

# **Brevard County Board of County Commissioners**

*Brevard County Government Center  
2725 Judge Fran Jamieson Way, Building C, Commission Room, Viera, Florida*



## **Minutes**

**Monday, September 14, 2020**

**3:00 PM**

**Commission Room**

## Call To Order

### Approval of Minutes - July 6, 2020

#### H. Public Hearings

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

**Attachments:** [Administrative Policies of the Future Land Use Element.pdf](#)  
[Staff Comments](#)  
[GIS Maps](#)  
[School Concurrency](#)

Michael Maguire, 330 N. Babcock St., Melbourne, stated the subject property is six acres that is split by N. Courtenay, on the south side of Curry Dell Lane. He said he had hopes of connecting onto Curry Dell Lane, but that seems highly unlikely now. The property only has 140 ft. of frontage, and 150 feet is required for AU, which is why he is requesting to rezone it to EU.

Mark Wadsworth asked staff to address some of the concerns in the public comment letters.

Jeffrey Ball stated in regards to installing a swale or berm along the south property line to prevent any drainage runoff, any concerns with drainage, stormwater, or retention, will be addressed during the site plan process, which is a staff review with no public hearing. He said another concern is if the developer will add a fence or landscape berm for visual and physical control with the developer being responsible for maintenance in perpetuity. Typically, between residential and residential, there is no requirement to have a visual buffer like that; it's up to the board to decide whether the request will warrant having such visual buffer. Another question is about utilities, but at this point staff doesn't know where the utilities will be located; it's up to the utility providers, but County staff will review and ensure compliance with County regulations. In regard to septic systems, the property is located in the Indian River Lagoon Advanced Septic System Overlay, so that is required by Code, and there is not currently a moratorium on septic tanks. He noted there are deed restrictions and covenants on the property, which is a private matter between the parties involved; it's not a County matter that can be addressed during the board meeting. The Planning and Zoning Board looks at the Comprehensive Plan and the surrounding area when it makes its decisions.

Public Comment:

Dave Earhardt, 3865 S. Courtenay Parkway, stated Mr. Ball mentioned that the swale/berm issue and concerns about runoff would be settled at a meeting that is not open to the public. Mr. Ball replied that is correct, it is a site plan concern that is addressed through Public Works at the site plan stage. Mr. Earhardt asked how the local residents who might be affected by the issue find out the results. Mr. Ball replied it is not a public hearing process. By code, the developer is not allowed to have stormwater runoff go off of their property; the site will have to be engineered to accommodate the runoff.

Robin Silvea, 3800 S. Courtenay Parkway, stated she is concerned that the board is speaking in terms of a foregone conclusion about the approval of a site plan in advance, and the neighbor's voices do not have any impact.

Mr. Ball stated the Planning and Zoning Board is an advisory board that makes recommendations to the Board of County Commissioners who will make the final

determination. Whether this board recommends approval or denial, the request has to go to the Board of County Commissioners for the final decision.

Ms. Silvea stated her primary concern is the negative impact the project will have on the current homeowners in the area. If the development is approved it will double the amount of homes given his primary plan of 11 homes, and the effects will be felt immediately with the loss of natural habitat, impacts to pedestrian safety, increased construction traffic, and loss of property value due to years of potential construction. In the long term, it will increase the overall traffic on S. Courtenay Parkway, potentially overcrowd the local elementary school, which has just picked up new homes because of Georgiana Reserve to the north, which is a large neighborhood, so there is not exactly a need for additional homesites. Unlike that neighborhood, this property is a fraction of the size and is nestled between existing, established homes without clear delineation or fencing, or even the room to have a barrier, or its own road. She said the property is not wide enough to have both a house and a road, and the road needed for the developer's site plan is currently in litigation with the HOA, which has maintained private use of that road for many years and has been categorized as private by the County. She stated the proposed site plan is in direct contradiction to the County's own ordinance. Section 62-3694, Permitted Wetland Uses, deems that residential lands within a wetland have to be at least five acres if not subdivided prior to September 1988. The Fanczi property was not subdivided; Mr. Curry subdivided his property prior to 1988 which allowed him to do his development. This particular property was not subdivided prior to September 1988, which deems a huge portion of the six acres 100% wetlands. If he decides to increase his acreage and not subdivide, then the EPA and Army Corps of Engineers are going to require that he build on the least intrusive land, which is a portion to the west. The property to the west of Courtenay also has emerging wetlands; the property east of Courtenay on the Banana River side is 100% wetlands. The developer has a contingency offer to the Fanczi's based on the decisions being made by the board's recommendations. She asked if a traffic study has been done, and what impact there will be on the school system. She requested the board postpone a recommendation until a traffic study is complete and until environmental impacts are reviewed by staff. She noted she has spoken to staff from the Natural Resources Department, many of whom have serious and grave concerns regarding this project because of its impact on the wetlands. There is zero community support for this project; it is not needed; it is not wanted; there is a brand new development nearby; and she would ask that the board not approve it.

Bill Jefferson, 3750 S. Tropical Trail, stated the area is unique in the fact that there are three different gopher tortoises nesting in his yard, there are barn owls, red-shouldered hawks, and quite a few Florida scrub jays, which are protected. Given the unique situation and the unique location of the property, developing it would be detrimental to the area. He said he hopes the board takes that into consideration.

Ron Bartcher asked if the depth of the property is 150 feet deep. Mr. Maguire replied it is 139 feet deep, from north to south.

Mr. Bartcher stated EU zoning requires a minimum of 100 feet, and asked staff if it would be possible for the developer to put in a roadway with 39 feet. Mr. Ball replied the road access is a separate issue that will be dealt with at the site plan stage. There are different things the developer can do, whether it is a private roadway dedicated to the County, or a private roadway that the HOA or another entity other than the County would maintain, and there are different standards for those.

Mr. Bartcher asked how the property on the east side would be developed. Mr. Maguire replied he has a consultant who has been looking into whether or not it can be impacted at all, and if it

can't, then he will probably develop a walkway to the river.

Joe Buchanan asked where the stormwater drainage finishes. Mr. Maguire replied there is a structure that goes across the ditch to S. Courtenay Parkway, and when it fills up to a certain point, it overflows onto S. Courtenay.

Mr. Maguire asked staff if there is concurrency with Brevard Public Schools, as far as Tropical Elementary. Mr. Ball replied yes, and the board members have that information. Mr. Maguire asked if there has been a traffic study done for S. Courtenay. Mr. Ball replied there was no traffic study, but the concurrency analysis is provided in the staff comments.

Mr. Buchanan asked if there is supposed to be a 50-foot barrier for surface water.

Jeanne Allen, Natural Resources Management, confirmed there is a 50-foot surface water protection buffer, which means there cannot be a primary residence within that buffer. There could be an accessory structure within the buffer, but the stormwater runoff would have to be maintained.

Peter Filiberto asked if a portion of the property is within the floodplain. Mr. Maguire replied yes. Mr. Filiberto asked if there are wetlands on the property as well. Mr. Maguire replied yes, on the east side, and about 20 feet on the west side along S. Courtenay. Mr. Filiberto asked if he has considered the nitrogen reduction septic system. Mr. Maguire replied yes. Mr. Filiberto asked about protected and specimen trees. Mr. Maguire replied he has not done a tree survey yet; he would like to get the zoning before he does a tree survey.

Mr. Filiberto stated there are no scrub jays on the property, but there are some environmental constraints, wetlands in question, and the fact that the property has not been properly surveyed. He stated he will be voting against the request.

Mr. Maguire stated the property has been properly surveyed and the wetlands have been located, but whether or not the County will allow him to do anything on the east side of S. Courtenay, he doesn't know.

Harry Carswell asked the size of the proposed lots. Mr. Maguire replied if he is allowed to attach onto Curry Dell Lane, they would be 110 feet x 139 feet; if he goes the other way, he could possibly do a couple of 1.5-acre lots that go east to west, or he could just sell off one parcel with one house.

Bruce Moia stated the applicant has a lot of hurdles to overcome. He's going to have to deal with the State and County codes, and regulations are in place to address a lot of the concerns. The County cannot mandate connecting his property to any other private property; that will be up to the neighbors if they want to include him and give him access, and he doesn't see that happening, so he isn't sure how the property is going to be developed. He stated the applicant has met the school concurrency, and the traffic is going to be minimum. Looking at it as a zoning issue, this area is zoned EU, and he doesn't want to get off track with the development issues because those are things the County, State, and Federal agencies will dictate.

Motion by Bruce Moia, seconded by Joe Buchanan, to approve the requested change of zoning classification from AU to EU. The motion passed 6:1, with Peter Filiberto voting nay.

**Result:** APPROVED

**Mover:** Bruce Moia

**Seconded:** Joe Buchanan

**Public Comment**

Adjournment

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

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

This meeting will be broadcast live on Space Coast Government Television (SCGTV) on Spectrum Cable Channel 499, Comcast (North Brevard) Cable Channel 51, and Comcast (South Brevard) Cable Channel 13 and AT&T U-verse Channel 99. SCGTV will also replay this meeting during the coming month on its 24-hour video server nights, weekends, and holidays. Check the SCGTV website for daily program updates at <http://www.brevardfl.gov>. The Agenda may be viewed at: <http://www.brevardfl.gov/Board Meetings>