

# **Brevard County Board of County Commissioners**

*2725 Judge Fran Jamieson Way  
Viera, FL 32940*



## **Minutes**

**Thursday, October 1, 2020**

**5:00 PM**

**Zoning**

**Commission Chambers**

**A. CALL TO ORDER 5:00 PM**

**Zoning Statement**

The Board of County Commissioners acts as a Quasi-Judicial body when it hears requests for rezoning and Conditional Use Permits. Applicants must provide competent substantial evidence establishing facts, or expert witness opinion testimony showing that the request meets the Zoning Code and Comprehensive Plan criteria. Opponents must also testify as to facts, or provide expert testimony; whether they like, or dislike, a request is not competent evidence. The Board must then decide whether the evidence demonstrates consistency and compatibility with the Comprehensive Plan and the existing rules in the Zoning Ordinance, property adjacent to the property to be rezoned, and the actual development of the surrounding area. The Board cannot consider speculation, non-expert opinion testimony, or poll the audience by asking those in favor or opposed to stand up or raise their hands. If a Commissioner has had communications regarding a rezoning or Conditional Use Permit request before the Board, the Commissioner must disclose the subject of the communication and the identity of the person, group, or entity, with whom the communication took place before the Board takes action on the request. Likewise, if a Commissioner has made a site visit, inspection, or investigation, the Commissioner must disclose that fact before the Board takes action on the request. Each applicant is allowed a total of 15 minutes to present their request unless the time is extended by a majority vote of the Board. The applicant may reserve any portion of the 15 minutes for rebuttal. Other speakers are allowed five minutes to speak. Speakers may not pass their time to someone else in order to give that person more time to speak.

**Present:** Commissioner District 1 Rita Pritchett, Commissioner District 2 Bryan Lober, Commissioner District 3 John Tobia, Commissioner District 4 Curt Smith, and Commissioner District 5 Kristine Isnardi

**B. MOMENT OF SILENCE**

**C. PLEDGE OF ALLEGIANCE Commissioner Rita Pritchett**

Commissioner Pritchett led the assembly in the pledge of allegiance.

**F. CONSENT AGENDA**

Chair Lober stated Item F.3. has been deleted; he wanted to put on the record that he has spoken with Eden Bentley, County Attorney, about Items F.1. and F.2. as he serves on the Board for the other organization that will be contracted with; she verified that there was no conflict as to him voting on this; and he asked Attorney Bentley if that was correct.

Attorney Bentley replied that is correct.

Chair Lober stated in addition to Items F.1., F.2., and F.4., he sees that for Items H.2. and H.3., the only comment card he has is for the applicant; and he asked Commissioner Smith what his position is with respect to that and perhaps the Board could have staff do a quick introduction to H.2. and H.3., and then move along with passing Consent Items and H.2. and H.3. given that only the applicant is present.

Jeffrey Ball, Planning and Zoning Manager, stated these are companion applications; H.2. is Brevard Medical City, LLC requests an adoption of the 2019-2.2 large scale comprehensive plan amendment to change the future land use designation from Planned Industrial Community commercial, located in District 4, which is Commissioner Smith; H.3. is the zoning which is Brevard Medical City, LLC, Brevard Medical City Owner's Association, Inc., and Chateau Madeleine, LLC requesting a change of zoning classification from Planned Unit Development (PUD) and Planned Industrial Park (PIP) to all PUD with a retention of the Conditional Use

Permit (CUP) for the alcoholic beverages, full liquor, and an Assisted Living Facility (ALF) with a waiver request for the building separation between an existing and proposed ALF expansion; and this is also in District 4, Commissioner Smith.

Chair Lober stated that he did not know where Commissioner Smith was with it, but if he was inclined to approve it, it could be taken care of all at once with F.1., F.2., F.4., H.2., and H.3.

Commissioner Smith stated he had no objection.

Attorney Bentley asked if that could be clarified for the record that the zoning Items are under the Public Hearing section and there is no one in the audience to speak, there are no comment cards, and there is no objection to proceeding at this time.

Chair Lober stated she has clarified the record, and added that there is only one comment card and it is from the applicant.

**F.1. Memorandum of Agreement with the East Central Florida Regional Planning Council to assist Brevard County with addressing deficiencies in the County's 2017 Evaluation and Appraisal Report (EAR), as identified by the Florida Department of Economic Opportunity (DEO).**

The Board approved and authorized the County Manager to execute a MOA with ECFRPC to assist with addressing deficiencies in the County's 2017 EAR as identified by the DEO per SB 1094, Laws of Florida No. 2015-69, an act relating to the peril of flood requirements for the Coastal Management element of local Comprehensive Plans

**Result:** APPROVED

**Mover:** Curt Smith

**Second:** Bryan Lober

**Ayes:** Pritchett, Lober, Tobia, Smith, and Isnardi

**F.2. Florida Department of Environmental Protection grant of \$70,000 for the East Central Florida Regional Planning Council to assist Brevard County with addressing deficiencies in the County's 2017 Comprehensive Plan Evaluation and Appraisal Report, as identified by the Florida Department of Economic Opportunity.**

The Board approved and authorized the County Manager to execute a Grant Agreement with FDEP to receive \$70,000 in grant funding for the ECFRPC to assist with addressing deficiencies in the County's 2017 Comprehensive Plan EAR as identified by DEO.

**Result:** APPROVED

**Mover:** Curt Smith

**Second:** Bryan Lober

**Ayes:** Pritchett, Lober, Tobia, Smith, and Isnardi

**F.4. Launch the Vote Art Contest**

The Board adopted Resolution No. 20-134, to recognize and congratulate the first, second, and third place winners and Award the Winner of the Supervisor of Elections and Chick-fil-A 2020 Launch the Vote Student Art Contest.

**Result:** ADOPTED

**Mover:** Curt Smith  
**Seconders:** Bryan Lober  
**Ayes:** Pritchett, Lober, Tobia, Smith, and Isnardi

## **H. PUBLIC HEARINGS**

### **H.2. Brevard Medical City, LLC, requests Adoption of the 2019-2.2 Large Scale Comprehensive Plan Amendment to change the Future Land Use designation from Planned Industrial to Community Commercial. (19PZ00086) (Tax Accounts 2632155, 3014505, and 3012173) (District 4)**

Chair Lober called for a public hearing on a request by Brevard Medical City, LLC to adopt the 2019-2.2 Large Scale Comprehensive Plan Amendment to change the Future Land Use designation from Planned Industrial (PI) to Community Commercial (CC).

Ordinance No. 20-17

Ordinance amending Article III, Chapter 62, of the Code of Ordinances of Brevard County; Entitled "The Comprehensive Plan", setting forth plan amendment 2019-2.2; amending Section 62-501, entitled "Contents of the Plan"; specifically amending Section 62-501, Part XI, entitled Future Land Use Element and Future Land Use Map Series; providing for internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date.

There being no further comments or objections, the Board conducted the public hearing and adopted Ordinance No. 20-17, the Comprehensive Plan, setting forth Plan Amendment 2019-2.2 Large Scale Comprehensive Plan Amendment for Brevard Medical City, LLC; and executed the Transmittal Letter for changing the Future Land Use designation from Planned Industrial to Community Commercial.

**Result:** ADOPTED

**Mover:** Curt Smith  
**Seconders:** Bryan Lober  
**Ayes:** Pritchett, Lober, Tobia, Smith, and Isnardi

### **H.3. Brevard Medical City, LLC; Brevard Medical City Owners Association, Inc.; and Chateau Madeleine, LLC, requests a change of zoning classification from PUD and PIP to all PUD with retention of CUP for alcoholic beverages (full liquor) at an ALF (Assisted Living Facility) with waiver request for building separation between existing and proposed ALF expansion. (20Z00014) (Tax Accounts 2632155, 3014505, 3012173 (part), and 2603505) (District 4)**

Chair Lober called for a public hearing on a request by Medical City, LLC, Brevard Medical City Owners Association, Inc., and Chateau Madeleine, LLC for a change of zoning classification from Planned Unit Development (PUD) and Planned Industrial Park (PIP) to all PUD with retention of Conditional Use Permit (CUP) for alcoholic beverages (full liquor) at an Assisted Living Facility (ALF) with waiver request for building separation between existing and proposed ALF expansion.

There being no further comments or objections, the Board approved the request by Medical City, LLC, Brevard Medical City Owners Association, Inc., and Chateau Madeleine, LLC for a change of zoning classification from PUD and PIP to all PUD with retention of CUP for alcoholic beverages (full liquor) at an ALF with waiver request for building separation between existing

and proposed ALF expansion.

**Result:** APPROVED

**Mover:** Curt Smith

**Second:** Bryan Lober

**Ayes:** Pritchett, Lober, Tobia, Smith, and Isnardi

**H.1. Carmen Fanczi (Michael Maguire) requests a change of zoning classification from AU to EU. (20Z00013) (Tax Account 2511450) (District 2)**

Chair Lober called for the Public Hearing on a request by Carmen Fanczi (Michael Maguire) to change the zoning classification from AU to EU.

Chair Lober stated he had disclosures with respect to H.1. and provided them to the Clerk to the Board; he has corresponded extensively by email with nearby residents Robin Silvea, Judy and Carl Gustafson, all of whom are opposed to the proposal; there have been numerous emails that have been exchanged with these individuals from September 28, 2020, through September 30, 2020; he has also corresponded with the Home Owner Association's (HOA) attorney Kevin McCann via email and texts from September 25, 2020, through October 1, 2020, and met him in person on September 28, 2020; he received an email from William Jefferson expressing concern over the proposal on September 29, 2020; he spoke with Rachel Sadoff regarding the proposal on or about September 25, 2020; and he spoke with Jeffrey Ball, Planning and Zoning Manager, to relay his request that the applicant considered a Binding Development Plan (BDP) limiting the number of lots and/or the number of septic systems on the subject property. He understands that his request was conveyed to the applicant who rejected it on or about September 29, 2020; and he asked Mr. Ball to introduce the Item.

Mr. Ball stated Carmen Fanczi requested a change of zoning classification from Agricultural Use (AU) to Estate Use Residential (EU); the project is located in District 2; he pointed out that during the planning and zoning meeting, the applicant acknowledged that since the Curry Dell Lane is a private road, they cannot use it for access; and they will need to ensure that the proposed lots will have adequate access during the subdivision phase and access may limit their lot yield.

Chair Lober stated the things that the Board is entitled to consider in deciding a zoning change proposal are number one, the County's Comprehensive Plan including any administrative policies, two, the compatibility with adjacent, nearby properties, and three, the consistency with adjacent nearby properties; numerous concerns have been brought up by nearby residents including those related to financial aspects of potential development or lack thereof; and the Board cannot lawfully consider those in evaluating the rezoning. He added another example would be the potential number of lots a developer could place on the property, to his understanding, is not a factor that can be lawfully considered in evaluating a rezoning request; and he asked Eden Bentley, County Attorney, if that was a correct statement.

Attorney Bentley replied insofar as could be considered density as part of the zoning classification, yes, but, that is all tied to the number of the lot; and it is an overall density question, not a number of lots in a subdivision plat question.

Chair Lober remarked it is undeniable that there is a tremendous amount of EU zoned property immediately adjacent to and near the subject property and he acknowledges that there is a smattering of SEU nearby, but substantially all of it is on the riverfront lots on the east, not on any land that is to the west of Courtenay Parkway in that area; the subject property is

essentially and island of AU in a sea of EU; the overwhelming majority of the contiguous property is zoned EU, both to the north and the south; the County would have an incredibly hard time defending the position that the proposed rezoning is not compatible and consistent with the nearby and adjacent parcels; and to ignore the applicable law and to deny the rezoning request would essentially force taxpayers to eat legal costs defending what appears to him to be an unjustifiable position that would have the effect of simply delaying the inevitable conclusion that they are entitled to the rezoning. He added he thinks that, while it is perhaps unreasonable to expect that someone else's land would remain undeveloped forever, on the other side, it is far more reasonable to expect that land will not be over developed; he thinks that is where the concern lies; he empathized with the neighbors because he would not want to see 11 lots and 11 septic tanks introduced into the subject property, which is right between the Indian River and the Banana River on the south end of Merritt Island; it may be the worst possible location to add additional septic tanks in the County, however, he does not believe that is something that the Board can legally consider with respect to the rezoning application; and he mentioned to Attorney Bentley if she needed to interject, he would welcome it. He went on to say he thinks it is worth mentioning that these and other concerns raised, may be considered the future when waivers are inevitably sought during the site plan process which will undoubtedly follow the rezoning; while the site process plan is typically handled administratively, given the intense development plans of which he has heard talk, he is not comfortable leaving it with staff to deal with; following Public Comment, he would ask that any motion that may be offered by one of his colleagues to approve the rezoning, include also the following language: that staff be directed no to administratively grant any waivers of any development standards without the express approval of the Board of County Commissioners and that staff be further directed to apply the most stringent lawful standards in analyzing any such waiver proposal(s); and assuming that this proposed language is included in the motion and it passes, he encouraged residents to remind the other Commissioners when this comes back to the Board, of their concerns regarding potential overdevelopment of the land and the impact that it likely will have on neighboring properties on the Indian River Lagoon. He further stated the applicant is entitled to a total of 15 minutes to introduce the proposal, to have any experts speak, and time permitting, to rebut any opposition testimony; everyone else will have five minutes to speak, and he encouraged all speakers to focus their comments on whether the proposed rezoning complies with the County's Comprehensive Plan, including the administrative policies, and whether it is consistent and compatible with the adjacent nearby properties; and he asked Attorney Bentley if she thinks needs to be added before comments.

Attorney Bentley replied that he could talk about the existing development in the area.

Tad Calkins, Planning and Development Director, stated in this area, there is quite a bit of EU development which looks like it has the minimal lot size, which is 100 feet by 100 feet, so that would be the minimum lot size that would be required, which is consistent with what is in the neighborhood and throughout the area; there are some larger lots, but that is the minimum lot size; with the larger lots, it just depends on how the land was split up; in this particular case he thinks the concerns that Chair Lober mentioned are because the lot is very narrow and when the County looks at subdividing that property, is when it starts getting into the standards; there is not enough lot width to begin with that would allow for the typical right-of-way sections and the buffer tracks that the subdivision codes require, that would allow the lots to be that minimum width or depth of 100 feet; and he believes that is where the concern comes in.

Chair Lober stated with respect to the language he just read, that he requested accompany any motion to approve this, he spoke about having to have any waivers of any development standard come back to the Board; and he asked Mr. Calkins if he would say it is a fair statement that a right-of-way waiver would be a development standard waiver.

Mr. Calkins replied yes; and he stated he would take that to mean that any waiver through the County's subdivision code standard requirements would need to come back to the Board and would not be allowed by that motion, and would not be an administrative waiver to be considered by staff.

Michael Maguire stated he is present to get a rezoning on this property that is currently zoned AU; consistently with the AU zoning, there is not enough width to meet the requirements for the AU zoning; the EU zoning is prevalent throughout the entire area; he does not believe that he has given up any position that he would not try to access Curry Dell Lane; he believes the Homeowners Association (HOA) does not own that road and currently has a legal action going on and no one knows how that will end up; and he believes that this is the correct zoning for this property and he will save the rest of his time for rebuttal.

Chair Lober inquired, with respect to the plans, for the benefit of the people in the audience, if his plan is to wait to see how that pending litigation pans out before doing anything like further developing the property; and he asked if he was looking at pursuing it concurrently with the litigation.

Mr. Maguire replied concurrent.

Robin Silvea stated she resided adjacent to the Fanczi property on the Banana River side; she is a lifelong resident of Brevard County and she is present to voice her opposition to the rezoning request and respectfully ask that the committee's recommendation be reconsidered, which was not unanimous in its favor, to have the status changed; she would first like to thank Chair Lober for the work he and his staff has done, the exhaustive outreach, and research that he has done on this; she would like to address three issues; first, are the merits consistent with the request; second, the entitlement of the soon-to-be land owners to make this request; and the precedence it established. She went on to ask, for the merits, is the request consistent with the surrounding property; she knows there is a lot of EU there, but she would argue it is just as consistent to maintain the current AU status as it would be to change it; she disagrees that it is just a smattering of farmland as she can stand on the corner of the property, throw a rock, and hit a 10-acre mixed fruit farm that is river to river, just one plat south; and that is something to consider. She went on to argue that there is more agricultural acreage from Pineda north to the property line than people realize; one would only have to look at the aerial maps of River to River Estates that still maintain their agricultural status or drive south down South Tropical Trail during Mango season to see all of the fruit stands along that road; all things being equal, she thinks they both have merit; second, it has been said that the developer and out-of-state owner are entitled to request a status change; and, yes, they are entitled to request it, however, they are not entitled to it being approved any more than the homeowners are entitled to oppose it, otherwise, there would not be a meeting on it. She added the only people entitled to make that decision is the Board, in the best interest of the County; she would also argue that, collectively, the surrounding homeowners pay many times more in property taxes and should, at least, be given equal consideration; as far as the question of precedence, there is only precedence of land usage change because a Board has approved it in the past; and she asked if there is any scenario where this would not be approved, any opposition big enough, any land too important, that it would not approve it; but, if not, then it could extrapolate that into the future where every request along South Tropical Trail is approved for status change. She asked what would that look like, and would it look like subdivisions, cleared land, and a four-lane highway; at some point people have to think that way; somewhere down the line a Board in the future will hopefully recognize the importance of preserving a Brevard County gem such as South Merritt Island and that it benefits all of Brevard County; similar to Cocoa Beach, the beaches benefit everyone, Indian River Drive, Riverside Drive, which benefit Brevard County; it is what makes

Brevard special and should be preserved for the future; and she asks that a new precedent is started this evening with this Board. She finished by stating if the Board cannot see to turn this down, she would ask that it look out for the homeowners by making the approval tonight contingent upon any waivers and variances so that it would come back to the Board and can be out in the sunlight and only because the developer's plan is so aggressive; and she thinks it needs to have a second look along the site process which is normally closed to the public.

Commissioner Isnardi asked Ms. Silvea where she lived and if she lived in a subdivision.

Ms. Silvea replied she does not and is probably the least affected person; if someone looked at the people that live on the HOA, they do not even have a road; it is so intrusive; it blows her mind; she is actually on the Banana River side and thinks she would probably be the least impacted; if the site was looked at, and hearing what the developer wants to do, once he gets approval it is going to go, go, go; he is litigating for that road and pushing for everything; and that is why she asked the Board to think about the gems that are still in Brevard County. She added when she was growing up, she would take South Tropical Trail and pick oranges; and it is part of being a lifetime resident of Brevard County that needs to be protected.

Scott Price stated he is the first resident of Curry Dell Lane, and has been there since day one; Curry Dell Lane has nine lots with an active HOA, which he is the president, and he is speaking on behalf of the residents; his HOA, Rockwell South, has a responsibility of maintaining Curry Dell Lane and the common area for the past 14 years with no assistance from the County or the original developer, Tom Curry; the residents of this community purchased their homes primarily due to the fact there were a limited number of homes on a private street, the privacy of the street, and having low traffic and an HOA; and when he purchased his home, he did his research with the respect to the potential future development of what might be around that street. He added the south side of the property in question is really what he did his research on; when doing his research, it was undeveloped, he understood who owned the property was someone is Georgia, and he checked the plat; the plat has access and it is not land locked; it has access to the south of that property and on the east off Courtney Parkway and Tropical Trail; and over the years he has had the opportunity to speak with the original developer of Curry Dell Lane, Mr. Curry, who passed away this last summer, who told him that back in the 90's he provided an opportunity to Carmen Fanczi to pay half of the development cost of the road, Curry Dell Lane and he received a negative response. He went on to say Mr. Curry went ahead and completed the development, making sure the road was on his property, created an HOA and filed with the County to ensure it would remain private and accessible to only its homeowners; the homeowners would be in control of the future living on Curry Dell Lane with the filed covenants that he drafted and still remain in effect today; the covenants note all the transfer and rights and responsibilities of the road and the common area to the Rockwell South HOA many years ago; now there is a developer who wants to come in and purchase the property in question to the south and wants approval for 11 home sites, and access to Curry Dell Lane to do so; and if this plan was ever to be allowed, and access to Curry Dell Lane provided, it will more than double the homes and the traffic on a small circle drive. He stated the homeowners believe it will devalue the current properties of Curry Dell Lane due to overcrowding and congestion on the street; this does not even count for the years of construction, its traffic, damages, and environmental impacts that will be incurred for the next unknown amount of time; as the president of the Rockwell South HOA, there is no plan to ever allow or grant access to Curry Dell Lane to the developer and there is 100 percent consensus on this issue; the property to the south is platted, not landlocked, and has provided two access points to that property on its south side from Courtenay Parkway and South Tropical Trail; and the developer has an alternate plan to develop the property and can use those access points. He added the alternate plan is less destructive to the environment and less invasive to the



surrounding properties by subdividing into larger parcels and much less homes; that is not the developer's objective; his objective is to cram 11 home sites onto a small street with no consideration of the current resident of Curry Dell Lane at this time; the Curry Dell Lane residents ask the Board for consideration of not approving any measure that would allow this developer to potentially develop this property as he wishes, and if approved, only the alternate plan be approved; and any approval of his primary objective will destroy why the current residents of Curry Dell Lane bought their homes in the first place, which is privacy, peacefulness, uncongested, and a respectful small community. He asked the Board to consider these residents and the surrounding area and only approve the least invasive plan for the benefit of the community versus the developer.

Chair Lober inquired of Mr. Calkins, assuming for the moment that the rezoning is approved, without getting waivers, if he saw any way in which 11 home sites could be fit in the subject property.

Mr. Calkins replied he did not feel that 11 homes would fit on the property with the width constraints that it has, without seeking some waivers, and also without having access to Curry Dell Lane.

Bill Jefferson stated his property will probably be most impacted by this development; his property line covers three acres adjacent to where this area needs to be developed; under either development, there will be years of turmoil and destruction to the property; when it comes down to the flag lots, he has no idea what sort of access they are looking at for the flag lots; he asked if they were going to put a road all the way through that property, or limit the access from Courtenay and South Tropical; he has no idea what they are doing; and he has been a proud Florida resident for four generation and what he sees between Courtenay and South Tropical is precious little natural resource left. He added there is Rotary Park and this property, and not much else there; over the years he has had contractors, electricians, plumbers, and carpenters come out to his house and, without exception, and the one thing they say is that they did not know anything like this existed on Merritt Island; they are right, there is not much left; the property sites around this area are one, two, and three acre home sites; directly to his south is seven acres, which is still zoned agricultural; and he just does not see how putting a subdivision in that area goes with the same spirit of what is already there. He stated there will be years of turmoil; the area has long-term nesting owls and hawks and those nesting areas are going to be completely disturbed by the construction, which are a federally protected species, not to mention numerous colonies of gopher tortoises that have been there longer than he has; there are old growth oak trees; the way that the developer has got this segmented out looks like he is developing a prairie land, not some place that has a living environment to it; he implores the Commissioners to take this into consideration, as this is not in the spirit of what is in that neighborhood now.

Chair Lober stated to Attorney Bentley that he is trying to find any lawful reason he can shoot this down, just to be blunt; and he asked if the Board was entitled to consider the fact that it is one of the only remaining vacant pieces of land in the area.

Attorney Bentley replied not in that direct descent concept like that, but he is, under the administrative policy, allowed to look at all the surrounding uses; he will need to look to the north and the south to make a judgment under the administrative policies.

Chair Lober inquired if there is no nearby, adjacent, north or south, similar to it in the immediate vicinity, where does that leave the Board.

Attorney Bentley replied if it is appealed, the court will be looking at whether or not the surrounding uses are consistent and compatible with the proposed zoning; if they are consistent, which is generally the Comprehensive Plan portion of the Future Land Use map, and the staff comments already indicated that it is consistent with the Future Land Use map; that leaves it with only compatibility, a desire for vacant land adjacent to the property is not a valid basis for denial; however, it can look at the development surrounding it and make a judgment accordingly; pursuant to the criteria in policy three, it talks about lighting, odor, is it a material reduction in land value; and is it consistent with an emerging pattern or an existing pattern, historical land use patterns, actual development, or development approved within the last three years.

Chair Lober asked if there was anything out of that list that, or anything else that she thinks the Board is entitled to lawfully consider, that would give her any degree of comfort with respect to defending a lawsuit that results in the Board denying the request, or results from that.

Attorney Bentley replied that she would do her best to defend the Board's decision.

Chair Lober remarked as she always would and he thanked her for the diplomatic answer.

Kevin McCann stated he is a Merritt Island lawyer and he represents the Rockwell South HOA; he does not want to repeat everything that was said, but he adopts everything that was said; he takes offense to a comment made by Mr. Maguire calling it an illegal action; there is litigation over Curry Dell Lane and who the owner of Curry Dell Lane is; he will say, without going into details about the litigation, Curry Dell Lane is within the Rockwell South HOA and has been since day one; Mr. Curry is the original developer of that property consisting of 11 parcels; there is a retention pond parcel, there is the street parcel, and there are nine resident parcels that is the HOA; and what Mr. Maguire wants to do is take that street away from the HOA and make it his so he can access his property and add 11 to 12 residents on that vacant land. He stated that is the litigation going on now that Mr. Maguire did not mention in the Planning and Zoning Board meeting; he actually made a comment and acknowledged in that meeting that Curry Dell Lane is a private road and he knows he cannot use it for access, which is on page 98 of the Agenda; he stated Planning and Zoning did not have accurate information when the vote was made; they voted, he believes, six to one, or one opposed and the rest for the rezoning, but they did not have at the time the information that Mr. Maguire had and that this road is actually in litigation; Mr. Maguire is trying to get access and ownership of that road so he can build his development on that very narrow strip of land; and as it is known, that strip of land is so narrow that it cannot be developed without accessing Curry Dell Lane. He went on to say he wanted to make that clear and set the record straight that inaccurate information was provided at the Planning and Zoning meeting; he thinks that information is extremely important for the Board's vote; in addition, he does not want to disagree with Chair Lober, but Suburban Estate Residential (SEU) zoning is very prevalent in that area; the entire strip of all the waterfront properties on Banana River Road is zoned SEU; and this property extends all the way to Banana River, and all the SEU properties align the Banana River, and this property itself is waterfront on the Banana River as it passes South Courtenay Parkway and hits the river. He stated there is almost two acres of wetlands from the Banana River up to and past Courtenay Parkway into where those 11 properties are to be developed; all properties south and north of the parcel that extends to the Banana River are SEU and SEU extends several properties up and several properties down along the river; Mr. Maguire does have a plan to put a residence on the parcel right on the Banana River, which is 100 percent wetlands; Mr. Maguire provided his plans to him and he wants to put that in the record; after placing the plans on the projector, he advised this is the property with the primary desired plan; there are 10 parcels that align Curry Dell Lane just to the south of it, all the residents on Curry Dell Lane are

on the north side, and the developer wants to occupy the south side of the road and take up that entire strip of land and put all those residents in there; and there is also a flag lot on South Tropical Trail which is to the west, and a waterfront property which he plans to attempt to develop right on the Banana River. He went on to say he thinks it is completely appropriate to consider SEU as a potential zoning classification for this change; and in conclusion he feels Mr. Maguire did not provide full truthful information to staff and to the Board and he wants to make that clear before the Board votes, and also requests, if the Board considers a zoning reclassification, that it be consistent with other very dense zoning in this SEU area.

Chair Lober inquired if both EU and SEU are in the area, what degree of flexibility does the Board have in offering up a SEU zoning instead of an EU zoning.

Attorney Bentley remarked she would like to confirm with Mr. Calkins and Mr. Ball that SEU zoning is a less dense zoning classification.

Mr. Calkins replied that is correct; and it is one acre instead of one-third.

Attorney Bentley stated the way the ad is run, it does provide that the Board can consider other zoning classifications that are of a greater density, when going from AU to EU, anything in between would be available.

Chair Lober asked if the SEU would be something that the Board is permitted to offer up. Attorney Bentley replied yes.

Chair Lober inquired if the Board would need the applicant's consent to move to approve it as SEU if the Board is not inclined to approve it as EU.

Attorney Bentley replied not necessarily, no, anything that is advertised can be considered; and he may want to inquire.

Chair Lober stated to him, that may be the way to resolve this where it is consistent with the nearby SEU; there is an argument for that as opposed to just saying no outright; that would enable him to develop the subject property reasonably; and he asked Mr. Maguire to return to the podium.

Mr. Maguire stated he had a couple of points; currently, this is AU, and there is not enough frontage on South Tropical Trail or South Courtenay Parkway to meet the requirements for an AU lot; when he went to the meeting with Planning and Zoning, he was told that the only zoning that was allowed for this property was EU; the abutting properties to the south and the north are EU; the house sizes for EU is 2,000 square feet, which is comparable to the houses on the north side of Curry Dell Lane; and the property has been owned by Mr. Curry since he developed it, and in his understanding, he saw fit to leave it to his daughter through his estate. He stated Mr. Curry's family is suing for control of this street, he is not; this property will not devalue their homes as it will be the same size, almost, per square foot of lot and of house size, but they will be newer; and he believes that this is the right zoning and if the Board looked at what is required by the law, that this is the right thing to do, and he believes, the only thing it can do.

Commissioner Isnardi stated she saw staff scuffling around and talking back and forth, so she wanted to know if they had any input on this, or information, or concerns they could share with the Board.

Mr. Calkins stated there has been a lot of information provided and they wanted to make sure that they were able to answer any questions that may come up; as mentioned earlier, there is SEU in the area and SEU is compatible or can be considered consistent with the land use; that is a larger zoning classification than what has been requested as it is a one-acre zoning classification; the lot size for that is 125 feet by 125 feet, and he believes this lot is somewhere between 130 and 140 feet, so if it goes with the larger lot, it does not alleviate the concerns or waivers that would be necessary for doing a subdivision; and there will still be right-of-way constraints.

Commissioner Isnardi stated that was going to be her question, if they build one less house is it really going to be that much of an impactful difference; if someone looked at the properties, and she is not for or against either, but if looking to the south there is the property that is up to be changed is now AU and the one directly below it is SEU, then it is EU, EU, AU, EU, and EU headed south; it may be more SEU to the north, but much more EU to the south; and she asked Mr. Calkins if realistically, it is one or two less houses, like nine instead of 11, if talking about lot size.

Mr. Calkins replied the lot is six acres, so if it was one acre, it would be limited to six; and he stated he misspoke earlier and the lot is 125 feet by 200 feet, his apologies.

Commissioner Isnardi stated she was trying to understand why it was ok for the properties to the north; she understands that is not what they signed up for and they hoped it would not be developed, but that is not their say, especially if the original property owner or estate decided to sell the land; and she understands both sides.

Chair Lober stated he would be happy with SEU; he would still ask whether a motion comes up to approve it as SEU or EU, to include that language he read earlier in the meeting; if the applicant consents to SEU, he thinks all the issues for tonight's purposes are resolved; he understands that there will probably still be waiver requests and they will be evaluated as they come in, but he will feel better that there would be fewer septic tanks being placed in that little area; and irrespective of what is there, he can say if one looks at Rockledge Drive going up into Cocoa from Rockledge, there are a slew of septic tanks, many of which are decades old and polluting the Indian River, which does not make him feel better about adding more septic tanks in that area that is sandwiched against a body of water. He added this is even worse because the area is sandwiched between two bodies of water on a barrier island; he thinks anything the Board can do to limit the density in that area, given that there is not an option for folks to hook up to sewer; to him that is a big concern on the environmental standpoint; as far as the gopher tortoises, he understands that there are policies in place addressing that and would be at their cost should that be an issue; and he stated he would support SEU with the caveat that staff be directed not to administratively grant any waiver of any development standards without the express approval of the Board and that staff be further directed to apply the most stringent lawful standards in analyzing any such waiver proposal(s). He advised he did not think that he would be voting against an EU proposal because he felt that the Board was a little more constrained, than he now gets the feeling that it is; he does not believe that he is in a position where he can support an EU zoning tonight; and with that said, he respects where everyone else is, and to vote appropriately.

Commissioner Tobia inquired if the additional verbiage of the motion, is just subject to this property or for all future requests in all Districts.

Chair Lober replied it is subject to this subject property on the Agenda Item; it is not involving any other piece of land; and to be frank, he thinks Mr. Maguire is entitled to have something approved to let him develop the land regardless of how nice it would be to have it vacant.

Commissioner Smith stated from his perspective, there are two sensitive bodies of water on either side of this property and to put more septic tanks in as opposed to less, does not float his boat; he is thinking this is very difficult for this developer no matter what is decided, because unless he can access Curry Dell Lane, he will not be able to get lot size and room for a roadway within this property; and he asked Mr. Calkins if that was correct.

Mr. Calkins replied yes; he stated that is where the waivers would come in, which Chair Lober is requesting to be brought back to the Board; if they did a formal subdivision where they were proposing to construct a roadway, then it would be looking at 50 feet of right-of-way width; they could do a minor subdivision where they take access off of Courtenay Parkway and South Tropical Trail but would be limited to lot widths, and would not be able to get the lot yield of 11 or 12 lots; and they would be limited to about three or four lots if that were the case, depending on the zoning classification that the Board granted.

Commissioner Smith stated he is not crazy about having septic tanks in there anyway; in fact, Mr. Calkins' predecessor sat on the Board and he adamantly said that he would not be in favor of any development in the County unless it had sewer; and he stated he would make the motion that it is listed as SEU and he would include the verbiage that Chair Lober mentioned.

Chair Lober inquired of Attorney Bentley if there was anything else needed or anything else beneficial that should be added.

Attorney Bentley replied she thinks he covered it.

There being no further comments or objections, the Board accepted the request by Carmen Fanczi (Michael Maguire) for a change of zoning classification from AU to EU, and approved as SEU and directed staff not to administratively grant any waivers of any development standards without the express approval of the Board of County Commissioners, and further directed staff to apply the most stringent, lawful standards in analyzing any such waiver proposal or proposals.

**Result:** APPROVED

**Mover:** Curt Smith

**Seconder:** Bryan Lober

**Ayes:** Pritchett, Lober, Tobia, Smith, and Isnardi

## **K. PUBLIC COMMENTS**

Sandra Sullivan stated she was present to speak about the issues with the Hightower Preserve and the South Base housing again; she has a couple of concerns, one being the intent and she has been doing records requests; the intent initially that the density on the south base housing was capped at 999 units; the Air Force had come to the City and the County with their specification of what they were looking for to privatize and they wanted 1572 units; and the bottom line is under Congress, as they have to approve the development plan as part of Congress granting them the right to privatize. She continued to say they did that in 2004 for the Pelican Coast; the Planned Unit Development (PUD) explicitly met the specifications as agreed by the Air Force; there are a couple of things she would like to ask the Board; from its own objections that were written when the City won adding the 366 units, the Board wrote a letter of objection to the District Court of Appeals (DCA) because that violated the intent of the reserve agreement and no density bonuses were allowed; and apparently, on the City's Resolution 631, it says that the County Commissioners have the legal authority under the

County Charter and provisions of general laws of the State of Florida to adopt ordinances that are effective in both the unincorporated area and the municipalities. She is asking for the Board because it was a partner in one preserve agreement and co-applicant; they both required the same changes to the Comprehensive Plan, the cap and densities; the City went a step further and represented to the local residents that they were making a clerical change to match the zoning to the PUD but what they did, and has shown intent by the packet, they gave the developer the right to a hotel; now, instead of the 1365 units is now being pushed to that unit and a hotel; and this is going to adversely affect a preserve which was funded with about \$5 million of State funds and the County was a partner and a co-applicant on the two preserve agreements. She is asking if the Board will take action to help protect it either by an ordinance or by lobbying to the Federal government to deny the current development plan that has not been agreed to and violates their own specifications that they specified and agreed earlier.

Chair Lober stated he may ask Attorney Bentley sometime between now and the next Commission meeting what the Board is entitled to do on that end; and he would like to do a little more recon before he comments on it.

#### **J.1. Financial Incentive for Constituent Reporting of Waste Management Missed Pickups, District 2**

Kristina Jackson stated this Item is incentivizing people to look for fault and make complaints; if someone made one complaint a month and this lasts the seven years of the contract, they could make \$2,100 from the County just for making complaints about a company; she asked if there was a limit to the number of times an address can complain; if someone complained twice a month, they would make \$50, or \$4,200 in seven years; that is good money for someone, but how is a complaint validated. She continued by saying people forget to put out their trash, many do; she asked can that be validated or can someone forget and then make some money off of it; she thinks if this is done, notices should be sent out to everyone on the route; she only knows about this because she has a subscription to a newspaper; when she was 18 years old, single, and pregnant, she could not afford it; people without a newspaper subscription will not know about that program, if it is approved; and when her 16 year old heard about this, he said to get an accurate account of what is occurring, pay people to do a survey and the good and the bad will be heard and they would get paid for it, instead of paying for complaints. She continued to say there is a reason people do not pay for complaints; people want a complaint to be valid and time spent making the complaint, as it took her time to come to the meeting and planning a speech; if she was getting paid for it, she might be there more often; she asked where is the \$50 supposed to go that the company is getting paid for; it says Waste Management is giving the County \$50 for each complaint; and the public did not know about this until this was brought up. She added people are being told that the County is bleeding money, public record prices went up extensively, and she asked does the County not need all that money, and how can it afford to give half of it to the people when it needs money; it is said to help pay for the time staff spends doing this but that is the job of staffers; they take calls about complaints and inquiries, and that is the nature of the job; she asked if the complaints help the trash service, and asked what are the complaints, and what good does the \$50 do; and she asked if the County is wanting to bleed the company dry or is it upset with the company. She asked what other company is going to want to offer a bid after this; she assumes the \$50 for each for each complaint was in good faith and doubts they thought it would publicized; the County will pay people money to complain; if it were her company, she would be outraged; her mom pays \$30 per year more in Wichita, Kansas for one day per week service and has to take items to the dump; and with Covid 19, people are forgiving companies for longer wait times and she is asking the Board to say no to this proposal to pay for the complaints, especially in a pandemic.

Commissioner Tobia thanked Ms. Jackson for coming and asked why she was so passionate

about this and if she had a relationship with Waste Management.

Ms. Jackson replied no, she is just so frustrated with the idea; it seemed like a personal vendetta against a company; and that has been known to happen with maybe Health First, a business owner that was representing other businesses, who did an email, and there was a personal vendetta.

Chair Lober interrupted and stated he thinks she has answered Commissioner Tobia's question; he stated he will address a couple of things that came up; he does believe that the County does need all the money that it is entitled to by way of damages and by encouraging and incentivizing folks to make valid complains and more likely receiving more complaints that otherwise may not have received; as far as making \$4,200, if folks not only did not believe everything they read, or believe sporadically depending on the author, everything they read, but the proposal had it capped at their cost of service; and he asked Euripedes Rodriguez, Solid Waste Management Director, what the average cost of service for an individual over the course of a year, or seven years, so the Board could look at the numbers.

Mr. Rodriguez replied the current contract that ended yesterday, was around \$135 for a year. Chair Lober remarked if that is capped at the cost of service, the \$4,200 is impossible; and he asked Mr. Rodriguez if that was correct.

Mr. Rodriguez replied if it was capped, yes sir.

Chair Lober stated the cap was proposed in the actual Agenda Item, and asked if that was correct.

Mr. Rodriguez replied yes sir.

Chair Lober stated then that is a fallacy as well; and with respect to the validation of the complaint, for everyone's benefit who simply assumes that they know the entirety of something based on a short article, he asked Mr. Rodriguez if he would mind giving a little background on how his department goes about validating complaints.

Mr. Rodriguez replied there are two sources of complaints; one is through the internet, which has increased recently due to the publicity, calls coming in, emails coming in, complaints the Commissioners forward to him, and calls directly to the Waste Management website; every month they get together and compare notes; the complaints can be anything from oil spills all the way down to missed pickups; and all of them have different days in which they can be cured, some can be cured, some of them just for occurring, are automatically susceptible to liquidated damages. He added in the case of missed pickups, they get 20 complaints that are at no cost to Waste Management; 20 out of 100,000 homes that are served every month; percentage-wise that is extremely low; and then he looks at whether Waste Management was informed that there was an issue, as they have to have proof of that and that they responded to the County, and after that a determination is made on whether it is susceptible to liquidated damages or not.

Chair Lober inquired if that was something his department is capable of doing.

Mr. Rodriguez replied that is what they currently do.

Chair Lober asked if there was an issue, to his understanding, with his department's ability to validate complaints.

Mr. Rodriguez replied no, it is just a matter of volume, not a matter of process; and the process would be the same.

Chair Lober asked Mr. Rodriguez if he was aware of there being any talk of a vendetta between Waste Management and himself; and stated he would ask the next speaker the same thing.

Mr. Rodriguez replied not to his knowledge.

Chair Lober asked the next speaker, Dina Reider-Hicks, to come up and stated he had a couple questions before she started; and he asked if there was a vendetta that he did not know about.

Dina Reider-Hicks, Public Affairs Manager with Waste Management, replied no, we do not.

Chair Lober stated he thought they had been cordial and pleasant with one another; and asked if she believed the County is able to validate complaints submitted to the County.

Ms. Hicks replied as Mr. Rodriguez suggested, there is a good process in place; they review for what is considered a legitimate complaint, and per the contract, anything is considered a legitimate complaint unless appropriate disposition is furnished; and they discuss all of those items and make sure that for any of those items, that we have appropriately provided a disposition for the resolution of that complaint.

Ms. Hicks thanked the Board for the opportunity to speak; she thanked the Board for its support, as there has been a long, solid relationship with Brevard County, and there have been ups and downs; this summer was one of the down periods, as Covid-19 presented a unique set of challenges for all people, every day; she asked to please accept a sincere apology for any difficulties that may have been experienced by County offices and for any inconvenience to the residents; they do understand, as the drivers, managers, dispatchers, and herself, all live here too; and they want to return to the exemplary service that people deserve and have come to expect from Waste Management. She went on to say there is no one who wants our service to be exemplary more than those who work for Waste Management in Brevard County; she is pleased to report that there has been considerable improvement throughout September and she is confident people will see service to continue to head back on track in the coming weeks; today is the start of the new franchise agreement with Brevard County and she thanked the County again for selecting Waste Management as the service provider; today brings with it new and additional trucks to service Brevard, as was discussed last November; new high-capacity grapple clam trucks have been added to service large yard waste piles in the area; today also brings additional personnel that have come from servicing another area within the County; and these are all Brevard County residents and are quite familiar with the area. She added these added resources mean adding more service routes within Brevard County to serve the expanding population; in the past several weeks, they have hired additional personnel and have promoted from within and recently name a few new route managers for residential services; these new employees, along with the existing employees who are segueing into new roles within the County, will help get service back on track in short order; she is confident improvement will be seen in the coming weeks; and as trying as it has been, they thank the County sincerely for its patience and support and for the continued confidence and trust it puts in Waste Management.

Chair Lober stated he will add that his concerns over the past with respect to Waste Management, none of them have involved Ms. Hicks; he thinks she is great asset to the



company, and has been stellar to work with; he has no complaints with being able to reach her, or with respect to any of the issues that he has brought to her attention, not being resolved correctly; he thinks everything has been dealt with well and timely when he has brought it to her attention; he does not want anyone to mistake this Agenda Item as any sort of slight to Ms. Hicks, as it is not; and he wants to add, with respect to what is proposed, in an ideal world the goals are totally compatible and he has discussed this as well, but for everyone's benefit, he does not want to see any liquidated damages because he would love to see all the pickups go perfectly. He continued by saying in an ideal world, this would be voted on, it would pass, and the County does not look to enforce anything because every pickup is addressed as scheduled and there are no issues; that is what he really hopes to see; he thinks this helps to better ensure public confidence and he understands things happen, some may be tied to Covid-19, but he thinks now the it has more resources, now is the time to look at this fresh; he thinks that the folks that live here that do have Waste Management service, will gain a degree of confidence knowing that there is a mechanism in place, should there be any service issues in the future; but he hopes there are not any. He added he does not wish Waste Management poorly as he loves capitalism; he understands Waste Management is publicly traded and hopes its stock price goes through the roof; the better Waste Management does, does not harm the County or residents; and he just wants to see everyone benefit from this, especially the folks that are scheduled to have pickups from Waste Management.

Commissioner Tobia asked if there were any videos extolling the virtues of Waste Management or did she not make one this time.

Ms. Hicks replied not this time.

Barbara Gorin stated she was shocked when she saw the price of the cost of the service go up so much; there is so much new development in the County and she knows this is not the format for it but there are so many new homes that are going up right across the street from her in Viera; for it to go up that much with the new homes going in, it just blew her mind; it took her by surprise and with Covid-19, she did not get to come in and voice her opinion or have time to organize any of her people that came in the last time this was up for bid; and she stated there would be an increase in cost through the seven years, just like the last contract. She added it does not seem fair that seniors have to pay that much more to have their garbage picked up, as it cuts deep; nothing more is given for the money, and she would not expect the service to go down; with all the new businesses and homes, she does not know where their money is going that the rates would go up 39 percent; she did say that the service has been really good in Heritage Isle as they have only had one issue a few weeks ago where there was no pick-up one day, but it was picked up the next day; and she would not complain about that, but if it happened regularly, she would put her two-cents in to let the County know she was unhappy. She just wanted to get that off of her chest.

Chair Lober stated he would encourage her to add her two-cents, should that be the case; but hopefully, as Ms. Hicks mentioned, with the additional resources they are bringing in, he hopes that is not the case; and he asked Mr. Rodriguez, for everyone's benefit, if he could reiterate the cap with respect to increasing costs throughout the duration of the contract.

Mr. Rodriguez stated the contract has a Consumer Price Index (CPI) increase on it that is capped at three percent; and the cap means that if the inflation is one percent, they cannot ask for a three percent increase, all they can do is ask for a one percent increase.

Chair Lober remarked it is the lower of CPI or three percent, then.

Mr. Rodriguez replied yes sir.

Chair Lober stated he is happy to reiterate what is on the Agenda Item but he thinks everyone knows what it says; and he is open to a motion to approve it or discuss it.

Commissioner Pritchett stated she had a couple of struggles with it; the County is already fining them, which she thinks is a good thing; she thinks that will incentivize people to call that are not currently calling in; her struggle is when they miss a pick-up, it is costing them like \$1.30 and the County is giving them \$20 which is an extensive amount of money to pay people for that; and most of the complaints have been in District 1, but they are going down. She thinks in September there were seven complaints in her office and there were four this time; she stated her office receives one or two a week regardless; she is starting to see improvement; the new contract begins October 1, so she thinks a discussion in about a month might have been more appropriate; and she does not know that is getting fixed now. She went on to say if the Board does this and it has got to be validated with all the new ones, all of these people that are contacting the County will spend more staff time and have to add staff to do this; she does not know if there is not going to be an argument with what is validated and what is not, and how long that will take, then send a check; she does not know if it is fair if somebody misses five or six times to not be paying for any garbage service the rest of the year; and she does not have a problem with the \$50 fine because of what the Board is trying to get in place. She continued to say that kind of shares the love with the whole community later when it tries to get more waste management; if it is really this bad, then maybe it should go out for bid again; if they cannot fulfill it, she is concerned that another company wanting to place a bid with the County, knowing that it promotes the fee base; and she just has some concerns and would like to hear what the rest of the Board thinks.

Commissioner Isnardi stated she does not have a problem; obviously there is a system in place to pay a fine for missed pick-ups, but she does not like the idea of incentivizing complaints, only because she thinks it is telling people that if they miss a pick-up, you can report it and the County will pay you, and it just does not feel right; she thinks the County should be aggressive as it can if people are missing their pick-ups and make sure that it recovers those fines; Waste Management needs to be held accountable, but if that is the case, then take the numbers at the end of the year and reduce rates for everyone or give back a piece of those fines instead of the County keeping the money; but ultimately, it is the customer that was affected. She does not want to be in the business of incentivizing complaints.

Commissioner Tobia inquired of Mr. Rodriguez if he thinks there would be a need to add staff to verify complaints; and asked how long it takes to validate a complaint.

Mr. Rodriguez replied if the complaints received continued at the current level, they would not have to add staff; if they were to get additional complaints, yes, he would have to consider that option; and as far as validating, they validate any complaint.

Commissioner Tobia asked if there were more and he needed additional staff, there would also be additional revenue, correct, because that would be additional \$50 fines if 20 or 25 went to the person registering it, the other 20 or 25 that it would not otherwise have, would then come to his department.

Mr. Rodriguez replied yes, one goes along with the other.

Commissioner Tobia stated while there may need to be more staff, it may be covered; and he asked Mr. Rodriguez if that was fair to say.

Mr. Rodriguez replied yes sir.

Commissioner Tobia stated he did not know if Chair Lober has the votes on this one; he thinks that incentivizing behavior is something that government does all the time; the Board needs to tell the Sheriff to stop offering rewards for people that give crime tips to turn in people that have done bad things in this community; he does not think this is all that radical of a proposal; and he thinks Waste Management and the Board want the exact same thing, less misses and less complaints. He added if that is the goal, then whether the County offers \$20, \$50, or \$1.33, if there are none there, then there is no reason to complain; and he stated he will join Chair Lober on this and make the motion, but he does not know that he has a third on this one.

Commissioner Smith stated he did not have a third with him; the County has a brand new contract with these folks, and history with them; there are remedies in place in the contract if they fail to do their job; he does not feel that it needs to invent new ways; if it gets to the point where it really gets bad, then it could revisit the issue; but he does not think this is the time.

Chair Lober stated Commissioner Tobia mentioned the fact that revenue increases will offset any additional costs the County may have by way of staff; the reason this was introduced was because right around the time that residents were facing a 39 percent increase in their collection costs, which was unavoidable, it was a slap in the face to say pay almost 40 percent more and have missed pick-ups; he understands the concern about incentivizing folks insofar as it might encourage them to file complaints that are not valid, but staff would quickly see who those folks are that are filing those complaints and give complaints from those sources their due amount of warranted attention; using the liquidated damages to reduce the pick-up costs for everyone is much better than doing nothing with it; and he thinks it is better than building the reserves at this point in time in that particular department but, as Commissioner Isnardi pointed out, ultimately the ones that are affected most directly are the customers. He went on to say the folks that do not have their trash picked up on a particular day are the ones that have to smell the rotting food until it gets picked up; if someone ends up with seven or more missed pick-ups, that essentially comps the cost of their collection for the year, as they should have had those days with proper service; he has no qualms incentivizing people to report behavior that goes toward the contractual remedies, not looking to invent or add to the remedies, with respect to Waste Management; he is seeking to put the County in a better position whereby it can enforce those remedies that are available to the maximum extent possible; and it is the same thing with speed limits, a person will not speed if they know there are cops around the corner. He added he is not saying that Waste Management would intentionally not pick up trash, but he thinks anything the Board does to incentivize service that gets closer to perfect service, the better; he is happy that Waste Management has moved resources from the other contract on the south end of the County and kept those people on board without letting them go as he thinks that is to their benefit and to the County's benefit; he hopes that the County does not need something; but he still worries about the folks who are now paying more, should they continue to have issues with respect to their service pick-up.

Commissioner Tobia made a motion to approve the financial incentive for constituents' reporting of Waste Management missed pick-ups.

Chair Lober seconded the motion and Called the Question.

Commissioner Pritchett stated she hopes Waste Management continues to do better; her office is on the phone with them several times a week and she appreciates the hard work; in 2014, the County collected \$222,000 worth of fines, in 2018, \$24,950, in 2019, \$15,450, and this year it is at \$13,700; so the County does collect fines from Waste Management when they do not

pick-up; she is not sure about the other Commissioners, but she gets calls from the ones that are missed; and she wants to encourage them to continue to get the improvements done during the new contract.

Chair Lober stated he hopes things go well; the end goal is to have good, consistent service; and he hopes today's vote will not make a difference because the service will be at the level there would not be any liquidated damages to worry about.

The Board denied creating and implementing a financial incentive program for constituent reporting of Waste Management missed pickups.

**Result:** DENIED

**Mover:** John Tobia

**Second:** Bryan Lober

**Ayes:** Lober, and Tobia

**Nay:** Pritchett, Smith, and Isnardi

## **L. BOARD REPORTS**

### **L.4. Bryan Lober, Commissioner District 2, Chair, Re: Report**

Chair Lober stated the member of the Board each wear a number of hats in life and he is an attorney, a mediator, an avid shooter and a diver; wearing the other hats, he has been, and remains, involved in a number of different legal and civic organizations and groups; to his knowledge, this Board has never rejected any Commissioner's request to obtain an Attorney General Opinion (AGO); he would like to ask for approval to request an AGO to confirm that one or more of his planned activities will not conflict with his service as a County Commissioner; and he has already drafted the request and, as such, he does not think it would take more than a couple hours of the County Attorney's staff time.

The Board granted permission for the County Attorney to use up to two hours of staff time to request an AGO for Chair Bryan Andrew Lober, for his involvement in different legal and civic organizations and groups confirming that one or more planned activities of his will not conflict with his service as a County Commissioner.

Upon consensus of the Board, the meeting adjourned at 6:29 p.m.

ATTEST:

\_\_\_\_\_  
SCOTT ELLIS, CLERK

\_\_\_\_\_  
BRYAN ANDREW LOBER, CHAIR  
BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA

**Result:** APPROVED

**Mover:** Rita Pritchett

**Second:** Bryan Lober

**Ayes:** Pritchett, Lober, Tobia, Smith, and Isnardi