

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, January 10, 2011**, 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; Laurilee Thompson; Bill Cannon; Aneta Ott, Vice-Chair; Linda Wise; Laura Ward; Peter Aydelotte; Clyde Thodey; Jerry Jagrowski; Robert Ludwiczak; John Stone; Ron McLellan; Loretta Goggin.

Staff members present were: Cindy Fox, Planning, Zoning & Enforcement Manager; Christine Lepore, Asst. County Attorney; George Ritchie, Planner II; Candy Hanselman, Zoning Support Manager.

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

There were ten regular members, and one alternate, present at the start of the meeting. All regular members present voted throughout the meeting. Loretta Goggin was not present for items 4, 7 and 1.

The items were heard in the following order: 4, 7, 1, 2, 3, 5. Item 6 was withdrawn. These minutes are in agenda order.

Henry Minneboo – This is the Planning & Zoning Board meeting, which is advisory board to the Board of County Commissioners. All the items here today will be heard February the 3rd at 5:00 p.m., back in this particular room. So those of you all that have any action here today, February 3, 2011, at 5:00 p.m., back in here. Each applicant today will be given 15 minutes to present their request, and each person speaking for or against will be given five minutes. Did everybody have an opportunity to look at the minutes of our last meeting?

Motion by Aneta Ott, seconded by Jerry Jagrowski, to approve the minutes from the Planning & Zoning Board meeting on November 8, 2010. The vote was unanimous to approve the minutes, as submitted.

Motion by Ron McLellan, seconded by Robert Ludwiczak, to reelect the Chair (Henry Minneboo) and Vice-Chair (Aneta Ott) for 2011. The vote was unanimous to approve the motion.

DISTRICT 5

V.B.1. (Z1101501) – MEADOW PINE, LLC – (William D. Padgett) – requests a change from RU-1-13 to AU with removal of an existing BDP on 17.3 acres, +/- Located on the northeast corner of Henry Ave. & Seminole Blvd. (2325 Seminole Blvd., Melbourne)

P&Z Recommendation: Ott/McLellan – Approved. Vote was 8:1, with Ludwiczak voting nay.

Doug Padgett – Good afternoon, Mr. Chairman, board members and staff, Doug Padgett. I am one of the members of the LLC, one of two. Mr. Samuels is my partner in that venture here. We were lucky enough to purchase that property, just recently. We live in the adjacent neighborhood that I developed about 25 years ago, Pine Meadow Avenue. And we live on Lots 1 and 4. So, basically, this property abuts our property line to the west. And, several years ago, a developer came through and had made some changes, and got our attention. We did discuss that with staff and, I think, here at this meeting, on occasion or two. I guess that didn't go through, and he missed his market, and we were fortunate enough to buy the property. And we'd like to go back to where it was, and has been, at least in my lifetime, to the AU zoning. A portion of it was RR-1-7 "sic", I believe, along Seminole. It was an old active orange grove up through about the mid '60's or early '70's, I believe. And we'd just like to, you know, take care of our property values and conserve our back yard, and enhance it for that purpose.

Henry Minneboo – I just have one small question before I let some of the other members here. Did – I was trying to recall that. How many units could that have held?

Doug Padgett – Thirty-seven or 38, is what my history finds. So, basically, we're – you know, we were looking at it. The way it's zoned now is about 37 or 38 units, depending on how they can fit it in.

Henry Minneboo – Thank you, Mr. Padgett. Jerry.

Jerry Jagrowski – Yes, sir. It said for agricultural pursuits. Could you please define that? Exactly what do you plan on using it for?

Doug Padgett – Well, Mr. Samuels and his kids have some horses. We're looking to maybe bring a little stable back there and put horses on a portion of it. I kind of like the grove. The infrastructure, and drainage, and the swales for the grove are mostly still in place. A lot of trees growing on them, but I'd like to maybe plant some more orange grove back there.

Jerry Jagrowski – Thank you.

Henry Minneboo – Any other questions? Yes, sir, Robert.

Robert Ludwiczak – I just have a question for staff, just for my own edification. Last year, we talked about BDP's. And several people came forward, asking to get the BDP changed. And I need some clarification. When we enact a BDP for a property, does that inure to the next person coming and buying that property?

Cindy Fox – Yes, the BDP would run with the land. So any improvements that the new owners would want to do to the property, they'd have to adhere to the BDP.

Robert Ludwiczak – So for us to change back to an agricultural for this...

Cindy Fox – Part of the motion is to – you would have to remove the existing BDP on the property.

Robert Ludwiczak – And do we need another BDP for this gentleman?

Cindy Fox – No, not unless the board chose to do one, based on what the gentleman wants to pursue on the property.

Robert Ludwiczak – Well, I guess my question is, I don't understand - when we give BDP's, it's for the intent we're trying to bind the owner to some type of an agreement. And when we renege on those things, then that opens up the floodgates for everybody else to come forward and ask that we renege on a BDP, whether they're the existing owner or a new owner coming forward. What are our options in that regard?

Cindy Fox – Well, I think you have to look at the BDP's specific to what they require. They're not just a general binding development plan. They have very specifics on developing this property. The BDP that was existing, that you would be removing, dealt with the limiting this property to 37 units. They don't wish to develop any units. So removing the BDP doesn't have any effect, as far as preserving the character of the neighborhood, which maybe some other BDP's might.

Robert Ludwiczak – But with this gentleman wanting to go to a AU classification - which is agriculture, correct?

Cindy Fox – Yes.

Robert Ludwiczak – And he's gonna get agricultural, based on somebody bringing a horse in.

Cindy Fox – I'm sorry, what...

Robert Ludwiczak – He said that someone wants to bring a horse on that property.

Cindy Fox – Right.

Robert Ludwiczak – He doesn't own any agricultural animals. I haven't heard that, anyway.

Doug Padgett – Mr. Samuels does.

Robert Ludwiczak – And he's your partner?

Doug Padgett – Yes.

Robert Ludwiczak – O.K. So they would bring an animal on?

Doug Padgett – He owns two.

Robert Ludwiczak – He owns two. So the classification from a BU to an AU, two animals is all you need to have?

Cindy Fox – If you wanted to – if you wanted to, and the applicant was agreeable to do a new BDP, limiting the number of animals, you could do that. It would be a new BDP as part of the motion.

Robert Ludwiczak – O.K. Now, is it my understanding, also, that most all their surrounding properties are RU's?

Cindy Fox – There is an error in the staff report. There is AU property to the south.

Robert Ludwiczak – O.K. Then...

Cindy Fox – But that is correct. There's RU-1-7, and AU and RR-1 surrounding the property, as well.

Robert Ludwiczak – So, then, we could ask this gentleman what his – do you have a short-term and a long-term desire for this property? Is it always gonna be agricultural, in your mind? Or are you gonna be coming back here and saying, "I now want to build 37 properties on this?"

Doug Padgett – Well, if I ever came back to you, the 37 house thing would go away, and we would be back to figuring out what was able to be built there. But, quite frankly, I've been there 25 years. I developed the street to the east. And I don't really have any intentions of going anywhere, hopefully, any time soon. Mother Nature may have a different story, but that's my plan.

Ron McLellan spoke without a microphone.

Peter Aydelotte – I was just wondering if the RR-1 classification, which would put limits on horses – you can still have the groves – would not be a better classification, because RR-1 apparently is what is in most of that

area, if I'm not mistaken. And doesn't that also limit you on the horses, versus a total agricultural? He could start putting lots of chickens or hogs on there.

Cindy Fox – I mean, just – you know, we're kind of mixing things up. I mean, horses you can do in AU and RR-1. He's asking for AU, which would allow horses. And you could limit him, in a BDP, to just stick to horses. If you went to RR-1, he would be limited to horses automatically, but it would also allow him to build more units. So you have to decide which you want to control there.

Doug Padgett – I'd like to just bring up the fact that we've developed this street, you know, 20, plus, years ago, and we live there. This is our back yard. We're buying this to preserve what we've had for 25 years. And I don't think that we're gonna do anything – I know we're not gonna do anything ourselves that would be deterrent to the neighborhood, and especially in our own back yard.

Henry Minneboo – Good. Let me go to the audience. Anybody in the audience like to speak for, or against, this? Yes, sir. Please come up.

Richard Scalise – My name's Richard Scalise. I live at 380 Sagamore Street, which is one block from the property. And in the process of them clearing out the property, they had knocked out a barred owl nest, which sat over on Henry Street, right across from the drainage ditch. The property across the street was 5770. It was right across the street from that. Also, there was a bunch of tires, casings, maybe about a couple hundred. And they were there one day and disappeared the next day. And I don't know what they did with them. They must have removed them at night. But, anyways, my understanding was that they were gonna build houses on two-acre lots. And that has not been mentioned. I don't know if that is true or not.

Henry Minneboo – I'm gonna answer your question, because from what they've told us, they don't want to build anything.

Richard Scalise – O.K.

Henry Minneboo – You want the tires back?

Richard Scalise – No. No, I was just curious what happened to them. I mean, they...

Henry Minneboo – I didn't know.

The applicant spoke from the audience.

Richard Scalise – O.K. You must have did it at night, or something, because...

Henry Minneboo – Well...

The applicant again spoke from the audience.

Richard Scalise – O.K.

Henry Minneboo – I was confused, 'cause nobody's ever complained about that obscene tire...

Richard Scalise – I didn't know if they threw them back on the property, or someplace like that, for filler, or something. That's what I was concerned about.

Henry Minneboo – O.K., I was a little confused.

Richard Scalise – O.K. But, other than that, you know, if they're gonna have just two horses on the 17.3 acres, I really don't have a problem with it. And if they're gonna have – they're gonna have to have a barn, or something, to house them?

Henry Minneboo – I can't answer that. They're not turning this into a Mormon ranch, or something, I don't think.

Richard Scalise – They're not gonna have stables, or anything like that?

Henry Minneboo – They haven't – that's hasn't been said. It's a zoning issue to go to agricultural. What they do beyond that, they'll have to comply with the agricultural...

Richard Scalise – I just don't want it to get to the point where you got a couple hundred horses or...

Henry Minneboo – I can't answer for him, but I don't think that's what we're doing today.

Laura Ward – Can I ask a question? AU doesn't limit the number of animals, does it?

Henry Minneboo – It's 20 acres.

Richard Scalise – It's 17.3 acres.

Henry Minneboo – Yeah. How much...

Laura Ward – So does it limit it?

Cindy Fox – No.

Laura Ward – No. And it doesn't limit what kind of agricultural pursuits. And it doesn't limit residential construction, either. You can build houses on two and a half acres. So the neighbors need to understand we're not determining today, unless we care to put a BDP on it, that he can only do two horses. Now, he's saying he only wants to do two horses. And, maybe, if there's a lot of residential around it, some limitation on the amount of livestock, and this, that and another ought to be considered under a BDP.

Richard Scalise – I'd appreciate it, if there would be a limit on it.

Laura Ward – O.K.

Richard Scalise – O.K.?

Laura Ward – Because that's the only way it's gonna get limited.

Richard Scalise – Yeah.

Laura Ward - All right, thank you.

Richard Scalise – Thank you, very much.

Henry Minneboo – Thank you. Anybody else? Yes, ma'am.

Dianne Edmands – I'm Dianne Edmands. Bob and I live at 426 Church Street, which is kind of like diagonally across, a little bit. And we go up and down that street, you know, to get in and out of our property. And there are a lot of homeless people had been living on that property. Since he has cleared it out, that has kind of gone with it. I was just wondering, under the current zoning regulations, which I'm not aware – you know, I know some of them, the two-acre, and the couple of horses per acre, and stuff. But I would like to see that continue to be cleaned out enough so that we're not going to have a second round of camping back there. And I don't know, this is probably not the time to make that decision. Is that something I would want to bring up at that next meeting?

Henry Minneboo – I would say that if it gets approved, then you have a whole new set of rules and regulations. But we're trying to make a decision here today to see if this is gonna be agricultural zoned. And that's...

Dianne Edmands – But if it is agricultural, it's like those empty lots around the neighborhood. They can just let them go to brush, right?

Henry Minneboo – Well, the nice thing here is I think you're gonna have one or two ownerships, versus what you had before. In other words, there's only gonna be two owners that basically lives on the property, as I was – thought we heard today.

Dianne Edmands – But there's nothing preventing them from subdividing again, as she mentioned.

Henry Minneboo – They'd have to come back. They'd have to...

Dianne Edmands – They would have to come back?

Henry Minneboo – Yes, ma'am.

Dianne Edmands – O.K.

Cindy Fox – No. They...

Henry Minneboo – If we approve...

Dianne Edmands – So then we would have another shot at it.

Cindy Fox – Not unless you wanted to do a BDP. They could – they would subdivide – they could subdivide the 17.3 acres into two-and-a-half-acre parcels for development.

Dianne Edmands – Put them out for investment and let them turn back to jungle again.

Henry Minneboo – Without coming back to this board?

Cindy Fox – Yes, sir. If you wanted to do a BDP that limited it to horses only, and no residential, that would make them come back, if they wanted to change that.

Robert Ludwiczak – Mr. Chair.

Henry Minneboo – Yes, Robert.

Robert Ludwiczak – I'm wondering if the owner would be open to a BDP.

Henry Minneboo – Yeah, did...

Clyde Thodey – Well, wait a minute, Henry.

Henry Minneboo – I'm gonna – ma'am, did you have any more questions?

Dianne Edmands – No, that was...

Henry Minneboo – Did you have some?

Clyde Thodey – Yeah, I want to...

Henry Minneboo – O.K. Ma'am...

Clyde Thodey – I just wanted to tell you that – ma'am, if you'll come back up. I just wanted to tell you that you're talking about the overgrowth on those lots.

Dianne Edmands – Yeah.

Clyde Thodey – O.K. The overgrowth is regulated under the County zoning laws. And if that is an overgrowth that's disturbing you, we have a division called Code Enforcement, in which you could go to Code Enforcement and file a complaint, and then they would see to it that it is rectified.

Dianne Edmands – So any of those lots in the neighborhood, you can ask...

Clyde Thodey – Any of those lots that are overgrowth, we have zoning laws that they must be maintained.

Dianne Edmands – All right. Thank you.

Robert Ludwiczak – Mr. Chair.

Henry Minneboo – Yes.

Robert Ludwiczak – Can I get a clarification of Clyde's statement from the staff? On agricultural property, how do you keep that to the point where – what he's discussing, being a zoning problem?

Cindy Fox – You're getting a little bit out of my area. It's controlled by the Landscaping/Land Clearing and the Solid Waste overgrowth section of the Code. So it's – there is the responsibility to maintain the property, and there's a distance between the front of the property and so many feet in, things like that. So...

Robert Ludwiczak – Now, can I ask the owner if he would be open to a BDP?

Henry Minneboo – Yeah. I don't – nobody else out in the audience? There is. Hold on. I'm gonna try to get the owner up one last time.

Robert Bruce – Robert Bruce, at 2050 Seminole. Are ya'll privy to the BDP, as far as on this property?

Henry Minneboo – It's not in our packet.

Robert Bruce – How many zoning classifications is it from AU to RU-1-13?

Cindy Fox – I'm not sure what your question is.

Robert Bruce – How many steps is that?

Cindy Fox – Well, they're not really steps. You just need the number of zoning classifications?

Robert Bruce – Yeah, how many classifications between those two? Five? Nine?

Cindy Fox – I'm not sure what – I mean, help me to...

Robert Bruce – George, maybe you can help us.

Cindy Fox – Help me answer your question. If you go from RU-1-7, there's one, two, three, four, five, six, seven, eight, nine, ten zoning classifications. But some of those zoning classifications wouldn't fit this property. So...

Robert Bruce – I understand.

Cindy Fox – O.K.

Robert Bruce – So it's probably more than five, nine, ten, between AU to RU-1-13. I believe there's a rule of thumb, three – they don't like to do over three at a time. That's just food for thought. In the BDP, it states here that the neighbors had great input in designing this BDP, which these are the neighbors on the east. And you have neighbors on the west. So there was a lot of input in how that design was done, and the BDP. So, really, the BDP needs to stay in place, 'cause it was their wishes, also.

Henry Minneboo – What you're saying, you'd rather see the 37 houses, versus...

Robert Bruce – Absolutely. For one thing, what that'll do, it'll help the comps for the houses on the west side of the property, than if it was just AU. The other thing is, it would influence city water coming in, providing it was those type of houses put in. So it'd benefit everybody on Seminole. A BDP from the applicant might be a way to go for the future. That's about all I got.

Henry Minneboo – Thank you. Any questions for the gentleman?

Laura Ward – I have a question for him.

Henry Minneboo – O.K.

Laura Ward – What – so the BDP did not just limit the number of units? There were other requirements under the BDP?

Robert Bruce – Yes.

Laura Ward – What were they?

Cindy Fox – No.

Laura Ward – No?

Robert Bruce – You asking me?

Cindy Fox – The BDP specifically dealt with units.

Robert Bruce – Oh, no. No, it mandated a 50-foot buffer on the east side of the property.

Cindy Fox – That was under the subdivision regulations.

Robert Bruce – No, it's in...

Cindy Fox – I know it's in the BDP, but that was covered under the subdivision plat. But the BDP – if it was to be developed, they incorporated that into the plat. But the BDP specifically limited the units to 37 units.

Robert Bruce – O.K. It also limited to – the property is, we'll call it split in half from the east side and the west side. He only could build half-acre tracts on the east side of the property. And, on the west side, they could be no less than 50 foot. So there was mandates in here more than what you are aware of. So, if at all possible, I'd like for ya'll to get a BDP and read through it.

Laura Ward – On the east side, why was that set up that way, because of the proximity to residential homes?

Robert Bruce – Yes. What the whole intent of – from the adjoining property on the east, was they were on one-acre tracts, and they wanted something comparable to it. So...

Laura Ward – Well, current – if he goes back to AU, what he could do on the east side would be limited to two-and-a-half-acre tracts. Is that right?

Cindy Fox – Yes.

Laura Ward – So that part of the BDP, I think, takes care of itself, doesn't it? If he goes back to AU...

Robert Bruce – No, we want the BDP to stay in place.

Laura Ward – What else is in there that is – 'cause he's not gonna be able to put...

Robert Bruce – The 37 lots.

Laura Ward – But he's two-and-a-half-acre tracts, and 17 acres. That doesn't – oh, it's the water you're after?

Robert Bruce – Correct. You're saying that's better? No, that's not better for the area. No.

Laura Ward – O.K. I'm not saying...

Robert Bruce – O.K.

Laura Ward - ...better or not. I'm saying a BDP ought to be looked at, rather than just an open-ended AU. That's my opinion.

Robert Bruce – Absolutely.

Laura Ward – Because of the fact that it's separated by residential, actual uses. I see development of residential around there. And, you know, I understand that AU – I understand that for owners, AU offers a better tax situation. Is that correct?

Robert Bruce – It's a tax shelter. Sure.

Laura Ward – We all know that.

Robert Bruce – Yeah.

Laura Ward – And we know that people look to that, I think, for a holding situation. Then they come back in when things are better, and we just rezone it again.

Robert Bruce – It's a no-brainer.

Laura Ward – So, I don't know, I just think the board ought to consider – if you're gonna do this, then consider what would be appropriate for limiting uses on the property, in light of the fact that you do have residential development around it, pretty close to it, on a certain side. So it's up to the board what they choose to do. I don't get to vote this time.

Robert Bruce – See, if it was developed into two-and-a-half-acre tracts, the houses to the west couldn't comp to it. So it'd be no value.

Laura Ward – But comps aren't...

Henry Minneboo – Any other questions?

Ron McLellan – I don't understand how we can leave the BDP under AU.

Cindy Fox – You can't.

Ron McLellan – Everything's got to change. Right, staff? Everything is gonna change.

Cindy Fox – The BDP was designed for residential development.

Ron McLellan – Yeah, yeah. But we're trying to leave – this gentleman wants to leave that BDP with an AU zoning.

Cindy Fox – No...

Robert Bruce – No.

Cindy Fox – ...his biggest...

Robert Bruce – Don't change the zoning.

Ron McLellan – Don't change nothing.

Robert Bruce – Leave it as is.

Ron McLellan – So you're opposed to the whole thing.

Robert Bruce – Absolutely.

Ron McLellan – O.K. Now I got you.

Henry Minneboo – Thank you. All right, sir Let me make sure again. Is there anybody – yes, ma'am.

Carol Hahn – I'm Carol Hahn. I'm at 2020 Seminole. And I want the binding development plan to stay existing, because I'm looking for it for the city water.

Henry Minneboo – Thank you.

Clyde Thodey – Wait a minute. Wait a minute. I didn't understand that. You want to leave it the way it is, put the 37 houses up...

Carol Hahn – Because that's a possibility that we'll get city water.

Clyde Thodey – Possibility.

Carol Hahn – But, right now...

Clyde Thodey – But you don't know that for sure.

Carol Hahn – Well, it's in the plan.

Clyde Thodey – But you don't know that for sure.

Carol Hahn – It's in the plan.

Clyde Thodey – What plan?

Carol Hahn – The binding plan – development plan.

Clyde Thodey – Is it, Cindy? No.

Cindy Fox – The availability, or providing water, is not in the binding development plan.

Clyde Thodey – Thank you.

Carol Hahn – But, if they're on two and a half acres, they'll have septic and a well, and they won't have any chance of getting city water. They won't do city water, at all. We've been on Seminole Boulevard for a long time, and there's no way for us to get city water, unless this development goes in.

Clyde Thodey – Where would you get the city water from?

Carol Hahn – It doesn't matter where it comes from. They're already talked about that it's a possibility that we could get city water, if they put the development in.

Clyde Thodey – Well, you talked about it. Where would you get the water from?

Carol Hahn – I don't know the details of it...

Clyde Thodey – O.K.

Carol Hahn - ...sir. What's your name, I'm sorry?

Clyde Thodey – My name's Clyde Thodey.

Carol Hahn – O.K. I didn't see it.

Clyde Thodey – O.K.

Carol Hahn – Thank you.

Henry Minneboo – O.K. I don't think there's anybody else out here. O.K., yes, sir.

Doug Padgett – I'll address a couple of those...

Henry Minneboo – I think Robert had one specific one for you. Let...

Robert Ludwiczak – I'll let him address the issues first.

Henry Minneboo – O.K., great.

Doug Padgett – Out of just pure common sense, I think we need to understand that Ms. Hahn and Mr. Bruce, that you last heard speak here, were the original owners, or the owners that started this development, had that binding site development plan provided, and lost the property. I'm sorry for that. That's misfortune in this day and time. But I think it – their negative feedback comes with a little bit of angst. The other thing, as far as talking about a binding site plan, or a binding development plan, for agricultural is, yes, the agricultural opens up several venues, and we wouldn't want to limit ourselves and be put at a, you know, a deficit from the other agricultural parcels around the community. Obviously, you've seen the plat for the area specifically adjoining this property, but to the east, about 600 or 800 feet, is another ag piece. As Cindy mentioned, to the south, on Henry Avenue and below, there's a pretty substantial ag piece there, where Mr. Samuels and his family have their horses currently boarded, is probably a quarter of a mile, or less, to the west. And there are several other entities like that within that general area. I think, if you look at that June Park, Police Foundation, area south of 192, I-95 and Minton Road, there's a lot of ag properties there. And we just – you know, you're – I understand your point. And if you wanted me to say I'll agree not to have pigs there - I'm not gonna put pigs in my back yard, but I'd sure agree to it. But if we wanted to go through every possibility and try to develop something, you're holding us to a little bit higher standard than you are all the rest of the ag area.

Henry Minneboo – O.K. Jerry.

Jerry Jagrowski – Yes, sir. Would you be willing to limit yourself to number of horses?

Doug Padgett – How many?

Jerry Jagrowski – Well, would you – first of all, would you be willing to limit? That's the first question. Yes or no?

Doug Samuels – I would think that's arbitrary. On the outset, no. I live there. Doug and I live there. This is our back yard. I don't – I'm not a horse rancher. My kids have a couple of horses.

Christine Lepore – Mr. Chairman, I'm sorry to intercede but, sir, we need to have you identified for the record, please.

Doug Samuels – Doug Samuels. I'm one of the other owners that purchased this property.

Jerry Jagrowski – Limit yourself to either four or six horses?

Doug Samuels – Again, I don't know why I would be asked to do that.

Jerry Jagrowski – To keep – some of your neighbors are nervous, and we want to make sure – we got to worry about them, just like we have to worry about you.

Doug Samuels – Well, I can appreciate that. But we are surrounded by agricultural properties all around us that don't have those limitations. I'm telling you I'm not getting in the horse ranch business. I have a job. We live there. This is our back yard. We – I would like to actually correct something Mr. Bruce said. We supported the last binding development plan. We didn't prefer to have a bunch of houses in there, but it was his property, and we wanted him to be able to develop as he chose. He owned the property. So when we felt like we had addressed the issues, we backed it 100 percent. He did a great job cleaning up. And, unfortunately, the timing, or whatever, didn't work out. But now we're asking to just put it back to the way it was, for our enjoyment.

Jerry Jagrowski – Yes, sir. But I asked you one question. Would you be willing to limit yourself to the number of horses? I didn't say how many. I said just yes or no.

Doug Samuels – Well, that's a – I think that's a – that's an arbitrary question. My question was, how many? And what are you basing that on? Where do we come up with a number?

Jerry Jagrowski – Well, first of all, would you limit yourself?

Doug Samuels – Yeah, sure.

Jerry Jagrowski – O.K., that's – we have to – the number. What would be the normal number per acre, Cindy, that we'd get?

Cindy Fox – Well, in RR-1, there's a limit of four horses per acre, and they have to be accessory to a residence. So I don't know if the four per acre – in AU, there is no limit. But, remember, AU also allows other farm animals. So one thing you might want to limit is – if he's not looking to do any other farm animals, just horses would be something that you could limit him to in a BDP.

Henry Minneboo – You know, my concern, I guess, is we picked the word "horses", but what about cows and giraffes, goats? I mean, you know, I don't – if you had used the word "goats", I wonder – I mean, I don't – that's what confuses me. Robert.

Robert Ludwiczak – Yes, sir, Mr. Chair. I guess I have a couple of questions for these gentlemen. Is it your intent – had it ever been your intent – is it your intent now to develop this property?

Doug Padgett – No, sir.

Robert Ludwiczak – Not now, not in the future?

Doug Padgett – No, sir.

Doug Samuels – That's correct.

Robert Ludwiczak – It's your intent to leave it agricultural, until such time as you may sell it.

Doug Padgett – Correct.

Doug Samuels – That's correct.

Robert Ludwiczak – O.K. You'd be willing to put that into a binding development agreement, that this property will never change into anything but the AU, and will not be ever developed?

Christine Lepore – Mr. Chairman, I don't think that's an appropriate condition...

Aneta Ott – I don't either.

Christine Lepore - ...for a zoning change. You're talking about...

Robert Ludwiczak – In some respects...

Christine Lepore - ...how they can buy and sell property. We're talking about compatibility of land use.

Robert Ludwiczak – Well, what I'm talking about is what came up earlier, is that we're changing this from a tax-base to a non-tax-base property. And, if you're gonna sit on this for a while, the County's out of money. And if that's your intent to do so, then we need to know that.

Christine Lepore – I understand that may be an impact of changing the zoning but, again, we're talking about land use compatibility. And the discussion about whether AU is compatible with the surrounding RR-1, and RU-1-7, and the interspersed AU in the larger area should be the focus of your discussion.

Robert Ludwiczak – Well, then, I guess my question goes back to you, again. Then what is their purpose of changing from the RU to the AU, if the AU gives these gentlemen everything that the RU gave in the binding agreement?

Aneta Ott – No, it doesn't. It doesn't. It doesn't give them the amount of houses. It does not give them the amount of houses that the RU...

Doug Samuels – Yeah, with AU zoning, I could not put 37 homes on that property.

Doug Padgett – We don't want 37. We don't want any. I have one other thing here. One of the adjoining property owners has sent me a letter to give to ya'll today, expressing his wish that this be approved. I have a few other handouts here, or a handout here, if you want it. It kind of helps give you some understanding of

where we live. The green is the other agricultural property in our immediate area, and basically adjoining this property. And this pink little piece right here is the house where this gentleman lives. And he is just about the most affected person, other than the folks along Pine Meadow. We have talked to all of our neighbors along Pine Meadow and have had no negative impact, or discussions, with them. So that's – there's 16 houses there. We're two of them. The other 14 have not expressed - in discussing this with them, have not expressed any heartburn over the change.

Henry Minneboo – Anybody on the board here need this gentleman's...

Aneta Ott – No. I would like to say something. This does not make any sense to me, at all. These gentlemen live on each side of this property, 17, plus, acres. They want to take it to a lower amount of homes, if they build homes, on it. The gentleman stated that he wanted to refurbish the trees that were there. To me, this makes sense. They're the neighbors of this 17 and a half acres, and they're asking for something very simple. They'd like to have it go back to normal. They own it, and they will be their own neighbors. I would like to make a motion for approval on this.

Ron McLellan – I'll second it.

Henry Minneboo called the question, and the board recommended approval of the request. The vote was 8:1, with Robert Ludwiczak voting nay.

DISTRICT 1

V.B.2. (Z1101101) – BRUCE L. ANDERSON – requests a change from GU to AU on 1.01 acres. Located on the south side of Dalhi St., approx. 170 ft. west of Knoxville Ave. (3215 Dalhi St., Cocoa)

P&Z Recommendation: Thodey/Ott – Tabled to the P&Z mtg. on 2/7/11, as applicant failed to appear. Vote was unanimous.

Henry Minneboo – Applicant here? (no response) Seeing no applicant...

Clyde Thodey – Motion to table it until the next meeting.

Henry Minneboo – Motion by Clyde. Is there a second to table this item, since the applicant is not here? Seconded by Aneta (Ms. Ott's second was made without a microphone; therefore, it is not audible on the record).

Henry Minneboo called the question, and the board tabled the request to the P&Z meeting on February 7, 2011. The vote was unanimous.

DISTRICT 2

V.B.3. (Z1101201) – PAUL H. WARRENER, TRUSTEE – (Steven Letts) – requests a CUP for Alcoholic Beverages (Beer & Wine only) for Consumption on Premises in a BU-1 zoning classification, in conjunction with a restaurant only, on 0.23 acre. Located on the southwest corner of 22nd St. & Hwy. A1A. (3210 Atlantic Ave., Cocoa Beach)

P&Z Recommendation: Thodey/Jagrowski – Approved. Vote was unanimous.

Steven Letts – How you doing? I'm Steven Letts. Actually...

Henry Minneboo – Your address. Your address, for the record.

Steven Letts – I am the owner of Spaghetti Eddie restaurant.

Henry Minneboo – O.K.

Steven Letts – The owner...

Henry Minneboo – You got an address? Oh, you're just the owner.

Steven Letts – I'm the owner of the restaurant. Paul is the owner of the building. I lease the property.

Henry Minneboo – We need the address.

Steven Letts – 3210 South Atlantic Avenue, Cocoa Beach, Florida, 32931.

Christine Lepore – Mr. Chairman, did we get the applicant's name?

Steven Letts – Steven Letts.

Henry Minneboo – Yes, I did get it. I just was slow getting the address. Please tell us what you want to try to do here. CUP?

Steven Letts – Yes, approval of a CUP for the restaurant. Now, what I understand, this restaurant was there for over 25 years. It's always had a beer and wine license, except for the last two years, where he leased it out to another fellow that he only opened it for breakfast and lunch, and he never needed a beer and wine license, so he never had it. So the laws of this county states that if you don't have a license for six months, it's called abandonment. So you have to go through the process.

Henry Minneboo – Is there any questions for this gentleman? (no response) Is there anybody out in the audience that – yes, ma'am, Laurilee.

Laurilee Thompson – Sorry. When – how much lunch business do you have right now? Is it – do you have a problem having enough parking places, as it is now, with the barber shop being there, too?

Steven Letts – No, ma'am.

Laurilee Thompson – I would think that most of your business is in the evening, isn't it?

Steven Letts – Correct. I talked to Paul about that, 'cause someone said over here that there wasn't enough parking. And Paul's owned that building for 25 years, and he's even had part of that restaurant in the very beginning. And he's never had that parking lot filled up in 25 years.

Laurilee Thompson – I would believe that.

Steven Letts – Yeah, it's a slow area.

Laurilee Thompson – I think it's ridiculous how many parking places businesses are required to have in this county that they never fill up. So, thank you.

Steven Letts – Well, they allowed me to open up the restaurant. They didn't ask me how many seats I needed for my parking. But when I applied for the – when I said I wanted to apply for a beer and wine license, now they want to know how much parking. I just didn't understand that. I mean, they allowed me to open up the restaurant before. You understand? But there's never been a problem with parking, what I understand.

Clyde Thodey – Henry.

Henry Minneboo – Yes, sir.

Clyde Thodey – Motion to approve, as submitted.

Henry Minneboo – O.K. Let me just make sure. I think – is there anybody out in the audience to speak for, or against? (no response) I don't see any. And there's a motion by Clyde, and seconded by Jerry (Mr. Jagrowski's second was made without a microphone; therefore, it is not audible on the record). Oh, I'm sorry, Laurilee.

Laurilee Thompson – Because he doesn't have the appropriate number of parking places required by the County, wouldn't we have to have some kind of a variance, or something, in order for him to proceed?

Henry Minneboo – I don't think at this level, though, we – the attorney can correct me but, this level, we don't have to address that issue. He may have a further issue. We're just trying to get him a CUP so...

Steven Letts – Well, I corrected that problem, because he said I should have only X amount of seats in a restaurant. And I went to that criteria for the X amount of seats for my parking. I took tables out of the restaurant.

Cindy Fox – For the record, the applicant – we have communicated with the applicant, and he has agreed to limit his seating to the on-site parking availability.

Henry Minneboo – Bill, did you have one?

Bill Cannon – No.

Henry Minneboo – O.K. Is everybody fine to vote on this measure?

Laurilee Thompson – So he's gonna lose seats from what he had originally intended, because of the parking?

Steven Letts – Correct.

Cindy Fox – The – let me just – I'll start over. The restaurant is a nonconforming use. It was constructed prior to site planning being required. So, over the years, it has been a restaurant. So there was no change of use requirement when he opened up the restaurant. The CUP allows us to examine the parking availability when we're going for something with on-premise consumption of alcohol. So when he came in, he said he's got 49 seats. And we said, "You don't have enough parking per the parking requirements that requires one parking space for every three seats." And so he has agreed to limit his number of seats to the available parking that he has on-site. So he would meet – that would be part of the CUP. And that is – that would meet the County requirements for parking.

Laurilee Thompson – So how many seats does that give him?

Cindy Fox – I believe it's 27.

Steven Letts – No, I think it's like 33, or something like that. It's supposed to be three persons to a car. I got – I can't remember – 18...

Cindy Fox – The staff comments say 27, but we can talk about that.

Steven Letts – But my point is, when I applied for an occupational license to open up that restaurant, regardless of beer and wine, they never asked me how much parking, how many seats. It didn't matter.

Cindy Fox – That's correct, 'cause the change of use ordinance does not allow – you were a nonconforming building, and it did not allow us – the ordinance doesn't allow us to go back and make you put in more parking or (unintelligible) your use under that ordinance. But when you go to ask for alcohol, which is an expansion of the business, then we're allowed to look at the parking availability as part of the conditional use permit.

Laurilee Thompson – He can't make a living with only 27 seats.

Steven Letts – No. Right now, I'm working at a loss. I put in 70 hours a week, and I take \$500.00 out of our pocket every week – every month.

Clyde Thodey – Henry.

Henry Minneboo – Yes.

Clyde Thodey – Cindy, can't he apply for a variance, and go through the hardship program, which he does?

Cindy Fox – No. There's no variance to the number of parking spots required. That section of the Code, you're not allowed to request a variance to. There are waivers to parking. But, again, he's a nonconforming site, so it's already drastically reduced to the number – I mean, he doesn't even get to that point.

Clyde Thodey – The nonconforming kicks it out.

Cindy Fox – Yeah, it's the nonconforming aspect.

Steven Letts – Well, there is another business right next door to my business. It's a surf shop. They close at 5:00 p.m. And I'm sure they'd have no problem if I needed that extra parking, which I don't think I will ever need. The owner of the building said he's had that for 25 years, with a beer and wine license, and he's never filled that parking lot in 25 years.

Cindy Fox – Maybe we're just hoping you'll be more successful.

Henry Minneboo – O.K. Yes, ma'am. Laurilee.

Laurilee Thompson – So if he could make some kind of an agreement with the surf shop owner that he could use that guy's parking places after 5:00, would that help? I mean, I have – we have an agreement with somebody across the street that they can use our parking lot as overflow. And then they were able to put a business in. Is there some way we could get that done?

Henry Minneboo – Let me answer for the attorney. The problem I got is we're just – that's not a semantic of the CUP. I think we – we're here to just say, "Hey, we're gonna give you a CUP, or we're not gonna give you one, for beer and wine." I don't – you want to help me? We got a motion, and second. Am I right or wrong?

Christine Lepore – No, I think you're right. I think if there's a desire to have more in-depth look at what parking options might be available, then we need to look at tabling this item. And I don't know if there are any available.

Steven Letts – Well, I'm not even sure that he would allow that. But I'm just saying there's a business that they close – it's just like if you go downtown Cocoa Beach, and there's no parking, if there's a bank there, people go park in their bank. I mean, they don't...

Christine Lepore – I understand. I just don't think that's an issue we can address, right now, in the middle of the public hearing.

Henry Minneboo – O.K. Laurilee. Laurilee, this is the last one.

Laurilee Thompson – So are we approving a CUP for him to be able to serve beer and wine...

Henry Minneboo – Yes, ma'am.

Laurilee Thompson - ...for – I mean, we're not even talking about his parking issues. 'Cause the next item on the agenda is another CUP for alcohol where they don't have enough parking places. So we are – right now, us, as a body, we are only discussing whether it's appropriate at that location to have a CUP for alcohol?

Henry Minneboo – Yes, ma'am.

Laurilee Thompson – Is that correct?

Cindy Fox - No.

Christine Lepore – No. If you look down in your packet, Section 62-1901 (c) (2) (j) talks about the impact on parking. And we do look at that in CUP's for alcohol.

Henry Minneboo – On this one?

Christine Lepore – This is not just a...

Cindy Fox – Page 19 of your staff comments, the last section, "Impact of off-street parking and loading areas upon adjacent properties". But, also, in the first part of that section – these are the general criteria that all CUP's, not just alcohol, we look at. It does impact those that are for alcohol more so than others. So, in this situation, we have to look at the fact of whether or not adding the alcohol use to this property is going to exacerbate an already existing parking problem. So that is something that you look at when you look at these CUP's for alcohol.

Steven Letts – I'd like to add something. In that area, if they can't get in my parking spot, there is no place for them to park, 'cause they're all condominiums. It's all private. They can't – there's no space on the side of the road for them to park. So there is no other place for them to park, unless they're in my parking spot.

Cindy Fox – Are you saying that the adjacent residential development parks in your parking lot? Is that what you're saying?

Steven Letts – No. They're all privately-owned condominiums. There is no public housing there. It's all privately-owned homes or condominiums. And there's no space on the side of the road on A1A for anybody to park, because it's just too narrow for anybody to park. So there really isn't any place for them to park, unless they do park in my parking spot.

Robert Ludwiczak – Mr. Chair.

Henry Minneboo – Yes, sir.

Robert Ludwiczak – Just a question, maybe for staff. Would it be appropriate, since he's already given consent to limit his seating to the required amount of seating for the required amount of parking, to approve this applicant here this afternoon, and then could he come back looking for a variance, if he got other – no. So it's gonna – he's gonna be stuck with what he's got when he gets approved.

Cindy Fox - He has a developed site that has X amount of parking. The parking regulations say you have to have one space for every three seats. And then there's provision for employees. So all we're doing is what we're telling you, is what the Code allows as far as number of seats, based on available parking on this existing site.

Robert Ludwiczak – O.K.

Cindy Fox – So if...

Robert Ludwiczak – If I understand the applicant, though, you're – just for the sake of getting along with business, you've limited yourself – you just want to get along with business. You want this approved, and you're hoping we'll give you approval.

Steven Letts – Correct.

Robert Ludwiczak – And Clyde has a motion. I'd like to second that motion and move on for approval.

Henry Minneboo – We got a second already.

Aneta Ott – Believe me, it's been – I've called for the question several times. We have a motion, and a second, already.

Henry Minneboo – Peter, you got something?

Peter Aydelotte – I have a major problem with this, because he's been approved for a restaurant for a nonconforming use, and he has X amount of seats that have – under that nonconforming use. And, in these days and times, to have a successful business – all he wants to do is serve his customers beer and wine. And to come up under another set of circumstances, even though it's a nonconforming use, to get a CUP, which is a beer and wine, to keep his customers, which basically he can have that amount of people there under a nonconforming use – and I'd really like to just sit here and approve the CUP with the existing seats of the restaurant that he has, because nothing's changing. He has the seats there. He's serving the public there. The only thing that he's adding is the ability to be competitive in this marketplace. And I think – can we modify that motion to approve that, that it's a nonconforming use under the CUP, or no?

Christine Lepore – No. And this is the reason why. And I understand the situation and the business realities that you're dealing with, but this county, and other counties, have litigated over the addition of beer and wine sales, and even the expansion of beer and wine sales to include liquor sales. And that, by law, in the State of Florida, in Fifth District Court of Appeal, is an expansion of a nonconforming use. So I don't think this board can decide otherwise, because that would be contrary to the law in the State of Florida. And I don't think that this board can approve a CUP that's contrary to the Code requirements. I understand the situation. If you want to take more time to see if there's opportunity to find a waiver, or other resolution to the Code requirements, you can do that, but you cannot approve a CUP that's contrary.

Henry Minneboo – O.K., there's a motion, and a second, on the floor to approve the CUP.

Laurilee Thompson – I'm sorry, but I'm sitting here with a drawing in my hand that shows 18 parking places around this building, and 18 times 3 equals 54 seats. So where did this thing that was included in our packet come from?

Cindy Fox – There was an on-site inspection made, and there are only 12 spaces.

Steven Letts – No, there's more than that.

Laurilee Thompson – Determined by who? A surveyor, what?

Cindy Fox – It's up to the board to decide what they want to do. We're just giving you the facts here. The drawing provided 18...

Steven Letts – Could I see that drawing that you have?

Laurilee Thompson – Sure.

Cindy Fox – That was the drawing that the applicant provided.

Laurilee Thompson – And that's the man that owns the property?

Steven Letts – I physically went out and did this.

Laurilee Thompson – So who did the inspection that came up with 12 spaces?

Cindy Fox – County staff.

Laurilee Thompson – County staff?

Cindy Fox – Let me just – I'll also remind you that there is an existing barber shop also in his building. So he's a multi-use site.

Steven Letts – Right. They close at 5:00 o'clock. He gives me permission to use that. And, during lunch time, I'm very, very slow.

Cindy Fox – So that – because the applicant has volunteered that information, that is something that you could use as part of your motion, that...

Henry Minneboo called the question, and the board recommended approval of the request. The vote was unanimous.

V.B.4. (Z1101202) – NICHOLAS M. & LAURA J. STIPANOVICH, CO-TRUSTEES – (Clifford Repperger, Esq.) – request a Amendment to an existing BDP in a BU-2 zoning classification on 1.48 acres, +/- . Located on the southeast corner of Tangerine Ave. & N. Tropical Trail. (140 Tropical Trail, Merritt Island)

P&Z Recommendation: McLellan/Ott – Tabled to the P&Z mtg. on 2/7/11. Vote was unanimous.

Cindy Fox – V.B.4, the Stipanovich item, staff is requesting tabling because of a notification error. So I'd ask the board to please make a motion to table that item to the February 7th, Planning & Zoning meeting.

Ron McLellan – So moved.

Aneta Ott – So moved.

Henry Minneboo – A motion by Ronnie McLellan, second by Aneta, to table that item.

Henry Minneboo called the question, and the board tabled the request to the February 7, 2011, P&Z meeting. The vote was unanimous.

DISTRICT 3

V.B.5 (Z1101301) – SEBASTIAN INLET MARINA, LLC – (Thomas P. Kennedy) – requests a CUP for Alcoholic Beverages for Consumption on Premises in a BU-2 zoning classification, in conjunction with a restaurant only, on 2.85 acres. Located on the east side of U.S. 1, immediately opposite of the easterly terminus of Daytona Blvd. (8685 Hwy. 1, Micco)

P&Z Recommendation: Aydelotte/Ott – Tabled to the P&Z mtg. on 2/7/11. Vote was unanimous.

Cliff Repperger – Good afternoon, my name is Cliff Repperger. My business address is 1795 West Nasa Boulevard. I'm an attorney with the law firm of Gray/Robinson, and we represent the applicant, Sebastian Inlet Marina. We were recently retained on this matter. And my understanding, upon review of the staff report, is that there are some concerns, similar to the previous item, with regard to parking. This is a CUP request for alcohol. There are also concerns with regard to water source and fire suppression. This morning, my office – I had a telephone conference with staff, and we discussed various issues related to the parking on-site. There is a legislative intent that is in the works for a code change that the Board of County Commissioners is scheduled to hear on January 25th. The way that that issue is resolved may have some impact as to how we analyze parking, and the options of parking on-site, for the purposes of considering this application. So with that being said, the applicant is requesting that the board table this item for one additional meeting, such that those issues related to parking, and any other issues that are raised by staff, can be more comprehensively addressed by the applicant.

Henry Minneboo – Is there a motion? Motion by Peter (Mr. Aydelotte's motion was made without a microphone; therefore, it is not audible on the record).

Jerry Jagrowski – Sir, you said alcohol – on premises alcohol. What are you defining that, all types, or beer and wine?

Cliff Repperger – I believe that this is all types of alcohol.

Jerry Jagrowski – Thank you.

Henry Minneboo – There's a motion by Peter, and seconded by Aneta (Ms. Ott's second was made without a microphone; therefore, it is not audible on the record), to table this motion.

Henry Minneboo called the question, and the board tabled the request to the P&Z meeting on February 7, 2011. The vote was unanimous.

DISTRICT 4

V.B.6. WITHDRAWN BY STAFF.

V.B.7. (Z1101402) – DIAMONTE SANDS, LLC – (Jack Spira) – requests a Small Scale Plan Amendment to change the Future Land Use Designation from Res 15 to CC; and a change from RU-2-15 to BU-1, with a Binding Development Plan for an Assisted Living Facility with 18 total units, on 0.37 acre. Located on the east side of Hwy. A1A, immediately opposite of the eastern terminus of Berkeley St. (501 Hwy. A1A, Satellite Beach)

P&Z Recommendation: Thodey/Ott – Tabled to the P&Z mtg. on 2/7/11. Vote was unanimous.

Cindy Fox – This item involves the Parks & Recreation Department, and they have representatives here. And I'd like them to be able to speak at this time on that item.

Henry Minneboo – Great. Looks like the famous Jack Masson.

Jack Masson – Mr. Chairman, members of the committee and board, my name is Jack Masson, Parks & Recreation Director of Brevard County. An issue before you today, item – Ms. Fox, the item, please?

Cindy Fox – V.B.7.

Jack Masson – V.B.7 is in reference to the old Perkins restaurant location in Satellite Beach. We were notified this morning that it was coming before your board today. There was some misrepresentation in the narrative portion. We have not been in discussion with the developer in this case on the request for the easement or the breezeway, or whatever else. So I think we need to have some time in the Parks & Recreation Department to review the request and see if it fits in with what we think is the best way to go.

Clyde Thodey – Motion to table.

Henry Minneboo – Is the applicant here today?

Cindy Fox – I believe the applicant's representative is here.

Henry Minneboo – O.K. Is that suitable?

Jack Spira – Mr. Chairman, members of the board, my name is Jack Spira. I represent the applicant. My understanding is Parks & Recreation first spoke with our engineer this morning. My understanding, there are some questions where they weren't involved in the loop, so we have no objection to tabling this to allow them to have a chance to sit down, try to work it out.

Henry Minneboo – Thank you. Who – Clyde, you made that motion? Do you have...

Jerry Jagrowski – I have one question to Jack. How much time you gonna need?

Jack Masson – We can be ready by the next meeting.

Aneta Ott – February 7th.

Henry Minneboo – February 7th, Mr. Spira? O.K. And that motion was by Clyde. Who...

Aneta Ott – I second it.

Henry Minneboo called the question, and the board tabled the request to the February 7, 2011, P&Z meeting. The vote was unanimous.

The meeting was adjourned at 4:00 p.m.