couple months would be enough time or if he would need longer. He asked staff what could be done with a couple months out.

Tad Calkins, Planning and Development Director, stated a couple months out would be the December 5th meeting.

Commissioner Lober asked if that would work for Mr. Moia.

Mr. Moia confirmed it would.

Commissioner Lober made the motion to continue this Item to December 5, 2019.

Commissioner Tobia asked Chair Isnardi if the Board could direct staff, if possible, to provide the Board with information concerning septic tanks of all varieties that are in the coastal high hazard area.

Commissioner Lober commented if Commissioner Tobia wants him to make that part of the motion he will, but he does not know that it is necessary.

Chair Isnardi responded she does not think it is necessary. She went on to say she thinks, this is not her District so she is not going to speak to harshly against Commissioner Tobia, however she thinks if this is how Commissioner Tobia felt maybe meeting with Mr. Moia and the applicant would have produced more fruit and they could have moved forward; she thinks Commissioner Lober said it best, it is completely unfair to any property owner, whether it is a development of eight houses or 300 houses, to place an unfair burden on them saying they have to have an advanced system when others do not; now if the County Commission wants to change its Policy then that is fine, she is willing to look at that; but given the fact that there are several empty lots within that same area that would develop and that the Board would not require them to have the advanced system, and they would probably have a larger impact on the drainage than a house with 2.5 acres would have; she does not think the Board is being very consistent, she thinks it is being impassioned and speaking hypotheticals that very clearly had to be drug out of staff to come up with to how this might possibly could have maybe in a high 100 year storm affect the coastal high hazard area; and to her it is more to the infrastructure than to the Lagoon. She noted she thinks if staff is going to come back with an opinion it better be sure what it is saying before the Board starts restricting without change in Policy; and she reiterated she is willing to look at the Policy and talk about the Policy but the Board cannot just say arbitrarily that this is an unfair burden that it is going to place on a developer because of a hypothetical. She continued by saying she thinks that is reckless and possibly grounds for appeal if they actually wanted to sue this Commission; this is a public hearing, and it is based on testimony of fact, she does not think hypotheticals would work for policies that the County does not have in place, understanding of course that BDPs often offer concessions; she thinks that people get impassioned and a little confused when using the term development because with development people assume it's a big PUD on these little quarter-acre lots and it is high density, these are 2.5 acre lots; and most of the opposition the Board heard was the reduction in density which Mr. Moia addressed; and that is just how she feels about it. She added in order for her to support any further restrictions she would have to have a change in Policy or some real science instead of hypotheticals.

Commissioner Tobia stated the way lobbying works, his office is always open and it is the job of the people who are concerned and making change to come see him, in his office this is the way they handle things; Chelle Woods had contacted his office on numerous occasions and she has come in on numerous occasions; in all honesty if he was a lobbyist and he was interested in developing a piece of property that may have some issues with constituents, he thinks common sense would be to call up the Commissioner and ask for a meeting; it is not his job to seek the council of people trying to come forward; and whether this is being listened to or not, the residents figured it out, certainly the lobbyist did not. He went on to say as for the grounds to appeal, his suggestion would be to seek counsel, there is competent counsel in back, do not take the opinions of folks that have not passed the Florida Bar nor have gone to law school.

Chair Isnardi commented while she would agree with that sentiment, the fact of the matter is that this applicant has been before this Board before and it did talk about terms; when those terms appeared to change, she knows her office and she had additional questions, would have reached out to the applicant because ultimately she wants to come to a solution and not send the applicant back again to delay it; if it is a good solution for all then it is a good solution for all, that is the bottom line; and as far as grounds for appeal, she has been at this for a while, she has seen it, and she just suggested that was an exposure of this Commission.

There being no further comments or objections, the Board continued the request for a BDP limited to a maximum of eight lots in an RU-1-13 zoning classification to the December 5,

2019, Zoning meeting.

Result: Continued

Mover: Bryan Lober

Second: Curt Smith

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

H.6. Public Hearing, Re: Brevard Medical City, LLC, Requests Transmittal of the 2019-2.2 Large Scale Plan Amendment to Change the Future Land Use Designation from Planned Industrial to Community Commercial (19PZ00086)

Jeffrey Ball, Planning and Zoning Manager, stated Brevard Medical City, LLC requests the transmittal of a Large Scale Comprehensive Plan amendment to change the future land use designation from Planned Industrial (PI) to Community Commercial (CC); it is located in District 4 on the east side of North Wickham Road approximately 740 feet north of Jordan Blass Boulevard; and on September 9, 2019, the Local Planning Agency heard their request and unanimously recommended approval.

Robert Lee, Lee Engineering, stated is representing Brevard Medical City, LLC, and this is a request to change the Future Land Use Plan from Planning Industrial (PI) to Community Commercial (CC). He added this is the first step necessary to follow up with a PUD to allow for some independent living facilities in an expanded assisted living facility, and he is there to answer any questions the Board may have.

Commissioner Lober stated he has one and it will not affect how he votes on this, but he is curious enough to ask; he added back in April there was an Agenda Item in this same spot that indicated it was a 120 room assisted living facility, the current one talks about adding 40 beds to raise it from 96 to 136 beds; and he inquired if the Representative had any idea which was accurate, it does not matter as far as he is concerned, but he is curious based on the discrepancy. He noted if Mr. Lee did not have it handy it was not the end of the world.

Mr. Lee replied right now that is a general amount of units; it will be figured out in the site planning stages during the PUD process; it would be 100 units for the independent living facility, the owner is okay with that amount; and he believed it was an increase of 40 beds over the originally approved assisted living facility. He went on to say that would be 40 more assisted living beds and 100 rooms for the independent living facility.

Commissioner Lober stated his appreciation.

Commissioner Smith stated he would like to move to approve this; he had some concern about the addition of the extra units; and his concern was traffic on that section of Wickham Road, but staff has assured him that it does not pose a problem and that is why he is in favor of it.

There being no further comments or objections, the Board approved transmittal of the 2019-2.2 Large Scale Plan Amendment to change the Future Land Use designation from Planned Industrial to Community Commercial on 16.329 acres of land located on the east side of North Wickham Road, approximately 748 feet north of Jordan Blass Boulevard.

Result: Approved

Mover: Curt Smith

Second: Bryan Lober

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

H.8. JSFS Land Trust, Jacob and Faye Shapiro, Trustees (Kim Rezanka) Request a Small Scale Comprehensive Plan Amendment to Change the Future Land Use Designation from Residential 4 to Residential 6 (19PZ00062)

Chair Isnardi called for a public hearing on JSFS Land Trust, Jacob and Faye Shapiro, Trustees, to request a change to the Future Land Use designation from Residential 4 to Residential 6.

Jeffrey Ball, Planning and Zoning Manager, stated Item H.8. and H.9. would be read in together because they are companion applications. He noted Item H.8. is JSFS Land Trust, Jacob and Faye Shapiro, Trustees, represented by Kim Rezanka, and they are requesting approval of a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from Residential 4 to Residential 6.

Kim Rezanka, Cantwell and Goldman, P.A., stated she is attending with the developer, Juan Negaro, of SOHO One Development, LLC, and Z. Sid Chehayeb, who is the engineer of record; as the Board can see from the aerial on page 568 of the packet, this is the only undeveloped land in the area that is residential; to the north of it is conservation land, and then the City of Titusville; this is approximately 9.79 acres, it is heavily wooded, there are over six acres of wetlands on this almost 10-acre parcel; it has never been developed; and has a history of sales but no development. She went on to say it was sold in 1977, 2004, 2009, and it is currently under contract with SOHO One Development, LLC; the initial plan was to build duplexes; once the initial wetlands survey was done, they found out there were too many wetlands to do that; and that is when the project was changed into townhomes, which are single-family homes, not multi-family. She added it is currently RMH-1 zoning, which is one unit per acre of mobile homes and it has a Future Land Use of Residential 4, they are asking for Residential 6, an R-A-2-6, so townhomes can be built and clustered to make the project viable; the package she provided to the Board, on page one is the concept plan that has been provided and it is also to be attached to the Binding Development Plan, the north is to the right side; and as the Board can see, there is a proposed seven buildings, with seven units, there will be a little clubhouse, pond, and retention ponds. She went on to say the clubhouse will have an impact on some wetlands, and as the Board knows, they are limited to impact on wetlands; there is access to the south onto an unpaved County Road, which is Ranch Road; the way it is designed right now, it crosses to Falk Avenue, which she understood was a paved road, but in the staff report it may not be paved, then Falk Road goes out to Everett Road that goes out to Grissom Parkway; and that is not the desired access, so the applicant met with staff on September 19, 2019, to review County standards and the BDP resulted to allow the developer to improve Ranch Road. She noted that will be improved to the project entrance; the hope is for 49 townhomes, but it will likely be only 48 because of the acreage if this is passed; the BDP will limit, even though they asked for Residential 6, they are limited to a little less than five units per acre; the sales price should be approximately \$250,000-\$300,000 for each unit; and there is City water on Ranch Road, and the developer will bring sewer to the property. She explained Ranch Road will be improved if the density is increased to Residential 6 as requested in the BDP; and starting on page 2 of the packet is the BDP, based upon Tad Calkins' comments, they have revised it, pretty much in conformity of what he suggested. She explained he pointed out that they agreed to limit the small area on the west of the property, marked 425, that they would leave it undeveloped, so that has been added as paragraph five, paragraph four has been changed mostly as Mr. Calkins suggested; however, he had asked that they take out the last sentence in paragraph four "the Developer/Owner may be entitled to transportation impact fee credits or reimbursement"; she added "for the cost of engineering, permitting, and construction"; while staff at this point looks at this as a site related

improvement, they do not believe they have to, this is what was called a concession, they believe the developer does have access to a paved road as required by County Code to Falk Avenue, however it does make more sense to have the access on Ranch Road, so it is a concession for the increase in density, the developer will pay for about 1,600 to 1,700 lineal feet of Ranch Road for access; and whether or not they can get impact fee credits or reimbursements, they have to come back to the Board anyway, and she did not want it left out there that they are still seeking them because they believe they will. She pointed out the road could cost \$300,000 to \$400,000 to improve because they have to move power lines and other things on this road that have been there for a long time; just for reference, she has in the packet on pages eight and nine, the transportation impact fee issues, what capital improvements are, they believe this makes it, and also Section 62-815, on page nine that deals exactly with credits and reimbursements for informational purposes; they met with residents at a meeting on June 25, 2019, and there were close to 40 residents there and they were rightly interested and concerned about what was going on next to their property; they were concerned about traffic, again, this will go onto Ranch Road, which goes onto Grissom Parkway, and that will have no decrease in service; they were worried about buffering and privacy, again this is clustered, there are only nine or ten homes that will even see these townhomes; and it will have at least a 25-foot buffer, and there is a 20-foot buffer from the property owners surrounding it due to the zoning category. She reported there is no evidence that this will drop the market values, as she said, they will sell for \$250,000 to \$300,000; the recent sales in the Cypress Woods area, which is the development that surrounds this property, have run anywhere from \$148,000 to \$300,000 in the past two years; the access issue again is a site plan issue, and they now have it on Ranch Road not going through the neighborhood subdivision to the south; drainage was also a concern because this has historically been where property drains to, and as the Board knows and understands under 62-32.02, on page 10 of this packet, the drainage of the property shall not alter the established drainage so as to adversely affect the adjoining property, and this will not either, but that is a site plan issue with stormwater. She went on to say this is a unique property, it is the last undeveloped area, there is a reason it is undeveloped, because it is hard to develop; this will provide a housing choice of townhomes, there is nothing like it in this area, but there is to the north in Titusville, but not in this part of the County; the Future Land Use Element 14 states that zoning regulations should allow for a variety of housing types while providing residents with a choice in terms of residential locations, and this will do just that; the first request is a Comprehensive Plan Amendment, there have been some current concerns that this does not match with one of the Board's Policies, because it is not a transition zone, it is not next to other Residential 6; however, Brevard County Land Development Code says that Comprehensive Plans can be amended with the procedures established by State Statute. She explained State Statutes that she found, including 163.3231.163.3194, say that land development regulations, permits, and orders have to be consistent with the Comprehensive Plan, otherwise no one could amend the Comprehensive Plan; there is nothing that states, that she could find, in Florida Statute, and Ms. Bentley could know better, but she could not find it, that states Comprehensive Plan amendments must be consistent with the Comprehensive Plan, otherwise one would go in a circular pattern, and no amendments would ever occur; the Comprehensive Plan amendment is a legislative planning decision; the Comprehensive Plan is a general guideline for the growth of the community; and there is no way in 1988 anyone had even thought about this parcel of property and what would be needed there to make it developable. She pointed out as to the zoning, this is a peculiar property because of the wetlands, that is something for the Board to consider and determine a reasonableness for the zoning classification; the mere fact that it has not been developed is akin to a change of circumstances; there is case law out there that says lack of development is a reason for rezoning if it cannot be developed any other way; and this is infill development, and she had this discussion at Planning and Zoning, Brevard County Code does not define infill development. She went on to say on page 11 and 12, she found some things on the internet about what infill is, they all know what it is, it is a development of vacant parcels within previously

built areas; and she stated the printouts are not from the State, she could not find anything that was too helpful, but it does talk about the American Planning Association on that first page, and the second one she has some things highlighted about infill development. She added there is increased emphasis on developing passed over parcels within developed areas and on maximizing use of existing public facilities, which is water and sewer; there is already power lines down there as well; new infill development can often lead to some benefit that may have been missing from a neighborhood, such as some increase in density to help support more frequent transit service; she reiterated this gives the neighborhood a different type of housing units, they are still single-family, and it will also result in the improvement of Ranch Road; and she added if one goes down Ranch Road, there are seven or eight houses that access Ranch Road directly. She went on to say if one goes over I-95, there are hundreds and hundreds of developable acres that one day will likely be developed and they will have a start on Ranch Road; this will result in the partial construction of Ranch Road, it can also be used for the subdivision to the south, they would have an extra access to Falk Avenue that they did not have before; and it will allow the property to be developed. She concluded by saying she would request approval of the Comprehensive Plan Amendment to Residential 6, and the rezoning to RA-2-6.

Chair Isnardi asked the Board if it had questions for Ms. Rezanka now.

Commissioner Lober responded affirmatively. He asked looking at the east side, simply because that is where the most development is, the three buildings that are roughly north of the center, if the buffer to the east of those buildings was 20 feet.

Ms. Rezanka replied it has to be at least 25-foot to the edge of the property, and she was saying it was 20-foot from the setback to the other building, it is just from a neighbor's house to the building will be at least 45 feet; and she added this still needs a site plan, these are just concept plans.

Commissioner Lober stated he just wanted to make sure he was still on-board; he appreciates the information with respect to Ranch Road, but putting it aside for the moment, there is certainly some adjoining and nearby streets; and he inquired what the situation was with those streets, if they were paved or unpaved and if they were likely to face traffic from this.

Ms. Rezanka replied Falk Avenue is paved to Everett Street, which is also paved, which goes to Grissom Parkway; and she does not think so, she thinks this development would use Ranch Road if it is available and paved because it will be a nicer road. She explained the others are older roads, they are not in the best of shape; there is no line down the middle, there are no shoulders; and she does not think there are sidewalks.

Commissioner Lober stated with respect to the cover sheet on the Agenda Item, it talks about the applicant having intent to provide sewer; and he inquired if she knew whether or not sewer would be hooked up.

Ms. Rezanka replied they will have to.

Commissioner Lober stated one of the people he met with for his staff briefing called this a lake of Residential 6 and an ocean of Residential 4; he said maybe it is a pond of Residential 6 and an ocean of Residential 4; and he inquired what Ms. Rezanka thought in terms of how this really fits in with the nearby area, how is it that Residential 6 is consistent in her mind.

Ms. Rezanka responded the only reason Residential 6 is consistent is to get the townhomes, for the clustering, to make a piece of property that is not developable, to make it developable,

because of the cost of the road, because of the cost of the amount of roads they will have to put in to get there, it will have to be built up so it does not impact the wetlands; spot zoning does not really apply to comprehensive plans; and if there are reasons to do it from a legislative policy, it is fairly debatable to allow this to happen to get the concession of the road, then she thinks it is viable for the Board to approve it.

Commissioner Lober stated he does not believe that anyone necessarily has any issue with multi-family, but he thinks it is the Residential 6 bump that is causing at least his consternation with it; he inquired if she thinks this is something that will simply not be economically feasible to do multi-family with keeping it at Residential 4.

Ms. Rezanka stated her client does not think so; when they first looked at this road as a \$1.2 million road to build it to full County standards, so that is where the problem came in; it is just difficult, even the wetlands surveying on this property is expensive, so, no they do not; and she added it is single-family, not multi-family, it is single-family attached.

Commissioner Lober stated his apologies.

Ms. Rezanka stated that is a common misconception, it is going to be single ownership, it is not going to be rented out to anyone that comes down the road like an apartment; and it is single-family with single-family ownership.

Commissioner Lober expressed his thanks.

Commissioner Pritchett stated she really appreciates that her applicant stepped up with the road; she probably liked Mr. Calkins' version of the BDP better, because he added in about the Ranch Road improvements receiving a certificate of completion; and she inquired if Ms. Rezanka had a copy of it.

Ms. Rezanka stated her apologies that she forgot about that, that she does have it.

Commissioner Pritchett stated on the applicant's BDP, she would like to strike out the words "or allow paved access", because she thinks it has to be paved access, she thinks that was just a typo, and she would like Ms. Rezanka to look at that; but she would like to tell her that she loves the townhomes; and when she was first hearing about this, it could be fixed, because she said cluster. She went on to say they are kind of clustered close to the neighborhood; her struggle, and she has not heard from everybody and she has not had a chance to talk to her, so they have kind of been going back and forth working stuff; she does struggle with the Residential 6, unless there are some parameters in place that will cause no harm to the surrounding properties; and she thinks that can happen, but they are going to have to figure out how to go about it. She inquired if these will be single story or not.

Ms. Rezanka stated two-story.

Commissioner Pritchett confirmed two-story, and inquired what the height will be.

Ms. Rezanka responded the maximum that can be done is 35 feet.

Commissioner Pritchett inquired if that was what they were planning on.

Ms. Rezanka stated she does not know yet, they have not been designed yet.

Commissioner Pritchett stated her struggle with that is that it is so close to the houses and it is up high and the other houses are single level houses behind it; what she is struggling with is if they would have all been in the center, they would be good to go, but there are all of those wetlands; and she does not know if they can mitigate all of those things.

Ms. Rezanka replied they cannot mitigate wetlands at all because of access.

Commissioner Pritchett stated she is having a hard time with that; right now it is zoned Residential 4 and it is manufactured with nine; to do this they will end up with 49, so they will have to work hard together to come up with something for that; she reiterated she has a lot of heartburn for the surrounding people; and she stated her thanks for the change from Everett, because she thought 490 trips up and down that road everyday was just not fair to that little road. She went on to say there are also a lot of homes behind it, and they have been bumped up to a zoning that was only going to allow nine homes that were manufactured homes, there was never going to be two story; now they have to be concerned with maybe a two or three story home right behind their houses, and those are right on top; and there is not going to be any type of buffer, so she needs to hear from her and the residents, but she is just being fair with her and up front with what her struggles are right now.

Ms. Rezanka stated there was four units to the acre, so in theory, it could have been the same zoning they had, RU-1-13, which allows 35-foot height as well; they could have 35-feet anywhere in Cypress Woods, they are allowed to, so this is not more.

Commissioner Pritchett stated this is for building townhomes right behind those houses, and before it could have only been manufactured homes, so this is significant, so she is going to have to continue hearing from her; and she is just telling her up-front what she is struggling with.

Ms. Rezanka stated she understood, and she is just trying to explain they can only do what they can do with the limited impact; they know where the wetlands are, and they know there needs to be roads.

Commissioner Pritchett stated she knows, she understands this is a really wet piece of property, she really gets it, and she understood that they are trying to find a creative thing; and she reiterated she is trying to let her know up front, so this is what she is going to try to work through tonight.

Ms. Rezanka stated she understood, but in theory they could put up a 35-foot home right there.

Commissioner Pritchett questions who could put a 35-foot home right there.

Ms. Rezanka stated if they wanted to get regular zoning, RU-1-13, it could have 35 feet.

Commissioner Pritchett inquired where that would be.

Ms. Rezanka stated the property at issue.

Commissioner Pritchett inquired if it was the property they are on right now.

Ms. Rezanka replied yes, because the next-door zoning is RU-1-13, and this is Residential 4, and they could go to RU-1-13, she thinks that would be imminently compatible; and they could have a 35-foot home there.

Commissioner Pritchett stated yes, but it would be just one home, and there would only be nine on the property, so they are bringing a lot of density; she stated she really wants this to work, so she is waiting to hear from the residents; they have gotten lots 21, 22, 23, 24, 25, and 26 here, and the residents say that it would not bother them a bit, she would probably get a little more comfortable; and she reiterated that she does not want to cause any harm. She added she does want the applicant to be able to do this project, but she is struggling with that Residential 6 transitional property and she is not real sure if this is the best zoning; but she does understand why it was picked because it will work if they can make this work. She explained this is really complicated, she is really hoping that all involved are really creative and can find a way to make it work, but right now there is a lot to work through; she gave kudos to her for working on the road portion, because that was her number one thing that she thought was going to hinder things; and she worked very hard on that, and she appreciates that.

Chris Clements stated she has not seen the final plan, today she was not sure if it was going to be on the Agenda; she came to a couple of meetings where it was tabled; and she knows the Board indicated it wanted some more specific type things. She added as a resident of Cypress Woods, it is a single-family zoned community that will back up to this property on Ranch Road; she feels that the rezoning application should not be approved for the requested RA-2-6 designation so that 49 single-family attached units can be built on this property; the reasons she feels this way are: all the surrounding homes are zoned residential four level, therefore it is not consistent with the surrounding landscape; she feels a multi-family type zoning does not belong in the Port St. John community, it does not exist in other places; she is very concerned about the impact on the wetlands and on any heritage trees that may be on the property; and much of the property is muck, and she thought it was part of a special flood hazard area, which could not be developed, so the developer is trying to make up by building more homes on a reduced amount of land so it can be a profitable venture for him. She added there will be seven buildings, seven per unit, two stories, a pool, community center, and it is too much for that parcel of land; she is concerned that the runoff and the drainage will impact their community in Cypress Woods and other surrounding Ranch Road residents; she feels a builder cannot guarantee the impact will not be felt by other local residents; she is concerned about the traffic and trips generated in and out, and it is nice that they would pave Ranch Road, because that is kind of an eyesore and it is not a good road; but she cannot believe that if there are seven buildings, seven units, everyone has three cars, how much more traffic and noise level that will impact that area. She noted she was a little confused, M&R, who was going to build a warehouse, she is confused now, it was taken off, it was withdrawn, they were going to, within a small proximity, have a warehouse there in this area, and she does not know if it was taken off the table completely or it just means that they are not asking for the BU-2 zoning, so in this area, there is a lot going on; also her understanding is now there is a small area study group looking at Port St. John future development; she thinks very serious consideration should be given to this request in order to make sure that Port St. John manages its growth properly, and for it to be the best for the community to maintain its small town feel and character; and it is not Titusville and it is not Viera.

Roland Hudson stated Falk Road is right beside his lot, it is only, at the most, 200 feet long, and only about half of it is not there anymore; but his biggest concern was the paving of Ranch Road; and they have said they would do that. He added there is a lot of traffic on that road.

Linda Donahoe stated she is the president of Cypress Woods Homeowners Association, she is not here to speak as the president of Cypress Woods HOA, she is a resident, but she has several opinions from the home owners; and she added there are 305 homes there, the ones that are going to be affected the most are the ones that will have the development backed up to them. She explained they all have one story houses, they are all on the same level, and now there will be townhouses overlooking their backyards; some of them have swimming pools in

their backyards; she inquired how the Board would like it if it had their neighbor looking out the window while one is in their pool; that is a big concern for the neighborhood; and the main concern is the drainage, when it rains it pours. She went on to say they have floods, they have lots of floods, and it is mainly back there on Ranch Road; there is a canal that is supposedly catches the runoff, but it is not kept clean, it has trash in it, and all kinds of things; and by adding more houses and more water flowing in there, as well as more everything will cause more problems. She pointed out the last storm they had two years ago had all of their roads flooded, no one could get in or out of their homes, and Ranch Road was worse; the entrance would be going into the middle of the wetlands, and she assumes they will have to pave that; she inquired what that would do to the drainage; and she stated drainage is a big thing that they are really concerned with, on top of the distance between the houses and the townhouses. She added these people paid a lot of money for their houses, it is not like one's normal everyday house, they are very nice houses in a very nice neighborhood, and they would like to keep it that way; and they do not want to degrade their home values. She went on to say they do not know how it will affect them having a townhouse in their backyards overlooking their yard and things of that nature; she thinks just about everybody has addressed most of the concerns; and as far as the townhouses go, she does not know if it is that big of a concern if they were not overlooking their pools and their homes, but they are, plus the drainage issue, are the main concerns that everybody has.

The Board recessed at 7:00 p.m. and reconvened at 7:12 p.m.

Ms. Rezanka stated they did meet with the neighbors and they were concerned the buffer; they have been talking with staff regarding the landscape buffer requirements, and what is necessary; it is only a 25-foot buffer, there is no requirement for a fence, there is no requirement for an extra landscape buffer, but they are prepared to offer an additional landscape buffer to mitigate if it could be bamboo, like they did in Viera; and she inquired what would be acceptable to the Board. She went on to say her client is thinking two layers of trees, but again, the Board is going to have a minimum of 45-foot distance between the buildings and the houses; she pointed at when looking at the aerial, many of those houses in Cypress Woods are at their front property lines, or they have big backyards, so she thinks it is probably more than that, but it would have to be a landscape buffer and he is more than willing to do that; and there is nothing in the Code that requires it, she is not sure how to negotiate it at the podium like was done in the old days when the other Commissioners were here, but they are willing to do the landscaping to buffer, but she thinks they would need to work with staff and it can be put into the BDP, or they can work with staff and come back, whatever the Board would prefer. She pointed out they are under a contract deadline, so they do not want to wait too much longer, but if that is a concern, or if they have a way to put that in there, saying that the landscape buffer needs to grow to 30-feet over two years, something along those lines, like the bamboo will do; she does not know what the condition is in the bank's BDP.

Commissioner Smith stated that were three stories and they put in bamboo.

Ms. Rezanka stated she thought they put in a berm and then trees on top of that.

Commissioner Smith stated it gave them the extra height.

Ms. Rezanka stated her client is willing to put the buffer in there to buffer them with a landscape buffer, but she does not know how to do it; staff does not have the time right now to try to figure it out; she would like to repeat it is not multi-family, it is single-family attached, the drainage has to meet Code; in theory, according to Residential 4, this could have 39 units if there were not wetlands on it, there would still be those trips; and if the buffering is the issue, which the Board

has heard it is, and Commissioner Pritchett is concerned about it, they can add an addition that there will be an opaque landscape buffering to grow to a height of 20 feet within two years, if that is acceptable. She added if staff thought it was acceptable; there are trees that start out at 10 or 12 feet, they can start with that, but it takes time for trees to grow; and a 20-foot tree cannot be put in very easily for it takes time to grow.

Commissioner Pritchett stated with the stormwater part, that is a concern for her, too, but the wonderful thing is with that, if anybody builds, they have to contain their own water; that is a whole different hurdle to get through later, so that will be taken care of later; whether they can build all of these and hold water will be down the road; the traffic problem has been kind of solved by the applicant agreeing to pave Ranch Road, but she still has a lot of struggle with going to a Residential 6 and adding the additional density; and she inquired if a berm is where the applicant builds up on the property, and they put in trees. She added that would maybe be interesting if a berm was built with some additional trees so there is the inability to see from this project to the other that could be a solution; her concern would be for the neighborhood right behind it, she would like them to see a natural complete buffer so there is the inability to look onto their pools and such; and if they can get there, she would certainly be a happier Commissioner. She explained if the applicant would have to get through all of those other things, and they are trying so hard to work through it; she thinks if the applicant went with Mr. Calkins' language on the BDP; she spent a lot of time with him yesterday trying to get something that would cover that concern; and she inquired if staff thought that would be adequate if there was a berm built on those units that have houses abutting the project.

Darcie McGee, Natural Resources Management, advised that, as Ms. Rezanka stated, when the trees are planted, it is not going to be opaque, it could take a few years, and they need to make sure there is a very robust planting plan, so that may increase the depth of it so one can stagger different heights of things, and use berms; and they can get there, but she wanted to caution the Board that it takes time.

Commissioner Pritchett asked if staff needed time to work this part of it out, or if staff felt confident that they could help Ms. Rezanka come up with an adequate BDP language that would satisfy the condition.

Ms. McGee replied she feels confident they could work something out in the language for that.

John Denninghoff, Assistant County Manager, cautioned the Board that it can only go so high with the berm because the drainage still has to work for the site, the drainage cannot be pushed off into the yards of the neighbors, so there is a limit to how high they can go with that; and he does not know how high that is just yet, but that is something staff can work on with the applicant. He noted he does not know if they have the TOPO for the property yet, or a concept of how their drainage plan would work, but there is a limit to how high that berm could be.

Commissioner Pritchett stated it cannot be a 30-foot berm.

Mr. Denninghoff stated he assumes they would not want to use retaining walls to have a similar effect; that would be very costly for one, and two it would introduce all kinds of other issues for maintenance.

Commissioner Pritchett inquired how she would make a motion to approve this with the BDP and things that were discussed; she asked how she would state the motion so that they come up with a type of buffering that completely protects the neighbors behind them, as they go up 35-feet.

Eden Bentley, County Attorney, replied the Board is so far off at this point that tabling the Item may be better so the Board could get specific language from staff and they would have a chance to actually think about it and look at the site; staff has had experience with buffers in the past, and she thinks that is what Ms. McGee was trying to explain, where people thought they would be installed and look a certain way; and the Board needs to be very clear on how it will look in the beginning versus later, so that it does not incur any problems. She explained staff does need specificity so the Board does not end up in an argument about what kind of tree goes where.

Commissioner Pritchett stated the Board can table this to the next Zoning meeting that should be enough time to make sure the neighbor's concerns are addressed, and everybody will be so happy with this project; and the applicant has worked so hard to try to mitigate all these needs, and she is very impressed with that. She inquired if the applicant was amicable with tabling this Item to the next zoning meeting.

Ms. Reznaka asked what the date of the next Zoning meeting would be.

Christy Willey, Clerk to the Board, replied November 7.

Commissioner Lober stated if that does not work, the Board can put it on a Regular meeting.

Commissioner Pritchett agreed; and she inquired what would be best for them to make sure this is done properly.

Mr. Calkins stated they would want to make sure that the applicant understands that that gives them a two week window to turn this around; and he does not know if that is adequate time for them to get some of the information to put together a TOPO for the berm and make sure they are not blocking any drainage.

Ms. Reznaka stated they are not going to have a TOPO, and the applicant is under a contract deadline, and really needs to do this in October, if possible; if this is a condition they cannot meet, they will need to come back and ask for a change; he is willing to do whatever needs to be done to put the language in the BDP, if they can get it to the Board this month.

Commissioner Pritchett inquired if everyone can work on it, and if they feel like they get to a place earlier than that, but she would like for the neighbors to make sure they give their contact information to her Aide so she can contact them directly and they are on top of the meeting times, too; and she inquired if they have to have the date of the meeting.

Ms. Reznaka stated yes; she inquired if October 22, was an available meeting.

Frank Abbate, County Manager, stated yes, that is the next Board meeting.

Ms. Reznaka stated that would be their preference.

Commissioner Pritchett made a motion to table this Item until October 22.

Commissioner Lober seconded for a brief discussion.

Ms. Bentley inquired if that would be both the land use and the zoning.

Chair Isnardi responded affirmatively.

Commissioner Lober stated Mr. Denninghoff was thankfully the bad guy, he was going to have to go there with the drainage, but he beat him to it; the other item he wanted to make sure was addressed is the maintenance of that shrubbery as well, so that it is maintained in perpetuity, so if it dies six months after it is planted, then too bad so sad to the adjacent property owners.

Chair Isnardi stated for clarity, she understood Commissioner Pritchett wanted Mr. Calkins' language in the BDP; she inquired about the item Ms. Rezanka brought up about the transportation impact fee credits, about that being an option since that will come back to the Board if those are awarded.

Commissioner Pritchett stated she thinks that part is good, too.

Chair Isnardi stated it was crossed out in Mr. Calkins' version, but Ms. Rezanka wanted to make sure that was added back in if the opportunity presented itself.

Commissioner Pritchett stated she would not mind at all; and she added if she could find a way to get them the credits, she would love to also.

Chair Isnardi asked if that was clear with staff.

Mr. Calkins responded affirmatively.

Commissioner Smith stated he would like to caution everyone, the Board and audience included, having gone through this with Viera, it takes a while for that vegetation to grow, and he assumes that they will get vegetation that grows very quickly, but it could take two to four years for it to create that opaqueness, and it will not be 100 percent, but it does work. He added they had that in Viera, and the Board tried to explain it to the neighbors, and it was still two years before they started to see it grow and were happy with it.

Commissioner Pritchett asked the neighbors to see her Aide, Marsha, to give their contact information, so she could keep them in the loop with the process.

Chair Isnardi called the question.

The Board tabled the request for a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from Residential 4 to Residential 6, to the October 22, 2019, Board meeting.

Result: Continued

Mover: Rita Pritchett

Secunder: Bryan Lober

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

H.9. JSFS Land Trust, Jacob and Faye Shapiro, Trustees (Kim Rezanka) request a change of zoning classification from RRMH--1 to RA--2--6. (19PZ00063)

Chair Isnardi called for a public hearing on JSFS Land Trust, Jacob and Faye Shapiro, Trustees, to request a change of zoning classification from Rural Residential Mobile Home (RRMH-1) to Single-Family Attached Residential (RA-2-6).

The Board continued the request for a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from Residential 4 to Residential 6, to the October 22, 2019, Board meeting.

Result: Continued

Mover: Rita Pritchett

Seconded: Bryan Lober

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

L.3. Board Report, Re: Rita Pritchett, Commissioner District 1

Commissioner Pritchett stated they have been dealing with some Code Enforcement issues in District 1, and one of them that came up recently is they were past the point where they could levy any more fees; because of that, staff cannot get them to respond at all, so she would like to find out where the Board is at a future meeting if the Board would be willing to start charging interest when they have maxed out; and maybe this would encourage the offender to respond to staff.

Commissioner Lober stated he is on board with that.

Commissioner Tobia responded affirmatively.

Chair Isnardi responded affirmatively.

Commissioner Pritchett asked staff if they could come up with some change to the County Code to allow the Board to charge interest when an offender is maxed out on fines.

Chair Isnardi stated maybe with some parameters on the extreme cases, or cases that would be a detriment to health and safety, not just overgrown grass; she added someone who has an infestation or something like that.

Commissioner Pritchett stated some of these are so bad, and the offenders will not respond to anything.

Chair Isnardi stated they are dealing with a house with rats right now.

L.4. Board Report, Re: Bryan Lober, Commissioner District 2, Vice Chair

Commissioner Lober stated he is going to keep it relatively brief, but he cannot pass on this Board Report, he has passed on the last several; he added he is in the process of working with Utilities, and to a lesser extent, Natural Resources Management and the County Manager's Office, on some concerns he has with respect to leaking laterals; and he may have mentioned it in the past, but he is in a better position in terms of having things better formulated. He went on to say he is essentially looking from moving from the carrot to the stick with the people that have not fixed their leaking laterals; just by way of background, and he will go into further detail in a couple meetings when this comes up on the Agenda, staff has spent a tremendous amount of money to test the beachside communities to see if the laterals were leaking; and the laterals are not the County's responsibility, but the County did it because it does impact the system. He went on to say when there is a discharge event, the cliff notes version of why there are discharge events oftentimes is because when there is an option of either flooding people's houses and having effluent going back into the toilets, showers, and tub, or releasing it and having it go out to the Lagoon, it is a horrible decision; but generally the decision is to release it out into the open so it does not go into people's living areas; and the reason that often happens is not just

because they have a storm, it is because there is a storm and there is an infiltration of water into the system somewhere. He added some of that is on account of man holes, some of that is on account of leaking laterals, and there are a variety of reasons that there is that infiltration into the system; he added one of them is the laterals, in the past when staff has tested, and done the smoke testing to identify those laterals, not only did they advise these people timely and said that their laterals are leaking, it is hurting the system; and it is not just bad for them, but bad for the County, too; but they also offered them through Save Our Indian River Lagoon (SOIRL) funds, 100 percent reimbursement to have a licensed plumber of their choosing, which is good for them because they can choose whoever they ordinarily use, and good for the Board, because if something is screwed up, the liability is on them not the Board; and it did not force any individual or entity on them. He reiterated they offered to reimburse them 100 percent of their costs to go ahead and do that, and yet, there was, over a long period of time, a tremendous amount of reluctance; he does not know if people are simply un-caring, if they are lazy, or what the situation may be, but they have tried the carrot by saying they do not owe anyone this, but it has been tested and found it is failing, it is causing the County problems; and even if it was a very small discharge, that discharge could have been prevented by having those laterals fixed. He went on to say it is whatever that volume is; if one subtracts that from the discharge amount, that is where it is at; if 10,000 gallons was leaked, and there is 10,000 gallons going in through the laterals, that is a problem; if, on the other hand, there is a million gallon leak, something catastrophic, it would have been 10,000 less than that; and some leaks can be prevented altogether, and some discharges on the other hand, can at least be lessened. He added the Board really needs to look, and he is not saying it just bludgeon these people into compliance, the Board may still want to have that carrot available to say hey, look, the Board is willing to give this money in order to get that person to do the right thing, but if they do not, the Board will be pretty onerous in terms of the fine that will be expected to pay, whether it is \$100 a day or something else; they are obviously not getting it, and his level of empathy for people that are ruining the system, and by extension ruining the environment, it is dwindled; he tries to keep track of the numbers to see where people are at, and there is more compliance over time, but it is not a rate that anyone would think is reasonable; and he asked that the Board keep it in its mind, because he will have something coming up in the future. He added he is at the point where there is no excuse that he has heard that would justify people's reluctance to do something that costs them nothing, when the Board is willing to fix their failed equipment.

Commissioner Smith inquired why he does not just give them a time limit, that they were notified on a certain date, they have 30 days to comply, after which there will be a \$50 a day or \$100 a day fine.

Commissioner Lober stated he is fine with that.

Chair Isnardi stated the Board could still offer them the opportunity for assistance.

Commissioner Smith stated it could say something like they only have 30 days left to take advantage of the free deal.

Chair Isnardi stated yes, and it could say otherwise Code Enforcement action is pending.

Commissioner Lober stated he would not say to someone that their lateral was leaking and the Board will start fining that person in three hours, he is not trying to be a jerk or unreasonable about it; a month is fine if that is reasonable to the Board; and it could be six weeks, two weeks, four weeks, he does not care so much about that, he is flexible.

Commissioner Pritchett stated that would at least give them time to make an appointment for them to find someone to fix it for them.

Commissioner Lober stated it makes sense.

Chair Isnardi agreed that it made sense, because when looking at the bigger picture, aside from the fact of course that it is polluting the Lagoon, one is not only dealing with that, but dealing with the taxing on the system, like Commissioner Lober stated, the potential discharges, and if that plant needs upgrading, it could be a higher cost for everyone; it is all bad, and she agrees, the Board definitely needs to address that; and she thanked Commissioner Lober for bringing that forward.

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

Commissioner Smith stated it is October; it is breast cancer awareness month; and he is wearing his pink shirt today and he has pink socks on that he can show the Board. He went on to say part of that is all about raising funds to defeat breast cancer and create more scientific studies on breast cancer; and he hopes his fellow Commissioners will help him raise funds, and staff as well, it is very easy and he realizes there are an awful lot of things to donate to, and if they do not have room in their budget he understood, but it would be most helpful if they did it together. He added one can go to his Facebook, they will see "Real Men", just tap on "Real Men" and a donate button will come up; he will match donations up to \$2,500; and he is looking forward to the Board and staff getting involved.

Commissioner Lober inquired if he minded if he cut him a check this evening.

Commissioner Smith stated that is fine, that works, too.

Commissioner Pritchett asked if they could share that link on their Facebook pages as well.

Commissioner Smith responded affirmatively.

Chair Isnardi agreed.

Upon consensus of the Board, the meeting was adjourned at 7:34 p.m.

ATTEST:



SCOTT ELLIS, CLERK



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

As approved by Board December 17, 2019