

Minutes Planning and Zoning Board / Local Planning Agency

3:00 PM

Call To Order - 3:00 P.M.

Approval of Minutes - February 14, 2022

H. Public Hearings

H.1. Scott Minnick requests a change of zoning classification from AU to RR-1, with a BDP. (22Z00003) (Tax Account 2004518) (District 1)

Scott Minnick, 1968 Turpentine Road, Mims, stated the subject property is 167 feet wide and he is trying to get access to his lot behind it. He said he originally thought he could come in from Okaloosa, but when he applied for an easement it was denied, and then staff recommended he rezone from AU to RR-1. He noted the lot is nine inches too narrow to apply for a variance.

Public Comment

Jared Adkins, 3000 Sunset Avenue, Scottsmoor, stated he is not an immediate neighbor of the property; however, he is the President of the Scottsmoor Community Association and he is present to voice the concerns of the community. He said he spoke with Mr. Minnick's representative who explained the intent of the rezoning. Afterward he spoke to the community association and conveyed the stated intentions, and the community association unanimously opposed the rezoning, with some members of the association being immediate neighbors of the subject property and others who live in close proximity. The association is not against Mr. Minnick's intention as far as what he wants to build and how he intends to use the land, but what they are against is how it's being done, which is through a rezoning. He stated the community would support some other way into the property. He said the association does not want rezoning to RR-1 from AU, because of the potential ramifications of that rezoning. He noted if the property is rezoned, then sold to someone else, and the BDP changed, it would allow the potential for more homes to be built.

David Laney, 3800 Sam's Lane, Scottsmoor, stated the Mr. Minnick is not eligible for a rezoning because the situation he is attempting to remedy is of his own making. He stated the property does not meet the 150 feet of road frontage required for a 2.5-acre lot; instead, it only has 137 feet. He said it can be rezoned to RR-1 with a binding development plan and still be utilized for the same building consistent with the classification of other properties in the area, and that's fine, but what the ordinance is not intended for is to allow for a rezoning from a modification of an existing lot to receive a variance on that lot for the purpose of benefitting another piece of property.

Henry Minneboo asked if the property is landlocked. Mr. Minnick replied no, it's not landlocked.

Ron Bartcher asked if the 10-acre lot in question is adjacent to Wheeler Road. Mr. Minnick replied yes, but it has not been developed. He stated Okaloosa runs into Wheeler and there's already two homes that come off of that street, and that was his intended plan, but it was not allowed. Mr. Bartcher asked why Mr. Minnick did not want to use Wheeler Road as an access. Mr. Minnick replied, you have to cross Wheeler Road off of Okaloosa. Mr. Bartcher asked if Mr. Minnick's 10-acre property borders Wheeler Road. Mr. Minnick replied yes, it does.

Mr. Bartcher pointed out that getting access to that property from Wheeler Road would mean he doesn't need other access through the smaller lot. Mr. Minnick replied that is correct, if you came all the way from Dixie, but then that would mean a paved road or up-to-County-standard road, which would be very expensive when he could come down Okaloosa, which people already utilize.

Ben Glover asked if anything can be done on the parcel in its current configuration.

Peter Martin stated the subject property fronts Dixie Way and it meets all AU requirements in terms of lot dimensions and size; however, the applicant would like to access the abutting parcel to the west which would require a 25-foot flag stem for a flag lot. The applicant applied for an easement, but it was denied because it doesn't meet the requirements for an easement. The subject property is 159 feet wide. The required lot width for AU is 150 feet; if you take 25 feet away for a flag stem, it would make the lot substandard, but the RR-1 zoning only requires a lot width of 125 feet, which would allow enough room for a flag stem. He noted the BDP submitted with the application limits development to one lot.

Mr. Glover asked Mr. Minnick if his intention is just to provide access. Mr. Minnick replied yes, to the 10.5-acre parcel to the west. Mr. Glover asked what he plans to do with the 10 acres. Mr. Minnick replied he would like to build one home.

Mr. Glover stated he does not know how the board can tell him that he can't make a driveway on one of them when he owns both of them.

Liz Alward asked if there are any limitations to how many homes he can put on the 10 acres.

Jeffrey Ball explained that on a 10-acre piece of property, each of those lots zoned AU has to be 2.5 acres, which is four lots. Under the Subdivision Code, anything over three lots requires a minor subdivision that he would have to go through and each of the lots would be required to have access onto a County-maintained road. The other caveat is that there can only be two flag lots adjacent to each other, so he would be limited to two lots because of the flag stem. If there is another way of getting access to the rear, outside of a flag stem, through Wheeler Road or Todd Lane, but by land use and zoning he can have four lots on the 10-acre parcel.

Ms. Alward clarified for the public that the request is not increasing the density on the existing 10 acres by adding the flag stem. Mr. Ball noted that the 10-acre parcel is not part of the request.

John Hopengarten stated paragraph 4 in the BDP says density shall be limited to one unit per 2.5 acres, which means he could essentially put four houses on the 10 acres.

Mr. Ball explained that the BDP is on the subject property, not on the 10 acres to the west. The RR-1 zoning requires one acre. The BDP is written in a way to recognize Mr. Minnick's rights as far as the Future Land Use designation of RES 1:2.5, and not the RR-1, which would allow for a one-acre lot. He is capped at one unit per 2.5 acres.

Mr. Bartcher stated he does not see a problem with the request because he is providing a binding development plan, which effectively keeps the zoning the same as the RES 1:2.5. He said his concern in that area is increasing the density, but the BDP keeps the density the same.

Motion by Ron Bartcher, seconded by Liz Alward, to approve the request for a change of zoning classification from AU to RR-1 with a BDP limited to one unit on 2.5 acres. The motion passed unanimously.

Result: APPROVED

Mover: Ron Bartcher

Seconder: Liz Alward

H.2. Clair John Jaussi and Janet Hamilton Jaussi Revocable Trust requests a CUP for six goats. (22PZ00002) (Tax Account 2416958) (District 2)

Clair John Jaussi, 1655 N. Tropical Trail, Merritt Island, stated he is spending \$150 per week to mow his property and he would like some goats.

No public comment

John Hopengarten asked if Mr. Jaussi will be able to keep the goats inside the fence line with the electric fence. Mr. Jaussi replied yes, the fence is far superior to anything else that can be constructed, and it will have a battery backup in case the electricity fails. It is good at keeping the goats in and unwanted prey out. He stated there will also be an open 10 X 10 shed for the goats to go to for shelter from the elements.

Liz Alward noted the CUP allows for no more than six goats because of the size of the lot. She stated she is glad Mr. Jaussi is following the spirit of the North Tropical Trail Small Area Study in keeping the area rural.

Motion by Liz Alward, seconded by Henry Minneboo, to recommend approval of a CUP (Conditional Use Permit) for six goats. The motion passed unanimously.

Result: APPROVED

Mover: Liz Alward

Seconder: Henry Minneboo

H.3. *Storsafe of Rockledge, LLC (Nathan Lee) requests a Small Scale Comprehensive Plan Amendment (21S.03) to change the Future Land Use designation from RES 4, NC, and CC, to all CC. (21PZ00083) (Tax Accounts 2511096, 2511103, 2511119) (District 2)*

Jeffrey Ball noted the applicant has not submitted the required authorization to represent the property owner; and therefore, items H.3. and H.4. should be tabled to the April 18, 2022, meeting.

Motion by Liz Alward, seconded by Henry Minneboo, to table the request to the April 18, 2022, meeting. The motion passed unanimously.

Result: TABLED

Mover: Liz Alward

Seconder: Henry Minneboo

H.4. Storsafe of Rockledge, LLC (Nathan Lee) requests a change of zoning classification from AU and BU-1 to BU-2. (22Z00004) (Tax Accounts 2511096, 2511103, 2511119) (District 2)

Jeffrey Ball noted the applicant has not submitted the required authorization to represent the property owner; and therefore, items H.3. and H.4. should be tabled to the April 18, 2022, meeting.

Motion by Liz Alward, seconded by Henry Minneboo, to table the request to the April 18, 2022, meeting. The motion passed unanimously.

Result: TABLED

Mover: Liz Alward
Seconder: Henry Minneboo

H.5. *Rushing Wind, LLC (Steven Austin) requests a Small Scale Comprehensive Plan Amendment (22S.02) to change the Future Land Use designation from RES 1 to RES 4. (22PZ00003) (Tax Account 3008616) (District 3)*

Steve Austin, 409 Pelican Key, Melbourne Beach, stated the subject property is next to a 100-acre development that used to be RR-1 and is now one-quarter-acre lots, and they would like to have similar zoning.

Ben Glover noted the street coming in looks like part of the community. Mr. Austin replied it is the same drive they had for the one-acre lots, but they are not part of the other development.

William Buchman stated they own the property on the west side and it was permitted in 2006. The project on the east side is completed at four units per acre, and they would like to market their land, which is why they want the comp plan change.

Jeffrey Ball stated the board should not focus on the access, because access will have to meet code at the time the site plan is addressed. They will need to provide access to a county-maintained road. He added, the property adjacent to the east is RES 2, and the zoning was approved with a BDP to cap the density at two units per acre.

Mr. Buchman noted the west boundary line is in the City of Palm Bay.

John Hopengarten asked if the lots in the development to the east are build-to-suit lots? Mr. Austin replied they are all sold and built-out. Mr. Buchman stated the builders have bought the lots and houses are being built.

Mr. Hopengarten asked if they are planning on doing the same thing on their property. Mr. Buchman replied they plan to sell to builders and they will come back with engineers.

Motion by Ben Glover to approve the request. He explained the area needs more housing, and if someone wants to sell land to build on it, it's not like the lots next door are small lots.

Liz Alward asked where they will be getting the water and sewer for the subdivision. Mr. Austin replied water is not an issue, but they will have to use septic unless the capacity is increased in Barefoot Bay.

Ms. Alward asked if they are within the Barefoot Bay Water and Sewer District. Mr. Buchman replied no, they would have to annex into Barefoot Bay, but that is up to the builders to figure out. Ms. Alward stated she is concerned about the sewer and not having the capacity for the land use change. Mr. Buchman stated according to Environmental Health, they can do three units per acre.

Ms. Alward stated if they are not in the Barefoot Bay Water and Sewer District boundary, they can't approach the district unless there is capacity. Mr. Buchman replied they are not hooking up to sewer. Ms. Alward asked if they are going to use septic tanks on four units per acre. Mr. Buchman replied yes.

Ms. Alward stated according to the School Board there is not enough capacity for the total projected and potential students for the Rushing Wind development. She asked if they have had any correspondence with the school board. Mr. Buchman replied they submitted it all to the

County, and they said it is fine. Ms. Alward stated according to the school board, the only capacity is schools many miles away, but the schools closer do not have capacity.

Ms. Alward stated she is not willing to support the motion to approve until she has a better understanding of what they plan on doing as far as septic. She said she supports development, but she doesn't support something that doesn't seem planned.

Mr. Bartcher stated a portion of the area is in the septic overlay, and asked if they will be using the high-performance septic tanks. Mr. Buchman replied yes, 246 nitrogen reduction units.

Mr. Bartcher asked if the board's School Board representative have anything to offer about the school concurrency. Mr. Hopengarten stated they have an issue because Sunrise Elementary is over capacity. Mr. Bartcher stated any children in the subdivision will have to be bused quite a distance.

Ms. Alward stated the comprehensive plan and the zoning accounted for 34.6 acres, which is 25 units, and septic on 25 units is a lot different than 138 units, which is what is being proposed.

Mr. Buchman stated they do not think they're going to get that. He said it was an option of two units per acre or four units per acre. He said the property next door is one-third acre lots, and they were hoping to get the four so they could give it to the engineers and they could come back with a plan.

Mr. Austin stated the builders will have to do some engineering. If they get quarter-acre lots they may not be able to get enough houses with septic.

Mr. Ball explained Policy 1.2 says, "In Residential 30, Residential 15, Residential 10, Residential 6, and Residential 4 land use designations, centralized potable water and wastewater treatment shall be available concurrent with the impact of the development." He said he is hearing that wastewater is not available, but the RES 4 requires connection to central water and sewer. When considering a land use change, the board can consider the availability of infrastructure and that can mean water, sewer, roads, and school capacity. He said the comp plan requires connection to wastewater if RES 4. If the board is more inclined to approve RES 2 to not have the requirement for central sewer, then a BDP would need to be placed on the zoning to restrict the density because the zoning request is for RU-1-11, and RES 2 is not consistent with that zoning classification.

Mr. Bartcher stated it seems the board doesn't have much choice but to deny the request. He said there is a school concurrency problem, they have to meet the RES 4 requirement and they are saying they can't do that, and the board wouldn't want to recommend something that is against the comp plan.

Mr. Ball stated the board can recommend a lesser intense land use category, such as RES 2. Mr. Buchman pointed out they already have RES 6 on the front. Mr. Ball replied RES 6 is already out there, and he's not sure how that was established, but that is not being considered. He said the applicants are requesting a RES 4 land use designation and the comp plan requires central water and sewer.

Mr. Bartcher asked the applicants if they are willing to change their request to RES 2. Mr. Austin replied they will, but they are trying to be consistent with the development next door.

Ms. Alward asked staff how many units they can get with RES 2. Mr. Ball replied at 24 acres, it

would be 48 units.

Mr. Glover withdrew his motion to approve RES 4.

Mr. Bartcher asked if the applicants are willing to change their request to RES 2. Mr. Austin replied yes.

No Public comment.

Motion by Ron Bartcher, seconded by Ben Glover, to recommend approval of the Small Scale Comprehensive Plan Amendment from RES 1 to RES 2. The motion passed 6:2, with Liz Alward and Lorraine Koss voting nay.

Mr. Ball noted that since the board's recommendation on the land use was for RES 2, the applicants would need to agree to a BDP to cap the density at two units per acre, which would give them the ability to design the subdivision according to the RU-1-11 standards, but cap the density at two units per acre.

Ms. Alward asked how many units that would be. Mr. Ball replied 48 units.

Mr. Bartcher asked the applicants if they would agree to a binding development plan. Mr. Buchman and Mr. Austin agreed to a binding development plan.

Motion by Ron Bartcher, seconded by Ben Glover, to recommend approval of a change of zoning classification from RR-1 and IN(L), to RU-1-11, with a BDP limiting density to two units per acre. The motion passed 6:2, with Liz Alward and Lorraine Koss voting nay.

Result: APPROVED AS AMENDED

Mover: Ron Bartcher

Seconder: Ben Glover

H.6. Rushing Wind, LLC (Steven Austin) requests a change of zoning classification from RR-1 and IN(L) to RU-1-11. (22Z00001) (Tax Account 3008616) (District 3)

Steve Austin, 409 Pelican Key, Melbourne Beach, stated the subject property is next to a 100-acre development that used to be RR-1 and is now one-quarter-acre lots, and they would like to have similar zoning.

Ben Glover noted the street coming in looks like part of the community. Mr. Austin replied it is the same drive they had for the one-acre lots, but they are not part of the other development.

William Buchman stated they own the property on the west side and it was permitted in 2006. The project on the east side is completed at four units per acre, and they would like to market their land, which is why they want the comp plan change.

Jeffrey Ball stated the board should not focus on the access, because access will have to meet code at the time the site plan is addressed. They will need to provide access to a county-maintained road. He added, the property adjacent to the east is RES 2, and the zoning was approved with a BDP to cap the density at two units per acre.

Mr. Buchman noted the west boundary line is in the City of Palm Bay.

John Hopengarten asked if the lots in the development to the east are build-to-suit lots? Mr.

Austin replied they are all sold and built-out. Mr. Buchman stated the builders have bought the lots and houses are being built.

Mr. Hopengarten asked if they are planning on doing the same thing on their property. Mr. Buchman replied they plan to sell to builders and they will come back with engineers.

Motion by Ben Glover to approve the request. He explained the area needs more housing, and if someone wants to sell land to build on it, it's not like the lots next door are small lots.

Liz Alward asked where they will be getting the water and sewer for the subdivision. Mr. Austin replied water is not an issue, but they will have to use septic unless the capacity is increased in Barefoot Bay.

Ms. Alward asked if they are within the Barefoot Bay Water and Sewer District. Mr. Buchman replied no, they would have to annex into Barefoot Bay, but that is up to the builders to figure out. Ms. Alward stated she is concerned about the sewer and not having the capacity for the land use change. Mr. Buchman stated according to Environmental Health, they can do three units per acre.

Ms. Alward stated if they are not in the Barefoot Bay Water and Sewer District boundary, they can't approach the district unless there is capacity. Mr. Buchman replied they are not hooking up to sewer. Ms. Alward asked if they are going to use septic tanks on four units per acre. Mr. Buchman replied yes.

Ms. Alward stated according to the School Board there is not enough capacity for the total projected and potential students for the Rushing Wind development. She asked if they have had any correspondence with the school board. Mr. Buchman replied they submitted it all to the County, and they said it is fine. Ms. Alward stated according to the school board, the only capacity is schools many miles away, but the schools closer do not have capacity.

Ms. Alward stated she is not willing to support the motion to approve until she has a better understanding of what they plan on doing as far as septic. She said she supports development, but she doesn't support something that doesn't seem planned.

Mr. Bartcher stated a portion of the area is in the septic overlay, and asked if they will be using the high-performance septic tanks. Mr. Buchman replied yes, 246 nitrogen reduction units.

Mr. Bartcher asked if the board's School Board representative have anything to offer about the school concurrency. Mr. Hopengarten stated they have an issue because Sunrise Elementary is over capacity. Mr. Bartcher stated any children in the subdivision will have to be bused quite a distance.

Ms. Alward stated the comprehensive plan and the zoning accounted for 34.6 acres, which is 25 units, and septic on 25 units is a lot different than 138 units, which is what is being proposed.

Mr. Buchman stated they do not think they're going to get that. He said it was an option of two units per acre or four units per acre. He said the property next door is one-third acre lots, and they were hoping to get the four so they could give it to the engineers and they could come back with a plan.

Mr. Austin stated the builders will have to do some engineering. If they get quarter-acre lots

they may not be able to get enough houses with septic.

Mr. Ball explained Policy 1.2 says, "In Residential 30, Residential 15, Residential 10, Residential 6, and Residential 4 land use designations, centralized potable water and wastewater treatment shall be available concurrent with the impact of the development." He said he is hearing that wastewater is not available, but the RES 4 requires connection to central water and sewer. When considering a land use change, the board can consider the availability of infrastructure and that can mean water, sewer, roads, and school capacity. He said the comp plan requires connection to wastewater if RES 4. If the board is more inclined to approve RES 2 to not have the requirement for central sewer, then a BDP would need to be placed on the zoning to restrict the density because the zoning request is for RU-1-11, and RES 2 is not consistent with that zoning classification.

Mr. Bartcher stated it seems the board doesn't have much choice but to deny the request. He said there is a school concurrency problem, they have to meet the RES 4 requirement and they are saying they can't do that, and the board wouldn't want to recommend something that is against the comp plan.

Mr. Ball stated the board can recommend a lesser intense land use category, such as RES 2. Mr. Buchman pointed out they already have RES 6 on the front. Mr. Ball replied RES 6 is already out there, and he's not sure how that was established, but that is not being considered. He said the applicants are requesting a RES 4 land use designation and the comp plan requires central water and sewer.

Mr. Bartcher asked the applicants if they are willing to change their request to RES 2. Mr. Austin replied they will, but they are trying to be consistent with the development next door.

Ms. Alward asked staff how many units they can get with RES 2. Mr. Ball replied at 24 acres, it would be 48 units.

Mr. Glover withdrew his motion to approve RES 4.

Mr. Bartcher asked if the applicants are willing to change their request to RES 2. Mr. Austin replied yes.

No Public comment.

Motion by Ron Bartcher, seconded by Ben Glover, to recommend approval of the Small Scale Comprehensive Plan Amendment from RES 1 to RES 2. The motion passed 6:2, with Liz Alward and Lorraine Koss voting nay.

Mr. Ball noted that since the board's recommendation on the land use was for RES 2, the applicants would need to agree to a BDP to cap the density at two units per acre, which would give them the ability to design the subdivision according to the RU-1-11 standards, but cap the density at two units per acre.

Ms. Alward asked how many units that would be. Mr. Ball replied 48 units.

Mr. Bartcher asked the applicants if they would agree to a binding development plan. Mr. Buchman and Mr. Austin agreed to a binding development plan.

Motion by Ron Bartcher, seconded by Ben Glover, to recommend approval of a change of zoning classification from RR-1 and IN(L), to RU-1-11, with a BDP limiting density to two units

per acre. The motion passed 6:2, with Liz Alward and Lorraine Koss voting nay.

Result: APPROVED

Mover: Ron Bartcher

Seconder: Ben Glover

H.7. Brian G. and Debra S. Lawson (Kim Rezanka) request a change of zoning classification from GU to RR-1 with a BDP. (22Z00005) (Tax Accounts 2314706, 2314720, 2322365, 2322366, 2314737, 3018241, 2314738, 2314709) (District 1)

Kim Rezanka, 1290 U.S. Highway 1, Rockledge, stated Mr. Lawson purchased the property in 2018 with the intent of creating seven separate parcels because they are already separated in the deed. She stated as they went through the process they found out in order to do that he would have to do a minor subdivision, which is very expensive. The lots are all zoned GU with a Future Land Use designation of RES 1:2.5. The RR-1 zoning classification was chosen because of the dimensions of the lots that are split and to limit some of the uses. The four lots that would be limited by a binding development plan. Lot 1 is the Lawson's residence, and lots 2 - 4 will require two administrative easements of 20 feet.

Jeffrey Ball noted the BDP condition is for a maximum of four units on the property, it does not bind the BDP with the concept plan.

No public comment

Ron Bartcher asked about the separated triangle piece of property. Ms. Rezanka replied it is Old Sharpes Road, it has been there a very long time, and it is pretty much a drainage ditch through quite a bit of the area.

Motion by Henry Minneboo, seconded by Ben Glover, to recommend approve of the change of zoning classification GU to RR-1 with a BDP limiting development to a maximum of four units. The vote was unanimous.

Result: APPROVED

Mover: Henry Minneboo

Seconder: Ben Glover

H.8. John Johanson requests a change of zoning classification from AU to RU-1-13. (22Z00002) (Tax Account 2501508) (District 2)

John Johanson, 1682 Angel Avenue, Merritt Island, stated the property is three, 50-foot wide lots on South Tropical Trail, and he would like to make two lots off of Victoria, just to get the access off of South Tropical.

No public comment

Liz Alward stated she supports the request because the applicant wants to create three non-conforming lots into two conforming lots that he will be able to build two homes on, and it is compatible with the neighborhood.

Motion by Liz Alward, seconded by Henry Minneboo, to recommend approval of a change of zoning classification from AU to RU-1-13. The motion passed unanimously.

Result: APPROVED

Mover: Liz Alward

Seconder: Henry Minneboo

H.9. South Beach Cove Development Corp.; and Robert A. Baugher, Trustee (David Menzel) request a change of zoning classification from RU-2-15 to BU-1. (21Z00050) (Tax Account 2520070) (District 2)

David Menzel, MAI Design Build, 395 Stan Drive, Melbourne, stated the subject property is an existing site that was rezoned a number of years ago to RU-2-15; it had an existing building on it when it was rezoned, so it was non-conforming, and this rezoning is to bring it into conformance. He said the property has been reconfigured along A1A as commercial so they can share a drive way. Currently, there would be two driveways on A1A, so this would clean it up and make it safer, and brings it into conformance.

No public comment

John Hopengarten asked the current use of the property. Mr. Menzel replied it is the corporate office for Mr. Baugher's companies. Mr. Hopengarten asked if he is also talking about the larger parcel. Mr. Menzel replied no, the whole parcel right now is a rectangular piece and the southeast corner is where the building sits, so the whole piece is zoned RU-2-15, and what they are doing is taking the southeast corner of the property and rezoning it from RU-2-15 to BU-1 to make the office building conforming. Right now, where the two roads divide, that is where you cross to get in, and they are going to move the entrance further to the north end of the property so you have to go up to the divided highway, turn, and come back, to make it safer. The "Y" is not wide enough for a car to get in there, and it combined the office building entrance and the drive that goes back to the five-lot gated community and combines it into one road, so everybody enters and leaves at the same place.

Mr. Baugher stated there are actually two deeded lots. The one that is Robert A. Baugher, Trustee, is the parking lot and the building. The one that is South Beach Cove is the company he owns, and he bought them at the same time. It was one lot when he bought it 30 years ago, and he has since remodeled it and turned it into his corporate office. He said it has been operating it as his corporate office since 1997, and it is his intent to operate it as a corporate office. He rezoned the whole block to RU-2-15 because he was going to incorporate that into the condo as a condominium with office available, but he has kept it as his corporate office. He said what he has is five residential lots and he's keeping the office the way it is, with one entrance. Nothing is really changing except he's going to add five lots on 2.3 acres, which is downzoning the whole thing.

Liz Alward stated it is a good project, consistent with the Future Land Use, and he is just making it conforming.

Motion by Liz Alward, seconded by Henry Minneboo, to recommend approval of a change of zoning classification from RU-2-15 to BU-1. The motion passed unanimously.

Result: APPROVED

Mover: Liz Alward

Seconder: Henry Minneboo

H.10. *Murrell Properties of Brevard, LLC; and Harmony Villas Properties, Inc. (Vaheed Teimouri) request a Small Scale Comprehensive Plan Amendment (21S.11) to change the Future Land Use designation from NC to CC. (21PZ00095) (Tax Accounts 2511036 & 2511043) (District 2)*

Vaheed Teimouri, 32 East New Haven Avenue, stated the projects are currently operating as group homes, and the owners would like to add additional units. Changing from BU-1-A to

BU-1 would allow his clients to go to an adult congregate care facility (ACLF) that would allow more beds. He stated all infrastructure will be provided and they are providing a lift station that will serve both buildings currently on septic tank. The first building is under construction right now and they are waiting for the rezoning so they can go for an additional site plan and change the site plan for the southern lot.

No public comment

Mr. Hopengarten asked how many beds will be in the facility. Mr. Teimouri replied 19 or 20 beds on each property.

Mr. Hopengarten stated the properties abut an airport and asked if it is an active runway. Mr. Teimouri replied it is not an active airport.

Mark Wadsworth asked how much more bed space they are getting by changing to BU-1. Mr. Teimouri replied a lot more than what they want.

George Ritchie stated in the BU-1-A zoning, they are limited to 14 units as a level 2 group home, and once over 14, the code defines them as assisted living facilities and they go up with no cap. The building will have to be sized to support those residents at 250 square feet per resident, and that is part of the criteria he will have to meet during site planning.

Mr. Hopengarten stated his office has developed ALF's and he's concerned about the ALF market where people are essentially dropped off and have a meager existence if amenities are not provided.

Johan Starn, owner, stated there will be amenities, such as entertainment, a garden, a hair salon, an exercise area.

Liz Alward stated in regards to land use, the request is compatible with what is currently in the neighborhood, and it has been her experience that ALF's are good neighbors.

Motion by Liz Alward, Seconded by Ron Bartcher, to recommend approval of the Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from NC to CC. The motion passed 7:1 with John Hopengarten voting nay.

Motion by Liz Alward, Seconded by Ron Bartcher, to recommend approval of a change of zoning classification from BU-1-A to BU-1. The motion passed 7:1 with John Hopengarten voting nay.

Result: APPROVED

Mover: Liz Alward

Seconder: Ron Bartcher

H.11. Murrell Properties of Brevard, LLC; and Harmony Villas Properties, Inc. (Vaheed Teimouri) request a change of zoning classification from BU-1-A to BU-1. (21Z00049) (Tax Accounts 2511036 & 2511043) (District 2)

Vaheed Teimouri, 32 East New Haven Avenue, stated the projects are currently operating as group homes, and the owners would like to add additional units. Changing from BU-1-A to BU-1 would allow his clients to go to an adult congregate care facility (ACLF) that would allow more beds. He stated all infrastructure will be provided and they are providing a lift station that will serve both buildings currently on septic tank. The first building is under construction right

now and they are waiting for the rezoning so they can go for an additional site plan and change the site plan for the southern lot.

No public comment

Mr. Hopengarten asked how many beds will be in the facility. Mr. Teimouri replied 19 or 20 beds on each property.

Mr. Hopengarten stated the properties abut an airport and asked if it is an active runway. Mr. Teimouri replied it is not an active airport.

Mark Wadsworth asked how much more bed space they are getting by changing to BU-1. Mr. Teimouri replied a lot more than what they want.

George Ritchie stated in the BU-1-A zoning, they are limited to 14 units as a level 2 group home, and once over 14, the code defines them as assisted living facilities and they go up with no cap. The building will have to be sized to support those residents at 250 square feet per resident, and that is part of the criteria he will have to meet during site planning.

Mr. Hopengarten stated his office has developed ALF's and he's concerned about the ALF market where people are essentially dropped off and have a meager existence if amenities are not provided.

Johan Starn, owner, stated there will be amenities, such as entertainment, a garden, a hair salon, an exercise area.

Liz Alward stated in regards to land use, the request is compatible with what is currently in the neighborhood, and it has been her experience that ALF's are good neighbors.

Motion by Liz Alward, Seconded by Ron Bartcher, to recommend approval of the Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from NC to CC. The motion passed 7:1 with John Hopengarten voting nay.

Motion by Liz Alward, Seconded by Ron Bartcher, to recommend approval of a change of zoning classification from BU-1-A to BU-1. The motion passed 7:1 with John Hopengarten voting nay.

Result: APPROVED

Mover: Liz Alward

Seconder: Ron Bartcher

H.12. *The Heather Calligan Trust requests a Small Scale Comprehensive Plan Amendment (22S.01) to change the Future Land Use designation from RES 1 to RES 4. (22PZ00001) (Tax Account 2112413) (District 1)*

Kim Rezanka, 1290 U.S. Highway 1, Rockledge, stated the subject property was before the board last fall for a rezoning request. [Ms. Rezanka gave the board a concept plan. The concept plan can be found in file 22PZ00001, located in the Planning & Development Department]. She stated it is a 79.16-acre development which has been rezoned to RU-1-7. She said it is environmentally sensitive land, and a conservation easement has already been recorded on the property in favor of the St. Johns River Water Management District. The request is to change 8.25 acres on the west side of the development from RES 1 to RES 4. There is already a BDP over the entire 79.16 acres that limits the number of units to 199. She

stated the amendment will allow the development to move forward, it allows the wetlands to be preserved, it allows the open spaces to be preserved, and it allows the clustering of the development, which was requested in the 2007 Mims Small Area Study.

No public comment

Ron Bartcher noted the staff comments mention there is a cultural resource, an Irving Holder Farm, on the property, and asked what impact that has on development?

Jeffrey Ball stated the applicant would have to contact the State to determine what they need to do to rectify that. Ms. Rezanka stated she was not aware of that, but she will make sure the applicant, Mr. Genoni, is aware.

Motion by Ron Bartcher, seconded by Henry Minneboo, to recommend approval of the Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from RES 1 to RES 4. The motion passed unanimously.

Result: APPROVED

Mover: Ron Bartcher

Seconder: Henry Minneboo

H.13. Norfolk Parkway, LLC (Bruce Moia) requests a change of zoning classification from GU with a CUP to BU-2 and removal of CUP. (22Z00006) (Tax Accounts 2802674 & 2802676) (District 5)

Bruce Moia, MBV Engineering, stated the property was approved a year or so ago for the same thing being requested today. The previous developer decided to walk away from it and never executed the BDP, so the entire application was considered withdrawn. Since then, there is another developer who wants to do the same thing. He said he is before the board to ask for the same approval they already had for a different applicant. He stated the proposed use is an outdoor boat and RV storage facility on Norfolk Parkway, and there have been multiple community meetings where they were able to resolve all of the issues. He noted the conditions in the proposed BDP are the same conditions in the previous BDP that was never recorded.

No public comment

Ben Glover asked for confirmation that the proposed BDP reflects what was approved previously. Jeffrey Ball replied yes, the conditions in the previous BDP are reflected in this request for a new BDP.

Motion by Ben Glover, seconded by Ron Bartcher, to recommend approval of the change of zoning classification from GU with a CUP for Tower & Antenna to BU-2 and removal of CUP for Tower & Antenna, with a BDP. The motion passed unanimously, with David Bassford abstaining.

Result: APPROVED

Mover: Ben Glover

Seconder: Ron Bartcher

H.14. *Wireless Telecommunications Facilities Ordinance*

Jeffrey Ball stated on July 6, 2021, the Board of County Commissioners unanimously approved legislative intent and permission to advertise revisions to Chapter 62, Article VI, Division 7, in order to address emerging wireless technology, specifically incorporating small wireless facilities. The proposed changes include defining small wireless facilities, establishing setback

requirements for the placement of certain wireless telecommunication facilities and restricting the placement of commercial small wireless facilities in a residential zoning classification. On March 9, 2022, the Building Construction Advisory Committee unanimously approved the changes.

Ron Bartcher asked if the purpose is to not have small wireless facilities in a residential area.

Mr. Ball replied that is part of it. A new definition is being incorporated into the code that reflects what the State Statute defines as small wireless facilities. The residential portion of that is just one of them, and what it does is allows for these facilities to be mounted on light poles within the right of way.

Mr. Bartcher asked if it means that in a residential area that has a public road that there can be a wireless facility on a light pole. Mr. Ball replied not within a residential zoning classification.

Mark Wadsworth asked if it has to be within 100 feet. Mr. Ball replied yes, it is 100 feet from residential, child care facilities, and public or non-public school structures, as defined in the Florida Statutes.

Mr. Hopengarten asked about 6G, 7G, and 8G, and said it is left open to any future technology. He said no one has done any studies on the radiation effects on these types of communication systems. He stated he is concerned if about the health effects of 5G because it has a bad reputation and he's worried about the way the ordinance is worded in that is it not limited to 5G. There could be 6G, 7G, where the strength of the signal could be increased without anybody studying the effects.

Liz Alward asked if it is correct that this is the result of the State requiring the County to do it. Mr. Ball replied that is correct.

Mr. Hopengarten stated he doesn't care what the State says. He said sometimes the State does things that are not in the best interest of the citizens. He said he does not agree with the ordinance and more investigation should be done so the board can make an intelligent decision. Ms. Alward pointed out that as a local government, they have to comply with the State. Mr. Hopengarten stated as an advisory board they are giving their sign of approval if they agree to this, and he does not agree.

Mr. Ball stated he understand the concerns. He said if it is the board's recommendation that as studies come out it can be re-addressed, that is for the board to decide what it wants to recommend to the Board of County Commissioners.

Ms. Alward stated from a public safety perspective, beachside has a lot of condos, and it can be difficult to get signals to contact 911 in an emergency, and this is a way to reach out so that phone calls don't get dropped. She added that people need to be able to rely on technology in cases of emergency.

Mr. Wadsworth stated there is language in the ordinance that says design standards can be waived by the Board of County Commissioners.

Mr. Ball stated the draft ordinance allows for a cell company to ask the Board to waive the standards, which would be done in a public forum. If that is the case, there would be competent substantial evidence to support such a request.

Mr. Bartcher stated he would assume that small wireless facilities are actually less powerful than the cell towers, and would have less of an impact on brain and other health.

Mr. Hopengarten stated he can't speak specifically to 5G, but he has heard that they put the units closer together than they do the current cell towers, so the intensity of the radiation is much more concentrated, and it's worrisome.

Mr. Bartcher asked if it is the same level. Mr. Hopengarten stated there hasn't been any studies so it is difficult to answer. He said his concern is giving blanket approval and harming themselves. He said his recommendation would be to limit it to 5G rather than make it for all future technologies, and that the technology be monitored, that over a period of time if it is determined that it is causing harm, the ordinance can be rescinded and another technology be used entirely.

Mr. Wadsworth stated he agrees and he would not want to limit it to 5G without some proper studies to go along with it to see the effects, if any.

No public comment

Mr. Ball stated the board can craft the motion to state that under 62-2422, it be limited to 5G wireless technology only.

Mr. Hopengarten stated 5G is everywhere, and they have been putting it in without any approvals from anyone. He said he would rather limit it to 5G with the condition that it be studied to make sure it is not causing any public safety issues or harm.

Mr. Ball suggested recommending approval or denial with the caveat that the board would like staff to look at any other study that would support or not support limiting the technology.

David Bassford stated he likes staff's suggestion, and if there are studies that say one way or another, then those can be into account, but if there aren't any, and it has been limited to 5G, then there is no way to progress.

Mr. Ball recommended the board come up with language that addresses the concerns but allows staff to move forward and address the concerns in a timely manner.

Mr. Hopengarten asked if the item can be tabled.

Alex Esseesse stated the item still has to go before the County Commission, but Mr. Hopengarten can coordinate with staff or the County Attorney's Office.

Henry Minneboo asked if the issue has been through several committees.

Mr. Ball stated the County Attorney's Office and Planning and Development staff has vetted the change. This was directed by the Florida Legislature to comply with new and emerging technologies. Staff can let the Commission know that the LPA was concerned about 5G and the monitoring of studies, and that language can be added to the agenda report.

Mr. Bartcher pointed out that the board can recommend denial for the reason of health concerns and because it is not limited to 5G, and no one knows what future technologies are going to be, so the board would like to see the ordinance changed to reflect those concerns. If the board denies it, it will get attention more than if it approves it with recommendations. He

clarified that the reasons for denial is that it is too general, it should only address 5G, and there is no mention of health concerns, and the board would like staff to be able to look at the health concerns for 5G technology itself.

Motion by Ron Bartcher, seconded by John Hopengarten, to recommend denial of the Wireless Telecommunications Facilities Ordinance. The motion passed 6:1 with Lorraine Koss voting nay.

Result: DENIED

Mover: Ron Bartcher

Seconder: John Hopengarten

Public Comment

Adjournment

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing special accommodations or an interpreter to participate in the proceedings, please notify the Planning and Development Department no later than 48 hours prior to the meeting at (321) 633-2069.

Assisted listening system receivers are available for the hearing impaired and can be obtained from SCGTV staff at the meeting. We respectfully request that ALL ELECTRONIC ITEMS and CELL PHONE REMAIN OFF while the Planning and Zoning Board is in session. Thank You.

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