

**MINUTES OF NORTH BREVARD ECONOMIC DEVELOPMENT ZONE (NBEDZ)
SPECIAL DISTRICT BOARD, GOVERNING BODY OF THE SPACEPORT
COMMERCE PARK AUTHORITY**

May 13, 2022 @ 8:30 a.m.

Statham Park

7101 U.S. Highway One

Titusville, Florida 32780

Board Members:

In Attendance: Dan Aton, Rodney Honeycutt, Micah Loyd, Stan Retz, and Louis Sanders

Telephone:

Absent: Brenda Fettrow, Al Matroni, George Mikitarian, and Donn Mount,

Call to Order: Meeting was called to order at 8:30 a.m. by Micah Loyd, acting Chair.

Pledge of Allegiance: Troy Post, Executive Director

Troy Post, CEcD, CBE, NBEDZ Executive Director, stated the three officers of the Zone board could not be present today; he asked to select an acting Chair for the meeting and he opened up the floor for nominations; Stan Retz nominated Micah Loyd; Mr. Loyd accepted; and the board voted unanimously.

I. Approval of Minutes

Motion by Louis Sanders, seconded by Dan Aton, to approve the April 2022 Minutes as presented. Motion carried and ordered unanimously.

II. Report on Expenditures to Budget

Troy Post, CEcD, CBE, NBEDZ Executive Director, stated they are tracking everything and it looks okay; there is still an anomaly with the SAP program that shows the amounts for the health insurance premiums and life insurance premiums which are incorrect; and everything else is tracking according to the current budget. He added there has been some money added to the budget for payment of grants and aids that hopefully will go out this summer.

Motion by Stan Retz, seconded by Rodney Honeycutt, to approve the Report on Expenditures as presented. Motion carried and ordered unanimously.

III. Staff and Partnership Reports/Updates

North Brevard Economic Development Zone Executive Director Report

Troy Post, CEcD, CBE, NBEDZ Executive Director, stated he submitted the budget summary, which is used to show an annual report of the Zone's activities; it will be sent out to the Board members soon; he met with some of the other Economic Developers in the County about legislation that will potentially impact the Zone over the next year; there is a fairly large project, Project Poseidon, in the works pending approval by the City of Titusville to use a 20 acre lot near the airport; and more discussion was had about the use of the contaminated property of the former Correctional Facility. He met with Titusville-Cocoa (TICO) Airport official on the proposed development plans for the "Innovation Park" property; a project from last year, "Rising Tide" has returned and is again considering a Florida site for an aerospace manufacturing project; he met with the owner of the Titusville Mall to discuss impact fees for the proposed redevelopment project; and staff met with officers of the Valiant Air Command at TICO to review the findings of the RevPar International feasibility report for the proposed event center, which may involve a financial request from the Zone. He mentioned Neha Pandit has been working on trying to update the application for assistance with the help of Christi Schverak, Assistant County Attorney, to differentiate between the types of assistance needed; he shared an article about the space industry that shows it is still growing; and he mentioned in a recent Metropolitan Statistical Area (MSA) report, Brevard County is only surpassed by four major metropolitan areas in the State for average annual wages.

Chair Loyd asked if there was a time line for the Titusville Mall project; and he asked about the budget for the project.

Mr. Post replied it would be a multi-million dollar project, as he has seen estimates of between \$65 to \$95 million; the plan is to take down the mall in phases; for the Zone board to make an impact, it would be a significant incentive above \$500,000, which would require approval by the Board of County Commissioners; he mentioned possibly using some Zone incentives to offset the impact fees; and there may be a way to reduce some of the burden of property taxes once the improvements are done. He mentioned the Zone would benefit from the revenue stream if the mall project is completed; and the value of the incentive may be up to \$2 million.

Rodney Honeycutt stated from his perspective, rather than reduce the property tax, there are infrastructure improvements to be done also; and the incentive could tie to that, similar to what was done for Titus Landing.

City of Titusville

Scott Larese, City of Titusville Manager, mentioned the roof top area at the Courtyard by Marriot is open and doing well; and he and the Mayor highly recommend it.

Titusville-Cocoa (TICO) Airport Authority

Kevin Daugherty, TICO Airport Director, stated the construction is almost complete on the runway rehabilitation; site work to accommodate the Valiant Air Command event center construction will begin as soon as the 70 gopher tortoises have been relocated; the Memorandum of Understanding for the large corporate hangar development was approved by the board at the last meeting; and a new company called BETA wants to establish a Florida charging network and they want it located at TICO by 2024.

IV. Discussion and Direction

Dan Aton mentioned the abandoned and blighted golf courses in Titusville and asked if there is a blueprint of other communities that have come up with anything that makes sense, as he does not believe this is isolated in Titusville.

Scott Larese, City of Titusville Manager, replied that four or five years ago, the City tried to get a redevelopment ordinance together for Royal Oak that would help with redevelopment; the neighbors there did not like it, so it went nowhere; and the property is still in litigation.

Stan Retz asked if anyone had looked at any projections over the next two to five years with the rapidly increasing property values on commercial and vacant land sites as to what the revenue stream for the Zone looks like; he knows it has been at 3 to 3.1 percent and senses it could be a significant increase over the next several years; and he knows it plays into the rollback rates and such.

Mr. Post remarked when he does the cash flow analysis, it usually goes out about five or six years; they try to be fairly conservative on the revenue side, as to not overstate it; and the rate will be set by the Property Appraiser in July.

V. New Business Items

Troy Post, CEcD, CBE, NBEDZ Executive Director, stated back in 2018/2019, there was discussion with a company called Merritt Precision, which has a boating operation in Merritt Island; they needed space to expand and purchased a lot in Spaceport Commerce Park to build a 20,000 square foot building; the project stalled during the pandemic and Mr. Post has not had any contact with the owners over the past year; and many deadlines have passed. He added he has tried to contact the owner many times, including a certified letter of the intent to re-purchase the land, and has had no response; he needs to get a response indicating their intent; the process to re-purchase it begins with the Zone board approving that action; and then the Board of County Commissioners (BOCC) would need to approve NBEDZ to buy the property back.

Christi Schverak, Assistant County Attorney, remarked it would need to go on the next BOCC Agenda because the deed has got a 36-month expiration date, which would expire in June, on the ability to exercise that right; normally an expiration date is not

added that restricts the Zone board's ability to exercise it, but this was probably negotiated by the buyer; and that is probably why they have not responded to Mr. Post.

Mr. Post stated there is a Board of County Commissioners meeting on May 26, 2022, so it will need to be on that Agenda; the money to be used for the re-purchase comes from the Spaceport Commerce Park (SCP) fund; he thinks there is an opportunity to better the Zone board's position, as not only has the land value increased, but this is the parcel with the odd configuration and getting it back may allow for it to be better utilized; and it could be used for one of the Economic Development Commission of Florida's Space Coast (EDC) projects.

Chair Loyd suggested the Zone board does not put the 36-month timeframe in the contracts any more.

Attorney Schverak remarked this was probably added due to negotiations, as she does not add that in present contracts; and this is why that is a problem.

Stan Retz stated he would have thought it would have been 36 months after the expiration of the 2-year period.

Motion by Stan Retz, seconded by Louis Sanders, to request approval of the Board of County Commissioners to exercise the Zone board's re-acquisition right on the Merritt Precision property. Motion carried and ordered unanimously.

Mr. Post mentioned that he never did get back what he was expecting from North American Properties; they optioned a SCP lot and last year paid an option fee to extend their agreement for another year; they originally were going to do a build-to-suit project, but that deal fell through; they are now proposing to build a spec building; and hopefully by June they will know what they want to do.

Mr. Retz asked how big of a building they are proposing to build.

Mr. Post replied 75,000 square feet.

VI. Old Business Items

Proposed Changes to Incentive Arrangement for Project "Custard"

Troy Post, CEcD, CBE, NBEDZ Executive Director, stated it may not be a big deal now but he would share the latest on the Culver's deal; there were some changes the owners wanted to make on the draft agreement and there were a couple of changes the Zone board could accept based on past agreements and some that it does not want to change; they wanted the \$300,000 grant commitment paid within a certain time frame once they qualified for the award, but the Zone board cannot dictate to County Finance when to release the funds, so the language was stricken; Attorney Schverak suggested another change to add that the employees must be e-verified, as County Finance will not process without the company being enrolled in e-verify; and this will be included in all future agreements. He added they also wanted to remove

any prohibition against selling the property shortly after finishing it; typically, on a redevelopment project, the clawback is based on the owner/developer holding the title for a certain period of time, usually about two years; the owners are wanting to change ownership of the building after about six months to a group that would still operate it as a Culvers, just under new ownership; and he thinks now that may not be an issue.

Dan Aton stated he spoke with Robin Fisher, who is the consultant for this deal, and he asked to relay to the Zone board that the owners do not have a problem holding the Culver's property for two years; and that is no longer an issue.

Attorney Schverak mentioned there were other minor changes but it should still be approved.

Chair Loyd stated it is important to remember that there is a government asset here and the Zone board needs to be careful to not unfairly enrich a certain member of society; at the Port, the leases are transferrable for 20-30 years, so one would not want to vote on something just for the buyers to go sell the lease and do another business; there is great responsibility in these incentives and the Zone board needs to be very transparent and careful; and he likes the agreement as written, but if the owners are agreeable to it, it should be taken out.

Louis Sanders stated the idea is to prevent someone from getting the grant money and turning around and doubling their money on it; at least NBEDZ should get their grant money back if that happens; and if a time limit is set on how long they own the property, they could do anything they want after that.

Mr. Aton suggested the buyer could always make a petition for NBEDZ to not pursue the clawback and the Zone board could consider it; but leaving it in there, at least the Zone board is in control.

Stan Retz asked if there is still the ability to transfer it to a related entity or controlling entity; and if it is transferred from the real estate LLC to an operating LLC or corporation.

Attorney Schverak replied yes, there is a separate paragraph in the grants now that says they have to own the real property at the site or they have to control, be under control of, or be under common control with the owner of the land; then they have to do an amendment to tell the Zone board who to pay the grant to; and this was added because all the companies are doing that, splitting up the ownership.

Motion by Rodney Honeycutt, seconded by Stan Retz, to approve the amendments to the Incentive Agreement for Project "Custard", to include the removal of a portion of section 5.5 of the clawback provision. Motion carried and ordered unanimously.

Action on Change of Ownership – Beachwave Development

Troy Post, CEcD, CBE, NBEDZ Executive Director, stated the owner of the Beachwave store has completed the conditions to receive the grant; upon submitting

the documentation around August last year to County Finance for the grant disbursement, there was an issue when County Finance performed a routine check of the Employer Identification Number (EIN) and found it was incorrect; this issue was finally settled around the end of April; during that period of time, the owner has sold the operation and no longer owns the building or is related to the company that is occupying the building; but he still wants the grant. He added the Zone board is acknowledging that he did do what he said he was going to do as far as redeveloping the land and building the building; this was pitched as an economic development project, not a redevelopment project, because the owner did not like the prohibition of the two-year turn-over of title; he then had two amendments to the agreement, one to reduce the number of jobs for the clawback, and the second amendment to change the agreement to allow him to show a Business Tax Receipt (BTR) to show the operation is in the building in lieu of documenting jobs created, both due to the pandemic; and the new owner is Surf Style Retail Management, Inc.

Christi Schverak, Assistant County Attorney, explained that she felt the easiest path, if the Zone board still wanted to pay the grant, would be to accept what looks like an assignment; in October 2021, the EIN number had to be changed which took over six months, and at the end of October 2021, Wave Development LLC executed a purchase and sale agreement to sell the entire business and land to Surf Style Retail Management, and by the end of December, Surf Style Retail Management does a partial assignment to 101 A. Max Brewer Parkway LLC, which is the current owner of the property; when he did that, he protected his interest, with regards to the grant, by specifying in the purchase and sale agreement that Wave Development, LLC will get the grant of \$150,000, but it puts the duty on the successor in interest to provide the BTR every year; the Zone board has the BTR for 2022 from Surf Style, which raised a couple of issues with the grant; and she mentioned there is a no assignment clause in the agreement in that an assignment cannot be done unless the Zone board approves it, which has not happened. She added the second problem is with the language; when the BTR was allowed, it did not specify which entity had to supply the BTR, as it only said "a Business Tax Receipt", although it was implied that it would come from Wave Developments LLC; and what they want to do is provide a successor in interest's BTR to meet their requirements. She went on to say in the purchase and sale agreement, they also bound the successor in interest to indemnify Wave Developments LLC; so if the successor in interest does not keep open the business and the Zone board exercises the clawback against Wave Development LLC, then Wave Development LLC has indemnification provision with the successor in interest; he took steps to ensure the BTR would be provided every year and the business would be kept open, but he did not come back to the Zone board to get permission to do that; and that technically puts him in default. She stated the default provision is to exercise the clawback provision to receive the money back; this agreement has a partial clawback and would be \$52,000; with the verification they provided in 2021, that goes down to \$48,000; and if the Zone board accepts their successor in interest, then it goes down to \$40,000 for the clawback.

Stan Retz asked if the maximum clawback was only \$52,000.

Attorney Schverak replied that was negotiated as part of the original grant agreement; it does not clawback the whole grant; the reason to not pay the rest of it would be due to default by not getting permission for the assignment and that they need to provide their own BTR; and they want to be able to provide the BTR for the successor in

interest. She added the control that he has is related to the assumption that the successor in interests has agreed to assume these duties and keep it open, not ownership control.

Chair Loyd stated his understanding was that the owner should have come to the Zone board to see if it would agree to the transfer of ownership and gotten approval at the time; he could be asking for that now, even in arrears, to no be considered in default; he thinks, as a board, it should ask him to do that step and then discuss it amongst the Zone board; he does think he made the investment, but it is important to expect the NBEDZ agreements to be followed; the Zone board should not be used as a tool to flip real estate; and he thinks the owner should be held to the contract, even if it is in arrears.

Dan Aton asked if there has been any discussion with the buyer; the other is that he built the building, but the pitch was for a store, a restaurant, and a rooftop bar; and he would like to know if the new owner intends to go through with that plan.

Attorney Schverak stated she has had no contact with the new owner; technically he could be paid the grant right now with the exception of the fact that there's a question as to whether he is in default; and the assignment provision says that it will not be unreasonably withheld.

Chair Loyd asked Mr. Aton if he was saying the Zone board needs to have the clawback capability with the new owner.

Mr. Aton remarked it sounds like he has covered himself pretty well with having the new owner supply the BTR; and all that has to be done with the second amendment is that he still has to be operating a business in that space.

Attorney Schverak stated every time a BTR is received for the unit 101, Beachwave retail store is operating, it waives the job verification requirement for that year; if the store is closed up, then the owner would have to meet the clawbacks for that year otherwise; right now the Zone board has to go back against Wave Developments LLC to recoup any of the clawback; but the duty and the obligation is on the new company that the Zone board does not have a contract with.

Louis Sanders mentioned if the original incentive was on a \$2 million project and it went up to \$6 million with infrastructure costs, the board really made a good deal.

Mr. Retz stated this project has had trouble since the beginning, with the pandemic, not having the restaurant, the wrong EIN number, et cetera; he stated if there are going to be agreements, they should mean something; a deal is a deal and if the Zone board should pay them, then do so; but the owner needs to do an assignment before they are paid.

Chair Loyd asked if the Zone board should give some direction to Mr. Post and Attorney Schverak and have them go back for a discussion; possibly pro-rate the clawback at this point and go ahead and take the last three years off, maybe \$30,000 of the clawback, and call it even.

Attorney Schverak reiterated the owner is technically in default for not getting permission for the assignment to the new owner.

Mr. Aton suggested to discuss with the owner that the Zone board is uncomfortable with the assignment that was done after the fact and in arrears, but would be okay with not placing him in default on the \$102,000 piece and just pay it; then nobody has to do the BTR after this and be done on the building; and pay the \$102,000 to be current and the other \$48,000 will go away with no further obligations.

Chair Loyd stated he feels the Zone board does not want to get into a situation where it is negotiating, like in this project.

Mr. Retz suggested if the Zone board is going to waive the BTRs for the remainder of the contract, it should get something for that.

Mr. Aton responded that it would get \$48,000.

Chair Loyd mentioned that Mr. Aton is saying to take the \$48,000 clawback now.

Mr. Retz suggested to do that clawback, then with the four years remaining, if he wants to buy out the last three or four years, the Zone board would give him \$75,000 of the clawback; NBEDZ is getting a \$48,000 clawback that may be due; and if they want to buy out the remaining clawback for the next three or four years, there has to be consideration for the Zone board to waive that.

Chair Loyd agreed with that; and he stated he thinks Mr. Post and Attorney Schverak would need to go back and talk to him about it.

Attorney Schverak stated his position right now is that the Zone board owes him the full amount.

Chair Loyd stated the Zone board has had a good discussion about it and suggested to table it.

Attorney Schverak stated she would contact the attorney for the owner and explain what was discussed by the Zone board; and then any action would be brought back to the Zone board.

Rodney Honeycutt asked Attorney Schverak if she had any recommendations and what her thought are with this situation.

Attorney Schverak replied she would do what the Zone board asks, to litigate or settle; and she would rather not take a position in a public meeting, as it is on the record.

Mr. Retz stated for the Zone board to go into executive session to discuss that would require litigation that has to be filed.

Attorney Schverak remarked she would have to check the rule; it may have to be imminent; it would require a notice in the paper and the board would have to vote; and

it would take the Zone board quite a while to get into executive session without a special meeting.

Mr. Aton stated it seems like there are two things here; there is the clawback and some level of undue enrichment by flipping; and the community and the board do not want to end up with a vacant, blighted property, although ultimately the land got developed, the building is nice, and there is a tenant.

Motion by Stan Retz, seconded by Louis Sanders to table discussion on the default of the Beachwave Incentive Agreement. Motion carried and ordered unanimously.

Upon consensus the meeting adjourned at 9:51 a.m.



Donn Mount, Secretary/Treasurer

Approved on August 12, 2022