



# Brevard County Board of County Commissioners

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Legislation Text

---

**File #:** 6836, **Version:** 1

---

### **Subject:**

Consideration of Proposed Vested Rights Order in the Matter of Air Liquide Large Industries, US, LP, Subject Property: 7007 N. Courtenay Parkway, Merritt Island, FL 32955

### **Fiscal Impact:**

N/A

### **Dept/Office:**

County Attorney's Office

### **Requested Action:**

*In the matter of the Petition for Vested Rights by Air Liquide Large Industries, US, LP:*

- (1) Consider the proposed vested rights order issued by the Special Magistrate, the record before the Special Magistrate, timely submitted written argument, and the oral argument of the parties to the proceeding;
- (2) Based upon the record, Section 62-507 of the Brevard County Code of Ordinances, and the findings of fact set forth in the Special Magistrate's proposed order, either (a) grant vested rights; (b) grant vested rights with conditions; or (c) deny vested rights; and
- (3) Either (a) adopt the Special Magistrate's Proposed Order or (b) direct the County Attorney to prepare an order for the Board to enter within 30 days of the date the motion is voted upon.

As explained further below, Air Liquide Large Industries, US, LP has requested that the Board continue consideration of the Proposed Order to a future meeting to allow time for stakeholders to consider a potential resolution.

### **Summary Explanation and Background:**

Air Liquide Large Industries, US, LP ("Air Liquide") is pursuing a vested rights determination regarding noise created by the business operation located at 7007 North Courtenay Parkway, Merritt Island, Florida, which is alleged to exceed the allowable limits permitted under the Brevard County Code of Ordinances. Air Liquide has been served with both a Notice of Hearing and Statement of Violation as issued by Brevard County Code Enforcement on September 2, 2020 and September 1, 2020, respectively. In response to the County's Code Enforcement action, Air Liquide submitted a petition for a vested rights determination pursuant to Section 62-507 of the Brevard County Code of Ordinances.

In the vested rights proceedings, Air Liquide is represented by the law firm of Akerman LLP. Cliff Repperger,

Esq., of the White Bird law firm advocated the County Planning and Development Department staff's position at the Special Magistrate vested rights hearing. Attorney Repperger's limited representation of the County was authorized by the Board because of Florida Bar rules and Florida Attorney General opinions holding that a conflict of interest results when an attorney serves as both a legal advisor and as an advocate before the same board. As such, the County Attorney's Office cannot serve as both legal advisor to the Board of County Commissioners and as an advocate on behalf of the Planning and Zoning Department in this matter.

The petition was heard by the Vested Rights Special Magistrate on November 30 and December 1, 2023, concluding with a public comment period. Closing arguments were held on January 19, 2024, and the parties were given time to submit written closing arguments. After the written closing arguments were submitted, the Special Magistrate issued the attached Proposed Order on April 8, 2024. The Proposed Order sets forth detailed findings of fact, analyzes the applicable ordinance and case law, and recommends proposed conclusions of law and that the vested rights petition be denied.

Under Section 62-507(d)(6), the Board of County Commissioners shall consider the Proposed Order as an agenda item at a meeting in accordance with the following procedures:

- a. No evidence will be taken by the County Commission and the Board shall make its decision based solely upon the record, findings of fact, and the oral argument of parties to the proceeding, which shall be limited to ten minutes per party (Air Liquide and the County). If a party attempts to introduce new evidence, the Board shall remand the proceeding to the Special Magistrate for review of that evidence.
- b. Any party, staff, or person wishing to submit written argument in support of or against the proposed order must submit written argument at least 14 days prior to the date upon which the proposed order will be considered.
- c. Based upon the record, the ordinance, and the findings of fact set forth in the Proposed Order, the Board shall either move to grant vested rights; grant vested rights with conditions; or deny vested rights. In so doing, the Board shall either adopt the Special Magistrate's Proposed Order or enter its own order within 30 days of rendition of the date the motion is voted upon.

Due to the quasi-judicial nature of this item and the public comment permitted during the Special Magistrate hearing, oral comments will not be accepted by the Board except from Air Liquide and the County. Planning and Development Department staff provided a notice to citizens who previously participated in this proceeding or otherwise indicated an interest in the matter. That notice made clear that they would not be able to make public comment on this matter at the Board meeting, and that written comment was the only remaining avenue for the Board to consider an argument made by a non-party citizen. All written arguments timely received from non-parties are attached.

It should be noted that Air Liquide has requested that the Board continue its consideration of the Proposed Order to a future meeting to allow time for stakeholders to consider its proposal to construct a 14-foot high, 400-foot long noise barrier along the north side of Courtenay Parkway in an effort to resolve the noise complaints that resulted in this vested rights proceeding. The Board may wish to consider the request to continue prior to receiving argument from the parties.

If Air Liquide disagrees with the Board's vested rights decision, it may appeal that decision by petition for writ of certiorari to the circuit court filed within 30 days of rendition of the Board's order.

In addition to the attached Special Magistrate Proposed Order and Air Liquide's written argument, the County Attorney's Office will make available to Commissioners the entire record submitted for the Special Magistrate proceeding, as well as the transcript of the proceeding. Both the record below and the transcript shall be included in the record for the Board meeting and are available to the public upon request.

**Attachments:**

1. Special Magistrate Proposed Order
2. Air Liquide Vested Rights Written Argument
3. Sheriff Ivey Letter in Support of Proposed Order
4. Brian Bauer Letter in Support of Proposed Order
5. Martin Boyd Letter in Support of Proposed Order
6. Mary Slowinski Letter in Support of Proposed Order
7. Douglas and Theresa Waller Letter in Support of Proposed Order
8. Air Liquide Noise Barrier Proposal

**Clerk to the Board Instructions:**

Please return a memo of the Board's action to the County Attorney's Office and Planning and Development Department Director.