

LOCAL PLANNING AGENCY/PLANNING AND ZONING BOARD MINUTES

The Local Planning Agency/Planning and Zoning Board met in regular session on Monday, January 28, 2019, at 3:00 p.m., in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

Board members present were: Henry Minneboo, Chair; Ron Bartcher; Ben Glover; Scott Langston; Mark Wadsworth; Bruce Moia; and Peter Filiberto.

Staff members present were: Erin Sterk, Planning and Zoning Manager; Jad Brewer, Assistant County Attorney; Mary Taylor, Customer Service Specialist; and Jennifer Jones, Special Projects Coordinator II.

The Chair, Henry Minneboo, called the meeting to order at 3:00 p.m.

Approval of November 19, 2018, Minutes

Motion by Ben Glover, seconded by Scott Langston, to approve the minutes of November 19, 2018. The motion passed unanimously.

Plan Amendment 2018-2.1:

A proposal initiated by Flamingo Land Company to amend Part XI, the Future Land Use Element, to change the Future Land Use Map Series designation from IND (Light Industrial) to RES 4 (Residential 4). The property is 27.99 acres, located on the northeast corner of Canaveral Groves Boulevard and Morris Avenue.

Rick Kern – Rick Kern, 5963 Stillwater Avenue, Port Saint John. We're seeking an amendment to Residential 4, and we believe it would be a benefit to the area. If there are any questions, I'd be happy to try to answer them.

No public comment.

Bruce Moia – I'll make a motion to approve.

Peter Filiberto – Second.

Henry Minneboo called for a vote on the motion as stated and it passed unanimously.

Flamingo Land Company (Rick Kern):

requests a change of zoning classification from IU (Industrial Use) to RU-1-7 (Single-Family Residential). The property is 27.99 acres, located on the north side of Canaveral Groves Boulevard, between Morris Avenue and Devoe Avenue. (No assigned address. In the Cocoa area.) (18PZ00072) (District 1)

Henry Minneboo - Anybody have any questions?

No public comment.

Bruce Moia – I'll motion to approve.

Mark Wadsworth – Second.

Henry Minneboo called for a vote on the motion as stated, and it passed unanimously.

Martin Family Trust (Jennifer Martin-Sater & Craig Sater):

Request a change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The property is 1.39 acres, located on the west side of U.S. Highway 1, approximately 600 feet south of Cross Road. (3645 North U.S. Highway 1, Cocoa) (18PZ00117) (District 1)

Mike Sarraco – I'm Mike Sarraco, representing the Martin Family Trust, and we're requesting a rezoning from BU-1 to BU-2. In going through some of the comments and some of the revisions, there is already a block wall about 8 feet tall behind the building separating them from the residential.

Henry Minneboo – You're across from Lay Z Boy?

Mike Sarraco – Yes, almost to State Road 528.

Henry Minneboo – And then you go all the way to East Railroad Avenue?

Mike Sarraco – Yes.

No public comment.

Bruce Moia – I see that there's BU-2 already in the area, so I'll recommend approval of the request.

Mark Wadsworth – I'll second.

Henry Minneboo called for a vote on the motion as stated, and it passed unanimously.

Clark A. and Patricia A. Simms:

Request a change of zoning classification from RU-1-9 (Single-Family Residential) to RU-2-4 (Low-Density Multi-Family Residential). The property is 0.93 acres, located on the west side of North Tropical Trail, approximately 685 feet north of Lucas Road. (700 Saint Lawrence Lane, Merritt Island) (18PZ00130) (District 2)

Clark Simms – My name is Clark Simms, I'm the property owner at 700 Saint Lawrence Lane. My request is to change the zoning from RU-1-9 (Single-Family Residential) to RU-2-4 (Low Density Multi-Family Residential). What we really want to do is build a home for my mother-in-law, because my wife and I will be taking care of her.

Henry Minneboo – Are you on the west side?

Clark Simms – I'm on the west side of North Tropical Trail.

Henry Minneboo – You're the next property north of the Timuquana subdivision?

Clark Simms – Yes.

Bruce Moia – All you are proposing is one additional residence?

Clark Simms – Probably a duplex because my own parents are getting elderly as well, and we're hoping to have them there.

Bruce Moia – I was wondering why you were asking for multi-family zoning.

Clark Simms – The only other option was to make a flag lot and separate the property, but that's not really what we want to do, and because of the width of the property, that would cause problems with driveways and access.

Bruce Moia – So, you want to maintain ownership of the property and just rezone a portion of it.

Henry Minneboo – With a binding development plan?

Bruce Moia – We don't have any multi-family in that area. How big is the area?

Clark Simms – My property has two different zonings. I have EU-1 (Estate Use Residential) on the two acres, and then the front 0.92 acres is Single-Family Residential.

Bruce Moia – Our staff comments say they could get up to three more units. Is that three additional, or three total?

Clark Simms – It's Residential 4, but I can only put three according to staff because it's less than an acre.

Bruce Moia – Right, but you do back up to single-family residential.

Ben Glover – Bruce, do you want to limit him to just one duplex to keep him from building additional multi-family structures on the property?

Bruce Moia – How does that work when they want multi-family residential against single-family residential? Are there any other additional requirements in the Code?

Erin Sterk – Not really, and the protections preventing them from subdividing aren't there. They say they aren't going to do that, but there's nothing specifically to prohibit that if they could do a flag lot and develop it in a way that would allow the back to have access.

Bruce Moia – If we just flat-out rezone it they could build a triplex and rent it out. I don't think that was the intent, but we might want to have something to limit the development.

Bill Hank – I'm Bill Hank, I live at 685 Timuquana Drive, which is the first street south of the property in question. I live at the end of Timuquana Drive, so I'm kind of away from it. Personally, it probably doesn't affect me very much, but I'm here for another reason. Fourteen years ago I was involved in a small area plan committee that looked at everything in this area, everything west of Tropical Trail, south of Venetian Way, and north of Lucas Road. That small area plan was started because a developer wanted to rezone a 27-acre parcel and put in over 200 units; needless to say, the community got together. That particular plan, because of the opposition from a lot of people, the developer eventually withdrew their request, and as a result of that, Commission Pritchard put together a committee to do a small area study of this particular area to see what we could come up with. I know that because I was the co-chairman of that committee. We worked for almost a year and had incredible community support; we met once a month and it was rare not to have 30 – 40 people from the community present who felt strongly about it; and the desire was that we not make a major change like what was being considered. After a year's worth of deliberation, we came up with the recommendation that eventually went to the Commission, saying that nothing in the area would ever

be good for anything except a minimum of one acre per dwelling lots. At that time, something went on with Commissioner Pritchard; he was also involved with a small area team that was working north of the Barge Canal, and they came up with a two-acre requirement, and he didn't like that. The end result was that our plan never got submitted to the County Commission, and when we discovered that it was around the time that Chuck Nelson got elected as our new Commissioner. The co-chair and I talked to Chuck and he didn't know anything about it, and within a month it had gone to the Commission and our plan for a minimum of one acre per dwelling in that area was approved and supposedly went on to Tallahassee to get incorporated into the Brevard County Master Land Use Plan. I'm confused with this request as to why that isn't in play; I don't know why it's not being considered, because that's what the plan was to do. That's an unknown at this point. I would like to recommend against approving this request. It's doesn't seem like a big thing, but it opens the door for other people along Tropical Trail. That being said, I fully understand that both you guys, and the Commission, have the right to approve this if you so desire, and if you do, what I'd like to ask is that you put some hooks in it in the form of a binding development plan that first says the property can never be subdivided. Also, before you approve it, the plan needs to show how he's going to situate a dwelling, or dwellings, on the property, because it is a narrow, 100-foot piece of land, 10 feet of which is taken up by the ditch on the north side of Timuquana Drive, and another 20 feet is taken up for his lane to get to his house on the river, so that doesn't leave a lot of space for building. The third item I think is important is that any such dwellings must be occupied by a blood relative of whoever is the owner at that time, and I'd also like to tie in that under no circumstances can any of the dwellings ever be rented to the general public. I don't know if that's possible, it's just my personal feelings on the subject.

Henry Minneboo – The last part is a little tricky. The first one, though, if he just put one additional, you'd be relatively satisfied?

Bill Hank – Yes, but I'm not sure how he can ever make it fit on that narrow property.

Henry Minneboo – Staff would have a position on that, right?

Erin Sterk – I had similar concerns and it was difficult to decipher how they would meet the lot width depth and get the access road past it, and without a concept plan it's hard to demonstrate that it is feasible. There are a lot of environmental constraints on the property that are unusual.

Bill Hank – The other hang-up that I didn't mention is that to the best of my knowledge, there are no sewers on that portion of North Tropical Trail, so these structures will have to be on septic systems, and I don't know how you fit that in on a piece of property that is right on a canal that directly flows into the Indian River.

Henry Minneboo – I don't think there is sewer up there.

Erin Sterk – I don't think so at all.

Henry Minneboo – Septic tanks have to be 75 feet from that.

Michael Notary – Michael Notary, my dad lives at the end of Timuquana Drive. We don't feel that Mr. Simms is being straight forward with what he is planning on doing with that property, and we feel he wants to put in rentals and do more than he's saying he wants to do.

Lana Walters – My name is Lana Walters, 530 Timuquana Drive.

John Mason – John Mason, same address.

Lana Walters – We're here today to recommend against the approval of this application. We do empathize with the Simms family and their situation, because a lot of us have been, or are about to be, impacted with the same situation with aging family members. As much as we do appreciate that, the impact of this change affects the whole neighborhood and community. We just purchased our property in October, and with the extensive research we did to find our new home, we finally chose this one for a lot of reasons. Had it backed up to a property with low-density multi-family, we probably would not have purchased it. Some of our concerns are the environmental impact on the area, and we are concerned about the market value of the surrounding property; we are directly across from the subject property and will have an entirely different view, different noise levels, and things like that. The biggest concern we have is the future possibilities for that property. If it is zoned low-density multi-family, what is to stop somebody from turning it into a duplex, or triplex, or seasonal rentals? The entire area could change if that is rezoned. There would be a burden on the property itself, and as mentioned, it is a narrow property. We haven't seen any plans for how they are going to make that happen.

John Mason – We don't necessarily think this is what his intentions are. We've talked about it, and he plans on being there forever, but you don't know. We want to be there forever.

Henry Minneboo – Are you on the north side of the road, or the south side?

Lana Walters – The north side. We are the second house on the canal, so we can see all of it.

Clark Simms – I addressed the last couples' concerns, and I think they were really concerned about me putting a building right behind their lot. It will be as close to my house as possible, so it won't affect their view or anyone else's view. The gentleman who owns the houses that are adjacent to where I'd like to build this duplex, rents his houses out, the two houses on Timuquana Drive, so he has no issue with it. Like I said, it's for my mother-in-law and my parents. With Bill's concern about the small area plan, that was for separate lots, and we're not building a different lot, our objective is not to subdivide and sell off anything. I thought that my only option was going to be to create a flag lot, but after talking to staff – he was here, but he left, and he could have explained it better – he said this would be a better option.

Henry Minneboo – I know North Tropical Trail fairly well. One of the problems I see is that when you start at Lucas Road and go north there's not much double occupancy, meaning two houses, on the same parcel. That prevails as you continue northward, and there's a lot of people who own a lot of land up there.

Clark Simms – Only until you hit Easy Street, which looks like a development someone tried to start.

Henry Minneboo – Easy Street is a little different.

Clark Simms – I meant on the river side. They must have started that development in the mid-2000's.

Henry Minneboo – And it died, but then you go beyond that and everybody has larger parcels, and they just haven't busted them out. I really don't want to elaborate because I own five acres north of

there, so I'll reveal that. That's never been our intent, but this is not about what I own. When we open it up for you, we might as well open it up for everybody, so I can't disagree with that one comment.

Erin Sterk – I was able to pull up the South North Tropical Trail Study. Although I can't speak to the exact moments in time that it came forward, on page 10 of the study is the Citizens Resource Group recommended Future Land Use change which depicts the Residential 1 on the portion of the property to the west, and Residential 4 on the property that currently retains the Residential 4. The recommendation of the committee was implemented, but in that recommendation, the front half of that property was always intended, according to the recommendation, to retain Residential 4 density potential. That's why the front half has a denser land use designation than the rear half, as a result of the study.

Henry Minneboo – I can tell you that happened because of some of the oddities to the north of this, and there were actually some businesses through there, and they've come and gone, so I think that might have had some impact.

Erin Sterk – It seems to me like they implemented the recommendations as proposed, leaving this gentleman with the density he has today.

Henry Minneboo – You know when we let one do it, you'll have 10 more applications next week.

Ben Glover – Is there a possibility for him to build another single-family home on the property?

Henry Minneboo – Yes.

Ben Glover – And then we could do away with the multi-family.

Henry Minneboo – He can build one and get away with it, yes.

Ben Glover – I agree with your statement, as far as if we let one do it, everyone is going to apply for it. I'm against the multi-family part of what he is requesting, and if he can make-do with one, then that would probably be the best situation.

Bruce Moia – What I'm seeing is that we don't have any multi-family on that side of the road. There are two choices: one, we deny this and he'll have to do a flag lot, or we approve it with the condition that he gets one unit.

Mark Wadsworth – He can already do that.

Bruce Moia – Yes, but he has to divide the property to do that. We can approve this rezoning, but limit him to one unit, and then he can maintain ownership of the property, but limited to one single-family residence.

Henry Minneboo – Tie it to a binding development plan?

Bruce Moia – In order for him not to have to divide his property, I will make the recommendation that we approve this with the condition that we only allow one additional unit on the property.

Ben Glover – Would that be multi-family?

Henry Minneboo – No.

Bruce Moia – No, one unit.

Mark Wadsworth – I'll second that.

Henry Minneboo – Are you willing to do a binding development plan?

Clark Simms – Yes, sir.

Henry Minneboo – For one unit?

Clark Simms – Yes, sir.

Erin Sterk – Can we clarify that the unit is intended as a single-family unit.

Bruce Moia – One single-family unit, yes.

Henry Minneboo – Is that acceptable to the other side?

Bill Hank – It is to my point of view, but I can tell you there are other people in the area that area thinking that if this goes through, they are going to do the same thing to their property.

Bruce Moia – They can still build one unit.

Henry Minneboo – At least now you have a binding development plan that will limit that.

Erin Sterk – The one valuable piece of doing it this way with the multi-family zoning as opposed to doing the administrative process is that the flag lot would be done administratively, but having the multi-family zoning allows him to share the access. If he had to create a flag lot for his current access and then another access with the canal on the property, two driveways out to Tropical Trail would be challenging.

Bruce Moia – I want to amend my motion to limit the binding development plan so that there would be shared access.

Erin Sterk – You get to the same place in the end, but allow the shared access, and never subdivide the property.

Bruce Moia – And it will make it a little easier for him to get a septic tank on there.

Mark Wadsworth – Second.

Jad Brewer – Is that for an amendment for shared access?

Bruce Moia – Yes, he re-seconded the motion.

Henry Minneboo called for a vote on the motion as stated, and it passed unanimously.

Happy Landings Homes, Inc. (Kevin Lee):

Requests an amendment to an existing BDP (Binding Development Plan), in an IN(H) (Institutional Use – High-Intensity) zoning classification. The property is 5.33 acres, located on the southwest corner of U.S. Highway 1 and Otter Creek Lane, on the east side of Old Dixie Highway. (5925 Old Dixie Highway) (18PZ00088) (District 4)

Documents submitted during the meeting can be found in file 18PZ00088 located in the Planning and Development Department.

Scott Knox – Scott Knox, Widerman and Malek Law Firm, 1900 West New Haven Avenue, Melbourne. Since there are some new faces here, we thought we'd start with a PowerPoint presentation, and Dr. Ronsisvalle is here to do that and explain the difference between this facility and the facility that was there originally, so I will defer to him for now.

Mike Ronsisvalle – Good afternoon, I appreciate you indulging us with this PowerPoint, I know some of you have seen it before, but we just wanted to make sure we were clear about what we were doing on the property. My name is Mike Ronsisvalle, 1299 Bedford Drive, Suite A, Melbourne. I'll talk to you a little bit about the need for addiction treatment in our County. Brevard County needs a facility where professionals can provide effective treatment for substance abuse simply because we are faced with a legitimate crisis. I can give you some graphs that show you how significant this crisis really is; in 2017, 72,000 Americans died from drug overdoses; in 2013, it was 40,000, so it almost doubled in three or four years. I broke it down in regards to which drugs are actually causing the most significant problems, although we've had an uptick in all drugs, the biggest issue is with the synthetic opioids. It takes one Google search, or one look at ABC News to see how significant the problem is. It is an immense problem, but it's also a local problem. In Florida, the top five counties with the most drug or alcohol overdoses from 2014 to 2016 are Palm Beach, Number 1; and Number 2 is Brevard. Out of all the counties in Florida, we're Number 2 in regard to drug and alcohol overdoses. We've got a significant issue facing us. People who live in Brevard are 44% more likely to die due to drug overdoses than an average American. We've got to do something as a community to try to address this. We want to provide that solution for Brevard County. Nationally, 1.3 million people seek treatment for addiction every year; six months after treatment, 60 to 80% of them have relapsed, and that's not good. Our solutions are different, and I'm proud to be part of Journeypure because what we're doing is significantly more effective. We've got data that supports six months after treatment we've flipped the table; 70% of our patients are clean and sober six months after treatment. How are we getting that kind of significant shift in the effectiveness of our treatment? Number 1, we start with an assessment; Number 2, we go to an individualized treatment plan; and Number 3, we have a long-term coaching process that uses technology to help our patients stay clean and sober over time. We have access to the patients that go through our program for almost a year, back and forth with coaches that are communicating with them and helping them deal with triggers and issues in their lives that make them want to relapse. If we dig down into how we do this, I'd start with the assessment and evaluation, because we treat causes, not symptoms. We start with getting a diagnosis, which is key, and that diagnosis is not given by someone who spent three years on drugs and now they want to help people; the diagnosis is given by a medical professional, such as a medical doctor, a psychologist, a licensed clinical social worker, and those are all medical professionals that are giving medical treatment to our patients. Secondly, as we identify people that are ready for treatment, we plug them into the level of care that's appropriate for what they've got going on in their life. Already, in Brevard County, we've been doing intensive outpatient programming and a partial hospitalization program, and we've been doing that for over a decade here, treating

addictions, and what we want to add on this five acres is the residential and detox component. I'll tell you more about how that's different than some other things that have been in the County over the years, and some of the things that have actually been on that property over the years. This is pretty exciting for me, because we were trying to track our outcomes and demonstrate the validity of our treatment, and six months after treatment 84% of our patients report not using substances; 92% report that they are not seeking treatment for physical or mental health issues from a hospital or emergency room; and 68% are employable, which is a big deal when you think about someone that is struggling with that level of an addiction, that they can go back to work and contribute to our community. Who are we? I think that's a lot of the questions the neighbors have for us, and maybe you guys have for us. I want to start by telling you who we are not. We're not a recovery house or a sober living community. That property in particular has a long history with people that have been there, they've wanted to get help for addictions, but it was a come-as-you-go, it wasn't run by medical professionals, it wasn't licensed by the State, and none of the issues that we're going to have in place were present as Resurrection Ranch, which is what it was called years ago. That's not what we're doing, it doesn't look like that in any way, it doesn't resemble that, and people aren't going to be walking around the neighborhood. This is a closed facility where people, once they come, they stay for 30 days; they're not driving on and off the property every day, they are there getting healthy, and these are people who want to be there. Most importantly, we're not a community health center that admits Baker Acts or court mandated treatment. That's just not who we are; that's not in our DNA; there are other places in Central Florida these patients can go if they are court ordered or a hardened criminal with a long record, but that's not our facility, and that's not what we want to do. We want to help soccer moms, we want to help engineers at Harris, and we want to help attorneys and doctors. We want to help people who are employed that have insurance, and who are ready beat this and continue to contribute to our community. We are a group of professionals that provide detox residential, partial hospitalization, for patients who are self-motivated to become and stay healthy. How do we know these folks aren't going to leave this property? Because they are there because they want to be; they have checked themselves in; and they are self-motivated to be there. We're passionate about helping our patients be successful in treatment. To us, success means that the person is employable and they're not using the healthcare system, or our resources in Brevard County, as a result of addiction-related behaviors. We are a company with a proven track record of creating professional, beautiful facilities that are an asset to the communities we serve. We're building buildings that fit in the communities that we're building them in; they fit the culture and the landscape. (Dr. Ronsisvalle referred to pictures of other Journeypure facilities around the country. The pictures are part of the PowerPoint presentation that can be found in file 18PZ00088, located in the Planning and Development Department.) Florida is different in that it has different kinds of licenses for substance abuse treatment. A lot of places you go, all of the people in rehab stay on property and get treatment on the same piece of property. Florida has the kind of model where you can have treatment with community housing, so your treatment is done in an office building, and then you stay offsite. What we're proposing here on this five acres is not the kind of model where you stay one place and then you're transported to get services at another location. We're proposing a true detox residential program where people can come, stay on property for 30 days, and then leave.

Scott Knox – I'm going to speak a little bit about the binding development plan that we've adjusted since the last time we met, and go through them one by one with a short summary. We basically have kept the 6-foot privacy fence along Old Dixie highway, which is part of the original deal; we are limiting access to Old Dixie Highway at the existing access, or if the new building is built, which is where they plan to actually do the treatment, it would be done on a more northerly part of the property to get further away from the residential area. We looked into access from U.S. Highway 1 and the

prospect of that are zero and none because the Florida Department of Transportation has control of that and they don't want that there, as far as I know. The developer has also agreed to comply with all the conditions that basically apply to a permitted use with conditions, which this is, in the Institutional Use High-Intensity zoning. This is a treatment facility, a recovery facility, and is a permitted use with conditions; there are certain things attached to that that my client has agreed to provide. The only thing that's different, because we need to have a centralized kitchen and a specific number of bathrooms, and square footage for the centralized kitchen, we need more square footage than we have right now. We have 9,885 square feet, and what we've proposed is up to 16,700 square feet, which would include the new building, primarily. We will meet all of the parking requirements; we have limited the residents to the same number that were there before, 47, with 21 employees maximum; and we've agreed that to the extent we don't have compliance already, we will comply with the permitted use with conditions section within a year after getting approval.

Henry Minneboo – The site has a certain amount of square footage, and hasn't that been a point of controversy, that it only has 10,000 square feet of structure now, and there's been concerns about staying within that 10,000 square feet? Whatever the square footage is, they want you to stay within that square footage, is that correct?

Scott Knox – They?

Henry Minneboo – The residents, the people who have not been in favor of this.

Scott Knox – Originally, we had proposed to stay within that square footage. Since we're treating as a permitted use with conditions, one of the conditions we have to meet requires a bigger, centralized, facility.

Henry Minneboo – How much of an increase is that in square footage?

Scott Knox – Well, it's up to 16,700 square feet, but it is at 9,885 square feet now.

Henry Minneboo – Roughly 7,000 square feet. You've reduced the number of employees from what you originally had planned, is that correct?

Scott Knox – It's the same. We have 47 residents and up to 21 employees.

Henry Minneboo – And none of those people that pay are going to be able to come and go?

Scott Knox – No, they are there for the 30 day period.

Henry Minneboo – How many trips do you think this place will generate a day? If you have 47 employees, and in theory everybody drives one car, so you have 47 coming and 47 going.

Scott Knox – It's 47 residents and up to 21 employees, so they could have different shifts and different work days, so I don't think it is 21 every day.

Linda Blumauer – My name is Linda Blumauer, and our place is in Indian Harbor Beach. I'm here again today to ask for your help in our quest to protect the property values and the general safety and welfare of our neighborhood. While Mike's presentation about their proposed plans is great, it has nothing to do with Planning and Zoning and why we're here today, unless you guys are potential investors, which I don't believe any of you are, correct? We understand the need for these types of

facilities and are sympathetic to those in need, but a residential neighborhood is not the place for them. Evidence shows that these types of facilities tend to have bad track records. They say they will be different, but without security, without regulation, and without legal means to keep the patients onsite, the neighborhood will suffer the consequences once again, as the ingress and egress would be in the neighborhood and not an arterial road. From the beginning, Journeypure has not been transparent in their real plans. How can we trust anything that they have said? This property is in an Institutional Use, High-Intensity zoning classification that is nonconforming. The applicant is seeking an amendment to the existing BDP (Binding Development Plan) for the purpose of expanding the service to include men, which is less restrictive, and to include a residential detox and treatment facility, so this change of use is an expansion, and by Code is not allowed, as it is not conforming. They also want to expand the footprint to add 7,000 square feet, which would be considered an expansion of use and not allowed by code. The change of the use to allow addicts and possible felons without onsite security is less restrictive. The land use compatibility outlines the roles of the Comprehensive Plan in a designation of low-end high institutional use, and Happy Landings meets none of them. The increase of traffic from the residents and the staff will change the impact of the neighborhood. Since the 2009 inception of the Institutional Use, Low-Intensity zoning there has been little impact on the surrounding neighborhood, as the property appears to have been abandoned and is currently in a state of disrepair. There have never been 21 employees, and there's never been 47 residents. There have been a handful of people that have come through there in the last nine years. The purpose of the Institutional Use zoning classification is to provide for private non-profit or religious uses, which are intended to serve the needs of the public for facilities of an educational, religious, health, or cultural nature. The classification is divided into two types: low intensity and high intensity. High intensity uses are more suited to a commercial or industrial area, not a residential neighborhood. The proposed use will cause a substantial diminution in value of the neighborhood residential properties. A BDP seems to not be worth the paper it's written on, as the current one has not been enforced; no meetings, no inspections, no compliance. What is there to protect the neighborhood if there's no enforcement? A BDP is a tool for the applicant to agree to the conditions above and beyond code criteria. Conditions within a BDP should not be utilized as a mechanism to waive existing code provisions. This is a non-conforming property, it has not been a good steward to the neighborhood or the County, they have not paid their taxes, they have a history of fines and liens, so how can a memorialization even be a consideration? In times of controversy, I like to put myself in the other position; think of your parents, your son, your daughter, your family, living in this neighborhood; would you feel that they would be safe and their property values not affected? I think most educated people would not. Regardless of past use and history, approving this will have an injurious effect on the neighborhood. The County should protect the neighborhood, follow Code, and deny this request.

Henry Minneboo – These people that are proposing this, are they the same owners from the past?

Linda Blumauer – That's unclear. In the beginning, Journeypure came in and it was supposed to be the Journeypure/Ronsisvalle-run show. Things have changed several times since then and now all of a sudden on the last few BDP's that came through, Lila and Happy Landings are back. So, you can ask them, but I don't know whether you want to trust what they're going to tell you because from what we've seen and experienced so far, I do not have a lot of trust or faith in anything that I've been told. We have met with each and every County Commissioner. Curt Smith seemed to think that U.S. Highway 1 and a wall would be something that could bring this place into compliance, or one of the many things to bring it into compliance, yet there's no talk of it here, and why we're even back here is a mystery. There's other concerns like concurrency, the abandonment, and so many different codes

that haven't even been talked about; discontinuation of land use without having a proper principal structure; the procedure for mitigating a nonconformancy; concurrency management; the interpretation for conflicting provisions. All of those codes were meant to protect us and I feel like they have been completely overlooked.

Henry Minneboo – Do you see a difference in the people that were here before than what is proposed today? It was my understanding that in the past it was mandated by the court system to attend this facility.

Linda Blumauer – No, it was a women and children facility.

Henry Minneboo – Didn't the courts make them go there before?

Linda Blumauer – I don't know if the court made them go there or not, but it was my understanding it was a non-profit, and Journeypure is a for-profit company, a Chinese-held foreign for-profit company.

Henry Minneboo – That means if you're going, you're paying.

Linda Blumauer – Yes. It is a complete different use.

Jinger Knox – Jinger Knox, Pine Cone Drive, Otter Creek. I own some things around there. If you can consider a BDP (Binding Development Plan) that says, "I don't have to make a parking lot because I'm Scott Knox, even though it's Code", that says, "I can open without providing my client the minimum square footage that's allowed for their health and safety, because I'm Scott Knox", then why would I come up here and even bother talking to you guys? This stuff is the minimum for the entire county, this is for their residents, to protect their residents, their residents' safety, and you're going to put in a BDP that they don't have to protect their own residents? You do understand that the State doesn't actually mandate what their square footage does, you guys do. It's all on you, and because you're buddies with Scott Knox, you're going to say that it's okay, but guess what? If somebody goes in there and they don't have those health and safety things, who's going to be responsible? The County, because you guys said it was okay for them not to worry about the residents' health and safety. Plus, what kind of business would want to open for a year without worrying about the residents' safety? What about worrying about if they have someplace to go eat? Thirty square feet, and they want to open for a year without giving them that? What kind of people are going to go to that facility? You want to say they will be doctors and lawyers, and I don't know if you guys have been done there, but I don't know any doctors and lawyers that would go down there the way it is now. Why not wait until there is a facility that is safe and healthy for them? Why push it to open a year early? Because they don't care, and it's all about the dollar. If you put all that aside, it's a nonconforming property; they could come off of U.S. Highway 1, but they told us it wasn't cost effective, and I don't care because the Code says they have to come off of U.S. Highway 1 or they can't build a new facility that is 68% larger than the one they had there, whether Scott is your friend or not. Do you understand that? We have Code, we have laws. You guys can pass whatever you want, and we'll go to the County Commission, you'll put them in that position in front of the media and everyone else, because you've passed this atrocity, and after that we'll go to the County Courthouse, because this is a joke. This BDP that gives them less restrictions than the County Code, that's not what a BDP is made for and you guys all know that.

Shirley Leslie – My name is Shirley Leslie, 2665 Hilltop Lane, Melbourne. I'm here to address the BDP (Binding Development Plan), which states that he or she has a contract interest in the property,

but he does not represent and warrant that he is the present owner of the property. The developer must show marketable title of the property, or certification that shows marketable title of the property. Also, Section 62-1157 says, "Where a BDP is submitted, approval of the zoning action shall be contingent upon the presentation of a final and complete BDP". Paragraph D of the BDP references Section 62-1862 of the County Code in three different instances, but there is no Section 62-1862. The incorrect reference of Code makes the BDP incomplete and does not provide the County with a legally referenceable document. The recitals of the BDP call the facility a treatment center. To be complete, the BDP should read, 'residential detox, treatment, and recovery', contrary to what Dr. Mike said they were not. And Otter Lane should read, 'Otter Creek Lane'. Paragraph 7 should be completed with a date. For these reasons alone, this board should not accept the proposed BDP. The current owner is not in compliance with Item 6 of the current BDP that requires semi-annual meetings with the neighbors. Item 7 of the current BDP requires County inspections that were never conducted. This represents to the community that the current BDP was not adhered to, and there is no control or oversight of facilities like this, and will not afford citizens of the County their rights and protection of health, safety, and welfare as required by local zoning code. The facility noted in the BDP offers services more intensive than those required for room board, personal service, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals requiring diagnostic treatment, or care for illness, injury, deformity, infirmary, et cetera. Florida Statute 395 states that the services qualify a facility to be a hospital, which would move this facility to a higher intensity use. The conceptual graphic representation of the proposed development attached to this BDP is of a facility not approved by, or located in, Brevard County. The proposed BDP offers a 6-foot fence, but since the property and some activities are visible from the crown of Old Dixie Highway, an 8 to 10-foot fence would be more appropriate. Also, the existing fence is not maintained to County Code, and the developer could possibly assume that fence to be adequate. In Paragraph 2(h) of the BDP the developer wants to comply with the facility requirements within one year after receiving approval. Rule 65D.30 of the Florida Administrative Code says a license must be provided. The Fair Housing Act requires that dwellings are readily accessible to, and usable, by handicapped persons. The Florida Administrative Code 65D.30, Compliance with Local Codes, says licensed facilities by the provider shall comply with health and zoning codes enforced at the local level and all providers shall update and have proof of compliance with local fire, safety, and health inspections annually. In Paragraph 3(f) the developer offers to only make background checks available within 30 days of recordation of the BDP, and thereafter upon request of the County. Who, in this County, is going to make this request? What tools does the County have in place to continually make this request, or assure that the owners provide these background checks remembering that both staff and residents continually change? Paragraph 3(g) says the developer operating the treatment center will not contract with the Department of Corrections. What about the owners or other employees of the center? Can they contract with the Department of Corrections? That verbiage should change. In Paragraph 3(i), the developer does not represent in the BDP that ADA (Americans with Disabilities Act) parking requirements per ADA standards are met. Paragraph 7 says the agreement should not automatically inure to just anyone until rezoned. As currently proposed, this BDP could transfer to a totally different type of establishment and they can practice as such until new successor or assigns. Paragraph 9, Conditions Precedent, means all conditions shall be met. Item 3(h) seems to circumvent the requirement to meet square footage requirements. History has proven that certain elements of the existing BDP were not adhered to. There's no guarantee the developer/owner will ever meet the square footage standards enumerated in Section 62-1826(3). The same facility standards for square footage have applied to this property since it was rezoned in 1986, and they have never been met.

Mark Leslie – Hello, Mark Leslie, 2665 Hilltop Lane, Melbourne. I don't disagree with Mike that this is needed; I don't think anybody does, but he also referenced this being the next step down from a hospital. I'm not sure how many of you guys want a hospital in your neighborhood, especially one that's treating opioid addictions; and it's not about people, it's about the zoning. He's talking about 1.3 million people saved, but none of that matters because we're here to talk about the zoning, and I'm going to go to that now, but I just wanted to make sure you understand that we're not against this because of what they're trying to do, we're against it because it's coming into our neighborhood. Item 3 in the BDP (Binding Development Plan) says, "the development shall comply with the following conditions on the use and improvement of the property". One of the conditions of IN(H) (Institutional Use, Low-intensity) is that they meet a collector road, or arterial collector road, not a neighborhood road, so they can't meet that requirement. The way they're stating it, it would only be on Old Dixie Highway, and that means they will never have to, even if they are able to. They're basically binding themselves out of Code by doing that. Prior to the determination that the Institutional Use is exempted from the locational standards, we were looking at a nonconforming use, but we found lately that they are exempt from that nonconforming status because they were a pre-existing use. Exemption for a pre-existing use where the property was developed as an institutional use as described in the Section, prior to August 15, 2004, "The above location standards and intensity limitations shall not apply". Those are the intensity locations for IN(H). "The parcel shall be administratively rezoned to the Institutional zoning classification with the intensity designation that more closely represents the previously approved use. The use shall have the same rights and privileges as a pre-existing use as established under Section 62-1839.7." In 2005, they were rezoned administratively to IN(L) and Neighborhood Commercial as an ALF (Assisted Living Facility). Prior to that, they were an RSSF (Residential Social Services Facility), under the Agricultural Residential zoning designation, a RSSF, Treatment and Recovery Facility, and an ACLF (Adult Congregate Living Facility). Some of the stuff you were talking about earlier, what happened in 2004, is we brought it before the board because they were in association with jails and court; they actually had contracts with the State Department of Corrections to bring people into the neighborhood and rehabilitate them in the facility. It was against them when it was in the ACLF designation, so we called them on it and it came out that they were going to go before the Special Magistrate, and we ended up having a hearing before the Board and things got dicey at that point, but basically, the requirement for meeting a connection to an arterial road did not come up until 2009 when this was rezoned as Community Commercial and IN(H) for the women with children center. It was not out of compliance from this IN(H) designation until the 2009 rezoning. Item 3(d) of the BDP says, "The developer shall comply with the 250 square-foot rule, whatever the restroom and dining facility standards are." That same rule has applied to this property since 1986, and they said in the last BDP that they would comply within a year and they didn't. So, you have to understand the distrust has been built over 20 years, it's not just because we're here telling you we don't want this thing in our neighborhood, it's a long history. By virtue of being a pre-existing Institutional Use, we have established that the locational standards, and therefore the nonconforming use designation does not apply as they were a pre-existing Institutional Use prior to the Comprehensive Plan Amendment in 2004. The request to amend the BDP to develop the property as a residential detox treatment and recovery center, licensed by the Department of Children and Families under Rule 65D.30, Florida Administrative Code, should be denied because it would mean the treatment and recovery facility is being re-established; it was that prior to 1986, and now they're asking to re-establish the treatment and recovery. Section 62-1839.7(b) says, "A pre-existing use may not be re-established if at any time it is changed to the use as consistent with the Comprehensive Plan, or if the pre-existing use is abandoned for a period of three years or more". So, it was treatment and recovery, it was administratively rezoned in 2005, then rezoned again in 2009, and now they want to go back and rezone it as a treatment and recovery facility. Prior to 2005

rezoning to Neighborhood Commercial, Institutional Use, and an Assisted Living Facility, it was zoned as Agricultural Residential with a Conditional Use Permit for an RSSF (Residential Social Services Facility) and ACLF (Adult Congregate Living Facility). If the property was use was treatment and recovery up until 2005, how can the use of treatment and recovery be re-established? It's been 14 years or so since the treatment and recovery use applied. This application of treatment and recovery was substantiated by the County Attorney during May 18, 2004, Board of County Commissioners meeting. Mr. Knox advised the Board from a legal construction that approval could view the property as having been given a Residential Social Services Facility zoning in 1986, which would then include drug treatment and recovery facility.

Henry Minneboo – How much more time do you need?

Mark Leslie – I've got a couple more pages.

Henry Minneboo – We try to do three or four minutes and you've done five.

Mark Leslie – That's interesting, because the gentleman at the other hearing had a whole lot more minutes. This is the same thing that happens every time, Mr. Minneboo, and it's not right. Other people have lots of time.

Henry Minneboo – Go ahead.

Mark Leslie – I'm telling you a lot of specific stuff, and if you don't care to hear it I'll sit down.

Henry Minneboo – We're here, but there's other people who want to talk, too.

Mark Leslie – If they want to expand the facility now, expand the floor area, they would be allowed to, but they would only be able to do it by 25% through administrative review and approval, as long as the expansion meets all the County and Land Development Regulations. This administrative approval shall not permit expansions which exceed the maximum permitted by the zoning classification or Comprehensive Plan. In order to expand a pre-existing use beyond the 25% administrative approval, a conditional use pursuant to 62-1949.7, a substantial pre-existing use shall be required. As an RSSF, treatment and recovery, and ACLF, was a pre-existing use, then the 25% additional square footage would be the current 9,885 square feet, times 25%, equals 2,471 square feet, not the 6,815 square feet they are proposing; that's 68%. If they were to choose to go ahead and pursue administrative relief through the board, it would require that they go through a process, and the Planning Administrator would have to illustrate the location and all proposed expansion and conformance to all applicable site improvement requirements for the proposed re-building or replacement construction, and the degree at which that construction meets or brings the site into more conformance with all applicable site improvements. A copy of a written confirmation issued by the zoning official designating the property as a pre-existing use would also have to accompany that application. If it was a pre-existing use, and that's not allowed to be done again, how could they confirm it's a pre-existing use, it's already been done and they closed the door on that chapter? I want to finish by briefly talking about the State standards. We've heard there is a requirement for square footage at the County level; the State basically requires compliance with all local codes to be adhered to. The State doesn't spell out specific square footage, they leave it to the County to decide what that square footage should be. Lastly, regarding fair housing, there's a lot of discussion about the Fair Housing Act, and it's discriminatory for the County Code to discriminate against those with disabilities or addictions. We don't believe that's the case, because the same Code applies to assisted living

facilities and to treatment and recovery facilities. The people under an assisted living facility designation are not part of that same description of those protected folks. I'd like to mention the ADA (Americans with Disabilities) guidelines, and as we heard, no one has inspected this property. It was anticipated in the binding development plan that it would happen, and it didn't happen. We don't know how many square feet we actually have down there; we don't know if it's ADA compliant, and a quick drive through there this morning showed no ADA parking spaces, so if they decide to go that route, they need to clean up their own act on the property first.

Costas Manouselis – My name is Costas Manouselis, I live across the street from the proposed project, and my daughter lives next to me, and my concern is safety for me and my family. I understand high-class people go there, but if they're dealing drugs, who's going to keep them from jumping the fence to come to my house or my daughter's house? I'm also concerned about the traffic from U.S. Highway 1, and there are a lot of accidents there. Traffic and safety for my family are my concerns, and I hope the board denies it.

Scott Knox – I would like to say that Mr. Leslie was very articulate in the way he described the pre-existing use. That's exactly what it was, and for that reason the use that was there before existed as a treatment and recovery facility, with the exact same conditions that exist today. That road was there, the buildings were there, and the only thing we're asking for is an expansion. Very interestingly, as Mr. Leslie announced to you, two things happen when you're a pre-existing use: Number 1, in this particular zoning classification you don't have to comply with location standards, so collector road/arterial road is completely irrelevant at this point, because he's right, it is a pre-existing use, and it was at that time so it didn't have to comply with the collector/arterial road requirement. What was there was there and it was okay. Now, he's asking today to change that and make them do something different by connecting to an arterial road, or a collector, which I think this probably still qualifies as a collector because it does collect traffic from abutting residential neighborhoods onto Old Dixie Highway, which turns into Otter Creek Lane, and there is a commercial establishment at the end of Otter Creek Lane, so it fits all the criteria for a collector road under the County Code. I don't think that's even an issue, assuming it was relevant to begin with, which it's not because this same use back in the timeframe that Mr. Leslie was talking about, had the same conditions that exist today, and the reason that's important is because there is a Fair Housing Act, there is an Americans with Disabilities Act, and there is a Rehabilitation Act at the Federal level that says you can't discriminate against a particular use where people have disabilities. What happened back when Mr. Leslie was talking about, is the same condition that exists today, and the only reason you would turn it down at this point is because it is a treatment facility, and that doesn't fly under the Federal law, so you have to be careful with that. The other thing is, expansion that's permitted for a pre-existing use is 25% as Mr. Leslie described, or they can file a site plan with the County, which 99% of what was discussed today would be covered by a site plan; the parking requirements, all of those things have to comply with the standards of the ordinance. The way expansion works with pre-existing uses was you had the right to go 25% administratively through staff, or it could go beyond that if you went before the County Commission with a site plan and get the site plan approved. That is where we would go if we needed that much space. We put the 16,700 square-foot in there as a cap; there may be fewer residents there, or there may be fewer employees there. By the way, the proprietor-to-be indicated that the number of trips he expected to be generated because of the number of employees that would be there at any given time was 12 trips. The other thing the ordinance says about trading this exemption for pre-existing uses, is that the use has the same rights and privileges as are set forth in the ordinance; it doesn't say they have to comply with all the conditions of the ordinance. In fact, if you look at the pre-existing use ordinance, it has a list of things you have to do to qualify for it to

begin with. This ordinance, Section 62-1573, which deals with high-intensity uses, institutional, says that if you existed as an institutional use before August 15, 2004, you are a pre-existing use, you don't have to go through the qualification provisions, but it does say you get the same rights and privileges that a pre-existing use would have. The only thing you get under the provision that deals with pre-existing use and waive a right over privileges, a right to expand, and that right to expand is detailed, as Mr. Leslie said, 25% administratively, or more if the Board approves a site plan. As I said, that site plan would cover all of the square footage requirements, they would have to meet the parking requirements, it would have to meet the square footage for the facility for the central eating facility, and all that would have to be shown on that site plan in order to be approved. It may not be as big as they ask for because they be a smaller facility than what they think they're going to be.

Henry Minneboo – Mr. Knox, is there a plan of this facility, the way it would look, is there any pictures of this?

Scott Knox – I think in your packet we had some pictures.

Henry Minneboo – Yes, you did, but is that the same concept that would be there?

Scott Knox – That's the concept they're proposing to use, yes.

Henry Minneboo – That exact one? Okay. It looked to be three or more stories.

Scott Knox – No, it's a single-story building.

Henry Minneboo – Any more questions for Mr. Knox? Okay, I bring it back to the board. Erin, specifically we're dealing with the amendment of the BDP (Binding Development Plan)?

Erin Sterk – Yes, the request that's before you is the amendment of the BDP and amendment of the use within the BDP, some of the responsible parties within the BDP, and the specific conditions. I can answer questions about some of the accusations that the public made regarding the ability of the applicant to propose some of the changes that they are proposing, if that's something you'd like me to run through, or can allude to our general concerns regarding some of the language.

Henry Minneboo – Yes, please.

Erin Sterk – The BDP, like some members of the public said, is not a tool to usurp anyone from meeting County Code requirements, and some of these provisions seem to be designed to do that. There are specific ones that say they'll come into compliance with the facility standards a year after opening. Administratively, we do not have a tool to allow for that to occur, we cannot sign a Business Tax Receipt for a facility to be out of compliance with Code over a certain period of time. The BDP is not a tool to allow us to do that. Specifically, 3(h), complying with the facility standards within a year, the County does not agree that provision can be adopted as proposed. Item 3(i), the developer representing that there is adequate parking on the site, we don't have any demonstration that that has been inspected and approved, and we also don't have any mechanism to exempt someone from meeting parking requirements when they expand a facility through a BDP condition. If you were to construct a new building, you have to construct parking; we can't exempt you from stormwater, we can't exempt you from parking, so for 3(i), we just don't find a way to approve it as-is.

Henry Minneboo – It really creates a whole new concept, it starts it back at square one.

Erin Sterk - There is a lot of specific minutia, but the main point that is before you today is just the change of the use and whether or not that is consistent and compatible with the surrounding development. Beyond that, the specifics of it, and exactly how many square feet, you have to get past Step 1 and answer that question, and then get into the rest. Additionally, the BDP (Binding Development Plan) is a tool to obligate the property owner; it runs with the property, it doesn't run with whoever the developer is and when a new developer shows up it doesn't become applicable anymore, so we would ask that every condition obligate the property owner to comply so that the County has an enforcement mechanism. There is a lot of other information in the BDP, but generally what is before you is the proposed use between going from a dormitory in IN(H) (Institutional Use, High-Intensity) zoning to a treatment and recovery facility. The dormitory is a permitted use, and the treatment and recovery facility is permitted with conditions, and that's when those specific conditions for compliance with the facility standards kick in. The dormitory doesn't have those standards and that's why they sought the dormitory use in 2009 and memorialized it in a BDP, because they weren't able to provide the facility standards necessary for the residents of the adult congregate living facility. Here, I guess the way to do that would be to expand the building to allow them to come into compliance with providing those facility standards. The question is if they need to do that in order to come into compliance with Code, is that consistent and compatible with the surrounding development? That's what we ask you to decide.

Scott Langston – How many years has it been a treatment facility there?

Erin Sterk – It has not been a treatment and recovery facility since at least – it didn't even have the rights to be one, I don't know what they were actually operating as, but they have not had the rights to be a treatment and recovery facility since 2005, when it was administratively rezoned and a BDP for an ACLF (Adult Congregate Living Facility) was placed on the property. It had before that, an AU (Agricultural Residential) zoning with a Conditional Use Permit for an RSSF (Residential Social Services Facility) and an ACLF. When it was rezoned administratively, what happened was institutional uses used to happen in other zoning classifications, we didn't have an institutional zoning classification, and when we created it, we tried to create a mechanism to bring those out of the institutional uses in other zoning classifications and bring them into the right intensity of institutional use. That's what happened from 2004 to 2005 when it went to IN(L) with the ACLF, and then they rezoned once more on their own merit after that, to the dormitory use, and now it's another request that is not administrative.

Scott Langston – The same owners the entire time?

Erin Sterk – Since the 2005 Board action they have not had the rights to have a treatment and recovery facility at that location.

Scott Langston – Has it been the same owner of record throughout the whole time, or have they changed owners?

Erin Sterk – I think it's been the same owner. I think it's been operated under different names over time.

Henry Minneboo – Our only objective today is to determine if we're going to amend the BDP.

Erin Sterk – It's whether or not you intend to approve the conditions as proposed, or the use in general.

Henry Minneboo – I think the first thing you have to do is eliminate the BDP (Binding Development Plan) from the past.

Bruce Moia – Or we just approve this one over that one.

Erin Sterk – The County has some significant concerns over the language of those conditions, such as the responsibility of the parties who would be obligated to come into compliance as proposed today and the intention to usurp the Code at a later date.

Ben Glover – I thought we already finished this one, and I honestly think the applicant is coming back and we're starting all over. I don't know how I feel about it; I felt better about it the last time. If the County has concerns, I don't know how we pursue something like that.

Ron Bartcher – The BDP has been brought up a couple of times. Typically, BDPs add to the zoning restrictions. I've only been here six years, so I can't remember everything, but I don't ever recall a BDP doing what this one is trying to do and circumvent the zoning restrictions. I think that's something we ought not to be doing. Also, in looking at some of the staff comments there are changes to using the word 'developer' and 'owner'. Usually, it's 'owner/developer', and they are now separating 'owner' versus 'developer'. To my mind, that is something the owner and developer should do amongst themselves as to who pays for which purpose of it, but from our point of view, we don't care which one they do it, we just want it done. I'd prefer 'owner/developer', but that's something else. In looking at 3(i) and 3(j), there's been no evidence given to staff to support those assertions, and I don't understand that, it's not that big a deal. I also have a question for staff. When we have a BDP that makes something, for example, Item 4 says there will be meetings. Who enforces that? What department does these regular inspections, or does one of the residents have to come and complain to one of the departments? How does that work?

Erin Sterk – In a perfect world, these conditions would be structured in a way that include some timely mechanism that the applicant would need to demonstrate that they come into compliance with. We don't have a regular mechanism to go out and just inspect properties. They would have to request an inspection from County staff and provide evidence on whatever timeframe should, in theory, be memorialized.

Ron Bartcher – So, what we're doing is we are creating rules that we don't enforce, and we leave it up to the residents to try to do that. That's not right. If we're going to create a rule that says they've got to do something on a regular basis, then it should be up to the County to say you're doing it or not doing it. If we don't have a way of doing that, then I don't see a use for putting it in there.

Erin Sterk – They have a way of requesting that we come out and check whether or not they are in compliance, they just haven't requested it.

Ron Bartcher – Yes, the fox that's in the hen house can come and check to see if there are any foxes in the hen house.

Henry Minneboo – With situations in the past, I think Code Enforcement has been the agency to undertake some of these tasks, not specifically this location.

Erin Sterk – The conditions in a BDP essentially become part of the zoning action, so just like any other part of the zoning code they are enforceable by the Code Enforcement.

Henry Minneboo – Not to be critical of Code Enforcement, but it's almost like the health department attacking these restaurants. They just periodically say they're going to go after Chinese restaurants today and Mexican restaurants tomorrow.

Ron Bartcher – The Health Department has a regular schedule, more or less, whereas Code Enforcement, I'm not aware of any schedule they have for inspections.

Henry Minneboo – No, they don't have a schedule.

Scott Langston – I think there was also a mention of maybe their corporation being defunct or something, but it isn't an active corporation and all the members are listed on Sunbiz as inactive.

Scott Knox – Paragraph 5 says, "The developer shall comply with all regulations and ordinances of Brevard County". We don't have any objection changing it to 'owner/developer', however you want to phrase it. The reason we have it the way it is because we have an owner and a company that has it under contract, and will become the owner, but is not the owner yet, so we put 'owner' and 'developer' separately, but we can put them together if you want. Clearly, if there's something that's not in compliance with the County ordinances, and staff feels that's the case, we can fix that, because our intent is to comply with the County ordinances, and it's in the agreement. As far as being enforceable, it is enforceable by Code Enforcement and the provision in Section 8 says that. If it makes the folks happier and more comfortable, we would certainly be glad to agree to a requirement that they come out and inspect to ensure compliance from time to time.

Mark Wadsworth – She said earlier, with a BDP (Binding Development Plan), if a new owner comes in, that BDP is not applicable.

Erin Sterk – I meant that if they were to put a responsible party in the BDP that wasn't the property owner, and that developer party changed, then it wouldn't be tied to the land. It's not that the BDP is no longer enforceable, it's just that the accountable party in the BDP would no longer be a constituent.

Jad Brewer – I think staff's concern is it's simpler to say 'owner/developer'. If something happens to this developer, or the deal falls through, or some other organization comes in, it's still tied to the land.

Mark Wadsworth – Is that what we're trying to do here, get approval for property so that you can sell it to a potential buyer?

Jad Brewer – I believe they are buying it from the potential seller.

Scott Knox – The potential buyer is here and is one of the parties to the agreement. If they buy it they will become the successor in interest and are bound by everything in there.

Bruce Moia – We've done BDPs before where the developer was just under contract to buy the property, but they did a BDP and it was just stated as 'owner', whomever the current owner is, and then when they sell the property the owner becomes the owner. I've never seen it broken out like this before. Of all the projects that have come through here that were under contract, it's always been the owner and the owner is bound to it until he sells it, and then the other owner is bound to it. I've never seen it like this before, it's a little unusual, and maybe that's why it's confusing.

Peter Filiberto – Mr. Chairman, I think we've heard a lot on the subject. The County is concerned about it, the residents are concerned. I'm going to motion to deny the request in its current language.

Ron Bartcher – I'll second.

Henry Minneboo called for a vote on the motion and it passed 5:2, with Langston and Wadsworth voting nay.

Adjournment

Upon consensus of the board, the meeting adjourned at 4:46 p.m.