

# **Brevard County Board of County Commissioners**

*2725 Judge Fran Jamieson Way  
Viera, FL 32940*



## **Minutes**

**Tuesday, January 25, 2022**

**9:00 AM**

**Regular**

**Commission Chambers**

**A. A. CALL TO ORDER 9:00 AM**

**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 Zonka

**C. C. PLEDGE OF ALLEGIANCE: Commissioner Curt Smith, District 4**

Commissioner Smith led the assembly in the Pledge of Allegiance.

**D. D. MINUTES FOR APPROVAL: November 9, 2021, Regular; December 2, 2021, Zoning**

The Board approved the November 9, 2021, Regular meeting and the December 2, 2021, Zoning meeting minutes.

**Result:** APPROVED

**Mover:** Rita Pritchett

**Second:** Curt Smith

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

**F. F. CONSENT AGENDA (The entire Consent Agenda will be passed in one motion to include everything under Section F.)**

Commissioner Tobia asked for Item F.14., appointments/reappointments to be pulled for discussion.

**F.2. Final Plat and Contract Approval, Re: Del Webb at Viera - Phase 1, (District 4) Developer: Pulte Home Company, LLC.**

The Board granted final plat approval in accordance with Section 62-2841(i) and Section 62-2844; and authorized the Chair to sign the final plat and Contract for Del Webb at Viera – Phase 1, Developer: Pulte Home Company, LLC, subject to minor changes, if necessary, receipt of all documents required for recording, and developer responsible for obtaining all other necessary jurisdictional permits.

**Result:** APPROVED

**Mover:** Curt Smith

**Second:** John Tobia

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

**F.3. Final Plat and Contract Approval, Re: Aripeka at Viera - Phase 2 Developer: The Viera Company District 4**

The Board granted final plat approval in accordance with Section 62-2841(i) and Section 62-2844; and authorized the Chair to sign the final plat and Contract for Aripeka at Viera – Phase 2, Developer: The Viera Company, subject to minor changes, if necessary, receipt of all documents required for recording, and developer responsible for obtaining all other necessary jurisdictional permits.

**Result:** APPROVED

**Mover:** Curt Smith

**Second:** John Tobia

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

**F.4. Acceptance, Re: Binding Development Plan with James Eric Preece (District 5)**

The Board executed Binding Development Plan with James Eric Preece, Trustee, for property located at .26 acres, on the south side of Franklyn Avenue, approximately 320 feet east of Palm Avenue, Indialantic.

**Result:** APPROVED

**Mover:** Curt Smith

**Secunder:** John Tobia

**F.5. Acceptance, Re: Binding Development Plan with The Heather Calligan Trust (District 1)**

The Board executed a Binding Development Plan with The Heather Calligan Trust, for property located at 79.16 acres, on the south side of State Road 46, approximately 635 feet east of Turpentine Road, Mims.

**Result:** APPROVED

**Mover:** Curt Smith

**Secunder:** John Tobia

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

**F.6. Approval Re: Right-of-Way Use Agreement for the Oak Forest at Melbourne Homeowners Association - District 5**

The Board executed and approved the Right-of-Way Use Agreement with the Oak Forest at Melbourne Homeowners Association to permit improvements to be installed and maintained in the public right-of-way.

**Result:** APPROVED

**Mover:** Curt Smith

**Secunder:** John Tobia

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

**F.7. Permission to Bid Re: Brevard County Detention Center Kitchen and Laundry Equipment Preventative Maintenance Services**

The Board approved permission to bid, award, and execute a preventative maintenance service contract for the kitchen and laundry equipment at the Brevard County Detention Center; and authorized the County Manager to execute all necessary contract(s), contract amendment(s), and extension(s) upon review and approval of the County Attorney's Office, Risk Management, and Purchasing Service, and to execute all necessary Budget Change Requests.

**Result:** APPROVED

**Mover:** Curt Smith

**Secunder:** John Tobia

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

**F.8. Approval, Re: Dedication of Sanitary Sewer Easement for the Jijoco Retail Center from Jijoco, LLC - District 2.**

The Board accepted the Sanitary Sewer Easement for the Jijoco Retail Center from Jijoco, LLC.

**Result:** APPROVED

**Mover:** Curt Smith  
**Seconded:** John Tobia  
**Ayes:** Pritchett, Lober, Tobia, Smith, and Zonka

**F.9. Adopt Resolution and Release Performance Bond: Sendero Cove and Sierra Cove at Addison Village, Phase 3 - District 4  
Developer: The Viera Company**

The Board executed and adopted Resolution No. 22-002, releasing the Contract and Surety Performance Bond dated May 18, 2021, for Sendero Cove and Sierra Cove at Addison Village, Phase 3 – Developer: The Viera Company.

**Result:** ADOPTED  
**Mover:** Curt Smith  
**Seconded:** John Tobia  
**Ayes:** Pritchett, Lober, Tobia, Smith, and Zonka

**F.10. Public Transportation Grant Agreement Amendment 1, AWOS Installation at Valkaria Airport**

The Board executed and approved the Public Transportation Grant Agreement Amendment No. 1, AWOS installation at Valkaria Airport; and authorized all necessary Budget Change Requests associated with this amendment.

**Result:** APPROVED  
**Mover:** Curt Smith  
**Seconded:** John Tobia  
**Ayes:** Pritchett, Lober, Tobia, Smith, and Zonka

**F.11. Approval, Re: Resolution and Lease with the Community Services Council of Brevard County, Inc. (Districts 1, 2 and 3)**

The Board executed and adopted Resolution No. 22-003, authorizing the lease of real property to a not-for-profit corporation organized under the laws of the State; and executed and approved the Lease with the Community Services Council of Brevard County, Inc., for utilization of the kitchens and the lunch rooms at Cuyler Park, Mims, Port St. John Community Center, Port St. John, Cocoa West Recreation Complex, Cocoa, Woody Simpson Park, Merritt Island, Joe Lee Smith Park, Cocoa, and South Mainland Community Center, Micco.

**Result:** ADOPTED  
**Mover:** Curt Smith  
**Seconded:** John Tobia  
**Ayes:** Pritchett, Lober, Tobia, Smith, and Zonka

**F.12. Re: Acceptance and Authorization of Department of Health Resources and Services Administration (HRSA) Provider Relief Fund Phase 4 Funding**

The Board approved retaining the full balance of the HRSA Funds, in the amount of \$172,955.86; authorized the Brevard County Fire Rescue, Chief of Finance, to digitally sign the attestation documents; and authorized the County Manager, or designee, to sign subsequent Budget Change Requests, administrative actions, and transfers needed to cover eligible

expenses or lost revenue.

**Result:** APPROVED

**Mover:** Curt Smith

**Seconder:** John Tobia

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

**F.13. Approval, Re: Budget Change Requests**

The Board approved the Budget Change Requests.

**Result:** APPROVED

**Mover:** Curt Smith

**Seconder:** John Tobia

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

**F.1. Waiver Request, Re: Waiver of Wall Requirement for Waste Management (21WV00022)(District 1)**

Tad Calkins, Planning and Development Director, stated Item F.1., is a request for the Board to consider granting a waiver of Section 62-3202 h (10) which requires a six-foot masonry or solid wall when a development of commercial is adjacent to residential zoning classifications.

Ken Talbert stated he and his wife have two pieces of property adjacent to the Waste Management property, 245 and 255 North Burnett; he thanked the Board for allowing him the opportunity to voice his feelings on this; he expressed his appreciation for Waste Management and the job they do; he mentioned as far back as he can remember with this property, Waste Management has always done an excellent job; he also wants Waste Management to know he and his wife have no other complaints about their service; but he and his wife are in favor of the wall. He explained the reason for wanting the wall is because the trucks are geared towards a beep when they are backing up and their property is right adjacent to that; before the sun is up they can hear them beeping and honking the horn occasionally; occasionally one guy is yelling to another guy; that is usually pretty early in the morning, before the sun comes up; they think a wall would be a benefit to maybe buffer some of that a little bit; occasionally a little trash blows over onto their property, and it is not the end of the world, but it is a factor that maybe a wall would assist with that also; and the third thing is it is not just the voices and the noise factor, it is just occasionally, and it is very important to him. He advised it is not very often that this happens but he might as well put it out there, and once and a while the odor is a little tough on them; when they empty all the trucks they park them back in the area where he is at; it is natural it comes from the landfill and there is going to be some odor from time to time, but it is not a major concern; and he figured he had the opportunity he might as well throw it out there. He noted their relationship with Waste Management has been very positive as far as service goes; since the opportunity presented itself, they thought they ought to voice their opinion for the wall; they think it will improve the quality of the property; and it may have a positive impact on their concerns; and he will let his wife take it from here.

Betty Talbert stated her family has owned the land for over 60 years; as her husband had stated, they have had a good relationship with Waste Management, however over the years, they have had the noise of the trucks backing up, horns blowing as early as 5:30 or 6:00 a.m.; they believe a wall would help buffer the sound as well as any loose trash which could come this way; and because of the increase in population they are building a lot of apartments on Pluckebaum Road and she is sure the Board is aware of that. She went on to say she does

not know what the future will hold as far as the increase in employees and trucks which could adversely affect her; she would also be concerned of the negative impact more trucks and more shifts might have on the value of the property; and she believes a wall would help in respect to that. She noted if Waste Management should ever sell their company, they do not know if the next owners would be as conscientious or respectful, so they are asking for the wall for now and also as protection in the future in regards to property values.

David Bassford stated he is the representative for the applicant; as it was stated this site has been there for a while; with this proposal, just shy of 20 years ago, they came in and developed the site; as he understands it, a wall was not part of the Code requirement then; what they are trying to do now is memorialize and actually install some of the things that were permitted back in 2002/2003; there was a formal employee parking lot that was proposed over on the west parcel that has now been lot-combined and that was never constructed as either concrete or asphalt for the employee parking, nor was the additional area for the garbage trucks; and part of the reason for the request of this waiver is there is a chain link fence right now and an existing 24-foot vegetative buffer along the west and the south of the west parcel, and in talking with staff, one of the things they wanted to do was maintain that vegetative buffer for aesthetics. He went on to say they will end up losing some very large trees if they take out the chain link fence and install the wall; one of the proposals is to enhance the existing vegetation so it should help with some of the things the speakers described; however, they are not changing the existing use or doing anything different than what is there now; and instead of it being stabilized parking, they are doing asphalt parking.

Commissioner Pritchett advised she does not have any questions; she was trying to see if there was anyone who had any heartburn with this; typically she likes going with the natural buffers because it is better on the environment and there are a lot of trees there; the concern she has now is what the property is being used for; she would ask the Board to table this for one meeting because she needs to do a little more work on it; and she noted she is not necessarily for denying or approving it, she just wants to meet with staff and see if there is something that she needs to discuss differently with him.

Mr. Bassford responded if it is a matter of potential particulates and or trash, if there is not slats in the existing chain link fence, they can certainly add those; and it is not a matter of cost it is just a matter of why tear out the nice trees to just put in a wall.

Commissioner Pritchett stated that usually gives her the same struggle.

Mr. Bassford advised he is certainly sensitive to what Mr. and Mrs. Talbert said because he hates noise altogether.

Commissioner Pritchett asked if this could be tabled to the Zoning meeting.

The Board tabled consideration for a waiver request of a wall requirement for Waste Management, to the February 3, 2022, Planning and Zoning Meeting.

**Result:** TABLED

**Mover:** Rita Pritchett

**Secunder:** Bryan Lober

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

#### **F.14. Appointment(s) / Reappointment(s)**

Commissioner Tobia stated he really does not have an issue with any of the applicants, it is more of the process; on August 6, 2019, action was taken by unanimous vote, and the Board of County Commissioners imposed term limits of eight consecutive years or 10 years in a 16 year period for all advisory board appointees; there are a couple that cause some concerns for him in terms of policy; there is one and there was a note made that this committee did not meet for three consecutive years during the appointees prior term, thus an eight year term limit was not constructively exceeded; he would look at that differently; if a board is not meeting for three consecutive years, he is thinking one of two things, either do away with the Board altogether or find appointees that want to meet more often, so they can provide counsel to this Board; and he does not think inactivity is an excuse to extend term limits. He mentioned another appointee is up here who has been serving consistently since 2009; he knows there is an exception, it requires supermajority, but that requires some sort of special need and he does not know that any of the Board has advertised these and not received responses back accordingly; it is not reflected in any of the requests; with the Construction Licensing Board, he has some concerns because these people make decisions that have impact on business owners; and he does not think there should be people with extended periods of time that may render a decision that would carry on longer than those eight years. He went on to say he respects the decision that the Board made; he has not put anyone forward past that eight years or the 10 of 16, even though it has been requested; he consistently lets these people know that the Board voted in such a way that imposes term limits; he will do it, but it becomes very difficult when he says no, and these individuals run to another Commissioner to explain why they are so useful, and then another Commissioner appoints these people; this requires a supermajority vote to be valid per Section 2-213(3); but for future reference, he will not be voting for any term-limited appointee per the Board; therefore this would then have to run the table with everyone else; and he noted this is not a reflection on any of these appointees individually, it is a reflection on the Board. He noted the Board put forth a policy; it is very difficult to follow that policy and then have everyone else abjectly disregard it; he reiterated he is going to say this again because he has respect for these appointees and he greatly appreciates what they have added to this; however, this would be the District 2 appointee and the District 4 appointee who would not meet the requirements and require a supermajority. He noted the last names are Fuscas and Durham that he, in good conscience, cannot vote for it.

Commissioner Smith commented he recognizes Commissioner Tobia's concerns; he has a couple different thoughts; this particular board that he is speaking of, it is essential to have institutional knowledge in decision making; the Licensing Board does need that as it is construction oriented; he does not have an abundance of people beating down his door to volunteer for this; it is important to have people serving that have the institutional background that comes from having served for beyond the eight years; the Board is lucky in these cases where there are people who are so skilled and have such background, and are willing to serve the community for no pay, they are volunteers; and he has never been comfortable with term limits for a volunteer position, but he is extremely in favor of term limits for the elected officials. He mentioned he thinks Brevard County has 64 boards that the Commissioners have to appoint people to; he has said this before, there is not always a plethora of people that are standing in line waiting to serve; most people have a life, and routines, and it is hard to get them away from those routines to serve the community; and having said all of that, he does understand there are term limits in this particular case, but he also understands that there are waivers available and that is to the option of the Board to decide to exercise the waivers. He noted he likes the system the way it is and he will not support this.

Commissioner Lober stated he thinks there are two separate questions that are contemplated or that have been raised by Commissioner Tobia; the first obviously deals with just a straight exceeding of term limits; the other deals with whether or not to count years in which the board

simply has not met; he does not necessarily have an issue if Commissioner Tobia wants to bring forth either a discussion or action item on particular boards, if he is looking to dissolve them because they simply are not necessary; and as to the one appointment that he has, who had three years of technical service, where the board never met, he explained it was not his cause that the board never met, these people just simply show up when they are told to show up. He went on to say to have someone on paper as serving where there were no votes taken and no discussion had, he does not see that as really going to the core of what he was trying to accomplish when he put up the Agenda Item in the first place, to institute term limits; he is very skeptical as to waiver requests when it comes to certain advisory boards, but certain advisory boards have been beating his door down to get on, whether it is the TDC, the EDC, the Charter Review, or Redistricting; he had no problem filling those, but there are others; for instance the one he did ask for the waiver on, where the Committee has not met for three consecutive years during the term; and he just does not see that going toward the issue that he was seeking to remedy. He noted obviously in hindsight, people would do things differently; in hindsight he probably would have built something into that Agenda Item, going back a couple of years, to allow for that; when he sees term limit waiver requests, as to the boards that are hard to fill, he does not have an issue with that; he trusts the individual Commissioners in trying to see if they can fill them; his office has advertised for a number of different committees and some were filled based upon those advertisements; there are some that are advertised and no one requests for it; and that leaves very little choice, either do not appoint anyone or appoint the person who is still desiring to serve.

Commissioner Pritchett stated if Commissioner Tobia finds more boards to dissolve she is totally in on it; she thinks there probably are way too many boards; she is in complete agreement with that; for elected officials, she thinks that is kind of funny, the Board has term limits, but voters vote people out so that is a natural thing; when the Board appoints people, these are probably the ones that would be more concerning; the thought is it is an advisory committee, but going through COVID-19, it is hard finding people to serve on boards; and she is going to vote with the Commissioner of the District for what they feel they need.

Commissioner Tobia stated he just wants to remind the Board that institutional knowledge is not always a good thing; in all honesty it is not a minimal requirement; in fact, a board member he received an email from, if it does not border, it certainly exceeds Sunshine; the email begins, "Thank you for your response Commissioner Tobia, Commissioner Smith and I wanted..."; this is an individual who probably has been through Sunshine training, hopefully five or six times, and blatantly disregards it with this email; he knows he should not be saying this, but the reality of the situation is these people have one cardinal rule and it is broken in the first sentence of the email; and he does not always see institutional knowledge as a positive. He noted he thinks fresh blood is probably a good thing; he appreciates Commissioner Lober advertising, and he does not know that this position was advertised; he is going to continue to vote no on this one; however, more important than exceeding the term limits is what Commissioner Pritchett mentioned, doing away with some of these boards. He advised he tried this a year or so ago and he does not think he even received a second on this one; Katherine Wall, Assistant to the County Manager, has done an amazing job; he does not know if it is public yet, he thinks he said there were 50 or 60 boards, he was off by about 30, apparently there are like 90 of these boards; he would challenge the Board to go through it, sees who is on it, and if the board has ever advised this Board for anything; and he will ask again for a list of all the boards that are statutorily required, because he does not want to do away with any boards that are required by the State; but to continue to have boards with no purpose, that do not meet for years, and are not needed, is not only a waste of the members time, but it is a waste of staff time and potentially puts the Board into some jeopardy with these types of emails, that fall outside of Sunshine; and he noted he will be bringing a list back to the



Board, and tasking Ms. Wall to send that list out to all of the Board Members, because she probably already has that delineated. He advised he will continue with a no vote on this Item and he certainly understands everyone's disregard for term limits.

Chair Zonka commented she thinks the waiver is in place for a reason and she thinks it should be applied more to those boards that the Board Members have not been able to fill; she thinks that is the exception, of course; obviously the Board wants to make sure Planning and Zoning and that sort of board has members that show up; she knows that was the discussion this Board had regarding those waiver requests; she believes in term limits as well; she thinks the Board needs to give other people a chance; there are some important boards, as far as Budget and that sort of thing; she knows plenty of people would be interested in it, if the Board Members worked really hard; she knows her office works really hard to try to advertise in order to get people to volunteer for the boards; she thinks it is the Commissioner's job to argue the point, since the Board supported this, if one believes that a member needs to stay on; and yes it sounds tedious, it takes time, but if someone can justify why someone is being reappointed for the 100th time, then she will support it, but as for now she will not support any extension without a good argument. She noted she thinks District 2 has the strongest argument at this point; the board has not met in three years, and one can look at the board to see if it needs to remain in place, but the guy has not been providing any input, so it is not like he is going in biased or that the Board is tired of hearing from him; he has not served in a meeting in three years; and she mentioned she would support the District 2 appointment, but that is the only one. She noted her appointment on this Agenda Item is a new appointment because they replaced someone who did not come to meetings; and that is something her office is trying to make sure of, that the people who are on these boards are showing up.

Commissioner Smith stated he likes the idea of having the ability to remove one of these people because sometimes they do get old and crusty; sometimes they are just there because they do not have anything else to do in their life; the County needs people who show up, that are responsible, and serve a useful purpose; that is why he likes the waiver; when there is a person that meets the criteria of showing up, being the Chair, being respected by his or her peers to be elected to Chair; that says a lot for him that the people who work with that individual support what he or she is doing; that is the case with his appointee; he has been on the board since 2009; he knows the ins and outs of most of this stuff; and his fellow board members have elected him to be the Chair, again. He stated that is why he chose to reappoint him; if the next Commissioner decides that he is too long in the tooth, then he or she can remove him; there are people he has removed because he thinks they had been there too long; however, it is not the case in this particular instance. He commented that is the reason he chose the waiver and to reappoint him; he will admit some people are just there too long; and he does not feel that is the case in this particular instance.

Chair Zonka inquired if Commissioner Smith's office advertised or tried to get someone else to fill that slot.

Commissioner Smith responded negatively.

Chair Zonka noted that is the only things she does not like about it; and Commissioner Smith presents a good argument as far as why he wants to keep him, but she thinks other people deserve a chance to serve on these boards.

Commissioner Smith noted for argument sake, if he is happy with the job he or she has done, and he thinks that he or she adds a lot to the quality of the board, why would he want to.

Chair Zonka responded while that is a good argument, it is against the Board's policy; he

probably should have spoken up more strongly against the policy if he wanted to have that.

Commissioner Smith noted he does not disagree with the policy; he thinks it is an opportunity for the Board to clear out dead wood and he does not particularly think this guy is dead wood.

Commissioner Lober stated apparently it is not going to matter how he votes on this one since it needs a supermajority; he does feel kind of conflicted with respect to Commissioner Smith's appointee; he does like referring to the Commissioner in whose District the selection or vote in hand impacts; but then again he also supports the prospect of term limits; seeing how his vote does not matter, this is one of those coin-toss votes; and he will go ahead and support Commissioner Smith's decision, but it is not going to change anything with respect to the outcome.

Commissioner Pritchett commented maybe if the Board allows a little time on this and comes back to allow some time for advertisement to see if other people jump in on it; she knows Mr. Fusscas brings a lot of wisdom to a board; she does not want to disrespect him either; and she does not know if there are other people or not, or even if that board is necessary. She reiterated to give a little time to advertise and see if anyone signs up to take those places; she stated she is having a hard time finding anybody to fill boards; having someone like Mr. Fusscas who is willing and definitely brings a lot to the table; they really give the Board a lot of help with research; and that is her thought.

Commissioner Smith commented he thinks that is wise council.

Commissioner Lober noted it sounds like there are enough votes for everything except the one individual from Commissioner Smith, so if the Board wants, he can make a motion to approve all but that; he explained he is just trying to read the tea leaves; and he would be willing to support it but he does not think Commissioner Smith's appointee has the votes.

Commissioner Smith stated he does not object to advertising it; if he gets some superstar that applies, or even a good quality first stringer he would consider appointing that person; and that raises another question, what if he does not and the Board has just cut this person off.

Chair Zonka noted Commissioner Smith would then probably have a good argument as to why he should keep him on.

Commissioner Smith noted that is why he said that was wise council.

Chair Zonka stated Mr. Fusscas is probably one of the finest human beings in this County; he is smart, committed, kind, compassionate individual with a ton to contribute; and she knows it is hard to not support him.

Commissioner Smith noted he could say the same about Mr. Durham; Mr. Fusscas is an appointee of his, on a board or two and he would put Mr. Durham in that same class; Mr. Durham is not as active with the rest of the Commission, like Mr. Fusscas is; maybe the Board does not even know him; and he will be happy to advertise and see what comes up.

Commissioner Lober stated he will go ahead and make a motion; and he is not going to move to reject Commissioner Smith's appointment.

Chair Zonka noted maybe Commissioner Smith can pull those appointments.

Commissioner Lober stated it is even cleaner if Commissioner Smith pulls it.

Chair Zonka asked which appointments are being pulled.

Commissioner Smith responded R.J. Durham.

Chair Zonka asked and Mr. Fusscas, so those appointments do not have to be rejected.

Commissioner Lober responded for Chair Zonka to tell him because he thought there may be enough votes for Mr. Fusscas.

Commissioner Smith responded he thinks Mr. Fusscas should be pulled in fairness.

Chair Zonka commented that way he can at least stay in place until the Board has decides, once it has been advertised.

Commissioner Lober agreed with that; he stated he will pull Mr. Fusscas and Commissioner Smith has pulled Mr. Durham; and he moved to approve taking no action on the two that were pulled.

The Board appointed/reappointed Robert Beatty, MD, to the Emergency Medical Services Review Committee, with said appointment to expire December 31, 2023; Kerry Gardner to the Contractors Licensing Board (Non-Construction), with said appointment to expire on December 31, 2023; David Foley to the Contractors Licensing Board (General) with said appointment to expire on December 31, 2023; and Leanne Chaney and Laura Petruska to the Suntree/Viera Public Library Advisory Board, with said appointments to expire December 31, 2023.

**Result:** APPROVED

**Mover:** Bryan Lober

**Secunder:** Rita Pritchett

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

## **G. PUBLIC COMMENTS**

Charles Trapp stated he wants to talk about predatory towing: he is a recent victim; he understands that the Board is currently considering substantial rate hikes for the towing services in Brevard County; he does not begrudge anyone the opportunity to earn a fair wage, but he feels that some protections should be put in place for people that are victims of predatory towing; if the Board allows increase without monitoring the effects that predatory towing people have on the common person, it offers them the opportunity to increase that pain; and it is a financial thing. He finds with predatory towing, when someone tows a vehicle and they do not have the right to do so, and the person tries to address it with the local law enforcement, they consider it a civil matter to go to court to get one's money back, which he is planning on doing; however, when a crime is committed and someone's vehicle has been taken, people lose control of something that they own, or their private property has been removed from their possession and they no longer have access to it, that is pretty eye-opening; in Miami-Dade and Hillsborough County there are class-action law suits, and Morgan and Morgan is doing the Hillsborough County one, because they are trying to get help for victims of such practices; and in this case, he feels when a lawyer has to get involved there is something not happening with the people that set the rules. He advised maybe something can be done when rate increases are requested; maybe somebody can look at the opposite side and what is going to be the effect of the people who do not follow the rules, because there are people who

do not follow the rules; as a Brevard County citizen he just wants to put it out there that there is an opposite side of that coin; he is in the automotive business and he deals with a lot of tow truck drivers; until recently he thought they were all above board, they are all decent human beings and doing a good job; unfortunately, he has found just recently, that they are not all like that; unfortunately as he started to do some research, it is not just him, it is more of a common problem than he would have imagined; and he just wanted to bring that to the Board's attention.

Commissioner Smith stated he acknowledges Mr. Trapp's concern and he agrees with him; he can only imagine how helpless one would feel when they park legally, and when the individual comes out, they do not know if their car has been towed or stolen; when it is found out that it has been towed, now the onus is on the owner of the vehicle to their car back, hire a lawyer, pay the fine, and pay the towing fee; he agrees there has to be some kind of protections in the Board's considerations; and the Board has to protect the people.

Mr. Trapp advised he appreciates that.

Commissioner Lober stated he completely agrees that what is being discussed would be incredibly frustrating; the item that was brought forth deals essentially just with rates; and whether the Board lowers rates, keeps them the same, or raised the rates, he does not know that the rates themselves are going to necessarily impact whether or not someone is going to tow a car illegally.

Mr. Trapp commented he understands that; he has no objection to people earning a good wage; he understands the rates have been this way for quite a while; he does not have a problem with the need for a raise in the rates; there are some bad apples out there; and he thinks maybe there should be some way to weed them out or maybe if there is a process put in place where if someone crossed certain lines, then they could be taken off of the list; he knows the counties and cities call them; and he suggested, if the towing people break certain boundaries then they would no longer qualify for special treatments or services.

Commissioner Lober advised if the Board wants he would be happy to reach out to the Sheriff or Florida Highway Patrol (FHP) because they have a station not too far from his house, to see what the criteria is for getting on the list; and he thinks that may be a more direct route to resolve it through the people who are actually determining who to call for particular tows.

Chair Zonka responded in the affirmative.

Commissioner Lober advised he will follow up with Brevard County Sheriff's Office (BCSO) or FHP, and he will probably bring it back at the next meeting if he can get ahold of someone beforehand.

Commissioner Pritchett asked Mr. Trapp to check in within her legislative aide so she can get in contact with him.

#### **H.1. Creation of Proposed Chapter 46, Article XI, Landscape Irrigation, Relating to Watering Schedules consistent with St. Johns River Water Management District model ordinance - Public Hearing**

Amanda Elmore, Assistant Natural Resources Management Director, stated this is a public hearing for the creation of a proposed Chapter 46, Article XI, Landscape Irrigation, relating to watering schedules consistent with St. Johns River Water Management District (SJRWMD) Model ordinance; this is just mirroring the language and it allows the County to remain eligible

for Cost share grants District-wide cost share grants up to 25 percent for shovel-ready projects; and they are in an application cycle now.

Rick Heffelfinger stated he was before the Board last year; he really does not like when the Board mandates, or creates ordinances to try to force people to do things; if there is a water problem then that should be done; he finds that it is all about the money because the SJRWMD refuses to give any Brevard grant proposal any consideration unless it does this; to him that is coercion; he sent the Board a letter; and he is asking the Board to stand against that. He went on to say if the County needs to do water restrictions, then talk about that, but do not fold to, what he calls being extorted; he gives to SJRWMD, everyone in Brevard does, because it is a taxing authority; they take his money, they are supposed to do what is right about the water, and then they say unless people pass this law and restrict themselves SJRWMD will not give the money back; as far as he knows they will not even consider a grant; and he thinks that is wrong. He asked if that is even legal; he stated SJRWMD is strong-arming the people; they have his money and they will not give it back; maybe he has a good idea; he wanted to dig a pond on his property; he suggested the Board write up a really good proposal, ask for a grant, send it up there, and let them say no way; the Board could then talk to the Governor and say it is being strong-armed by another branch of the government; and he reiterated it is wrong. He advised he wants the Board to stand and say it is not going to do it, put the grant forward anyway, let them say no, and then go to court; he does not know if coercion is legal or not; it may not be illegal, but it is wrong; and he would hope that the Board would take that into consideration and make a stand. He mentioned he tried to throw some words into the letter he wrote because in the past SJRWMD would say they would give five extra points for the grant proposal; that used to be their policy, if people do something for them they will get five extra bonus points; that is coercion and a little sleazy; that is fine, if they would still consider the grant; now they are saying that did not work, they could not get the people to fold, so they add laws to make sure people do not water their grass more than twice during a certain period and then take it down to once; and if the people will not do it, then they will not even consider the grant. He noted if the people want their money back they have to conform to SJRWMD; what happens after they do this and accept this one, they say they will put it on the board and there will not be a penalty, and everyone's happy; but what about the next year, they get that ordinance and guess what, they put a penalty on people; and that is where this is going.

Sandra Sullivan stated she attended the Satellite Beach meeting when this was discussed; they had a different conclusion on the enforcement part, and that they were required to enforce; she does not know why that municipality, when they implemented it, had a different opinion on that; and she noted she also wants to talk about something related to this. She mentioned Florida Department of Environmental Protection (FDEP) issued information last year that their projections are the County is going to run out of drinking water to meet future demand and that the County needs to think about renewing sewage water to be cleaned to become drinking water; groundwater conservation is important and she appreciates that; she also appreciates one of the largest users of groundwater is Home Owners Association (HOA) common areas; and when thinking about strategic decisions, addressing those largest users is a way to get the most bang for the buck. She continued by saying she does not see anything in the Ordinance about running sprinklers in the rain, for example when it is pouring rain and the sprinklers are running in the HOA common areas; here are a couple considerations, adding a rain censor clause for all new development in the Planning and Zoning, requiring new development agreements to reference this Ordinance along with the rain censor requirement, strengthen aquifer recharge areas by amending the Comprehensive Plan for a stronger low-impact development ordinance for the upcoming Comprehensive Plan changes; Pinellas County for Tampa Bay have much stronger Low Impact Development (LID) components than Brevard County; and Brevard County should be leading the way with the Indian River Lagoon (IRL).

Commissioner Lober stated for the folks that are watering their lawns when it is raining, he sees it too; he thinks it is stupid and wasteful, but he does not believe the purpose of bringing this Item up today is to address things that are stupid or wasteful, it is to continue to have a system in place that allows the County to receive State grant funding; he is not saying that the ideas brought forth are not interesting ideas to debate at a future meeting on a different Agenda Item, he would be happy to talk about them, or look at any proposal that is brought up in either direction; and as far as Satellite Beach having the conclusion that they have to enforce it, he cannot speculate as to why they have a different conclusion, all he can say is County staff and legal have said there is no obligation to do anything by way of enforcement with this. He noted he would not be supportive of doing this if the County had to do enforcement, for a couple of reasons; first, he thinks it is a regulation that if the County were to enforce, actually does begin to have teeth, but if the County is putting in place some form of a mandate that has no repercussions, it is not really a mandate, except on paper, and all it does is save taxpayer dollars by allowing the County to continue to draw from a pool of money that the County otherwise would not be entitled or able to draw from; the other thing is it costs money to enforce things and if the entire goal of doing this is to save money or allow money to come from the State that otherwise would have to come from those who live in Brevard County; and it would be foolish to do that and spend money enforcing it, which would offset the gain being received from the State. He mentioned as far as the suggestion from the first speaker that the Board take a stand and bring it to the Governor after the County gets the short end of the stick from SJRWMD, anyone can talk to the Governor, anyone on the dais and anyone in the audience; it is all about the money and there is no question about that; he thinks the Board was pretty blunt about it at the last meeting when this came up that the entire purpose of this is to continue to get State grants; there are some uphill battles that he has been happy to fight; he thinks the Commission has taken some stands that would be considered uphill battles, and that is fine, but when talking about something that really has no non-frivolous cause of action for the it to even file a lawsuit about, he does not know what the Board is expected to do; and no one has even suggested a potentially meritorious cause of action that the County would be able to challenge some like this. He noted it is great for one to stand on principles but when one knows to complete certainty that nothing is going to be accomplished by filing a lawsuit, other than getting the attorneys in trouble for filing something they know is frivolous and has absolutely no chance of any degree of success, that is just not the way to go; he is supportive of this; it is all about the money; and he would rather have the money come from the State than from those who live in Brevard County.

The Board executed and adopted Ordinance No. 22-01, creating a new Article XI, in Chapter 46 of the Brevard County Code of Ordinances, "Landscape Irrigation", related to watering schedules consistent with St. Johns River Water Management District model ordinance.

**Result:** ADOPTED

**Mover:** Bryan Lober

**Secunder:** Rita Pritchett

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

Recess

The Board recessed at 9:51 a.m. and reconvened at 9:58 a.m.

#### **I.1. EEL Malabar Scrub Date Correction**

Commissioner Tobia stated this is an evolving scenario; the town of Malabar had a special meeting last night; he and the County Attorney attended but neither one spoke; he would like to

deal with a couple things that were brought up, recap where the Board was last time, and then after listening to the speakers decide whether or not to move forward with any motions; before that he wants to dispel some of the rumors that he thinks are floating out there, through partially the County's fault, and he wants to take that off the table; there is the thought by many residents in Malabar that the County is doing this merely for profit; apparently the County is selling the tonnage of trees; and he advised when the County takes the trees down, it has one of three options, leave the trees there which unfortunately creates fire issues, take it to a landfill which takes up space and is expensive, or sell a portion of the tree to offset the cost of removing them, whereas the County does not make very much money at all for doing that. He advised this decision is not a decision that is coming down to any profit margin; there was talk at the end about white vans going out there and surveying, which he thought was kind of interesting; there is some genuine concern, and he understands a little bit of that, that the County is just going to go down there and mow down the trees without a permit; while in all honesty that had crossed his mind for half of a second, and although he does not have control of that, he would absolutely never or even get close to voting to circumvent a permit that was necessary; that causes all sorts of problems with the County; if one was necessary he would never vote to disregard a permit of any legal body; and that should take those two off the table. He continued by saying, thankfully, the 100,000 tree rumor he believes has been dealt with; it is still many trees, but it is a small percentage of that 100,000 that was discussed; one other thing that came up last night that is very important to mention is that the nesting season starts pretty soon, March 1, and goes through June 30; nothing can be done during that period, therefore there is need some need to move forward; that is what came forward at last night's meeting; and he appreciates the tenor of the not only the people who were speaking on the other side, but also the members of the Malabar Town Council because it certainly did not raise to the level that staff had to deal with previously. He added he thinks things were improving, at least with the attitudes there. He went on to say to recap where the Board was at the last meeting, it, through a motion, directed Mr. Knight, EELS Director, to forego continuing public meetings; these individuals and City Council members are more than willing to contact the Board Members or show up at these meetings, as they apparently have; the County has rescinded transferring the Malabar Scrub Lease to the Town of Malabar; it agreed to install a six foot chain link fence; and then instructed the County Attorney to reach out to the State for directions and possible other actions to take place; and the reason it is coming back is because he made an error and said February 24 instead of January 24, though he did say immediately after the Special meeting, so he misspoke. He mentioned his error was understood by the town; in fact in the meeting notes for last night, they have a timeline and in the timeline they got the intent correct where they put down January 25; there will be a motion dealing with that, a slight change instead of a chain link fence, it will be a barricade; it would be January 25 and he does not want anyone to think he is springing this on anyone, it was his error and the town was aware of it by their own accord; and he noted with Chair Zonka's approval he would like to listen to the speakers and then potentially make motions based on what is presented by the public, as well as potential members of the Town Council.

Commissioner Lober mentioned this is one of those Items that the last time it came up he did not speak; there are four things that he wants to mention; first is the conspiracy theory that the County is doing this to make money on selling the trees; he does not know what it is with trees and conspiracy theories but they are all over the place; Commissioner Smith can certainly relate to that; he and Commissioner Smith had received a nasty letter from an attorney about the tree issue on Rockledge Drive where it was suggested that the County was trying to butcher the trees to reduce the value of the properties so when septic was placed in there, if that comes to pass, that the eminent domain and acquisition cost would be lowered; just crazy stuff; and trees and conspiracy theories seem to go hand to hand, and he does not know why. He continued by saying that he does not know if the County recovers some of the cost of

dropping the trees and going through this process by virtue of selling them, that it would be in the net positive; he is not sure if staff has a strong opinion one way or the other; he would think the County would recover some of the costs by selling the trees but he does not know that it would even cover the cost of dropping them; and he asked if staff knows.

Tad Calkins, Planning and Development Director, advised staff does not know; they have not run any estimates on that; but they think if there is a profit it would be very low.

Commissioner Lober continued by saying the County may be in the negative nonetheless, it does not sound like there is a huge profit incentive; the emails that he has received have frankly pushed him more in Commissioner Tobia's direction than he was at the last meeting, just based on that fact that there is a ton of misinformation out there; one of the emails that he thinks everyone on the Board received, said that the County was looking at removing 140,000; that is about 10 times as much as staff told him; he thinks the number was between 10,000 and 20,000 that he heard from staff; and why not go to 1.4 million, if one is going to make it up, then make it big. He went on to say when people came to the last meeting to discuss the issues and why this is necessary, they mentioned the Cooper's Hawk; he was thinking about it afterwards and it occurred to him that he does not think there is any sort of agreement with the birds of prey whereby they are going to stop eating the Scrub Jays while this is being debated and discussed; he cautioned everyone that whatever is done there is a time line; the land exists because there is a threat to the population there and if the County is just twiddling its thumbs, potentially waiting months and months for another governmental entity to do the right thing, or stop doing the wrong thing, the Cooper's Hawks are going to continue to munch and nom on the Scrub Jays; he does not think that is the way to do it; and he thinks whatever is going to be done, it needs to be in the near future. He stated he is not just looking at this from an environmental perspective, but first and foremost, from what benefits his constituents in District Two; EELs property and funding exists, not to provide additional money for Parks and Recreation facilities; it is not a goal of EELs to essentially increase recreation at the cost of environmentally sensitive actions or environmentally beneficial actions; there is a reason that the property is named what it is named, there is a reason that it was designed and envisioned when the funding was produced, and that was to keep the Scrub Jays in an area where they are able to do what they do, survive, reproduce, and continue to exist for a period of years; therefore, it is not lost on him that people are talking about other usages of the land, are talking about usages that were not the primary use envisioned by the funding that set this aside in the first place; and he will leave it at that to see where this goes.

Matt Stinett stated he is the Town Manager of the Town of Malabar; he is in attendance after direction from counsel last night to ask the Board to direct County staff to work with him to get the permit issued for the tree thinning in the Malabar Scrub Sanctuary; at this time the County does not have a valid permit submitted to the Town of Malabar; he believes that is partially because of the town's permitting requirements, which were changed last year, and were not intended to deal with conservation type work; they are a bit excessive for the type of work that Mr. Knight has proposed; and last evening's Planning and Zoning meeting he was directed to address that for future projects; and council wanted to focus on getting this project through because of the tight time line the County is on, so he was given the leeway to negotiate and talk with County staff on modifying those permit requirements for this project, specifically. He mentioned at a previous Town Council meeting, Mr. Knight had informed the Council he was going to be holding some public workshops on the project to try to find some kind of balance; of course those were cancelled; Council was looking for those results in order to make its decision on modifying the permit for last night; since those meetings did not happen, this was the only action they could take; and he believes Mr. Knight can attest that collaboration and good faith is his mode of operation. He added he has had a positive working relationship in the past, prior to



this; he has personally been out of the State for military duty for the past year and was not a part of the process of putting this together; and he thinks there is an opportunity here if everyone could just hit the reset button and he could work with County staff to get a permit in place so the County can begin its work.

Commissioner Tobia stated he is certainly not attempting to be adversarial and he does not want to treat him in such a way that County staff was treated when they went over there; he mentioned it was not by Mr. Stinnett personally, but by other people that he may work for or with; he heard certain things by Mr. Stinnett's board and he has a question; and he asked if the primary concern of the Town and the elected officials is the trees or the Scrub Jays.

Mr. Stinnett responded the primary concern of his Council was more the lack of public input; obviously the sign went up, there was a permit that was submitted last year, and he does not think it was fully understood what level of project this is going to be; Council received a rash of concerned citizens wanting to know what was going on; Council raised a flag and asked what was going on; and there has been a lot of misinformation going around, which has led to heated conversations on both sides.

Commissioner Tobia asked Mr. Stinnett if he does not believe that the December 6, 9, 17, 20 and January 3 meetings, all open to the public, were enough.

Mr. Stinnett noted there has been a lot of public engagement since then.

Commissioner Tobia asked if he is arguing it has not been enough.

Mr. Stinnett noted he is not saying that now; he thinks it has and he thinks that is why Council has given him the direction to essentially color outside of the lines for this project.

Commissioner Tobia stated he appreciates the position that Mr. Stinnett is in; he thinks he is doing a very good job weighing the two; there was talk on Mr. Stinnett's Council about a compromise and he believes the talk was they, a couple members of Council and actually a couple members of the public, were okay with cutting down 99 percent of the trees; and he asked if Mr. Stinnett recalls that.

Mr. Stinnett responded affirmatively.

Commissioner Tobia commented he understands that Mr. Stinnett is probably going to be under direction of these people, and he asked, if the one percent of the trees that they want to keep up, and his primary concern is that of the Scrub Jay population, is there any scientific basis for the decisions of those one percent, when it comes into consideration of the Scrub Jay population, or will the one percent be for recreational purposes.

Mr. Stinnett answered the 99 percent number is a speculation; the truth behind it is they are very close; the Trails and Greenway Committee members are in attendance to talk about it; but he thinks that is the reality they have all come to after the public engagement that has happened over the last few meetings; and they are really talking about doing the same game plan and just want to make sure the County is not just cutting trees without purpose; there may be a few trees in there and maybe Mr. Knight knows exactly what trees he is cutting down, however he does not believe that Mr. Knight had specifically identified every single tree that he is going to cut down; and he mentioned they just wanted some involvement in it and he thinks they have had that and are very close to being on the same page. He added there needs to be a conversation on the technical aspects of it.

Commissioner Tobia stated he may disagree; he thinks the level of involvement has been above and beyond; he greatly appreciates Mr. Stinnett being there; he is doing a great job given the situation that he is in; he thanked him for showing up; and noted he does not want anyone to think the Board treated him in a bad fashion. He mentioned he is very cognizant of the feelings of staff members that work within parameters; and he thanked Mr. Stinnett for his service.

Commissioner Pritchett thanked Mr. Stinnett for being brave enough to show up; she stated she wants to establish that this is Federal property and the County has been given the responsibility of caring for this property and the stipulation of bills; she knows Mr. Stinnett knows the County's goal is to try to do what it was told to do by the voters, as far as protecting the Scrub Jays because it was purchased for the Scrub Jays; and she knows that is not in the argument. She noted the County did have a permit to do this and the Town of Malabar had given the County that permit; she knows Mr. Stinnett understands the County had to go after funding to try to finish out what it needed to do on the property; before there was an agreement to do this project without a lot of pushback; it is not like it is a new thing, it has been out there for a long time; she has a concern now, that it almost looks like the City is trying to make a little more money off the County with a new permit because there is more of a cost to take down trees; and she asked if the City Council denied the extension of the permit or if that was administratively done.

Mr. Stinnett commented it was administratively done because the permit was expired for over three months.

Commissioner Pritchett stated typically with counties and cities that can happen; and she asked if he is allowed to administratively extend it after he has time to digest this a little bit; and she inquired if he is able to go back and extend this permit.

Mr. Stinnett advised no he does not have that administrative authority because once it is expired it is invalid and he cannot extend it.

Commissioner Pritchett advised that leaves the County in a pickle for something it had already established it was going to do; Mr. Stinnett has to understand the County's point on this; there is a lot of, what looks like, things were not done properly from her eyesight; the emails the Board is receiving, they are primarily concerned with it being a park and recreation area; that is her interpretation but she does not live there; and she does not think this property was ever purchased to be a park and recreation area, the County has plenty of those. She noted she is interested in where Commissioner Tobia is going to lead the Board on this one; she thinks this really needs to be fixed soon; and she is concerned with the Scrub Jays because it has been made a vital piece of property as far as their ability to survive.

Commissioner Lober stated he will echo what Mr. Stinnett has already heard about appreciating him being there and if he had to pick someone else's shoes to fill today it would not be Mr. Stinnett's; with that said, Mr. Stinnett has a job to do and the Board has a job to do; he is having a hard time trying to understand a few things; Mr. Stinnett had eluded to looking for tree level specificity from County staff as to which trees they want to remove; he has a couple concerns with that; first the County already had a permit, and he understands the process has changed down there, but it was not needed a year ago and magically it is so important that it is mission critical full hold/full stop condition precedent to moving forward now; and it just does not strike him the right way. He continued by saying he is curious on a couple things; one, he heard, unlike the 140,000 that was floating around, 10,000 and 20,000 trees are involved; he

asked what kind of specificity he is looking for and if it is okay if staff circles an area that has a clump of trees or if he would like them to tag each of the 10,000 – 20,000 trees in some way; and he noted he does not know if that is reasonable.

Mr. Stinnett noted he agrees with Commissioner Lober on that; that is kind of where Council did not have the consideration for EELs, when they were developing the current permitting requirements; he was looking for a tree survey that would identify each of the trees that were cut down specifically; now Council has given him the direction to not require that; he needs to put together some type of requirement for the permitting; and he knows his crew with Trails and Greenways has worked very hard on identifying specific trees or areas that they would like to save, and he thinks they have communicated that to Mr. Knight in the past. He noted that was not an option for him until last night; and now he has been given the authority to go and actually negotiate those terms.

Commissioner Lober mentioned Commissioner Pritchett brought up an interesting item and if he misspoke it is not the end of the world; this is not the most enjoyable spot to be in; he is sure everyone single person has said something in error at some point in time; he had gathered from the line of questioning that Commissioner Pritchett had for him, that the initial permit the County had, where it had an extension request that was denied, the denial was administrative, and in a little follow up back and forth with her, he had taken from that, that once the permit expires it is his position that he cannot administratively extend them; and he asked if Mr. Stinnett can only administratively deny.

Mr. Stinnett responded affirmatively and noted that was his take on it.

Murray Hann stated he just wants to add a little detail to it; the Malabar Greenways and Trails Committee learned about this when the signs went up; he understands there was a Selection and Management Committee (SMC) meeting in February 2021; he was not there, therefore, he did not understand that this was underway or they would have worked on it a little more over time; part of it has gotten compressed in time; the Greenways and Trails Committee had sort of an immediate meeting and he got the assignment to bring back to them, what is being called a compromise, but he thinks that is a bad choice of words, because what they did was, after talking with Mr. Knight and others, he thinks they understood the rules that they were trying to apply to get better Scrub Jays; and the rules were one to two trees per acre maximum, over 15 feet tall, get rid of screening trees, closer than 1,000 feet to prime habitat. He mentioned in that 1,000 foot it seems a little fungible, depending on the size of the property; they went and started looking at that because someone might have heard 99 or 98 percent of the trees; Greenways and Trails never wanted to try to tell the EELs Program how to manage its own property, although they have tried to influence a little bit, the trees that are around the trail; and some of those compromises have potentially led to some of the issues that Mr. Knight can talk about with screening trees. He went on to say they looked at what EELs was trying to do and at how the edges of a property often have tall trees on the private property anyway; if there is a clump of trees right up against 60-foot trees on private property, why not leave those; they tried to look at rational ways to leave some woods that did not affect the environmental goals, and they put quantities to that; they said area A has about 40 trees in it; and Mr. Knight and his staff had already identified three or four to save there, but it has about 40 trees. He stated then they looked at the entire property and they are till at 1.4 trees per acre for the entire property; if some are strategically located up against Country Cove, a few in a wetland so that they are not looking at a burn area, they have a small 30-foot wide screen of trees; they looked at those kinds of numbers and tried to strategically balance and meet their goals the best they could while still leaving as much as they could for the trail users; when there was a long north-south that was running through prime habitat, they told them they understood they are going to have

to take those trees down; that does create the screen that the County is concerned with, and they are not fussing at that; and that was the goal.

Andrew Thompson stated he is the Chair of the Trails and Greenways Committee for the Town of Malabar; they have learned a lot in the last two and one-half months; he knows more about Scrub Jays now than he did then; he knows the Board has enjoyed this, it is a little entertaining at times; there has certainly been some miscommunication on both sides of this; he thinks the board may be more aware at this point that the Brevard citizens in 2004 last voted for the \$60 million referendum which is coming up again in 2024; and when they voted, they voted for passive recreation among two other things, and that was protection of habitats, for natural habitats, obviously for the purchase of lands, and then education on environment. He noted they are not against any of that; they have always worked well with EELs; they feel they have tried to work with them because, at times, they need to work with them, they are the trails people; there is a major trail system there with some eco-tourism; it is certainly why people buy, purchase, work, and live in this part of the County; he knows the Board has received a lot of communications on that; and what Mr. Stinnett basically explained is that Council has listened to the Trails and Greenways Committee, they are an advisory committee. He went on to say he likes the trails, he is into trails, and he thinks it makes people chill-out; he thinks it is critical that the Board recognizes the Greenway; the fact that there is an urban forest and it is where people go to play outside and take their kids to see real woods; they are not trying to protect all of the woods; they fully acknowledge the science behind the Scrub Jay protection and why certain areas are designated for that; what he does not think the Council recognizes is that the voters have a different perception of what EELs is about; and he thinks another thing that needs to be acknowledged is basically, over the years, what has happened is, the forest was there, trails were built, there were trails before it was purchased, but people have built up; and that part of the County has a tremendous amount of people visiting this area, and those are the people that are worried about the trails going away or the trees going away. He advised what Trails and Greenways has come up with by studying the planning, and they understand the distance from trees as Mr. Hann has mentioned, some of this area does not allow 1,000 foot whether they have anything done differently or not; the thing is, they understand that there needs to be minimal trees for the predator birds to hang out and take out the Scrub Jays; they are not against that; they have a plan that they feel balances the intent of the scientists from the SMC; they have been to virtually all of the meetings and seminars, since they knew about this, shortly before Thanksgiving; and they have a plan of balance that they wish the Board would consider, and Mr. Stinnett's authority to talk to County staff is there.

Mary Jane Russell stated she walks the trails every day; she knows there is a lot of misinformation, but she is going to provide information that is not misinformation, it is the truth; about eight years ago, she was walking on the boulevard right off of Malabar where the firehouse is, and it was February; the person she was walking with mentioned the Scrub Jays and the trees were full of them; people could put their hands out with a nut in it and they would jump in a person's hand, take the nut, and fly away; that was not unusual because they did it several times; the trees were full of Scrub Jays; and she reiterated that was eight years ago and she is not making that up. She went on to say she does not know what happened; she knows that area has been burnt twice since then; she knows that she walks there every day and there are no Scrub Jays that she can see; she knows they burnt down Jordan and when she walks down there, there are no Scrub Jays; she asked what happened to them, and if they went somewhere else, because if someone burnt her area down, she would not come back; she mentioned she knows she loves walking the trails; if the Board members have not walked the trails, they really should; it is a place to go where people do not have to worry about their budget, how one's hair looks, and it is so peaceful and wonderful; and she advised she sees less and less of other birds and tortoises, but she does not know why. She stated she heard

there was a meeting last night and she heard the word compromise; she asked compromise what, if they are going to cut down some trees, and the Scrub Jays need certain trees like oak trees for the acorns, then cut one tree down and plant three of the ones the Scrub Jays need; she asked why cut them all down and burn everything up; she noted she just does not get it; it is such a beautiful area; and she suggested if anyone has not been there to go there before they burn everything down.

Susan Hann stated there was a very robust discussion at the Council meeting last evening; she would like to ask for the gift of time; there are some people who have been very actively engaged in trying to work with the science-based parameters and believe that they have some good ideas; they have presented them to the Selection and Management Committee; they would like to have some time to work with County staff and SMC to see if they can get to a place that demonstrates intergovernmental cooperation; this is important to the Town of Malabar, the County, the Scrub Jays, and the trail users; and she has always believed that there are ways to get to a place where everyone meets their goals. She reiterated she would really appreciate a gift of time so they can work with County staff and reach a plan that works for everyone.

Mark Britt stated his property backs up to the sanctuary and this whole thing has him petrified; he uses the sanctuary just about every day, jogging, taking the grandchildren, and biking; he has been over to the Jordan sanctuary and that is the first photo he provided to the Board Members; he mentioned that photo was taken after they did the last restoration; he knows they have a job to do; everyone appreciates the EELs Program; compromise is a good word; but if it were up to him, he believes there are five families of Scrub Jays in there and the goal is to enhance their being in there. The one thing he wants to point out in the Jordan sanctuary, is it still smells like a burn site; it was quite a while ago when they did the last burn in there; there was one done in December; and if this is what he is facing in his backyard, he wants some help because he knows they use chemicals to start the fires, there are plants in there that burn black; and basically it means he will not be able to sit in his own backyard if they do a burn close to his property.

Annalie Harvey stated Greenways and Trails Committee is a committee of volunteers; they spend their time without any pay or compensation, because they love the town and the trails; that is what is in the Malabar Scrub right now as well as the Jordan Scrub; it is the trails not park and recreation it is passive recreation; she used to take her kids down the trails when they were little; they liked it very much and learned a lot going through it; now she is an equestrian and she takes her horse down there; and she is very close to the Jordan Scrub. She noted she used to ride down there all the time and she was dumbfounded in the spring when all of the sudden there are no more trees, or barely any trees; she could see from the west end of the property all the way down to Harris which is the east end; it looked like a parking lot with trees on it that was burned; the lakes that were usually a great attraction with the palm trees and the shade, they are bare; she understands the EELs Program and the Scrub Jays need protection; and she is all for that. She commented her issue is the radical cutting down of everything; in the Malabar Scrub there are a lot of areas that are usable for the Scrub Jays to eradicate; take the trees down there for the Scrub Jays; but a lot of the trees that they are talking about that they would like to save are on the outskirts of the Scrub and border private property anyway, where there are huge trees that they will not be able to touch, so it would not make that big of a difference to just extend the tree line a little further into the Jordan Scrub; and the other thing, as far as miscommunication and rumors, she thinks that is a big lack of communication. She noted she knows there were a lot of meetings on this subject; she has been on Greenways for four years and she never heard anything about what they were planning in Jordan Scrub; they are volunteers and she has a job; she would have expected a notification, an email, or a

representative to show up and tell them about it, and provide a real picture of the extent of it; she heard a report on the news about 10 or 15 trees that were supposed to be removed and eight to 10 bikers that would have an issue with it; this is what the public hears; and that is what a normal person, that is not with the County or part of this, gets to hear and that is a big misrepresentation. She commented she would hope the Board would compromise.

#### EEL Malabar Scrub Date Correction

Ryan Chonka stated he is in attendance as user of the many trails and on behalf of the many bikers and hikers; he grew up in Broward County but currently resides in Melbourne Beach; he is new to the area; he absolutely loves the sanctuaries and the trails are spectacular; there is a fairly sizable number of people that have expressed interest and concern in this; and as of 7:30 a.m. they had approximately 381 signatures.

Chair Zonka asked if he knew the title says, "Stop the Destruction of Malabar Scrub Sanctuary" because it sounds like they are destroying the habitat; that is just so the public is aware because the public does not get to see this; and she advised that is a little misleading, and asked if he agrees.

Mr. Chonka replied he has to point out that this is not his petition; he did not start it or word it that way; and he apologized for that title being misleading.

Chair Zonka stated she had not started Mr. Chonka's clock but she always criticizes people for interrupting, but she was a little taken back by that because it is not really an honest title if one were to ask her; and now he has three minutes.

Mr. Chonka stated he comes as a user of that sanctuary and the trails; it really is a stunning place; he thinks it is one of the only deep woods recreation areas that people have easy access to in the community; he asked the Board to bring the Town of Malabar into the fold and be able to work with the County on a proper course of action, to make sure the Scrub Jay population is accounted for; also for the people who recreate there and enjoy the environment to be accounted for as well; and if an environmental impact survey is feasible that may be an option as well, to determine if the actions being proposed would actually have the impact that is intended.

Chair Zonka asked if he has the language for the petition.

Mr. Chonka responded no, but he can bring it up.

Chair Zonka explained she only asked because she would sign that because she would not want the destruction of the Scrub Sanctuary, if she just read the title.

Commissioner Lober stated Change.org can be signed by people anywhere in the world; and he asked if Mr. Chonka knows how many of the 381 live in Brevard County, Malabar, or even in the State of Florida.

Mr. Chonka replied he does not have those metrics, he would have to default to John Windchill; he is actually the person who put the petition together; and he noted he is there speaking on his behalf because Mr. Windchill could not be there.

Chair Zonka apologized for asking Mr. Chonka so many questions, but she noted he was the one who brought it forth.

Oli Johnson stated he has heard all of these other voices as an advocate for the Scrub Jays; he was a naturalist park ranger at Turkey Creek sanctuary for a long time; he is also on the Scientific Management Committee for EELs, but today he is there to speak as a citizen of Brevard County; the Malabar Scrub, Cameron Scrub, and east and west, is not a large area; it is not thousands of acres, if it was, this would be a legitimate thing to save some of the trees; it is not, it is just a small little postage stamp of Scrub in the midst of all of this development; people like to build their houses near the Scrub because it is high and dry and does not flood; people do not want to build their house in a swamp; and Scrub is a valuable, disappearing habitat in Florida. He went on to say the science says the trees have to go and the land has to be managed; there are lots of trails, so removing some of the trees and burning is not really going to affect it; the bottom line is they have to save the Scrub Jays because they are going to go extinct; science says they are going to go extinct on the beach side, in the north part of Brevard, and the south part of Brevard is the only place left that has enough Scrub habitat to support the population; and seeding the Sanctuary to the Town of Malabar would create a bad precedent because they are not capable of managing the property for the Scrub Jays.

Eva Nagymihaly stated she is a resident of Brevard County for 19 years; she came from Miami and she is glad she did; she does not live near Malabar and she has never been to this beautiful area; she does have a main concern, mostly because she is hearing commentary from the Board who she put as the legal people in charge of what is important to the people; what is important to the people is the EELs; the land is also endangered; this 477 acres that is being discussed; and she does not care how many trees, 10,000, 20,000, or 100,000 that the County wants to take down, she is concerned about taking down trees, as well, that is part of the land. She mentioned not only are the birds, the owls, the cougars, all of them are of the environment and people are concerned about it; if the people come up late and they were not following it all along, they expected the Board to follow if for them; her heart goes out to every tree, every animal, and every person that is concerned like she is; there is some form of compromise and something must be done; EEL is there to manage not just for Scrub jays; whoever decided that this beautiful area and beautiful paths is now going to be leveled, why did they not do something else, or sell a large part of property to a developer who gets to mitigate, he gets to buy somewhere else, and then he gets to build his apartments and stickup a little palm tree; and she does believe in development, she is not saying anything against it. She advised the Board that it is responsible to take care of what the County already has in nature; she asked that it not decimate the country just because it has a permit to do it; the permit might be legal, but is it the right thing to do; and this is where she has her major concern. She mentioned people do things that are legal and follow the science, but guess what, there are a lot of scientists out there with a lot of ideas; here is her idea, figure out a way to compromise this, save certain trees on the border areas so an owl can sit; pine trees are great trees, she does not want just certain trees saved; she wants the Board to save what it can and for it to do what it needs to do to help everybody; and she explained she is really emotional about it because she sees all these trees being taken down and all these apartment buildings that are going up, with no trees on them.

Commissioner Tobia stated he heard a couple things, the first one is time; he thinks time is a red herring here; at last night's meeting there was talk about how long the process would take; the board made the motion to send it back to Planning and Zoning; the response they received from staff was somewhere in the neighborhood of three to six months; best case scenario pushes the County into the nesting season; and there really is not that time if this is the intent, to help out the Scrub Jays. He went on to say, second, he heard about compromise; he heard shade, bike trails, horse trails, views, backyard, and these are all nimby arguments; what he did not hear was any science; he did not hear any environmental engineer or anyone point out that having a certain tree of a certain species would not have an adverse impact on the Scrub Jays;

and it is unfortunate, but the motions he has are as follows, and he does not mind discussing them, but he would like to make them individually. He went on to say the first is to reflect the deadline for the Malabar Town Council to comply with the County's request for permitting as of January 25, 2022, instead of February 25, 2022, that is approve the immediate installation of temporary barricades at the close of business on January 25, blocking access to Malabar Scrub Sanctuary and bill the Town of Malabar for any costs associated with the maintenance or replacement of temporary barricades; that was the intent last time but he messed up on the month; and that was his fault, however, the Town of Malabar was aware of that. He continued by saying, secondarily...

Commissioner Lober asked if this is the same motion or separate.

Commissioner Tobia advised this will be a second motion.

Chair Zonka asked if he wanted to wait until everyone is done talking and bring them back or is he going to stop with each one.

Commissioner Tobias asked how she would rather he proceed.

Chair Zonka noted she has a question on the first one; and she advised the County does not have a submitted permit application right now because it was denied; the County needs to resubmit if it is required; that is a question for the County Attorney; and she asked if the County is required to even have a permit based on the fact this is not commercial property or residential property.

Attorney Jorandby advised this is getting into some issues that have been looked into as far as pursuing legal action, which the Board directed her to do at the last meeting; one of the questions is whether the County has to apply for a permit in this case; they have applied for the extension under the old permit, under the old code; as far as the new code, at this time, she has advised staff to refrain from applying for a new permit because that would possibly jeopardize some of the County's legal action in the future; and as far as the motion, at this point in time, the County did apply for extension but did not receive that under the old permit, which was the permit the County could have done the work under. She noted at this point, she would be concerned moving forward in applying for a new permit unless the County had something fully worked out with the town of Malabar; if that occurs as far as the new parameters, under the new Code, about the survey and the costs, maybe the County could pursue that action; however, without any distinct details in writing from the Town, as far as any waivers that they may have authorized the Manager to do, she would be very concerned to apply for a new permit. She mentioned that could be one of the County's challenges.

Chair Zonka commented because the County does not have an existing permit, it is hard to say to approve this, if there is nothing to approve.

Commissioner Lober interjected what about asking the Town of Malabar to reconsider.

Chair Zonka and Commissioner Pritchett asked if he means reconsider the old permit.

Commissioner Lober responded affirmatively.

Commissioner Tobia explained the Town of Malabar certainly had the opportunity to do that last evening and there was no discussion of that; he certainly does not expect staff to make that decision in a million years; listening to the tenor of the board it was not anywhere near as



negative as it had been in the past; there were a couple comments by a different town councilman that talked about making the County pay, and it did not get to painful, but it got into the County paying millions of dollars; and with that being said, even if there was a waiver, it would put the County past the deadline, but their account, not his. He noted the reason he did not bring it up was for the County Attorney; he does not know if the County necessarily recognizes their authority to provide it with said permit; there is going to be a motion that follows that motion that the County Attorney may want to talk about, that would give the County additional avenues; but these can be done concurrently; and that is why he was doing it altogether, but he is more than willing to handle it separately at the discretion of the Chair.

Chair Zonka asked what is the Board's desire.

Commissioner Lober noted he would like to break it up if that is okay, that is what he prefers.

Commissioner Pritchett explained this land was purchased for Scrub Jays and that is why the County used the voter referendum dollars to purchase it; that is the primary purpose of it; when she voted for EELS, she did not vote thinking to have a nice recreation area; they are a nice side thing, but the main thing is for the habitats of endangered species; this was primarily for this endangered species; whether or not that is something that will be done in the future, she does not know; however, that is what this land was voted for. She continued by saying she has heard a lot of people talking about the County not doing what the voter's purpose was, but it absolutely is; that is how she interpreted it now and when she voted for it; it is for protecting the species; she would not be against having the meetings come back for discussions, but only if the Town reinstates the County's permit; she does not think it is fair that the County has to go permit again and spend \$40 of taxpayers money, to do a project that needs to be done for State property that the County has spent \$1.6 million on trying to maintain it, out of taxpayer's dollars; she does not like the feel of this coming from the City; and it gives her great concern that the permit was denied. She advised it could have been agreed upon and they could have come in and had discussions; she thinks the County is very good to the cities; the County is always open for discussions and listening; nobody has an Agenda outside of doing what is good for this public purpose; she has concerns with that and she also has concerns that this has been through the EELs board which these people put all this time into by NASA science coming in to say this is what needs to be done with this property for the Scrub Jays; and she advised Commissioner Tobia that she will support his motion. She stated she hopes the Town will reinstate that permit; the County would have reinstated their permit, and the Board would have allowed that to happen for them to have more time to get the funds together; this is not a new subject, it has been going on for over a year; it is not like the Town did not know this was going on, it did; there could have been discussions going on for a long period of time; and she noted she is kind of thrown back because this is not a construction project, it is property that the County is trying to maintain for its primary purpose. She advised no one is doing this to be mean, no one is trying to take out trees that are really necessary to have in there; she reiterated the purpose of this property is to keep that Scrub population; these birds are almost extinct; and she reiterated she will support the motion and she hopes Commissioner Tobia has some other ideas of what to do to help facilitate this project.

Commissioner Lober advised he is going to support almost anything that Commissioner Tobia suggests with respect to this as long as it is consistent with where he has been during both this meeting and the previous meeting where this was discussed; one of the speakers mentioned eight years ago that Scrub Jays were essentially everywhere and now they are nowhere; that is exactly why the County does not have the time to continue to have additional meetings; the bottom line is they are talking about pine trees; he has never in his life heard anyone suggest that pine trees are at risk of going extinct; Scrub Jays are a finite number, unlike pine trees; the

County is not looking to develop the property, the County is simply looking at maintaining it for the purpose that it was acquired; and he is going to support almost anything.

Chair Zonka noted she has a question for Mr. Knight; moving forward with the project as it stands, as the plan is now, does not impact the trail usage of the recreation user; and she asked if that is correct.

Mr. Knight responded affirmatively.

Chair Zonka mentioned it impacts the shade, the scenery, the picture, and the view, but it does not impact the use of the trail; and she asked again if that is correct.

Mr. Knight responded in the affirmative.

Chair Zonka commented she thinks she asked this of Mr. Knight at the last meeting, but she wants it very clear for the public; as far as voters perception of what this is about, and how the voters voted for passive recreation, the County is not taking recreation away from them; this Board ultimately is deciding what is more important, and she believes Commissioner Pritchett brought it up at the last meeting and this meeting, this property was purchased for the Scrub Jays; and whether people believe it is a good idea or not, really is not the point, this is what the voter's intent was. She went on to say in a perfect world the County and the Town would find compromise, but her concern, and what she has heard is the compromise is a big ask; if the County compromises too much it could potentially impact the project; she does not want to do this only half way; she wants to make sure what this Board does has a lasting impact for years to come; and her compromise is not to make sure that people have a nice view when they go riding their bike or walking, as lovely as that is. She stated there are a lot of places on the trailway where people get that visual that they need; this does not impact access; what she has always said about EELs property is she wants the public to have access and for the County to be able to maintain what is purchased; she thinks this accomplishes that; and on top of that, it accomplishes the intent to preserve the Scrub Jay population. She advised she is in support of Commissioner Tobia's move forward.

The Board approved modification of the January 11, 2022 motion to reflect the deadline date for the Malabar Town Council to comply with the County's request for permitting as January 25, 2022, instead of February 25, 2022; approved the immediate installation of temporary barricades at the close of business on January 25, 2022, blocking access to the Malabar Scrub Sanctuary; and directed staff to bill the Town of Malabar for any costs associated with the maintenance or replacement of the temporary barricades.

**Result:** APPROVED

**Mover:** John Tobia

**Secunder:** Bryan Lober

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

#### EEL Malabar Scrub Date Correction

Commissioner Tobia stated this was done in concert with the County Attorney's Office; there were some unique and very interesting ideas that the Board may or may not want to ask the County Attorney at this point; and the motion is to authorize the County Manager, or his designee, to execute any and all necessary documents regarding the effective management of the Malabar Scrub Sanctuary, including making applications to appropriate authorities pertaining to the classification of the property.

Chair Zonka asked if he can talk a little more about that and explain the purpose.

Commissioner Tobia advised he does not want to go to in depth in it; and he thinks maybe it would be better for the County Attorney to answer that question.

Attorney Jorandby advised the County is in the position that it could pursue designation or classification of the property which is one thing and staff would like to submit an application at this time; they would like the County Manager to do that; and that is one option for the property.

Chair Zonka mentioned she thinks she spoke to the County Attorney about that.

The Board authorized the County Manager, or his designee, to execute any and all necessary documents regarding the effective management of the Malabar Scrub Sanctuary, including making applications to the appropriate authorities pertaining to the classification of the property.

**Result:** APPROVED

**Mover:** John Tobia

**Secunder:** Bryan Lober

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

#### EEL Malabar Scrub Date Correction

Commissioner Tobia continued on by saying there is one more action and that would be to direct the County Attorney's Office to bring back to the Board a resolution initiating the normal process outlined in Chapter 164 of Florida Statutes. He mentioned there is one point for discussion; Commissioner Lober has a law degree and there is an "or" in this and he would go with either one of the two options; both of them came from the County Attorney's suggestion so they have been vetted; and the option is with findings of an immediate danger to the health, safety, or welfare of the public exists requiring immediate action to be taken and/or that the County legal rights will be compromised if immediate legal action is not taken.

Commissioner Lober noted the Board may need a supermajority for that.

Attorney Jorandby advised that would be for her to draft a resolution which she would be bringing back to the Board; and at that time there would need to be a supermajority for the second option.

Commissioner Lober asked what his preference was.

Commissioner Tobia advised he is not an attorney.

Commissioner Lober stated he would go with option 2; and he asked Attorney Jorandby what she thinks.

Attorney Jorandby advised under Chapter 164, the County is required to do the dispute resolution process; there is that second option to expedite it and actually bypass the process; her recommendation would be to bring back a resolution, if that is the option of the Board today, she would bring back a resolution either way, but one would be to go through the normal process, which could take six to nine months; it would be the process where the County meets with the Town Council and have different meetings to try to resolve the issue; the second option would be to expedite it by making that finding at the meeting where she brings back that resolution; and then the Board could bypass that process and move forward with any

appropriate legal action.

Commissioner Lober advised he would go that way, but it is up to Commissioner Tobia.

Commissioner Tobia advised he was unaware it would take six to nine months; that would put it past the nesting season; therefore, he thinks it should be the second one because of the timeliness; and that would include with the findings, that an immediate danger to the health, safety, or welfare of the public exists requiring immediate action be taken and/or that the County's legal rights will be compromised if the immediate legal action is not taken.

Chair Zonka advised she thinks the latter of that explanation, she does not think it impacts the health and safety of the residents, but obviously the importance of moving forward due to legal issues.

The Board directed the County Attorney to bring back a resolution with findings that an immediate danger to the health, safety, or welfare of the public exists requiring immediate action be taken and/or that the County's legal rights will be compromised if immediate legal action is not taken.

**Result:** APPROVED

**Mover:** John Tobia

**Second:** Bryan Lober

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

#### EEL Malabar Scrub Date Correction

Commissioner Tobia noted if this permit is extended all of this goes away; he really appreciates the work staff has done on behalf of Malabar; he wishes Mr. Stinnett had the ability to extend it, whether he does or not, he can keep that private; should he meet with Council and they decide to go in a different direction, he can call one of the Board Members and it can stop any of these things from happening once the permit has been extended. He thanked Mr. Stinnett for showing up, allowing the Board Members to attend the Council meeting, and he is sorry it had to get this far; and he noted he has never been on the side of environment and it is a fun place to be.

Chair Zonka mentioned she is glad he attended that meeting because she thinks the tone may have been different had he not; it is a lot harder to be verbally abusive when the person is in the room versus not; and a lot of things were said in that prior meeting that probably should not have been said or suggested.

Commissioner Lober stated as far as all of this potentially stopping, he would support if Commissioner Tobia wants to go that route, assuming the municipality changes its position; that is all fine except that one designation of having staff apply for the designation to potentially be changed; he would like that to continue irrespective of what the city does or does not do; and if Commissioner Tobia wants to scale-back on anything else, he will support it, but not that one.

Commissioner Tobia advised he contemplates that because unfortunately another board could go through the same action with a different council in the future if it needed to mitigate for Scrub Jays again, so yes, that was a good thought.

#### **I.2. Housing Assistance Eligibility Modification**

Commissioner Tobia advised during the September 21 meeting, the final budget hearing, Commissioner Lober addressed ineligibility for renter's assistance; section four from the

minutes, it specifically deals with that; the Board discussed modifying these terms; that would be prudent and the reason why it has been placed on the Agenda; it was his objective to make this section as clear and concise as possible in doing so; he looked at Federal Assistance Programs for guidance on the issues of eligibility disqualification; these were food stamps and temporary cash assistance; and for both food stamps and temporary cash, individuals found to have committed fraud by a court will be disqualified for a length of time addressed by the court. He noted he has all the documentation on this; his intentions were good in trying to rectify the situation, however, Commissioner Lober who has a much better legal understanding of the issue for obvious reasons, found problems with the proposed language; he found a large loophole that he did not see and certainly did not want to take place; it is clear that the changes given would be good and meet the needs and the intent that he was looking for; and he would wholeheartedly support his proposal when he continues. He advised his motion would be to strike the language "exclude from rental assistance program the individuals who are actively engaged in litigation against Brevard County, as well as those who sent a formal demand letter and/or notice of intent to file against the County since the enacting of the local State of Emergency, which took place on/or about March 15, 2022" and insert the language that Commissioner Lober did on the memo that was sent out to all the Board Member's offices.

Commissioner Lober asked if he could read it into the record real quick.

Chair Zonka mentioned she does not have an issue with the memorandum, but before Commissioner Lober does that, she would maybe add under investigation, "by a law enforcement agency".

Commissioner Lober advised it is in there.

Chair Zonka stated she can read what she has.

Commissioner Lober stated that is under the first part; he can add under investigation by a law enforcement agency; he read, "Exclude from the rental assistance program those individuals who are currently under investigation by a law enforcement agency for fraud, theft, or any similar crime regarding a government program. Exclude from the rental assistance program those individuals who have been referred to by a law enforcement agency for prosecution, subject to any relevant statute of limitation provisions for fraud, theft, or any similar crime regarding a government program. Exclude from the rental assistance program those individuals who have pled either no contest or guilty to fraud, theft, or similar crime regarding a government program or have been found guilty or had adjudication of guilt withheld for fraud, theft, or any similar crime regarding a government program. "

Commissioner Smith stated he is a little disturbed with this because the way he reads it, and he is not an attorney that is why he is bringing this up; it appears to him that the person, any person, who is under investigation that they are automatically assumed to be guilty; this is not extending their ability to go forward with the application; and he asked if that is correct.

Chair Zonka explained the way she understood it was only people who are under investigation for committing fraud to a government agency.

Commissioner Smith replied right, but they are not declared guilty; and the Board is telling them that their rights have been absolved because they are under investigation, so they cannot apply for this.

Chair Zonka responded affirmatively.

Commissioner Smith stated he thinks that is a stretch because what happens if the person is later acquitted; and he asked if they could come back and sue the County or create some type of legal action because the Board preemptively prevented them from taking part in this program, that is his concern.

Commissioner Tobia advised Commissioner Smith that he understands what he is saying; the first situation was a little arbitrary and that is the reason he wanted to deal with that one; that was anyone who had legal action against the County; there is unfortunately people that have legitimate legal action through no fault of the County, that have created a situation; this one he did it as best to mirror federal law; and this one mirrors the abuse of food stamps and the temporary cash assistance almost verbatim. He continued by saying the Board is treating this rental assistance the same way the federal government treats abuse of food stamps and temporary cash assistance; he will read it real quickly so no one thinks he is trying to pull the wool over anyone's eyes because he had to look this one up; he read, "Individuals who have been found to have committed fraud by a court will be disqualified for the length of time"; that is Section 3610.0902; and if these people are found not to have committed said crime, they would be eligible for food stamps and cash assistance. He noted while this is not perfect, he thinks it puts the County in a much better circumstance than what it was previously in; and if anyone has another one, he is not necessarily against it, he was just trying to get the Board from a bad place into a better place.

Commissioner Smith stated he agrees if someone has committed fraud and is found guilty, he thinks they absolutely should be excluded; he advised he is just concerned about the part that if they are under investigation, they are automatically excluded; and he has a real problem with it.

Commissioner Lober stated he thinks part of what was contemplated by Commissioner Tobia, and he can correct him if he is wrong, and certainly part of what he has contemplated when looking at this issue, and he knows the Housing and Human Services Director has given him several examples of who staff has reason to believe, and not just on a whim or an anonymous tip, have lied on the application for assistance itself; if the County does not have something in there to preclude them from getting funding, the County will give them funding just trusting that whatever they say is essentially the word of God; and the County's chance of getting that money back ever, is slim to none. He went on to say the money is gone and when it is gone, no one else will be able to make use of it and the County does not have that program for people who truly do qualify; one individual that he is aware of, claimed more dependents than he was entitled to claim, left income out, and he thinks there were some concerns over the assets as well; and to say that he was not convicted yet, law enforcement is in the process of putting forth an investigative package without causing them problems or disclosing something they would not want disclosed, it is going to be going to a prosecutor. He stated the one particular issue that he is referring to is one particular application; and to say that he has not been convicted yet, it is not taking a constitutional right from him, it is simply saying when there is strong reason to believe someone is in the process of trying to defraud the government right now with this application, the County is not going to give them the money and try to take it back after it was spent on gambling, hookers, or drugs.

Commissioner Smith stated Commissioner Lober brought up a good point; if staff has reason to believe this person is not eligible, they do not have to wait for a conviction, they would just turn the person down; and he asked if that is correct.

Ian Golden, Housing and Human Services Director, stated in many instances, the way the program works, he would not know until after the fact; in those instances, when they have

referred people to law enforcement for potential fraud, allegations have come after payments have been made; they do refer to law enforcement; there is language in the current policy regarding falsification of documents in the application itself; and misrepresentation would deny them future assistance, but there is nothing that speaks to fraud, theft, or similar crime as put forward in this proposal.

Commissioner Smith asked if the Board could include some wording that would say the application will be suspended while they are under investigation.

Commissioner Lober stated if that makes him happy, he does not have an issue with that.

Commissioner Smith said that makes more sense to him; and then after they are adjudicated, staff will know one way or another.

Commissioner Lober advised this seems to do that anyway, but if he wants to use that particular language that is fine.

Commissioner Pritchett noted those were some good points Commissioner Smith and she thinks he also came up with some good solutions; she has the benefit of getting to sit next to the County Attorney and she said Medicaid will not allow people to get payments if they are under investigation for fraud; there must be a little more to that investigation that is going on in her head as well; and she likes Commissioner Smith's solution.

Commissioner Smith asked about adding the wording.

Commissioner Lober stated he is thinking about a way to do this because there are some that do not need to change; for instance if they have already been found guilty; instead saying exclude from rental assistance it can say, "suspend the application for rental assistance from those individuals who are currently under investigation by a law enforcement agency for fraud, theft, or any similar crime regarding a government program; suspend the rental assistance applications from those individuals who have been referred by a law enforcement agency for prosecution subject to any relevant statute of limitations provisions for fraud, theft, or any similar crime regarding government program"; and he does not think these two should be changed, "Exclude from the Rental Assistance Program those individuals who have pled either no contest or guilty to fraud, theft, or any similar crime regarding government programs or have been found guilty or had adjudication of guilt withheld for fraud, theft, or any similar crime regarding a government program."

Commissioner Smith agreed with Commissioner Lober.

Commissioner Lober stated he can live with that too.

Chair Zonka asked if staff is going to put every person's name through every government agency; and how will that be managed.

Mr. Golden advised staff has already had plans to update the application based on the previous language; staff is looking at incorporating a new certification into the application for people who are under pending investigation; that becomes difficult for staff to determine whether somebody is pending or not, unless it is someone who they have actually referred, because typically they are not told by a law enforcement agency; that is an investigation and they cannot tell them any information; as for somebody who has been adjudicated guilty, they could probably add that to their application process; and add a step for their processing team to do a quick background

check of the person to see if there are any crimes that show up that fit the definition.

Commissioner Lober mentioned there is one other thing as well; he is not seeking to make Mr. Golden's job any more difficult or anyone that works with Mr. Golden; he would take it as a clue or hint if law enforcement reached out to subpoena records from them on a particular application; and he commented he would take that to suggest that they are probably being investigated.

Chair Zonka stated the person may know they are being investigated but staff may not know; and in the future if staff gets an application of somebody who has committed fraud, they are already breaking the law so chances are they are not going to admit that they are under investigation.

Commissioner Lober stated he is thinking in this case, because he understands from him, at least on one occasion, law enforcement has reached out to request records; and he asked if he is misstating that in any way.

Mr. Golden stated actually in that instance staff reached out to law enforcement first and that is what started that.

Commissioner Lober commented okay; he did not realize that had happened; but if staff does not know, then they do not know; and he is not looking to fault staff for doing the impossible.

Chair Zonka asked the County Attorney is she is comfortable with this language.

Attorney Jorandby responded in the affirmative; she mentioned she has worked with Commissioner Lober and talked with Commissioner Tobia on this; just looking at the language the County currently has, she has some concerns of what the directive was from the Board prior; and working with this language she thinks this is a better compromise, getting closer to the intent of the program, and mirroring the federal programs; and they have seen where they have disqualified individuals because of the pending investigations.

Commissioner Tobia advised he made a motion to strike the initial language, insert the language that was just discussed and then changed.

The Board approved modifying the Housing Assistance Eligibility Program by the following:

- striking the language, exclude from rental assistance the individuals who are actively engaged in litigation against Brevard County, as well as those who have sent a formal demand letter and/or Notice of Intent to file against the County since the enacting of the local State of Emergency;
- inserting the language, suspending the application for rental assistance from those individuals who are currently under investigation by a law enforcement agency for fraud, theft, or any similar crime regarding a government program;
- inserting the language, suspending the rental assistance application from those individuals who have been referred by a law enforcement agency, for prosecution, subject to any relevant Statute of Limitations provisions, for fraud, theft, or any similar crime regarding a government program; and
- inserting the language, excluding from the rental assistance program those individuals who have pled either "no contest" or guilty to fraud, theft, or any similar crime regarding a government program or have been found guilty or had adjudication of guilt withheld for fraud, theft, or any similar crime regarding a government program.



**Result:** APPROVED

**Mover:** John Tobia

**Seconder:** Bryan Lober

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

### **I.3. Driftwood Expired Escrow Agreement - District 2**

Sandra Sullivan stated she read the details; this arrangement as she understands it, was not really a seemingly good deal for Brevard in the first place; she listened to the Request for Proposal (RFP) meeting; in that meeting Peter Cranis, Tourism Office Director, indicated that convention centers do not make money; on the downside of economy the Tourist Development Committee TDC is the first to go; people do not want it on the tax payers burdened to pay a large debt service; the concern she has is this deal has gone from bad to worse; it is not a convention center, it is a 20,000 to 25,000 square foot facility; it is not the broader tourism economy, it is more serving one developer; and in that case, that is picking and choosing winners and losers and not doing the free market. She continued on by saying this is a foreign company that, or a company, that has foreign investors who benefit them by work permits and such; there are local people that have been in this business for decades; that gives her a little bit of heartburn; with an arrangement that is seemingly not a convention center, it is a business center benefiting an entity, why is the County going down the road and evaluating this; it seems to her, even if the Board approves this today, which she would prefer not to see, is that concurrently, it may be an idea to have the Tourist Development Committee (TDC) approach this from the other side and look at a convention center and whether Brevard County even wants a convention center, whether it would benefit the County from a tourism standpoint; and to take it from a broader picture of where the best location would be for that if the Board decided it would want one. She asked if it would be at the Port where they are putting in the aquarium where they have the most number of hotel rooms being built in the northern end of the County; and do a proper business analysis to take it from a broader Brevard County perspective, rather than just from a developer.

Commissioner Lober advised he agrees with most of what Ms. Sullivan said; the point that he differs with her most particularly regards the ramifications of the tourism sector falling out, if that is to come at some point in the future; he is not really thrilled with what he believes the current iteration is of the proposal from Driftwood, in terms of pledging, out of the Tourist Development Tax (TDT) as a whole, as opposed to what was originally floated by the Board, which was pledging just the amount of TDT raised at that particular facility; but in either event, he has never supported, and has said openly, that he does not support using any of the property tax dollars, any of the millage, to do anything with respect to this project; and if there is anything that comes down the road, there may or may not be, it is going to involve TDT funding, so if the tourism sector falls out, it is not going to be on the backs of the taxpayers to pay for something because the pledge that would be there would be tied to some portion of the TDT. He advised this may not even get to that point; it is interesting because it is almost like there is some mind reading going on here; and he asked if Chair Zonka is on the TDC this year.

Commissioner Pritchett responded she is.

Commissioner Lober commented he is glad he asked. He went on to say the Board will hear something from Peter Cranis, Tourism Development Director, soon with respect to this; he emailed Mr. Cranis not to long ago, a couple days ago and he wrote, "In anticipation of the upcoming TDC meeting, I would appreciate if you would float an idea by the TDC to ascertain

interest level. I'd like to know whether the TDC is interested in commissioning a study to determine the best location for a convention center and the ideal size for a convention center. This would be separate and apart from anything related to the Westin Driftwood Project, and I contemplate the study occurring concurrently with discussions regarding Driftwood. While I have no qualms spending the developer's funds researching their proposal, the end product is unlikely to answer some fundamental questions I have which can be addressed more independently through the TDC."; he mentioned it goes on a little bit, but he is hoping that will be brought up; he got an indication from Mr. Cranis that he will bring it up at least to see what the TDC's thoughts are; and he would appreciate if the TDC brings something forward, if someone wants to make a motion at that level, if it comes back to the Board, presuming it is anything along the lines of a reasonable cost, he would support it.

Chair Zonka noted it is interesting because where she is sitting right now, of course there is a lot of opposition and a lot of things for it, but she thinks the biggest hurdle with this entire project is the misinformation; there has been nothing presented to this Board; there has been a lot of talk, but she hears a lot of regurgitation of talking points, and it is awful; what she would recommend this Board do, and she is not even prepared to support this, not because she does not support what could potentially come, but she would at least suggest that each Board Member sit down with the Westin people and have that conversation of where this is at; she knows it has changed from the time they were in her office, the first time; and she explained the first time they were in her office she told them absolutely not, there is no way. She went on to say she is not saying she is even toward a yes, but she is saying she does not want them to waste their time or money; she finds it a little disturbing that they were so intent on getting things done so fast and they were not going to be able to do anything; now it is wasting a ton of time, or spend a bunch of time putting this out to RFP for a study on the economic and financial impact of a project that they were so urgent and desperate to get done; and her interest is not to make a bunch of foreign investors a whole bunch of money either. She stated she does not know if she will ever support this and it is wasting a lot of time and getting people excited and angry about what this Board may, or may not, do when none of the Board members have said they would support this.

Commissioner Lober agreed.

Chair Zonka went on to say she thinks it is actually hurting this Board because it looks like it is giving away taxpayer dollars which no one on the Board has ever agreed to do; no one on the Board has said they support this; she thinks for the public's benefit, and for the media circus to stop, she thinks the Board Members need to have those meetings to find out if the company even needs to waste their \$65,000 to do a study; that is going to require a supermajority; and she will guarantee there is one vote on this Board that is a definite no.

Commissioner Lober asked if Chair Zonka would be more comfortable if he pulled the Item.

Chair Zonka replied he could pull it; and she advised she is not going to support it today.

Commissioner Lober stated he will pull the Item; there is no reason to ram anything forward; he thinks the Board can take its time on something like this; and he reiterated he will pull it.

Chair Zonka mentioned she just wants to see what the plan is; and she still thinks she is pretty far from ever being comfortable with it, but she would need to hear it from them. She advised this big convention center is turning into a big ballroom; and that is kind of funny too.

Commissioner Lober stated that is a part of the concern that he has; and he would be happy to

withdraw this today and if at some point the Board has more information and it wants to revisit that is fine, however it comes.

Commissioner Pritchett advised it is Commissioner Lober's Item and if he is not supporting it, then it would be good to withdraw it; as far as another company spending the money to do it, it is their money and it would not matter to her either way; even if the Board passes or does not pass it, this does not put the Board in any kind of legal agreement with doing anything; last time the Board said no to it because it wanted to be sure it was not going to cost taxpayer dollars; and if the County ends up with an amazing convention center in Cocoa Beach, she would rather it be in North Brevard, but she thinks it would greatly help the County as far as tourist dollars. She stated she does not know, she has not even seen a proposal; if they want to spend some money to do their due diligence to see if it is even something they are able to do, this does not in any way, shape, or form set the Board into having to do anything; and if they want to spend the money, that is up to them; and she is fine if Commissioner Lober wants to pull it, but she would support it as well.

Commissioner Lober advised he may have a 3:2, but the bottom line is, down the road and to look at moving things further, he would rather have more support on doing the due diligence; if the Board is not sure it even wants to do the due diligence at this point, there is no point at spending anyone's money, even if it is not taxpayer money; he is fine withdrawing it and his intentions at this point are to leave it alone until the Board receives something more concrete from them; and if it does not come, then the Board will not see it again.

Frank Abbate, County Manager, stated he wants to point out if there is not any motion to the contrary, since the escrow agreement expired on December 31, the remaining funds will need to be returned; and if there is no direction from the Board to continue holding it, then that is how the County would proceed.

Chair Zonka asked Attorney Jorandby if a motion is needed.

Attorney Jorandby replied if the Item is withdrawn, there is no action other than the fact that the County will refund the money in escrow.

The Board discussed the Driftwood expired Escrow Agreement, but took no action.

## **K. PUBLIC COMMENTS**

Sandra Sullivan thanked the Board for the last Item, because there is not even a proposal in hand yet. She stated she attended the Save Our Indian River Lagoon (SOIRL) meeting this past Friday; she has some pretty significant concerns with it from last year; she would ask the Board to consider giving direction to staff; despite scientific literature showing that there are increasing levels of pfas and glyphosate in the manatees, the County is not doing testing as part of the SOIRL Plan; and what the taxpayers voted for, as part of that language, was operating capital improvements and capital maintenance projects and programs designed to improve water quality, fish, wildlife, marine habitat, remove muck, and reduce pollution; it can't be reduced if the County is not testing for it; and data must drive the decisions. She mentioned Florida had the highest number of manatee deaths that it has ever had at 1,101, and 359 being in Brevard County which is almost one per day; this year there have been 13 manatees in 14 days in the first days of the year and seven manatees just this past weekend; Florida Atlantic University (FAU) Harbor Branch scientist has said there is a loss of 60 to 80 percent of the sea grass in the Lagoon; without seagrass as a foundation species, the Lagoon is dying, because so many species rely on it; the County is not looking at why the seagrass is dying; in Section three of the SOIRL Plan it talks about pollutants and mentions nutrient loading, but none of the

pollutants; there is pfas, herbicides, PS2 herbicides, pesticides, and copper; and copper is in over the cleanup target in Grand Canal and is a biocide that kills seagrass. She continued by saying the County is looking at dredging Patrick Air Force Base where the disposal of these chemicals has been to the river, so that very much concerns her; she is talking about restoring dikes, taking out the dikes of the mosquito impoundment areas where there is concerns that it has caused releases of pesticides that caused previous brown tide events; and she showed a few photos from the weekend. She explained this picture is from her community and it is spraying of herbicides in the ditches.

L.6. Curt Smith, Commissioner District 4, Vice Chair

Commissioner Smith stated he would like to reach out to his fellow Commissioners whom he has great respect for, and ask for their input for some ideas of where his office can advertise to search for qualified candidates for the Licensing Board.

Commissioner Lober stated Don Walker, Space Coast Government Television (SCGTV) Director, has helped him in the past with that.

L.4. Bryan Lober, Commissioner District 2

Commissioner Lober stated for reasons in large part that are different than those of Ms. Sullivan, he has concerns over the Save Our Indian River Lagoon (SOIRL) Plan; he thinks in short, there are certain aspects of it that are immensely over-complicated and he does not know that they need to be; it is great to have experts and there are things for which experts are needed, but there are also things that are just evident and obvious to someone who is a lay person; and he explained for instance he does not need a medical examiner to come out if someone is decapitated to say in their expert medical opinion they believe that individual is expired. He noted he would like to give props to Alex, at the County Attorney's Office; he thinks he has his stuff together and in some years when Abby is looking to retire, or there is another spot that is comparable in an adjacent County or one of the municipalities, he could see him moving up rather easily; and he has an amazing brain.

Adjourn

Upon consensus of the Board, the meeting adjourned at 11:34 a.m.

ATTEST:

\_\_\_\_\_  
RACHEL M. SADOFF, CLERK

\_\_\_\_\_  
KRISTINE ZONKA, CHAIR

BOARD OF COUNTY COMMISSIONERS

BREVARD COUNTY, FLORIDA