

Tammy Etheridge

To: Knox, Scott L
Cc: Lewis, Sally A
Subject: October 2, 2014 Zoning Meeting Minutes

Scott:

Attached are the October 2, 2014, Zoning Meeting Minutes for your review and recommendations. They will be considered for approval by the Board at its November 25, 2014, Board meeting.

Tammy Etheridge
Clerk to the Board
Brevard County Clerk of Courts
Tammy.etheridge@brevardclerk.us
321-637-2001 Extention 49056

MINUTES OF THE MEETING OF THE BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

5:00 PM

The Board of County Commissioners of Brevard County, Florida, met in regular session on October 2, 2014 at 5:00 PM in the Government Center Commission Room, Building C, 2725 Judge Fran Jamieson Way, Viera, Florida.

CALL TO ORDER

Attendee Name	Title	Status	Arrived
Robin Fisher	Commissioner District 1/Vice Chairman	Present	
Chuck Nelson	Commissioner District 2	Late	5:13 PM
Trudie Infantini	Commissioner District 3	Present	
Mary Bolin Lewis	Commissioner District 4/Chairman	Present	
Andy Anderson	Commissioner District 5	Present	

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.

INVOCATION

The Invocation was given by Reverend Eric Ball, founder of E3 Ministries, Titusville, Florida.

PLEDGE OF ALLEGIANCE

Commissioner Infantini led the assembly in the Pledge of Allegiance.

PUBLIC HEARINGS

Chairman Bolin Lewis called for a public hearing on Planning and Zoning Board Recommendations of September 8, 2014, and NMI Recommendations of September 11, 2014.

ITEM III.B.1., (14PZ-00055) - MORTGAGE INVESTMENT FUND 1, LLC - REQUESTS AN AMENDMENT TO AN EXISTING CUP FOR COMMERCIAL, ENTERTAINMENT, AND AMUSEMENT ENTERPRISES, TO INCLUDE RACING, SWAP MEETS, AND VEHICLE SHOWS FOR CARS, AIR BOATS, TRACTORS, TRUCKS, RIDING LAWN MOWERS, GO CARTS, AND ATV'S WITH SPECTATOR SEATING, CONCESSIONS, AND GRANDSTAND FOR AWARDS AND LIVE MUSIC, WITH WAIVER OF 50 FT. FROM THE REQUIRED 75 FT. SETBACK FOR BUILDING, MOBILE HOME, TRAILER, VEHICLE, OR MAINTENANCE EQUIPMENT

Robin Sobrino stated the applicant had requested the item be tabled; the Planning and Zoning Board tabled it to its meeting of November 10, 2014; and she asked the Board to table this item to the December 4, 2014, Board meeting.

There being no further comments, the Board tabled the amendment to an existing CUP for Commercial, Entertainment, and Amusement Enterprises, to include racing, swap meets, and vehicle shows for cars, air boats, tractors, trucks, riding lawn mowers, go carts, and ATV's, with spectator seating, concessions, and a grandstand for awards and live music, with a waiver of 50 foot from the required 75 foot setback for a building, mobile home, trailer, vehicle, or maintenance equipment, in an IU zoning classification, on 21.84 acres, located on the south side of Eau Gallie Boulevard, to the December 4, 2014, Board meeting.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Andy Anderson, Commissioner District 5
SECONDER:	Robin Fisher, Commissioner District 1/Vice Chairman
AYES:	Robin Fisher, Trudie Infantini, Mary Bolin Lewis, Andy Anderson
ABSENT:	Chuck Nelson

ITEM III.B.4., (13-PA-00098) - FLORIDA RIVER RAT, LLC - (JAY SCHENCK) - REQUESTS A CHANGE OF CLASSIFICATION FROM AU AND EU-2, WITH BDP, TO BU-1 ON THE WEST 400 FEET (3.43 ACRES); AND AU ON THE REMAINING 7.26 ACRES, WITH REMOVAL OF EXISTING BDP, ON 10.69 ACRES, LOCATED ON THE EAST SIDE OF U.S.1, APPROX. .23 MILE NORTH OF SILVER HILL LANE

Robin Sobrino stated this item was before the Board in February, and at that time the applicants representative made to limit the agricultural uses on the property, subject to a Binding Development Plan (BDP), the BDP that was proffered by the applicant did not restrict the uses to those that were stated on the record, and therefore, staff has requested this Item come back in a full public hearing for the Board to reconsider the request for re-zoning.

Jay Schenck stated he does not have any questions, and hopes for approval. He added he has owned this property since 1979, and he knows of only one objection and that was a letter that came in from a lady from Colorado representing her parents that live two houses away from the subject property.

Commissioner Fisher stated his concern is the residential, south part of the subject property backs up to, may need to meet a setback; and he inquired what Mr. Schenck is intending to

October 2, 2014

build. Mr. Shenck responded he and his brother own the six acres to the east, which is zoned agricultural, there is a fence up, and a natural buffer area, and of course depending on what kind of facility, if one is put on there, there are different barrier requirements. He added a lot of that has already been addressed with the County; and as of now, he has no real intentions to put any structures up.

Commissioner Fisher inquired if there was a structure put up, what the setback would be for the residents that back that property. Ms. Sobrino responded depending on the nature of the structure, it could be as little as 10 feet, or 15 feet, as a side property line, that is how staff would treat it. She added if it was a barn or stall, it would require a 50 foot setback from the adjacent properties, but any other agricultural related uses could be as small as 10 or 15 feet. Commissioner Fisher further inquired if there were any structures that would be of any concern for the other residents; and if he would have to fence his property. Ms. Sobrino advised there is no requirement for agricultural or single-family residential for fencing. Commissioner Fisher stated that is his only concern, is that he does not want the residential neighbors to have to see farm equipment in their back yard.

Mr. Schenck stated he has fenced the area between the river property and the neighborhood, on the east side, and he has informed all of his neighbors he more than likely would put up a fence; and a few of the neighbors are utilizing his property, so if he does put it in, it will be set back a little bit.

There being no further comments, the Board approved the request for a change of classification from AU and EU-2, with a BDP, to BU-1 on the west 400 feet (3.43 acres); and AU on the remaining 7.26 acres, with removal of existing BDP, on 10.69 acres, subject to a Binding Development Plan to exclude commercial hog farms and dog kennels.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Trudie Infantini, Commissioner District 3
SECONDER:	Andy Anderson, Commissioner District 5
AYES:	Robin Fisher, Trudie Infantini, Mary Bolin Lewis, Andy Anderson
ABSENT:	Chuck Nelson

ITEM IV.A., EXTENSION OF TIME TO RESPOND TO THE LETTER OF JUNE 18, 2014, RE: ALL ABOARD FLORIDA (AAF) AND FLORIDA EAST COAST RAILWAY (FEC)

Commissioner Infantini stated she is concerned that All Aboard Florida keeps asking for an extension; they were first supposed to get information to the Board by June 18, 2014, and now the Board is extending this out to December; and at some point the information that the Board is asking for is going to come after the time period to make comments on the Environmental Study. She inquired if she was the only one who was concerned about the fact that the Board will be receiving information after the comment period is over.

Commissioner Fisher stated she can make comments now. Commissioner Infantini responded the Board was waiting for information, such as their financial information from them; and she was hoping to receive that information from them so that the Board could make more intelligent public comments; and she thought the Board was holding off on approving the resolution and saying they wanted all of the information.

Commissioner Anderson stated he does not believe the financial information has anything to do with the environmental impact study that is being done. Commissioner Infantini stated it does

October 2, 2014

not have any impact, but she does not understand why the Board will not make a motion to approve the resolution, and inquired if the Board is in favor if the resolution to not assign the leases from Florida East Coast Railway to All Aboard Florida; and she does not understand why the Board is waiting for their financial information to make that decision either.

Commissioner Anderson stated there are three other issues coming before the Board, the Transportation Planning Organization (TPO) issue, and some other issues, and he is okay to extend until all of those come out. Commissioner Infantini inquired why the Board is extending; it would either want to extend the leases to All Aboard Florida from Florida East Coast Railway, or it does not, it is not a financial decision. Commissioner Anderson stated because the County Attorney has advised the Board that the extension is proper; and he is not an attorney.

Commissioner Fisher stated he is not supportive of the resolution because in Commissioner Infantini's resolution, the County would bare all costs for maintenance; he is not supportive of that; and he will not be voting for the resolution to bare all costs for maintenance.

Commissioner Infantini stated she is not asking the County to bare all costs for maintenance, and he is clearly reading out of context. She stated she guesses the Board will vote. She stated she is not in favor of this.

Commissioner Nelson's presence was noted at this time.

The Board approved an extension of time to respond to the letter of June 18, 2014, for All Aboard Florida and Florida East Coast Railway.

RESULT:	ADOPTED [4 TO 1]
MOVER:	Robin Fisher, Commissioner District 1/Vice Chairman
SECONDER:	Andy Anderson, Commissioner District 5
AYES:	Robin Fisher, Chuck Nelson, Mary Bolin Lewis, Andy Anderson
NAYS:	Trudie Infantini

ITEM III.B.2., (14PZ-00070) - KYLE LANE, INC. - (KATHERINE JOHNSON) - REQUESTS A CHANGE OF CLASSIFICATION FROM BU-2 TO AGR, ON 14.38 ACRES, LOCATED ON THE SOUTH SIDE OF PARRISH RD., APPROX. 0.12 MILE WEST OF RANGE RD. (2704 KYLE LANE, COCOA)

Robin Sobrino, Planning and Development Director stated there is one letter of objection in the file, and that Commissioner Nelson had some observations about the Zoning application; and she has spoken with the applicant to share some of the concerns with her. She stated this is the Kyle Lane, Inc. application where they are seeking a rezoning from BU-2 to AGR so that they can have an animal sanctuary.

Commissioner Infantini stated for the record she had discussions with Ms. Johnson sometime ago about this property; and she knows her assistant has also had discussions.

Katherine Johnson stated she thinks she has talked to all of the Commissioners. She stated she is present for any questions the Board may have.

Commissioner Nelson stated for the record Ms. Johnson and he have talked but not about this specific property; but they talked about the concept some time ago. He went on to say there is an unintended consequence; he does not have an issue with the change; but the unintended

October 2, 2014

consequence is that in the future the adjacent BU-2 properties would be subject to having to put up walls because they are now adjacent to agriculture; and he does not want to put that on the adjacent property owners. He stated he thinks the County Attorney has a thought on what might be done to address that question.

Morris Richardson, Assistant County Attorney, stated the best he can suggest, because he does not think the Board can take any action at this point to waive the requirement that they place a wall in the future; it should be noted he thinks there are a few BU-2 uses at least, depending on how they configure, could require a wall even without the zoning change to Agricultural; and what could be done with the applicants voluntary consent is if the applicant is willing to waive any right or ability to object in the future to a waiver request from one of her neighbors. He stated if one of the neighbors wanted to develop their properties if it would require a wall simply because of the zoning change and they requested a waiver from that requirement, if the applicant agreed not to object to that, and that would be in the form of a binding development plan that would be recorded and it would be binding on anyone who purchased the property in the future; it would not go all the way to protecting the neighbors, but he thinks it would be a big step towards a compromise; and it would alleviate some of that concern.

Ms. Johnson inquired if the waiver would go with the property to the next person who bought the land. Mr. Richardson replied it would be binding to its successors. Ms. Johnson inquired what about the other property owners; and inquired if they sold their property would that waiver extend to the new owners. Commissioner Nelson responded it should. He stated the reason is by making this change, because they have BU-2 now, they are not required to do walls to wall off from each other; and he does not see how its fair to businesses adjacent to the applicant because of the change they would now be subject to it. He noted a future Board could make that decision based on the review of it, but she would not be able to object because she was the one that created that where it is currently not a circumstance the adjacent owners would be subject to. Ms. Johnson agreed to Commissioner Nelson's request.

There being no further objections or comments, the Board approved Kyle Lane, Inc. Request for a change of classification from BU-2 to AGR on 14.38 acres, located on the south side of Parrish Road, west of Range Road, 2704 Kyle Lane, Cocoa, subject to a Binding Development Plan (BDP) whereby the owner would waive objections to future requests by adjacent property owners to waive buffer walls along common property lines.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Chuck Nelson, Commissioner District 2
SECONDER:	Andy Anderson, Commissioner District 5
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM III.B.3., (14PZ-00069) - STEPHAN PROPERTIES AND TROY W. STEPHAN - REQUEST A CHANGE OF CLASSIFICATION FROM RU-2-4, RU-2-10(5), AND AU, ON 5.07 ACRES, LOCATED ON THE EAST SIDE OF N. COURTENAY PKWY., APPROX. 0.17 MILE NORTH OF KINGS WAY

Robin Sobrino, Planning and Development Director, stated this is Stephan Properties and Troy W. Stephan requesting a change to Institutional Light.

There being no further comments, the Board approved a change of classification from RU-2-4, RU-2-10(5), and AU, on 5.07 acres, located east of North Courtenay Parkway, north of kings

Way, subject to a Binding Development Plan (BDP) to limit it to a 63-bed assisted living facility only.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Chuck Nelson, Commissioner District 2
SECONDER:	Trudie Infantini, Commissioner District 3
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM IV.A. EXTENSION OF TIME TO RESPOND TO THE LETTER OF JUNE 18, 2014, RE: ALL ABOARD FLORIDA (AAF) AND FLORIDA EAST COAST RAILWAY (FEC) (CONTINUED)

Commissioner Fisher stated he wants to get the record straight with Commissioner Infantini; with the resolution 15-13, where she always acts that he is putting words in her mouth, that resolution says, "Whereas, local government will bear the maintenance cost of upgraded railroad crossings and the cost of installing and maintaining quiet zones at the 50 railroad grade crossings within Brevard County and 352 rail crossings in the regional affected by All Aboard Florida;" and he stated that is why he is not supportive of the resolution. He asked Commissioner Infantini to correct what she said on the record, that would be great.

ITEM III.D., ORDINANCE, RE: MODIFYING SECTION 62-1953 TOWERS & ANTENNAS, A NEW ORDINANCE REGULATING COMMUNICATION FACILITIES AND ENACTING A WIRELESS TELECOMMUNICATIONS MASTER PLAN (SECOND READING)

Marjory Derrick stated she wants to talk to the Board about the tower ordinance the Board is considering; 12 years ago the Board of County Commissioners specifically passed the law now in place requiring that the height of communications towers be set in terms of the limits recommended by the U.S. Fish and Wildlife Service; the reason for this was, and is, that Brevard County is directly in the path of a major migratory bird track; twice a year millions of birds fly in the Brevard County skies on their way to Mexico and Central and South America, or conversely on their way back to their northern homes; and the reason we do not see them is because they fly at night. She went on to say the problem with these high towers is in fog or cloudy skies, the birds are forced to fly at a lower altitude; as a result, the towers intrude directly into these bird flocks as they pass through, they do not see them and collide with them, either that or they fly around them to the point of exhaustion; the reason for this is that they use celestial navigation to guide their flight, and they think the tower lights are stars; and it is real carnage. She pointed out losses are estimated between four to five million birds killed annually; one example in this County is at Sebastian when a Ranger passed a tower very early one morning and one hour later on his return found some 300 dead birds around the tower; the issue is even more serious than it was when the law was passed; tower construction has been increasing six to eight percent annually since tower development, continuing at the rate of a thousand a month; and according to the Federal Communications Commission, they now total 120,000. She noted potentially impacted birds include Noddy birds species, which are already threatened or endangered and 124 of non-game species; not long after the law was passed in the County, the Board received a request to allow towers to be constructed one mile apart all over the County; and the answer was no. She advised the Board there is a specific reason the U.S. Fish and Wildlife Service became involved and made its recommendation in an effort to accommodate the tower industry's needs, and at the same time protect this huge number of creatures from harm; it is not an arbitrary figure, but based on accommodation to real need; lighted guide wire towers taller than 199 feet are especially hazardous to night-flying song birds;

October 2, 2014

lighting these towers, hazardous as it is to the birds, is nevertheless a necessity for aviation safety; at this time there is a communication work group of government agencies, industry, and academic researchers already formed to develop and implement research that may yield additional information on ways to construct and operate towers to prevent bird strikes; and as new information becomes available, guidelines will be updated accordingly. She went on to say that said, the present Brevard County law set a national precedent at the time it was passed; nothing like it had ever been done before; two articles about it were featured in the *American Bird Conservancy Magazine*; and as the result, other Florida organizations became involved. She pointed out her own work with the issue resulted in her receiving the Partners in Flights Stewardship Award sponsored by the Swarovski Company and presented by the U.S. Fish and Wildlife Service; that is not a brag; and the point is the significance of what the Brevard County Commission did in passing this law cannot be overstated. She asked the Board to join the Commission who first set it up, and keep it in place for the time being, at least in terms of tower height not exceeding 200 feet; stated if there are to be any changes made in it, let them be governed by a legal requirement that they follow the updated recommendations of the U.S. Fish and Wildlife Service Communications Work Group as these recommendations are formulated; and the fellow creatures need all the help they can get.

Kim Rezanka, stated she is representing herself as a citizen because she receives calls asking her about this; she did not know anything about it; and she spend hours last night reading about it. She went on to say although she believes the concept is right, she has concerns about the public not knowing what is going on with the overlay district; she lives off of North Indian River Drive; there is the Fire Station 42 that is now a site where they can put a cell tower, which is right down from her home; and she would not have known that had she not read this. She stated Catalina Isles and Watts Park can put a 100-foot cell tower there; and Catalina Isles hated the cell tower on Courtenay Parkway that was constructed. She pointed out her concern is notice and how people will know; there used to be the public process for Conditional Use, so people knew and there would be public input; and now the distance from residential property has been reduced from five times the height to two times the height; she thinks people should know what is being permitted; and it should not be because it is on government land it gets a permit. She noted there should be a Conditional Use Permit (CUP) even on the sites that are government-owned; maybe it should be a less difficult CUP process; she does not know what the notice requires, because there are 31 pages, with 482 sites, that now the County Manager or his designee can approve a cell tower; and she does not think it is the public process anticipated under zoning ordinances. She stated she is also concerned about anti-trust laws being violated by preferential treatment of the government lands; she struggles with this because she thinks it is a good idea, but she is concerned about the lack of public process now in the proposed ordinance; and especially having dealt with a year and one-half of Catalina Isles residents not wanting a tower 750 feet from their property, and now at Watts Park on the River they are going to put a 100-foot tower 200 feet from residentially zoned property. She asked the Board to reconsider putting Conditional Use back for all sites, by giving a lesser standard review, but a public process and notice to residents, businesses, and property owners.

Commissioner Nelson inquired where Ms. Rezanka was when they were fighting Catalina Isles; and stated she was on the other side actually wanting it. Ms. Rezanka stated she understands, but she had to abide to five times the height, and they did; she is just saying the public does not know what is being done. Commissioner Nelson pointed out every application the County has received has asked for a waiver, including the one Ms. Rezanka represented. Ms. Rezanka noted not the 750 feet. Commissioner Nelson advised as he recalls there was not a site that did not trigger that, because Ms. Rezanka went by residential and she did not consider the apartments residential. Ms. Rezanka stated that is correct. She stated the developer in her loves the proposed ordinance; but as a private property rights person, she is concerned that the public no longer has input.

October 2, 2014

Commissioner Fisher stated some of the sites that are on the list, they will never have a tower there anyway; setbacks and compatibility issues need to be looked at; and he does not want to lock the County in either.

David Slawson stated he made some phone calls later this morning, he was kind of upset with what he saw when he looked at the proposed ordinance; he spoke with a couple County Offices; he was upset because some of the things that this group of Commissioners recommended and voted to the employees of the County was not followed through; in particular relating to non-commercial towers; and Commissioner Nelson voted on and Commissioner Anderson amended his amendment to roll back everything dealing with commercial towers the way it was before, which has not been done. He went on to say the Assistant County Manager Mel Scott was supposed to meet with them; he had them fill out a list and put an asterisk next to their names; they were going to discuss the unintended consequences of antennas of other organizations; and that meeting never happened. He noted the Board was told by Mr. Scott that there would be a meeting to discuss those problems; now it is several weeks later and nothing has happened, yet the second reading is happening of something that had not fully been taken care of; and he wants to see his elected people take him seriously. He went on to say the non-commercial antenna restrictions, if those are rolled back, he is fine; they looked at the regulations and from what he can see it was not done; and one of the things that was said was they gave permission for towers that are preexisting. He stated the unintended consequences of the marine band; General Mobile Radio Service (GMRS) are used in the emergency plan; they are being restricted by not allowing them to put up their antennas and not allowing them to have a tower for that; and marine band people are out there to assist vessels. He pointed out citizen band still plays an active role in highway emergencies and also during disasters; it is a way families can communicate with other families; and then hopefully they will pick up an amateur operator to get the message passed on from there. He noted Exemption Six is what is in there now for the taxi-cab and tow truck drivers; there was a previous exemption for all towers and all services under 35 feet; and if that tow truck thing is eliminated and put that exemption back in for all towers under 35 feet, it would solve that problem.

Commissioner Nelson stated what he thought was being done was staff was going to go back to deal with cell towers communications specifically, to go back to where it had been for the ham operators and other aspects; there may be parts of the old Ordinance that staff was not looking at that may have affected Mr. Slawson in the way he just described; and he thinks the unintended consequences were they were trying to get the amateur radios out of there back to where it had been, and not trying to impact any other aspect other than the telecommunications piece of that.

Mr. Scott stated staff did put back the exemption in place; the Board's direction was to move forward on a second hearing that had this ordinance set up so that those that enjoyed exemptions with the current Code could enjoy those same exemptions; staff has done that, it is on page 15, Section 12; and he was clear after the meeting following Board direction, there was a desire to have certain things expanded upon in the realm of exemptions that were not in the current Code. He stated following Board direction from this point forward if those are to be investigated, he would be happy to; the list that they signed that he promised he would compile was for the purposes before the meeting occurred making sure the public saw staff's effort to restore the exemptions; and those emails went out. He pointed out he did not receive any responses from the mass email being sent out; he was clear as it related to standard exemptions for other non-commercial antennas and things of that nature, that staff did not have Board direction to take the exemptions further than were currently in place.

Mr. Slawson stated on non-commercial antennas there was a Board directive; he has the video with him on a thumb drive of the Board meeting; and at 10:17 a.m. he thinks, Commissioner Nelson specifically said he did not want those operators to be affected; the agreement was yes,

October 2, 2014

they have and they will be rolled back along with the amateurs; and directly after that portion, Commissioner Anderson spoke and said he would like to amend the motion he made to include non-commercial in there because he was not sure that was clearly said.

Commissioner Fisher stated he thinks he was the one who had the concern; the original motion was to table it and he was not comfortable tabling it; and that is when he asked Commissioner Anderson to change his motion. He went on to say his intention was to put the amateur operators back to the same position they were before, not adding anything, but putting everyone back in the same position they were before the ordinance came back; and whatever that was the Board was changing, it was going to put that back in place and not adding, expanding, or doing anything else. He noted if it was changed in the ordinance, for the ham radio people, it was going back to where it was before; and that was his motion and intention that he asked Commissioner Anderson to change.

Commissioner Nelson stated he thinks there was confusion over that aspect that cell phones were only going to be addressed; it is not saying they should not address what Mr. Slawson is talking about; and he thought they were going back to where it was and only talked about cell phones. He advised he is okay moving forward with his issue, but it is outside of what is being discussed in terms of this; it has gone back to only dealing with cell phones; and it is a different process. He stated the Board would be better suited to be able to understand those issues dealing with them specifically; the Board is not saying it is not going to do it; but it will be pulled out from this discussion.

Mr. Scott stated for the citizen's benefit, there was Board conversation that definitely spoke to that; but that was conversation that occurred after the Board motion and vote. He went on to say the Board has not given direction to move forward on some of those ideas; he had conversation with the County Legal Counsel on this Master Plan, Anthony LePore, who can speak to the Board if it wants to address these other aspects of potential exemptions relating to Federal Communications Commission (FCC) regulations that the County may run a foul of if it moved towards the expanded ideas related to exemptions; and he cautioned the Board it is on the right track to pursue that issue separately from tonight's advertised ordinance.

Commissioner Anderson stated the confusion comes in talking about ham radio versus non-commercial broadcast entities; and he asked the Assistant County Attorney to define that so it is clear.

Morris Richardson, Assistant County Attorney, advised the Board that he is not competent to give the Board that definition; it was staff's understanding was the Board was addressing the concerns addressed by the amateur radio operators, and was not specifically addressing at that time how to deal with non-commercial broadcast; and in Section 62-2406, it clearly exempts out antenna, antenna support structures run by amateur radio services operators licensed by the FCC.

Anthony Lepore, CityScape Consultants, stated ham or amateur operators enjoy a limited federal exemption called PR- 1, modified in Florida Statutes; it is strictly a private radio service used by individuals; non-commercial broadcasting is a reserved band of the FM band below 91 megahertz that is similar to commercial broadcasting except that there are restrictions on the content of promotional announcements that are capable of being broadcast; and non-commercial licensees are required to be only permitted to be religious, community, and other category, traditional non-commercial entities. He stated the FCC does not treat commercial and non-commercial broadcasters differently when it comes to infrastructure, they are treated exactly the same; and he would urge the Board to retain the similar regulations as it related to the broadcasting infrastructure that it currently has.

October 2, 2014

Commissioner Anderson inquired in laymen's terms, a radio station on a low FM frequency that does not have commercials that is restricted to certain categories. Mr. Lepore responded affirmatively.

The Board adopted Ordinance No. 14-30, amending Chapter 62, "Land Development Regulations", Code of Ordinances of Brevard County, Florida; amending Article VI, Zoning Regulations; specifically amending Subsection (3) of the Following Sections: 62-1331 General Use, GU; 62-1332 Productive Agricultural, PA; 62-1406 Recreational Vehicle Park, RVP; 62-1481 Restricted Neighborhood Retail Commercial, BU-1-A; 62-1482 General Retail Commercial, BU-1; 62-1483 Retail, Warehousing, and Wholesale Commercial, BU-2; 62-1511 General Tourist Commercial, TU-1; 62-1512 Transient Tourist Commercial, TU-2; 62-1541 Planned Business park, PBP; 62-1542 Planned Industrial Park, PIP; 62-1543 Light Industrial, IU; 62-1544, Heavy Industrial, IU-1; and Subsection (1)(B)(4) of 62-1574 Farmton Mixed Use Zoning Overlay District, Farm-1 to replace the phrase "Towers and Antennas" with "Wireless Telecommunications Facilities and Broadcast Towers"; specifically amending Subsection (3) of Sections: 62-1334.5 Agricultural Rural Residential, ARR; 62-1335 Rural Estate Use, REU; 62-1343 Single-Family Attached Residential, RA-2-4, RA-2-6, RA-2-8, and RA-2-10; 62-1344 Residential-Professional, RP; 62-1371 Low-Density Multiple-Family Residential, RU-2-4, RU-2-6, and RU-2-8; 62-1372 Medium-Density Multiple-Family Residential, RU-2-10, RU-2-12, and RU-2-15; 62-1373 High-Density Multiple-Family Residential, RU-2-30; 62-1401 Rural Residential Mobile Home, RRMH-1, RRMH-2.5, and RRMH-5; 62-1402 Single-Family Mobile Home, TR-1, and TR-1-A; 62-1403 Single-Family Mobile Homes, TR-2; 62-1405 Single-Family Mobile Home Cooperative, TRC-1; 62-1571 Environmental Areas, EA; and 62-1573 Institutional Use, IN(L) and IN(H) to amend the Conditional Use term from "Towers and Antenna, Non-Commercial" to "Wireless Telecommunication Facilities and Broadcast Towers"; specifically amending Subsection (3) of Sections: 62-1334 Agricultural Residential, AU and AU(L); 62-1336 Rural Residential, RR)1; 62-1337 Suburban Estate Residential Use, SEU; 62-1338 Suburban Residential, SR; 62-1339 Estate Use Residential, EU, EU-1, and EU-2; 62-1340 Single-Family Residential, RU-1-13, and RU-1-11; 62-1341 Single-Family Residential, RU-1-9; 62-1342 Single-Family Residential, RU-1-7; and 62-1404 Mobile Home Park, TR-2 to Amend the Conditional Use term from "Towers and Antennas, Non-Commercial (see Division 5, Subdivision III, of this Article" to "Wireless Telecommunication Facilities and Broadcast Towers"; specifically replacing design and location standards for towers and antennas and the biennial tower Conditional Use Permit Application cycle currently in Section 62-1953 Towers and Antennas with review criteria for Wireless Telecommunication Facilities and Broadcast Towers; delete Section 62-2124, Television Dish Receivers and Antennas as similar language is being created within Section 62-2447 titled Satellite Earth Stations; create Chapter 62, Article VI, Division 7, Communication Facilities to administer the Tower Master Plan process; create Chapter 62, Article VI, Division 7, Subdivision 1 titled General Provision Title, Intent, Goals, Definitions, Applicability, Existing Communication Facilities, Exempt Facilities, Abandonment, Administration, Enforcement, Penalties, Interference with Public Safety Communications, and Appeals; create Section 62-2400 Title; create Section 62-2401 Intent; create Section 62-2402 Goals; create Section 62-2403 Definitions; create Section 62-2404 Applicability; create Section 62-2405 Existing Communications; create Section 62-2406 Exempt Facilities; create Section 62-2407 Abandonment; Create Section 62-2408 Administration; create Section 62-2409 Enforcement; create Section 62-2410 Penalties; create Section 62-2411 Interference with Public Safety Communications; create Section 62-2412 Appeals; create Chapter 62, Article VI, Division 7, Subdivision II Permit levels and General Development Standards to Identify Various Permit Levels, Design Preference, General Development Standards, Maintenance, and Fees; create Section 62-2420 Permit Levels; create Section 62-2421 Design Preference; create Section 62-2422 General Development Standards; create Section 62-2423 Maintenance; create Section 62-2424 Fees; create Chapter 62, Article VI, Division 7, Subdivision III Level I Permits; create Section 62-2430 Application Requirements; create Section 62-2431 Reserved; create Section 62-2432 Antenna Element Replacement; create Chapter 62, Article VI, Division 7, Subdivision

IV Level II Permits to create Subsection for Level II Permits; create Section 62-2440 Application Requirements; create Section 62-2441 Co-Location; create Section 62-2442 Concealed, Camouflaged, and Non-Concealed Attached Antennas; create Section 62-2443 Specific Application Requirements for Co-Location and Attachment; create Section 62-2444 Mitigation; create Section 62-2445 Wireless Telecommunication Facilities on County-Owned Property; create Section 62-2446 Specific Application Requirements for Mitigation and New Level II Towers; create Section 62-2447 Satellite Earth Stations; create Chapter 62, Article VI, Division 7, Subdivision V Level III Permits; create Section 62-2450 Application Requirements; create Section 62-2451 Specific Application Requirements for new Wireless Telecommunication Facilities; create Section 62-2452 Specific Application Requirements for New Broadcast Towers; providing for conflicting provisions; providing for severability; providing for area encompassed; providing an effective date; and providing for inclusion in the Code of Ordinances of Brevard County, Florida.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Robin Fisher, Commissioner District 1/Vice Chairman
SECONDER:	Andy Anderson, Commissioner District 5
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM III.C.1., - (ADMINISTRATIVE REZONING) - PROPOSED ZONING OVERLAY FOR THE DEVELOPMENT OF COMMUNICATION FACILITIES WITHIN CERTAIN COUNTY-OWNED PROPERTIES BY TAX ACCOUNTS NUMBER

Robin Sobrino, Planning and Development Director, stated these are the properties outlined in the Master Plan that would be government-owned within the unincorporated area of the County that would be allowed to have towers.

Commissioner Infantini stated Kim Rezanka brought up a very interesting point, one that she had not considered; she does think the public should be informed; and she would like to have the Item tabled pending a better notification to the community.

Commissioner Fisher inquired when the County decides to use a site to put a tower on what would the process be.

Mel Scott, Assistant County Manager, replied to take a step back as far as the online notification, staff has the Master Plan and these locations on the Planning and Development Department's website; it has been online and accessible through the Internet for months and it will continue to be there. He went on to say the next public process would be the Board approving lease terms; and in a couple of weeks the Board will be entertaining an agenda item that will allow staff to move forward on a bidding process to line up tower companies to be onboard for the County to fulfill carrier need as they present themselves and to identify public lands that are part of the Master Plan.

Commissioner Nelson stated as part of this, whether it is policy or possibly should have been in the Ordinance, he does not have a problem with having a public hearing when that decision is to be made, and probably in conjunction with the lease itself to give the opportunity to the public comment; not all sites listed would be selected, because some of them there is just no way the Board would ever want to use them; but the fact that it would be in a public meeting probably is not strong enough, it needs to be a public hearing component for approval of the lease for use of that.

October 2, 2014

Mr. Scott stated it would be easy enough for staff to have that in the Public Hearing Section of the Agenda as opposed to a Consent Agenda item if that is the pleasure of the Board.

Stockton Whitten, County Manager, stated the Public Hearing Section of the Agenda requires the advertisement; it is the notice that is the issue; and the section of the Agenda requires an advertisement and notice.

Commissioner Nelson stated he would prefer that; the process has been simplified to expedite the decision making, but the public hearing process is giving the public the opportunity. He went on to say it needs to be an advertised public hearing, the lease and conditions of that lease would be available at that time.

The Board approved Administrative Rezoning recommendations of September 8, 2014, and Planning and Zoning recommendations of September 16, 2014, with a Public hearing; and directed staff to develop a policy requiring future tower lease requests on County properties to be placed on the Public Hearing Section of the Board Agendas.

RESULT:	ADOPTED [4 TO 1]
MOVER:	Chuck Nelson, Commissioner District 2
SECONDER:	Robin Fisher, Commissioner District 1/Vice Chairman
AYES:	Robin Fisher, Chuck Nelson, Mary Bolin Lewis, Andy Anderson
NAYS:	Trudie Infantini

ITEM VII.A., REPORTS, RE: STOCKTON WHITTEN, COUNTY MANAGER

Stockton Whitten, County Manager, requested the Board cancel the October 16, 2014, Board Workshop as there is nothing assigned for it.

The Board approved cancelling the October 16, 2014, Board Workshop.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Andy Anderson, Commissioner District 5
SECONDER:	Chuck Nelson, Commissioner District 2
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

Mr. Whitten stated staff received proposals for the State Lobbyist services; he will bring that back to the Board on October 21, 2014; and he will invite all six firms to appear. He stated the Board can either interview them, have presentations, or go to a final ranking, whatever is the pleasure of the Board. Mr. Whitten stated at the Budget Hearing there was discussion about the EEL properties in Scottsmoor; the issue at hand was whether or not the County had purchased property for \$13 million that was previously sold for \$2 million; that issue is there was a portion of the property sold to the larger landowners for \$2 million, 125 acres of the 853 acres the County purchased; and the County purchased 853 acres for \$13.5 million, not 125 acres that was a part of the larger parcel.

Commissioner Anderson stated every utility has cattle leases, Parks and Recreation, and every other department handles them; and he inquired if the County is uniform in those leases or is it based on how the agreements were established. Mr. Whitten responded it is different

October 2, 2014

circumstances; in the Scottsmoor property the lease is to a small owner; the Solid Waste cattle leases is to the owners of the Deseret Ranch, a much larger space, and commands much more in terms of the lease fee; and that is the difference between those two. He went on to say looking around the State, the per acre lease amounts range from \$0 per acre, because they are in trade managing the land, to \$29 per acre; Brevard County is at \$16 per acre; and they are right in the middle. He stated staff always worries how to present its facts when something has been said, and he thought it was best to come back and correct the record.

ADJOURNMENT

Upon consensus of the Board, the meeting adjourned at 5:57 p.m.

ATTEST:

Mary Bolin Lewis

Scott Ellis

SCOTT ELLIS, CLERK

MARY BOLIN LEWIS, CHAIRMAN
BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

As approved by the Board on 10-2-2014