

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

June 10, 2022, @ 8:30 a.m.

Statham Park

7101 U.S. Highway One

Titusville, Florida 32780

Board Members:

In Attendance: Dan Aton, Rodney Honeycutt, Al Matroni, Donn Mount, and Louis Sanders

Telephone: Dr. Brenda Fettrow

Absent: Micah Loyd, George Mikitarian, and Stan Retz

Call to Order: Meeting was called to order at 8:30 a.m. by Donn Mount, Treasurer.

Pledge of Allegiance: Donn Mount, Treasurer

I. Approval of Agenda

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

Approval of Minutes

Troy Post, CEcD, CBE, NBEDZ Executive Director stated there were a few changes to be made to the minutes from May 2022 and they will be brought back to be approved at the next meeting after suggested changes are made.

II. Report on Expenditures to Budget

Donn Mount, Treasurer, stated there is nothing new.

Troy Post, CEcD, CBE, NBEDZ Executive Director stated there is still the anomaly of the life and health insurance premiums, which has still not been corrected in SAP; but everything is running the way it is supposed to be for the budget.

The Report on Expenditures was accepted in the record as presented.

III. Staff and Partnership Reports/Updates

North Brevard Economic Development Zone Executive Director Report

Troy Post, CEcD, CBE, NBEDZ Executive Director reported he spoke with the management at LaCita to discuss their irrigation and water retention system; the Zone board had a project that was proposed to help them with an infrastructure improvement project that directly impacts the health of the Lagoon, and due to the pandemic, this has

not been implemented; they are looking into what they can do and still meet the program requirements, so it may be coming back to the Zone board soon; he went to the Transit and Tourism Summit at Kennedy Space Center; Jane Poynter, CEO of Space Perspectives, (Project Chariot) was the speaker and it was exciting to see what they are doing; and their office appears to be very active and they have put in a temporary structure for the construction of the balloons in the interim until they are able to do the new facility that the Zone board has provided and inducement for. He mentioned according to the Space Coast Office of Tourism, collection of the local Tourist Development Tax is expected to exceed \$20 million, for the first time ever, in the current Fiscal Year; he stated he attended the Florida Economic Development Council's annual conference in St. Petersburg last month; there was a lot of good information, particularly about what is going on with the State, CareerSource Brevard, and the issues with the skilled labor; it is time to work on the bi-annual Economic Assessment report; the 2020 report had some skewed numbers due to COVID-19, but now he has the latest census material along with a more stabilized local economy; and he thinks the 2022 report will be helpful to the groups that he sends the information to. He added he met with the County Manager to go through the budget that was presented to the Zone board; he will go before the Titusville City Council in July for approval to use the City's Tax Increment Financing (TIF) funds; there are still several Projects that are being worked on with three of them having a potential of over 200 jobs each; he mentioned the Brevard County Property Appraiser is considering an upgrade to its online Geographic Information System (GIS) mapping tool which could cost over \$2 million; and this could be something the Zone board may look into participating in as they are hoping other governmental agencies will help defray the cost. He briefly discussed the latest North Brevard Economic Development Zone Summary that is prepared each year to provide to the County and the City of Titusville; the summary includes the Zone's accomplishments and incentivized projects over the last year; he mentioned this is the 12th year at the Zone; next year the last incentive payment to Blue Origin will be paid and about half of the Titus Landing incentive has been paid; and that will put the Zone in good shape to provide more incentives in the near future. He mentioned to the board that Form 1, Statement of Financial Interests are due before July 1, 2022, and must be taken to the Supervisor of Elections office for submission; his staff has been working on special projects in the community such as the food trucks at the Spaceport Commerce Park, meetups, a social media tool, which allows them to meetup with entrepreneurs and others in the community; he plans to begin meeting with the Zone board members independently to discuss ideas again in July; and sadly, Micah Loyd has decided to step down from the Zone board, and he hopes to have a new board member in August or September.

Rodney Honeycutt stated he would like to learn more about the Property Appraiser's GIS tool; and Mr. Post provided him with an excerpt of a PowerPoint Presentation handout.

Dr. Brenda Fettrow asked about what raise the County is proposing in the budget.

Mr. Post replied he thought it was around five percent but he was unsure and did not want to say without checking his notes; but he had been asked to look into doing a Cost of Living Adjustment and add it into the budget.

City of Titusville

Lisa Nichols, Economic Development Director, City of Titusville, stated Wawa is getting close to approval of their site plan for their location at 1245 Grumman Place; Culver's has submitted their documentation and fees for their pre-up meeting for its location on Cheney Highway; Launch Credit Union will be having their grand opening on July 8, 2022, at 11 a.m. at 90 South Singleton Avenue; she had a courtesy meeting with developers from Clearwater about a potential redevelopment of the Ramada Inn and Denny's; and they are proposing to demolish the current building and replacing it with a gas station, convenience store, car wash, a sit-down restaurant, and a quick-service restaurant. She mentioned the Development Services Manager is updating the City's information on the residential units that are going to be in progress or phased in over the next couple of years which she will bring to the next meeting; she attended the Transit and Tourism Summit and she thought it was a good program; there was an open house for the Marriott in Cape Canaveral hosted by the Titusville Chamber of Commerce and she learned that it had been a member of the Cocoa Beach Chamber but decided not to renew with them and join the Titusville Chamber, which she found interesting; and she thought that was a good sign that Titusville is taking care of its businesses.

Scott Larese, City of Titusville Manager, stated the Geographic Information System (GIS) that the City of Titusville uses is an easy to navigate tool; he mentioned Troy Post, CEcD, CBE, NBEDZ Executive Director, may want to look at that; Royal Oak Golf Course has sold as well as the old Whispering Hills Elementary School; and the preliminary numbers show property values are up 12.87 percent this year, which is the highest it has ever been.

Mayor Dan Diesel stated he is excited about these new developments.

Titusville-Cocoa (TICO) Airport Authority

Kevin Daugherty, TICO Airport Director, stated it is Federal grant season, so he is anticipating getting the Master Plan grants for Spaceport, Space Coast, Merritt Island, and Arthur Dunn Airports which should be around \$2 million and will be brought to his board for approval next month; his board approved the purchase of the 5.56 acres of vacant/undeveloped land across the street, which will be cleaned up and put on the market; and the siting process was just completed for the new air-traffic control tower.

IV. Discussion and Direction

New Application Format

Troy Post, CEcD, CBE, NBEDZ Executive Director, stated he and staff have been working on a new application format for some time; the applicant provides certain information about the projects on these applications and he uses that for presenting to the Zone board; if the Project is approved, he takes the application to the County Attorney's office and they use the information to create the Incentive Agreement; as more infrastructure improvement and redevelopment projects are being applied for, the application has many questions that do not apply as well as information that is not on the application that would be helpful; they are looking to revamp the application; and he wanted to see if the Zone board had any input before sending it to the County Attorney's office for review. He added he thinks this would give greater flexibility with the type of

project the Zone board is working with; he explained some of the changes made for ease of use and protection of the Zone board; and he plans to make it in a writable PDF format which will make it even easier.

Dan Aton asked if there was a section to ask about teleworkers.

Mr. Post replied yes, it was left in there, including a definition of what teleworking would be.

Al Matroni asked about the section High Wage Business Attraction and whether it was a requirement for 30 full-time employees at \$55,000.

Mr. Post replied one of the things they wanted to make clear; he followed the strategic plan that was adopted by the Zone board, City Council, and the Commission; the very first program is the High Wage Job Program which does have a condition of creating 30 full-time employees over the life of the project; that is why they sometimes rely on the Small Business section of the Plan and also the Strategic Initiative section; and usually they try to meet with the applicant to try to determine their specific needs and which Program fits their needs.

Mr. Matroni expressed concern that an applicant could be scared off seeing that and think that they are not qualified to apply.

Mr. Post remarked he thinks the new forms will be easier to navigate through to apply for the right Program.

Mr. Aton inquired if verbiage should be added to suggest contacting the office to set up an appointment to meet.

Mr. Post remarked that was an excellent suggestion and he will consider that.

Notice from Trout/Hunt Properties, Re: Paragon Expansion Plans

Troy Post, CEcD, CBE, NBEDZ Executive Director, stated back in 2015, Paragon Plastics (Trout/Hunt Properties purchased a property in Spaceport Commerce Park [SCP]) to develop the existing 6,000 square foot Paragon Plastics building; in 2018 they needed room to expand and bought the adjoining 4-acre lot; there is a provision that they must start building by a certain point, which did not happen; they were notified and an Extension Agreement was made with a fee of \$10,000; and in that agreement there was a provision for an addition extension with a fee and an option for a refund of the deposit if they did not decide to complete the Project. He added he has received notification from Trout/Hunt that they are not ready to move forward with the expansion at this time; they have requested a return of the deposit and would like the Zone board to repurchase the property; he mentioned he would have to go back to the County Commission for approval to repurchase the lot for \$120,000 from the SCP fund and enter into a real estate contract; and he posed the question to the Zone board.

Al Matroni noted he had never seen a request to refund a deposit on an Extension Agreement unless it was negotiated at the time.

Christi Schverak, Assistant County Attorney, replied it was negotiated and this was not a standard form, as it was customized to the situation.

Mr. Matrioni stated he thinks on an Extension Agreement, the deposit should not be refunded, as the property was taken off the market for that period of time.

Mr. Post remarked it is an unusual situation; the provision in the deed would have clouded the title had they tried to do something like sell it to someone else; Attorney Schverak devised the Extension Agreement to allow the Zone board to have the option to repurchase if they decided against the expansion; and that protected the Zone's interest.

Attorney Schverak mentioned it does not become non-refundable until July 1, 2022, and they have given notice prior to that; and it is going to be refundable.

Dan Aton inquired if the funds will be returned to the SCP fund.

Mr. Post replied the money will come from that and any land sales in the future will go back into that fund.

Mr. Aton remarked the good news is the property values are far increased enough to offset it.

Mr. Post stated the other Project that was talked about last month is an adjoining lot, and that lot can now be bought back, giving the option of another 25 to 30-acre lot, which is very prized right now.

Motion by Louis Sanders, seconded by Brenda Fettrow, to proceed with the re-purchase of the Spaceport Commerce Park property from Trout/Hunt Properties and refund the \$10,000 deposit for the Extension Agreement. Motion carried and ordered unanimously.

Direction Requested on Beachwave Development

Troy Post, CEcD, CBE, NBEDZ Executive Director, stated this was tabled at last month's meeting with no clear action taken; he briefly reviewed the details of the Redevelopment Project for Beachwave; he noted that there was a problem when County Finance was to disburse the check for the Incentive payment in that the Employer Identification Number (EIN) was incorrect; it did not match the name of the entity for the check; it was about six months before the issue was corrected; and at that point it was discovered that the property had been sold.

Christi Schverak, Assistant County Attorney, stated the property and business was sold and the grant does not prohibit the owner from doing that; the question became as to whether the assignment provisions of the grant had been complied with; she was concerned because essentially, in the selling of the property and business, Mr. Oshri Gal, the original owner, kept the ability to receive the grant, but the duties were given to the new owner; in this case, the duties are not very much because during the pandemic there was an amendment to the grant that basically waived the job requirement if they kept the business open and provided the Business Tax Receipt (BTR) annually; and

section 9.1 is where there is some concern. She noted that it says that this Agreement may not be assigned without the prior written consent of the District and only upon satisfactory terms; the question was, is this an assignment or not; Kim Rezanka, attorney for Mr. Gal, responded back that she did not think it was an assignment; in the interim, the new owners also protected their interest and filed a demand letter requesting payment; in talking with their attorney, they also did not believe this was an assignment; and she went back and did some more legal research. She added this is a fairly standard clause that is in a lot of Agreements; she found a Fifth District Court of Appeals (DCA) case which is binding on the Eighteenth Judicial Circuit Courts, that talks about a very similar type of clause, which says a partial assignment, which is what is taking place, is not an assignment; she wanted the Zone board to know that because when the Agreement was drafted, she does not know that it was contemplating that it would cover a situation where there has been a partial assignment; it is a tough case to overcome; it was discussed as to whether there had been an assignment, as she thought there had been an assignment, but this case seems to change the picture; the County Attorney's office has no objection if the Zone board would pass a motion to direct payment of the grant; and she thinks that would be helpful for the County Finance Department as well.

Al Matroni asked why it is being referred to as a partial assignment.

Attorney Schverak replied what happened when the property was sold, he has no ownership interest now in the business or the land; he entered into a new contract with the new operator of the business and that operator agreed to indemnify Wave Development's LLC as well; in the Agreement it says Mr. Gal, Wave Development, is going to receive the \$150,000, but the new company, Surf Styles, will be responsible to keep the unit open and provide the BTRs to the Zone board, which will satisfy the job creation requirements through 2027; and for at least the next three years Surf Style is indemnifying Wave Developments so that if Surf Styles does not keep the business open and provide the BTRs, and the Zone board goes after the clawback, then Wave Development goes after Surf Styles. She asked Ms. Rezanka to correct her if she is wrong; these grants in the middle of the pandemic, they did ask for the amendment on the BTRs; this is the only grant the Zone has where it has permitted a waiver of the job requirements if they just remain open and operating that one unit; the Zone board does not have privity of contract with Surf Styles, but as much as she would like to say the assignment was done without the Zone board's permission, there is this case at the Fifth District Court of Appeals (DCA) that interprets a similar type of clause in a much different way, in that basically, Mr. Gal's right to the \$150,000 would also have had to have been assigned to Surf Styles in order to violate this clause; and now she thinks Mr. Gal has a good point to be arguing this case. She added in fact, in talking with their litigation attorney, they did not want to come to ask for an assignment to be approved because it would jeopardize their litigation position.

Mr. Matroni asked if the Fifth DCA case she is referring to has a partial assignment.

Attorney Schverak replied it is interpreting what an assignment is in a very similar paragraph; in that particular case, because it was split, and not all the rights and duties were assigned out, it held up that the assignment clause had not been breached; she stated she is really summarizing and she does not know that the average layman, when reading an assignment clause, thinks that is how they are going to be interpreted in court; it may be that the Zone board needs to change the language to be more specific, that the job duties can be assigned out; she thinks as far as this grant today, the Zone

board has received a demand letter and it has provided a letter to state they were breaching the clause; and at this point, she thinks the cleanest and fastest way to resolve this would be for the Zone board to move to pay the grant. She mentioned if it wanted to go a step further, to prevent any more explanation to the Clerk, it could accept the partial assignment that was made, but under this Agreement, this case would seem to suggest that their argument is a good argument; she wanted to bring it to the Zone board because she was concerned about the language; and she would have no objection to action directing payment of this grant.

Donn Mount remarked from what Attorney Schverak is saying, the Zone board got what it wanted out of the Agreement and it has not been damaged; and to him, he thinks it should just get this behind it.

Mr. Matroni remarked from what was just said, he asked if the new company would be the one that would have to pay if there was a default.

Attorney Schverak replied no, the recourse would be against Wave Developments; as she mentioned last month, this agreement has a negotiated clawback, not the standard, and the amount that can be clawed-back is not the whole amount of the grant, it is less than that; she thinks that was done in recognition of the redevelopment nature of the Project; the max amount of the clawback is \$48,000 of the \$150,000; and the privity of contract is with Wave Developments, so if for some reason, the unit is no longer open, or no longer providing the BTRs, and the money needs to be clawed-back once it was paid to them, the Zone board would be going back to Wave Developments for payment, who would then have to seek the money to be repaid from Surf Styles.

Dr. Brenda Fettrow asked Attorney Schverak, referencing section 5.2.2, if all other terms and agreements have been met, aside from the assignment; and she asked does that give the Zone board any kind of an out.

Attorney Schverak replied yes, they have; she stated it does not give any kind of an out; the out that was talked about in May was the assignment clause; she believes they have provided all the other documentation; the correct EIN number was needed to be able to pay them; she knows Dr. Fettrow had asked about getting some information on how well the business is doing; and she asked Ms. Rezanka if she had any information for the Zone board.

Ms. Rezanka responded that she does not represent Surf Style and could not speak for them; they know what the intentions were that were discussed at the sale, but that was seven months ago; but she noted they are a good, reputable, well-known company.

Dan Aton stated the motion does not have any effect on the clawback; the clawback still exists even after the Zone board pays it; his question would be the expectation and there are some gaps between what is written and what the expectation was, but then Beachwave would own the real estate for the period of time since there was an assignment, so there would be a clawback against an entity that had assets; and he asked what protects the Zone board's ability to clawback if the clawback is against what could be a shell company.

Attorney Schverak replied this one does not have that requirement; the more recent grant agreements have a requirement that one must own the company to be paid; the

newer agreements provide that if the land was put in a holding company, it has to be a company that has a control relationship and both of them are jointly and severally liable; that is being done now and that preserves the ability to get a judgement and go after the land owner; these agreements have evolved over time and that is not in this agreement; and there is nothing that prevented the owner from selling the land or the business.

Mr. Aton remarked the assets that were created by selling the land and business into Beachwave; and if the Zone board needs to do the clawback and there are no assets left in the company...

Attorney Schverak responded it would be challenging; and she is not going to pull any punches on that.

Motion by Louis Sanders, seconded by Al Matroni, to authorize payment of the Grant Incentive in the amount of \$150,000 to Wave Developments, LLC. Motion carried and ordered unanimously.

V. Old Business Items

Action Requested on Merritt Precision Project (Lot Repurchase)

Troy Post, CEcD, CBE, NBEDZ Executive Director, stated this lot was sold to Merritt Precision in 2019 and they reached the threshold and had not started anything; shortly after the sale, Merritt Precision was purchased by Correct Craft and Correct Craft came to the Zone board to try to buy some additional land but was not approved at that time; Merritt Precision has since done some expanding by acquiring a facility in Tennessee, and locally they acquired an adjoining lot near their existing facility in Merritt Island; and their plan is try to grow and develop that. He reminded the Zone board that at last month's meeting he mentioned that several notices and letters had been sent to Merritt Precision and nothing had been heard back from them; Christi Schverak, Assistant County Attorney, then sent a formal notice to take action; last month the Zone board voted to notify the Board of County Commissioners that it would like to repurchase the lot, which was approved; and then a phone call was received from Merritt Precision. He added Merritt Precision indicated that they still would like to do something, but they did not have any short-term projects for the area; they advised that they were not opposed to the Zone board repurchasing the lot and would be willing to initiate a real estate contract; they indicated they may be interested in coming back in the future for another project; and he let them know they are more than welcome to apply again. He asked the Zone board for a motion to authorize setting aside \$150,000 to repurchase the five-acre lot; and this would allow for a much larger lot to be sold at a higher price, as the land value is now higher.

Donn Mount asked who pays the closing costs when these lots are repurchased.

Attorney Schverak replied the Board of County Commissioners authorized the Zone board to pay the closing costs as part of that action; she does not know the exact amount the closing costs will be but it will come out of the Spaceport Commerce Park fund; she asked the Zone board to advise if she would be authorized to file a complaint if these negotiations fail; she expects to hear back from Merritt Precision, but should this

slow down or fail, she would need authority to file a complaint; and that would give her flexibility if she cannot make it back to a Zone board meeting before that.

Dan Aton asked how the doc stamps work as it relates to closing cost with government sales such as this; and is there a way to recover those costs since it is reversing an action.

Attorney Schverak replied typically, governments only pay doc stamps by exception and the other side typically will pay the doc stamps no matter the direction; this would be an exception; and as to whether there is a State exception to having to pay doc stamps, she has not yet researched that.

Motion by Dr. Brenda Fettrow, seconded by Rodney Honeycutt, to authorize Troy Post, Executive Director, and Christi Schverak, Assistant County Attorney, to proceed with the repurchase of the lot owned by Merritt Precision; and if necessary, authorize Attorney Schverak to file a complaint on behalf of NBEDZ. Motion carried and ordered unanimously.

Amendment Proposal: Lennovation Redevelopment Project

Troy Post, CEcD, CBE, NBEDZ Executive Director, stated this is a project that was undertaken at the end of 2019; Tuan Le is in attendance and has had several business ventures in town; he acquired the old strip mall with gas station across from the old Eckler's building; he was able to buy the center, complete renovations, and he provided all the documentation required of him for the grant money; and the County Manager's office was concerned that the clawback was for jobs, which he has not been able to do because of COVID-19 and the economy. Mr. Post suggested to make it more consistent with the other redevelopment projects, the job requirements should not be included; and he suggested an amendment to the Agreement, to delete the section for job requirements and add the new clawback which states the property cannot be flipped for two years after receiving the grant; he stated Mr. Le's plan is long-term business investment in the area and he has purchased more properties locally; and Mr. Le has a good track record. He proposed, if the Zone board is okay with it, to let Attorney Schverak handle the amendment; with the amendment, that should clear the way for the grant to be processed; Mr. Le has incurred a lot of expense with the project and it has turned out well; and he thinks he has reached the \$1 million mark.

Donn Mount inquired if something is taken away from the conditions, should something be added in return; and he suggested to maybe add a couple of years to the length of time he has to hold the property before being able to sell it.

Dan Aton mentioned this is similar to the Beachwave Project; and he suggested to ask for the Business Tax Receipts (BTR) or require the plaza to be occupied.

Mr. Post commented that the two-year hold on the property is after the grant is received, and he feels that is fair; and Mr. Le submitted the documentation back in September or October of 2021 before running into these problems; and he has had the property for close to two years now.

Rodney Honeycutt remarked in the Amendment it says the two years start when he meets the criteria instead of when he receives the money.

Attorney Schverak replied it can be made to be upon receipt.

Dr. Brenda Fettrow stated she is opposed because when this began, the job creation was a huge part of it, bringing jobs to the area; she hates to give that up although she understands Mr. Le has done a lot; she is sure Attorney Schverak will include in the verbiage some strict protections of the taxpayer money; however, she thought the job creation was very important.

Motion by Al Matroni, seconded by Rodney Honeycutt, to execute the Amendment to Lenovation Economic Incentive Agreement as presented, with one exception changing the two year timeframe to begin after receipt of the grant; and subject to review by the County Attorney's office. Motion carried and ordered, with Dr. Brenda Fettrow voting nay.

Tan Le commented he thinks he has tried to do everything in this town because he loves this town; all of his projects are ground-zero properties; and he mentioned he has a new property on Hopkins Avenue that has been sitting for 10 years and has been a nightmare for months now.

Mr. Mount reminded the board members to complete and submit Form 1 to the Supervisor of Elections.

Upon consensus the meeting adjourned at 9:46 a.m.



Donn Mount, Secretary/Treasurer

Approved on August 12, 2022