

## **PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, January 9, 2023**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order at 3:00 p.m.

Board members present were: Board members present were: Henry Minneboo (D1); Ron Bartcher (D1); Brian Hodgers (D2); Robert Sullivan (D2); Lorraine Koss (Alt. D2); Ben Glover, Vice Chair (D3); Mark Wadsworth, Chair (D4); Peter Filiberto (D5); and John Hopengarten (BPS).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Jane Hart, Planner III; Alex Esseesse, Deputy County Attorney; Billy Prasad, Strategic Operations Manager; and Jennifer Jones, Special Projects Coordinator.

### **Approval of the November 14, 2022, P&Z/LPA Minutes**

Motion by John Hopengarten, seconded by Peter Filiberto, to approve the P&Z/LPA minutes of November 14, 2022. The motion passed unanimously.

### **Chair and Vice Chair Nominations**

Motion by Brian Hodgers, seconded by Peter Filiberto, to nominate Mark Wadsworth as Chair. The motion passed unanimously.

Motion by Peter Filiberto, seconded by John Hopengarten, to nominate Ben Glover as Vice Chair. The motion passed unanimously.

### **Ordinance Amending Chapter 62, Article VI, Division 2, Section 62-1157, "Submission of a Binding Development Plan in Support of Request for a Change of Zoning or Conditional Use Permit"**

Jeffrey Ball stated the proposed ordinance will require a binding development plan to identify all legal and equitable owners of the property, and any entity with interest in the property, including but not limited to, any lienor or lienors; it will also require that all legal and equitable owners of property and any entity with an interest in the property, including but not limited to, any lienor or lienors, be party to the BDP prior to final approval by the Board of County Commissioners; and it will clarify when the 120-day period begins to record a BDP.

John Hopengarten stated the ordinance states that a zoning change can remove a BDP, which takes all the teeth out of a BDP. He said if there is a new owner of the property and they want to change the zoning, they can automatically do away with the existing BDP, but the BDP has certain requirements within it that were developed over time by either going before the zoning board or neighbors raising issues, so they set stipulations. He stated it is important that if there is an existing BDP that the board should consider the restrictions so it can either agree to keep them or talk about why they should be removed. He further stated that the proposed ordinance seeks to have stakeholders involved in signing the BDPs, and asked what happens when a mortgagee holds a note for a property, then the property is sold, but they transfer the mortgage to the new owner.

Billy Prasad, Strategic Operations Manager, Planning and Development, stated that is why the ordinance change is necessary. He said the mortgage holder would have signed it, been a party to the BDP to begin with and therefore, it would continue to run with the property.

Mr. Hopengarten asked what would happen if the Board removes a BDP. Mr. Prasad replied, the interest holders at that time will still have to be a party to it, to any application to amend a BDP.

Mr. Hopengarten stated the proposed ordinance says a BDP will continue to run with the land regardless of disposition, including foreclosure, and asked how the board can give BDPs more teeth so that they are not arbitrarily dismissed.

Mr. Prasad stated part of the reason behind the ordinance is to ensure all interest holders are part of the BDP and therefore, as the land evolves in the future, there is no argument to be said that as an owner of the property they weren't a party to the BDP and therefore it doesn't apply to them. He said as far as amendments to BDPs, it's up to boards to consider those.

Mr. Hopengarten asked the fee for a BDP. Jennifer Jones replied the recording fee is \$10.00 for the first page and \$8.50 for each additional page.

Henry Minneboo stated he was always under the impression that a BDP was made part of the deed and everybody knew what was going on.

Mr. Prasad stated BDPs are recorded. He said another part of the proposed ordinance is the 120-day clock; a BDP is not recorded until that application has been given final approval by the Board of County Commissioners. If it is not clear when the 120-day clock begins, there can be quite a long period before a BDP is recorded, and that's what staff is trying to firm up, so that it is on the record and any interest holder or neighbor can find out if there is a BDP on a property.

Motion by Ron Bartcher, seconded by Henry Minneboo, to recommend approval of the Ordinance Amending Chapter 62, Article VI, Division 2, Section 62-1157, "Submission of a Binding Development Plan in Support of Request for a Change of Zoning or Conditional Use Permit".

Public comment:

Kim Rezanka, Lacy Lyons Rezanka, 1290 U.S. 1, Rockledge, stated lienholders could be a code enforcement lien, and the County is not going to sign off on a code enforcement lien; it could be a mechanics lien with a dispute, or a supplier, or someone who has provided materials. The section of the ordinance with any lienholder is over-broad, and she asked the board to recommend that it not be in the ordinance. She said she understands having a bank, the mortgagee, be required to sign. She noted she currently has a case that came before the board with no recommendation of a BDP, but at the County Commission one of the commissioners wanted a BDP. The client who owns the property agrees, but now the bank won't sign a joinder, and now that 120 days is a problem. She said the proposed ordinance doesn't clarify the 120 days; it doesn't give any discretion going forward if an extension is needed, and she will have to start the process all over again. She noted the fee for a BDP is \$849, so there is a fee going through the process, and a \$300 Natural Resources fee, and the recording fee. She asked the board to consider that the 120 days may be extended by the County Manager, or designee, upon good cause shown, such as the inability to obtain the mortgagee's consent, or joinder, and that the denial of an extension may be appealed to the County Commission within 30 days. She said there needs to be a remedy, because right now her client is stuck because they are coming up on the 120 days, and the County Commissioner did it at the hearing and she couldn't go back to the bank and explain. She asked the board to get rid of the lienholder because it's over-broad, and add a provision that the 120 days can be extended upon good cause.

Mr. Bartcher stated he thinks there should be a way to extend the 120 days, but as far as getting rid of all of the lienholders, they have an interest in it and they may object to having a BDP removed, for example, or they may be in favor, but the board needs to know what they want.

Mr. Wadsworth asked staff if the board needs to table the item to get clarification on the extension of the 120 days. Mr. Ball stated staff can write language that provides for an exemption or meets the intent of the potential issue.

Alex Esseesse stated the item still has to go before the Board of County Commissioners, so if the board's direction is to incorporate some sort of administrative process that can increase the time, staff can take that to the Board and make note of it in the agenda report.

Mark Wadsworth called for a vote on the motion as stated, and it passed 8:1, with John Hopengarten voting nay.

### **Robert J. Woodhouse**

A change of zoning classification from GU (General Use) to AU(L) (Agricultural Residential, Low-Intensity). The property is 1 acre, located on the south side of Detroit Street, approximately 310 feet east of Hartville Avenue. (3735 Detroit Street, Cocoa) (22Z00059) (Tax Account 2441057) (District 1)

Robert Woodhouse, Jr., 3735 Detroit Street, Cocoa, stated his father would like to build a 1,500 square-foot building because he owns a 60-acre piece of property in South Carolina that he goes back and forth from, and he needs a place to store equipment and vehicles.

No public comment.

Peter Filiberto asked if Mr. Woodhouse plans to do any agritourism or any commercial activity on the property. Mr. Woodhouse replied no, the AU(L) zoning does not allow for commercial activity.

Motion by Ron Bartcher, seconded by Peter Filiberto, to recommend approval of the change of classification from GU to AU(L). The motion passed unanimously.

### **Michael C. McLain and Kelsey Barnes**

A change of zoning classification from RR-1 (Rural Residential) to AU (Agricultural Residential) The property is 3.03 acres, located on the east side of Maple St., approximately 450 feet north of Milwaukee Avenue. (2405 Maple Street, Melbourne) (22Z00055) (Tax Account 2802103) (District 5)

Michael McLain, 2405 Maple Street, Melbourne, stated they would like to raise chickens and breed them with a few roosters to make hybrid chickens and to produce eggs to sell locally. He added, they would also like to have a couple of goats and an alpaca as family pets.

Public comment:

Patrick Horn, 2335 Maple Street, Melbourne, stated it is not that the neighbors do not want them to have a family farm, it comes down to the roosters. He said at one time they had four roosters, and even though he lives 200 yards from their fence line it felt like the roosters were in his backyard. He noted he is not as affected as the immediate neighbors, Steve and Sharon Dolan. He stated it comes down to the roosters, and asked if four roosters are necessary. He asked if there was an option to let them have the other animals they want, but not roosters.

Brenda Piccirillo, 2470 Vermont Street, Melbourne, stated she is in favor of the request. She said she moved to June Park so that she would have the freedom to have animals.

Darrell Duran stated he and his parents live near the subject property and do not have a problem with the request.

Peter Filiberto asked the applicants if they plan to do any agritourism on the property, such as charging for pony rides. Mr. McLain replied not at this time, but maybe in the future, right now they just want family pets, and chickens and eggs to sell to the community.

Mr. Filiberto asked if they needed four, or any, roosters. Mr. McLain replied they would like to have 3 to 4 roosters for breeding, but right now, they have 2 roosters that a neighbor is taking care of because they are in violation and can't have them at the moment.

Kelsey Barnes stated most of their neighbors have roosters.

Mr. McLain explained the current coop is near the fence line, but he is building a new coop so that the chickens will be free-range.

Mr. Filiberto asked staff if a conditional use is needed for a petting zoo. Mr. Ball replied yes, they would need a conditional use permit for a zoological park.

Mr. Hopengarten asked the nature of the code violation. Ms. Barnes replied it is for the roosters, but they have been re-homed until the rezoning process is complete.

Motion by Ben Glover, seconded by Brian Hodgers, to approve the change of zoning classification from RR-1 to AU. The motion passed unanimously.

**Austin A. and Kailey R. Mahan**

A Small Scale Comprehensive Plan Amendment (22S.15), to change the Future Land Use designation from NC (Neighborhood Commercial) to CC (Community Commercial). The property is 1.77 acres, located on the north corner of U.S. Highway 1, and E.R. Smyth Drive, Mims. (3716 E.R. Smyth Drive, Mims) (22SS00013) (Tax Accounts 2102061 & 3030132) (District 1) This item was automatically tabled by the applicant to the April 17, 2023, P&Z/LPA meeting (Letter received 12/30/22)

**Austin A. and Kailey R. Mahan**

A change of zoning classification from AU (Agricultural Residential) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The property is 1.77 acres, located on the north corner of U.S. Highway 1, and E.R. Smyth Drive, Mims. (3716 E.R. Smyth Drive, Mims) (22Z00054) (Tax Accounts 2102061 & 3030132) (District 1) This item was automatically tabled by the applicant to the April 17, 2023, P&Z/LPA meeting (Letter received 12/30/22)

**Tomas Manuel Guillen Arguelles and Elsa F. Rodriguez Arriaga**

A change of zoning classification from AU (Agricultural Residential) to RU-1-9 (Single-Family Residential). The property is 0.24 acres, located on the west side of Koch Street, approximately 245 feet south of Lucas Road. (No assigned address. In the Merritt Island area.) (22Z00058) (Tax Account 2419383) (District 2)

Tomas Manuel Guillen Arguelles, 501 Brock Avenue, Crestview, Florida, stated he needs to rezone his property in order to build a single-family home.

No public comment.

Motion by Brian Hodgers, seconded by Peter Filiberto, to approve the change of zoning from AU to RU-1-9. The motion passed unanimously.

**Ronald Abbott; Abbott Manufactured Housing, Inc.** (Kelly Hyvonen)

A change of zoning classification from BU-1 (General Retail Commercial) with an existing BDP (Binding Development Plan) to BU-2 (Retail, Warehousing, and Wholesale Commercial) and removal of existing BDP. The property is 4.58 acres, located on the north side of Barefoot Bay Boulevard, approximately 200 feet west of U.S. Highway 1. (No assigned address, in the Micco area.) (Tax Account 3010400) (District 3)

Kelly Hyvonen, Land Development Strategies, stated her client is seeking to rezone the subject property from BU-1 to BU-2 for boat and RV (Recreational Vehicle) storage. She said the site is a good location for the use is because it is close to U.S. 1, and it is adjacent to railroad tracks, vacant property, and some retail uses, as well as it is in close proximity to Barefoot Bay. She noted Barefoot Bay has onsite storage for boats and RV's, but it's at full capacity, so it is expected that residents of Barefoot Bay would be customers of the proposed project. She stated Mr. Abbott has spoken to the Barefoot Bay homeowner's association manager, as well as some residents, who told him they are seeking a nearby boat and RV storage facility. She said a letter of support from the HOA (Homeowners Association) is anticipated, but not yet received; and other than the HOA, there has not been any communication related to the rezoning.

No public comment.

Henry Minneboo stated historically, the board has requested that applicants meet with surrounding property owners, and asked if the board wants to maintain that consistency.

Ms. Hyvonen stated she and her client reached out to Barefoot Bay management who are expected to submit a letter of support that can be entered into the record before the County Commission meeting.

Ron Bartcher asked if the intended use is for boat and RV storage. Ms. Hyvonen replied yes, that is consistent with the current market.

Mr. Bartcher asked if her client would agree to a BDP (Binding Development Plan) on the property stipulating boat and RV storage would be the only BU-2 use.

Ms. Hyvonen stated she would need to confer with her client, but the plan is for boat and RV storage.

Ben Glover stated he agrees with a BDP, and he agrees it might be a good idea to table the item to give them time to speak to the community and find out if a BDP is something the client would consider.

Peter Filiberto stated he agrees with a BDP for the project; however, Barefoot Bay has a group of trustees that are elected representatives of Barefoot Bay, so he feels the board should move forward

with the request with a BDP, because it seems she did due diligence on meeting with the HOA manager.

Ms. Hyvonen stated her client would agree to a BDP limited to boat and RV storage as long as everything allowed in BU-1 is also allowed. She said it would make sense if the BDP says they can have everything BU-1 allows, plus this one BU-2 use. She said if they decide on a retail store in the future, they would have to come back to amend the BDP. She stated she doesn't want to exclude the lower intensity uses that are currently allowed.

Jeffrey Ball stated the applicant is asking to have BU-1 uses with the inclusion of RV and boat storage only, so that would allow for all of the BU-1 uses that are currently allowed on the property to remain, with the addition of boat and RV storage as the only BU-2 use.

Ms. Hyvonen stated her client would agree to that.

Mr. Ball noted the property has an existing BDP, so the board's motion should be to remove the existing BDP because it limits it to a 55 and older community, so that BDP needs to be removed in order to allow for the BU-1 uses.

Mr. Hopengarten asked what uses are allowed in BU-1. Mr. Ball replied typically it is office, retail, and light manufacturing uses.

Mr. Hopengarten stated the current BDP has a restriction of residents age 55 and older, and no residents under the age of 18. That restriction of the 18 year-olds would be affected if anyone wanted to come back and have an apartment complex. Mr. Ball stated a BDP is a negotiating tool the board has, as well as the County Commission. If the board has issues with any of those uses it can limit them through the BDP.

Motion by Ron Bartcher, seconded by Peter Filiberto, to approve the change of zoning classification from BU-1 to BU-2, with removal of the existing BDP, and adding a new BDP retaining all BU-1 uses, and limiting the BU-2 use to boat and RV storage only. The motion passed 7:2, with Minneboo and Hopengarten voting nay.

**NDA Merritt Project Zenith, LLC; and SES Merritt Project Zenith, LLC (Kim Rezanka)**

A change of zoning classification from BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing, and Wholesale Commercial), with two existing BDP's (Binding Development Plan), to PUD (Planned Unit Development), with waivers, and removal of two existing BDP's. The property is 15.11 +/- acres, located on the southwest corner of Fortenberry Road and Harbour Woods Boulevard (No assigned address. In the Merritt Island area.) (22Z00062) (Tax Accounts 2428002, 2428157, 2428161, & 2428163) (District 2)

Jeffrey Ball clarified for the board that the request is for a PUD, which has a Preliminary Development Plan (PDP) that gets approved with the zoning action, and with that, there are a couple of waivers that have been requested. Two of the waivers are for setbacks, but based on staff review, those are not needed; however, there is an additional waiver needed that goes with the open space requirement of 25%. In addition, there is a list of potential conditions in the staff comments if the board wishes to include them in its recommendation.

Kim Rezanka, Lacy, Lyons, Rezanka, 1290 U.S. Highway 1, Rockledge. [Ms. Rezanka presented handouts to the board. The handouts can be found in zoning file 22Z00062, located in the Brevard County Planning and Development Department.] She stated her client is requesting a change of zoning from BU-1 and BU-2 to PUD with a recommendation of approval of the Preliminary Development Plan (PDP), and removal of two existing BDPs that limit commercial use. She said the subject property is on Fortenberry Road, behind Merritt Square Mall, it is the old paint ball field and skate park that has been shut down for several years. The PDP allows flexibility and design, and also allows the developer to work around two wetlands on the site that will be preserved. She explained the plan is to have 370 luxury apartments within five buildings; the apartments are five floors with elevators, which will be 60 - 62 feet in height; and there will be a clubhouse, a pool, and a dog park. Fortenberry Road is to the north, and South Plumosa Street is to the west, as well as two credit unions. Harbor Woods Boulevard is to the east, and Harbor Woods condominium is to the south, and there is single-family rental property to the south, owned by Phil Cohen. She stated the revised PDP shows three waivers; one is a waiver to the 25-foot reduction from the 2:1 setback requirement along the south interior property line. Staff has said that waiver is not needed, but a 2:1 ratio at a 60-foot building is 120 feet and there is only 95 feet, so they are still asking for the 25-foot waiver; and if it is not needed it at final development, it will come out. She said the developer is also asking for a reduction of 1.1 acre in the open space requirement because the property is a unique size and has wetlands that are intended to be preserved, and also the Veterans Memorial Park, which has many amenities that the residents of the apartment complex will be able to use. The open space requirement is not as necessary as most PUD's because there is recreation to the east at the Veterans Memorial Park. The final waiver requested is a waiver to allow one main access point to Harbor Woods Boulevard and Fortenberry Road. The Access Management code, 62-2957(c)(1) requires three accesses for over 350 units, but the developer's life safety expert has said that is not necessary with the two accesses on Fortenberry Road and Harbor Woods Boulevard, so they are asking for a waiver to 62-2957(c)(1) to allow two access entrances instead of three. She noted if necessary, the developer could create an access off of Plumosa Street, but there are some wetlands that would be impacted and they prefer not to do that, and residents do not want more traffic on Plumosa as it is a substandard local road. She stated County staff identified a concern as to Harbor Woods Boulevard; however, that road was transferred to the County by Pulte Group in 2009, so Harbor Woods Boulevard is owned by the County; it may not be County-maintained, but it is owned by the County. The other issue identified was stormwater, and Ken Good is working with the County to resolved whether or not three of the four parcels was in the basin study for the Veterans Memorial stormwater basin, so hopefully the third parcel can be pulled in as well. If not, the final development plan and site plan will have retention on site. She said County staff also suggested a SCAT bus stop, but a stop already exists on Fortenberry Road, very near the proposed project, and also at the Merritt Square Mall, but the developer will look into possibly changing the bus stops or something else that will make it more friendly for bus usage. The MIRA (Merritt Island Redevelopment Agency) board reviewed the project on December 8, 2022, and unanimously recommended approval of the PDP. The MIRA board did not have the access management waiver or the open space requirement, but they did have what the P&Z board has, and those waivers were not on the PDP at the time. The MIRA board's justification for the recommendation was the lack of new multi-family housing on Merritt Island, the growing employment base, a vision for mixed-use development around the mall to help meet housing needs and promote economic development, and that the Comprehensive Plan states that the County should, "encourage high-density development in clustered patterns". Additionally, she held a community meeting on January 4, 2023; 150 notices were mailed and nine people attended. The concerns raised at the community meeting were, increased traffic on Harbor Woods Boulevard

and traffic in the area, future development plans for the mall and the effect on road congestions, and safety at the intersection of Harbor Woods Boulevard and Fortenberry Road. She said safety at the intersection will be addressed with Public Works and if there are any improvements that are needed offsite the developer will include that in the final development plan and site plan. She continued, the residents were also concerned about the type of construction; it is intended to be concrete block, but construction prices in two years are unknown. She said other concerns of the residents were construction noise, and landscape and buffering. She stated building 1, adjacent to Fortenberry Road, will be 145 feet from the property line to the west; building 3, to the east, is 147 feet from the property line to the west and goes through the maintained wetland area; and building 5, adjacent to Harbor Woods Boulevard, is 95 feet from the property line to the south.

Ross Abramson, Woodside Acquisitions, stated they have a site in Palm Bay that they are going through the entitlements on; and a second site in Palm Bay they are hoping to break ground on this summer, which is a \$125 million mixed-use project. He said Woodside Acquisitions pride themselves on being a custom design developer; they hire top tier consultants, architects, landscape architects, interior designers, and civil engineers.

Peter Filiberto asked if the waiver for the three access points go to site plan review. Mr. Ball replied potentially they could ask for it at the site plan stage, but because this is a PDP they are asking for it now. Staff has not had the opportunity to review that as far as impacts on the traffic and if it meets code.

Henry Minneboo asked if the board can make it a requirement of the PDP that there only be two accesses. Mr. Ball replied his suggestion would be for the board to condition the PDP to require two accesses, as it is certainly under the board's purview to grant the waiver having only two accesses.

Mr. Filiberto stated his initial thoughts are that they are preserving three acres of wetlands, and having four acres of open space on 15 acres, so over 40% of the property is going to be open space or wetlands, and that decreases the density. He said he believes the property could get the waiver for the two access points. He stated for the third access point, he would prefer to preserve that wetland than put an access through it.

John Hopengarten stated what was presented at MIRA prior in December were three-story buildings and one five-story building. Now, they are all five stories. Mr. Abramson stated previously, there were two three-story buildings and four five-story buildings. Mr. Hopengarten stated what was presented to MIRA and what is in the Planning and Zoning Board's package is different. He said he doesn't have a problem with it as long as it complies.

Mr. Hopengarten asked if staff has seen the waiver for the open space, because he doesn't think there is 5.5 acres. Mr. Ball replied they don't have 5.5 acres, but the waiver request is to reduce that open space requirement. He explained, the code requires multi-family to have 25% open space, which is 5.5 acres, so with the waiver, the open space is reduced by one acre.

Kim Rezanka stated that came from the staff comments, which said they needed to ask for the waiver. She said she believes it is appropriate because of the wetlands and because of the Veterans Memorial Park, which has amenities for the residents.

Mr. Hopengarten asked if anyone has suggested widening the road between Fortenberry Road and Sykes Creek Parkway. Ms. Rezanka replied they don't know yet, but the staff comments refer to Fortenberry as an Urban Collector.

Robert Sullivan asked if it has gone through Fire Safety because it is an Urban Collector. Ms. Rezanka replied no, it is just a preliminary development plan, it has not been fully engineered. She said the County can require offsite improvements if necessary.

Mr. Sullivan asked if the developer is trying to use the wetlands for stormwater. Ms. Rezanka replied no, her understanding is that Veterans Memorial Park was designed to take stormwater from the entire area. The idea was to take water from S.R. 520 all the way back to these properties to have extra capacity; it may even be connected to the Merritt Square Mall stormwater. Stormwater is a site plan issue, but she believes there is extra capacity at the Veterans Memorial Park, and if not, they will have to re-design the stormwater and have less units.

Mr. Hopengarten asked if the developer can put in a playground area at the pool site. Mr. Abramson replied they could certainly add a children's playground.

Ron Bartcher asked if the roadway is or is not county-maintained. Ms. Rezanka replied it is owned by the County. Mr. Bartcher asked if staff can staff verify it is owned by the County. Ms. Rezanka replied she obtained the information from the Property Appraiser's Office, who gave her the deed to supply to the County.

Mr. Bartcher asked if the road needs maintenance to accommodate the residents of the apartments, and asked if it is not county-maintained, who will pay for the maintenance. Mr. Ball replied staff is in the process of reviewing a traffic impact analysis, and that review will be complete before the County Commission meeting. He said as far as the maintenance of Harbor Woods Boulevard, it is his understanding that it is a county road that is maintained by others, so it would be a private road. They would still need to get approval from that maintenance entity to get access, and it will all be handled through Public Works at a later stage.

Mr. Minneboo stated Harbor Woods has been there since the 1980's; they have maintained it for years; and there has always been a question about ownership of the right-of-way, which is not uncommon. He said in 2008 or 2009, it was turned over to the County for numerous reasons, but it is maintained by Harbor Woods. He stated he is adamant that if there is an existing access point, it should be utilized, but three access points on Fortenberry Road are not needed.

Mr. Bartcher asked, considering climate change and sea level rise, and Merritt Island's average elevation is only three feet, has the developer that kind of problem into consideration. Mr. Abramson replied approximately the northern half of the site is not in a flood zone, but the buildings will be above the flood elevation, which is a minimum of one foot above the base flood elevation.

Mr. Bartcher stated the hospital development across from mall has made significant changes to their plan to accommodate the anticipated sea level rise, and asked if Mr. Abramson will have only office space on the first floors. Mr. Abramson replied with the exception of the clubhouse, the project is fully residential, so there will be residences on the ground level, but the buildings will be above the FEMA flood elevations.

Public Comment:

Phil Cohen, 426 and 420 S. Plumosa Street, stated he owns property on the south side of the subject property. He said one of his concerns is the water runoff of so many tall buildings, there are a lot of low lying areas; originally, they were going to be three-story buildings and now they are five-story buildings, allowing tenants to be able to look down on neighboring properties. He said he is also concerned that a waiver is needed because in order to meet code, 5.5 acres of open space is needed, as well as the possibility of a third access point, which he assumes would be along Plumosa Street. He said if the project is done correctly, he has no problems. He said if there are only two accesses along Fortenberry Road, traffic will be bad unless it is widened to four lanes, or if there is a full turning lane along the whole corridor.

Ben Glover asked if two of the waivers are because of the increase in height. Ms. Rezanka replied the waiver to height was always there. One of the new waivers is the open space waiver because there was a miscalculation, and the other waiver is for the access that came up during staff review, and she did not know there needed to be three access points. She said one of the main purposes of a PUD is to allow waivers so wetlands can be preserved, buildings can be re-arranged, and other things that could not be done under normal circumstances. She noted the setbacks have also being increased; the setbacks from Mr. Cohen's property is 147 feet on the edge of the building, not where the windows will be facing his property, and all of the buildings facing south are also the edges of the building.

Mr. Minneboo asked if the civil engineers are looking at the drainage pond to the east as the primary.

Ken Good, Atkins Global, replied the intent is to utilize the existing ponds around Veterans Park because that is why they were built. He said the drainage basin line for those ponds runs right through the middle of the project. In talking with staff, there has been some internal discussions and thoughts that they should open that up a little bit to allow some of the surrounding parcels to also utilize those existing ponds because there are some parcels within that basin that will never be developed and never be utilized at the capacity that was planned.

Mr. Minneboo asked if Mr. Good is also handling the traffic, as far as two driveways. He said there is an existing driveway that has been there for years and it works. He stated if the decision is made to move forward, he'd like to put that in a binding development plan.

Mr. Glover asked if Mr. Minneboo wants one access on Fortenberry and one on Harbor Woods. Mr. Minneboo replied yes, he believes that is where the emphasis should be placed.

Ms. Rezanka stated that is the intent, that's what has been set forward in the PDP, and it would be a note on the PDP that that is what is intended; it would be a condition of approval along with the other conditions put forward by staff, because that would then transfer with the PDP and ultimately would be in the general statement on the final development plan if necessary.

Motion by Henry Minneboo, seconded by Peter Filiberto, to approve a change of zoning classification from BU-1 and BU-2, with two existing BDPs, to PUD and removal of the two existing BDPs, with the proposed 7 conditions, and an added 8<sup>th</sup> condition of one access on Fortenberry Road and one access on Harbor Woods Boulevard. The motion passed unanimously.

**Kanes Furniture, LLC (Bruce Moia)**

A Small Scale Comprehensive Plan Amendment (22S.16), to change the Future Land Use designation from CC (Community Commercial) and RES 4 (Residential 4), to RES 15 (Residential 15). The property is 12.59 acres, located on the south side of West New Haven Avenue, approximately 300 feet east of Seminole Boulevard. (No assigned address. In the West Melbourne area.) (22SS00012) (Tax Accounts 2800116 & 2800342) (District 5)

**Kanes Furniture, LLC (Bruce Moia)**

A change of classification from RU-1-7 (Single-Family Residential) and BU-1 (General Retail Commercial) with an existing BDP (Binding Development Plan), to RU-2-15 (Medium Density Multi-Family Residential), and removal of existing BDP. The property is 12.59 acres, located on the south side of West New Haven Avenue, approximately 300 feet east of Seminole Boulevard. (No assigned address. In the West Melbourne area.) (22Z00052) (Tax Accounts 2800116 & 2800342) (District 5)

Jane Hart clarified that in the agenda report for the small scale amendment it was noted there was one vacant property zoned RU-2-15, and it should read RU-2-6. It is multi-family and it is vacant, but it is not RU-2-15, it is RU-2-6.

Kim Rezanka, Lacy Lyons Rezanka, 1290 U.S. Highway 1, Rockledge, stated she represents Terwilliger Brothers, LLC, and Kaness Furniture. She stated the first request is a small scale amendment on 12.59 acres to change Community Commercial on 4.35 acres, and Residential 4 on 8.32 acres, to Residential 15. The zoning application is to change BU-1 on 4.35 acres, and RU-1-7 on 8.32 acres, to RU-2-15. She explained BU-1 allows general retail commercial uses, including drug stores, gas stations, bowling alleys, foster homes, pawn shops, outdoor restaurant seating, tourist efficiencies, and bars. RU-1-7 allows 5,000 square-foot lots with 5-foot side setbacks for single-family homes, as well as bed and breakfasts and resort dwellings. The subject property has been vacant for a long time, it is next to Kaness Furniture on West New Haven Avenue, also known as Highway 192. She stated the requests are intended to create needed additional housing in Brevard County and to provide a variety of housing choices, as specified in the Brevard County Housing Element. The proposed project is a 186-unit apartment complex, six three-story buildings with elevators, a clubhouse, and a dog park. It will have keypad access and be fully-gated, fenced, and landscaped. She said sewer will be brought to the site instead of septic, which could be done with single-family homes on quarter-acre lots; and stormwater treatment will be provided to the site that currently has no drainage controls. She stated all County code requirements to roadway improvements and parking will be met at the site plan stage. A market study has been done that shows the need for housing for professionals with an average income of \$70,000 to \$80,000 per year. She stated the developer held a community meeting on December 14<sup>th</sup> and approximately 45 people attended. Those who attended were concerned with the increased traffic on Seminole Boulevard, height, increased crime, noise, reduction of wildlife, flooding and stormwater, and changes to the vacant property, but most simply did not want multi-family at this location. She stated the developer and property management company will comply with all performance standards of the County code regarding noise and other performance standards that are site plan issues.

Bruce Moia, MBV Engineering, stated he is the Engineer of Record for the project, and based on the conversations at the December meeting, modifications were made to the plans. He said there was concern about the location of the driveway on Seminole Boulevard, so it has been moved 200 feet to the north to get it as close to 192 as possible. The clubhouse and amenities have been moved as far as possible from the residents and will be screened so there will not be any lights shining into the

neighborhood. He said they also moved two of the buildings on the east side another 10 feet farther away from residential properties.

Ms. Rezanka stated her clients are agreeable to a binding development plan to assure the impacts will be as limited as possible.

Jim McKnight, Land Use Consultant, stated the subject property has a land use designation of Community Commercial, which provides a wide range of commercial uses in BU-1 zoning. Of the total property under consideration, the commercial is 4.35 acres. He said under the current zoning, height can range from 35 feet to 60 feet, depending on the abutting uses; 35 feet if abutting single-family; 45 feet for multi-family; and 60 feet if abutting medium density residential or commercial, and some of this commercial property does abut other commercial property. He stated height for multi-story does not count the parking area, it ends at the floor level of the first story. The other two-thirds of the property is Residential 4. The subject property is bordered by the road right-of-way of Seminole Boulevard and unimproved Miami Avenue; and the property to the east is residential on larger lots. He stated when commercial and single-family abut, the introduction of low to medium density multi-family is an acceptable land use that transitions from the higher intensity to single-family. He stated the requested land use is considered a step-down and can include development approaches such as tree buffering, stormwater separation, and permanent fixtures such as walls and fences. In the urbanized area of Highway 192, RES 15 has already been introduced to a similar depth on the north side of 192, where it is behind commercial, and it is also adjacent to single-family on two sides, and while currently the parcels are not developed, the larger parcels will more than likely one day be developed as multi-family.

Henry Minneboo asked how many units could be built without a modification. Mr. McKnight replied he believes it ranges from 58 to 74 depending on how it would be developed, because in BU-1 single-family is a permitted use. He said it all comes down to how it is constructed. He mentioned his professional background as having a master's degree in planning and 42 years in local government in Brevard County, working for the County, the City of Cocoa, the City of Rockledge, and the City of Cocoa Beach.

James Taylor, Kimley-Horn & Associates, 189 South Orange Avenue, Orlando, stated he is a Transportation Engineer and has had his P.E. license since 2004. He stated a traffic study was performed in accordance with the County's requirements. The study area for the development based on the number of trips is approximately one-half mile, and all of the major roadway segments and intersections within that area were analyzed. He explained, the Space Coast Transportation Planning Organization requirements list capacities on roadway segments, and the County requirements list the level of service requirements that need to be maintained on County roads. He noted after the County's review, the traffic study will have to go through a DOT review for access permitting. He stated the conclusion of the report is that the project is anticipated to generate about 1,200 daily trips based on the proposed 186 units. In the p.m. peak hours, it is about 101 trips, so over the course of an hour it looks like a trip in and a trip out of the site, and those will be divided amongst the different driveways. He said it is a factor that's significantly less than what can be developed on the site today with the commercial uses. When calculating what the existing code allows for the different acres and uses on the site, it is approximately 175,000 square feet of commercial, plus some measure of single-family units; it is a trip generation for what could be developed of about 6,800 trips per day, and the project is anticipated to be 1,200 trips per day. He stated in the p.m. peak hour it could be 629 trips based on the maximum potential capacity, whereas the proposed project is anticipated to be about

101 peak hour trips. He said DOT requires the trips to be matched up to jobs over the course of a day, and they used the capacities that are adopted by the TPO that the County regularly uses, and concluded there are no roadway segments identified within that half-mile study area that are deficient at the build-out or in the existing. He stated for the intersections they also did an analysis in the a.m. and p.m. peak and found there were no new deficiencies, but that's not to say there aren't some approaches that have high delays, but no new turn lanes, or turn lane extensions, are needed. He said the board will hear concerns about Seminole Boulevard and the amount of traffic that will be moving south of the site, and that is anticipated to be somewhere between 10% and 20% of the traffic, so it is about 20 trips over the course of an hour, and when divided by each direction it is not a lot of traffic. He said they also have 24-hour counts on Seminole Boulevard as well as on Henry Avenue, and there are only approximately 2,000 vehicles on each of those roads today, on roads that have the capacity to take well over 10,000 vehicles. He stated the remainder of the traffic is anticipated to go toward 192 by two ways: the right-in right-out; and the driveway east of Seminole Boulevard is where he anticipates about half of the remaining traffic that isn't going south, to go north, and they will also head to Seminole Boulevard at roughly the same amount as anticipated and do the same thing. He said he has queueing analyses at all of the intersections to determine that the turn lanes that are out there today on 192 are sufficient to accommodate future traffic. He said there are some concerns in the public comments about the queueing at Seminole Boulevard, and that is one of the approaches that if you are heading northbound on Seminole Boulevard there is a high delay today; however, the queue only builds back for about six vehicles at the build-out analysis which doesn't impact any of the driveways. He stated overall, the intersection is within the adopted level of service allowance, but as is on a lot of DOT roadways, priority is to the major street volumes, so there is going to be many roadways along 192 that have the same condition where there is high delay at the minor approach.

Henry Minneboo asked if all of the roads considered are maintained or owned by the County. Mr. Taylor replied Highway 192 is a DOT roadway, but otherwise, yes.

Ron Bartcher asked if the revisions made to the outlet on Seminole Boulevard had any effect on the calculations. Mr. Taylor replied there was no change to the calculations after the revision.

Mr. Taylor explained the trip rates come from the Institute of Transportation Engineers documentation where counts are taken countrywide at individual driveways, then divided by the number of units to determine the trip rate for a multi-family apartment development, and they are then used by counties, cities, and DOT's. For multi-family, the 100 trips are occurring within one of the largest hours of the day, between 4:00 p.m. and 6:00 p.m., so they will take those counts and find out that the maximum trips were between 4:30 and 5:30 at one site, and then count the trips and units, and do the math to figure out the trip rate per unit, and then that is averaged throughout all of the studies that have been done countrywide. He said it is the same in the morning, with 7:00 a.m. to 9:00 a.m. as the highest hour.

Ms. Rezanka stated RCLC Real Estate Consulting conducted a market study for the Palm Bay, Melbourne, and Titusville metropolitan statistical area that included an analysis of the economic sector, and the study showed that the aerospace technology and engineering manufacturing, construction industry, and healthcare industry need housing. She said the developer believes they can bring in the renters needed to be this successful. She stated the proposed apartment complex will have a strong amenities package that includes a pool, clubhouse, fitness center, media game room, grilling area, and a dog park, and it will also be fully gated with key entry. She said the market

study is what caused the Terwilliger Brothers to come to the area and negotiate with Kanes Furniture for a piece of vacant property. She stated in summary, the proposed apartments are a less-intense use than could be there; 175,000 square feet of commercial could be on that 4 acres along Highway 192. It's not the intent to harm the neighbor's, it's the intent to build an apartment complex to serve the needs of the community. Sewer will be brought to the site; otherwise, there could be single-family on septic. She said the developer do whatever the County requires, including sidewalks and improvements along Seminole Boulevard; stormwater runoff will be improved, impact fees will be provided for roads and schools, and property tax revenue will increase for the County.

Mr. Hopengarten stated a condition of the existing BDP is that developer/owner will not construct buildings or parking on the southwest portion of the property, but that is where there is a proposed parking lot and a pool house.

Ms. Rezanka stated the BDP is on four acres, but it is unclear where those four acres are because there is not reference to a lot and block. She said the BDP was recorded in 1999 when things were different.

Mr. Hopengarten asked if there will be an impact of a key card system on the traffic flow, for people coming back into the site, and asked if traffic will back up on 192 or Seminole Boulevard. Mr. Taylor replied that is something to be addressed with the County to show the queueing, but there is quite a bit of distance between Seminole Boulevard and the proposed gate, and it looks like it can accommodate at least four vehicles before there is disruption on Seminole Boulevard.

Robert Sullivan asked if people will be short circuiting through the parking lot on the north end of the property to go left to I-95. Mr. Moia replied people will figure out where they're going to go before they get there; the intersection at Seminole Boulevard and 192 is full median access, it's not restricted, and DOT may want the developer to make modifications. He said to come out from Seminole, people have to go east, but DOT has no issue with U-turns, they actually prefer them if they're safe.

#### Public Comment:

Wilbur Copen, 2099 Ohio Street, stated traffic is his biggest concern because people and children frequently walk along Miami Avenue and he is afraid someone will get hurt with the increased traffic from the proposed apartments.

Larry Vincent, 2223 Merlin Drive, stated he is concerned about traffic and people from the apartments driving to Milwaukee Avenue once they realize they cannot get out onto Highway 192. He is also concerned that Seminole Boulevard and other roads in the neighborhood are not sufficient to carry the current traffic.

Marguerite Vincent, 2223 Merlin Drive, stated she is not against apartments, but the subject property is not the right location, it should be in the bigger areas and not in the middle of a community.

Fred Mullins, 2155 Feast Road, stated he was at the meeting in 1999 when Kanes Furniture conceded to build their store and they need to live up to the binding development plan; it is supposed to be undeveloped, and it should be left that way.

Scott Schopke, 2245 Pine Meadow Avenue, Melbourne, stated over 600 signatures have been collected from the neighborhood in opposition to the proposed apartments. He said the existing

binding development plan should be enforced because that is what Kanesh chose, to mitigate negative impacts on abutting land owners, and to prevent commercial spread into the neighborhood. He asked if anyone looked at the existing school on Seminole and 192 that is already clogging up the street.

Mitch Miller [address protected by Florida Statute], asked that the binding development be enforced.

Craig Scarlett, 3285 Milwaukee Avenue, Melbourne, stated he is concerned with traffic because there is not a traffic light at Seminole and 192, and the proposed project is too much in a small area.

Larry Henke, 2205 Commodore Boulevard, Melbourne, asked that the binding development remain on the property because the neighborhood has not changed in 30 years to the point where apartments are needed. He said it is concerning that BDPs can be removed. He said his other concerns are for the safety of kids walking to school, a decline in property values, and crime.

Brenda Piccirillo, 2470 Vermont Street, Melbourne, stated according to a national survey, an average person lives in an apartment complex for 2.5 years. She said there is a private school on the corner of Seminole and 192 that uses Seminole as access for drop off and pick up; over 50 cars from the school line up twice a day on Seminole directly across from the proposed entrance, and now the entrance has moved north which means it will be even closer to the school. She has been told by the Brevard County Traffic Engineering Department that a traffic survey has not been approved or even reviewed by them. She stated at the community meeting in December it was noted multiple times by the developers that a flood survey would not be conducted unless the rezoning is approved because they don't want to spend the money.

Scott Weiderman, Weiderman-Malek Law Firm, 1990 West New Haven Avenue, Melbourne, stated Kanesh Furniture agreed to the existing binding development plan to specifically only have low residential density within the area, and now Kanesh wants to change that. He said BU-1 is not compatible with multi-family anywhere. He stated on any of the County's roadways for multi-family residential the minimum allowable width of the road must be 22 feet; Seminole Boulevard is 20.57 feet, and Feast Road is even smaller. He said nothing has been brought forth to show that the applicant has determined if they have the width or the condition to do what is planned. He stated in Administrative Policies 3 and 4, the question becomes, based on density, what is going to be the proposed use that is not materially or adversely impacting an established residential neighborhood by introducing types of intensity of traffic, including but not limited to, volume, time, traffic activity, types of vehicles, parking, and trip generation. He said he doesn't know how trip generation goes down when adding units. He mentioned additional daily trips by Amazon, UPS, the US Postal Service, and food deliveries. He stated the roadway isn't compatible today with the traffic generation of 130 additional units as allowed right now, and the developer wants to get rid of a binding development plan and build 186 units. He stated the staff comments mention more than five times how the requests will introduce medium density. He said June Park is single-family residences on quarter-acre lots, or more, and that was the specific deal in the binding development plan in order to create Kanesh Furniture. The question is how the change is justified with the continued and same use that is still going on there. He stated one of the biggest questions is going to be the utilities and the use of the utilities for the project. The utilities in the area are provided by the City of Melbourne and the City of West Melbourne. He said the developer has not gone to either of those entities, especially West Melbourne, which is the only place they're going to be able to get sewer. He stated multi-family residential is not compatible with the zoning conditions according to the administrative policies that deal with compatibility with the neighborhood. On page 7 of the staff comments, the last paragraph

states, "the board may wish to consider if the request is consistent and compatible with the surrounding areas with the introduction of RU-2-15." There is none in the area. He said the actual intensity allowed with what is there now is 58 units, and this board gets to determine if 130 more units is compatible with single-family residential on all sides except for Highway 192.

Lorrain Koss's absence was noted at 5:30 p.m.

Carolyn Bevill, 2405 Cottonwood Avenue, Melbourne, asked that there not be any changes to the zoning in June Park, specifically lands surrounding Kaness. She said rezoning the land would be breaking the original BDP agreement that was made to not develop uses such as apartments.

Tara Miller, 2240 Pine Meadow Avenue, Melbourne, stated at the December community meeting the engineering firm and developer left the community with more questions and concerns than actual facts. She said initially they said a water drainage assessment deemed there would be no additional drainage impacts to the existing residential properties. However, the engineer told her after the meeting that they haven't done any water drainage assessment and that they wouldn't spend that kind of money unless they know the land will be rezoned. She stated there is established precedent for commercially zoned businesses, not apartment complexes. She said the developers are looking to build an apartment complex and then sell it as soon as possible after reaching a certain capacity. She said traffic is already congested, and if the rezoning is approved it will set a dangerous precedent for other developers to propose similar apartments on the remaining land along Highway 192.

Susan Croft, 2140 Feast Road, Melbourne, stated she and her husband spearheaded an informational campaign across June Park to help augment the petition campaign that was already underway. She said the conditions present in 1999 when Kaness agreed to the binding development plan still exist today. The proposed apartments are a complete mismatch to the established community by any measure. She asked the board to honor the BDP and deny the requested changes.

Michael Croft, 2140 Feast Road, Melbourne, stated under the terms of the binding development plan, he requests that the development be restricted to two-stories for less people, less traffic, less noise, less parking, and less flooding potential. The current environmental report needs to be re-done by a third party company instead of the one owned by Bruce Moia, who owns an engineering firm and was hired by the developer, and sits on this board. He stated there is a brownfield site at the end of his street that has been neglected and the proposed apartments would be 75 feet away from the site. He stated his other concerns are the increased traffic and dangerous U-turns.

Karen Clark, 2025 Wood Street, Melbourne, stated the Highway 192 corridor from I-95 to Minton Road is the third largest traffic accident area in Brevard County. She said if the rent for the proposed apartments is \$2,000 per month, renters have to make \$6,000 per month to qualify. She said she is not against growth, she would prefer commercial on 192, and the BDP should remain on the property.

Cindy Baggette, 3730 Miami Avenue, Melbourne, stated her concern is traffic; Highway 192 is congested and Miami Avenue and Seminole Boulevard already have heavy traffic.

Peter Filiberto's absence was noted at this time.

Christina Crosby, 2240 Seminole Boulevard, Melbourne, stated she is concerned about flooding because new codes require everything to be built up. The proposed apartments will be 18 inches

higher than the roadway. She said if the rezoning is approved, it will change the face of the neighborhood and property values will go down. She asked that the BDP remain on the property.

Melissa Webber, 7801 Henry Avenue, Melbourne, stated she is concerned about traffic and that the traffic study didn't include the Minton Road corridor. She said when the developers hosted the informational meeting in December the notice she received had the wrong date and year on it, and that distribution of mis-information communicates that either they're not willing to meet with the neighbors or they are not willing to follow the guidelines of the rezoning process. She stated the current zoning would allow the land owner to build homes consistent with the current neighborhood.

Vin Bepler, 2655 Center Street, Melbourne, stated June Park is an established community. He said the board is supposed to look out for the interests of the residents, not the developers.

Dr. Jerry Nessler, 2700 New York Street, Melbourne, stated he is concerned about the increase in traffic, and that the apartment tenants are going to circumvent away from 192 to Miami Avenue, to Wood Avenue.

Renee Wiebelt, 2246 Arizona Street, Melbourne, stated she is in real estate and is a closing agent. She said the applicant said people with an average income of \$70 - \$90,000 are going to live in the apartments, but anyone with income like that are going to buy a house. She stated apartment complexes bring down values of neighborhoods, and renters do not maintain them. She said she is also concerned about an increase in crime.

Glen Williams, 2430 Michigan Street, Melbourne, stated he looked at four of the closest established apartment buildings near June Park, and there are 144 vacancies. He said the proposed apartment complex is just an investment for the developer.

Vicki Cash, 2165 Main Street, Melbourne, stated she doesn't have a problem with commercial businesses along 192 because it is consistent and appropriate, but houses are consistent with the zoning in June Park, which was platted in 1925, and should be designated as a historical area.

Ron Story, 7645 Helen Street, Melbourne, stated the proposed apartments do not fit in the neighborhood and he is strongly opposed. He said West Melbourne provides sewer in the area, but the subject property does not abut the City limits, and he doesn't know how they can get sewer. He asked the board to enforce the existing binding development plan.

Rob Downey, 5745 Cajeput Circle, Melbourne Village, stated the residents of June Park chose to live there for the solitude; when they bought their properties they may have known that it was residential across the street, but they were not bargaining for apartments. He said the developer could build apartments somewhere else, but they must be getting a deal on this land, and they are doing it at the expense of the people who already live there.

John McQueen, 2100 Feast Road, Melbourne, stated he is opposed to the apartment complex because it is out of character for the area. He said there is more than enough land to build apartments that make more sense elsewhere.

Gina Skinner, [address protected by Florida Statute], stated having hundreds more people in the community in an apartment complex will impact things like schools, power grids, and emergency services.

Clyde Orris, 2420 Green Street, Melbourne, stated there are a lot of children and wildlife in the area, and he hopes the board denies the rezoning and keeps the area as single-family residences.

Tracey Anderson, 8850 North Indiana Avenue, Melbourne, stated over the years, with the development in West Melbourne, there has not been any drainage added, it's still the same canals that have always been there, and she hopes the board takes that into consideration.

Ron Viesens, 2030 Seminole Boulevard, Melbourne, stated before he bought his property he checked with Planning and Zoning about the subject property and was told it was single-family homes, four per acre, and that was the reason he bought his property and built a new home. He said his other concerns are lighting from three-story apartments, and the school traffic that backs up every morning.

Terri Janson, 2265 Commodore Boulevard, West Melbourne, stated zoning ordinances are created to protect the safety and peace of residential areas. The master zoning plan was created to preserve the integrity of West Melbourne. She said the developer is asking to rezone these properties to a significantly higher density rate, which is inconsistent with the surrounding areas and the master plan. She said one of her concerns is that people who live in apartments are transients, they don't take pride in owning because they don't own, they are short-term. She asked the board to enforce the existing BDP and deny the application.

Margie Brown, 328 Ash Street, Melbourne, stated she lives on the other side of 192, and for her to come out she has to make a right turn and then a U-turn. She said traffic is her biggest concern and it is dangerous for Seminole Boulevard.

Michelle Harvale, 303 Ash Street, Melbourne, said they are bordered on three sides by the City of West Melbourne which has its own growth, and they are already feeling the effects of that. The strain and growth significance has already had an effect on schools and public works. She stated the market study covers an area that is more than is in question today, and she doesn't think it takes into consideration the growth last year. She noted the website for the project says there is a plethora of high paying tech jobs in the area, and stated there is also a plethora of other sites for the project.

Linda Fernandez, 4450 Miami Avenue, Melbourne, stated she lives at the far west end of Miami Avenue, which is a dead end. When there is flooding, new residents assume they can get out at the west end of Miami. They try to make a U-turn to go east, but there is a big ditch that gets flooded and people cannot see it, so they end up getting stuck, and the same thing will happen to the people who live in the apartments.

Kim Rezanka stated multi-family is not always considered commercial, multi-family is considered residential, so it is residential against residential. It is the edge of June Park and in a trending commercial area. She said the conditions of the area have changed since 1999. The flood study that has been referenced is at site plan review, and the board is aware that County code requires the drainage to be retained. Right now, drainage flows anywhere, but when the apartments are built the drainage has to stay on the property and the County ensures that through site plan review. She said regarding compatibility, it is multi-family to single-family, so it is a transitional zoning. She noted that increasing the buffers and having fencing is what increases compatibility, and that's why it is generally single-family, multi-family, commercial for transitional zoning. She said Seminole Boulevard is a site plan issue, and the County can make the developer pave roads, increase roads, put in sidewalks, storm drains, and shoulders, but all of that is done at the site plan stage. She said Kimley-

Horn did traffic counts and it's in the traffic analysis that has been submitted to the County, and it considered the Amazon deliveries and the school. She stated the subject property is in the West Melbourne service area for utilities, and there is capacity; therefore, as utilities, they must allow sewer. She said there is residential to the south, to the west, and to the east, but it's all commercial to the north, and the requested zoning is transitional. She stated changing this 4.35 acres is a down-zoning, and averaging all of the use over the 12.59-acres is a down-zoning. She said people are always concerned about precedent, but each zoning and land use is on its own, and this is infill development. She stated three stories is same height a single-family home could be, 5 feet from the property line, and the apartment setbacks are much greater. There has been a lot of speculation about apartments bringing down values around it, and that they are not maintained, but that is all speculation and is not appropriate for zoning and future land use consideration. She said the price of the property is \$6 million; it is \$476,000 per acre, so it is not a deal and no one can build single-family there for that value. She stated regarding the administrative policies cited, the biggest issue is compatibility of Administrative Policy 3, and that deals with uses, which is residential, and it says hours of operation, which is residential; lighting, odor, noise levels, are all by the performance standards of County code. The biggest thing is Policy 3d, whether the proposed use would result in a material violation of relevant policies in any element of the comprehensive plan. This is the only place staff made an opinion and said, "no material violation of relevant policies have been identified." There is no evidence that adopted levels of service will be compromised; the only evidence is a traffic study that says it will not. She said she believes the developer has met the burden of showing consistency with the comprehensive plan and consistency with the land development regulations, and the need and reasons for the change.

Ben Glover asked if the potential highest use of the commercial property was used in the traffic study. Ms. Rezanka replied yes.

Mr. Taylor stated there is a catchall rate in the ITE handbook that is for all shopping centers, so they've done a lot of empirical data collection from many different shopping centers of different sizes and the category by size that this fell into was between 150 and 200,000 square feet, so that trip rate is what was used for generating the potential trips at the site.

Mr. Glover stated it is very possible that what was used in the proposal is much higher than would go there, because it's the maximum. He stated he is not in favor of the requests because he doesn't see it as compatible and it is far too dense for the area. He said the BU-1 on the front could be developed, but the back should remain RU-1-7.

Robert Sullivan stated BDP's should not be able to be removed 10 years later because the zoning has changed. He said the existing BDP was put there for a reason, so it has to be respected. He stated the other aspect is compatibility, and it is not compatible with the area.

Ron Bartcher stated the closest RES 15 is on the other side of 192. The immediate area around there is all RES 4. The existing zoning of RU-1-7 is all around, so it's hard to call this a transition when going from small residential to high density residential. He said transition means there is something on the other side, you don't put it in the middle of it.

Brian Hodgers asked if the existing BDP applies to both parcels. Ms. Rezanka replied the BDP addresses a 4-acre parcel on the east 8 acres, and it only restricts parking and structures, it does not restrict stormwater, and if they can figure out where it is they may be able to work within it.

Mr. Hodgers stated the property is not going to come down in price and somebody else is going to come along and develop it. He said his concern is the portion of property with the existing BDP, and if it is on the BU-1 portion or the RU-1-7, because there might be something on the BU-1 property that the residents might not like.

Motion by Ben Glover, seconded by Ron Bartcher, to deny the Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from Community Commercial and Residential 4, to Residential 15. The motion passed unanimously.

Motion by Ben Glover, seconded by Robert Sullivan, to deny the change of classification from RU-1-7 (Single-Family Residential) and BU-1 (General Retail Commercial) with an existing BDP (Binding Development Plan), to RU-2-15 (Medium Density Multi-Family Residential), and removal of existing BDP. The motion passed unanimously.

Upon consensus, the meeting adjourned at 6:55 p.m.