

Brevard County Board of County Commissioners

*2725 Judge Fran Jamieson Way
Viera, FL 32940*



Minutes

Thursday, February 3, 2022

5:00 PM

Zoning

Commission Chambers

A. CALL TO ORDER 5:00 PM

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

ZONING STATEMENT

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

C. PLEDGE OF ALLEGIANCE - Commissioner Curt Smith, Chair, District 4

Vice Chair Smith led the assembly in the Pledge of Allegiance.

F.1. Resolution recognizing January 23-29, 2022 as National CRNA Week

Chair Zonka read aloud, and the Board adopted Resolution No. 22-004, recognizing January 23-29, 2022, as National CRNA Week.

Result: APPROVED

Mover: Bryan Lober

Second: John Tobia

G. PUBLIC COMMENTS

Kenneth Talbert stated he has two pieces of property 255 North Burnett Road and 245 North Burnett Road, he just wanted to go over a few things; he has some concerns for North Burnett Road, as the road is really not designed for the kind of traffic it gets and he will give an example: Two or three years ago, the heavy trucks that go up and down this road, broke one of the water pipes in the middle of the road and they had to tear it all out, fix the pipe, and they repaved the little section and they put all the cones around, took the cones up and said everything was fine; within 24 hours, the road had such a dip in it from the trucks going over it again, the trucks would just make this loud clanging noise; that started the concern about the way the road is built to be able to handle heavy trucks; probably about 85 to 90 percent of the vehicles, big vehicles, trash trucks, unfortunately, are with Waste Management; in the morning they send out all the routes, they swing around, they go through Burnett Road, and they come back but it has the same volume early in the morning as they have in the afternoon, that is not including everyday trash trucks going back and forth; and he does not know why maybe they

might have to change the route: He has a constant barrage of trucks going back and forth; one other issue is one block has the speed limit at 35 miles per hour, and going across Lake Drive it is 25 miles per hour, which is only one block; he is just concerned that they have a lot of drivers driving fast; the stop sign on the corner of North Burnett Road and Lake Drive has been torn down a couple times and the sidewalk has been crushed from the weight of so many trash trucks going through there, and other trucks, it is not all Waste Management; also, constant fast traffic is going through there; and on one side closest to Lake Drive, the ditch has at least 50 to 70 beer bottles in it, and this has been going on for years and the only reason he knows this is because the beer bottles are all floating and they are just like all over the place. He added his next concern is that one-fourth of the ditch was filled in the Stated Road, towards 520, they piped it, and the rest is not enclosed; that may be the concern there; trash alongside the roads because of the traffic vehicles and trash vehicles, he goes up and down and picks up one big bag of trash on one block to try to keep it clean; and he does that by himself when he can.

Vice Chair Smith stated he forget to mention the fact that Commissioner Zonka will not be attending the meeting; and he asked if she is on the phone.

Commissioner Zonka respond affirmatively.

Commissioner Lober wants to make a motion to permit Commissioner Zonka to participate telephonically.

Result: APPROVED

Mover: Bryan Lober

Second: Rita Pritchett

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

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

H.1. Scott Minnick requests a change of zoning classification from AU to RR-1. (21Z00025) (Tax Account 2102550) (District 1) This item was tabled from the 11/15/21 and 01/10/22 P&Z meetings, and the 12/02/21 BCC meeting.

Vice Chair Smith called for a public hearing on a request by Scott Minnick for a change of Zoning classification from AU to RR-1.

Jeffrey Ball, Planning and Zoning Manager, stated Scott Minnick requests a change of Zoning classification from AU to RR 1, and this Item is being requested to be tabled to March 3, 2022, Board of County Commissioners meeting.

Mr. Ball, stated the applicant is here and this Item needs to be tabled because Mr. Minnick was not present at the previous Planning and Zoning (P&Z) meeting; and that is the reason why it is here tonight to table this Item again so the Board can hear the recommendation from the P&Z Board.

Commissioner Pritchett stated she thinks it would be better that way without any prejudice right now.

Vice Chair Smith asked if the Board is still good with that.

Commissioner Pritchett responded yes.

Commissioner Lober stated he will second for discussion.

Commissioner Lober stated to Commissioner Pritchett he will do what she wants on this; if she wants to continue he will happy to do that; he just wants to point out that it is not just one missed P&Z meeting, there were two missed P&Z meetings and one missed Board of County Commissioners (BOCC) meeting when this was tabled the previous time; so if he misses the next meeting, then it will be the fourth noticed hearing that he will have missed; he does not know if Board has had that in the past; if Commissioner Pritchett wants at that point in time, to move to deny it on that basis, as long as staff has noticed him, and he thinks he is unnoticed at this point as to when it will be tabled, he will support it any which way; but he will go ahead and leave it as she seems to desire to table it.

Commissioner Pritchett stated it would probably be very advantageous for them to go ahead and show up at the meetings and get this pushed through now.

There being no further comments or objections, the Board tabled the request by Scott Minnick for a change of Zoning classification from AU to RR-1, to the March 3, 2022, Zoning Meeting.

Result: TABLED

Mover: Rita Pritchett

Second: Bryan Lober

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

H.2. Robert Griffith requests a change of zoning classification from RRMH-1 to TR-1. (21Z00035) (Tax Account 2102136) (District 1)

Vice Chair Smith called for public hearing on a request by Robert Griffith for a change of Zoning classification from RRMH-1 to TR-1.

Jeffrey Ball, Planning and Zoning Manager, stated Robert Griffith requests to change the zoning in classification from RRMH-1 to TR-1; and this Item is also being tabled to the March 3, 2022, Board of County Commissioners Meetings.

There being no further comments or objections, the Board tabled the request by Robert Griffith for a change of Zoning classification from RRMH-1 to TR-1, to the March 3, 2022, Board of County Commissioners Meetings.

Result: TABLED

Mover: Rita Pritchett

Second: Bryan Lober

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

H.3. Sunil Rajan, Sudhir Rajan, and Suresh Rajan (Kim Rezanka) request a Small Scale Comprehensive Plan Amendment (21S.09) to change the Future Land Use designation from NC to CC. (21PZ00082) (Tax Account 2412234) (District 2)

Vice Chair Smith called for public hearing on a request by Sunil Rajan, Sudhir Rajan, and Suresh Rajan (Kim Rezanka) for a Small Scale Comprehensive Plan Amendment (21S.09) to change the Future Land Use designation from NC to CC.

Jeffrey Ball, Planning and Zoning Manager, stated Sunil Rajan, Sudhir Rajan, and Suresh Rajan requests a Small Scale Comprehensive Plan Amendment; this Item is also being tabled;

there was a mix-up in the Merritt Island Redevelopment Agency (MIRA) meeting to get a recommendation to the Planning and Zoning (P&Z); this Item is also being tabled to the March 3, 2022, Board of County Commissioners Meeting.

Commissioner Lober stated he is happy to table it but before he does that he just wants to add a quick disclosure; immediately prior to this meeting he did have a conversation with Kim Rezanka regarding this and the tabling of it; the other disclosures, he believes, are with the Clerk if there are any on this Item; and he will go ahead and move to table it to the date specified.

There being no further comments or objections, the Board tabled the request by Sunil Rajan, Sudhir Rajan, and Suresh Rajan request of a Small Scale Comprehensive Plan Amendment (21S.09) to Change the Future Land Use designation from NC to CC; this Item is also being tabled to the March 3, 2022, Board of County Commissioner Meeting.

Result: TABLED

Mover: Bryan Lober

Second: Rita Pritchett

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

H.4. KJ Group FL, LLC requests a CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in Conjunction with a Private Club, in a BU-1 zoning classification. (21PZ00074) (Tax Account 2315967) (District 1)

Vice Chair Smith called for public hearing on a request by KJ Group FL, LLC a Conditional Use Permit (CUP) for alcoholic beverages (full liquor) for on-premises consumption in conjunction with a private club, in a BU-1 Zoning classification.

Jeffrey Ball, Planning and Zoning Manager, stated KJ Group FL, LLC requests a CUP for alcoholic beverages (full liquor) for on-premises consumption in conjunction with a private club, in a BU-1 Zoning classification application number (21PZ00074), located in District 1.

There being no further comments or objections, the Board approved the request by KJ Group FL, LLC, a CUP for alcoholic beverages (full liquor) for on-premises consumption in conjunction with a private club, in a BU-1 Zoning classification.

Result: APPROVED

Mover: Rita Pritchett

Second: Bryan Lober

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

H.5. Steven H. Long requests a change of zoning classification from GU to AU. (21Z00038) (Tax Account 2538150) (District 1)

Vice Chair Smith called for public hearing on a request by Steven H. Long for a change of Zoning classification from GU to AU.

Jeffrey Ball, Planning and Zoning Manager, stated Steven H. Long Request a change of Zoning classification from GU to AU application (21Z00038), located in District 1.

There being no further comments or objections, the Board approved the request by Steven H. Long for a change of Zoning classification from GU to AU.

Result: APPROVED

Mover: Rita Pritchett

Second: Bryan Lober

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

H.6. Bruce Fernandez requests a Small Scale Comprehensive Plan Amendment (21S.07) to change the Future Land Use designation from RES 1:2.5 to RES 1. (21PZ00032) (Tax Account 2005100) (District 1)

Vice Chair Smith called for public hearing on a request by Bruce Fernandez for a Small Scale Comprehensive Plan Amendment (21S.07) to change the Future Land Use designation from RES 1:2.5 to RES 1.

Jeffrey Ball, Planning and Zoning Manager, stated Items H.6 and H.7 are companion applications; he will read them both into the record at the same time, however, separate votes need to be on each one of them; Item H.6., Bruce Fernandez request a Small Scale Comprehensive Plan Amendment (21S.07) to change the Future Land Use designation from RES 1:2.5 to RES 1 application number 21PZ00032, located in District 1; H.7., Bruce Fernandez requests a change of zoning classification from RRMH-2.5 to RRMH-1 application number 21Z00019, also located in District 1; before he turns over the podium, he wanted to make sure the Board knows that this is a zoning and land-use change; when one does that the primary focus is on compatibility and consistency with the Comprehensive Plan; he brings that to point because getting access to this property will have to comply with all the land development code regulations; and is not a consideration for either the land use or zoning.

Bruce Fernandez stated what precipitated this on the three and one-half acre portion of the eight acres, there is currently a 30-year old mobile home and his son and his girlfriend are using the house; she takes care of foster children that the County has seized that people cannot take care of, that have medical issues, that she is able to take care of; his wife has 45 years of extensive experience, with 30 years at Washington Square, and between them they take care of these kids; now what has happened is they started off with three and the County has added more because they do have special skills; and now she has seven sick kids in this little mobile home. He stated his son works for Harris and has offered to build them a \$400,000 to \$500,000 house on the back part of his property; that would give these kids a lot more room and he can take in more of them in; now the problem is they have been going around with the staff and they have to deal with the rules and the way it is worded and that is what he just alluded to; and the issue is going to be how they would build this house in compliance with the words. He added he had a survey done and the road is not actually on center, it is eight foot onto his property but he would like to show a picture, as the picture shows the actual ground and what it looks like; it is in the public interest for this house; and he does not see the problem. He added what is on the County records is not correct.

Commissioner Pritchett mentioned she thinks it is a good fit for the property; she just wanted it on the record, and she knows this because they have told him that; he has to get creative with that flag lot to get something out to the road; but he knows that already.

Mr. Fernandez stated that is what he would like to show the Board; and he does not see why it needs a flag lot.

Commissioner Pritchett stated the Board is just changing the zoning for him; she is going to agree to change the zoning; but he will have to just get with the County to work on getting

access to the road to permit it so that he can build, which is doable because he owns all the property.

Commissioner Lober stated for Commissioner Pritchett mentioned the zoning for H.6 is on the Comprehensive Plan, so if she has a motion to pass for H.6., he will second it for the Board to move on to the Zoning.

There being no further comments heard, the Board conducted the public hearing and adopted Ordinance No. 22-02, Amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, entitled "The 1988 Comprehensive Plan", setting forth the first Small Scale Plan Amendment of 2022, 21S.07, to the Future Land Use Map of the Comprehensive Plan; Amending Section 62-501 entitled contents of the Plan; specifically amending Section 62-501, Part XVI (E), entitled the Future Land Use Map appendix; provisions which require amendments; providing legal status; providing a severability clause; and providing an effective date.

Result: APPROVED

Mover: Rita Pritchett

Second: Bryan Lober

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

H.7. Bruce Fernandez requests a change of zoning classification from RRMH-2.5 to RRMH-1. (21Z00019) (Tax Account 2005100) (District 1)

Vice Chair Smith called for public hearing on a request by Bruce Fernandez for a change of Zoning classification from RRMH-2.5 to RRMH-1.

There being no further comments or objections, the Board approved a request by Bruce Fernandez for a change of Zoning classification from RRMH-2.5 to RRMH-1.

Result: APPROVED

Mover: Rita Pritchett

Second: Bryan Lober

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

H.8. Cobb 192, LLC (Bruce Moia / Adam Broadway) requests a change of zoning classification from BU-1 to BU-2. (21Z00040) (Tax Account 2800098) (District 5)

Vice Chair Smith called for public hearing on a request by Cobb 192, LLC for a change of Zoning classification from BU-1 to BU-2.

Jeffrey Ball, Planning and Zoning Manager, stated Cobb 192, LLC request a change of Zoning classification from BU-1 to BU-2 application number 21Z00040, located in District 5.

Vice Chair Smith asked Commissioner Zonka if she has anything to say on this.

Commissioner Zonka responded she has no issues with it; and she will make the motion.

Commissioner Lober stated just for the record she said she has no issue.

There being no further comments or objections, the Board approved the request by Cobb 192, LLC for a change of Zoning classification from BU-1 to BU-2.

Result: APPROVED

Mover: Kristine Zonka

Second: Bryan Lober

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

H.9. David C. and Cynthia R. Ramage, Co-Trustees, request a change of zoning classification from AU to RR-1. (21Z00036) (Tax Accounts 2101027 & 3020477) (District 1)

Vice Chair Smith called for public hearing on a request by David C. and Cynthia R. Ramage, Co-Trustees, request for a change of zoning classification from AU to RR-1.

Jeffrey Ball, Planning and Zoning Manager, stated David C. and Cynthia R. Ramage, Co-Trustees, request for a change of zoning classification from AU to RR-1 application number 21Z00036, located in District 1.

Vice Chair Smith asked if there were any restrictions that Commissioner Pritchett is aware of.

Commissioner Pritchett stated this one is good, they just want to split and build, and it is easy.

There being no further comments or objections, the Board approved the request by David C. and Cynthia R. Ramage, Co-Trustees, for a change of zoning classification from AU to RR-1.

Result: APPROVED

Mover: Rita Pritchett

Second: Bryan Lober

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

H.10. Howard L. Gasman (Robert Gasman) requests a change of zoning classification from GU to AU. (21Z00045) (Tax Account 2402174) (District 1)

Vice Chair Smith called for public hearing on a request by Howard L. Gasman for a change of zoning classification from GU to AU.

Jeffrey Ball, Planning and Zoning Manager, stated Howard L. Gasman requests a change of zoning classification from GU to AU application number 21Z00045, located in District 1.

Mary Gasman stated she is the daughter-in-law and she has her paper that says she is allowed to speak for him; they just want to change the zoning so they can move there and build a big building for their lawn equipment; they live around the corner; and that is why they want to change it to agriculture.

Commissioner Pritchett stated the area they are at, it will fit.

Ms. Gasman responded yes, it is a dead-end road.

Commissioner Pritchett stated she understands since they want to do an accessory structure; she thinks this is an appropriate fit for this; and she has no concerns with anything.

There being no further comments or objections, the Board approved a request by Howard L. Gasman for a change of zoning classification from GU to AU.

Ms. Gasman stated her husband asked how long he needs to wait to apply for the building permit.

Mr. Ball, responded he can come in tomorrow and apply for a building permit.

Ms. Gasman remarked awesome, great.

Result: APPROVED

Mover: Rita Pritchett

Second: Bryan Lober

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

H.11. Carter and Jessica Hayes request a change of zoning classification from AU to RU-2-4. (21Z00042) (Tax Accounts 2318403 and 2318404) (District 2).

Meeting went into Recess

Meeting Reconvened

Vice Chair Smith called for public hearing on a request by Carter and Jessica Hayes for a change of Zoning classification from AU to saying-2-4.

Jeffrey Ball, Planning and Zoning Manager, stated before he reads this Item into the Record, he wanted to state his name, Jeffrey Ball, he is the Planning and Zoning Manager; he is also an American Institute of Certified Planners (AICP); and Item H.11. Carter and Jessica Hayes requests a change of Zoning classification from AU to RU-2-4 application number 21Z00042, located in District 2. He pointed out the staff comments analysis of Policy 4, this could be considered spot zoning or this could be considered as a transitional use; and it is up to the Board to decide that aspect of this zoning request.

Commissioner Lober stated he had some very recent disclosures from today and yesterday that he was not able to get in time to the Clerk's Office; they were from nearby residents in Merritt Island who were expressing concerns regarding the application and he is going to hand the list over to the Clerk; he has one from Bernd Zoller, one from Ivan Velez, and one from Curtis Brotherton; and beyond that, he just wanted to say briefly there were some questions and concerns raised by the application itself and some communications he has seen related to it, and he does look forward to hearing from the applicant and addressing consistency and compatibility; and he thinks there is a lot that the Board stands to get across today that may not have made it in the application itself.

Carter Hayes stated he did not fill out a card.

Vice Chair Smith stated he has to fill out the card that would give him a clue that he wants to talk; he suggested to fill out the card after the meeting so there is a record that he spoke at the meeting; he has so many cards at three minutes each, that is 33 minutes plus some time, so if somebody else substantially says what they wanted to say, they can just raise their hand and say they support this, they do not have to come up; the Board wants to hear them if they have something to say; but if they find what they wanted to say is redundant, then they do not have to come up.

Carter Hayes stated he thinks everyone got the staff comments, it has got some nice maps and he used this a couple times as a reference; he thinks the Board has it as well; he is with his

wife, Jessica, and they are the owners of the property; he is also a State-certified general contractor so when it comes time to build, he is going to build it himself; the reason that they are here today is because they want to change from AU to RU-2-4; he asked the Board while considering their request, if they could start with the Planning and Zoning (P&Z) meeting recommendation possibly and allow him the opportunity to try to convince the Board to just move him in to RU-2-4, but unencumbered, just straight RU-2-4; and a little history of the property, it has always been zoned AU and never been zoned anything else, in fact, it has been zoned AU so long it no longer meets the minimum lot size requirement under that designation. He stated basically, he has two non-confirming lots; on the first page it says current zoning can be considered but he asked, can it really; for an example, if he wanted to sell one of his lots, he asked how he would advertise; that AU would not be fair because they would not be able to use it for that; under the RES 4 move from it AU to RU-2-4 which would allow him to build duplexes; and he wants to maintain ownership of them and rent them out. He added by saying under the RES 4, which is right there in the Comprehensive Plan he asked if what he is trying to do consistent with the Comprehensive Plan the answer is yes; he is under RES 4 and this is where he wants to be; he wants to build some duplexes and he is going to build them by himself, maintain ownership over them, and rent them out; the duplexes are going to be beautiful with the preliminary design by his wife who has a lot of experience working for developers, especially at this stage, in unit layouts, and design; and they are talking about 1,500 to 1,800 square foot, two-bedrooms, nice kitchen, and easy flow one-story buildings. He stated their target demographic will be a lot of young engineers working out at the Space Center, just out of college; it is going to be a nice place to live with the Space Center being right down the street; also his kids, his sister's kids, and his friend's kids are getting out of college and they need a place to live while they are saving their money to buy a house here in Merritt Island; he does not want them to leave Merritt Island; they can stay there, as there are not a lot of rentals; and one of the authors of these comments puts in here a multi-family use may be considered transitional from North Courtenay Boulevard to the single-family residence to the west. He mentioned where he is at on State Road 3, it has business, commercial, neighborhood commercial, and directly across the street from him is a 75-acre mobile home park; everywhere he stands on his property he can see mobile homes; it is right there, that is his neighborhood; and if it is looked at as a transitional space from high-density mobile home park, RU-2-4 is considered low density. He described high density mobile home park, some beautiful townhouses or duplexes, and then they flow into the single-family residential to the west; it is a nice transition and it works; he asked if what he is trying to do compatible with the surrounding neighborhood; he stated the answer is yes; he is in there with the business, the commercial and the mobile home park; and that is his neighborhood, duplexes fit right in. He continued by asking if they look at this map, which is the St. Johns River Water Management District (SJRWMD), Wetlands Map, the one with the green line right down the middle, it is interesting that two maps right next to each other, this is where the wetlands are now and this is where the wetlands were, or want to be, due to the nature of where it is at; this is the natural flow; he had the U.S Army Corps of Engineers, the Department of Environmental Protection in conjunction with the SJRWMD, Brevard County Natural Resources Management, and he has had them all out on that site; they walked the site and they demarked the wetlands; as soon as they did that, later that day or the next day, he had his surveyor out there, they marked it, and it has got a raised seal right here; and, however, these were done in 2013. He stated he thinks everyone knows it is only good for five years, which is a lot of money and five years it is out; and if one were to look at this map, it is really close, they can look at it and see his property that about the back third is wetlands; when he looks at this map, the white area is his buildable area, and the green area has wetlands; he does not want to do anything in the wetlands or want to touch them; he will just turn his back and focus on the area that he has as his buildable space, in fact, this green area could really be considered a natural barrier to the single-family residential to the west; if one stands there, one would not see those houses as it is too thick

with the peppertrees, he cannot see them, and they cannot see him; no matter what he builds there, they will not be able to see it; he guarantees this as the peppertrees are 30 foot tall; there is 200 foot of them and he cannot even walk to the back of the property, even with a chainsaw; that is really the end of his deal, but this is their third meeting; they have been through this and there are a lot of concerns from the other property owners about water; and the Board will hear from a lot of these people that live on Deanna Court, whose houses are built in the water, that are now concerned about water. He stated when it comes to stormwater runoff, he is not asking for any deviations for stormwater management; he fully intends to comply with the County's stormwater management and that process takes place during site plan and building plan approval; they are going to fully comply with stormwater management, no exceptions; the only other thing that has come up in these meetings is entrances onto State Road 3; for some reason, in both of the other meetings, a lot of the other homeowners said he only has one entrance on to State Road 3, there are two entrances on to State Road 3 with 40-foot culverts; and he opened up both gates for the last three weeks prior to this meeting, hoping that some of these people would see that there are two entrances, for whatever that is worth, maybe one is going to be coming into the property and one is leaving the property, it has a nice easy flow with State Road 3, so it is a benefit having two existing entrances; hopefully the Board can see where they are consistent with the Comprehensive Plan, they are definitely compatible with the neighborhood right there on State Road 3; he asked the Board to approve them, as he cannot stay in AU anymore, and to move him right over to RU-2-4; and he asked if his wife could say a couple things.

Vice Chair Smith responded as long as she fills out a card also; and he reminded Mr. Hayes to please fill out a card before he leaves.

Jessica Hayes stated there were just a couple things he did not mention; all along State Road 3, all of those lots that face State Road 3 on the east and the west have single-family residents behind them and they are zoned all sorts of different things from businesses to multi-family, and just up the street, the Board unanimously voted for the North Villas project; again, across the street, is the four units for the mobile homes and all along Courtenay Parkway, properties that back up to single-family residences are separated only by a privacy fence, if anything at all, where they are offering to leave those wetlands and give that natural buffer; they are not part of their neighborhood; in their neighborhood, when they leave, they go down North Tropical Trail and they come out Hall Road; and they do not even see their property. She added their property cannot see what they are building, what they are doing, anything like that; two lots south of them, they are in for a permit to do a restaurant she believes, so they fit within the County plan as far as the surrounding area; and there is a housing shortage, as the Board is well aware of, and she looked today right before she left and there are only four spaces for rent in North Merritt Island and two of those are vacation rentals.

Vice Chair Smith stated he would like to entertain a motion to limit the next speakers to three minutes.

Result: APPROVED

Mover: Rita Pritchett

Second: Bryan Lober

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

Michael Yauch stated he is present to ask the Brevard County Commissioners to preserve their quality of life on North Merritt Island; Florida and Brevard, in particular, has vast resources that brings vacationers from all over the U.S and the world to enjoy the outdoors; in the last 10 years, they have taken substantial steps backwards in the environment; the Indian River

Lagoon and Banana River has been rated F by the Marine Resource Council; every day it is seen on the television news, dying, starving manatees; and this is the outcome of making zoning changes, increasing density, and increasing pollution. He stated in spite of these disasters taking place in Brevard County, they see more zoning approvals that increase the density and increase the pollution; the people and residents of Deanna Court have a quality of life they are trying to preserve; if the zoning change is approved, they face serious flooding, and he is not talking about just a small amount of rain or extra runoff; they are going to get it and their houses are going to flood; and they are going to have added noise and pollution and all of them on North Merritt Island are going to have added traffic that they do not need right now with bridge construction to the North of them on State Road 405 and a bridge that breaks down quite often over the barge canal. He added they have a traffic problem, recognize it or not; and he asked the Board to please vote to deny the zoning request in the name of the environment and also the quality of life for people on North Merritt Island.

Phil Bennardo stated he is president of the North Merritt Island Homeowners Association (HOA) and he is really talking on behalf of his HOA; they put it to a vote and they all agreed to recommend that the request be denied as written; for a number of reasons, they think it is inconsistent with some of the County's administrative policies, the factors to consider, and that is all in a letter that he sent to the five County Commissioners so they can read the details; as Mr. Yauch said, they have serious concerns associated with drainage and possible flooding; he knows there is a County stormwater management study that was just completed, but he also knows it is not been made public yet; but he feels confident that once he sees that, it is really going to strengthen the position and increase their concerns about the flooding and drainage. He added impacts to the environment, the effects of increased density, traffic, and they essentially have one way on and off the Island; they keep making density higher and higher, it is not good, nine times out of ten, they are going over the barge canal, and not going through the Space Center; also, they do not agree with a rental apartment building or duplexes; he had heard it was going to be an apartment building but, regardless, they are talking about higher density rental units that do back up to an existing neighborhood of single-family homes where the residents all own their homes; they are half acres or larger on the North and South of the property, and regardless of whatever the Future Land Use may say, they are currently zoned AU on either side; he talked about mobile homes across Courtenay Parkway; but again the point is they feel it is inconsistent. He added he would say what they, as an HOA, would agree to, is a density that would allow one or two units per acre; he thinks that is the compromise that they would look at; and again, the rest of the details can be read in the letter that he sent to the Board Members.

Brittany McLeod stated not only does she stand before the Board as a neighbor to Mr. Hayes's property, she is within 500 foot, but she is also here as an environmental engineer; she is a graduate from Florida Tech with an environmental engineering degree so she took it upon by herself, with the neighbors permission, to walk along this creek that they all have along their backyards; with this, she ran soil samples, saturation levels, and water analysis; with that, she can easily tell that up from the water line of the creek that is bordering the property of all the houses on Deanna Court, at minimum, five foot of that water from the water line onto their property is completely at saturation level; that means there is nowhere for that water to go and it is just going to erode away the properties; and many of the properties already are seeing a heavy erosion line where it rather than gradually fading down into the creek, it is now dropping off anywhere from four to eight inch gap which is an indication of erosion. She added with the water analysis that was done, she tested for PH, Phosphorus, Nitrogen, Nitric Oxide, and a few others which are not as critical to the wildlife and fauna that grow along those banks; right now, that water is very clean and healthy, however, with an influx of potential concrete or asphalt,

they are unsure of what Mr. Hayes may be putting down as his footprint, that could change the type of water body that is in there and be more chemical, which could then increase algae growth, which could then, in turn, harm all of the aquatic life that is in that area, not only floral but also animal and fauna; after doing the soil analysis, she saw that because of it is saturation level, they cannot even test to see what is in the soil along the neighborhood; because it is so saturated, the readings come out in a negative way, so it is invalid when it comes to a test; but she will say from the environmental perspective, any more water in that creek will flood out everyone's home in the backyard by a minimum five foot, as there is just nowhere for that water to go. She stated some of the neighbors already have bulkheads put up to prevent any more water coming into their yards and from an environmental standpoint all the houses will at some point have to put in bulkheads or some kind of retainer to keep the water from coming into their yard; that is at a great expense to the neighborhood and the owners of the property; with that being said, she asked if that is something that everyone in the neighborhood signed up for; not really; when they bought their property, they thought it was going to be a serene place to live; and she did not think everyone expected this expense with this potential influx of water, which is her big concern.

Commissioner Tobia thanked Ms. McLeod for laying out her education and she threw out a lot of stuff there; and he asked does she hold a license.

Ms. McLeod responded she has a certified environmental professional license.

Commissioner Tobia asked if it is a Florida license.

Ms. McLeod responded it is a nationwide license called a Certified Environmental Professional (CEP).

Commissioner Tobia asked if it is recognized by Florida.

Ms. McLeod responded yes it is, recognized by the Environmental Protection Agency (EPA) and the Department of Environmental Protection (DEP).

Michael McLeod stated he is a lifelong resident of the State of Florida he has been witness to the growth and expansion of many cities throughout this great State, however he has personal experience with the impacts of the type of decisions the Board is here to make today; his childhood home which was built in approximately 1975, was come to find out the house was built in the middle of a lake bed, it was flooded twice in 2004 and 2006, due to the decisions of people probably in a Commissioner position made; and he just hopes the decision made today does not have the same unintended consequence that allowed, in his opinion, what should have been agricultural land to be re-zoned as residential land and a neighborhood built on it.

Mary Hillberg stated the applicant mentioned several things that were discussed at the Advisory Board meeting prior to the Planning and Zoning Meeting; the Advisory Board did vote to deny the request as written, but they did suggest they go for SR zoning; they felt that this was much more compatible and consistent with the area and it would be a perfect fit for the area; and although it is a commercial corridor, there are some properties, if the Board looks at the map with the commercial corridor in red, it can see there are several properties that are, for whatever reason, not included and she does not know why that happened, but it did, and this is almost out of order. She added to put apartments there, they would have to be at least three stories tall and this would really be a water load for them; the builders have to hold their own water but they cannot hold their own water because State Road 3 is in front of them with a ditch that is going to drain off the higher State Road 3 when it is finished being

built, then they have the water behind them and they cannot drain to the other side of them so there is nowhere for the water to go; they really need to make a smaller footprint; it is not that they do not want them to make money and do well, they just want them to fit in with the neighborhood properly; she will say also that the applicant mentioned that a third of his property was wetland and he was not going to touch that, so a quick calculation, two-thirds of 2.79 is maybe like 1.94 acres, so they are going to put 2,000 square foot or if it has gone down to 1,800 square foot, that is a lot of square footage to put in 1.94 acres, and then subtract the 24 percent for roads, hardening, sidewalks, and so forth; if the Board considers all that together, it would realize that this is really not a doable thing; but it is a great idea for helping people to have rental property, as they have two rental homes themselves, they rent, they help and they do not raise the rents.

Alain Carpentier stated he lives in property parcel 41, which is directly behind where Mr. Hayes is going to do his construction; he would like to hit on a couple points, especially hit on the Planning and Zoning meeting that the applicants brought up; they were talking about the mobile home park being part of their neighborhood; as it was described, it is four lanes of State Road 3 which is across the street, across Courtenay Parkway; and he is not talking about across Courtenay Parkway, he is talking about the west side of Courtenay Parkway, which is his neighborhood. He stated the Planning and Zoning Board said it was a mistake back then to have high density and they said they did not want to make that same mistake; Mr. Hayes said he was planning on duplexes, which are inconsistent with the current zoning; also, he said he would utilize County sewer, which is real important; and if he would like to do that, they would like to see that binding, because in the construction process, he could change and put in septic systems which will increase the water saturation to an already saturated ground. He added as was mentioned by the last speaker, he would have to build up his land, as he is surrounded by kind of a trough on Courtenay Parkway and the wetlands directly behind him; water runoff is not going to run towards Courtenay Parkway more than likely it will be pitched to the back to the wetlands, which will greatly affect them; one thing he would like to add is the Board is hearing from several HOA's and Citrus River Groves, which is his neighborhood; they do not have an HOA private, so he did a grass roots campaign, literally knocked door-to-door, and got petitions signed; 67 percent of the residents are opposed to this and, all together with these HOA's there are hundreds of residents so these numbers speak volumes; and he would like to be taken that, into consideration when the Board makes their decision.

Kenneth Marino stated accountability is what he is trying to address here; Mr. Hayes is so inconsistent in his plans he contradicts himself; in the very first meetings, he said he was going to do single-story structures, then he changed it to duplexes and townhouses; he said he was going to build a single-story townhouse; if he is in the industry, he would know that a single-story townhouse does not exist; and then he would say a single-family residence, then it is a single-family duplex residence, that does not exist either. He stated he was called out at one of the meetings on what type of contracting he does; he is a home improvement contractor who does interior work, home improvements, and he admitted he has never done anything of this magnitude; normally, he would think that Mr. Hayes would have a plot plan, a site plan, and some form of renderings available when he is at this level of requesting a zoning change; he has nothing to prove or show for that; and false claims, one of the meetings he started showing photographs of other structures, condos, and duplex townhouses, but it turned out they were on the South Island, they were not on the North Island. He added of course, the rezoning is going to set a precedent for other land owners; if the Board changes this zoning, other land owners are going to request a change of zoning also, which is going to completely change the fabric of the community and the Island; then the environment, which is the most important thing; he has noticed land in his creek slowly slipping away into the creek because it is like one foot below flood stage now in the dry season; and they have never had that before. He stated

the additional runoff from his property will bring pollutants, oil, fluids from the gasoline from cars, and everything, flowing into the natural habitat; they have like an ecosystem in the back of their property with birds, reptiles, mammals such as bald eagles, blue herons, bobcats, otters, turtles, frogs, gators, and they are all going to be affected by this runoff; their water, as Ms. McLeod said, is pretty pristine right now; and they are concerned this waterway is going to be overrun by additional water and pollutants, which is going to cause a problem with the environment.

Don Barker stated Space Coast Government Television (SCGTV) is going to put some pictures up, that he indicated is the canal body of water they are talking about so the Board can have some understanding of it; he and his immediate neighbors are separated from Mr. Hayes' property by a permanent body of water, a canal, that is 35 to 50 foot wide, five to 10 foot deep in some areas, and this is dry season after an unusually dry year; he and his neighbors own land on both sides of the canal; if all of the runoff associated with the proposed new construction cannot be contained on Mr. Hayes' property, it is likely if not inevitable, to worsen their existing drainage problems; and as stated, 2021 was an unusually dry year for Brevard County in general, and on North Merritt Island in particular. He stated there were in 2021 no hurricanes or tropical storms yet the canal behind their houses is approximately one foot below flood stage; any significant rainfall causes the canal to reach or exceed flood stage; these photographs document the Deanna Court canal and were taken by him on January 5, 2022, in the dry season; the Deanna Court canal, up to several years ago, used to rise and fall with the seasons; and it does not anymore with the drainage changes on North Merritt Island. He added Mr. Hayes' property is part of seven lots located on the West side of State Road 3 between Orsino Baptist Church to the South, and the Victory Church to the North; these seven lots, with the sole exception of a condemned house on one of the Mr. Hayes' lots, have been undeveloped since they appeared on the property appraiser's records maps in the 1960s; people have speculated on the value and future use of these lots for close to 60 years and most of these have changed ownership several times; once the Board approves rezoning for one of these lots, it starts down a slippery slope for zoning and a cascade for development for the adjacent lots; and County staff has noted, in particular on their Geographic Information System(GIS) maps, this property is in a wetland and a well-identified Federal Emergency Management Agency (FEMA) floodplain and based on the buildable land, County staff has said it is very difficult to build the number of units that Mr. Hayes is requesting; Mr. Hayes has offered a 200-foot buffer zone on the property to the west at both previous zoning meetings; and while he and his neighbors would rather see the land developed as wetlands, drainage, and conservation area, he supports the North Merritt Island Dependent Special District's recommendation of suburban residential zoning of two residential units per acre with a binding development plan with at least a 200-foot buffer zone as offered by Mr. Hayes, and a required connection to the available and nearby County sewer system.

Ann Doucette stated she sent a letter to the Board Members; and she just wants to reiterate that she feels the density is too great and she would just like to see a smaller zoning change than what is there.

Dana Doucette stated he and his wife feel exactly the same; he does not have any objections to them building, he just thinks that what they want to build is too much for the piece of property they have; and he also supports Mr. Barker's comments.

Joseph Cholewa stated unfortunately North Merritt Island has become the dumping ground for cruise industry parking, as well as boat trailer storage, so it is understandable why there is pushback against some rezoning; the cruise parking is now a blight on the area and it is negatively impacting and he does not know what the negative impacts will be on the future for

the area; the residents of the area are watching as the erosion of the rural lifestyle that originally attracted people to North Merritt Island in the first place; one has to ask, is this responsible development regarding the type of growth that is consistent with what North Merritt Island residents want and is coming to the area; and he has worked 16 years in the real estate industry and Merritt Island is his primary farm ground. He stated he works with people who are coming from out of state and they are not looking for rentals and they sure as hell are not looking for two bedroom rentals; he can barely even sell three bedroom homes that are new construction under 2,000 square foot to people that are moving here, as they are looking for homes between \$400,000 to \$500,000 and they are looking for stuff that is over 2,000 square foot; he did not hear anything regarding rental terms and what they are going to be doing, whether it is short-term or long-term; he did not hear anything or read anything if they are looking to do short-term, because most people that come here from out of state, whether they are doing a SpaceX short-term, they are all looking; and there is plenty of short-term rentals at Cape Crossing and they can get anything from 30 days to a year. He added that offers plenty of short-term rentals; a multi-family can be done right and it can be beneficial to an area but he does not think this is the type that complements North Merritt Island; they did mention housing shortages, but the problem is that the housing that the people are looking for, like he mentioned before three or four bedroom homes, over 2,500 square foot, between \$400,000 to \$600,000 is what they are looking for; another problem with rentals coming in the area is it lacks the pride and ownership that a lot of North Merritt Island people have in living up there; and unfortunately, he cannot support it, as they do not have a development plan, they do not know what the pro forma rental price per square foot is going to be. He mentioned there is a lot of missing information that he thinks is important that the Board should understand; he thinks other people have done a good job talking about the impacts on the environment; he is just looking at it from a real estate perspective and what the demand is and he does not see it there for this type of development; and he hopes the Board considers that when voting.

Gina Lindhorst stated she is a property-owning resident in North Merritt Island and she is present to oppose the submission for the zoning changes as they are written; she feels that there will be significant problems for the resident property owners nearby this site because of the significant hardening of the land required for building anything more than two homes on the approximately two plus acres; it will have a serious impact on their properties causing decreasing value of their property and causing significant drainage problems and so on, which has been clear everybody else has been reminded that is what is going on too; and she would like to say please vote no on this submission and maybe they can suggest only two residences on that property instead of more.

Commissioner Tobia stated he was just going to ask the last speaker about how the property values are going to decrease; she mentioned something about decrease in value of surrounding properties; and he asked what type of analysis or expertise she had to level such a claim.

Ms. Lindhorst responded she heard all the other expertise from the other specialists and she is supporting that as well; she understands that when they have lots of drainage problems and they have flooding on a property, then there is a problem with property value; and that is pretty clear to her so that is why she is suggesting that as a firm support for what she has to say.

Commissioner Tobia asked her to confirm she has no expertise, she is just going on what the other speakers said.

Ms. Lindhorst responded yes, she listened very carefully and she agrees with them, and she is supporting them.

Chair Smith inquired what the pleasure of the Board is.

Commissioner Lober asked to have a three or four minutes break.

Recessed

The Board recessed at 6:04pm and reconvened at 6:11pm.

H.11. Continued

Commissioner Pritchett stated she just wanted to open with an observation while she was listening to the procedure; she knows this is always a delicate area here when they are trying to make decisions and she just wants to say Commissioner Lober lives there so he has feet on the ground a lot, so a lot of his opinion will carry a lot of weight with her in where the Board goes and what it does; a couple of the concerns that she heard she wanted to mention, as the traffic gets her attention but they have to do the traffic study with those things; she knows they are looking at duplexes and the plus side with this is right off Courtenay Parkway it is a pretty busy road, there are two big churches close by; and she is going to be interested in what Commissioner Lober brings to the table here because she knows he is going to still have more questions as she has known him for a long time so she knows he has got a few things he is going to be asking. She stated the County sewer was a good idea when that was mentioned and she would be interested in hearing what they have going with that; and she just wants to mention that, for her, this could still go either way, and Commissioner Lober's opinion here will carry a lot of weight.

Commissioner Lober stated he wants to give the chance to the applicant to rebut anything they want to rebut if the Board could give them four or five minutes, he would just like to hear from them one last time.

Vice Chair Smith stated for a minute.

Mr. Hayes stated he knows he has one chance tonight to get it right and to present his case and if he thought spending a thousand bucks on a pretty drawing, he would have done it, he has already spent a lot of money, but there are three things and Brevard County told him he did not need a site plan; in their handout, it says in the rezoning process is not the appropriate place for site plan review, so it would be inappropriate really; there are so many unknowns; he asked where is his wetlands; he stated he has delineated, but now it is moved; and he asked what zoning is in. He added he could have come up with a 100 different site plans, why do that; he wants to get the zoning locked down; he is talking about one-story buildings but they have some really sharp plans for a triplex where he can stick another unit right on top and not affect their footprint or any of this Stormwater Management, but yet still have a very attractive building; this was a project in Titusville that they are looking at, but nowhere is zoned on State Road 3, there is no Suburban Residential (SR), there is business, commercial, 48 townhouses a couple blocks down the street that just got approved a couple years ago, but there is no SR; that was an emotional meeting, he thinks the Planning and Zoning meeting was a very intelligent meeting, it was well thought out, well represented, and it came to what he thought was a good decision; he asked to allow him to try to go back to just straight up RU-2-4 without the BDP's; let the site determine what he can do and let their ingenuity determine what he can fit there, he is going to go by all the rules; and when these maps are looked at for the wetlands, the property already drains to the back and the elevations and the sand is where the water goes, so his property is already contributing to the water on the back of the property, it is already taking place by the nature of the way this whole area is set up it is like a "V" right there, and everything drains into the middle when they built the neighborhood back there they filled in

those wetlands and pushed their houses right up to the setbacks, built a wall of dirt, and he thinks all of that water went all onto his property. He added they are worried about water, but looking at the footprint of those houses is in the Samsula muck that is why there is no data on the saturation of the Samsula muck which is the definition of wetlands.

Ms. Hayes stated nobody has brought up that the Future Land Use for this lot and the lots that are not zoned commercial like was discussed is RES-4; right now there is a house that is condemned on the property and they need to get it out of there; to go RES-4 is in line with the Future Land Use, it is what it is zoned for; they are going to go with this the County sewer, it is available and they are not going to do septic; the stormwater will go through all the engineering during the site plan; and then the commercial traffic creates 10 times more than residential and the Board knows that.

Commissioner Lober stated he has got a few things he wants to get on the record and then he may have some questions; as with most things in life, there is good, and there is bad and this is no difference; when it comes to zoning issues he has to look at consistency, compatibility, and everything that comes down to those two overarching goals; there are things he has heard from both the folks opposing it and from the applicant which does not go toward consistency and compatibility; there are other things that both those opposing and the applicant have discussed to go towards consistency, compatibility, but there are other things that both oppose and the applicant have discussed that so towards compatibility and consistency; some of the things that do not go toward it and he is not going to consider it because he do not believe he is legally entitled to consider petitions; simply as best as he can tell opposing the zoning and does not necessarily express a reason; he believes the intro they gave, which was quite a bit lengthier than he cares it to be and gets into the Board being prohibited from considering whether someone prefers or oppose something; and the gentlemen plans on constructing a home, homes, duplexes or whatever it does not go toward consistency or compatibility, so the fact that he may be the general contractor on whatever ends up taking place there to him is not a factor positive, negative, or neutral towards this is not something that matters. He stated there is a concern that he has with respect to not rentals but short-term rentals particular in that area; his understanding is that with RU-2-4 it is a possibility that they could have short-term rentals, so they could have folks stay a couple nights and leave; it could be seen on Airbnb, on Vrbo, or Booking.com with SR, is not a problem and simply is not permitted under any circumstances; pride of ownership is another one that sounds great, but it does not go toward consistency or compatibility to him; and the lack of a site plan, he is not going to hold that against them either because it is not something that is required, it is nice if it is available, but to him it is not a make it or break it issue, and it really does not change the equation. He added he draw issue with the statement that was made in rebuttal, essentially he may be paraphrasing here if it is not verbatim, but nowhere is there SR; this parcel abuts SR on the west and he thinks there are at least two, unless he is looking at something upside down or sideways there are at least two parcels that directly abut this property that are SR; he does not agree with that; SR is immediately adjacent to it with respect to this contention that the mobile home park somehow ought to be a factor due to being on the other side; he thinks it was Mr. Carpentier who mentioned that it is on the other side of State Road 3, it is a four-lane divided highway with a grassy median, and it is not immediately adjacent to it; it is not something that really is in the same neck of the woods so being there does not really change the equation for him; the other thing to keep in mind is that was approved, as he understands it in the mid to late 1980s prior to the adoption of Comprehensive Plan, so just because the Board may have made a mistake once does not mean it should compound the mistake and make it yet again; he does have concerns with respect to RU-2-4 being consistent and compatible and really maintaining the character of the community; with respect to the 30 foot high peppertrees or whatever the height was he does not consider that to be an acceptable vegetative buffer, he can let the Natural

Resources Management or Planning and Development staff talk about their concerns, but he does not know that they need to waste the time on that; he appreciates the offer to leave at least some portion of the wetlands alone on the west, he does not necessarily consider that generous; he thinks that is required by and large at least by Policy six in the Comprehensive Plan; and as to the ultimate goal, he is just going to throw this out there to get some place where they are in an unencumbered RU-2-4, not from him and until after November of this year. He stated he has no problem with the applicant building something; he thinks it is unreasonable to assume that it is going to remain vacant; he gets it and if he were Mr. Hayes, he would not purchase it just to be altruistic and to maintain a vacant land in perpetuity so people can back up to a natural preserve, that is ridiculous; he thinks there is a middle-ground between doing nothing and doing what is on the Agenda tonight; neither the North Merritt Island Dependent Special District nor Planning and Zoning recommended straight RU-2-4 without any condition, so it is just not in the cards; it is not consistent; it is not compatible; and it does not match what either of those bodies suggested. He opined SR it is a good fit, whether it is two single-family homes, two duplexes, one single-family home and one duplex, he thinks all of that frankly even if people are going to say it is upsetting to them, he thinks that is consistent compatible either way with that; he thinks having the 200 foot buffer to the west, if that is something that they previously offered to do is wonderful; sewer again certain zoning classifications may require to connect anyway but if Mr. Hayes is willing to put that in a BDP, as with the 200 foot buffer that he understands they have offered is wonderful; whether it is 1,500 foot or 1,800 square foot or 2,000 square foot, he thinks if they are looking at two units whether that means two duplexes for a total of four residential habitations or otherwise that to him is not a make it or break it, and he can live with either of those; in terms of the Comprehensive Plan itself, he just wants to make some observations that he thinks apply to this, or that he thinks applies to this; and in Policies in the Comprehensive Plan, Administrative Policy 3.C.1., requires evaluating whether the proposed use is consistent with an emerging or existing pattern, is determined through an analysis of the historical land use patterns; at this point he has looked through that map more than twice and there are no existing RU-2-4 multi-family in that area; and he thinks the closest is one-half mile away or there about, and on the basis he does not think the RU-2-4 is a consistent and compatible zoning for this particular area or with a fitting with the historic land use patterns. He continued to say the Administrative Policy four requires that they consider the character of the neighborhood or the area for rezoning applications, specifically having to consider the character of the area that it must not be materially or adversely affected by the proposed rezoning or land use application within about one-half mile, he does not think there is any RU-2-4 in the surrounding area, and this would essentially introduce multi-family use into a neighborhood that has a developed character of low density residential and some commercial development; he is aware that staff made the observation that it could be viewed as transitional but there was nothing mandatory; he really does view this as definitionally spot zoning, it would serve as what he would term an island of RU-2-4 in a sea of several other things that it is simply not compatible with; and to say that SR is not around there, again it is backed up right to it, if it looked to the west of the property there is a slew of SR and moreover even if there were an SR, SR is more consistent with the general feel of that area in terms of the single-family developments and properties that are surrounding it then would be RU-2-4. He stated Administration Policy six really goes into the environmental aspects with respect to wetlands; he thinks there are a lot of constraints with respect to developing the property under Policy six; with respect to the 200-foot buffer to the west, he thinks some of that they are probably not going to be allowed to touch anyway but if they are willing to call it a minimum of 200-foot he thinks that would calm a lot of the concerns that people have to his west; but due to the fact that the mapped area of the wetlands are on the subject parcels, he thinks Mr. Hayes is going to have a problem developing it. He stated he is really at a point where he could do one of two things and he would like to work with Mr. Hayes, because he thinks he should be entitled to build something that allows him to monetize the

property, but he thinks what it is that he were seeking with this Agenda Item is way overboard; if he would be comfortable addressing some of the concerns that would enable this to be more consistent, compatible he could get behind it; but the few things he would like to see with it are a BDP with a 200 foot buffer to the west, a BDP obligating to connect to sewer if the zoning class obligates him to do it anyway really makes no difference if he puts it in the BDP as well he is basically saying he is agreeing to be obligated to do what he is already obligated to do, he really wants to see it limited to two duplexes, two single-family homes, or a duplex, and a single-family home, and he does not care much about the square footage. He advised Mr. Hayes will have to go through a process to get that approved, that is on him, and he does not want to interfere; he should be able to do that without tremendous difficulty; he believes they can do that with SR, if they are amendable to do that; and he thinks it can be wedged in where it is consistent and compatible, as opposed to denying this that puts him on hold for another six months.

Mr. Hayes stated he was talking about SR along State Road 3, there is no SR on State Road 3, and that is where he is at and what he meant.

Commissioner Lober stated he is just trying to move forward to find a way that allows him to use this without ruining things for the folks to his west.

Mr. Hayes stated he has never offered a 200-foot buffer; all he has ever said and he does not know where that came from, is he is not going to build in the wetlands; like Commissioner Lober said is not so much as his choice because it is kind-of the way it is, not allowed to build in the wetland; he does not want to; whatever the wetland is, that is unbuildable; and he does not know what Commissioner Lober's definition of a buffer is and he does not know what the County is, or what that means.

Commissioner Lober asked staff to give the definition of a vegetative buffer or at least a working definition even if it is not a perfect verbatim one.

Tad Calkins, Planning and Development Director, responded in the Code they have vegetative buffers defined as a type A, type B, and a type C and that is what they use to buffer commercial development from residential; but he would defer to Amanda Elmore, Deputy Director, who would be able to answer.

Commissioner Lober inquired if it is all right for him to ask Ms. Elmore.

Vice Chair Smith responded absolutely.

Ms. Elmore stated the Board typically does not have buffers in between residential to residential, but the requirements are in Section 62-4342, and there is a couple different types of buffers like Mr. Calkins said, so usually along roadways it is 15 foot wide, along incompatible uses where they have commercial to residential it is 20 foot wide, and then there are vegetative requirements in the Appendix B for trees per 100 linear feet and two layers of shrubs; she thinks there is some preserved native vegetation that could be used; and the Brazilian peppertree will have to be removed, all of it, because the property is less than five acres.

Commissioner Lober stated he thinks the last little bit that Ms. Elmore touching on really gets toward the more or less the core of the question, so it is four trees for how many linear feet.

Ms. Amanda responded 100 linear feet so they can be grouped in that 100 linear feet and they can use preserved trees or planted trees.

Commissioner Lober stated see that is what he is looking at and if he can take a look at it for a few moments, otherwise the Board can recall this perhaps in a few minutes, if he think it is less than 200 feet that the existing wetlands encompass; if the Board can come to some agreement to that, he thinks they can move forward without that necessarily being a roadblock; but the other items he really does not believe that he has the ability to budge on.

Mr. Hayes reiterated there is no SR on State Road 3; and he inquired if he can build duplexes under SR, he wants to build some nice duplexes, and he is thinking SR is single-family with quarter acre lots or one house.

Commissioner Lober asked if there is any issue with building duplexes under SR zoning.

Mr. Calkins replied the SR zoning is a residential zoning classification, it does not have duplexes identified as a permitted use.

Commissioner Lober asked if he would have to get a variance for that or what is the process to cause that to happen.

Mr. Calkins responded it would not be allowed by variance; and he needs a second to look at the zoning that would allow for a duplex.

Commissioner Lober stated please and he is not trying to pull a fast one on Mr. Hayes.

Mr. Hayes thanked Commissioner Lober; and he stated he understands but that is why the RU-2-4 would work maybe with a BDP.

Vice Chair Smith stated well if he got the wetlands behind.

Commissioner Lober indicated he is just concerned in terms of the depth of them, if they are substantially 200 feet, if it is 160 it is not the end of the world.

Mr. Hayes stated it is a lot.

Mr. Calkins stated it would be the RA-2-4.

Commissioner Lober asked for help with RA-2-4.

Mr. Calkins replied the difference between the RU-2-4 and RA-2-4 is it considers it an attached residential unit, so it is more of a townhome type construction; and he stated it does allow for multi-family in there as well.

Commissioner Lober inquired if he would still be okay building single-family or combination of the two if he chose to do so.

Mr. Calkins responded he could do single-family, but he thinks that to address all the concerns he would probably still want to have some limitations on the multi-family development aspect of the property.

Commissioner Lober stated here is where he is at if they end up doing that, if there is some downside or upside that he is not aware of please jump in because he will be honest, he is not as familiar with RA-2-4 as he is with a lot of the other zoning classes; and he asked if

short-term rentals are allowed in RA-2-4.

Mr. Calkins replied it does have short-term rentals identified as a permitted use.

Commissioner Lober asked if they go in that direction to have a BDP that includes no short-term rentals.

Mr. Hayes stated that is fine with them; the same with the sewer, it is right there on in front of the property; and he is definitely tapping into that sewer.

Commissioner Lober stated any motion comes that from him, at least after this is going to contemplate a BDP with no short-term rentals, connection to sewer for any residential unit or any living unit on the premises, and then in terms of the buffer to the west he does not know if anyone has an idea in terms of the footage that it ends up going eastward so they can see if it is close.

Ms. Hayes remarked they could agree to 100 feet.

Commissioner Lober stated he is just curious where the wetlands go.

Mr. Hayes stated the standard buffer he thinks it is 20 foot.

Commissioner Lober stated it is kind of a different situation where the Board is putting in zoning that otherwise frankly they would not get; and he is trying to make it work for them.

Ms. Elmore stated she measured it with Darcie Mcgee, Assistant Director Natural Resources Management, while sitting in the back; she thinks it probably exceeds 200, but since staff currently, has maps, they do not have a delineation and they are not sure; but Mr. Calkins is measuring right now and he is finding the same thing, as he is nodding along.

Commissioner Lober asked what the width is of the lots in and total from east to west.

John Denninghoff, Assistant County Manager, responded the lots are approximately 100 feet wide each for the two of them.

Commissioner Lober inquired from the east to the west.

Mr. Denninghoff responded they are approximately 600 feet deep from Courtenay Parkway to the west property line.

Commissioner Lober stated it sounds like it is going to be more than 200 anyway, he could live with 160 if they are able to do that, just because he thinks that is a very substantial buffer more so than what they would get for almost anything else; the BDP would be no short-term rentals, connection to sewer for any residential unit on there, a minimum of 160 foot vegetative buffer on the westernmost portion of the property; and he asked if staff has any other thoughts or concerns.

Abigail Jorandby, County Attorney responded what it is limited to.

Commissioner Lober stated this would be limited to either two duplexes, two single-family homes, or one single-family home and one duplex.

Ms. Hayes stated she do not agree with that being fair; and if the Board really looked at State Road 3, there is no other new construction of single-family homes, there may be by the Space Center of a single-family home that fronts Courtenay Parkway but there are not any other single-family homes, they are all something different.

Commissioner Lober stated to kind-of cut back to it, he thinks just because mistakes have been made in the past does not mean that they are to reiterate or replicate them again; he thinks what it really comes down to in all truth, and if they feel differently they are not obligated to agree with him is with the wetland concerns they have, and they may not be able to get much more than that anyway; at one point had in one of these emails that came through, he believes it was 11 units that were at one point contemplated; he could not figure out how to put 11 units on that property; and he thinks with two units they could probably build that, but when they start increasing beyond that he is not sure whether they would be able to build three or not.

Ms. Hayes stated well and that is where they would have to go through the site plan and all the engineering for the stormwater; and they are not asking for a variance for any of that, and she would hate to restrict that now without exploring that.

Commissioner Lober advised if she thinks that she has more usable space to build, as far as having the footprint or the pad of a house, she can put up larger duplexes, a large single-family, or one large single-family and a large duplex.

Mr. Hayes pointed out there is almost two football fields, if he thinks about it that way, and that is how big that property is.

Commissioner Bryan stated with a ton of it being wetland on the west; if they do not want to agree to it, then do not agree to it; but he sees this as the way forward.

Mr. Hayes inquired why not agree to what Planning and Zoning said RU-2-4, three units per acre, which was a well thought out decision, and can they start with that.

Commissioner Lober replied he does not think it is compatible with that; and it is up to them.

Ms. Hayes stated she would say no single-family, because that is not compatible there at all.

Mr. Hayes stated that is RU-2-4 with two units per acre then; and it will cut them right in half.

Commissioner Lober asked what the practical difference is between RU-2-4 and RA-2-4, if they have these BDP conditions.

Mr. Calkins replied it is primarily the product type where staff mentioned it would be a townhome in RU-2-4, and getting into more of the apartment complex, multi-family condominiums stuff like that.

Commissioner Lober stated he do not know that is compatible.

Mr. Calkins stated it is primarily more of the ownership.

Ms. Hayes asked if there is any designation, as far as ownership like if they would have to sell and create a homeowners association and everything like that if it remained owned under one entity in RA-2-4.

Mr. Calkins responded there is no zoning requirement for something like that.

Ms. Hayes reiterated under the RA-2-4.

Mr. Calkins responded under the RA-2-4 no; and he advised not from a homeowner association documents which is what the question was, right.

Ms. Hayes replied right; and she stated one entity could remain as the owner, it would not have to be divided, they would not have to have a Planned Unit Development and all of that in that zoning.

Mr. Calkins responded they would have to divide the property to make lots for the dwellings, that is where staff looks at it from the townhome product standpoint; and whether those are owned by one person or have two townhomes owned by the same.

Commissioner Lober inquired if that would be the difference between RA-2-4 and RU-2-4 anyway; and he is just wondering if there is really any difference in that respect.

Mr. Calkins stated the RU-2-4 does not have to subdivide the property for the townhome aspect, and be able to build the four units or the three units on just the property.

Commissioner Lober asked if they are looking at putting up townhomes and is that really what they want to do.

Mr. Hayes responded two units together, whether it be called a townhome which some people think it has to be two-sided; he is thinking duplex, two units kind-of stuck together; maybe they can stick a couple triplexes out there; but that is what they are looking at, not subdividing the land all up but put some duplexes out there easily.

Commissioner Lober asked if there is a definition of duplex, because he is thinking if they have a BDP that limits it to duplexes it almost does not matter what the actual zoning is, if they can do it, and limiting it to only that particular envision use; and he stated he appreciate Vice Chair Smith's patience.

Commissioner Pritchett stated it is limited to 10 multi-family units.

Commissioner Lober stated he does not think they are going to get there though.

Commissioner Pritchett asked they already have some limitations, correct.

Commissioner Lober stated yes.

Commissioner Pritchett stated she just wanted to ask that question real quick.

Commissioner Lober stated he will defer to Mr. Calkins, but that is his understanding.

Mr. Ball clarified the definition for duplex in Section 62-1102, duplex means a residential building designed or occupied by two families, with the number of families in residence not exceeding the number of dwelling units provided.

Commissioner Lober stated if they want the RU-2-4, the only real way that he could see making it happen, in addition to what they said is the other BDP terms again to reiterate for the benefit

of the clerk, is no short-term rentals, mandatory connection to sewer for all of the structures on the property, and a minimum of 160-foot vegetative buffer on the westernmost side; and if he agrees, to limit it to duplexes as far as the construction.

Mr. Hayes added some kind of plex.

Commissioner Lober advised he does not know that either the Planning and Zoning or the North Merritt Island Dependent Special District Board has had a chance to consider triplexes; he stated he feels comfortable moving forward with duplexes, if they are okay with that; and he does not feel comfortable with triplexes, because he would want them to have another shot at addressing that to see if that is something that they are comfortable with.

Mr. Hayes asked if he would go two units per acre.

Commissioner Lober responded again, with the wetlands, he is not sure what they are going to be able to do; but he stated he is comfortable with two duplexes, essentially they would have four families able to live there if they want the RU-2-4.

Mr. Hayes stated he wants RU-2-4, yes.

Commissioner Lober stated so just to be clear he wants to make sure so there is no ambiguity; the motion he is going to make is to approve the rezoning to RU-2-4 with the BDP with the following conditions no short-term rentals of any kind on the property, so none of the duplexes; mandatory connection to sewer for any structure on the property; a minimum of 160-foot buffer for a vegetative buffer on the westernmost side of the property and then the only permitted construction type would be duplexes; and it would be limited to two duplexes, so they would have one duplex that is one set of two, then another duplex, another set of two.

Vice Chair Smith asked if the 160-foot buffer is where the wetlands are.

Commissioner Lober responded yes; and he stated he thinks they heard from staff that they probably are even further east than that, so 160 is pretty safe.

Vice Chair Smith stated he just wanted to protect them and define what a vegetative buffer is because he does not want somebody to look at this when everybody is gone five years down the road.

Commissioner Lober advised they are going to use Ms. Elmore's definition.

Vice Chair Smith remarked he does not want somebody to say the wetlands are not considered that is a vegetative buffer so they do not want them to be forced to have the wetlands considered or not considered a part of the buffer and having an additional 160-foot buffer, in other words if this is their 124-160-foot water they do not want somebody to say they have to have 160-foot of vegetative buffer on the other side concept, so it has to be included.

Commissioner Lober stated he is thinking that Ms. Elmore gave the definition out of policies; he is fine if they are okay with the BDP language, having staff work with them to come up with appropriate terms; if they want, if it is appropriate and permissible he does not mind joining in on that conversation so that everyone is on the same page for when this comes back to the Board, there is not going to be any ambiguity as to exactly what is meant; they can hash that out without having a whole bunch of folks waiting for other items; but if they are comfortable he thinks they all understand what the intent is.

Mr. Hayes asked if the buffer is to be in the wetlands.

Commissioner Lober responded he envisioned it to include buffer be in the wetland area, it is not the wetlands and then 160-foot; and he stated he is not looking at being unreasonable and he thinks that is the way to do it.

Mr. Hayes asked for clarify because he does not want any trouble with the people behind him, and if he can still put up a six-foot privacy fence on his property line.

Commissioner Lober asked if that is a concern, in terms of having a privacy fence on the outside portion of the vegetative buffer; he stated he does not know that it is going to hurt anything; but they can talk about the language, he has no objection to that, and he thinks that is fine.

Mr. Denninghoff asked for a point of clarification; he stated if they were talking about 160-foot of buffer, he wanted to distinguish for just a moment between what is typically called a buffer in the County Code and what he is talking about here, which he thinks is really more of a preservation area; they are going to preserve the existing vegetation in that 160-foot or whatever the wetlands would wind up being, but 160 at the minimum; the reason he is asking because this is heavily covered with Brazilian peppertrees; he asked if they are going to be expecting them to remove the peppertrees or not remove the peppertrees; and he just needs to get a little bit of clarification as to what the intent is.

H.11. Continued

Commissioner Lober responded he was looking at having the peppertrees out, whatever natives are there, whatever else does not need to be removed, and he does not want them to rip it out to replant something, that is foolish; but whatever natives are there, assuming it is necessary to supplement that to meet the definition of a vegetative buffer that had been read into the record a little bit earlier, he would just have them add to that and the only thing that he is envisioning being removed are the Brazilian peppertrees, and then beyond it was the four trees per 100 linear feet.

Ms. Hayes asked if they can even add trees into a wetland; and she stated she does not want to agree to something if they are not allowed to plant those plants in a wetland.

Ms. Elmore advised staff can work with them on appropriate species for what wetland planting.

Mr. Hayes stated there might be enough trees there already.

Commissioner Lober advised they are talking 160-foot; and the bottom line is, his goal is to make it opaque and if they cannot see through whether it is six trees more or twelve trees less, he do not care, and it is just to accomplish the goal.

Mr. Hayes stated they will get rid of those peppertrees by pulling all those out of there.

Vice Chair Smith stated he wants to be clear, if their wetlands is actually 200 feet then they are not going to be required to do anything except clear out the peppertrees, because that is their buffer, and to not call it a vegetative buffer, call it a natural buffer any additional necessary to make it 200 feet.

Mr. Hayes stated he does not know want the neighbors thinking they own it, which is what they

are going to do.

Commissioner Pritchett remarked that is a huge buffer.

Commissioner Lober stated he will scratch what they did before the for sake of clarity and just state it at one time, so that they are not on different pages; the BDP would be no short-term rental, connection of any structures that are on the property or that they build on the property to sewer, a minimum of 160-foot; and he asked if it should be called a natural buffer or does that have some particular term with definitions, because he does not want to create problems thinking he is solving them.

Ms. Elmore responded if it is intended to meet the four trees per 100 linear feet, whether they are preserved or planted, then Appendix B could be referenced of the Landscaping Land Clearing and Tree Protection Code, that way it would be all spelled out; and she inquired opaque is to what height because typically they would not have an opaque requirement in an instance like this, and she just wants to make it clear for staff.

Commissioner Lober replied it is so dense he does not know that he is going to make an issue over that due to being so dense.

Ms. Elmore stated staff just does not know the percentage of peppertrees and they are not sure once those are removed how much planting will need to be done, because staff does not have a tree survey.

Commissioner Lober stated in the BDP, if they agree, to remove the peppertrees within the buffer and then maximum of two duplexes on the property with the RU-2-4.

Ms. Hayes stated she guesses the only other thing to do, would be to switch it to townhomes and ask for six units.

Commissioner Lober request to please not change it on him now.

Mr. Hayes inquired five units.

Commissioner Lober responded if they can live with two duplexes, he thinks they can leave, and everyone is not necessarily happy but are content to treat it like a mediation, where everyone does not get 100 percent of what they want but everyone gets something.

Ms. Hayes stated she just does not know if that really flows on Courtenay Parkway, she means there is a restaurant that is literally going for permit, two lots down from them; and there is churches that have cruise ship parking now.

Commissioner Lober stated he can tell them his thought with respect to cruise ship parking lot and it is not positive.

Ms. Hayes stated she knows, but the church is two lots north of them; she means it is not like they can build these big square footage, beautiful single-family homes, or big, huge duplexes.

Commissioner Lober stated his parents have lived in the same house since the mid-to-late 80s, they just had someone buy the next door property, the guy has crazy parties, and he goes the engine in his car constantly or cars he should say constantly to be showy as far as he can tell; from what his parents tell him, that is not fun but he does not want to replicate that for

someone else two houses down; he gets what Ms. Hayes is saying 100 percent, with respect to there being a variety of uses on State Road 3, he see it every day; he was on State Road 3 a few hours ago, as he will be tomorrow again, too; he just thinks there are some things that clearly will work, there is some things that will clearly not work, and there is some that are in the gray area; he thinks they are at a point where it clearly would work; there may be some grumbling and people may be upset for him working with them to this degree anyway; but he thinks he can justify this, look everyone in the eye, and say look everyone walks out with something that is fair with this.

Mr. Hayes asked if it could be said one last time that in the RU-2-4, it could just say two units per acre and let him try that.

Commissioner Lober replied the problem is with that RU-2-4, there is such a variety of different permissible structures he is not comfortable with it for that reason.

Mr. Hayes stated with the other BDP's, but as far as density goes instead of two duplexes.

Commissioner Lober stated well if they want to do two single-family homes or one single-family home and one duplex, he could live with that; he thinks the combination of single-family homes and duplexes does not matter to him; but it is really those two he can tell them he feels they are consistent with the area.

Ms. Hayes asked he would not agree to two units per acre, where Planning and Zoning was three units an acre.

Commissioner Lober mentioned Planning and Zoning is an Advisory Board.

Mrs. Hayes stated she understand but two units per acre.

Commissioner Lober stated this is basically splitting the baby between what Planning and Zoning suggested and what North Merritt Island suggested, with respect to giving the zoning being asked for, but limiting the density to what the Dependent Special District asked for; he thinks this is a fair offer; he just wants to make sure that there is not any question; he apologized to Vice Chair Smith for being repetitious but he is just trying to keep it clean for everyone; the BDP will be no short-term rental, connection of any structures that they build to the sewer, a minimum of 160-foot natural buffer, removal of peppertrees, and a maximum of two duplexes on that particular property; and he asked if they are good with that.

Vice Chair Smith asked to make it tougher to include the wetlands.

Commissioner Lober responded he will make it clear the buffer envisioned is including the wetlands; and he stated he is not asking them to begin the buffer after the wetlands end, otherwise, it would be essentially eliminating the entire property.

Ms. Hayes stated it may not even be called a buffer just natural vegetation; and she asked if they can work on that language later.

Commissioner Lober stated he thinks they can work on that language.

Vice Chair Smith stated use the wetlands as the buffer.

Commissioner Lober advised that the purpose tonight is just to move forward, because it is has

to come back with a BDP anyway; if the Hayes will work with him, he will continue to work with them and staff, as long as they stay within the guidelines of tonight; and he thinks they can tweak the language, with respect to the particulars of the buffer between now and when it comes back, as long as they are okay with the general premise, the items that he mentioned for the BDP.

Mr. Hayes stated yes.

Commissioner Lober stated he will make a motion to approve, contingent on the BDP conditions that he read into the record.

There being no further comments heard, the Board approved a change of zoning classification from AU to RU-2-4 with a BDP to include conditions: no short-term rentals, mandatory connection to sewer, limit to two duplexes, 160 foot natural buffer on the westernmost portion of the property which includes the wetlands, and removal of Brazilian peppertrees in the buffer.

Result: APPROVED

Mover: Bryan Lober

Seconder: Rita Pritchett

Ayes: Pritchett, Lober, Smith, and Zonka

Nay: Tobia

H.12. Justin M. Falscroft requests a change of zoning classification from RR-1 to AU. (21Z00039) (2404081) (District 1)

Vice Chair Smith called for a public hearing for a request by Justin M. Falscroft change the zoning classification from RR-1 to AU.

Jeffrey Ball, Planning and Zoning Manager, stated this is a request to change Zoning classification from RR-1 to AU, application number 21Z00039, and located in District 1.

Commissioner Pritchett stated Mr. Falscroft is getting ready to put some horses on the property and some other structures.

Mr. Falscroft responded the idea is just to build a structure and the horse thing was just...

Commissioner Pritchett stated she thinks it is a great fit; she knows staff had talked to him, because they always have a concern with certain types of overnight stays; and she thinks with everything he said he wanted to do is good, if he is agreeable to doing an AUL and then a Binding Development Plan (BDP) just saying they are not going to do agritourism, then she is good to go.

Mr. Falscroft stated he does not have any problem doing so.

Commissioner Pritchett stated she is making a motion with that criteria.

Vice Chair Smith asked the Clerks if they have those restrictions.

Commissioner Pritchett stated AUL with a BDP restricting agritourism.

There being no further comments, the Board approved a change of zoning classification from

RR-1 to AUL, with a BDP restricting agritourism for Justin M. Falscroft.

Result: APPROVED

Mover: Rita Pritchett

Second: Bryan Lober

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

H.13. Edic and Ashley Moreno request a change of zoning classification from GU to RR-1. (21Z00041) (Tax Account 2423907) (District 1)

Vice Chair Smith called for a public hearing for a request by Edic and Ashley Moreno from GU to RR-1.

Jeffery Ball, Planning and Zoning Manager, stated Edic and Ashley Moreno request a change of zoning classification from GU to RR-1, application number 21Z00041, located in District 1; he pointed out that just like the previous application tonight, this property may have some access challenges; what is before the Board is a rezoning request where they consider compatibility and consistency with the Comprehensive Plan; and the applicant will need to demonstrate compliance with Section 62-102, regarding access which is done in a separate process.

Commissioner Pritchett asked if the applicant is present; she stated for the record she is going to agree to the zoning change, but they do have a landlocked situation; they will have to work to maybe purchasing some property from someone so they can get a flag lot out there, or get creative with some way to get there; she just wanted to make sure they are aware of that; and to get it on the record.

Vice Chair Smith asked Ashley Moreno to state her name; and he stated they need to get her to sign a card.

Commissioner Pritchett advised to fill out a card real quick so they have it for the record.

There being no further comments heard, the Board approved a change of zoning classification from GU to RR-1 for Edic and Ashley Moreno.

Result: APPROVED

Mover: Rita Pritchett

Second: Bryan Lober

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

H.14. Public Hearing, Re: Adoption of EAR Based Amendments, 2017-2.2. DEO #17-3ER

Vice Chair Smith called for a public hearing for the adoption of Evaluation and Appraisal Report (EAR) based amendments, 2017-2.2. Department of Economic Opportunity (DEO) #17-3ER.

Tad Calkins, Planning and Development Director, stated Item H.14; is a request for the Board of County Commissioners to adopt the 2017 Evaluation and Appraisal Report-based amendments to the County's Comprehensive Plan; Florida Statute requires that every County Municipality evaluate their Comprehensive Plan every seven years; the adoption of the proposed ordinance in this package would allow staff to complete the 2017 Plan Update, just a couple things about what is included is everything in this ordinance that is being proposed as an amendment has either been previously approved by the Board of County Commissioners as part of the December 2017 EAR transmittal to DEO package or is current language in the

Comprehensive Plan that was mistakenly omitted from that transmittal package, and they are asking for it to be included in with the exception being and the only new language that is for the Board's consideration tonight are the 13 new coastal management policies relating to the perils of flood, which are addressed in the deficiencies identified by the DEO in their objections, recommendations, and comment report; and these policies being brought to the Board tonight are a collaboration of various agencies, County departments, the East Central Florida Regional Planning Council (ECFRPC), and a state-funded grant through the Department of Environmental Protection and Florida's Resiliency Coastline Program.

Commissioner Pritchett stated she is going to support the staff's recommendations, she got a lot of emails, but she knows this is specific to what is being asked for to qualify; she reiterated that she got some emails, she totally gets it, and they shall develop mechanisms to evaluate and should develop; she thinks when they start getting into the shalls, they start entering into an area where they could have some complications later, some unforeseen consequences; she agreed, the County should be very aggressive in working towards these things; and she is going to support the staff's recommendation this evening.

Commissioner Lober stated he is going to support most of staff's recommendations this evening; he did send out a memo to all the folks, up here and the Clerk's; it is going to be set in this evening meeting minutes; if anyone wants to review it, it will be available along with the meeting minutes; there were some changes that he had asked to be made and this is not necessarily exactly what folks were requesting in emails, but he thinks it clarifies things and puts everyone on notice there is one change that staff had requested that he consider with respect to his suggestions; and he will give his suggestions first and then he will give their suggestion, which he is amenable to, as far as altering what he suggested changing in their language. He stated the two items he is looking at are Policy 14.6 and Policy 14.9, whereas the way it presently reads, the County should develop mechanisms to evaluate; he struck out should and included the word must and then at the end of that sentence he changed it to add unless it can be clearly demonstrated that: (a) strict application will be contrary to the public interest; (b) the public values being protected are in significant and strict application will result in an excessive hardship to the project; (c) strict application will place an excessive hardship on the project, and an alternative action is available which is equal to or superior than the original requirements in reaching the policy's objective; (d) the activity is not financially feasible for the local government; and staff had requested that he consider changing the and at the end of little (c) prior to (d) to an or, he is fine with that. He stated with respect to Policy 14.9 the changes he proposed in the memo where it talks about the County should encourage nature-based design, he changed should to be must, and then at the end of that sentence that ends in future flooding impacts, he moved the period and made it unless it can be clearly demonstrated that: and he put the exact same language he just read through the a, b, c and d; staff again asked if he would consider instead of an at the end of little (c) prior to (d) making that an or; that is his suggestion and he is fine with, as far as making the two ands ors, if folks are amenable to that; and he will go ahead and make motion at the end of this to adopt that language that he has read in with respect to 14.6 and 14.9, otherwise adopting everything as staff has recommended them.

John Schantzen stated the first principle in writing any agreements or regulations is never should on themselves.

Commissioner Lober stated that was pretty good.

Chair Smith stated point well taken.

Phil Bennardo stated he is going to speak as a long-term resident of Merritt Island; he has watched the Indian River Lagoon slowly die and he has seen it in the paper about record numbers of manatee deaths, fish kills, and red tide; and he just wanted to point out that mandating things versus recommending things, as Commissioner Lober's is recommending is him kind-of agreeing to what he was really going to say about Policy 14.6 and Policy 14.9.

Dr. Lessa Souto, Executive Director of Marine Resource Council (MRC) stated the MRC is a non-profit dedicated to protecting and restoring the Indian River Lagoon (IRL) through science, education, and restoration; she was delighted to hear Commissioner Lober's language improvements to the Comprehensive Plan, MRC, IRL, Coastal Community and she thanked to him for that; the new report card is out, it was brought up to Tallahassee to share with every Representative and Senator in the State of Florida last week; she wished she could say it was well received; they have been mailed to the Commissioners; they still have a lot to do; but she is not going to tell what the grade is, because they are going to do the public release on March 10, which is one of the reasons she is here to announce the new report card is out, they have got work to do, and she appreciates the thoughtful input on this Comprehensive Plan language because this is the beginning of a door opening to creating a different paradigm in sustainable development in the County. She added she is delighted to hear that Commissioner Lober is willing to entertain the improvements to the language; if the Board has not received a report card, she has some to give them tonight; and she does not really have anything else to say because the Board has already addressed the two policies that MRC were most interested in seeing a change in the language.

Mary Sphar stated she is speaking for the Sierra Club; Brevard County is working hard to restore the health of the Indian River Lagoon with many excellent projects that are part of the Save Our Indian River Lagoon (SOIRL) project plan; these projects cannot do the job alone; she quoted from the (SOIRL) project plan about the risk assessment of top scientists "The scientists continued to voice concern about the restoration of the IRL in the absence of regulatory reform needed to prevent new development from adding more septic system and stormwater pollution to the Lagoon;" therefore, updated regulations are needed as a complement to this plan, to ensure timely and sustained success in restoring health to the IRL; the proposed policies, the coastal development and redevelopment could be part of the updated regulations needed to prevent more stormwater pollution from entering the Lagoon; but these projects cannot do the job if they fail to ensure the County's commitment to implement them in a timely manner. She stated the word should, used in all 13 of these policies, by definition gives the County an excuse to delay as long as "The activity is not financially feasible;" she is hoping that after she speaks Commissioner Lober will clarify whether his suggested language includes they must do these policies, unless the activity is not financially feasible; this can mean delays because it is not in the budget, staffing concerns, or not getting a grant; she does not know about a definition of must; it is most unfortunate they did not get wind of this language prior to the meeting, they could have done some research; they are asking to prioritize policies 14.6 and 14.9, by using the word shall; she suggested sticking with that; the taxpayers are paying with sales tax \$489 million over 10 years for SOIRL projects; and they have got to get away from having this excuse of not having to do something if it is not financially feasible.

Maureen Rupe stated the wording when she was at school in England which was a long time ago the English master pointed out the difference and consequences of using semantics that change the whole meaning of sentence; verbs like should or shall or may or must have different meanings, one is a prediction and one is a promise; words such as these can change the whole concept of a document and leave an opening for an undesirable action and the IRL cannot afford any undesirable actions; Brevard County is in a crisis with the environment and it still has

not put in place low impact development which has been proved to significantly help problems with pollution in water and waterways, by using the word should and not shall gives the County and the development community an out, to not comply for a multitude of reasons which taxpayers or the IRL cannot afford; and she asked the Commission to insert shall, it knows it should, but that does not mean it will.

Gina Lindhorst stated she is concerned about the environment and the fact that she is a long-term and full-life resident, along with her husband and children; it is important for them to have a good quality of life, a good environment to live in, have lots of revenue for the community, and billions of dollars of revenue comes from the IRL every year; and if it continues to languish and wither, due to several factors they forego these dollars. She mentioned interstate and international business are attracted to the environment; if it is looking like a sewer, they are not going to come and arrive with their business, and employ people; policies 14.6 and 14.9 should be changed and having shall instead of should will take care of everything and it takes a load off of everybody for making these decisions right per project; nobody wants to pay more money than they have to with any projects, everybody is going to say it is so difficult and it is so much money, it is not really worth it; and this will take care of it if they just put shall instead of should.

Michael Myjak stated time is running out; they have been running out of time for 20-30 years, they have been waiving the banner but nobody seems to be listening, and the development practices continue; there tends to be more and more density put in smaller and smaller areas and the environment simply cannot withstand it; at some point they are going to run out of those resources; water resources are looking at running out in another 20 years, surficial and aquifer water will no longer be able to accommodate new people moving in so says the St. John's River Water Management District; the time for coulds and woulds are passed; 20 percent of the manatees have been lost, think of it another way, a deck of cards only has three suits, they have lost 20 percent of the people on the planet, they would be talking about two billion people; that is what happening in the Lagoon right now; and they are out of time, this needs to be a shall or a must, he could care which both will do the same thing, and please help save the Lagoon and make this a priority.

Luarilee Thompson stated developers have expectations that they can make money as much as possible on their projects; she is present to remind the Board that other Brevard County citizens have expectations and they should be considered, too; as a major employer in North Brevard since the early 1960s, her family has operated multiple businesses through the decades; today they are in the business of tourism; they have an expectation that they should be able to obtain seafood from the Indian River to offer in their restaurant which has a reputation for serving locally caught seafood, because that is what her dad did when he started the restaurant 40 years ago; he only served what he could get from local waters due to decades of too many nutrients and too much pollution going into the river; and 95 percent of seagrass is gone, shrimp and fish need seagrass in order to exist. She added they have not been able to get Indian River mullet for months; oysters and clams from the Indian River have been unavailable for decades, like the seagrass the ability to obtain local seafood products has evaporated; North Brevard County was once hailed as the redfish capital of the world; fishermen packed the hotels and restaurants during half a dozen annual fishing tournaments; years now passed between Titusville redfish tournaments; as operators of a tourism business they have an expectation that the river should be healthy enough to support the lucrative fishing tournaments that used to be so prolific here; they have an expectation that there should be plenty of healthy manatees and dolphins for their visitors to enjoy; Brevard County is all over the news media these days and identified as the community that has done such a poor job taking care of the estuary, that helpless defenseless manatees that are starving to death; and

she asked how can that be good for tourism. She went on to say the river is in a death spiral because past development practices have allowed too much freshwater with too many nutrients and pollutants to enter the river; updated regulations are needed as a complement to the SOIRL plan to ensure the constituents tax money is spent wisely for timely and sustained success and for restoring health to the damaged Indian River Lagoon; and prioritizing Coastal Management Element policies 14.6 and 14.9 by changing the word should to shall or must in each element will not kill development in Brevard County, a lifeless river will.

Mr. Ball stated he has a housekeeping item for those who spoke, if they did not sign in they can come and sign this sheet; and it gets sent to the State, as it is part of the review.

Commissioner Pritchett expressed her apology to Commissioner Lober because she should have known with him being a lawyer, he had unless and less in there, and under certain circumstances there is a way to do something different; she stated when reading through this must encourage or shall encourage is not lot of difference; she is fine with the must on that because putting that there will help with that; she wants to defend staff here a little bit; she knows people get very passionate about this, but Brevard County staff is working very hard to ensure the IRL and the environment is being very well taken care of; they are being great stewards; she does not want to make it look like there is something even if they had should staff is not doing it, they are doing it; this Commission has stood very strong with doing these types of elements that are helping the environment; a lot of money is being spent on it; she thinks what Commissioner Lober put in there together was a good job; and she should have known with him being a lawyer he would have had that in there and she should have read before. She stated she is supporting him and she is good, because he has the worst-case scenario in there, and they still have an ability to make changes; and the Board should be encouraging people.

Commissioner Lober stated as far as any questions for the Clerk's benefit for typing this up, the only change from the memo that was sent out on both bolded portions are basically carbon copies of each other a, b, c, d at the end to c where it says and, it is to read or; staff raised the legitimate concern with respect to that; he agrees with them and he has no problem with that, otherwise, the only other thing he will put out there for clarity sake because he does not think he read this portion; with respect to Policy 14.9 he kept the follow-up language saying such adaptation strategies may include and then it goes through a, b, c, d, e, f that is still left in there, he does not think there is any reason to take that out; but the language that he mentioned he added is the only language he has added, there is nothing hidden on the memo other than that, and the language that he struck through. He added he thinks the only words that were struck through were the two shoulds and he moved the period at the end of those sentences, so there is nothing sneaky that he can see or recognize with this; with that he will go ahead and move to approve staff's recommendations as contained in the Agenda Item with the exception of policies 14.6 and 14.9, wherein they will use the language that is included in the memo that he read off and will be available in tonight minutes with the exception of the two ans reading or in the spots that he mentioned.

There being no further comments heard, the Board adopted Ordinance No. 22-03, amending Article III, Chapter 62 of the Code of Ordinance of Brevard County, entitled, "The Comprehensive Plan", setting forth Plan Amendment 2017-2.2; approved staff's recommendations of Chapter 10: Coastal Management Element, adding a new objective for new policies 14.1 through 14.13 developed specifically to comply with Section 163.3178(2)(f), F.S. (Perils of Flood); and approved the following changes to Policy 14.6 and 14.9 of the EAR-based Amendments:

Policy 14.6-The County must develop mechanisms to evaluate and recommend new design and development standards for public and private infrastructure projects that consider future climate conditions, and amend Land Development Regulations to reduce obstacles that hinder nature-based design standards and/or Low Impact Development unless it can be clearly demonstrated that:

- a. Strict application will be contrary to the public interest;
- b. The public values being protected are insignificant and strict application will result in an excessive hardship to the project;
- c. Strict application will place an excessive hardship on the project, and an alternative action is available which is equal to or superior than the original requirements in reaching the policy's objective, or;
- d. The activity is not financially feasible for the local government.

Policy 14.9-Based on the 2021 Resilient Brevard Community Survey, completed by the ECFRPC, the County must encourage nature-based design standards and/or Low Impact Development design for development and redevelopment within areas vulnerable to current and future flooding impacts unless it can be clearly demonstrated that:

- a. Strict application will be contrary to the public interest;
- b. The public values being protected are insignificant and strict application will result in an excessive hardship to the project;
- c. Strict application will place an excessive hardship on the project, and an alternative action is available which is equal to or superior than the original requirements in reaching the policy's objective, or;
- d. The activity is not financially feasible for the local government.

Such adaptation strategies may include:

- a. Multi-use stormwater parks,
- b. Bio-swales as stormwater management techniques,
- c. Green streets,
- d. Reduced impervious areas,
- e. Florida-friendly landscaping/xeriscaping, and
- f. Ecological asset preservation (e.g., tree canopy, natural areas, mangroves, wetlands, dunes, aquifer recharge areas).

Result: APPROVED

Mover: Bryan Lober

Second: Rita Pritchett

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

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

Tad Calkins, Planning and Development Director, stated is a request from the applicant Waste Management for the Board of County Commissioners to grant a waiver of Section 62-3202(h) (10) which requires a six-foot or solid wall when commercial development is adjacent to residential zoning classifications; this Item went before the Board on the January 25 meeting; and it was tabled to this meeting.

Kenneth Talbert mentioned his wife and he are for the wall because of the noise issues, which were talked about earlier; they are coming early in the morning before the sun comes up; when they come in the evening, there is trash that occasionally comes onto their lot and they have to clean it up; there are odors from the empty trash trucks, that are lined up and right against them from time to time, and that is pretty tough; occasionally they are moving dumpsters from one place to another on its lot and that plopping up and down makes for considerable noise; he thinks at the last meeting he came to, it was said that a lot of the large trees would have to be uprooted; in his section it has all small shrubbery and no big trees, but in the other section he cannot speak for; his understanding is that this Code or ruling of what has been established in 2013, where the requirements are now being enforced, and one comment is that if they have that why it is not being enforced; there was a reason for it back in 2013 and they have been there since his wife's family in 1952; if it is a case of money, they would be tickled pink if they could get a wooden fence that was six or seven foot so they do not see the trucks and that sort of thing, and as long as it would be well maintained and painted; but they really want to encourage something to buffer that a little bit more for them, not to mention all the stuff he mentioned earlier.

David Bassford stated he wanted to thank Commissioner Pritchett for meeting with him the other day; he has just a couple of things because he has already done an introduction of the background at the previous meeting; they are in agreeance with what they discussed, more importantly, he mentioned a couple of different things, and he misspoke at the previous meeting; he expressed thanks for bringing that to light, that was not intentional, but there are two separate portions of the property; and the portion that he was speaking to was what he will call the northwest, where there is already an existing 20-foot vegetative buffer, and a chain link fence; and that is where, if they were to put in the wall that they would destroy all the vegetation. He added going back in and reviewing a lot of the site photos, Mr. Talbert is correct, there are no substantial trees along there which he consider the southwest; but there is a drainage feature that was permitted back in 2003-2004 so it is an existing site and that is part of the reason that they were applying for the wall waiver, it is not monetary, it is already been permitted, and they are not changing any of the uses.

Commissioner Lober asked if Commissioner Pritchett is kind-of looking at this to seeing if there is a way.

Commissioner Pritchett replied she had a negotiation with them that is really good; she stated she is talking about the concerns and she wants them to be a good neighbor with the neighbors, because they are expanding the footprint; here is what she got them to agree to, a 20-foot wide vegetative buffer that is opaque that cannot be seen through; in places where that is not possible there will be a six-foot opaque fence, PVC or wood; she thinks that they have got all that coming and the natural buffer is for nothing to get through; this is going to make for a nicer product by the time it is done; she thinks they got all of the things being asked for with

this; and she read aloud for the record and if they agree to this, they are good “The buffer along the west property line, adjacent to the residential zoning uses shall meet the type A buffer requirements which is pursuant to the Landscaping, Land Clearing Tree Protection Section 62-4342 which requires a 20-foot wide vegetative buffer opaque to a height of six-foot, and a vegetative with four planted or preserved trees per 100 linear feet and two layers of shrubs, additionally where existing vegetation does not provide this 100 percent opaque barrier to height of six-foot a solid wood or PVC fence will be required six-foot in height.”

Mr. Bassford stated they have no objection.

The Board granted a waiver of Section 62-3202(h)(10) which requires a six-foot masonry or solid wall when commercial developments are adjacent to residential zoning classification; and required the following conditions: the buffer along the west property line, adjacent to residential zoning/uses, shall meet the Type A buffer requirements, pursuant to the Landscaping, Land Clearing and Tree Protection, Section 62-4342, which requires a 20-foot wide vegetated buffer, opaque to a height of six-foot and vegetated with four planted or preserved trees per 100 linear foot and two layers of shrubs; additionally, where existing vegetation does not provide a 100 percent opaque barrier to a height of six foot, a solid wood or PVC fence shall be required, six-foot in height.

Result: APPROVED

Mover: Rita Pritchett

Second: Bryan Lober

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

L.4. Bryan Lober, Commissioner District 2

Commissioner Lober stated he has a couple of things; first he followed up with Sheriff Wayne Ivey on the concerns over abusive towing; at this point he just asked for a little more time before having that addressed by the Board; the Sheriff has had Attorney Laura Moody, his legal counsel reach out to Abigail Jorandby, County Attorney, as she understands it, and they are working on crafting some language to address some of the concerns; he thinks on the Sheriff's part, and he apologizes if he is misspeaking, but he got a pretty good sense that the Sheriff's primary concern dealt more with storage fees and making it difficult to retrieve cars once they were towed; so there may be some reference to that as well; the second thing, he is not asking anything other than if folks are inclined to hear this at a future meeting, if they are not leave it alone, if they are inclined to hear an action item later, hopefully, he will get with staff or they will get staff directed to work on this, to bring the Board a couple options at a subsequent meeting so it can be noticed and discussed at greater length; but in the Land Development Code Section 62-3694(c)3(b) and he is just putting this on for the record for anyone wants to pull this later wetlands proposed for impact shall be assessed using methodologies established in the Countywide wetland study prepared by BKL, Inc. Consulting Ecologist September 30, 2013, to determine if they meet the criteria of high functioning wetlands or landscape level wetlands, and impacts the high functioning and landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest. He mentioned having a developer come in who has an interesting project in his district, he thinks it may or may not work at the end depending on how they interpret certain things, but his contention was essentially impacts the high functioning and landscape level wetlands shall be prohibited, would require the impact be to both high functioning and the landscape level wetlands; he thinks there is an argument to be made that it could be read either way; he thinks if the Board looks at some of the contexts there is a better argument to it being read or kind-of like saying arson and murder are illegal, does not mean that arson is not illegal or that murder is not illegal, but can list it with greater

clarity if saying arson and/or murder are illegal; with this he thinks if they take staffs current interpretation that it really functions as an or instead of an and they could simply change it with a couple of words being added to impacts to either high functioning or landscape level wetlands shall be prohibited, so they take out the word and, add the word or, and they would insert the word either between two and high; and in the alternative is they wanted to go the other direction if they did not agree with staffs interpretation, they could say something along the lines of impacts to both high functioning and landscape level wetlands shall be prohibited and further specify impact solely to high functioning or solely to landscape level wetlands shall not be prohibited, either of those or anything that is closely similar to that he thinks would work, but he thinks having ambiguity in the Land Development Code just opens to potential arguments from folks down the road. He stated he thinks they need to pick a side and essentially take that as their position moving forward; if folks are inclined to hear that at a subsequent meeting, he would just ask staff to bring the Board an item, clarifying not that, necessarily in either of the ways he propose; but just to give an option essentially reading it as an and another option essentially reading it as an or, that would serve to clarify that Section. He asked if that is something the Board is amenable to hearing; he is not hearing any no; he asked if it is good for Abigail Jorandby, County Attorney, and Frank Abbate, County Manager, to bring something back or do they want a formal motion or what would they like.

Mr. Abbate remarked if the Board wants to.

Attorney Jorandby responded if that is the Board's desire, yes, they can bring that back.

Commissioner Pritchett asked for the information to be sent out again so the Board can read it.

Attorney Jorandby responded affirmatively.

Commissioner Lober stated he will leave it be that then.

Attorney Jorandby stated staff can send the information out; and she thinks it will be an item set with Natural Resources Management so they can prepare something and have it put together, and it be send out.

Commissioner Lober stated he appreciates it.

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

Commissioner Smith stated he wanted to let everybody know that his staff and he have taken a pretty deep dive into these requests, regarding storage fees and towing; some of the storage fees seem to be excessive; they found if a person has had their car towed and the impounding yard is asked to get the car, they have one hour to get that car; he has had numerous people reach out to his office, to inform them if they had their car impounded on a Friday evening, they are told they cannot pick it up until Monday which incurs two more days of fees and is unfair, and illegal; the problems he has is lack of cleanup after an accident, there is a list of a litany of things; he thinks the primary problem is having a problem with enforcement; people do not know what their rights are, if they had their car towed and somebody charged an excessive amount, and they may not really care because they are not going to take the person to the court they just want their car back; if it is \$200 or \$300 that is not fair to the public; and this is something the Board really needs to look at deeply because this has been going on for a long long time in this County, and he will get back to the Board.

Adjourned

Upon consensus of the Board, the meeting adjourned at 7:31 PM.

ATTEST:

RACHEL M. SADOFF, CLERK

KRISTINE ZONKA, CHAIR
BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA