

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, November 7, 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; Aneta Ott, Vice-Chair; Laurilee Thompson; Linda Wise; Peter Aydelotte; Clyde Thodey; Sue Schmitt; Ron McLellan; Robert LaMarr; and Loretta Goggin.

Staff members present were: Cindy Fox, Planning, Zoning & Enforcement Manager; Christine, Lepore, Asst. County Attorney; Paul Body, Planner I; and Candy Hanselman, Zoning Support Manager.

The Chair, Henry Minneboo, called the meeting to order at 3:06 p.m.

Henry Minneboo – This is the Planning & Zoning Board meeting, which is an advisory board to the Board of County Commissioners. And everything today will be heard on Thursday, December 1st, at 5:00 o'clock, back in this particular room. Today, each applicant will be given 15 minutes to present their particular item. And everybody for or against will be given about five minutes. And I say about. You'll be held to the time here. Did everybody have an opportunity to see the P&Z meeting minutes of October the 3rd?

Motion by Clyde Thodey, seconded by Aneta Ott, to approve the minutes from the P&Z meeting on October 3, 2011. The vote was unanimous to approved the minutes, as submitted.

At the beginning of the meeting, there were eight regular members, and one alternate, present. All members present, voted throughout the agenda. Linda Wise arrived during discussion of Item #3; therefore she did not vote on Items 1 and 2.

DISTRICT 5

V.B.1. (Z1111501) – TODD J. WILLEMS – requests a CUP for Alcoholic Beverages for On-Premises Consumption in an IU zoning classification on 21.84 acres. Located on the south side of W. Eau Gallie Blvd, approx. 820 ft. west of I-95 (835 Paw Prints Ave., Melbourne)

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

Henry Minneboo – Please state your name and address for the record.

Todd Willems – Todd Willems, 835 Paw Prints Avenue.

Henry Minneboo – Tell us what you got.

Todd Willems – We turned it into a mud park out there, Eau Gallie Mud Park. It's a race track, or a mud park, west of the flea market there. We've been running it for a year now, and we need a CUP to let people drink alcohol there, bring their own beer and whatnot.

Henry Minneboo – Any questions from any of the board members? (no response) I bring it out to the audience. Is there anybody like to speak for, or against, this item? (no response) Seeing none, I bring it back to the board.

Ron McLellan – Mr. Willems, you haven't had any problems, at all, have you? I mean, any kind of Code Enforcement or anything?

Todd Willems – Nothing. No, not one incident in 13 months now. Nothing.

Ron McLellan – And you're just going to do – you have these things when, once a month, or twice?

Todd Willems – Once a month. Yes, sir. And once we get a CO, we might have it twice a month, but you couldn't do it no more than that. Most of the people, with the economy, they can't – we're not selling beer. They bring their own beer. They tailgate. So if you tell them they can't bring beer, they ain't coming. It's that simple.

Ron McLellan – So you're not going to see beer?

Todd Willems – Not right at the moment, maybe in the future. I'd like to think so, but it ain't happening right now, for sure.

Ron McLellan – Understand.

Henry Minneboo – Any other questions? (no response) What's the pleasure of the board?

Laurilee Thompson – In our staff notes, it indicates that people are bringing beer, right now. Is that not true?

Henry Minneboo – I think that's what he had indicated, Laurilee. And it's freebie, so I mean it's just a permit he's got to have, I guess.

Todd Willems – Part of the process.

Henry Minneboo – What's the pleasure of the board?

Loretta Goggin – I've got another question. In the package, there was information from the City of Melbourne concerning the water and sanitary issues. What do the rest of you think about – perhaps there might be some discussion on...

Henry Minneboo – Loretta, I'm going to just give you my opinion. It's nice for the city to say that. And if you went on, in that instrument, they said, "We'd love to have you in the city, and then you can pay city taxes, as well."

Todd Willems – Right.

Henry Minneboo – That's what I picked up on, fairly quick.

Todd Willems – Yes, sir.

Henry Minneboo – So I'm not sure this – if the man is struggling now, I'm not real sure he's excited about coming into the city.

Loretta Goggin – So then that's all that meant?

Henry Minneboo – That's what I read, yes, ma'am.

Sue Schmitt – I noticed that, in the summary, where it stated that if the board wishes to stipulate that the alcohol CUP not become effective until the required site plan improvements are completed, and that consumption will be limited to the 1,900-square-foot spectator area. Do you have any problem with that, sir?

Todd Willems – Well, as far as the site work for a temporary CO, that should be done by the end of this month. It's a lot of work on 23 acres there. But to limit it to the 1,700 square feet, or 1,900 square feet, I think is like –

you know, 90 percent of my parking's tailgating. And they bring beer. They drink beer. You know, it's that simple. So if you limit it to – that's 17 or 19 feet by 100 feet over 23 acres. To me, it doesn't make any sense, but...

Sue Schmitt – O.K., well, that was the second part of it. The first part would be that the CUP not become effective until the required site plan improvements are finished. Do you have any problem with that?

Todd Willems – Well, that's been a struggle for a year and a half to build it, you know. I'm down to probably 30 days from a temporary CO, but I'd like to see it go through right away. I mean, it's just...

Sue Schmitt – Well, you know that you have to do a site plan.

Todd Willems – It's 95 percent from a temporary CO. But it cost a lot of money to do the storm structures, lighting, and all that stuff. So I'm not far from it but, I mean...

Sue Schmitt – Well, even if the board approved the CUP, you still have to comply...

Todd Willems – Yes, ma'am.

Sue Schmitt - ...with the site plan.

Todd Willems – Absolutely. That all has to be done.

Sue Schmitt – Before you can have any alcohol there.

Todd Willems – Yes. I think, the last two months, we had to pull the – any alcohol permit to let them – allow them to drink there.

Sue Schmitt – For a special event?

Todd Willems – Yes, ma'am, through a non-profit organization. And we've done that. I'm hoping, December 1, that I'm good to go, and I don't – it's a lot of work to put that together every month. I keep fighting it, but I'm doing my best with it. So I'd like to see it go through right away, if we could.

Henry Minneboo – You're just trying to get legal what you've been doing for 18 months.

Todd Willems – Yes, sir. Yes, it's not – yes, I – yes, sir, that's exactly what I'm trying to do.

Henry Minneboo – Any other questions? (no response) What's the pleasure?

Clyde Thodey – Motion to approve...

Ron McLellan – I'll second it.

Clyde Thodey - ...as submitted.

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

Henry Minneboo – Now, did you mark the fact that, December 1st, you'll be back here? Their vote counts a little more than ours, the Board of County Commissioners.

Cindy Fox – May I get clarification that that motion by Mr. Thodey was to not include the limitations of the site plan work or the spectator area?

Clyde Thodey – Well, as it was submitted. He submitted it, and that's what I wanted to make the motion on, as his plan submitted.

Cindy Fox – Without the limitations?

Clyde Thodey – Without the limitations. That's correct.

Cindy Fox – Thank you.

DISTRICT 1

V.B.2. (Z1111101) – JOSEPH AND JACKSON'S, LLC - (Ashley Mangini) – requests a CUP for Alcoholic Beverages for On-Premises Consumption in an AGR zoning classification, as accessory to a restaurant at a fish camp, on 20 acres, +/- . Located east of Hatbill Rd., approx. 1.75 miles south of S.R. 46. (1955 Hatbill Rd., Mims)

P&Z Recommendation: McLellan/Schmitt – Approved. Vote was unanimous.

Henry Minneboo – State your name and address for the record.

Lauren Mangini – Lauren Mangini, 1955 Hatbill Road. We're currently a restaurant, and we have beer and wine, and we're looking to have liquor. We own the 4COP now, so we just need zoning and County approval to...

Henry Minneboo – You've only had what, beer and wine there for about 50 years?

Lauren Mangini – Yes, since '59.

Henry Minneboo – Since '59?

Lauren Mangini – Yes.

Henry Minneboo – Yes, it'd be a good time now to stop it, I guess, huh? Yes.

Laurilee Thompson – That's one of my favorite places to go eat. I would love to see them have liquor.

Henry Minneboo – Great. I knew that would be a hit. They've been there since '59. Is there any questions from the board, before I go to the audience? (no response) Seeing none, I go to the audience. Is there anybody like to speak for, and against, this 1959 beer and wine? (no response) Seeing none, I bring it back to the board.

Ron McLellan – Move for approval.

Schmitt – Second.

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

V.B.3 (Z1111102) – DAVID R. OLSON AND MARY T. SORENSEN – (Rodney M. Honeycutt) – request a Small Scale Plan Amendment to change the Future Land Use Map designation from Res 4 to CC, and a change from AU to BU-1 on 4.27 acres, +/- . Located approx. 257 ft. east of U.S. 1 and approx. 0.2 mile south of Wiley St. (In the Mims area)

LPA Recommendation: Thompson/Ott – Approved. Vote was unanimous.

P&Z Recommendation: Thompson/LaMarr – Approved. Vote was unanimous.

Cindy Fox – I'll remind the board that I need two separate motions, one for the small scale and one for the zoning change.

Rodney Honeycutt – Rodney Honeycutt, 5195 South Washington Avenue, in Titusville. And we're here today because we're going to get a Tractor Supply in Mims, with your help. And so the – it's a 19,000-square-foot building with 15,000 square foot fenced in outside. I don't know if you guys are familiar with the Tractor Supply. There's one in Melbourne now on 192, and there's another on in Chuluota on 50. So this will get us one in the north end of the County to help round that out. We've already met with DOT, and so we're using an existing median opening. We're sharing that with our neighbor, which DOT likes. We'll probably have to make some improvements in the roadway for that. Just for your information, we don't need as many parking spaces as the code requires, and there's a section of the landscape code that allows us to reduce that, if we preserve more trees. And the tradeoff is, I guess, in the future, if you wanted to put them in there, you could take the trees out. But we're proposing to do that. So we're providing a large buffer to the rear, and that's the area that we back up to residential. And we thought that was a good place to put that. Existing is a comp plan and rezoning on the front 200 feet. And so we're extending it approximately 400 feet to the rear. That lines us up with where the BU-1 is to our south, also. So we're not expanding that further. I don't really have anything else to add. We will be extending water to the site from the County system. Sewer is not available from this area, so we will have septic. And we're here today, if you have any questions. We do need BU-1 for this site. I noticed the staff report mentioned it might could be BU-1-A, but that's doesn't work. That's why we applied for BU-1. So I wanted to make that clear, also.

Henry Minneboo – Is there any questions from this board, to Mr. Honeycutt here?

Clyde Thodey – Mr. Chairman, I have to disclose that I know Mr. Honeycutt personally. He does business with my firm; however, it would not have any bearing on my decisions in this case.

Henry Minneboo – Thank you. Is there anybody in the audience like to speak for, or against, this?

Ron Bartcher – Thank you. My name is Ron Bartcher. I'm with the Mims Community Group. When the Mims Small Area Study was being performed, there was a general agreement among residents that the State Road 46/U.S. 1 intersection would become the center of commercial development in Mims, and that the U.S. 1 corridor should remain for commercial purposes. The recent developments in this area, which consist of D&E's Do It Best Hardware Store, Walgreen's Drug Store, the Dollar Store, the Race Track filling station, they all fit with the general vision of this Mims Small Area Study. There are several pieces of property that are for sale in this area, and the prices the owners are asking, to me, indicate they intend to sell for commercial purposes. The developers of this property met with me, and with the Mims Community Group, to let us know what they planned. This type of store, Tractor Supply Company, fits very nicely within Mims. Several members of our group are patrons of this company and would like to see one located in Mims. The exterior décor of this building that they propose has a country feel to it and will also be a good fit for Mims. They indicated that they do not plan to develop the entire property, but rather leave a portion of the east end as natural. This would be a very good thing for us. At our October meeting, the Mims Community Group voted in

favor of this development; therefore, I recommend that you approve a change to the future land use plan for community commercial, and the zoning changed to BU-1. Thank you.

Henry Minneboo – Thank you, sir. Anybody else like to speak for or against...

Clyde Thodey – Henry, I wanted to ask a question. How many people were at your meeting that you had?

Ron Bartcher – I don't have the exact number. It's approximately 15. It varies. Our attendance varies from 15 to 30. That's usually about as many as we have.

Clyde Thodey – So your average is say 20, 25, that would come to a meeting?

Ron Bartcher – Right.

Clyde Thodey – O.K. Thank you.

Henry Minneboo – Thank you, sir. Seeing none, I bring it to the board. Motion by Laurilee (Mr. Thompson's motion was made without a microphone; therefore, it is not audible on the record).

Aneta Ott – Second.

Henry Minneboo – To approve the first part.

Laurilee Thompson – Actually, I would move to approve the land use change...

Henry Minneboo – First.

Laurilee Thompson - ...and the zoning. Do you want to do them separate? Approve the land use change.

Henry Minneboo called the question, and the board recommended approval of the small scale plan amendment. The vote was unanimous.

Henry Minneboo – Second part.

Laurilee Thompson – Move to approve the zoning change.

Henry Minneboo – A motion by Laurilee.

Rob LaMarr – Second.

Aneta Ott – Second.

Henry Minneboo – I'm going to let Rob have that one. Seconded by Rob.

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

DISTRICT 3

V.B.4 (Z1111301) – TRACY J. FREY & JOANNE LEONARD-FREY – request a change from GU to AU on 4.83 acres. Located on the north side of Thompson Rd., approx. 600 ft. west of Fleming Grant Rd. (5120 Thompson Rd., Micco)

P&Z Recommendation: Ott/McLellan – Approved. Vote was unanimous.

Joanne Leonard-Frey – I'm Joanne Leonard Frey, 5120 Thompson Road, in Micco. We'd like to change our residence from General Use to AU, due to we're going to sell the property, and we're hoping that by having that in place that it will pull in a buyer quicker, because we have a lot of horses and cows in that area, already.

Henry Minneboo – Any questions? (no response) Seeing none, I go out to the audience. Is there anybody in the audience would like to speak for, or against, this item? (no response) Seeing none, I bring it back to the board.

Aneta Ott – Make a motion for approval.

Henry Minneboo – Motion by Aneta, seconded by Ronnie (Mr. McLellan's second was made without a microphone; therefore it is not audible on the record).

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

DISTRICT 4

V.B.5. (Z1111401) – THE DEVEREUX FOUNDATION – (Steven Monroe) – requests a change from AU to IN(H) on 49.65 acres. Located east of Murrell Rd., approx. 635 ft. north of Wickham Rd. (8000 Devereux Dr., Melbourne)

P&Z Recommendation: Schmitt/Ott – Approved, with recommendation that BCC table the rezoning request to the 12/13/11 BCC mtg. in order for the request to be heard in conjunction with the Large Scale Comprehensive Plan Amendment request. Vote was unanimous.

Steve Monroe – Good afternoon, ladies and gentlemen. My name is Steve Monroe. I'm Vice-President of Engineering for ME Construction. I reside at 3080 Brandywine Lane, Melbourne. I'm here to represent Devereux for this project. Early on, when Devereux established their site here in Viera in the early '80's, they were put in an agricultural zoning. We've been working with Devereux for quite some time, where they'd like to expand their facilities. But since that time, the County's established an institutional zoning, which they're more appropriate to belong in. Quite simply, after the staff report, they simply want to move from agricultural into an institutional-heavy, where their current use belongs. This will allow them to go ahead with their expansion that they're working to do right now.

Henry Minneboo – Thank you. Is there any questions? (no response) Anybody in the audience like to speak for, or against, this? (no response) Coming back to the board.

Sue Schmitt – I'd like to make a motion that we approve this. The comprehensive plan approval change has already gone through this board, and now we're to the zoning. And I know that this was originally supposed to go to the County Commission on December 1st, I believe; however, because the comp plan will go on the 13th of December, so this really should go with the comp plan on the 13th, at the same time, because the comp plan

change needs to be approved before this is approved. So part of my motion is that we approve it, with this joining the comp plan change on the 13th of December.

Aneta Ott – Second.

Henry Minneboo – That was a motion by Sue, and second by Aneta. Everybody understood that one? O.K.

Henry Minneboo called the question, and the board recommended approval, as stated above. The vote was unanimous.

THE FOLLOWING ITEM WAS TABLED FROM THE P&Z MTGS. ON 9/12/11 & 10/3/11:

DISTRICT 2

V.B.6. (Z1109201) – OVERLOOK TOWERS – (Lauralee Westine) requests a CUP for a Tower & Antenna in a BU-1 zoning classification on 3.58 acres, more or less. Located on the southwest corner of E. Merritt Ave. & Palmetto Ave. (89 E. Merritt Ave., Merritt Island)

MIRA Recommendation: Denied.

P&Z Recommendation: Thodey/Ott – Denied. Vote was 6:4, with Thompson, Wise, McLellan & Goggin voting nay.

Cindy Fox – This item was heard by the Merritt Island Redevelopment Agency Board on October 6th. And we currently also have eight letters of objection for this item.

Clyde Thodey – What did the Merritt Island Board vote on? How did they vote?

Cindy Fox – The Merritt Island Redevelopment Agency Board did not approve this item.

Lauralee Westine – Good afternoon. Lauralee Westine, on behalf of Capital Telecom and AT&T. I have with me here today, Marc Harris, with Capital Telecom. And I have three engineers from AT&T, Jim Graf, Waichen Mu and Yuvraj Varachhia. All the engineers - Mr. Graf's been with AT&T for 15 years, prior to that spending 20 years in the Navy. And both the other gentlemen have been respectively with AT&T for five years, and three years, with Masters Degrees in Electrical Engineering. As a housekeeping matter, I would ask – and it just depends on where I go – does your staff's report automatically become part of the record in your file?

Cindy Fox – Yes.

Lauralee Westine – And will the MIRA record already be part of the record, as well?

Cindy Fox – Yes.

Lauralee Westine – O.K. Then I don't need to ask you to accept that into the record, then. With that said, we're proposing a 170-foot monopole at the, what I call the peak of Palmetto Avenue, in Merritt Island, on a 15-acre commercial plaza zoned BU-1. The tower is designed to support the antennas of six carriers. You'll see – I gave you all handouts. I actually did bring it on the computer, as well, but I figured handouts sometimes are just as easy. The very first page is a picture of a monopole, although I'm sure you're probably familiar with them. This is a traditional monopole. It does not have guy wires, or anything like that. The anchor tenant in this particular case is AT&T, but Capital Telecom has already been approached, and applications have been filed by both Metro PCS and Verizon. Both Sprint and T-Mobile have been monitoring

this approval. What you'll find in this industry is that until something is zoned, and approved and built, a lot of times you won't get folks committing to a site. But the point I'm trying to make out of all that is this is an area that is clearly deficient in its wireless coverage. When you see all five, or all six, carriers come in to one pole, that shows you there's definitely a need in the area. The tower will be surrounded by a 60 x 60 compound that will be able to accommodate all the carriers' equipment. It will be surrounded by a buffer, with an eight-foot board-on-board fence, as well as a landscape buffer. The landscaping will be, though, on the north, west and south side. It is not proposed on the east, due to the existing 95 feet of dense vegetation. And I would point you to – if you go to the next page of the handout I gave you, you'll see there is a pinpoint, a push pin, which is the proposed tower location. And you'll see that this entire area that's in dark green to the, I guess, northwest of Palmetto, that is all dense vegetation. We've received our FAA Determination of No Hazard to Air Navigation on January 28, 2011. This matter was heard by MIRA on 8/18, at which time the matter was tabled until 8/6/11. What MIRA did at our first hearing was, they all had some very good ideas of some alternative locations. And so what we had asked is that we would table the matter until October, and if they would email us the locations – 'cause a lot of times, it was the BJ's, or it was something where we're not necessarily familiar with. They were able to email us those eight locations. And we did take them back, and we reviewed them from a standpoint of are they buildable, are they zone-able, and do they work for engineering. Kind of a very quick overview of towers and where they placed, when a new tower is needed, what you've got is engineers who take a look at what's currently out there, what are their current statistics, where are they having blocked calls, dropped calls, missed calls, things like that. And then they give the Real Estate Department a very narrow search area in which to go look, which is usually about 0.2, 0.3, miles. That narrow search area enables all these towers that are already existing out there, where there are existing sites, to talk to each other. To oversimplify it, you can't have a site too close to another site, you can't have one too far away, or they simply just can't talk to each other, and there's no point in putting the tower up. More or less, also, the towers have to be of the same height. One of the questions I get sometimes is, "Well, couldn't you do one at 50 feet and one at 150 feet?" That doesn't work. In essence, it's line-of-sight technology, and they have to be able to, I say, speak to each other or see each other. We also, on that August 18th date, we hosted a community meeting. It's not required here in Brevard, but we like to do it. And we mailed to 325 - and it's the same mailing radius that got this notice today, and that will get the notice for the Board of County Commissioners' meeting. We mailed 325 letters. We had 18 attendees. I had 16 attend, and I had two folks that didn't want to sign in. But I do always add them into my count. A majority of those attendees did live in Sun Isles Condominium, which is located in this area (pointing to a map), which is to the southeast of the parent tract. During that time, though, my office did get several phone calls thanking us for proposing the tower. They weren't going to come to the community meeting, but were pointing out that there was actually a gap in service in this area. I would also let you know that at the second MIRA meeting in October, as the board discussed it, they too admitted that there was clearly a need for service in this area. I don't think that's the question in this case. Also, during that meeting – during the MIRA meeting that early afternoon, we had been asked if we could disguise the tower. And so when I went and met with the folks later that afternoon, we offered to disguise it as a tree, because this area is so wooded. But we received a resounding no. They were not interested in the pole being disguised as a tree, simply because it's a 170 feet and would stand out too much. Additionally, one of the things – the other things that the MIRA Board had suggested we explore was actually clearing out that – I'm calling it a point – but clearing out that point, which is very densely wooded. The neighbors that showed up, the 18, had no interest in that being cleared out. I realize that the MIRA Board had a lot of – expressed a lot in interest in that being cleared out, and the underbrush being taken out because, I guess, every now and then you have some homeless folks that use that as a residence. But I can tell you that the folks who live either directly across the street, or very nearby, didn't have that inclination. And I have staff here who was present at that hearing, so they can correct me, if I'm wrong. There was, at one point, during the MIRA Board – during the October MIRA Board meeting, there was discussion of approving this, recommending approval of this matter, with conditions. And the idea was, what can Capital Telecom do to the parent tract to basically – 'cause, currently, it's used as a school bus depot. So what you've got is, you've got a large eight- or ten-foot chain-link fence there. You've got school buses going in and out. You've got, if you look at one of the very last pages of this, of my – actually the very last page, you'll see, on the right-hand side, kind of a

cement building, or a shed. But you've got kind of that open area, when they're pulling out of their condos, that doesn't look as nice as it could. And so what my client had offered to do was to landscape that area - granted this is all provided the School Board allows us to, just so that we were clear - but landscape that corner, and maybe put in a different type of decorative fencing from where it can be viewed from the Sun Isles Condos. The concept had come up of whether we would pave the entire School Board - the school bus depot. That was something that, candidly, my client wasn't inclined to do. And I think, at that point, the Assistant County Attorney had also mentioned that there's kind of a limit as to what kind of conditions you can place on a 60 x 60 conditional use request, versus like a rezoning or changing a land use designation. With that said, though, we are still before you today offering to do several things. We would still very much consider to landscape that little building. We would very much still be willing to change out that fence type - and this is all provided the School Board agrees - so that it's more decorative, or to landscape in front of it, something to buffer, so that when these folks pull right out of their driveways, they're not looking at 20, 30 or 40 school buses. One of the other things that was addressed at MIRA was aesthetics. They had proposed a tree. The neighbors did not wish to have a tree. But my client and I took back to the carriers, and one of the things that we have suggested is that we would propose putting together, instead of a large head frame - a head frame at the top of a tower is actually about 14 feet. It doesn't look like it when you're on the ground, but they're about 14 feet across. We can actually condense that to seven feet. And that's something that, from an aesthetic perspective, will actually minimize the visual impact, or the width of the tower, literally by half. My purpose of all that was the history, 'cause your first question was why did they not approve it. And so that's what I wanted to do, was to give you the history there. There are three code sections that we are required to prove to you for - we are required to meet for approval. The first is 62-1482 (3). That allows towers as a conditional use in the BU-1 zoning district. The second is the criteria as set forth in 62-1901 (c), which you all are probably very familiar with. And that - basically, the first section says that we will not impact adjacent, or nearby, properties. The things that they ask us to consider are the number of people that would be using the property. None. The site is unmanned. Whether there will be noise, odor, particulates, smoke, fumes or other emissions. The tower is unmanned. The tower doesn't make noise. It doesn't have odor, smoke, fumes, or any other emissions, as such. I would actually suggest to you that that probably the school buses leaving in the morning, and starting up, probably produce more noise, and more fumes, than the tower would. And whether there're any increased traffic. This tower produces about one visit per month, per carrier. And I say that with a smile on my face, somewhat, because that's ideal. That's if a technician happens to get out there. If there's a problem, is when they usually head out there. But you're talking about at a maximum - where you've got a tower that supports six carriers, you're talking about a maximum of six trips. So the impact on traffic in the area simply is nominal, if any. Is the tower compatible with the character of the adjacent, and nearby, properties of its use? And I would suggest to you that adding the tower use to the existing 15 acres of a large commercial parent tract is compatible with the character. And one of the things, I think, is when you couple this - and I'll call it slimmer - the slimmer head frame with this buffer - this is 95 feet. There's 95 feet of dense vegetation between where the tower's going to be located, to get to Palmetto. There's actually 100 and - a little under 150 feet to the north. Oh, I'm so sorry. This is the second page. And there's - oh, let me give you - may I approach? Oh, you've got one. O.K. To the north is about 150 feet of dense vegetation. And to the east, or to the southeast, you've got about 95 feet. If you go to the back pages of this, you'll see - the second to the last page, and then going forward, maybe the third to the last page, shows it pretty well. You'll see some really dense vegetation there. That's existing. You can flip through those pages. I've been out to the site. You can't see through. This isn't a site where you've got a couple of pine trees in there, and you can see from one end to the other. I mean, this is clearly dense vegetation. You're not going to make it through. But I would suggest to you that as a - with the combination of that - to the north, you have East Merritt Avenue. You then have the school - which Merritt Avenue, obviously, is a larger road. And then between any of the residential, you then have Palmetto. Again, going back to - the site is unmanned. There's minimal trips. I'm going to skip a few things, because I've already said some of the things. But, unfortunately, the way the code works, there's a little bit of overlap. One of the other things we've done is, we've designed this with a 70-foot collapse point, or hinge. We've all been through hurricanes. We've seen light poles. The light poles bend over like bendy straws at the top. That's the exact same technology that we have here. It's just a larger pole.

We built it at a 70 foot, so basically that hinge is smaller than the smallest setback that we have to the property line. It won't impact property values. One of the things that I had submitted with my application were three property studies, all of which were done by property appraisal experts, or professional appraisers. And there's been no showing that there has been any effect on home prices or res – actually both residential and commercial property values, based on proximity to a telecommunication tower. One thing that I usually don't have on my side is – the Chairman of your MIRA Board is also a realtor. And one of the things that she had said – she actually – the vote was 4:1, and she had voted in favor of this project. She had actually said that in her experience, she found that there was value to having wireless coverage in an area when she took people around. She thought that that was actually a positive, not a negative. Adequate ingress and egress. The ingress and egress is off Palmetto. Again, though, you're talking about a maximum of six trips per month. The access point will not burden the surrounding areas. The tower will not, again, produce noise, glare, odor, particulates, smoke, fumes or emissions, as regulated through 62-2251 through 2271. We will not produce noise, as regulated in those sections. No solid waste is generated. We do not impact potable water, or water, or wastewater. The only thing we use are telephone and power. We don't impact schools. Will the site be buffered and screened? Absolutely, we'll be buffered and screened in accordance with 62-1953. And, again, we do have the eight-foot board-on-board fence that goes above it. The only thing we are proposing to do is to use that 95 feet of existing dense vegetation, Instead of taking out four or five feet of existing dense, well heavy, vegetation and putting in some shrubs, we're proposing to leave that. No other signage will be on the site, other than required by the FCC. The only lighting will be that required by the Brevard County Mosquito Control. Any other security lighting, for example, to get into the site, if a tech's there, or something like that, will all be shielded in accordance with your regulations in 62-2251 through 2271. There are no hours or operation to this since it's unmanned. That's one of the considerations you all make. The height of the tower is well within the maximum 200 feet as prescribed in 62-1953 (d) (1). We are below that. We are at 170 feet. We will not impact the parking, at all. Addressing now the specifics of 62-1151 (c) – and I will move quickly – again, looking at the property itself, it's a 15-acre commercial plaza. It's currently being used, not only as a very large shopping center, and parking, but it's also – the closest use to it is being used as a school bus depot that is unpaved. To the north, again, is East Merritt Avenue, with – you've got a school there. Beyond that, you've got single-family homes. I'm trying not to repeat myself. A lot of this – they overlap. The existing LDR's do allow towers as conditional uses in the BU-1 zoning district. We are not asking for a change in zoning. We are not asking for a change in land use. We're simply asking for an allowable use within the BU-1 zoning district. The tower is unmanned. We don't – again, we don't impact traffic, water, sewer or schools. And I did mention that Capital Telecom has worked with their carriers and are willing to modify that head frame from a 14-foot head frame down to a seven-foot head frame.

Henry Minneboo – Bring it – we're going to make it a little easier here, when you're completed.

Lauralee Westine – With that said, we do have two waivers that we are requesting. In all candor, I will move – I will skip. We are requesting two waivers. The first waiver is, you all require the tower be 200 feet from any property line. We are requesting a waiver to the north of 10 feet, and a wavier to the southeast. Additionally, we are requesting a waiver. You all have a monstrous five times the tower height residential separation. And we are requesting – I believe the closest home is 231 feet. That homeowner did not attend the hearing, nor did they send in any objections, or anything like that. For the record, none – the objections that we received, or at least that I received, are from the Sun Isles folks, which is why we're trying to address their concerns. None of the single-family residences that were noticed filed any objections that I have seen, to date. I will point out, though, and I think Cindy will also agree with me, all the towers that have come before you, that 200 feet, and that fives time the tower height regulations, that's not a safety regulation. That's not something where the FCC or the FAA has said, "Wow, this is what you have to be." This is something that Brevard County has established as a limitation. Just so you are clear, the last towers that have been before you have all also asked for waivers, and that has not prevented them from being approved.

Clyde Thodey – What was the second waiver?

Lauralee Westine – In essence, there's two. There's one rule is you have to be 200 feet from the property line. And then a second waiver is – or then the second rule is you have to be five times the tower height from any single-family residential. So there's, in essence, two, even though I would see it as a variance – just as a setback variance. But there are two separate ones that we have requested, sir. With that said, the remainder of this, we do agree with the abandonment provision. We will provide the Building Official a structural report every five years. We are complying with the landscaping code. We are complying with the lighting code. The only thing that I will tell you is, is within your packet, there is engineering testimony. I do have the engineer here to testify that there are no towers within this area on which we could co-locate. Obviously, we would much prefer to be at a building permit stage than be before you today.

Henry Minneboo – One more shot, and that's it.

Lauralee Westine – With that said, we are here for any questions you may have. And we would request...

Henry Minneboo – Why don't you sit there. I see nobody in the audience, so I want that to be clear on the record. So I'm going to bring it back to the board. I've got a bunch of questions, but the board members are more important than I am. Anybody? Let me start that way. Linda.

Linda Wise – Lauralee, my business is about probably 1,200 feet from that location. And we are in agreement that there is a dire need for this. And I don't have any objections to it all. Cindy, any of the objections, were they, as she had reported, not from any single-family, just from Sun Isles, the eight that you all have received?

Cindy Fox – They are from the Sun Isles Condominium residents.

Linda Wise – So, thank you for trying to address their concerns, but I am for this, and I don't have any further questions.

Henry Minneboo – O.K., who is next on that side? Peter.

Peter Aydelotte – You've addressed all the issues as far as need and aesthetics. And my concern is safety. Some of these setbacks were decided upon hurricane wind strengths, toppling towers and where they go. I don't know what the engineering parameters, or if you have that, of what the wind tolerances on these towers. The only knowledge I have was I happened to be in law enforcement after Andrew, and there wasn't a tower standing, whether it be a monopole, or guyed-wire tower, or anything. And we're subjected to storms here. And these setbacks do consider hurricanes, electromagnetic fields, and such. If possibly you can enlighten me on some of these safety issues, I might have a differing view than I have in my mind, which sort of coincides with MIRA, who I don't agree with all the time. So if you could clarify that.

Henry Minneboo – We're going to let him – I want him to keep that, because there's going to be a couple of other engineering questions we're going to have. Peter, we're going to get him to answer that, but I don't – that way, I don't have to get him up and back. He's going to tell you the wind load here. Clyde.

Clyde Thodey – Well, since I'm a longtime resident of 43 years on Merritt Island, and used to be involved with the Holiday Inn, and I know that area very well there, I got some real problems. First of all, you didn't tell us the eight locations that MIRA suggested. What are those eight locations?

Lauralee Westine – They're actually in your backup package, in your – staff provided you the summary that we did for MIRA.

Clyde Thodey – All right, I'll look at those. The other thing is, the MIRA vote you said was 4:1. Four against, and one for?

Lauralee Westine – Yes, sir.

Clyde Thodey – So we had a realtor that was for it, and four business people against it?

Lauralee Westine – I don't know their backgrounds. But, yes, it was 4:1 against. But, candidly, I hope I didn't leave anyone to believe that that wasn't the case.

Clyde Thodey – The other thing that I have here is – and I'm concerned with the engineering side of it, which we're going to get to – because if that tower comes blowing down in one of our big storms, it's going to be a real problem for the people living in the condominium. It'd be a problem for the school buses. It's going to be a problem for the Holiday Inn. And I'm very concerned about that. I'm concerned about the aesthetics of where you want to put it. I just think that there's got to be a better location within that two-and-a-half-mile perimeter that you're talking about that you could put this thing, that is not going to stand up all over Merritt Island, because you come down there, you're going to see this thing, and it's going to be standing tall. I'm not really for it. I understand what needs to be done in the way of cells. But I've had a cell phone for more than 20 years, and mine operates fine on Merritt Island anywhere I go. It's not with the AT&T. I got rid of them a long time ago, whenever it didn't. But the other ones, it works fine. So all I can say is that I have some problems with the aesthetics. I've got problems with the engineering. And I just think it needs to go somewhere else, as Merritt Island is trying to beautify itself. Thank you.

Henry Minneboo – Thank you, Clyde. Anybody on my left side?

Sue Schmitt – It's not really a question. Just for the record, I do have AT&T, so I'm not prejudiced. I have some real concerns about the height, and the variance, as far as the number of feet from a residential area. When Brevard County put that provision in – I know you said other areas do not necessarily have that provision – they did it for a reason, because of some past experiences. And so my concern would certainly be on the waiver for the – what is it? It was 685...

Lauralee Westine – Six forty is the maximum request.

Sue Schmitt – That's where my concern is.

Henry Minneboo – I think, unless – we may pick up some other questions. You might want to come up, 'cause I'm sure a couple of – I'm going to ask you, who owns that triangle in there? Only the purpose I'm asking you that, to clarify myself is, is that owned by the School Board?

Lauralee Westine – No, sir.

Henry Minneboo – O.K., it's not. So then...

Lauralee Westine – It's owned by Overlook Towers. They own the plaza.

Henry Minneboo – And the only reason, 'cause I want to clarify myself, 'cause I really don't care about the owners, but my concern was, did we get any comments from Edgewood Junior High, across the street?

Lauralee Westine – Not that I'm aware of. But I can tell you they are on our list of notifications, so they've been notified of both MIRA hearings, my community meeting, and this hearing, too.

Henry Minneboo – I'm a little disappointed, because that's a top-shelf school, and no comments from them. Do they know the potential lies there to have something that can directly affect them? That was my only other – this is somewhat technical. Do you have any idea how many towers there are between 528 and 520 in the Merritt Island area?

Marc Harris – My name is Marc Harris, with Capital Telecom. And, no, I don't know that number.

Henry Minneboo – O.K. Are you not from here?

Marc Harris – I am not from here, but I like the weather. It's better than New Jersey.

Henry Minneboo – You know – and I'm going to cheat, because I happen to know. And you don't need to know why I know. But I think there's three towers that are actually north. And these towers go back, to the best of my recollection, to 1970's. And I don't think we've ever approved any more towers. When we had some impact with Verizon, another company, I guess maybe you guys – whoever you – Verizon used different technology, and they went from building – they were very suitable to have sites on buildings; i.e. being anything we had in the Merritt Island area. How come now we're going to towers, when everybody else that we've had some dialogues with – O.K., is that...

Marc Harris – That's a great question. The biggest issue we have for going on buildings in Merritt Island is, most of the buildings going north of Merritt Island Boulevard are, in fact, residential, or very low-standing non-residential buildings. That's a huge limiter with regard to coverage. So when we go on buildings – and, trust me, we always love to go on buildings, because that's a much easier fix – but, in this case, there's just not enough tall buildings, or really any good tall buildings, that we can go on here. So that's when we have to go to the more expensive, the more time consuming, and ultimately the more demanding, role of building a tower. Now, we don't want to build the tower just anywhere. And you mentioned before, where else have you looked? Have you looked at any other places? And not only did we look at other places after the MIRA meeting, but we looked before, as well. In fact, we looked on this lot, but there are several underground utility issues that we can't resolve. We looked on other lots, and there simply aren't any setback issues that we can resolve, that we don't impact with here. And at least we found in this location that this is a more sensitive site with regard to natural vegetation to block a lot of that view. We realize that the towers – again, we're not planting flowers. But we have to place them somewhere that makes the most sense, and this is the best possible location that we can find. And as far as the coverage is concerned, this is – I'm sure our folks here can attest that this is going to be – it's going to provide the coverage that's necessary. But as far as the towers are concerned, the engineering side of the towers, these are rated for a category 3 hurricane. And that's a requirement by the Federal Government under the EIATIA 2...

Henry Minneboo – Is that 150?

Marc Harris – I have to be honest, I don't know what a category 3 hurricane will run. But it's the maximum level of a category 3 hurricane.

Henry Minneboo – I'd like to know that. I mean, maybe these board members would, too.

Marc Harris – O.K. Well, we can always – we can design for a higher level, as well.

Henry Minneboo – I was just concerned about it. Pete, did that answer your question?

Peter Aydelotte – It answered part of it. But, on this line-of-sight issue – and I understand a little bit about towers – so you're going up 170 feet, which would facilitate you to hit another tower, versus maybe you have to build two smaller towers by putting them on condos. This way, they're in line of sight with each other to go get

to the same tower that the 170-foot one's getting to. So you don't have two tall buildings somewhere in the area that – you follow what I'm saying?

Lauralee Westine – I do. I do, actually, sir. If you can turn to page 3 of the handout that I gave you, there's something called signal strength. It's a red piece of paper. What you'll see is – by the way – and I'm going to start with, the circle means nothings. It's an engineer who put a circle in to show generally the area we're looking at. Everyone keeps saying, "Is that your search area?" That is not our search area. It is simply demonstrative. With that said, though, you'll see in that search area, the yellow – now I'm doing it – in that circle, the yellow. That yellow is unreliable coverage. You will also see these other indications. You'll see "Merritt Island", which is north here. You'll see this one, "Merritt Causeway". These are all the existing towers that AT&T is on. So the existing towers that are built, that AT&T can be on, we are on. And this is Jim Graf up here. I'm going to have him introduce himself. And I just want to have him confirm that, in fact, AT&T is on all the existing towers. They've co-located on all the existing towers at this time that they can.

Jim Graf – Jim Graf, 1101 Greenwood Boulevard, Lake Mary, Florida. And, yes, we are already on all the existing towers in the area.

Henry Minneboo – O.K. I don't want to take any thunder away from Peter, but the three towers that I think I recall are all relatively close in proximity to each other. And they're just south of State Road 528. And they've all been in that vicinity for...

Jim Graf – I know where you're talking about. That's...

Henry Minneboo – But there's a substantial – here's what – I'm trying to understand – I mean, I do have a little technology knowledge, so – but you have no towers from 520, south. And that's what confuses me. I mean, you're emphasizing the imperativeness of having this tower here but, south, there's none.

Jim Graf – We have proposed towers that we're not here in front of you yet. But we have one proposed for Tropical Trail out on Merritt Island. It's the south end. We've got towers that...

Henry Minneboo – You think you're having fun here? When you get to deal with those people in the south, I'm sure they're going to be here.

Jim Graf – We'll have a small army standing behind me with...

Henry Minneboo – We only hold 400. You'll enjoy that.

Jim Graf – Well, hopefully, someone will build a 1,400-story condominium between now and then.

Lauralee Westine – I actually wrote down your question. You had asked about emissions. The telecommunication – this is where I become a lawyer, and everybody dislikes me all at once – there's an act called the Telecommunication Act of 1996. When that was passed, that was passed after the government sold Spectrum. The government got lots of money to sell Spectrum. What they did, though, in the Telecommunication Act, is they said several things. One, they said that so long as these carriers are operating within the FCC limitations that you all, as a body – not just you, but other bodies, as well – could not make a determination based on emissions, based on health effects, things like that. The other issue that they made, and I can't remember who said it, but someone had said they changed from AT&T. One of the things that this act does do is it protect carriers, and it gives everybody an equal amount – it levels the playing field. Just because Verizon has coverage in an area doesn't mean that AT&T, or T-Mobile or Sprint can't come in and ask for a tower. So, from a legal standpoint, I'm sure I just blew it with everybody and had to pretend I was a lawyer up here. With that said, the safety perspective, as to Hurricane Andrew, those towers – after Hurricane

Andrew, the engineering of towers monumentally changed. I actually got into towers in 1999, and it absolutely – those – what we are designed at now is – frankly, these towers are better designed than most buildings. I say this respectfully, but unless your code holds me to a different standard, which it doesn't – your code holds me to the Florida Building Code – we meet, or exceed – in fact, generally speaking, these towers are engineered above what they're required for. And I believe – did you look up the – is it 140? Generally, these towers that are east of the Intracoastal are engineered for either 140 or 150. That would depend on where your wind line is, and that would be looked at, at site plan. But, generally, they're engineered at 140 or 150 for your three-mile gusts. The other thing, from a safety perspective, these towers are not tipping over. They are designed with that collapse point, or that hinge, as I had said. And we have designed that at 70 feet so that it stays within the setbacks – so it stays within that parent tract. I realize I cannot guarantee you anything. I appreciate that. But with that said, candidly, you can't hold a tower to any different standard than you are a building. I'm, in essence, a building. I'm a structure. There's no different than saying one of those school buses might fly and block a roadway, or something like that. I say that respectfully, but I see your concern. I hear your concern. I do these hearings quite a bit, so I understand where you're coming from. But with that said, as long as these towers are designed to the absolute maximum standards that they can be, which we are, that should alleviate – well, it may not alleviate, but I would hope it would at least lessen your concern.

Henry Minneboo – O.K.

Lauralee Westine – Unless there's other questions, I have...

Henry Minneboo – Yes, there is.

Lauralee Westine – I wrote down everyone's questions.

Henry Minneboo – Sue, you have one?

Sue Schmitt – Yes. The engineer said that normally, you design to a cat 3. Is that correct?

Marc Harris – That's correct.

Sue Schmitt – But you also said that you can design higher than a cat 3.

Marc Harris – We can. At significant cost, we can, obviously, yes.

Sue Schmitt – What's the wind load that you can design to?

Marc Harris – Technically, we could design, you know, category 4, category 5. But, again, this becomes...

Henry Minneboo – Cost prohibitive.

Marc Harris – It becomes – yes, significantly so.

Lauralee Westine – I actually found it. I knew it was on these plans. It was just a matter of me finding it at my age. It is 240 miles per hour, three-second gusts, in accordance with the 2007 and 2009 Florida Building Code.

Henry Minneboo – So the 150 that I had said was pretty close?

Lauralee Westine – Yes, sir. I knew it was on here. I just couldn't find it. I'm sorry. I can go through my notes quickly, and...

Henry Minneboo – No, that's good. Do we have any other questions here? (no response) I think we're through with you. We're going to...

Lauralee Westine – Well, I have a couple clarifications that...

Henry Minneboo – O.K., if you've got some...

Lauralee Westine – ...people said that I need to clarify.

Henry Minneboo – I'm going to let you have just a couple more minutes, 'cause we're going to try to help you and bring this to some kind of conclusion.

Lauralee Westine – I'm going to move fast. As to buildings, there weren't any tall enough in the area, and I believe my engineer addressed that. As to Verizon going on towers, Verizon has actually applied to be on this tower. Verizon needs this tower. As to the reason – someone had mentioned that those limitations, the 500 percent, and the 200 feet, must have a reason for something. I would ask Cindy to put on the record that, in fact, based on her knowledge and what she said previously, that that is not, in fact, the case.

Cindy Fox – What I can tell you is that there is nothing in the code that says that these are for safety reasons. These are standard setbacks in the code. Of course, I'm not a tower expert, but that's...

Henry Minneboo – I think we used the – didn't we use the Southern Building Code, because – I mean, these are rare anymore, I mean, to ask for towers. Isn't that what we have conformed to?

Cindy Fox – I don't believe that that's true, because other jurisdictions who also use the same Florida Building Code that we do, do not have the same types of setbacks. But, again, all I can tell you is that these are the setbacks that are in our code. And, as the board member, Schmitt, had said, those are probably from past experiences. That's the best I can give you.

Clyde Thodey – Cindy, the question is, when did we put that code – what year did we put that code into effect?

Cindy Fox – I would have to do some research. I mean, I...

Clyde Thodey – Would you say that that code is at least 20 years old?

Cindy Fox – It's possible.

Lauralee Westine began speaking while Cindy Fox was speaking; therefore, her remarks are unintelligible.

Cindy Fox – It's certainly greater than ten.

Lauralee Westine spoke again. Her remarks are unintelligible.

Henry Minneboo – I don't think so. Is it 20?

Sue Schmitt – Probably, yes, around...

Clyde Thodey – So...

Cindy Fox – It has been revised, based on the...

Sue Schmitt – Fifteen, 20, maybe.

Clyde Thodey – But we haven't revised it to bring it into our category 5 storms that we've had.

Cindy Fox – I believe that the code has been revised for State – to match what the State requires.

Clyde Thodey – So the State requires it, but Brevard County could require something more stringent.

Cindy Fox – Certainly.

Clyde Thodey - Thank you.

Henry Minneboo – I'm sorry, go ahead and bring...

Lauralee Westine – Someone had mentioned that the search area is a two-and-a-half-mile perimeter. It's not. It's 0.2 to 0.3, is the search area. My concern is that I don't want to leave anybody with the understanding that we have two miles to work with when we don't.

Clyde Thodey – Say that again.

Lauralee Westine – The search area. The search area in which a tower can be located, when you're trying to match with what you've got out there. The search area that you've got to work with in order for these towers to work are really 0.2 miles to 0.3 miles. You might be able to shift it a little bit, but you're not talking within miles. You're not even talking with a half mile. I mean, you're talking a minimal distance.

Clyde Thodey – One other question, then. When you're talking about that, is those other towers at 170 feet? You're saying it has to go to line of sight.

Lauralee Westine – They are all within – yes, sir, they are all within, what I will say, 145, 150, up to 180. They're all within, what I'll say, 30 or 40 feet of that, so that everything can talk to each other. And realize, you also want to put six carriers on one pole in this case. You don't want to bring this pole down to say 150 feet, and then have another pole pop up when, all of a sudden, now you've got two other carriers that can't get on this pole. That's all I have. I would respect – I have two – but no.

Henry Minneboo – Thank you. You all did a good job. Now, we're going to – let us deal with it at the board level here. O.K., what's the pleasure of the board? Whatever we do, it's going to be a roll call.

Clyde Thodey – Well, I'm going to move to deny it, unless somebody else has got something they want to say.

Aneta Ott – I'll second it.

Henry Minneboo – There's a motion on the floor to deny, by Clyde, and seconded by Aneta. Oh, Linda, you...

Linda Wise – That's O.K. I was going to vote for it, with the waivers.

Henry Minneboo – O.K., you get to.

Henry Minneboo called for a roll-call vote. After the roll call was taken, the board recommended denial of the request. The vote was 6:4, with Laurilee Thompson, Linda Wise, Ron McLellan and Loretta Goggin voting nay.

The meeting was adjourned at 4:12 p.m.