

## PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, July 14, 2025**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

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

Board members present were Henry Minneboo, Vice-Chair (D1); Ana Saunders (D5); Erika Orriss (D3); Debbie Thomas (D4); Greg Nicklas (D3); Ron Bartcher (D2); Ruth Amato (D1); John Hopengarten (D1); Jerrad Atkins (D1); Melissa Jackson (D5) and Robert Wise (D2).

Staff members present were Trina Gilliam, Zoning Manager; Justin Caron, Assistant County Attorney; Billy Prasad, Planning and Development Director; Jane Hart, Natural Resources; and Alice Randall, Operations Support Specialist.

### Excerpt of complete agenda

#### **H.3. NDW Consultants LLC requests a zoning classification change from AU to RR-1. (25Z00008) (Tax Account 2004246 & 2004248) (District 1)**

Trina Gilliam read Item H.3. into the record.

Joseph Minnick spoke to the application. He stated that they agree with the staff report for the most part on the zoning request. There are a few things that they do want to clear up. We do align with all the future land use with our property and all the properties around us. The future land use is RES-1. This parcel was not a part of the Mims 2007 small area study. One of the things we don't agree with was paving the road access. We're not trying to do a subdivision. The property we have was pre-platted in 1925 and falls under the nonconforming lots of record, which is Section 62-1188. We had a meeting with the County and in good faith we agreed to rezone to make everything match the future land use.

John Hopengarten asked if staff could explain what they meant on page 101 on the septic overlay. You have two shaded areas on the document, and I just need an explanation as to what that's showing and how it affects the site. Are they allowed to put septic in there or not?

Jane Hart responded they would need the advanced nitrogen removing septic systems if they are proposing it within the shaded areas.

Mr. Hopengarten asked what about the area between?

Ms. Hart responded she didn't believe that they would be required.

Mr. Hopengarten stated there's no restrictions on septic because there's know sewer there. I understand it's all septic in that area.

Ms. Hart responded that was her understanding. It only pertains to the shaded areas.

Ruth Amato stated that as of June 26, 2025, there was an open code violation on the property for digging and hauling dirt off the property without a permit. Has that been cleared up?

Mr. Minnick responded yes. They just got the survey back showing the areas on the pond to make sure it hit all the setbacks. It should be cleared up.

Ms. Amato inquired if it was still an open code violation on the property.

Ms. Hart commented that if you're talking about 25CE00248, that was closed on July 2<sup>nd</sup>.

Mr. Minneboo asked if it's only for 17 lots.

Mr. Minnick responded it's 17 acres and we'd be willing to do less than 17 total lots.

Mr. Minneboo stated but right this second, you have 17 lots.

Mr. Minnick replied that the zoning to require RR-1, that's what it would allow us to do, but we don't plan on doing 17

Mr. Minneboo stated he didn't know if they'd told these people, and he's sure these people are going to ask, how many are you planning on doing.

#### Public Comment

David Laney stated he takes issue with the applicant's assertion of nonconformity on the platting of the property. We'll be addressing that later at length with the County. Regarding his reference to the future land use map, local government has a discretion to deny a request to rezone land to allow the maximum use of densities or intensities potentially authorized by the comprehensive plan. That's established by a range of allowance that comes to the section 16331776A of the Florida state statutes. Additionally, Florida courts have explained that this means that plan set a maximum limit of ceiling for development. Future land use map designations are not a right. One of the reasons I'm addressing this right now is because in your last meeting, someone asked the question of a staff member and they said that yes, future land use designations are a right. They are not. In fact, in *Brevard County versus Snyder, Florida 1963*, the Florida Supreme Court ruled that a landowner has no property right to be granted a rezoning to the maximum use, density or intensity potentially allowed by a comprehensive plan, that the property right is simple to some use even the least intensive lucrative allowed by the planning at the intensity allowed at the time of core at the time of the purchase. There is no property right associated with future land use map designations. Additionally, the comprehensive plan establishes long range maximum limit on the possible density of land use. The plan does not simultaneously establish an immediate minimum limit on the possible intensity. Present use of the land by zoning ordinance continues to be more limited than the future land use contemplated by the comprehensive plan. Additionally, there's no constitutional under the Harris Act in case this comes up regarding the property right to increase planning. Under the Florida state law, the purchase of land is generally subject to the existing zoning or environmental restrictions. There is no property right to change them. That is in *Freeman versus Hollywood, Florida 3rd District Circuit Court*, and *Evan versus Miami, Florida 3rd District Court*. The Harris Act did not create a property right to increase plenary zoning allowances even when an increase to be within the maximum uses and density is allowed by the government unless there's a reasonable or unfair right to do so. Additionally, regarding this, and it is classified as a subdivision. Go into your county ordinances, it is a subdivision. The property is being subdivided. Associated with that city of Jacksonville versus Caufield, Florida First District Court rejected a Harris Acts claim because the owner's intended subdivision development was never an actual present or vested use of activity on the property at the time of purpose. Potable water, some of you remember six and a half years ago when we went through this, we had a study that was done by Florida University. That study is being redone. I'm

going to reference you to the Brevard statutes. St. John's River Central East Coast does foresee water quality issues impacting traditional water regionwide primarily to saltwater intrusion especially along the Indian River Lagoon likely due to lateral intrusion as well as vertical intrusion. I'll let you know that the professor Arnaldo Beles Levenson is conducting an additional updated study and you're going to find that the threat is even greater than it was six years ago.

Jerrad Atkins asked what the statute was that he was referring to about the water.

Mr. Laney responded that is in the Brevard County ordinances. It comes directly from chapter six, the potable water associated with long-range comprehensive plan Brevard County ordinances. That is chapter six. Specifically, in there it goes on to say that Brevard County is concerned not just for residential wells in the unincorporated areas but also Brevard County well fields. And that is both vertical and lateral saltwater intrusion, which is what's currently occurring, and we'll have additional experts to test that before the county commission.

Roger Sanders stated in 1978, I purchased two and a half acres off Roy Roberts, Senior to build a home. I occupied that home May 1st, 1979, and have lived there continuously and paid taxes there continuously since that date. When I constructed my home, it was in the BJR Acres Plat. I as well as others who have followed me building there have been required to have two and a half acres to construct a home. My opposition to this is based on the fact that the zoning for BJR Acres has been the standard since the 1920s. I see no reason to change that just so a developer can profit. That's not serving the best interest of the current residents nor the taxpayers and voters. Of course, the biggest concern I have instead of having the potential of two and a half, they could put what? Seven in there. Instead of seven septic tanks and seven private wells, you would have 17. And I don't have to tell you about the leeching and the concern that's going on. We are very close to the north end of the Indian River Lagoon and the federal authorities are involved and everyone else. There is the potential of doing further harm. Beside living at that address since 1979, my parents moved to the community in 1956. Then when I did my military service, I came back. I went to work. I bought the land there with the thought that I have this land and the people around me. Scottsmoor is kind of twofold. Everything south of Sunset, smaller lots. Everything north is acreage. Everything back toward the river is multi-acreage. We see no reason to change that. And I will tell you, having lived there since 1956, I've seen no other one issue that's fired up that little old community more than this. I just want you to know how the community feels.

Lauralee Thompson began by saying after enduring eight years of lifeless conditions last summer, fishermen were overjoyed to see seagrass explode along the western shore of the northern Indian River. Drought conditions led to high salinity and low water levels. Perfect conditions for seagrass seeds buried in the sediments to blossom. The seagrass looks as good now as it did in 2009. Nearly 20 years ago, to protect the Indian River, land use and zoning transitions were established through the Mims small area study. Small lots were allowed along US1 with increasingly larger lots introduced moving eastward towards the river. If this rezoning occurs, a precedent for future development in northern Brevard using smaller lots will be set. You won't be able to stop the train once you let the horse out of the barn and that will be bad for the Indian River there because the residency time for water up in the north end of the lagoon is more than one and a half years. This rezoning will enable houses on 1 acre lots to be built in between areas that are zoned AU. That is not a graduated transition. The pattern it sets will increase impermeable surfaces, resulting in more storm water going into the lagoon. It will escalate the number of septic tanks leeching sewage into groundwater that flows to the lagoon. Brevard County taxpayers have invested millions of dollars through the county's

save our Indian River Lagoon program to add biofiltration to ditches in northern Brevard to remove nitrogen and phosphorus before storm water enters the lagoon. But even if every trace of pollutants is removed from the storm water, fresh water itself is poison to a healthy estuary. Too much fresh water is disastrous for seagrasses and animals. It will kill clams and oysters. Excessive freshwater triggers egg hatching failure for important fish like sea trout and red fish. And it slows or may even stop seagrass growth. Reducing the amount of nutrients in ditches is wonderful, but it does nothing to address septic tank sewage. It does nothing to reduce deadly freshwater from entering the lagoon. Overdevelopment killed the Indian River in Central Brevard County. North Brevard citizens are the stewards of a critical part of the Indian River that produces fish, shrimp, and crabs for the middle part of the lagoon where too much density has destroyed the river's functionality. Tremendous amounts of seagrass have returned to this section of the Indian River. It's a recharge area for the rest of the lagoon where seagrass has shown no signs of recovery even though core samples have revealed that plenty of seagrass seeds lie within sediments all up and down the lagoon. There's no good reason to approve this rezoning request. By denying it, you will instead set a precedent for protecting the improving conditions in the northern Indian River Lagoon.

Tommy Armitage stated he is an ex-machine gunner. I'm a disabled veteran and was in demolition. I bought that property 20 years ago. The whole reason was so that we could be in the country, get away from the city, and it's secluded. Everybody out there has gardens. My neighbor says, "Come on over. Get your tomatoes, get your green beans, get whatever." We buy local beef. We buy everything local. And you guys are going to be the beginning of the change. If you agree to this, it's going to take off. It's just a matter of time before it goes somewhere else. It just keeps going. It's like termites. They spread. And if you guys agree to this, what you're going to do is start a domino effect and it's going to keep going. There're so many other places to build. To come over here in our little neck of the woods, and it is our little neck of the woods, and approve this it's just going to be damaging. It's going to be like cancer. It's not going to stop. It's going to keep growing. The reason that we live where we live is because of the nature of how we live. We can go down the street and we don't have to be addicted to a grocery store. We can go to our neighbors and get what we need. We can go around the corner and get what we need. We don't have to go over there and say, "Hey, Mr. Grocery Store, you big old multi-million-dollar company, sell us this tainted food from another country." No, we get it locally. I even have my own garden. I'm a plumber. I'm a plumbing and gas contractor. I've been doing it 47 years. And you know what? I still like the seclusion to be able to come, kick back and say, "Man, this is home. This is home." I've only got five acres. There's a lot of fellas out here that's got a lot more than what I have. I had a realtor come by and say, "Tom, you just finished building that house that you're building, and I could sell that thing for 1.2 million." I said, "Well, I'm glad you could, but I don't want to leave it. I don't want to leave. Look at what we have. We have solitude. This is where we are. This is a dream. It's taken me two and a half years to get to where I'm at right now. And I'm still as happy as could be and content. It's just me and my wife. And we got chickens and ducks and geese and emu, and donkeys. If that cancer comes in there, it's going to take it all away. Look at all the people who want to come over there and do the same thing and live the dream that we're living. So, it starts right here. You guys are the responsibility of our future. You guys hold that key to our future and how it's going to progress, how we're going to go further from here.

Cherylann Barnes began by saying Administrative Policy 3 from the Brevard County Comprehensive Plan Future Land Use Element Part C states the proposed use must be compatible and consistent with an emerging or existing pattern of surrounding development. It is determined through an analysis of one historical land use patterns; two actual development over the immediately preceding three years; and three development approved within the past three years, but not yet constructed. The

southern boundary of this proposed subdivision is Sunset Avenue. South of Sunset is the town of Old Scottsmoor. Scottsmoor was established as a municipality in 1926 at the height of the Florida land boom. A random sampling of the homes revealed most of them were built between the 60s and 80s on a variety of lot sizes and zonings. Historical land use patterns in this area can only be described as haphazard, containing zoning ranging from R-1-7 to AU-2.5. To help you better understand the historical development patterns, I reviewed the properties north of Sunset, east of US1, and north to the county line. My goal was to locate all properties within these boundaries which contain the proposed subdivision that had homes built on less than the two and a half acres as presently required by AU-2.5 zoning and determine the nature of development over the preceding three years as required by administrative policy 3. I could only locate seven homes that were built on less than two and a half acres in this area which encompasses approximately 1,600 acres. Five of the seven properties are located across from the parcels of land described by this rezoning request. Four of those homes are zoned AU and are only slightly under 2 and a half acres. They were built prior to 1980. The remaining home is zoned RR1 and was built in 1958. The only other homes I could locate were on the extreme northwest of the county. Two properties, one of them was built in 1964, the other 1967. The rest of the 1600-acre area is comprised of houses built on the minimum of 2 and a half acres and zoned AU. So historical land use patterns for the past 45 years are parcels built on agriculturally zoned land 2 and a half acres and larger. There are no subdivisions or approved subdivisions like this application in Scottsmoor in the past three years that I am aware of. I am asking you to consider the impact this development would have on the residents of the area, most of whom moved to Scottsmoor because of its rural environment and quality of life. If approved, a subdivision would constitute a negative impact to that rural environment that cannot be reversed. Please deny this request for rezoning.

Pat Raymer stated that she and her husband live on Mangrove Street, which is directly across from the acreage bought by NDW Consultants. We moved to Scottsmoor from Palm Bay a little over four years ago. The reason we moved was the increased population density in Palm Bay. It was apparent to us that Palm Bay's population was going to continue to explode. And with that explosion, there would be increases in traffic, crime, and general human conflict. We selected Scottsmoor very purposefully and our specific home because the area was a quiet country area zoned for one house per 2.5 acres. We were realistic enough to know that the orange groves across the street from our home would probably have houses built there someday. We didn't think it would be this soon, but someday. But we were not concerned because of the minimum 2.5-acre lot size. With that zoning, there would only be 12 homes built on the total acreage across the street from us. Currently, there are six homes on Mangrove Street. The developer is requesting to change the zoning on 17 acres to allow one house per acre. So instead of 12 houses in total, there will be 22 houses. The 17 houses that they are proposing and the five homes that are currently on Mangrove and the five houses that would be on 2 and a half acre lots, which is the rest of the acreage that they've bought. So instead of 12, we're talking 22 new homes. If the developer applies to change the zoning on the remaining 12 and a half acres there could be as many as 30 houses on that land instead of 12. 30. A density increase of that magnitude will change the character of the area from a sleepy country location to a suburban neighborhood. That's the exact thing we moved away from in Palm Bay. And we all know the problems that Palm Bay is currently having. With the character change, there will be increased traffic, crime, and human conflict. I implore you to consider how this zoning variance will change the character of the Scottsmoor area now and in the future. Please, please reject the zoning variance.

Sunny Applegate stated she owns Sunny Nights Kayak Tours. I guide small low impact ecotours out of Scottsmoor Landing. Several years ago, Lauralee Thompson took my hand in hers after a tour and

told me that I was one of the best interpreters that she had been on the water with. I've carried that with me for years, not just because of the compliment, but because it meant that someone that knows this place deeply believed in the way that I told its story. So, I want to try and tell you the story of this shoreline the way that I see it. One night on the water, I had a nine-year-old birthday boy who was on summer vacation, and all he wanted to do was go kayaking. His mom was in a tandem with his sister, and I towed him behind me after he paddled left to go left too many times. When I turned around to check on him, he was just floating in his kayak with his arms crossed, staring at the sky, and you could see the Milky Way that night. I remember it, because it was amazing. When he noticed that I was looking over my shoulder, he said quietly that he was going to remember this for the next 91 years. That's what this place offers. It's a memory, a moment of awe, and a feeling of stillness and connection that we can have inside for a lifetime. Scottsmoor has some of the healthiest seagrass beds that I've seen in half a decade of tours across Brevard County when they were vibrant like they were in 2009. I've seen what I believe to be two young Goliath grouper near the launch site, and that's a rare sighting of a protected species that is legally recognized. And this horseshoe crab, which might very well be record setting for the state of Florida. They usually only get to be about 16 inches, and that one tops out at 22 inches. It's a very important ecosystem that I didn't know was all but dead in 2016 until Lauralee sent me the photo. I always wondered why I was the only one guiding tours there because it was lifeless before I showed up. But now it's back and we have the chance to protect it while it still recovers and not wait until it's gone again. Changing these zoning laws might look small on paper, but to the lagoon, it's an open wound. More light, more runoff, more sewage. Please don't let this comeback turn into an obituary. If a nine-year-old kid can visit this place one time and plan to revere it for the rest of his life, then those of us that have the privilege to know it intimately owe it a lot more. Protect the zoning and the place where people remember the stars for 91 years.

Victor Kirschbaum stated he is a licensed water well driller and a licensed water treatment plant operator. I stand here before you to talk about our water resources. On my plan here, those yellow dots are public supply wells. The northwest of our county there is the city of Titusville's wellfield that lies due west of our properties. They draw thousands of gallons a minute, 24 hours a day. Our groundwater flows west to east. Look what's due east of that wellfield. This proposed development and my property. My well is 120 foot deep. When I moved in four years ago, my water was drinkable straight out of the ground. Now over time, my water is becoming salty. I'm closer to US1 and I have 30 foot of elevation above the sea level. I should not be getting salt water that fast. So, I stand here before you just to tell you that if you allow these developments to come in, that puts in their eyes a minimum of 12 wells, a maximum of 30 plus wells in that area. Most of the well drillers in our area drill 2-inch wells. You cannot set a submersible pump in a 2-inch well. 30 foot above sea level means the water tables will drop below 26 feet, which means your surface pumps will not pump water anymore. So, all of us residents will have to drill new wells and spend thousands of dollars to treat the salt water that's coming up into the ground. I don't believe there's city water close to us. I know there's some in Volusia County to the north, but that doesn't come to us. Mims' water system is way south, 11, 12 miles. The millions of dollars it's going to take them to run us drinking water is going to be on us or the county to pay. And I don't see the county running new water pipes that distance anytime soon.

Ms. Amato asked if he's already had to drop new wells.

Mr. Kirschbaum answered yes, for his property. I have a lack of water. My well, when I built my or when I moved into my house, my well produced 27 gallons a minute. It only produces 7 gallons a minute now. So, I had to install a shallow well, which is very, very, very poor water quality. Very high

in iron. Very high in minerals. You cannot drink it out of the water. It needs very expensive water treatment to make it to where my kids can shower in it.

Jeff Orey stated he owns one of the applicant's homes. They build a really good home, but I'm also just under five acres land just off US1. There's a lot of stuff here that got said that I agree with. But one of the things I'm concerned about is if we allow this precedent on the 17 acres, that doesn't seem like a lot to a lot of people right now, but right across the street, the rest of those orange groves, there's five parcels that total 212 acres and it's just going to continue. I just wanted to put that stat out there, so you guys understand what he was talking about with the water. I guess Farmington up the road is also having an impact on our water as well and the cemetery. So, we're being challenged with the water up there. So, I'd like you guys to reconsider this.

Frederick Wilson read a letter from Darren Meacham that was submitted for the record.

Jeff Bourne stated he is one house from US1. My drainage from the road goes through my yard into the ditch. Putting all these houses down on one area is going to block it. It's already clogged up now. Today I was over there and there's no water going down to the river. Putting more houses down there, it's going to do the same. My other neighbors that live right next to the orange Groves have water in their yard. So, putting more houses for them is going to hurt their area too. So, I agree with everybody else what they were saying about the water and the Indian River Lagoon, how we paid those taxes to get all that straightened out. That's a wonderful start and I think if you do this, you're just going to be hurting all that you've already started. I used to grow oysters for the river for two years and once they put them in, I know they got oyster beds out there and that was supposed to help to clean the lagoon but once we put them in along the shore they just got wrecked by the hurricanes and people weren't going in there picking oysters up. But I really would like to see something happen because I've lived here twice, and I finally moved out with my family and me, and my son used to go fishing and shrimping on the old bridge up in Titusville and I wouldn't eat anything out of the river anymore to tell you the truth. I would like to see it come back for my grandkids and the water was pristine down here. I went to high school at Clay High up in Green Cove Springs and Jacksonville. The water was perfect. It was beautiful. I would like to see that come back. My son lives down in Port Lucy and you go down there and the water's unbelievable. I know that's got ocean coming into it and everything like that. I agree with everybody of what they said here about fixing the lagoon and it should be it. It's a beautiful place.

Dwayne White introduced himself as the president of NDW Consultants. He stated he understands everybody's concern, especially the ones that live on larger lots. And I do understand the one gentleman said that future use does not override just because it's there. The properties were all pre-platted and I have laws right here that show that they are, and I can give you the laws. I can read them. That's why they're allowing seven houses down the street on one acre lot right now. They also just built three down the street on a half-acre lot, the same exact size as my little, tiny lots. And there's seven of them at 1.05 acres. Not trying to do that. Even the assistant county manager himself, Tad Calkins, said if 40, 50 people bought these lots, they could all build on quarter acre lots. We're not trying to do that. We would be as happy with as low as 12 lots. If I had known this many people were going to show up, I would have brought my customers here that can't afford a \$550,000, \$600,000 house, but they can afford a \$400,000 house. So, we're trying to do 12. We'd be happy with 12. We'd like to do maybe 14 or 15, but we'd be happy with 12. But I'm going to read the law so people here can kind of understand it. Single family use may be established on such lots provided they're 50 feet wide, 75 not less than 5,000 square feet. That's an agricultural lot. A lot or parcel of land in AU

agriculture use is less than 2 and 1/2 acres may also be determined to be a non-conforming lot if the parcel to track land was recorded in survey prior to March 6, 1975. These were platted back in 25 for grove workers, citrus, the cattle, for people who could afford small row housing. That's what they were designed for. We have since vacated the roads and we obviously can't get 100 and something houses in there and wouldn't want to. The whole front is 2 and a half acres. We left them all that 7-acre lot, 600, \$700,000 houses. But this is the back side. And the lady that was talking about in front of her house, those are all two and a half acres lot. They're already in permitting and everything. And also, a pond is not against the rule of Brevard County. There's no permit required to dig a 3/4 acre pond in Brevard County. There are rules that you're not allowed to take the dirt off. They must be certain slopes. There are rules, but there's no permit required in Brevard County to dig a pond. So, I'm just getting them rezoned because I want to get along with the county.

Mr. Minneboo stated we have attorneys here, so they'll handle that.

Mr. White responded that they won't answer his emails.

Mr. Atkins asked Mr. White if there was no dirt that had left the property.

Mr. White responded he had taken some topsoil off the dirt. All the dirt's been left on that original parcel.

Mr. Atkins asked how many trucks left that property with dirt?

Mr. White answered I don't know.

Mr. Atkins responded that he lives in the neighborhood. We saw hundreds. The fact that you don't have to have a permit to dig the pond, is the pond agriculturally exempt, the property that you dug the pond on. How many ponds are on the two parcels you bought?

Mr. White answered one. The guy that bought a lot from me is digging a pond on his to build his house to get dirt which is 100% legal.

Mr. Atkins replied with an AG exemption.

Mr. White responded no. He has a building permit and can build the pond with the building permit.

Mr. Atkins asked when the building permit issued.

Mr. White answered a couple weeks ago.

Mr. Atkins asked it that's why he dug the pond in February.

Mr. White responded that's the pond he's in trouble for. The second pond has a building permit. It sold to someone else, and he got a building permit before he started digging. The one pond that we dug prior code violation; they thought it was too big.

Mr. Atkins replied you put in an unpermitted illegal driveway. You dug a pond next to it. You use that driveway to haul several truckloads of dirt off the property. And then once the code enforcement



officer showed up, you stopped using that driveway, used a different entrance from a different pond that was dug on a separate parcel of land.

Mr. White responded there's not another pond here. There's one pond. There's only one pond. You can go up there. You're welcome. I'll give you permission to ride on my property.

Mr. Atkins replied that he has a drone, there's no need to.

Mr. White asked him if he was telling him there are two ponds on his property. There never was.

Mr. Atkins replied there were.

William Goff stated there are a myriad of reasons to deny this. Chiefly among them environmental impact. Scottsmoor, when they put those wells in about 10 years ago, the water table below our house was 120 feet down. That's where the salt line hit. The last time Titusville came up and tested the well, I walked over, and I asked the guy at what point did his meter spike as he was dropping the line down the test well number five right at the corner of Huntington and Dixie. The continuity spiked at 90 feet. Used to be 120. Every well that goes in, every water user that takes water stops some of that flow from reaching the Indian River Lagoon and allows saltwater intrusion. Some of us are going to have wells failing. The bottom of my well is 60 feet. I doubt that I'll live long enough to suffer with the saltwater, but somebody who buys my house may well do so. There's a myriad of reasons to deny this one, but the environmental issues are chief among them. So please think about it carefully.

Brad Flood stated he lives directly east of the property that these guys have already been digging on. There's a ditch directly to the north of the property and one directly to the south that is a straight shot to the lagoon. Any potential runoff would affect that almost instantly. I moved here from Kentucky in 2009. Went to school down here. Lived in the great city of Viera which rapidly increased in population. So, we decided to move to Scottsmoor on a 2-and-a-half-acre property just to get away from the density. I've got my nine-year-old son and wanted to get away from a lot of the people and stuff like that. People that are already kind of pushing the limits of what they're allowed to do or not caring what they're allowed to do. If you greenlight them to do one acre per property per house, they're going to push that all the way to the limit whether you know they say they're going to or not. It's a very rural place. We ride our horses and kids play on the dirt roads and stuff like that. So, I just would like to keep it that way.

Frank Blalock stated he's not particularly affected by this other than water usage and density. I have been affected by their buildings to the west of me. When they pulled the permits to build the two buildings on six acres, they had surveys of 2 and a half plus acres. About a week ago, I happened to look in county records and that's been rezoned to RR. So, they sold the property with 1 acre each, but the permit request was on 2 and 1/2 acres plus. I've had many issues with them in the building situation with those two houses that they built. They moved gopher turtles and were allowed to move them to the back part of the property which was not cleared. Four acres on the back of was not cleared. They're in the process of clearing that right now and they haven't mitigated those turtles either. They're not there. I haven't seen a gopher turtle on my property in months since they moved those turtles. They are in the process of digging a hole in the ground. I won't call it a pond because it's not large enough to be considered a pond yet, but they are digging what they claim is going to be a pond on the back four acres. That property originally was six acres, and it fronted on Todd Lane and went back to Wheeler Road which is not an improved road and L-shaped to US1. As it stands

now, there are two houses on Todd Lane on one acre each. The four acres to the back fronts on US1. And again, it was rezoned to RR without any neighbor being notified of it, which is in my opinion illegal. I can't give you the specifics on the date that it was reviewed by you or county commission, but I just happened to look in county records the other day and found that it had sold as 1 acre parcels.

Don Raymer stated the only thing he had to say is there's been multiple truckloads of dirt hauled from the property. They were hauled out by a company called Ramage and Thorn Land Development. I have photos and videos to the effect. So, there are more than just a couple truckloads of dirt hauled from that property as the previous gentleman said.

Kelly Nemeir stated she and her significant other live on the property adjacent at 3760 Sunset. The property line that we have is right next to the tree line of this orange grove. We have personally seen a lot of digging going on, going out with a lot of the blows of dirt which also is very frustrating because we moved out there for the farm life, the peace, the quiet. It's nice seeing the kids going up and down the streets. Your neighbors know everybody. And by inviting this company to come in and develop this property, put more houses, like one of the other people have said in the community, there's other acreages around, large, so they can come in and just like bees on a bunny hive, oh, we're going to add more. We can add more. We don't want that there. We want the peace. We want the quiet. We enjoy our neighbors. And one neighbor, Mr. Jeff Gordon who lives across the street, we've seen the issues he is having with his new septic system being put in. Everybody that must put all these new septic systems in, who's to say the properties that are over there are going to have to have issues? We currently have water that comes in off coral that goes in to feeds our pond. We also have lots of water standing in our yard. So, if this gentleman builds and must elevate, where's that water going to go to? We have all these road ditches that go down during the hurricanes, rainstorms, they get full. All that goes down the road down to Dixie, which then goes out to the lagoon. So, we're all getting more environmentally idealistic nowadays because we want to save our environment. By adding these companies to come in and add more homes, this puts more of our neighborhoods.... it's going to be effective with our water table, our sewage, etc. along with the environment. So, please oppose this.

Kevin Percy stated he and his wife lived in New Smyrna Beach for about 30 years until they were flooded four times. After Hurricane Ian, my wife said to me with three feet of water on the first floor of our home, "Kevin, we're moving." I said, "Okay, honey. We'll move." Less than a month later, Hurricane Nicole put 10 inches of water in our home. We were trapped on the third floor of that home for three days. We moved to Scottsmoor looking for a place where we would not flood. With further development, I fear that our home will flood again and that our neighborhood will be like what's happened in Volusia County, in Edgewater, in Venetian Bay, where all the development, the zero lot lines, the one acre lots ruined the neighborhoods. I am opposed to this strongly and I am for keeping Scottsmoor rural.

End Public Comment

Mr. White state that he totally understands that there are big giant ditches, and the drainage is incredible in this property, and it does hit the major ditches. I don't believe they'll be a concern. And plus, the building department nowadays is very strict and strenuous about containing your own water. It's very sandy. There's no water that ever stands on the property. Most of it will hit the aquifer. Plus, all the septic tanks are going to be the newer anaerobic not nitrogen ones which are the good ones. Also, I'm not trying to say this in an arrogant way but two thirds of every house in Scottsmoor, probably within a mile of this property, are sitting on a half-acre or less. So, they act like I'm

committing sin. And then the property in the front, all of those are seven. We kept them all two and a half acres. We'd be happy like I said with 12 on 17 acres. That's an average of 1.4 acres per lot. It's not like we're doing this giant subdivision, and I feel in my heart I can show rules. I'd be glad to give you all the rule where it shows every one of those lots are buildable, and they're grandfathered in because they were platted before May of 1975. And Jared I'd love to show it to you afterwards. If you want to speak to me?

Mr. Atkins stated he's seen it.

Mr. White stated it's a rule, that's why they're letting seven houses on an acre be built within a half mile of this property. And he went through the county, and they said it's okay. Seven houses on one acre. These same size little lots that I have, a hundred and something lots. Not willing to do that. Don't want to do that. So that property on Todd Lane has been sold to the person that lives in the house. That's his actual neighbor on a contract for deed. So, it's not even the same. That's my partner that I worked with for years that's retired. He has nothing to do with this. Plus, all the code violations are not on this lot that I'm getting rezoned. That's the lots in the front. Their building permits are already in. They're all being taken care of. This 17 acres is this parcel, and this little, small half acre parcel have nothing to do with none of that stuff with the dirt, the pond, nothing like that. So, I've been very forthcoming with Natural Resources. I've told them everything. I've talked to them. They know what's going on. You know, it's their job to find me and, do whatever is appropriate, and we're working it. The pond he thought was bigger because there was dirt spread out. Several hundred loads of dirt were left on that one parcel. You must leave it on the parcel. You can't even take it to the different parcels even if you own it right beside each other. But at that time, it was one big parcel. There are people I would have had come and say, you know, he's selling me a new house for 400 something grand. I can afford this. They make \$120,000 a year. They can't afford 600 grand. Husband wife teams, they can't afford that. So, it makes it better for us. I don't want to sound like it's all for me, because we can build more lots, more houses may make more money. I'm not saying that it doesn't benefit us. Obviously, it does, but we're not trying to do this big subdivision. It's nothing like that. We're talking 12 houses on 17 acres, an average of 1.4. And remember, two thirds of every house in Scottsmeer is sitting on a half-acre. Most of them are on quarter acres. So, it absolutely will not create any flooding problems. I can promise there's ditches on all four sides and one even in the middle of half the property that the county made me, to record a drainage ditch that drains the property and there are culverts that go under the road. This is not this property; it doesn't retain any water whatsoever. The one gentleman was talking about his well had been replaced over and over. There haven't been 10 to 15 houses built in Scottsmeer probably in the last 5 years. Probably 15 new ones at the most. That's the most undeveloped part of the whole entire county. In Scottsmeer, I didn't say Mims. From Huntington Aire, that area is Scottsmeer. There have been 15 houses built last seven eight years.

Mr. Atkins commented with you said there's ditches. You said you're going to put in a ditch to drain the runoff. And you also said the property is going to retain its own water. So, which is it?

Mr. White responded there's ditches all the way around. Because the drainage is going through the main property that goes under the road. The individual lots like the acre lots, they'll probably make us put a berm. Whatever the building department requires. We do it. They do it all the time. Make us put a one-to-three-foot slope berm around the whole entire property. Sometimes they don't require it. Sometimes they do, but there's ditches all the way around three sides of the property. Also, a drainage ditch right through the center and it swales down five or six feet. It doesn't even hold water;

the ground is so high. Some people may say, "This is flooding." They may already have a low lot. The water's going to hit ditches before it hits anybody's property. There's not a piece of property that joins me that the water doesn't hit a ditch or a swale.

Mr. Atkins responded that I understand. And he's correct. We do have, in Scottsmoor a massive network of drainage ditches that do go right into the lagoon. And when it backs up, I'm at the end of one of those ditches. I'm the recipient of all the water that the neighborhood runs off. So, currently my yard is underwater. Currently, there's probably 300 feet of road flooded on the way to my house. It has gotten worse with more recent development. Obviously, nobody wants water standing on their property, so they build the houses up high, they build the yards up high, bring in lots of dirt from whatever source, and they run all that water into those ditches. So, I think Laura Lee brought up a point about running all that fresh water into the lagoon. There is a filter at the end of sunset that is supposed to take out nitrates and whatnot. But when the water flow exceeds what the filter can handle, it runs right over the top. Whatever silt and grass clippings and whatnot are in there. The staff comments had that wetlands delineation must be completed prior to clearing or any land modification. That was as of June 26th. Has that been done?

Mr. White responded he's already had that done.

Mr. Atkins asked if that was done prior to any clearing or land modification.

Mr. White responded that you don't have to have any kind of permit to clear citrus. I've already got permission from natural resources.

Mr. Atkins asked what about land modifications?

Mr. White responded you can do ponds without any permits whatsoever.

Mr. Atkins asked what about wetlands delineation.

Mr. White stated he didn't want to comment on that. It didn't have any wetlands, so that wouldn't pertain.

Mr. Atkins stated one issue is with all the runoff from the higher elevation lots, you don't have surficial aquifer recharge for wells. And I think that's a big problem. I know I have a massive water system in my shed that costs tens of thousands of dollars. I know many people in this room have the same thing. They're concerned about additional draw on that surficial aquifer without additional recharge because any runoff instead of perking down into the surficial aquifer is just going to run out into the river and we're going to continue pulling salt. That's why I wanted to reserve the opportunity to ask the well driller a couple more questions just to make sure that I'm not completely off base there. And personally, with the extra tax money that we're putting toward the lagoon and trying to clean that up, I think it's counterproductive.

Mr. White responded this creates a lot of tax revenue. The growth was \$300 or \$400 a year.

Mr. Atkins added it kind of violates the spirit of the sales tax half cent which is specifically to go to the lagoon. I don't know how much of the property taxes go toward that project, but I know that the half cent sales tax does. So, we'd be kind of moving backwards if we increase density in an area that's in such close, proximity to that.

Mr. White commented these are all nitrogen reduction systems. The gentleman across the street just spoke, he's putting the new system in. I bet he didn't volunteer to put a nitrogen system in. Guaranteed. I've seen it.

Mr. Atkins added any reduction is more than zero, which is what's there now. So, it's going to add no matter what we do. It's just to what level will we add? And the seven and three houses being built on those other lots, I believe those lots were already separated out. That's why they were grandfathered in. I don't think that it's an apples-to-apples comparison on these lots. This is AG. They didn't need to rezone. They didn't need to do anything special.

Mr. White stated that he I read the rule. In 1975 AG only has to be 5,000 square feet. I showed you the rule. Any AG probably pre-platted before 1975. It says see size, limit, and area in this section. And it's one two sentences up and it tells you what it must be. I don't want to do that. You all let other people do it. There's seven going on an acre, three going on a half.

Mr. Atkins stated it didn't come through here.

Mr. White responded they didn't have to. The Brevard County level.

Mr. Atkins stated this one has to.

Mr. White replied no it didn't have to. I've volunteered this to get along with everybody and appease everybody, appease the community. I don't want people talking crap about me. I didn't have to. My attorney said, "I don't have no worries with this." He said, "When you get done, you turn this down, we'll put as many as you want in there. I can promise you because he read the laws. And I'd love to show any of you. I don't want to be that guy. These lots are platted. No different. They just let a guy build seven on one acre. He's building two now, but he's got approval for five more, a total of seven on 1.05 acres. Another builder just got done with three on a half-acre right down the street from me with the same exact size lots because they were pre-platted prior to 1975.

Ms. Saunders asked if staff could interject and provide a little clarification on the legality of what he's saying. Are they allowed to just go, because I feel like we're just going in circles. I just would like the county attorney's opinion on it.

Ms. Gilliam responded he's talking about code section 62-1188 which is non-conforming lot of records, which does state that single family or duplex buildings and uses may be established on such lots provided that a lot has a width of not less than 50 feet and a depth of not less than 75 in an area not less than 5,000 square feet. So, since this area was platted prior to, I think he said back in the 20s, they would have qualified for non-conforming lot of records. However, that property has now been all combined.

Mr. Atkins commented that that's what he was referring to with the other lots, is the way that they were already split up. They didn't have to go through this process when they built those other homes.

Debbie Thomas commented what was stated a minute ago by the owner was that he doesn't have to do this, that he can go ahead and do this without coming before us. Is there truth to that?

Ms. Gilliam responded if he was to put the lots back in how they were platted, that is true. He would qualify for non-conforming lot of record.

Ms. Saunders commented she is looking at the plat online and it shows.... was the property replatted and it was single ownership and combined into one?

Ms. Gilliam responded it was not replatted. It's still under the same plat. He's just combined it all under one deed.

Ms. Saunders stated so it's still platted. It's just deed ownership. Is it the opinion of the county attorney that if he wanted to come in and pull building permits on every single one of these platted lots, he could do that right now today?

Mr. Caron stated that was something he'd have to look into further.

Mr. White stated he didn't want to do that.

Ms. Saunders replied that she understood that. I just think it's important to know whether you have the legal right to come in and do that today or....

Mr. White stated that he'd love to pass one of you a law out so you all can read and determine for yourself or get your own opinion.

Ms. Saunders replied I understood. But the county attorney's opinion is the one that dictates.

Mr. White stated when he had a meeting with him, they didn't agree on it. They did not agree on it. Him and Tad Calkins, assistant county manager. I said, "So 30 40 people would have bought lots, and they could all build." He said, "Yeah, but you can't." I said, "Wait a minute. Because I got money I can't, but someone can build individuals so that we all made an agreement to get it rezoned." Is what agreement? The gentleman right there was sitting at the table and so we all made a mutual agreement. I didn't go get an attorney. I could go get an attorney. I can fight it, and I think I'm going to win. I don't want to.

Mr. Minneboo commented you all have done great. Let me just see if I can condense this piece in. I hope I'm answering question. In theory, he's got 17 lots today that have, forget everything we've heard. He has been through the different elements, 2007 he wasn't included, as I understand all the way back to the history which is 1920s or whatever. It is forgetting us totally and I'm trying to keep this simple, how many houses can he put in there on agriculture, and I'm going to say he can sell the lot, and that individual can come here and ask for, just like any AG, come here and ask for RR1. Am I on the right road here Billy?

Mr. Prasad responded if I understand what your question is, yes.

Mr. Minneboo then commented okay keeping it simple he can technically, without us do seven and he can sell them off individually and they could put 17 houses.

Ms. Gilliam responded not on all of them. Some of them are not 50 feet wide, some of them are platted at 49.

Mr. Minneboo stated in theory I'm on the right road, I mean we're dealing now with some other logistical issues in there.

Mr. Prasad responded I don't want to mix up different concepts. When we're talking about non-conforming lots, he's got to have a single non-conforming lot. Get one out of that.

Mr. Minneboo stated he can't have a 25-foot-wide lot that goes back 200 ft. I understand.

Mr. White stated he has 90 nonconforming lots.

Mr. Prasad stated as of today, this is not a nonconforming lot of record.

Mr. White asked to have the rule read to him.

Mr. Hopengarten asked the applicant if he owned the lot to the east and what he was doing with it.

Mr. White responded he did. I'm building houses on it. I already got permits turned in.

Mr. Hopengarten asked if it was zoned AU and did, he have any plans to change it to RR1. And how many homes are you putting there.

Mr. White responded yes sir, and I have no plans to change it. I've already got four or five permits turned in. Seven on two and a half acres plus.

Mr. Hopengarten commented this is the one we're talking about today. And there's this one here.

Mr. White stated there's seven 2.5 acre lots. I talked to the county and there was a drainage easement I thought that I owned. They said I didn't own it, which he'll attest to, and then they all agreed that I owned it and gave me permission to build on all seven of those 2 and a half acre lots. I've got surveys, title insurance, everything.

Mr. Hopengarten stated you're putting seven homes on that eastern parcel, right?

Mr. White responded all 2.5 plus. The smallest is at least 2.5.

Mr. Hopengarten asked why he wasn't doing that on this one.

Mr. White responded that's what I explained to you earlier. The cost of the land was so expensive that now I couldn't sell houses that are affordable to people. Everybody here's had a right to buy a house. I got young three people now that want a home, and this is in their price range. You know, they can afford an acre, a new home, 1,800 sq. ft., not a large home. And on the 2 and a half acres, I got quite a bit more money in them. I got 60% more money per acre in those than like an acre, an acre and a half lot. That's why.

Mr. Hopengarten asked did you buy both lots at the same time, and you did the math. It cost you a million something for the lots and figured out how much your payment per lot would be, correct?

Mr. White responded yes sir, per acre.

Mr. Hopengarten stated you said seven on the eastern portion. Plus, you're asking how many on the western one?

Mr. White said he would be okay with as little as 12.

Mr. Hopengarten continued so you'll put 19 homes on 34 acres. And all on septic.

Mr. White responded yes, all nitrogen septics.

Mr. Hopengarten then asked what about at the north and the southern end where the septic overlay says you can't.

Mr. White responded that's not going to be forever. You know what I'm saying. As of now, you can't build a house in Brevard County from 192 in Melbourne to New Smyrna Airport. You can't build one house on one single lot until they get the vanities fed back up. I'm fixing to move on the river. I got a house and the grass I've never seen the grass so pretty. I fish a lot. I've never seen the grass back so nice as I see it now. At the end of the day if you take people's property, you can't, that's why they make a law, a certain year. You can't say today all agricultural lots have to be 10 acres. You can say as of today any new platted ones have to be because you don't take value from people's land. This land was pre-platted in the 20s and that's what it's valued as. You can't go in there and say well they must be 15 acre lots or 10 acre lots or whatever they were valued and that's why it says in 1975 if they were pre-platted and they're individual lots. It's a law. It's a simple law. You can read it. It's very self-explanatory. Some in the zoning department don't agree with me and I've tried to get clarification, but I can't get nothing in email just in talk. I can't get anything wrote down in email. But I'm convinced that when I get done with this that I'll be able to put way more than that because you're letting people now do it. They let seven on one acre down the road. So, I know I'm going to get the same right. You can't do three more on another one.

Mr. Atkins commented they were zoned differently, though. The ones he's talking about had a different zoning.

Mr. White stated zoning doesn't have anything to do with it. That's what that law says prior to 1975.

Mr. Atkins responded that's why they didn't have to go through this exercise.

Mr. White stated in AU it must be 5,000 square feet, 50 feet long. If it was platted before 1975.

Mr. Minneboo asked if legal has been involved in this.

Mr. Prasad responded yes.

Mr. Minneboo asked what is their surmise of all we're hearing today?

Mr. Prasad replied there's been a lot of hypotheticals thrown around that I'm not sure if each one has been evaluated, if this then that, and each, and how would it have, when you're really talking about these technical issues. We must look at what the application is and see what would work. The current one before you is obviously RR1. So, I will say this has been extensively looked at by the county attorney's office as well as planning and development staff.

Mr. Minneboo stated here's my concern as chairman today. This thing's fairly complicated and I'm not sure. There's a lot of questions in my mind and I hope a lot of these board members.... until we get them answered it. This sounds crazy but I almost want to table this thing until all those issues are addressed.



Mr. White stated I would love for it to be a motion because I want the county attorney's office to answer me in an email, to tell me that my lot is legal.

Mr. Hopengarten asked if these were oranges groves and if all the trees have been cleared off the land.

Mr. White responded they were and that some of them have been.

Ms. Amato stated she wanted some clarification from natural resources on the Indian River Lagoon BMAP area. Is this included within not the septic overlay, but is this included within the North Indian River Lagoon BMAP area? The actual map itself.

Ms. Hart stated we don't have the BMAP map in front of us.

Ms. Amato said I know it roughly goes to US1 but that's rough. I was curious because I know that there's a federal mandate, a moratorium within the North Indian River BMAP area. So, you can't even put in septics, not even nitrogen, the special septics, is my understanding. And I'm not expecting from what I'm hearing for that to end anytime soon. Is that correct?

Mr. Prasad responded Florida Department of Health is actively looking at that and looking at procedures and how that impacts permitting here. I don't know if they've gone through every detail of how that's going to impact yet. But it does appear to impact the area. Yes.

Ms. Amato stated I don't know if county staff is familiar with it, but I know that the city of Titusville has water near there. The company is called TIFFA, and I believe they're in the process of an investigation with St. John's River Water Management to collect well data from the residents in Scottsmoor over the lack of potable water in the area.

Mr. Prasad stated he's not aware of that.

Ms. Amato replied it's currently undergoing though, just FYI.

Mr. White stated the city water comes from Mims, Titusville.

Ms. Amato replied they're on wells out there. Between the septic and in 2009 when another similar property was up for rezoning, the board of county commissioners voted unanimously to deny it since the character of Scottsmoor is not one acre lots. And looking back through that, between the lack of potable water, saltwater intrusion and septic issues in the area, I would tend to concur with that.

Debbie Thomas stated I think for me the most important part right here is there are just so many things unanswered. I would tend to agree with exactly what Ruth just said here and would happily move forward with that, but without some of these legal questions answered, if this was brought to us for a reason, I'm not upstanding if it could be overridden anyways, then why did it get brought to us in the first place? I think that those questions need to be answered before it comes back to us again. Just to be out of concern of you what would be the point of it going to Brevard County Commission if that's going to happen regardless. So, I think those questions need to be answered before we can decide with the proper amount of knowledge.

Mr. Prasad replied that if the board were to vote to continue it, we'll put together an addendum to try to answer those questions and have it to you before you hear it again.

Mr. Minneboo asked staff if they could get it done in a month.

Mr. Prasad replied yes.

Motion to table Item H.3. to the August meeting by John Hopengarten, seconded by Robert Wise.  
Motion passed 10 to 1.

Meeting adjourned at 5:08 p.m.

DRAFT