PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, November 18, 2024,** at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order at 3:00 p.m.

Board members present were Henry Minneboo, Vice-Chair (D1); Ron Bartcher (D1); Robert Sullivan (D2); Brian Hodgers (D2); Erika Orriss (D3); Mark Wadsworth, Chair (D4); Ana Saunders (D5); Debbie Thomas (D4); Melissa Jackson (D5); and Robert Brothers (D5).

Staff members present were Tad Calkins, Director (Planning and Development); Alex Esseesse, Deputy County Attorney; Jeffrey Ball, Zoning Manager; Trina Gilliam, Planner; Derrick Hughey, Planner; Sandra Collins, Planner; and Alice Webber, Operations Support Specialist.

Excerpt of complete agenda.

Item H.4. Christopher Espanet (Kimberly Rezanka) requests a Small-Scale Comprehensive Plan Amendment to change the Future Land Use designation from RES 1 to RES 2. (24SS00013) (Tax Account 2963382) (District 3)

Trina Gilliam read the application into the record.

Kim Rezanka on behalf of the applicant spoke to this item and passed out documents to the board members. Also with me is Jim McKnight, a professional planner, whom I will pass out his resume when he speaks and ask that you consider his testimony to be expert testimony. This is a request for RES 1 to RES 2. It normally would be a very simple request; we have an inconsistent zoning with a future land use that's a greater density. However, there is some discrepancy as to what the comprehensive plan says and what the South Barrier Island law really means and how it's applied. I had been working with Mr. Espanet for 2 years find a way to help him develop this property. As you can see from page one, he purchased this in 2005, it had just recently become a condominium. When you try to find this, you pull up the whole condominium of 1.7 acres, but this is really a 0.7-acre piece of property. Mr. Espanet owns condominium unit 1 and he tells me he checked with the zoning office before he bought it, but who knows if the condominiums were read properly or whatever, so he believed he could build one single-family home. He lives in Delray Beach. He bought it intending to move up here as his forever home, and now he can't build on it. If this isn't changed, he cannot build on this property. The purpose of this again is to allow him to build one single-family home. As you can see on page 2 this is the aerial map from your package, it shows the yellow square on the right side is one home, on the left side, the vacant property is Mr. Espanet's property. You can see that there are condos to the west but they're more like duplexes. There are duplexes to the north, single-family homes to the south, condominium due east, and some very tall 2 and 3 story homes along the beach there to the north and south. As you see on page 3 it actually shows the whole property, the 1.7 acres. We're only seeking the 0.7-acre future land use amendment to RES 1. The other owner is not involved in this property. You'll see also, almost everything in the future land use map is RES 1. Just immediately to the north on the beach side there is some residential 4, and I point that out because this RES 2 actually can serve as a transition between the RES 4 and the RES 1. This is the same issue with had with Sun Terra in Palm Bay, down south. The comp plan as you'll see doesn't say adjacent transition, it just says transition in the area. When you look at this page 4, you'll look at the zonings currently with this RES 1 future land use over RU-210, RU-2-4, RU-2-8, SR, these are all inconsistent zonings with the future land use. And the county did this. So, as I was talking with Mr. McKnight, what happens if these townhomes are blown away by a hurricane. Are they going to be rebuilt because they're inconsistent. I just raise that because this is a huge problem down here in the

south beaches. Page 5, coastal high hazard area map, this property is not in a coastal high hazard area, and that is extremely important because of the comprehensive plan policy that says you can't build in the coastal high hazard area. Page 6, this is from the property appraisers, this shows Mr. Espanet's property, the Decort's property, which is the built condominium unit, and then the condominium common area. The declaration of condominium on page 7. This is just a few pages. This was recorded like 2 months before Mr. Espanet purchased the property, and it does have on page 9, it shows the unit 1 and the unit 2. It also shows an ingress and egress easement of 75 feet. Looks like 75 feet by 181 feet. That's an easement area. Granted it has not been approved yet by the county, but as an administrative approval for an easement. And unit 2 can't complain. So, if this is approved then he would go to building permit and we would go through administrative approval through Mr. Calkins to get an easement approved. All we need is a 20-foot easement under 62.1.02. Page 10, Mr. Decort, he's the one that owns the built condominium unit. Pages 11 and 12 are pictures from Zillow that show the area even better than the property appraiser's map. Actually, beautiful pictures on Zillow, like 67 of them. This was recently sold to the Decorts, you can see all of what's around it. You can see the vacant lot that's Mr. Espanet's. It would be next to the pool for the condominium to the west. You also see the trees along A1A and along the Casseekee Trail to the south there. Page 12 again, this is also partially a 2-story house, so it does have some height as well. And then page 12, that's the driveway. So, it is heavily wooded. I only raise that because there's some comment in the staff report oh it might harm the visual buffer to the scenic route to the beach. Well, they're not going to see it anyhow, and they're already blocked by the 3-story homes that you see on the top of page 12. The Hautsons, page 13, they sent in an email, and granted I just got that package before I got here, of all those that came in Friday, so I don't know what's in that package of comments. So, this is the one that I did have, Mrs. Hautson, she did not want a trailer park. This is not going to be a trailer park; a trailer park requires TR-3 zoning and 10 acres. This is going to be one single-family home, which we've put in a binding development plan, you have the wrong version in your packet, I have it for you here today. Starting on page 14, a binding development plan, based upon the future land use, paragraph number 3, on page 15, a developer shall limit density to one single-family dwelling and permitted accessory buildings, if he wants to have a shed or a pool that's why that was in there. This was submitted to the county on October 28th, it somehow didn't make it into your packet, you have the wrong version in your packet. Page 18, the reason this is acceptable is because the county has done this before. They have approved a BDP for a future land use amendment with Dunkin Donuts, when Dunkin Donuts had to rezone on North Merritt Island. I had to change the future land use to CC so it could have a drive through. This is next to Divine Mercy, up on Merritt Island. So, there is precedence for this, and this is the Dunkin BDP that I was involved with, and the county commission asked for, recommended, and approved. Another instance, and this is under 62.1.2.5.5. that says you basically, simplified, you can have inconsistent future land uses and zoning categories, so long as a BDP makes them compatible. And that's what this BDP is intended to do. I show you another one, Island Forest Preserve, I think Mr. Minneboo knows this one very well, off Cristofoli Road. This one has RES 1 future land use, but it wanted an SR zoning. So, that was done, and you'll see on page 22 where it's all RES 1, but they do indeed, page 22, have SR zoning. And this was to limit the density to one unit to the acre. So, we're limiting the density to one unit for a RES 2. It's the same type of concept for a binding development plan to limit the use to make it consistent with the future land use. Page 27, this is where staff and the applicant's representatives disagree. I initially thought this should be changed because to me objective 7 and policy 7.1 are inconsistent. The way these things usually work is you start with A, if you don't meet A, you don't go further. So, limit densities with the coastal high hazard area and direct development outside of this area. This property is not in the coastal high hazard area so therefore the rest of this doesn't apply.

And it doesn't make sense that say you can't develop on a 0.7-acre piece of property for a single-family home. The staff report says this is an historical interpretation. I think it became historical because of this property in 2018 or 2019, I know it was an issue with the condominiums, the Deeter condominium that we did 2 or 3 years ago, but that had the proper future land use and Mr. Calkins said that's fine you can change the zoning. Well changing zoning here it doesn't help Mr. Espanet, we have to change the future land use, or he cannot develop. Again, the staff has said it's historical interpretation. Mr. McKnight is going to give you a different interpretation and you are permitted to listen to Mr. McKnight because of Constitutional Article 5, Section 21, on page 28 of your packet, judicial interpretation in statutes and rules. A state court or officer hearing may not defer to administrative agency's interpretation of a statute or rule and must interpret the statute or rule on your own. So, you do not have to abide by the interpretation of the staff, and you are perfectly permitted to make up your own mind of what the comprehensive plan means and was intended to mean. Finally, I cite to you page 29, which Ms. Saunders referenced a few minutes back, private property rights and local decision-making process. Mr. Espanet cannot do anything with his property if this is not changed, the future land use. There's no way to get a variance to the lot size because there's no way to get a variance to the comp plan, and therefore this is the only potential way to have use of this property. Also, I did want to let you know, Mr. Espanet has been paying taxes on this property since 2005. I know the page I gave you said the value is 155,000, this year it's 225,000. I'll give a copy to the clerk to show for the property appraisers. And pulling the taxes that were paid, he has paid almost $41,000 in taxes since he's owned it, for property he cannot use. So, with that I'm going to ask that Mr. McKnight come up. I'm going to hand out his resume and he'll give you a little bit of an overview. I think many of you know Mr. McKnight and he will give you additional information to consider.

Jim McKnight stated he a professional planner. Most of my life was spent as a city manager, but I'm doing that nowadays and very enjoyable, most of the time. I think what is important in this, there seems to be a lot of discussion for 0.7 of an acre that's intended for one single-family home. Staff's interpretation, and staff has every right to interpret things the way they see them, I'm not going to debate that with them, but the objective that says, objective 7 in the coastal management element, limit densities within the coastal high hazard area, and direct development outside the area. This is outside of that area. This meets the objective of directing it outside. So, we're not requesting that we put something on RES 1, we need RES 2, and we recognize it has to be RES 2. It is also a good transition when you do that. Now I understand it's a small piece, we all agree with that, but it is directly behind a single-family home, and it is before you get to the multi-family. So, from a compatibility standpoint it's exactly the way you draw it up in planning. So, I don't think policy 7.1 really comes into play because you can't get beyond the overall objective because you have directed development outside of that area. You also have a major inconsistency between the existing zoning and the RES 1 that is on the property for the comp plan. You've got zoning that's everything out there. I've looked at the map and it made my eyes cross because you've got some multi-family, some single-family, different types of single-family, and that's how it's developed over the years. But now you have a residential 1 on it, which limits someone from being able to build simply a single-family home 0.7 acre. To the north you have SEU, you have the road with an RU-2-10 zoning to the south. You have RP to the east, and you have RU-2-10 to the west. It cannot be said that this doesn't fit the neighborhood. It does. It absolutely fits the neighborhood from a planning perspective. I read through the guiding principles for development, and though that's not really where we're at if you read through the guiding principles for development this is exactly what would be intended for this piece of property. It's the piece that comes up because you're not increasing residential density because you're building a single home on a single lot. Ms. Rezanka has covered most of the area on that, but from what I see, and I read through some of the input about statutory noncompliance, again we're

requesting a change to the comp plan and therefore I don't think statutory noncompliance comes into play. The environmental and vulnerability I think whatever gets built there meets the same criteria. So, I don't think that really plays much into it. It is a critical state concern designation, and while I understand the critical state concern it is not a coastal high hazard area. And, the comprehensive plan inconsistency, again this is addressing a 0.7-acre, one unit, one home and therefore this would eliminate the inconsistency that's being brought out. And, while binding development plans aren't normally used on comp plan amendments, it has happened, and it has been done. I've seen it done in places like that. But it's just very unusual, I will give you that. But it does happen, and, in this case, it would make sense, because then everybody would know what you're getting on that property. I'll be glad to answer any questions you have, but in my opinion, this meets the intent of what is in the code, and I think it goes outside what the state was doing when they were trying to limit density. They weren't trying to create a situation where somebody couldn't develop a single-family home on 0.7 acre.

Henry Minneboo inquired how many square feet is the house.

Jim McKnight responded 4,000 square feet. So, we're talking about 15% of the property.

Brian Hodgers stated forgive me if I'm a little confused on this, but who owns that house that's immediately adjacent to the east.

Kim Rezanka responded page 10, Mr. & Mrs. Decort.

Brian Hodgers stated that when we look at it on aerial view it looks like the same owner on both the entire parcel.

Jim McKnight responded yes, but it's not. There're some maps in there that show…. it's divided. You have one acre.

Brian Hodgers continued with it just shows one owner for both parcels.

Kim Rezanka stated if you look at page 6 of that packet I gave you, when you run a search by condominium you have to search in the property appraiser's website by condominium as opposed to owner. When you do it by Casseekee Trails condominium, page 6 it shows the 3 owners. As does the condo docs which show the unit 1 and unit 2.

Jim McKnight commented which page 9 shows the clear division of unit 2 and unit 1.

Jeffrey Ball stated in 1992 the board adopted the south beaches area plan out, where the board directed staff to reduce the densities on the majority of the property down there on RES 1, based on a number of factors. There were several properties that remained RES 4, but the majority of the property was designated as RES 1. This property, along with other properties on south beaches is part of the critical area of state concern which you all decided to transmit up to the state. And, the board, last week decided that with that there are regulations that limit the density designations in that area. So, going from RES 1 to RES 2 is a density increase, because you're going from one unit to the acre to 2. That's a density increase. As far as the history of the property, sometime in 2005 the property was split using a condo doc with the house that was in front of the property to the rear. That property before it was split was 1.7 acres. So, the front property is one acre, the back part of it is 0.7, which is not in conformance with the RES 1 land use. And that's why we're here today. So, if this

board recommends approval this will be sent to the board of County Commissioners as well, and this will be reviewed under the state board of review, because it's part of the critical area of state concern. And then it would come back for you all under the adoption process as well.

Henry Minneboo asked do we have any other ones because there's some that's peculiar, that A1A section. Do we have some more if we open the door here.

Jeffrey Ball stated I would tell you from a staff perspective that it would set a precedence, yes sir.

Robert Sullivan commented so primarily this is a preventative issue from staff looking down range based on the area of critical concerns that has gone to the state. We don't want to open a precedence for Mission Creek for later development to use this as a precedence for something.

Jeffrey Ball replied just to answer your question, and it's going to go in a round about way, this application would in the way that we're interpreting 7.1 and that is to restrict residential designations with the south beaches area. This property would do that.

Robert Sullivan stated only in the zoning aspect.

Jeffrey Ball commented that is from a land use perspective not from a zoning perspective. That's a separate issue outside of what we're discussing today.

Robert Sullivan went on to say that the impasse right now is the RES 1 and the RES 2.

Jeffrey Ball replied correct.

Robert Sullivan a solution, because the owner is not increasing density, and then this goes back to the owners and what, are you recommending going to RES 2, but that would establish a precedence, and so now that would create a conflict between staff and yourself. I don't see a problem with approving it as 1. I'm trying to figure out why you need it as RES 2.

Kim Rezanka says because it's RES 1 right now and you can't build on property that's less than an acre, when it's RES 1. And I disagree that it sets a precedent because this is a legislative decision, a policy decision of whether it makes sense for this particular piece of property. So, if you have another one similar to this, I'd be really shocked because I'd have heard about it by now. So, this is not going to set a precedent because each piece of property is looked at individually and because it's a comp plan amendment versus zoning it's a legislative policy decision. So, I don't think it sets precedent and he just can't build on it because it's too small of a property for the residential 1 which requires one unit per acre, only allows one unit per acre.

Robert Sullivan went on with you have your binding agreement, builder's agreement.

Kim Rezanka responded Mr. Ball has worked with me for 2 years. He really has and you can't get a variance to the comp plan. There's no way to do it. I wish there were a way to do it.

Robert Brothers asked is it true that this is missed zoned. We cannot as a county zone property to make it where it can't be used.

Kim Rezanka responded right. But the county didn't do this. This was done by the person that created the condominium, the prior owner to Mr. Espanet. But, yes, it is true.

Robert Brothers commented the county puts out the zoning. You can't make your own zoning. Cause I would change mine.

Kim Rezanka stated there's been a number of times people have come before you and said I need to change the zoning because it's incompatible with the future land use or vice versa. I mean that's a lot of what you see.

Mark Wadsworth asked to hold on one second and yes sir you've got the floor.

Tad Calkins stated that the request is to increase the density. Right now, they're allowed one unit to the acre. RES 2 would allow two units to the acre. So that's why they have to have the two units to the acre to comply with the 0.7 aspect of the zoning. What they're trying to utilize by the binding development plan is say they will build only one unit on that property. I think that there's been a lot of discussion but when you look at policy 7.1, I think it is very clear in the limitations that the board has adopted in the comp plan. It says that Brevard County shall not increase residential density designations for property located on the barrier island, between the southern boundary of Melbourne Beach and the Sebastian Inlet. It doesn't talk about a coastal high hazard area. It gives you a definitive line from the south Melbourne Beach to Sebastian Inlet. And historically we have not entertained any land use changes which would increase density. There have been a few zonings where people have had a higher land use density where they could change the zoning to qualify to meet that.

Henry Minneboo commented but Tad anywhere else in Brevard County we can.

Tad Calkins replied yes sir. Any place outside of that area I would say you could.

Erika Orriss stated so this could increase density down there.

Tad Calkins responded it would increase density from a land use standpoint, yes ma'am.

Erika Orriss commented I live down in that area and the south beaches and they're pretty adamant about that. They did not want to increase density.

Ron Bartcher stated that the applicant was able to speak very eloquently about why this is not a density change. And his recommendation is she take that eloquent speech to the county commission. To me we've got a policy and it's very clear what the policy says, it's very clear what is being requested violates that policy. I for one will not vote to recommend approval because it violates the policy. Now if the county commission wants to do that it's their policy. They can change their policy. I don't think we have that authority to do it.

Erika Orriss stated I agree with that. Absolutely.

Robert Brothers asked is it not true that we did enter into an agreement, that this county, entered into an agreement with the state that we must make peoples land usable. That you can't deny the use of a person's property. This land is unusable the way it is zoned. He can't do anything on it. You can't build 7/10 of a house.

Alex Esseesse asked to clarify with respect to the timeline. In addition to what Mr. Ball and Mr. Calkins have already said, in 2005 the property was split which created a substandard lot. And that restricted the property owner at that time. It wasn't a creation of the Board of County Commissioners that's' restricting the use of the property, it was the property owner at the time splitting the lot improperly that's created this limitation on the current owner, who bought it subject to that limitation.

Robert Brothers continued with we found a lot of ways for why they can't. But it seems like we need to find a way that they can.

Brian Hodgers asked is that owner that split that property in 2005 still the owner of east section.

Kim Rezanka responded no. That was Mr. Lally. He sold it to Mr. Decort. I have to respond. We disagree with staff. You don't have to hold what the staff says as gospel. When you look at the objective, we meet objective 7, 7.1 is inconsistent with that. We don't get to 7.1 because objectives trump policy. This is a legislative decision, a policy decision that you all get to recommend. And yes, it did happen in 2005 and Mr. Espanet apparently went and talked to staff and got misinformation and they can't be held to that. So, we are trying to make it buildable. If you look at objective 7, we meet it. Therefore 7.1 is either a typo or inconsequential or inconsistent. And you can choose to look at 7 and not 7.1. And you're probably going to hear from people who disagree, but this is a policy decision, and the constitution says that you should not defer to people when you're zoned different.

Henry Minneboo commented to Tad that he dwelled on everything that's been said, I fully understand, but you know what's amazing…nobody's missed a beat on the taxes. He's got to pay those the whole time. You might say that's a little bit disturbing. I'd be a little disappointed, I think. I don't know if it has any impact, I'm just saying here are the tax side they didn't miss a beat. They chopped it up and put it in the registry.

John Shofford stated he lives directly to the west. Our pool, and my building is the first buildings there. I realize I can't see the ocean because of the 7-story that was there forever, but the lot as they said was a 1.7-acre lot and the owner broke it down into 2 lots because he couldn't get it sold. 1.7 acres, you know he figured he could get more money, so he broke it in 2. So that's the story on that. But my question is how the new owners will get to their lot in the back there. That's what I'd like to know. Because as they said, or whoever wrote that, it's landlocked. They can't enter it from our side, and they would have to enter it from A1A. Okay, let that go. But still there is this barrier island area of critical state concern and every septic tank, every whatever that's built on there is going to really put a lot of strain on the whole ecosystem there. The owner is going to have to build up. They're going to have to fill in because the whole area is in like a little, lower than anywhere else so they're going to have to fill in, which may cause that water to drain into our pool, but that's okay that can probably be prevented somewhere. Everybody talks about cutting the density down and yet they keep building it up. There is a lot to the south of this lot, it's lot 5660 which eventually will come, if they get their way, that will come under the same condition, and all of a sudden you have God knows what. What we're trying to prevent is naturally something like what the Harbor Island up there near the 7-Eleven and the Ocean Ridge people. There are single family homes and then there's a 3-story plus a garage right next to them. So, they don't get any sun, any time of the year. So, they say 1 story, I don't know 2 story, I don't know what they're going to put there.

Doug Page stated he lives around the corner from John. I've heard lots of stuff this afternoon and it's clear the property owner knew, or ought to have known, when they bought the property what the

zoning was. I also heard tonight that there's one philosophical approach of finding ways to help people use their property. It seems to me if you knew what the zoning was going into it you may have reflected, you may not want to buy it. If you knew it was a piece of cake to go change the zoning maybe we would have gotten together bought the property. But we didn't. We recognized what the zoning was. It appears that the owner had it for 19 years and now wants to build on it, 19 years later, or so. That's my understanding. We don't really know what going to go on the property. A 4,000 sq ft single-family home, where's the septic, where's the sewer going. I think John eloquently made comments about the issues with the leachate going into the Indialantic. I just have one additional comment that the board now has documents that the public does not. As of, immediately starting before this meeting the applicant's attorney handed out documents that are not part of the public record, that we have no idea what's in it. It just seems that there should be more public time to review and comment on documents that are provided at this hearing. That's my 2 minutes.

Catherine Odom stated our community is 138 homes just to the north of this property. We are South Shores Riverside. We're made up of the large homes across the street, a few of those homes, within the west side of A1A. We have single family homes, we have townhomes, and we have condominiums. I don't know if you received emails from people, there was some mix up in the communications regarding who was to be copied on this. I think some of your emails went to the city of Melbourne, so you may not have gotten those, but the majority of the people that I've spoken to are opposed to this, for the single fact that we are now a state area of critical concern and as that we need to be careful that we don't set up the precedent which may or may not be considered a precedent. I don't want to see this happening throughout the community. I feel badly for our potential new neighbor that he purchased a home that did not have zoning that would accommodate him. What we can do about it is beyond anything I can understand. I do understand that there is an easement there that will be used as the driveway.

End of public comment.

Kim Rezanka stated, again this isn't zoning, it's future land use. It's a legislative policy decision versus zoning which is strictly if you meet the requirements then you should be considered. So, there is an easement, it's in your documents, it's a 75-foot easement that he would have access subject to approval by Mr. Calkins or his designee. Mr. Espanet actually went to Clayton Bennet in 2018 to start this process and Mr. Bennet got shut down and didn't want to fight. And I get it because this is not an easy fight. This is trying to get people to understand the difference between policy, objectives and goals, and the fact that this is completely unbuildable without a change. This would not have sewer, it would have the high-density nutrient reduction septic system, as in your staff report. And, regarding Ms. Odom, again we do have the zoning, but if you look at that zoning that her development has, that's RA-2-10, SEU, RU-2-4, RU-1-7, it's all over the place, most of it inconsistent with RES 1. So again, we are trying to make the zoning consistent, and we can't build, we could build under RP. We could build a house under RP, but he can't build anything because of the Residential 1 and the size of the lot. Yes, he thought he did his due diligence and now he's stuck and it's something he didn't create. So, we would ask that you consider our arguments, consider our statements that the objective controls over the policy on page 27 and that one unit is not going to impact the environment, the flooding, the birds, or anything. And that even if it were he would have to climb all the zoning codes. But it's not and it's not going to stop the visual impact which is the only thing that came up.

Mark Wadsworth stated there's been a lot said from staff and board that you said, there was a RES 2 with a BDP.

Kim Rezanka answered that was not in this area. That was in Merritt Island that we used a BDP to make the zoning consistent with the future land use change. That was the Dunkin Donuts in Merritt Island.

Henry Minneboo stated I remember that. That was Dunkin donuts. For the drive thru.

Kim Rezanka said yes, for the drive thru. And here we're making it consistent. So, everyone knows that there's going to be one single-family home and not an 85,000 sq ft commercial center which is also permitted under the condominium docs and under RP. He just wants to build a house.

Ana Saunders inquired if she could ask staff a question. Mr. Calkins, I heard Mr. McKnight say that it's unusual but it can be done, a BDP with the land use. Can you speak to that a little bit. They're doing a RES 2 land use that foreseeably would increase the density, but they are willing to restrict it to one. That would be consistent with 7.1 in your mind.

Tad Calkins asked Ms. Saunders to repeat the last part of the question.

Ana Saunders stated if they were to restrict it to the one unit would that help with the consistency of this policy 7.1 by not increasing the density.

Tad Calkins responded I think the problem is the RES 2 future land use that they're requesting because I see that as a density increase which their position is that the objective is what we should be enforcing, but if I just enforced objectives I wouldn't be here very long because the comp plan is full of policies and we have to enforce all of the comp plan.

Brian Hodgers asked the staff when was the law put in force that restricted the increase in density to the south beaches?

Jeffrey Ball replied that the study which was the south beaches area plan was adopted in 1992.

Brian Hodgers stated so that law was in force before this property was split. Who takes the responsibility of allowing that split to have taken place since technically it was probably done illegally.

Jeffrey Ball responded my understanding is it was put through a condo plat. Which staff does not review condo plats.

Tad Calkins added the condo plats are reviewed by the clerk of the court's office by statute.

Robert Sullivan responded there was no opportunity for the staff to review the partition of that property. Is that correct?

Tad Calkins replied to the best of my knowledge the county staff did not have any review of that document.

Brian Hodgers commented that if that property had stayed in one parcel there would have been one tax bill. Then probably similar to the tax bill that sits on that single house now, but instead now the county gets the enjoyment of 2 tax bills at a much higher price, and which the owner cannot build on it, but he is being charged taxes on it. Am I correct?

Jeffrey Ball stated I can't address what or how the tax collector taxes properties. That's outside of what our staff does.

Brian Hodgers stated I realize this is planning not tax, but I have a problem with the fact that he's being told that he can't use that property but he's getting taxed on it. So, this again isn't for this board to address, him not having to pay taxes on it but for almost 20 years of taxes I think that this needs to be reviewed and maybe between you and the tax department to try and figure out what can come to fruition to help this gentleman.

Tad Calkins responded we can do that. We can talk to them. I think that the challenge though is that this property is inconsistent, standard. It wasn't done by us; it was done by an action of an individual. And so, property is sold every day that we have no part of, or we're not included in regulations. But we come in when people try to develop, which is where we are, we fully started 2 years ago.

Brian Hodgers stated yeah, but I'm sure he's paying fire fees and all sorts of other tax fees for property that's unbuildable, that he can't use. So, at the end of the day, you guys didn't do anything wrong, the person who divided that property up did. He's not going to get his money back. Okay, let's say you lift the taxes, and he doesn't have to pay taxes anymore on it, that's great, but he's still out a quarter of a million dollars for property he bought that he cannot develop. Let's be realistic, it is developed land.

Tad Calkins responded the request is to put a single-family home on there and it doesn't have the proper land use density for that.

Henry Minneboo commented I'm just going to add to Brian that if this was anywhere else, we wouldn't be having this discussion. If it were on Merritt Island we would have this discussion.

Tad Calkins stated correct. There may be other issues but may not be the one.

Brian Hodgers said he had a question for the applicant. It was brought up about access, is there a plan for how to get access to property?

Kim Rezanka responded yes sir. If you look at the condominium docs, I believe it's page 10 or 11, there is an access easement on that property and the process is to make an administrative application that would go through Mr. Calkins or his designee to say hey this is where we want to put our driveway and there's already a bona fide easement and they hopefully would recognize the easement to allow him to have access.

Brian Hodgers asked and that current owner's not having a problem with that.

Kim Rezanka responded he has no choice. It's in the document he bought, and I don't know if he does or not, but he would have no choice. I mean it's in the condominium docs and he agreed to it when he bought the property.

Brian Hodgers asked at his expense.

Kim Rezanka responded at Mr. Espanet's expense. There's already a driveway there. The current owner, Mr. Decort, may want that used, may want it next to it, but it's 75 feet. There's plenty of space to put a 20-foot driveway.

Robert Sullivan asked are we done with discussion on the board.

Mark Wadsworth stated we can ask that. Any other comments by the board. I guess we're done with discussion.

Motion to deny by Robert Sullivan, seconded by Erika Orriss. The vote was 4 to 6.

Alex Esseesse stated the motion fails and you're going to have to take another vote.

Mark Wadsworth stated we're going to need another motion.

Motion to approve with a BDP by Robert Brothers.

Alex Esseesse stated I must not have understood the previous vote. It looked like it was 4 to 6 and now there's not a second for the approval. So maybe we need to take another toll, we have a motion on the floor, but it doesn't seem like it's tracking.

Mark Wadsworth stated we have a motion for approval, I need a second.

Seconded by Ana Saunders.

Mark Wadsworth, we need a show of hands for the approval. So, we have some undecided.

Alex Esseesse stated frankly I apologize for my ignorance; I'm not understanding either. It looks like it was 4 to 6 for the last vote. Now it's 3 to 7?

Kim Rezanka looks like you have some abstentions.

Alex Esseesse, you can't abstain, you have to vote. Unfortunately. Unless you have a conflict which in general, I don't think anyone does. Let's do a vote. You point people out and they'll vote in favor or against.

Mark Wadsworth took a poll. The vote was 6 to 4. The motion passed.