

Brevard County Board of County Commissioners

*2725 Judge Fran Jamieson Way
Viera, FL 32940*



Minutes

Thursday, February 6, 2025

5:00 PM

Zoning

Commission Chambers

A. CALL TO ORDER 5:00 PM

ROLL CALL

Present: Commissioner District 1 Katie Delaney , Commissioner District 2 Tom Goodson, Commissioner District 3 Kim Adkinson, Commissioner District 4 Rob Feltner, and Commissioner District 5 Thad Altman

B. ZONING STATEMENT

The Board of County Commissioners acts as a Quasi Judicial body when it hears requests for rezoning and Conditional Use Permits. Applicants must provide competent substantial evidence establishing facts, or expert witness opinion testimony showing that the request meets the Zoning Code and 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, 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, inspection, 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 for 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.

C. PLEDGE OF ALLEGIANCE: Commissioner Kim Adkinson, District 3

Commissioner Adkinson led the assembly in the Pledge of Allegiance.

H.1. RHR Construction & Development LLC requests a Small Scale Comprehensive Plan Amendment (24.012), to change the Future Land Use designation from PI to RES 4. (24SS00012) (Tax Account 2320049) (District 1)

Chairman Feltner called for a public hearing on a request by RHR Construction and Development LLC for a Small Scale Comprehensive Plan Amendment (24S.012) to change the Future Land Use designation from PI to RES 4, located in District 1.

Trina Gilliam, Interim Planning and Zoning Manager, stated Items H.1. and H.2. are companion applications: she will read them into the record together but they will need separate decisions; RHR Construction and Development LLC requests a Small Scale Comprehensive Plan Amendment, 24.012, to change the Future Land Use designation from PI to RES 4 under application number 24SS00012, in District 1; and RHR Construction and Development LLC requests a change of zoning classification from GU and RU-1-11 to RU-1-11 under application number 24Z00042, located in District 1.

Robert Robinson stated he represents RHR Construction on the matter of 3970 Curtis Boulevard; he is going to talk about the lot and why he is doing what he is doing, the plans for it, and the justification; 3970 Curtis Boulevard currently exists as a 1.1-acre lot in Cocoa, Florida; the lot is very peculiar as it is considered one lot yet it is divided into two separate tracts, tract one and tract two, each with its own Future Land Use and its own zoning

classification; tract one is on the left side of the lot with a Future Land Use listed as Planned Industrial (PI) with a zoning classification of RU-1-11; and tract two is on the right of the lot with a Future Land Use listed as PI with a zoning classification of General Use (GU). He continued by saying in addition to the tracts being divided by a tract divider line, they are also divided by a 40-foot drainage ditch easement which runs down the middle and then along the back of the lot; the desire is that the Future Land Use be changed from PI to RES 4 for both tracts; in addition to the Future Land Use change request, he is also requesting the zoning be altered slightly; the current zoning of the tract one is RU-1-11 and the desire is to keep the zoning the same for tract one; the current zoning for tract two is GU and he is seeking to change it to RU-1-11; the Future Land Use of RES 4 will match the surrounding area as well as the rest of the neighborhood; and all he is doing is trying to make these lots able to be built upon, one house to whatever it is going to be to match the neighborhood, they are not going up or down in density.

Commissioner Delaney asked the applicant if he would not mind explaining what they are wanting to do, the reason for the change, and what the plan is.

Mr. Robinson advised the lot has two separate zoning classifications and Future Land Uses; in order to build a house he has to have the same zoning and Future Land Use for the lot, otherwise, he cannot build a house; and that is all they are trying to do, to make it able to be built upon.

Commissioner Delaney asked if they are trying to build two houses.

Mr. Robinson advised that will probably be the end goal, but currently this is the first step in getting there, the zoning change, regardless if it is one lot or two lots.

Commissioner Delaney inquired if these are personal houses of people and if he is representing the land owner.

Mr. Robinson noted he is just a developer and they are developing houses to probably be spec homes to sell around the neighborhood; but it will match the rest of the neighborhood, with the same zoning classification and same Future Land Use, nothing grand or a change of densities, they are actually coming down.

Commissioner Delaney noted she has some concerns about this project mostly because of the wetlands and the drainage ditch that goes through it; looking at the maps, this lot is extremely important for the drainage in this area; and she is concerned that if it is messed with it will impact the rest of the area.

Mr. Robinson explained there was an environmental study performed on the property before they bought it; the wetlands are confined to the ditches themselves; the only wetlands on the highlands, the buildable land, is the pepper trees; and that is probably because when they were excavating the drainage ditch they just piled the spoils on there so it is growing pepper trees; if they were to build on the lots, actually the lots would become higher, and theoretically the ditches would become deeper; therefore, if anything, it would actually improve the function of the ditch itself.

Commissioner Delaney asked if that is what the study shows.

Mr. Robinson inquired if she is talking about the environmental study and that the ditch would be improved.

Commissioner Delaney responded affirmatively.

Mr. Robinson stated the study was just for wetlands to determine if there was any flora or fauna; there are no Gopher Turtles, Scrub Jays, or anything like that; there are no protective wetlands within the buildable area of the lot, just to the ditch and the bank itself, which will not be altered because there is a ditch easement that one cannot impact at all; and that is not what they do.

Commissioner Delaney asked if they would be amenable to a Binding Development Plan (BDP) to commit to doing an engineering study to show how this will not adversely affect the drainage of the surrounding streets.

Mr. Robinson stated they would if they need to.

Commissioner Delaney noted with that she is okay with this.

Chairman Feltner stated for purposes of the Clerk, could Billy Prasad, Interim Planning and Development Director, help Commissioner Delaney read that motion again to include the language for the BDP.

Mr. Prasad stated given that the first motion would be the Land Use, the BDP would be the second motion with the zoning.

There being no further comments or objections, the Board adopted Ordinance No. 25-01, amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, entitled, "The 1988 Comprehensive Plan," setting forth the first Small Scale Plan amendment of 2025, (24S.12) to the Future Land Use Map of the Comprehensive Plan; amending Section 62-501 entitled, "Contents of the Plan;" specifically amending Section 62-501, Part XVI(E), the Future Land Use Appendix, and provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; providing an effective date; and changing the Future Land Use designation from PI to RES 4.

Result: ADOPTED

Mover: Katie Delaney

Seconder: Kim Adkinson

Ayes: Delaney, Goodson, Adkinson, and Feltner

Absent: Altman

H.2. RHR Construction & Development LCC requests a change of zoning classification from GU and RU-1-11 to RU-1-11. (24Z00042) (Tax Account 2320049) (District 1)

Chairman Feltner called for a public hearing on a request by RHR Construction and Development LLC for a change of zoning classification from GU and RU-1-11 to RU-1-11 on a property located in District 1.

There being no further comments or objections, the Board approved the request by RHR Construction and Development LLC to change the zoning classification from GU and RU-1-11 to RU-1-11 on property located in District 1, with a Binding Development Plan (BDP) for the applicant to do an engineering study to show this change would not adversely affect the

drainage of the surrounding streets.

Result: APPROVED

Mover: Katie Delaney

Second: Kim Adkinson

Ayes: Delaney, Goodson, Adkinson, and Feltner

Absent: Altman

H.3. Wanda and Dennis Crocker (Timothy Vulpius) request a change in zoning classification from AU to RR-1. (24Z00059) (Tax Account 2004800) (District 1)

Chairman Feltner called for a public Hearing on a request by Wanda and Dennis Crocker (Timothy Vulpius) for a change of zoning classification from AU to RR-1, on property located in District 1.

Trina Gilliam, Interim Planning and Zoning Manager, stated Wanda and Dennis Crocker, represented by Timothy Vulpius, request a change of zoning classification from AU to RR-1 under application number 24Z00059, located in District 1.

Timothy Vulpius stated he appreciates the Board hearing him today; and he is just trying to rezone this property from AU to RR-1 to make it buildable for residential.

Chairman Feltner asked if it is for a single-family residence.

Mr. Vulpius responded in the affirmative.

There being no comments or objections, the Board approved the request by Wanda and Dennis Crocker, represented by Timothy Vulpius, to change the zoning classification from AU to RR-1 on a property located in District 1.

Result: APPROVED

Mover: Katie Delaney

Second: Kim Adkinson

Ayes: Delaney, Goodson, Adkinson, and Feltner

Absent: Altman

H.4. Luz Nogueroles requests a change in zoning classification from AU to RR-1. (24Z00060) (Tax Account 2509830) (District 2)

Chairman Feltner called for a public hearing on a request by Luz Nogueroles for a change of zoning classification from AU to RR-1, on a property located in District 2.

Trina Gilliam, Interim Planning and Zoning Manager, stated Luz Nogueroles requests a change in zoning classification from AU to RR-1 under application number 24Z00060, located in District 2.

Luz Nogueroles thanked the Board for hearing her; she stated she is requesting to change the zoning from AU to RR-1 for one acre of a five-acre lot; the purpose of this is to be able to continue the agricultural portion of the rest of the lot and separate the single-family home on the RR-1; and that is what the request is.

Commissioner Goodson asked how long the applicant has owned the property.

Ms. Nogueroles replied almost two years.

Commissioner Goodson asked when she bought it, if she realized that it was one home per two and one-half acres; and that is what is zoned on either side of her.

Ms. Nogueroles stated they are five-acre lots.

Commissioner Goodson pointed out but that is one home per two and one-half acres; what she wants to take out is in a severe wetland, or a flood plain; and he asked if that is correct.

Ms. Nogueroles commented she did not know that was a flood plain.

Commissioner Goodson asked Billy Prasad, Interim Planning and Development Director, if the portion the applicant wants to take out for the flag lot is in a flood plain.

Mr. Prasad responded affirmatively.

Commissioner Goodson asked what that requires the applicant to do to build on it.

Mr. Prasad explained in the one-acre portion, the home is already there; but the remaining portion, Natural Resources is in attendance to discuss further, depending on what the elevations show, there is density restrictions associated with whether it is in the 10-year, 25-year, or 100-year flood plain.

Commissioner Goodson asked what it is in.

Darcie McGee, Assistant Director of Natural Resources Management, advised staff cannot determine that until they receive the topography of the site and then compare it against the St. John's Water Management District Technical Report; and it takes some research to figure out what those flood plains actually are, which year they are in.

Commissioner Goodson commented if anyone knows anything about the site on Martin Road, it definitely floods; and there is always a problem in that area.

Ms. McGee stated she is not really familiar with what the site conditions are out there, he probably knows it better than she does.

Commissioner Goodson asked Tad Calkins, Interim Assistant County Manager, if he knows the area.

Mr. Calkins advised he is somewhat familiar with the area; and he does believe there has been some flooding out there, as it is pretty low.

Commissioner Goodson asked if the applicant plans on building on it if she gets the zoning.

Ms. Nogueroles responded no, the RR-1, the area...

Commissioner Goodson interjected by asking why the applicant is asking for a zoning change if she is not going to build on it.

Ms. Nogueroles stated she wants to separate the two lots; one is going to be a flag lot, which is the four-acre lot, and the RR-1 is going to be the lot that currently has the house on it.

Commissioner Goodson inquired if she is going to own it, what is the purpose of separating it.

Ms. Nogueroles advised there are other lots in the area that have also done that and it is also for purposes of homestead that separate the agricultural portion of the lot from the house so she can get her homestead of that particular property; there are less than 1,000 feet away, a lot that is zoned RR-1; therefore, it is not like she is asking for something that does not already exist within the vicinity of the lot; and her intention is not to add additional structures to it. She noted she has been there to ask for variances; there is a barn on the flag lot; and the variances have already been approved once the flag lot takes place and this is approved tonight, the barn itself would be within the correct setbacks.

Commissioner Goodson asked if the applicant wants to go from Agricultural to RR-1.

Ms. Nogueroles noted it is just on the house.

Commissioner Goodson asked if the house is not already zoned RR-1.

Ms. Nogueroles stated no.

Mr. Prasad explained the full partial is zoned AU, this is a request for the one-acre with a house on it to go to RR-1.

Commissioner Goodson commented which would increase her taxes.

Mr. Prasad mentioned there may be some tax consequences with the homestead on the other four; just to note, Administrative Policy 7 does allow the Board to consider, and he read, 'at the propose, you shall not cause or substantially aggravate any substantial drainage problem on surrounding properties or significant adverse and unmitigable impact on natural wetlands, water bodies, or habitat for listed species'; therefore, the Board can consider that as part of the request.

Chairman Feltner stated just as a point of clarity, he thinks one can homestead on agricultural; if someone has an orange grove and a house in the middle of it, he thinks the Property Appraiser says that is not the agricultural portion of that where the house is; all the rest of it including even a pole barn and all those kinds of things are included for the purpose of the agriculture classification; that is a different thing; and he asked if that is correct.

Mr. Prasad agreed.

Chairman Feltner stated just to clarify for the Board, the applicant is not planning to sell that to somebody else who then is going to build a house on it.

Ms. Nogueroles replied no, it is everything within her own family.

Chairman Feltner inquired if she is doing this for the purpose of establishing homestead and asked if she does not have homestead on her property now.

Ms. Nogueroles replied no.

Chairman Feltner asked if that is something the Property Appraiser told her she needed to do.

Ms. Nogueroles commented, the Property Appraiser told her it would be better if the property were to be separate; pointing at a map, she stated looking here this RR-1 is a lot that is taking homestead and the rest of the area is also owned by the same family, which is not taking homestead, and it is agricultural; therefore, she is also basing this on that information. She added as of right now, there is no future plan to build on anything or further split the lot or anything like that.

Commissioner Goodson stated of course it is changing what has been zoned down there for 30 to 40 years, a long time; and he just cannot support it.

Chairman Feltner stated he is not sure for the purpose of homestead that the applicant would have to do this; just talking this through, he asked if Commissioner Goodson would consider a Binding Development Plan (BDP) where they are not placing another structure on that property; and he asked if that would satisfy the situation.

Ms. Nogueroles advised she would be willing to accept that.

Commissioner Goodson stated the BDP...

Mr. Prasad stated he is not sure if that would really operate because the rezoning request is to the one-acre portion, the BDP, it sounds like, would be concerning the remaining four acres that are not subject to the request.

Chairman Feltner thanked Mr. Prasad for the clarification.

Ms. Nogueroles stated regardless, even if it is at an RR-1, she is only allowed to have one structure on there; and that is already on the property so she is not intending to place anything in there, maybe a pool in the future, but nothing else.

Chairman Feltner asked getting back to where they are, if RR-1 is just on the portion that the house is on.

Mr. Prasad responded affirmatively.

Chairman Feltner stated that does not speak to what is going to happen and whether it is split in the future, or any of those things.

Mr. Prasad once again responded affirmatively and he mentioned it is just the one acre on the northeast portion.

Morris Richardson, County Attorney, asked if the properties have not been divided yet.

Mr. Prasad responded in the affirmative.

Attorney Richardson noted even though it is rezoning a portion of the property, he thinks because it is a rezoning related to the entirety of the property, although just a portion, he could probably structure a BDP in a way that it could restrict the development of another residence on the entirety of it because what they will have after the rezoning action is still one property with four acres zoned agricultural and one zoned RR-1; and he thinks he can make it work.

Ms. Nogueroles stated she also has the barn and stable already on there so she wanted to make sure the Board knows that.

Attorney Richardson stated he would agree with what the Commissioner said; he does not think the applicant needs to do this if the only purpose is for establishing a homestead through the Property Appraiser; however, if this is what the applicant wants to do, he thinks the Board can mitigate them through a BDP if that is the desire.

Commissioner Goodson stated he has no issue with that; and he would assume it will be brought back to the Board and not be voted on this evening, because he would like to see it prior to voting on it.

Attorney Richardson explained the Board would vote on the zoning tonight, subject to the BDP; and the BDP will come back to the Board.

Commissioner Goodson asked Mr. Prasad if that is alright with him.

Mr. Prasad stated if Attorney Richardson thinks that will work; his only concern is the legal advertisement; and he has not checked it but he would assume it was only the one acre.

Attorney Richardson stated he understands and Mr. Prasad is probably correct there; this is just coming up now; but he is pretty confident that it can be done through a BDP.

Mr. Prasad stated it is understood.

Chairman Feltner asked if that could be restated for Commissioner Goodson's motion.

Mr. Prasad stated his understanding would be to approve the rezoning request from AU to RR-1, with a BDP limiting development on the entire five-acre parcel to one residential unit.

Commissioner Goodson commented which is already there.

Mr. Prasad reiterated which is already present.

Commissioner Goodson asked the applicant if that is okay with her.

Ms. Nogueroles responded affirmatively.

There being no further comments or objections, the Board approved the request by Luz Nogueroles for a change of zoning classification from AU to RR-1 with a BDP limiting development on the entire five acres to one residential unit on the entirety of the lot.

Result: APPROVED

Mover: Tom Goodson

Seconder: Kim Adkinson

Ayes: Delaney, Goodson, Adkinson, and Feltner

Absent: Altman

H.5. Tiffany and Henry Lequear request a change of zoning classification from RR-1 to AGR. (24Z00058) (Tax Account 3008694) (District 3)

Chairman Feltner called for public hearing on a request by Tiffany and Henry Lequear for a change of zoning classification from RR-1 to AGR on a property located in District 3.

Trina Gilliam, Interim Planning and Zoning Manager, stated Tiffany and Henry Lequear request a change of zoning classification from RR-1 to AGR under application number 24Z00058, located in District 3.

H.4. Luz Nogueroles requests a change in zoning classification from AU to RR-1. (24Z00060) (Tax Account 2509830) (District 2)

Chairman Feltner announced he had two cards for Item H.4; he apologized advising it was his mistake; and he asked if the Board should have them come up.

Attorney Richardson stated, the Board should allow them to come forward and if the applicant is still here, she should probably stay around for a minute.

Alice Deakins stated she is just still a little confused because if it is rezoning for homestead; she is not sure what got approved because she does not know the terminology, but if it is rezoning for homestead, then that does not play a part; she just does not understand why they are going that route; to explain, it is all about the integrity of that property; she got extremely lucky almost 10 years ago being able to get that property; and she is blessed to be out there where it is rural and horse country. She added she wants to keep it that way; that is what they are all looking for; every time something gets built, every time there is a change on Martin Road, it is extreme flooding there; the property that was talked about is the buyer's property; and they are in attendance, and she thinks they will be speaking as well. She continued by saying the splitting of the lot was over 40 years ago when they purchased it, it was one family who purchased it, and it is the one family that is still there; that was done like 40 years ago; and it has not messed up the integrity at all being just that one-family owned. She stated she guesses she is the one, and she knows with other neighbors that approved the barn not having to be moved and those lines, because she is right next door; it was her that approved that the barn did not have to be moved the first time nor the second time because she has no issues; they are great people, she thinks they are going to be great neighbors; they have not moved in yet; and she has no issues with the structures that are already there. She went on to say she would not want them to move the structures and make it a heartache for them; she thinks it draws the line here because it makes her nervous; she asked why is she splitting this if it is just for homestead if it does not make a difference; why are they going that route; and she commented that is what she is confused about.

Chairman Feltner stated the Board was trying to figure that out as well; what Commissioner Goodson imposed is that there is not going to be another residence on the other portion of the property; and it will continue to be agricultural use.

Mr. Prasad stated that the BDP will follow even after the lot is split.

Ms. Deakins stated she thinks the applicant said there are no plans right now to do anything which does not negate the fact that there could be future plans; but in this the Board is saying that nothing else could be built on those properties; and that brings her back to why is the Board doing this to begin with because it sets a precedent.

Chairman Feltner stated he sees how that is possibly cleaner for the purposes of homestead for the Property Appraiser; he did work there for a while; he could see that they would do that because they typically carve out where the house would be and say that is the residence and provide homestead on that portion; the rest is agriculture, if it is an agricultural use and a

bonafide commercial growing operation, not a hobby farm; and then they would get that classification on the rest of it. He mentioned for the future they will not be able to place another residence on it even if they split it and someone else were to buy it; if that were to happen in the future he thinks someone else would have to essentially do agriculture on that; and he asked if that sounds correct.

Mr. Prasad responded affirmatively; and he stated it would have to be something non-residential consistent with agricultural zoning.

Ms. Deakins stated her first question is she thought for AG that it had to be five acres to get the tax AG; and she asked if she is wrong on that.

Chairman Feltner noted that may have been a rule, he does not know if it is a hard fast rule; and that is a really good question for the Property Appraiser.

Ms. Deakins stated because then if they decide to sell it, which they could easily sell it, then again it is deteriorating the atmosphere of the rural with just a few families out there at this point; they are not looking for a busy street and multi-family houses; there are two 10-acre lots for sale that the neighbors are dreading; but the owners are steadfast that they are selling to certain people and they are not looking for a subdivision to come in; and they are trying to keep that integrity.

Chairman Feltner stated he thinks the Commissioner just basically placed a deed-restriction on there to try to protect the residents.

Mr. Prasad commented it is no different than a rezoning, so it follows the zoning unless or until the Board amends the BDP, it will be on that property, it follows the property.

Ms. Deakins apologized stating she might not have understood; and she asked if they might be back at this again if somebody challenged it.

Chairman Feltner added a new owner could come and try that.

Attorney Richardson stated that could also happen if this is not approved and somebody buys the lot in the future.

John Angelillo stated he has lived out there almost 40 years; the biggest concern he has with it is not what they are doing, it is anything that will set a precedent where the lots on the north side of him, the two 10-acre parcels that were sold, that they would want to come in and start a subdivision; that is his biggest concern; he does not want to disrupt the area out there; it is nice and quiet; and as Ms. Deakins said, the area is being flooded out there and the County is well-aware of what the situation is. He mentioned the County has done studies and surveys; when they put the Phillip's Landing in, they put it three feet higher than his property; his whole driveway has disintegrated because it fills with water; and what Commissioner Goodson was talking about, was if that is the case and they would have to come back and get it rezoned, he would not have a problem with it. He reiterated his concern was with setting a precedent because he knows how that works.

Commissioner Goodson stated he has to correct Mr. Angelillo noting that Phillips Landing is in Rockledge and they are the ones who raised it three feet.

Mr. Angelillo stated he knows but the County had approved the drainage.

Commissioner Goodson commented he does not think anybody knows the drainage there.

Mr. Angelillo remarked they do not, but he does; and he thanked the Board.

Commissioner Delaney stated that area which she remembers very well, Circle C Ranch, the two 10-acre lots, she is going out on a limb but she would say it would be irresponsible for the Board to place subdivisions on those properties; she cannot imagine that happening; she does not foresee ever voting on something like that; she totally understands Mr. Angelillo's concern; and she knows those properties back there flood like crazy. She added like Commissioners Goodson and Feltner were saying, this cannot be built on unless it comes forward to a future Board and it would have to go through all of this again; and that is to give him a little peace.

Mr. Angelillo noted they could build a mansion over there on their property or whatever they would want to build, he is just concerned about rezoning and setting a precedent where all of a sudden here it goes again, and it mushrooms; and he thanked the Board.

Attorney Richardson advised the first vote was taken in error, therefore, the Board needs another motion and vote.

Chairman Feltner asked Mr. Prasad to restate the motion.

Mr. Prasad stated the motion was to approve the rezoning request from AU to RR-1 with a BDP across the parent parcel of five acres, limiting residential density to one unit.

Chairman Feltner asked if that is Commissioner Goodson's motion.

Commissioner Goodson affirmed that is his motion.

Commissioner Adkinson seconded the motion.

There being no further comments or objections, the Board approved the request by Luz Nogueroles to change the zoning classification from AU to RR-1, with a BDP across the parent parcel of five acres, limiting residential density to one unit.

Result: APPROVED

Mover: Kim Adkinson

Second: Kim Adkinson

Ayes: Delaney, Goodson, Adkinson, and Feltner

Absent: Altman

H.5. Tiffany and Henry Lequear request a change of zoning classification from RR-1 to AGR. (24Z00058) (Tax Account 3008694) (District 3)

Chairman Feltner reiterated that Item H.5. is a public hearing on a request by Tiffany and Henry Lequear for a change of zoning classification from RR-1 to AGR on a property located in District 3.

Trina Gilliam, Interim Planning and Zoning Manager, re-stated Tiffany and Henry Lequear request a change of zoning classification from RR-1 to AGR under application number 24Z00058, located in District 3.

Henry Laquear stated he just wants to rezone to AGR for short term to be able to put a pole barn up because legally he cannot put one up with it being RR-1; and then longer term is to do a deer farm, something he can do on a small property and can be quite lucrative.

Chairman Feltner remarked better than the fish business.

Mr. Laquear stated his mom tried to keep up with all of that, but it is a lot of work nowadays.

Commissioner Adkinson asked changing things to Ag, the one thing that Ag says that makes her a tiny bit nervous is, 'agricultural pursuits including the packaging and processing of commodities raised on the premises,' and if he is doing deer, she asked what that looks like.

Mr. Laquear stated it is livestock; it is just going to be multiple thousands square feet holding pen for them and in and out with a trailer, a barn, and to keep up with them; and there will be no packing facility or anything crazy.

Commissioner Adkinson asked if there would be no deer processing.

Mr. Laquear confirmed there would not be processing; and if the deer leave there, they are leaving alive.

Commissioner Adkinson asked staff in general if this property is large enough that if it was switched to Ag, he could do something like a packing or processing structure or plant.

Mr. Prasad, Interim Planning and Development Director, stated it seems unlikely from a practical perspective, given the size of the property; and he is not saying it could never be done, but it just seems a little impractical.

Chairman Feltner asked for clarification purposes if that would then turn into something commercial if he were to put in a plant.

Mr. Prasad stated like Commissioner Adkinson pointed out, what one is able to do on this property is agricultural pursuits including the packing and processing plant; and it is possible on Agricultural zoning.

Mr. Laquear advised he plans on building a house out there at some point, but he can promise none of that...

Commissioner Adkinson interjected saying they were talking about selling the genetics of the deer; and she asked if that is correct.

Mr. Laquear noted the genetics, to sell the deer.

Commissioner Adkinson stated she would also like to point out that the current zoning which is RR-1 is actually not consistent with everything around it.

Mr. Laquear explained he does not know if his father back in 2007 had big plans to sell the five-acre lots, and do that.

Commissioner Adkinson noted this actually brings it into line with the other zoning.

*Commissioner Altman arrived at 5:39 p.m.

There being no further comments or objections, the Board approved the request by Henry Laquear for a change of zoning classification from RR-1 to AGR on a property located in District 3.

Result: APPROVED

Mover: Kim Adkinson

Second: Tom Goodson

Ayes: Delaney, Goodson, Adkinson, Feltner, and Altman

H.6. Linde Inc. (Kimberly Rezanka) requests a Small Scale Comprehensive Plan Amendment (24S.016), to change the Future Land Use designation from PI and Res 2 to all Heavy/Light Industrial (H/L IND). (24SS00016) (Tax Account 2103214) (District 1)

Chairman Feltner called for a public hearing on a request by Linde Inc., represented by Kim Rezanka, for a Small Scale Comprehensive Plan amendment to change the Future Land Use designation from PI and RES 2 to all Heavy/Light Industrial (H/L IND) on a property located in District 1.

Trina Gilliam, Interim Planning and Zoning Manager, stated Items H.6., and H.7., will be read into the record together, however, they will need separate motions; this is Linde Inc., represented by Kimberly Rezanka, requests a Small Scale Comprehensive Plan amendment under 24S.016, to change the Future Land Use from PI and RES 2 to all H/L IND, under application 24SS00016, located in District 1; and Lindy Inc. requests a change in zoning classification from IU to IU-1 under application number 24Z00062, located in District 1. She added she wants to clarify that the Small Scale is approval to transmit it to the State, therefore, it will come back, if approved this evening, after it has been reviewed by the State; the State will send back an ORC report; and then there will be the adoption phase.

Billy Prasad, Interim Planning and Development Director, apologized to the Board, stating what Ms. Gilliam just stated applies to Item H.8. not Item H.7.; and this Item is not for transmittal, it is for adoption of the Small Scale Comprehensive Plan amendment.

Kim Rezanka stated what she has provided the Board has already been in the record, it is just easier for her team to review it, if necessary, and it does not have to flip through to find it; that picture with the truck on it has already been in the record; the letters of support were provided, but do not seem to appear in the record, they were sent individually, and she wanted to provide that to the Board, individually; she is in attendance on behalf of Lindy Inc.; with her is Dave Yogielslei, Director of Capital Projects; he is in Connecticut and happy to be here; Ben Vesquez the local facilities manager; Sean Chase the local production superintendent and Chris Harnden the environmental consultant who is in attendance to answer any questions about wetlands; and Lindy Air formerly known as Praxair is an industrial gas company that supplies products to support contractors at Kennedy Space Center (KSC) and National Aeronautics and Space Administration (NASA). She mentioned it also has an oxygen supplies to hospitals; it has many, many uses that they will be able to inform the Board of; the property's Future Land Use designation is currently PI and Res 2; the applicant desires to change the Land Use to H/L IND, and zoning to Heavy Industrial; the purpose is to make this all consistent so they can expand their production; in 2018 they did expand their production, there was a rezoning, and they did put a cold box in, but they need more; and as everyone knows with two to three launches per week, their product is in high demand. She continued by saying there is no

intension of building affordable housing; that is not the business they are in and if there are concerns about that they are willing to enter into a Binding Development Plan (BDP) to prevent that; that property is in rural Mims, north of Titusville city limits, along the Indian River and west and adjacent to the railroad; it is four miles north of Max Brewer Causeway and eight miles south of the Brevard/Volusia County line; there is no adjacent developed housing; there is industrial uses to the south in a County park, and Jones Avenue board ramp in Mims to the north; and again, they are seeking as Small Scale Comprehensive Plan amendment and a rezoning on 10.46 acres to Heavy Industrial and zoning to heavy industrial. She noted this is about one-half of the 22-acre site that is already developed; the reason is to expand production and to install a second cold box; she would like to have Mr. Yogielslei the Director of Capital Projects speak to the Board about Lindy, what it does, and why they need to expand.

Dave Yogielslei stated he appreciates the time to talk to the Board about this; he will start with what industrial gas is; he does not know if the Board is familiar with that; Lindy is a \$34 billion company with 66,000 employees; it operates in about 100 different countries; it really takes air and separates it into its constituents in terms of oxygen, nitrogen, argon, xenon, krypton, neon, and all the different constituents of air, used in many different areas of manufacturing; if one looks around in this room, or as he or she is driving around, almost everything to be seen has some form of industrial gas that gets used in this manufacturing; however, most people do not ever recognize that is what happens. He went on to say Lindy has a facility that has been on the property in Mims since 1966 to primarily support the Apollo Program when it started; they have used the products made there in all sorts of different applications, manufacturers of glass, metal, pharmaceuticals, semiconductors, so it is a very safe process; they are on the Dow Jones sustainable index for the past 22 years because they do this process very safely; they also have leading industrial safety performance for the processes that they perform; and one of their big customers is the space industry, and with the increase in launches, they need this product to be fuel for vehicles. He advised he is in attendance to ask for this rezoning to allow them to expand their facility; they currently have 30 employees at the site; they would double that; and also double the production capacity of the facility as well; and they are requesting this so they can move forward with the expansion and to be able to support the industry at the Space Center.

Commissioner Delaney inquired what type of experience people need to get some of these jobs that Mr. Yogielslei is talking about.

Mr. Yogielslei stated he would need Sean or Ben to come up and talk about their interview process a little bit.

Sean Chase noted they have various positions within the plant; some of those jobs are driving the vehicles, they would need to have certified truck drivers, with hazmat and tanker experience; they also have technicians on the facility, some of which are instrumentation and electrical; obviously, one would need some training and skill set behind that; some plant technicians which are essentially operators, so not quite as much education as maybe the others would need; and that is the vast majority outside of the staff, the superintendent, and the plant manager.

Commissioner Adkinson inquired if the process is noisy.

Mr. Yogielslei advised the process does involve compression equipment and cooling towers that have a level of noise that goes along with them; and it is very difficult to hear once outside the battery limit of their property.

Commissioner Adkinson asked as the area grows, it gets noisier or more frequently noisy, how that would play into what they have up there.

Mr. Prasad advised they are, and continue to be, subject to the noise performance standard found in County Code, particularly Chapter 46, Article IV, Sections 62-1483 and 62-1833.5; in addition, this is only the first step, they will have to come back for a Conditional Use Permit (CUP); and at that point, the Board will have the opportunity to not only just reiterate that, but impose other conditions that it may see fit.

Chairman Feltner inquired because they have been operating out there since the mid-60s, to anyone's knowledge, has there been noise problems or conflict up there with this property.

Mr. Prasad stated to his knowledge there has not been any complaints on this property.

Mr. Yogielslei commented the expansion will not raise the noise level from where it is now, there are no new processes that are coming in, therefore, it will not be any noisier than the existing facility.

Commissioner Goodson advised them to be prepared for complaints to come because if anyone knows anything about a railroad track, one builds beside it and it has been there 150 years, they have that same problem in North Merritt Island right now, so it will come.

Commissioner Delaney stated she just wanted to put this out there, when it comes back for the CUP, some of the things that she would like to be addressed is the noise and the traffic; there had been talk about the increased semis going in and out of that area and going onto US 1; that is a little concerning to her; with all of that being said, she went into the community and talked to residents up there; the residents say that they are great neighbors and partners with the community, therefore, she is not too concerned about this; they have all of those tree buffers on the property, and it was already said they are not taking them down; and maybe there are some other noise mitigation things that could be discussed at a later time.

Mr. Yogielslei stated that would not be a problem.

Ms. Rezanka advised she was not actually finished; she stated what they do here is different than liquid air; they do not have the same piping and things like that; yes, the noise would be a condition when they come back for the CUP, which at that point the Board would be able to add conditions to it; they have not come up with that yet because it takes a full-blown site plan; the document that was provided, and that was already in the staff report, shows what the intended is on page four; it is a conceptual and it has not been reviewed by staff; that is what would come back and to do that with the site plan and the dimensions with the height and things like that; and they are not at that stage yet. She went on to say as for wetlands there are no impacts planned; there are quite a bit of wetlands here and the staff report talks about it; she also talked with Mr. Prasad about that today and there are some restrictions on that due to the RES 2 being in place for so long; the idea is to make this one compatible land use; zoning, the plant has been in existence since 1966; there are no houses around it; also to the west of it there is mostly wetlands property; she knows many people who develop and she does not think that it is going to be developed anytime soon because of the wetlands and the Comprehensive Plan would prohibit that; they are just attempting to make it consistent so they can expand; and they will be before the Board again with the CUP. She commented as to the traffic, they did consult with LTG; they are putting together a proposal to review the intersection of Wylie Avenue and US 1 because of the increase in trucks; they are concerned that they will not get a full traffic signal, maybe a flashing light, or maybe some traffic calming or reducing the speed

along that area; they have looked at it, they just do not have anything to present to the Board at this time; that would definitely come back with a CUP; she knows that was a concern and they have admitted it is a concern for them as well because people take that as a speedway up there; and with that, if there are any other questions Mr. Harnden is there as a wetlands expert. She added she would ask that the Board approve both the Future Land Use and the zoning, as requested; and the BDP if the Board would like, but the Board could put that on the CUP as well.

Sandra Sullivan stated she is glad the noise issue came up; this property was zoned in 1961, before there was a Department of Community Affairs, with land planning, Comprehensive Plans which came 20 years later; when looking at that, it is non-conforming with the area, but obviously a great business; it has been there a long time; as they take this property to the north and develop that is where they are approaching some houses at the north end of that; and she might suggest that there be a buffer at the north end because a similar type plan had some noise issues. She continued on by saying the primary reason she came up to speak is an objection to the staff report and staff comments; she appreciates Ms. Rezanka mentioning they would be amendable to a BDP to prohibit Live Local, since that is not their intent; she would like to bring to the Board's attention that staff placed in the staff report that the potential for this property, because it has a Floor Area Ratio (FAR), an intensity use of 1.76; they could put 313 dwelling units with a development potential of 30 units per acre, pursuant to the Live Local Act, the affordable housing, one will own nothing and be happy law; she spoke with Mr. Prasad after the meeting and she told him she read the Live Local Act a few times and she does not see the language that he is saying is in that bill; she went home and read it again; Mr. Prasad told her he had a document and to records request it, he would send it to her, and she sent him the records request; and what he sent her paraphrases what is in Live Local which says, "additionally, a County may not restrict the height of such development below the highest allowed height for commercial or residential development in its jurisdiction within one mile of the proposed development, or three stories, whichever is higher," which is what she had stated. She went on to say the issue she has is, and she has researched this very much, there is no equivalency between intensity use and density use; she thinks this needs to be cleared up on this particular property so there are no other properties coming forward to this Board; there is nothing in Senate Bill 102 about intensity use equivalency; this does not apply if this is Light Industrial, but converting it to Heavy Industrial or any other Heavy Industrial; the claim is made by staff that there is equivalency between intensity and density; and Live Local does not have that. She mentioned if need be, she is requesting that the Board go get an Attorney General Legal Opinion because there is a lot of complexity with Senate Bill 102, and to make sure that moving forward on this issue there is some clarity; and for today she is requesting to take Ms. Rezanka's offer since there is no intent for Live Local and build that into the BDP.

Commissioner Delaney inquired if the Board can deal with all of those things during the CUP process, the potential of Live Local, the traffic, and the noise.

Mr. Prasad stated he is not sure of dealing with the Live Local through the CUP, the other things, he thinks the answer is yes; the Live Local is a specific exemption from a rezoning; it would still be a commercial or industrial zoning and therefore, be subject to the Live Local Act; it already is today so the request does not change that; and he does not see how it could be exempted in any way from the Live Local Act through a CUP.

Attorney Richardson advised Mr. Prasad is correct on all counts there; he is also correct that the current potential yield under Live Local as it is currently zoned will be the same if the Board grants the rezoning; and there is no change regarding Live Local implications.

Commissioner Delaney asked since the applicant is offering is that something that would build in any kind of protection.

Attorney Richardson stated if the applicant wants to submit a BDP, that can certainly be done.

Ms. Rezanka replied affirmatively stating if that is what the Commissioner would like, they can do that.

Chairman Feltner asked what that BDP would consist of.

Attorney Richardson stated he imagines it would be an agreement on the part of the applicant that they will not utilize the property for a Live Local project, essentially.

Chairman Feltner asked if it is Live Local project or just residential apartment dwellings.

Attorney Richardson explained they would not be able to do residential apartment dwellings with the rezoning that is contemplated, unless they were to do it as a Live Local project because it is going to Industrial zoning and Industrial zoning does not allow for a residential component.

Chairman Feltner asked if the applicant is amendable to Commissioner Delaney's request.

Ms. Rezanka responded affirmatively.

Chairman Feltner asked which Item that would fall on.

There being no further comments or objections, the Board adopted Ordinance No. 25-02, amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, entitled "The 1988 Comprehensive Plan," setting forth the second Small Scale Plan Amendment of 2025, 24S.16 to the Future Land Use Map of the Comprehensive Plan; amending Section 62-501 entitled, Contents of the Plan; specifically amending Section 62-501, Part XVI(E), the Future Land Use Appendix; and provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; providing an effective date; and changing the Future Land Use designation from PI and Res 2 to all H/L IND.

Result: ADOPTED

Mover: Katie Delaney

Second: Thad Altman

Ayes: Delaney, Goodson, Adkinson, Feltner, and Altman

H.7. Linde Inc. (Kimberly Rezanka) requests a change in zoning classification from IU to IU-1. (24Z00062) (Tax Account 2103214) (District 1)

Chairman Feltner called for a public hearing on a request by Linde Inc., for a change of zoning classification from IU to IU-1, located in District 1.

There being no further comments or objections, the Board approved the request by Linde Inc. for a change of zoning classification from IU to IU-1, with a Binding Development Plan (BDP) to restrict a Live Local project.

Result: APPROVED

Mover: Katie Delaney

Seconded: Kim Adkinson

Ayes: Delaney, Goodson, Adkinson, Feltner, and Altman

H.8. Christopher Espanet (Kimberly Rezanka) requests a Comprehensive Plan Amendment to change the Future Land Use designation from RES 1 to RES 2. (24SS00013) (Tax Account 2963382) (District 3)

Meeting went into Recess

Meeting Reconvened

Chairman Feltner called for a public hearing on a request by Christopher Espanet for a Comprehensive Plan Amendment to change the Future Land Use designation from RES 1 to RES 2 on property located in District 3.

Trina Gilliam, Interim Planning and Zoning Manager, stated this Item is Christopher Espanet, represented by Kimberly Rezanka, request a Comprehensive Plan amendment to change the Future Land Use designation from RES 1 to RES 2 under application number 24SS00013, located in District 3; and this one is approval for transmittal to the State and will come back with an Objections, Recommendations, and Comments (ORC) Report which staff will then have the time to resolve any issues and choose to adopt within 180 days.

Kim Rezanka stated this is a Future Land Use request to change from RES 1 to RES 2; her binder is over 500 pages of public comment that the Board has; she just received it today and has not had a chance to review; the applicant is here to move forward; they are not requesting a continuance; there are people in attendance and they are moving forward; and she is glad to see Commissioner Altman made it, she was worried about that. She noted the Board is in a catch 22 situation and she understands that; it has staff telling it one thing, hundreds of people saying something else, and it has been bombarded by emails; this is a problematic situation that seems almost illogical, unreasonable, and senseless; the whole purpose is to allow one house on 0.7 acre; staff has said the Board cannot do this because it violates the County's Comprehensive Plan; however, she does not believe it violates the Comprehensive Plan because the structure of the Comprehensive Plan and the glossary terms in the Comprehensive Plan; and Jim McKnight and Mr. Espanet will go through that with the Board. She went on to say the residents of south Brevard beaches do not want this; they have tossed around words like illegal, violates the Comp Plan, breaking the law, creating precedents, and none of it is true and she will explain that to the Board tonight; there has been a lot of unnecessary anger and worry about a matter that is really about one single-family house; and it is truly a storm in a teacup. She continued by saying first she would like to talk a little bit about the legislative text and addendum that County staff put together; this request is also for a Binding Development Plan (BDP), and staff says it cannot be done; it has been done before and she presented it to the Board in the packet she provided before; there is precedent to having a Future Land Use (FLU) amendment with a BDP to make them consistent with the County's Comp Plan; Section 62.1-1255 of the County Ordinance says that is the purpose of a BDP to make the Comp Plan and zoning consistent; that has been done and is in the packet; it will not be able to be done again because it is also in the new Comprehensive Plan Amendment that has been up to the State and back; it actually prohibits that from happening in the new Comprehensive Plan; and this would have been the second or third time it would have been allowed. She continued by saying it also says in this legislative report that RES 2 would create an inconsistency between RP zoning and the FLU designation; it is already inconsistent because of the size of the lot; staff have said that Mr. Espanet can build a commercial structure; that commercial structure can be 12,000 square feet based on the FAR and lot coverage; a single-family house which is allowed by the declaration to be 8,500 square feet,

which will not be if Mr. Espanet can build, there could be a 12,000 square foot professional offices to include group homes, boarding homes, a learning center, things that do not make sense in this neighborhood; but it seems that is what the residents want; and staff has said that he is basically vested to build a commercial structure. She noted it seems there is also no issues with access based upon the addendum that was provided by staff; she would like to point out if the Board members watched or listened to the Planning and Zoning (P&Z) or Local Planning Agency (LPA) meeting, they were torn on this issue and did not want to vote on this issue, but they did indeed recommend approval because it does not seem fair, and this is a fairness issue, a Policy decision this Board needs to make; to be clear it is a Future Land Use amendment, not a rezoning; most of the emails she has reviewed think it is a rezoning; but it is not, it is a legislative decision, a Policy decision, to be made by this Board. She stated Mr. Espanet never agreed that he would not submit for a Future Land Use amendment; Mr. Shantzis' email says he agreed, but that is not true; Mr. Bennet was working for the contract purchaser back in 2018; he withdrew the application because at that time he was told he could not move forward; they came to her and she disagrees with staff's interpretation; Mr. McKnight disagrees with staff's interpretation; and it is up to this Board to decide who is correct. She went on by saying regarding the staff report she believes there are three statements in opposition, which are in error; first, RES 2 creates an inconsistency between PR zoning; it already has an inconsistency which will be cured by the BDP that she has submitted, that in the staff report has not been talked much about, but it is there before this Board; the one in the Board's packet is incorrect and it was resubmitted with her packet to LPA; second, it would violate Policy 1.7 because it is not a transition; 1.8b does not say the transition has to be adjacent; there is RES 1, there is RES 2, and there is RES 4, this is a transition; it is the exact same issue they had at Sun Terra that Commissioner Goodson did not like; it is a transition and there is other RES 2 and other RES 4 in the area; therefore, it is not a violation of Policy 1.8. She continued on to say third, the request to increase the intensity violates 7.1, however, it is consistent with objective 7 of the Coastal element, therefore there is no need to review Policy 7.1; Mr. McKnight will go through this information with the Board about the County's glossary and terms; the staff report goes into detail about how this request will not violate the Barrier Protection Act, the Brevard Barrier Island Area (BBIA) that Commissioner Altman was involved with, and that is Section 388.05535; this is not on the beach, it is not on the dunes, there are no sea turtles, there are no wetlands, and there is nothing in that law that is intended to protect increased density; and staff does a great job of supporting her position on that. She remarked she would ask the Board to look at that rationally; she knows there is a lot of emotion in those emails and the Board may hear it tonight; one house is more compatible than a 12,000 square-foot commercial professional office that can have multiple uses; it is not in a coastal high hazard area and the map provided shows that; Mr. Espanet did not create the lot or the condominium that has caused this problem; if he made a mistake, it proves he is human; he will tell the Board he got direction from staff, not in writing, that he thought with RP, he could build a house; he is asking for assistance from the County; and placing blame on him for a bad real estate deal is unfair and it is not evidence. She stated fourth, this does not impact any concurrency levels of service and the staff report supports that; again, this is a Policy decision made by this Board; sixth, the Florida Commerce Department will review this; it will go up to the State and the State will say whether it makes sense; it will also review any building permit submitted by Mr. Espanet, so the Department of Commerce will review this; seven, this will not create any precedential value as these facts, this lot, this condominium are unique and likely incapable of replication; that word precedent has been thrown around like candy at a parade in all of these different emails; it is not true; and Mr. McKnight will say that. She stated on the sheet that she provided, two pages, the law dictionary from Black's Law and a Cornell Law review article that talks about what a precedent is; there has to be similar facts, similar property, and similar legal issues; she cannot imagine, nor has she seen in her 25 years of doing this, anything like this before; therefore, this will not create a precedent. She reiterated they can submit a BDP; the

Future Land Use is done and has been done; zoning regulations need to be looked at just like Comp Plan regulations according to case law; Hoffman vs. Brevard County Board of Commissioners, a fifth DCA case from 1980, one has to give their terms the broadest of definition; when looking at these glossary of terms, they need to be looked at in a favorable light of what is being proposed here; it does not get to the Policy if it meets the objective; the Policy is to define the objective; and she would point to the private property rights element of the Comp Plan and the potential that applying this Policy 7.1 in this manner, to this property, may indeed create a takings issues. She added not that her client wants to go there, but being involved with another Bert Harris case with the County, this is an application of a Policy that definitely impacts his ability; and with that, she will turn it over to Mr. Espanet.

Chris Espanet stated he is not good speaking with crowds it makes him nervous, he is more of an introvert so the Board will have to forgive him; he has been a Florida resident for 50 years; his children and grandchildren live here as well; he purchased the property from developer Doug Lally in 2005; attorney Phil Nohrr of Gray Robinson drafted the condo docs that are recorded in Brevard County official records; the recorded docs are attached to the deeds of both units one and two; and as a general contractor since 1990, he has always done his due diligence. He went on to say prior to purchasing he made a trip to Planning and Zoning with Pat Stay's listing information and recorded documents from Phil Nohrr which included the plot plan by Allen Engineering; it appears staff, in 2005, interpreted objective 7 differently, knowing that if objective 7 is met, Policy does not apply; although nothing in writing was received, they did inform him at the time that all looked good and there were no issues; he went on his way and proceeded with the purchase of the property; he sat on the property through the years with plans of building a home; a dozen or so years later, he suffered financial and personal hardship, along with health issues; and a difficult decision was made and the property was listed for sale. He explained the property went under contract and the buyers hired Clayton Bennett to perform due diligence; the buyers withdrew the contract in 2018, after being informed that a single-family home could not be built on the 0.7 acre, to the surprise of himself and all parties involved; staff has mentioned this is a one-of-a-kind historic case; if another property has had this issue, he would be very surprised and would like to know about it; he thinks it is sheer hypocrisy that some of the residents that live behind him in Lighthouse Cove are opposed to him building a single-family home on 0.7 acre, saying it will impact the area; Lighthouse Cove's multi-family development consists of 80 two-story townhomes crammed into 0.10-acre lots; and after hearing inaccurate assumptions from two of Lighthouse Cove's residents at the last meeting, it is clear the unit owners do not want anything built on his property. He noted he has yet to hear a complaint from Lighthouse Cove about the view they have enjoyed at his tax expense for the last 20 years; someone at the last meeting even called the 0.7-acre lot substandard; he did not get that one, but the other thing is, throughout the years, \$40,000-plus in taxes were not requested by the County, they were expected and paid; the County which is funded by taxes has not helped find a solution; and hopefully they can today. He stated it is evident from the opposition letters that the public are grossly misinformed and simply jumped on the bandwagon; he has looked up the addresses of many who opposed and has yet to find one that lives on a property larger than the one he plans to build a home on; and he has also noticed that many of them have arrived only in the last few years. He commented he does not know what those people are being told; he is not sure who the ring leader is in all of this, but it saddens him that people would show up and oppose someone building a single-family home on a suitable 0.7-acre lot, rather than offer support and help find a solution, like a good neighbor; objective 7 stated limit densities within the Coastal High Hazard Zone and direct development outside the area; the property is located outside the Coastal High Hazard Zone; therefore, Policy 7.1 does not apply as objectives trump Policy, and they meet objective 7 so Policy 7.1 does not come into play; and it cannot get past the overall objective because development has been directed outside the Coastal High Hazard Area. He

stated when due diligence was performed in 2005, it appears objective 7 was interpreted differently by staff; what everyone does know is that the South Beaches is riddled with inconsistent zoning and this would be a good transition; this would not increase density because they are building one single-family home on one single lot; he would like to point out that being in the area of critical state concern sets guidelines, it does not prohibit development; at the last meeting, one of the staff members mentioned Brevard County entered into an Agreement with the State that they must make people's land usable and that it cannot deny the use of a person's property; and the motion for this Item passed at the November 18, meeting because majority of staff knew it clearly made sense. He asked the Board to do the right thing today.

Chairman Feltner asked the Board if there were any questions for the applicant.

Ms. Rezanka requested more time for Mr. McKnight to speak.

Upon consensus of the Board, Jim McKnight was allotted five minutes to speak.

Jim McKnight stated he is a planner; he spent 40 years in local government so he appreciates what this Board is having to do tonight; he wants to hit on a couple of things that are very important in here; one, when looking at the areas of critical state concern there are two primary things in the Statute, one is the beach, the turtles, and the protecting that resource; the other is the Indian River Lagoon; this project, in no way, will impact either one of those Items in the 380 Statute that is being referred to; and it is important to ratchet back on that. He noted there was also something that was troubling to him that he really read a lot today, in the Statute being referred to, it says it does not affect existing land use or zoning with a barrier island before July 1, 2023; on one side there is RES 1 and on the other side is the RP zoning, yet it is being said one cannot use the Residential Professional (RP) zoning because it does not line up with the RES 1; that is why the RES 2 is being required because that is what the land use plan says; to him, it is a conflict with the State Statute in that individual is not able to build this one home, which RP allows one to build something that is a mixed-use, professional and residential, or each one can go its different way, residential or professional; he thinks the most important thing is this is an obvious transition that is very compatible with the area; from a planning perspective that is what is looked at, how this is compatible; he can go over the guiding principles and disagree on that; however, he thinks the most important thing to look at is compatibility. He commented he knows there are differences of opinions on that; even looking at RP, the lot coverage is less than any other type of use; there is an opportunity, he thinks, as to look at what best fits this piece of property; like he said previously, he has done this for 40 years and has never seen a case like this one; he has seen a lot of different zoning nuances, odd little things that occur, but never one that actually fell out quite like this does; also looking at the goal, the objective, and the Policy from the Brevard County Comprehensive Plans, and he will go beyond the goal because the goal is up here, look at the objective that limits densities within the Coastal High Hazard Area and direct development outside of this area; this area is, while part of the barrier island, clearly outside of the area that has some major impacts; and he thinks the objective is being met by what is trying to be done by the applicant. He stated he does not see the difference; this is not a precedent setting case in his opinion; he is not the County Attorney and he is sure the County Attorney has a different opinion; but precedent is based on the case itself, it does not establish something that is totally unrelated like this; and he thinks Ms. Rezanka covered everything. He added he thinks the compatibility is the biggest issue, does this fit in the area; and he thinks from a planning standpoint, it absolutely meets that.

Erika Orriss stated she lives at 263 Loggerhead Drive; she is a member of the South Beaches; she attended the workshop that was held on August 28 for the Critical Area of Concern; the

biggest issues were getting people off the island and growing density; immediately, when she hears things like density is going to be increased, and it goes against Policy 7.1, where it says Brevard County shall not increase residential density designations for properties located on the barrier island, between the southern boundary of Melbourne Beach and the Sebastian Inlet, that is a truth; and then looking at using a BDP, it should not be used as a mechanism to restrict density. She continued by saying to look at this and say it is one house, it is so innocuous it is just one house, but look at the history; this has been tried to be shoved through twice before; twice it has come to staff and each time the advisory board said no; this time the advisory board actually said yes, unfortunately, it was like a squabble; she says no because she lives there and she knows what it is like; it is not just the turtles it is the people; and the people are trying to get out on A1A to get there and they cannot. She mentioned evacuations and that it is very difficult down there; something different has to be done; she thinks to immediately out of the gate, after establishing a critical area of concern, to say back in 2005 a mistake was made and it is just being found out now, or in 2018, but someone wants everything changed, she thinks is just too much; it does set a bad precedent; it should have been caught a long time ago; she has done a lot of real estate transactions and some of them have been horrific; what happened was she had to eat it because she made the mistake; she did not go to the County, plead, cry, or 18 years later say she has just noticed this, she had to eat it; and the most thing of concern is the density. She added she obviously feels bad and she understands because she has made the mistakes; and she thinks he needs a lawyer to help him do something different, but not come to the Board like this, it does not help.

Sandra Sullivan stated she would like to start by thanking Commissioner Altman for sponsoring this bill for the area of critical concern and responding to all the people and their concerns of what Brevard County has is so incredibly special; there is a lot of history down there from a small area study and the Archie Carr; of course, there are sea turtles that are super important because that area is the largest Loggerhead nesting in the world; it used to be Omon and they used to have twice as much, but that is gone, that ship has sailed; Brevard is the future; and she just wants to read something. She continued by saying this is the staff report, "Administrator Policy 3, it says compatibility. RES 1 is the predominant FLU designation within the immediate surrounding area;" the Policy says compatibility with existing or proposed land use shall be the factor in determining where a rezoning or any application involving a specific proposed use is being considered; and that would not comply with that. She remarked she wants to give the Board a little bit of history; there was a situation a few years ago where an issue for an upzoning of a property in the south beaches came before the previous Commission; at that time the District 3 Commissioner listened to 37 people speak who were very prepared; they did not say they did not like something, they cited Policy; that Commissioner did not care what the people had said and it was voted through; and the people had recognized at that time that the Commission did not listen to the will of the people. She went on to say the people decided they would not waste any more time and decided to go to the State; it was a great deal of effort by a lot of people; and again a lot of gratitude goes to Commissioner Altman in bringing this bill forward. She noted what she has advocated for over the years and is her passion is the evacuation, because like the previous speaker stated, there have been studies done by the Eastern Central Florida Regional Planning Council's part of disasterflorida.org, it is 63 hours to evacuate the barrier island, as it is right now; it was much less than that and it was recently increased; she repeated it is 63 hours to evacuate; start paying attention to some of the hurricanes, how many hours do people get, 14 or 15 hours; people die and that is reality; and south beaches is very vulnerable, there is basically one way out on a very congested road; and if there is not adequate time to get out, everyone is not going to get out. She stated that area is so environmentally sensitive, if there is a hurricane there are sections of that, with a category four or five, it will wash right through and create a new area of water going into the Lagoon; it is very narrow strips of land in that area; she is

talking life safety here; it may seem like one up zoning, one more house, but it is the big picture; she showed a picture and explained this is a group of people who showed up to the area of critical concern meeting when Bonnie Landry made that presentation; there was a lot of people who came and a lot of public engagement; she showed another picture stating this is the results of the survey that Bonnie Landry did; this column is density and intensity; and that is the number one issue of the residents in south beaches, so as this Board listens to staff's report, who does not feel like this is compatible and the people who have voiced their concerns, and the legislators just for how environmentally sensitive this is, it is not just for the sea turtles, the Lagoon, the ocean, and all that wildlife, but it is very vulnerable for the people that live there. She mentioned she hopes the Board supports the people, the compatibility, and the laws and vote no for this.

Richard Drapeau stated he is there to voice his opposition to converting the said lot from R-1 to R-2; it seems like an extreme and extraordinary request; he cannot respond to all of the technical terminology; he thinks most of them look at this as something that happened when the property was subdivided which created, in his opinion, a non-conforming lot; and if the stated requirement for a buildable lot is one acre, and if the Board is allowing variations from that requirement then why have a residential 1 zoning at all, if somebody can just come in and make a request to get approval for something that appears to be substandard. He went on to say this may be an objection to what is in the zoning variance process; he knows there is a hardship that is being claimed here because of the taxes that had been paid by the applicant, but he would like to read the definition of a hardship; he read, "In some special circumstances makes it difficult for a project to meet the zoning Code, a hardship maybe established. A hardship generally occurs when the physical characteristics of a property are such that cannot be used for any purpose permitted by County Codes. A hardship may be created by the surroundings, shape, or topographical conditions particular to that specific property, however the hardship cannot be self-imposed or the result of the property owner's own action"; there is another section of the zoning process that states in no case shall the Board of Adjustment grant a variance which will result in a change of land use that would not be permitted in the applicable zoning classification; that is kind of where he is at on this; and he is wondering why it is even being considered.

Mark Shantzis stated he is the executive director of the Barrier Island Preservation and Protection Association which has been around for 34 years; the motive is to balance the development on the barrier island, along with the natural habitat and wildlife; this group is not anti-development, it is about balancing the development because of things like evacuations, infrastructure which there is none of, it is a two lane road going in and out; there is no water and sewer; and there are all kinds of problems, one more illegal septic tank, as he is going to call it, is not needed there. He went on to say basically, it is a property that was properly zoned and then got subdivided into one property that was correct and one that was not; that was the making of the original developer who, when he made it into a two unit condominium, instead of cutting it in half to have .85 and .85, as anyone would do in a condominium, made it one unit and 0.7; he was no dummy, his one unit for his one acre was compliant, the other was not; the first page right here is from an application that was in 2019 and it flat out says, this is the representative of the applicant, saying that the property is not compliant; he said it himself that he made a mistake; and displaying an email, he explained this is the applicant saying he made a mistake and staff saying that there is an insurmountable feat prohibiting this approval request. He continued on by saying it is insurmountable in 2019; then what happens is the applicant says he is taking back the application and will not be submitting if the County gives a refund; they cut a deal with the County saying to give back the money and he will not do this again; then they filed in 2022 again, they filed in 2024 again, and they are now here today again; he repeated insurmountable feat, a policy which is prohibited approval, which is staff;

and so the question is, is the Board going to follow binding law and the Constitutional Land Use of the CME of the Comp Plan and the staff comments where 10 times it was said that this does not comply, and five times said it was in violation of 7.1 as he pointed out it is on the screen. He asked is the Board going to break the law and violate 7.1 and increase the zoning because of a buyer's mistake that he admits is of his making, or support the binding law; he inquired again if the Board is going to support binding law or break the law; he commented it is as simple as that; it is not complicated; he handed out a document stating here is the law which is then duplicated again in 12.1 that was sent to commerce; there is both 7.1 and 12.1 of the Comp Plan since Commerce's Chief Stansbury sent back comments already; and that is basically what it is, a guy who created his own problem, a law that says he cannot do that, and now a choice of following the law or helping somebody make a profit on a property that they made a mistake on. He added he would love to buy a stock and have it go to zero and then someone pay him for it.

Robert DeCourt stated his property abuts the applicant's property; before he gets going he would like to make one correction to a blatantly false statement that was made and that there is nobody else that is opposed to this that owns land greater than 0.7 of an acre; his land is compliant, is indeed one acre, and the applicant knows that given he is his neighbor; he is new to land use but it seems to him one of the key principles is changing something that has been around for a long time, in the legitimate public interest, and does it do anything for the public, does it help, does it add a hospital, does it provide access where there is no access, or does it increase the wellbeing of the citizens; this is certainly going to make a big change if approved and the answer to those questions is clearly no; and he asked if there is anybody in Brevard County who wakes up tomorrow morning and says his or her life is going to be better; and he remarked the answer to that is also no. He went on to say one of the other things he would like to talk a little bit about is numbers, pesky little numbers; they are necessary because obviously they provide a foundation for many, many, and many times certainty when people make a decision in life; they are vitally important, particularly here on the Space Coast; should they launch a rocket, the numbers say it is okay; it is important to nurses, like his wife, who dispenses medications, it is very important to give a patient exactly what it says; also turns out financial professionals and not surprisingly, also for land use and planning specialist, they cannot do their job without the numbers; now most of the plans are mostly words, but to read it very carefully, most of the words are about numbers; and so people make decisions based on numbers, everyone in this room makes decisions based on numbers. He explained when he bought his property, he made a decision based on numbers; he based it on the land use planning; he based it on what has happened prior and struck a bargain for a price, knowing full well what he was getting into realizing that under the current circumstances that lot could not be built on; and then as it is today, as it was for the day that the property was purchased. He stated he will talk about the two numbers that are being discussed today, zero and zero; why are these numbers important, because Brevard County has determined and stipulated in writing many years ago, that residential density between south of Melbourne Beach and Sebastian Inlet that the answer to that is zero, and could not increase; similarly, the designation of the property as RES 1, given the substandard nature of the area of the property, meant that one could build zero residences; what the applicant is asking now, is to basically for no reason of public interest, to change those numbers and to say it is okay to increase the density of the south beaches, to avoid the RES 1 and change that to RES 2, with a bunch of other contortions to make it palatable; the other number is the number one, particularly as it relates to the idea that the number of homes that can be built on there for RES 1 is one per acre; and people are now supposed to believe that 0.7 is equal to one and by corollary 1.3 is equal to one. He went on to say by approving this there is a future thought one would be putting into place that the Brevard County Land Use of 30 percent criteria rule and why not build a house four stories.

Commissioner Delaney asked if she heard him right and that he lives in the house directly next to this property.

Mr. DeCourt responded affirmatively.

Chairman Feltner advised the Board there are 35 more minutes worth of speakers and he proposed a five-minute break before coming back to finish the Item.

The Board recessed at 6:48 p.m. and reconvened at 6:55 p.m.

Tracy Heins thanked the Board for hearing everyone; she stated she lives in Lighthouse Cove; this is not a tempest and tea cup, it is a big deal in the South Beaches in the grand scheme of things; she knows the word precedent has been thrown around and she is going to throw it around again; there are three properties that are waiting on this zoning change to go into effect; if one were to go on to Realtor.com they are already citing it by saying 'pending zoning change'; the large lot next door, 5660 Highway A1A is saying it is ready for a boutique townhouse community; if the Board opens this Pandora's Box and allow this increase from RES 1 to RES 2, it is going to be a domino effect down the beaches; and it is very important to the residents to try to keep the character of the area. She continued by saying her family has been Melbourne Beach since 1967; that means a lot to her; South Beaches has always been a special place; there is no place else for the sea turtles and there are Gopher turtles galore on this property, that cannot be ignored; they will just die if they are relocated; she wanted to point out big differences, as it mentioned about the numbers; one acre is 43,560 square feet; that is the requirement for a lot size in this area; this 0.7 acre is 30,492 square feet which is 13,068 square feet difference; that is a lot of square footage; and what difference does that really make, well there is no sewer, no water, and in that space there must be a well, a drainfield, and not risk contamination. She pointed out there is a well for Lighthouse Cove right on the northeast corner of her property, a four-inch well; if one were to look at it under the regulations for the County is 200 feet, there is just not the square footage; that is why the original Land Use when it was set at one acre was brilliant because it allowed for everybody to have their well, their septic, for everything else; when narrowing it down 0.7 is actually closer to 0.5 than it is to one-acre; so looking at it the residents do not want contamination of their water supply; also, looking at it and saying it is in the middle, but it is still going to have an effect on their runoff, storm drainage; her area flooded with the last hurricanes; and A1A is always under water as it is a high risk area. She asked the Board to please deny this petition for a change.

Amy Sewell Rickman stated her family moved to Indialantic in 1950; she and her husband have lived in Melbourne Beach for 15 years; she is there to ask the Board to please deny this request to change the zoning from RES 1 to RES 2; many of the people in the room live close by to this property; she has been to see 5610, so she knows exactly where it is; one has to go slow because it is a two-lane road and it is very thin, as one knows when he or she hears a myriad of reasons to protect this very fragile piece of land; all of Melbourne Beach is aware of this; and she likes to say she lives near the heart of Melbourne Beach, the heart of Melbourne Beach is the South Beaches. She went on to say she thinks it is unfortunate that Phil Nohrr led the owner to believe that what he was buying could be changed when all of these important legal County and State bodies have weighed in on how fragile this is; and she just wants to let this Board know there are a lot more people all over from Melbourne Beach all the way down to include Indialantic that are hoping this gets to stay as RES 1.

Commissioner Goodson inquired if her maiden name was Sewell.

Ms. Rickman advised it was and that her father was James Sewell.

Commissioner Goodson inquired if he was a doctor.

Ms. Rickman stated her father was the first surgeon in Melbourne.

Commissioner Goodson asked if he had Sewell Hardware.

Ms. Rickman responded affirmatively, and stated Sewell Hardware is alive and well in West Palm.

Commissioner Goodson stated he was a great surgeon and a great man.

Ms. Rickman thanked him for saying so.

Robert Logston, Jr. stated he wanted to propose the validity of this application is questionable; Planning and Zoning has done an incredible job presenting the facts and criteria for the Board's review; he is going to present some historical facts that are not provided; in January 2019, the applicant filed for a Small Scale Amendment for RES 2 via a professional engineer, same thing being discussed here tonight; according to Planning and Zoning correspondence, they were not even aware of the divided parcel and advised the applicant 0.7 acre was inconsistent and the Future Land Use designation and Coastal Element prohibited it; according to correspondence in the 2019 application, the County clearly stated that the Future Land Use and 7.1 prohibit the approval of the request; and the applicant withdrew and received a refund. He went on to say what the Board does not know is that included in the application narrative on page one, item four, is a statement by the applicant's representative that Mr. Espanet solely relied on the condo documents to make the purchase; there is no mention of any effort to contact the Planning and Zoning staff prior to his purchase; he admits he was misled by the developer; he finds it very troubling that in the review of the Land Planning Agency (LPA) meeting on November 18, 2024, the applicant's attorney implied two times that he reached out to Planning and Zoning staff for guidance prior to the purchase; and he asked why they are there and why the County is being held responsible for a bad real estate deal. He continued on by saying in June 2022, the applicant filed for a zoning verification; once again he was informed the property was noncompliant; December 2022, the applicant filed again with an absurd argument that somehow Coastal Element 7.0 was in conflict with 7.1 and this inconsistency should somehow allow this increase in density; and that application morphed into a Large Scale text amendment which imploded due to the implications it would affect over 50 acres on the barrier island. He noted that application was either withdrawn or rejected, but the County records are not very clear on that; this current application, July 2024, contains the same previous arguments that were rejected by the Planning and Zoning Board, but adds a BDP which the County staff agrees, does not apply; the applicant is providing testimony that clouds a factual issue that an increase in density is not allowed per Coastal Management Element Policy 7.1; and Planning and Zoning staff clearly states four times in its report to the Board that the application violates Policy 7.1 and the same letter was provided to the LPA, but the new uninformed majority of the members, were mostly concerned with the money the applicant spent. He stated they were fooled and voted on the issue using the false narrative that the County must somehow help this applicant because he continued to pay his taxes and voted with their emotions and not the facts; all of this to help a buyer admittedly on record made a bad purchase in December 2005; since when is it the responsibility of the County to provide relief to an applicant who bought a substandard lot just because he paid taxes on it; it is buyer beware; this is not a property lot rights issue, it is a civil case between the applicant and the condo developer that sold him the unbuildable lot; and it is very concerning that the Planning and Zoning staff review for the first applications were flat out rejections, but the current

application comes to them loaded with speculative suggestions that somehow they are asking the Board to consider the following criteria, it is consistent with the compatible and surrounding areas, no it is not if it violates 7.1 and 12.1 of the BBIA. He went on to say does it satisfy the locational criteria established in the Future Land Use Policy 1.8, no not when it violates 7.1 and 12.1; is increasing the residential density designation consistent with the Coastal Management Element Policy 7.1, no it clearly violates it; does the request meet the intent of the Brevard Barrier Island of Critical Concern Guiding Principles, no it also clearly violates it; the applicant is a State-certified general contractor with years of land development knowledge, multiple real estate transactions, and also a licensed real estate agent; there is no hardship or burden caused by the County; it was a bad real estate deal; and this has been a colossal waste of taxpayer money, a huge waste of Planning and Zoning time and dollars, and he believes it is a civil matter between the developer and the applicant and he should be suing the developer. He noted the responsibility to help this applicant is not with the County, the liability belongs to the applicant; please vote against the application, please do not provide a precedent for future crafty land owners to convert their property to a condo and then destroy the intent of the Future Land Use Plan; and he has documents to enter for the record.

Dolores Conway stated she opposes Mr. Espanet's request; the Future Land Use Plan, Coastal Element 7.1 is very clear that there is no density increases in the South Beaches; a change from RES 1 to RES 2 is a density increase; Mr. Espanet mentioned that he just wants to put a single-family home on and that RP zoning is the problem; the problem is the size of the lot; and the history of the lot starts with the previous owner, Mr. Lally. She continued by saying Mr. Lally bought the parcel in 2003; the 1.7 acre lot was compliant and had no development issues; in 2005, Mr. Lally converted the 1.7 acre lot into a condo regime form of ownership; he split the parcel into two lots via condo declarations, but the lots were not created equal; one lot, unit two was compliant at one acre; the other lot, unit one at 0.7 acre was not compliant and it was not buildable; the subject lot, unit one, now has development issues; Mr. Lally, not the County, created the problem; and aside from the obvious responsibility Mr. Lally has for creating and selling Mr. Espanet a noncompliant lot, the applicant is also responsible for not completing his due diligence. She commented it appears the applicant relied solely on the condo docs put together by Mr. Lally; at any time prior to closing, Mr. Espanet could have visited Brevard Planning and Zoning and requested written information about the status of the lot; in 2005, the applicant was experienced and knowledgeable in land transactions; he already purchased a lot in 1997 and another lot in 2002; from 2013 to 2024, the subject lot was put up for sale multiple times at multiple prices; Mr. Espanet has been a general contractor in Florida since 1990; and he made a mistake. She stated she would ask the Board to deny this request for the following reasons: this request increase density in the area of Critical State Concern, changing the Future Land Use Map designation from RES 1 to RES 2 would set a precedent, using BDP improperly to make this lot compliant may also set a precedent, and the condominium property regime form of ownership, Florida Statute 718 may also suffer a precedent; the greatest harm in approving this request is opening the door to one density request after another, using this lot as an example; and this is a civil matter.

Beth Glover stated she will be brief and that she just wanted to show the Board the petition she has and all the pages that are full of signatures from the South Beaches that want to stop this; they do not need the increase in density; leave it as RES 1; and do not increase the density.

Ralph Sammis stated he has been coming here surfing for the last 50 years; he thinks everyone is viewing this wrong; what is really being looked at is audacity; what happened was there was somebody who was a lawyer and a developer that decided they could dupe the way this is done; they had figured out that Planning and Zoning does not have contact with the Clerk of Courts over condos; and he asked if that was correct. He went on to say basically what

had been decided was they could put through condo docs and not have to have it go to Planning and Zoning; it went to the Clerk of Courts and they gave it tax numbers; it basically got put up there in a way that could go around people and dupe them; there is no other land like that; and he guarantees the Clerk of Courts does not get condo docs from the South Beaches because Aquarina has something they could build; there is a little bit of stuff left, but there is really not a lot of space; therefore, it is not like the Clerk of Courts is continually getting stuff, and they let that go through; and it then let the buyer go through. He mentioned here is a little background on Mr. Espanet, he is a good builder; Jerome Powell, the Fed Chairman, the last job he finished before he quit was a huge condo for Jerome Powell; people do not get that job unless he or she is good; he is thorough; he does not want me to say it, he does not want to call him cheap, but he will call him frugal; he will guarantee Mr. Espanet did not drop \$250,000 on something and pay full cash for something, if he can go to the County and check on it; and that is all he can say. He noted he has been to the County before and had stuff done in Planning and Zoning and then come back and have something change in that stuff too; he stayed with him the whole time he came; he suspects he had somebody look at it; at some point in time the County knew that his property was deemed unbuildable; when the house was built up front, they had to realize that they were going to make his lot unbuildable; is there no responsibility to tell him his lot is no longer buildable; in between that time, the guy that did the divide was a lawyer and the guy who owned the property both died, so there is no one to sue; and it is his fault, but the way this went through with the Clerk of Courts, there is also some culpability there too. He commented it has been a rough night and he would like to take the Board to the eatery, which is down the road from his property, it is 6,200 square feet and it probably has 200 people per day go to the bathroom there and the septic system seems to work.

Chairman Feltner asked if he is talking about the New England Eatery.

Mr. Sammis responded affirmatively.

Chairman Feltner commented when the snow birds are there, they are busy, no doubt.

Eva Nagymihaly stated she heard everyone speaking so she will be brief; they said it all; everyone was very intelligent, dynamic, and strong on their opinions; when someone buys land he or she has to know what he or she is doing; she is sorry that Mr. Espanet got hurt through the process, but it is important for the density to stay as low as it is; everyone thinks they have a major problem and if the Board lets it go this time, it will go again the next time; she asked the Board to please do the right thing; listen to the people tonight; and vote against this.

Chairman Feltner asked if she is waiving and opposing, and clarified the speaker was waiving and opposing.

Ms. Rezanka stated there is a lot that has been said, but nothing that she has not heard before; Mr. Espanet did say he went to the County; he did not split the lot; he did not write that narrative, it was Clayton Bennett on behalf of the contract purchaser; the 2022 application, she had put in for a text amendment; it was withdrawn because of Mr. Altman's Barrier Protection Act and the consulting planners told her there was no way they would get that because the Department of Commerce because it impacts so many; this impacts one lot and this only impacts Mr. Espanet; and it is one house versus a 12,000 square feet commercial building, which makes absolutely no sense. She continued by saying this property is not an area of critical concern; it does not have bugs and bunnies; it may have Gopher Tortoises she does not know; it is not a dune line and it is not a beach; many of the people who spoke to the Board live in a condo to the west of Casseekee Trail with an RU-2-10 zoning with RES 1 Future Land Use

on condos; this density is a transition from what is really there; and RES 2 does make sense, as Mr. McKnight stated. She stated regarding A1A, it has a 36.16 percent level of service; there is quite a bit of traffic that can still go on that road and it is only one house; there are two evacuation routes, one north and one south; this was put in place before she believes the bridge was down south, at least that is what she was told when she was looking at the 92 Ordinance; and she wants to talk about the 92 Ordinance, it is very confusing and she does not have information as to exactly what happened here, but exhibit A to addendum 1 says Ordinance 93-02; all this says is the mixed use is changing to residential, it does not say RES 1 in there, and she is not sure where that came about; but, she is trying to hunt that down. She noted regarding precedence, she would like to cite from a Yale Law Journal from 2013, called The City Unplanning, and it states, "the key to understanding map amendments is that they are successive changes to the map considered one by one and limited to a specific area without any precedential value for other zoning decisions"; and she reiterated this is a zoning decision and what she cited earlier says that (inaudible) still applies, to Comprehensive Plan amendments. She mentioned regarding Administrative Policy 3 that was cited by one of the speakers tonight, that does not apply here, it applies to rezoning only; regarding the Comprehensive Plan Glossary, she would implore the Board to read those, there is a goal and an objective, and it is more specific than a goal; it identifies the steps necessary to pursuit of a goal; if the goal is to develop growth management strategy, the objective is to limit densities within Coastal High Hazard; that is still being done when going to RES 2, so the objective is met; and then the Policy is to help with the objective but it does not need the help here because the objective is met. She stated the bill that keeps being talked about, the only thing it does here, because the guiding principles do not apply as stated by staff and Mr. McKnight, is it will allow Department of Commerce to review it; again, this is a Future Land Use not a zoning; this is not a variance if they are not claiming a hardship; the biggest thing she wants to explain is just because staff says so, does not mean they are correct; she knows the Board relies on them, they are very intelligent, they are very good, this has been a position that has been in place for a very long time, and Mr. Bennett, nor his client, wanted to fight this, but she is there to fight this because she believes that they have made a mistake; the BDP has been done before for Dunkin Donuts; and she wants to take the Board's attention to the last page of what she submitted to Planning and Zoning, it is the Constitutional Amendment in the Florida Constitution that states staff is not entitled to deference, that changed in 2020 or 2016, and it is stated on the page that she cannot find. She asked the Board to approve this; and she advised the Department of Commerce will look at it.

Morris Richardson, County Attorney, stated this is a little unusual and he would ask the Board to indulge him; it will probably hear from him a little more than usual; typically, his office brings to the Board applications where in it is function as policymaker, particularly for these legislative Comprehensive Plan amendments, the Board has broad discretions to apply its wisdom to the matters before it and make a decision; likewise, in zoning matters, where it is quasi-judicial, the Board considers the facts and the law and apply those, whereas, it has discretion; here it is staff's opinion and his legal opinion, that there is no discretion; and he would like to explain why he believes that is the case. He went on to say first of all, he has the utmost respect for Ms. Rezanka and Mr. McKnight, their professional knowledge, and skill, but he wants to talk a little about comprehensive planning under the Florida Statutes; according to Florida Statutes Section 163.3177, the format of a comprehensive plan is generally provided as goals, objectives, and policies, but the stated purpose of the comprehensive planning is not to compel local governments to regulate their land in a particular way, but rather to establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations; objectives do typically follow from goals and policies from objectives, but policies do not need to be narrowly written to further only the literal statement of the objective; in this case objective seven states

limit densities within the Coastal High Hazard Area and direct development outside of this area; Policy 7.1 clearly and unequivocally prohibits increases in residential density designations for properties located on the barrier island between the southern boundary of Melbourne beach and the Sebastian Inlet; that Policy is not inconsistent with objective seven, it supports objective seven as well as the overall goal of the Comprehensive Management Element, which speaks to the protection of coastal resources in human life and the limitation of expenditures in areas subject to destruction by natural disasters; and if looking at all the other policies under objective seven, none of them are limited specifically to application in the coastal high hazard areas. He continued by saying they talk about things like not placing a hospital on a causeway, the Coastal Emergency Management Plan, (CEMP) things that go beyond a narrow focus on the Coastal High Hazard Area; most importantly, the law affords equal dignity to policy and objectives, it does not say if it checks the box on an objective to ignore all of the policies underneath; rather, looking at Statute 163.194, which is entitled the legal status of a comprehensive plan, it expressly states a development order or land development regulation shall be consistent with the Comprehensive Plan, if the land uses, density, or intensities and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the Comprehensive Plan, and if it meets all the other criteria; he reiterated it does not say ignore the policies if the objective is met, but rather compels one to follow the policies in the Comprehensive Plan; he noted the cases interpret it to say that a Comprehensive Plan is essentially a constitution for all future development within the governmental boundary and the cases say that it is well established that a development order shall be consistent with the government body's objectives, policies, land uses, et cetera, as provided in its Comprehensive Plan; he is not in a position to advise the Board to ignore Policy 7.1, simply because this property is not in the Coastal High Hazard Area, rather to the contrary, he feels the Board is compelled to follow Policy 7.1; if he has his way and staff has their way, they probably would not have taken the applicant's money and said this is something the Board cannot approve, but were told in no uncertain terms that the applicant wants to go forward and possibly receive a denial that is subject to an appeal and that the County may even be sued to require it to process the application if it was turned away; therefore, it is here before the Board. He commented he has full respect for the Board, but he does believe that this is clearly inconsistent and the request clearly constitutes an increase in residential density and cannot be granted; he reminded everyone that there is a supplement to the staff report that states, and he believes the applicant talked about it earlier, this is not an unbuildable or undevelopable lot, a professional office could be placed on the lot; and he apologized for talking so much, but this is an unusual circumstance.

Commissioner Altman stated this is just for clarification, he is a little confused; he knows when looking at this parcel on the tax map, it is showing it as a condo common area, but does not show the name of the applicant on the tax map; and he asked if that should not be case if there is a landowner coming for a rezoning, that ownership should be showed on the tax map.

Billy Prasad, Interim Planning and Development Director, stated he has noticed that auditioning, if one searched on the Property Appraiser website by the tax account that is on the Agenda Report, the correct account does show up, and once selecting the tax bill, the owner shows up as Christopher Espanet, which is the applicant, and it shows the taxes are current; there are three tax accounts across the parent parcel; there is the full one that he believes Commissioner Altman is looking at; and there is a tax account on the east side and a tax account on the west side.

Commissioner Altman stated he cannot tell, but he will probably have more questions about that as he has never seen this before.

Mr. Prasad noted it probably has something to do with the way it was divided using the condo.

Attorney Richardson explained when it is in condominium ownership, like if one were to look at the condominiums to the west, he or she would see that they are all grouped together even though the units are individually-owned; he thinks that is probably why the Property Appraiser shows it that way; however, they are individually-owned and Mr. Espanet does own the 0.7 acre piece; and he does pay taxes on it.

Commissioner Altman responded by saying that is interesting; he inquired if it was rezoned today and they built a residential home, they would still be able to file for homestead and show it designated that way, or do they need to change the tax map.

Attorney Richardson explained the request today is a Future Land Use Map (FLUM) change; if that were granted, there may be an issue about inconsistency with the zoning, which he will ignore for the moment; but if they go to where they could build a home on it, they could apply for homestead, just like with a condominium, or townhome ownership.

Commissioner Altman commented it is just odd to him, the actual Tax Collector's map does not show the owner, it shows as part of a condo.

Chairman Feltner stated when a split is done or combined that changes tax account numbers so that is possible.

Attorney Richardson stated because of the condominium vehicle he thinks it will stay that way because it is in a condominium essentially.

Commissioner Altman commented he understands.

Commissioner Adkinson stated she is going to make a statement and staff can tell her if she is wrong; she wants to thank everyone who came; she knows this is a unique situation; she heard the word unbuildable, reiterating what Attorney Richardson said, several times, and she wants people to understand this is not unbuildable; and she inquired if that is correct.

Mr. Prasad responded affirmatively.

Commissioner Adkinson noted this is 0.7 and RES 1 indicates it has to be one acre to have one residence.

Mr. Prasad responded affirmatively.

Commissioner Adkinson stated the Board is talking about changing from R1 to R2; and she inquired what that means.

Mr. Prasad advised it would double the residential density.

Commissioner Adkinson stated Policy 7.1 of the Comprehensive Plan says Brevard County shall not increase residential density designations for properties located on the barrier island between southern boundaries of Melbourne Beach and the Sebastian Inlet, and again she asked if that is correct.

Mr. Prasad again responded in the affirmative.

Commissioner Goodson stated one cannot build residential, but can build a 12,000 square foot Commercial; and he inquired if that is what he heard.

Mr. Prasad explained it is certain types of commercial, not all commercial, but residential professional so professional office, as an example.

Commissioner Goodson inquired if it is 12,000 square feet.

Mr. Prasad advised he believes the minimum is 7,500 square feet.

Commissioner Goodson asked if anyone has an opinion of how much that would increase the density as far as traffic.

Mr. Prasad explained it may depending on the use; staff considers residential density and commercial intensity as two separate things; and that is why the Policy does not apply to the commercial aspects of it, it only applies to the residential aspects of it.

There being no further comments or objections, the Board denied the request by Christopher Espanet for a Comprehensive Plan Amendment to change the Future Land Use designation from RES 1 to RES 2.

Result: DENIED

Mover: Kim Adkinson

Second: Katie Delaney

Ayes: Delaney, Goodson, Adkinson, Feltner, and Altman

K. PUBLIC COMMENTS (Individuals may not speak under both the first and second public comment sections.)

Sandra Sullivan stated she forgot about her public speaking card, she just got so excited over that vote; she wants to talk about the firefighters today; she is sure the Board has seen the photos online of the wonderful rally and the tremendous turnout, including elected officials that came out in support of the firefighters; she wants to express concern on a couple of things; she went to the second floor today and there were negotiations that the firefighters were informed about two days ago; she has been to the meetings and recorded a lot of the negotiations; she knows the going back and forth between the attorneys inquiring if the other is available on certain days and they come up with a date; and two days' notice for a negotiation, what a waste of staff's time. She went on to say staff just sat up there with no one else in the room; she walked in, and sat down; staff is just sitting there kind of shooting the crap; she inquired why staff did that, if there is going to be something like the firefighters did not show up to negotiations so the County will set their wages; and she asked will there be some shenanigans like that. She continued by saying that rally was held because a workshop was cancelled, to get the message out; when the decision was made to cancel that workshop, what was said was the Board cannot discuss negotiations; there are documents that were shown to her that were walked or given, allegedly because she was not there, at multiple fire stations by staff of one of the Commission offices; she inquired if that is a problem for these negotiations; and she noted these negotiations are supposed to be confidential, but staff of a Commissioner is dropping them off at a Commission office. She stated secondly, a concern she has right now is she gave this Commission an Attorney General legal opinion that the County could put an Emergency Medical Services (EMS) assessment below the line; this Board has a problem that it is not even talking about at these meetings; that problem is legislatively 'we the people' passed an increase in homestead exemption, which means bringing in less money; therefore, when she brings the

Board an AG legal opinion that the County can put EMS assessment below the line, the Board should have embraced that; and the Board did not, so she would ask if it is going to try to bust the three percent cap and take it away.

L.3. Katie Delaney, Commissioner District 1

Commissioner Delaney stated she hopes that the intention of this negotiation that went on today, and that was just talked about, is not the case; she is very frustrated about what happened today; she is frustrated that staff sat in a room for seven hours alone; she has requested the emails between the County Manager and the attorney Mark Sugarman, and Mark Sugarman and the union lawyer; what she saw on the emails it basically stated that the union lawyer said they were not available today; and therefore, she is not sure why so much staff time was wasted knowing that the union could not be there, and the lawyer was not available. She went on to say she does not see how this moves anyone forward to a better place, fosters trust, or provides a better relationship moving forward; and she is heavily concerned that a Commission office gave out paperwork, with firefighters names on it, their rank, their time and service, and their wages; the Board is not supposed to be doing that so that is very concerning; she worries about the legal ramifications of that especially when her workshop was shut down because of possible legal ramifications, even though in 2021 there was a workshop where fire was talked about during the budget workshops; those concerns were not brought up at the time; and frankly, she is frustrated, she hopes the Board and staff can move through this in a better way that gets everyone to a better place.

L.6. Thad Altman, Commissioner District 5

Commissioner Altman stated he just wants to thank the Board for understanding him being late; it is interesting, he works at the Space Center and it now reminds him of the 60s and 70s; it is getting really crowded out there; it is bumper to bumper traffic from the Barge Canal back about a mile; he would guess that is a good thing with a lot of jobs out there; and he apologized for being late.

Adjourn

Upon consensus of the Board, the meeting adjourned at 7:41 p.m.

ATTEST:

RACHEL SADOFF, CLERK

ROB FELTNER, CHAIRMAN
BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA