

MINUTES OF THE MEETING OF THE BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

5:00 PM

The Board of County Commissioners of Brevard County, Florida, met in regular session on December 2, 2010 at 5:00 PM in the Government Center Commission Room, Building C, 2725 Judge Fran Jamieson Way, Viera, Florida.

Call to Order

Attendee Name	Title	Status	Arrived
Robin Fisher	Chairman/ Commissioner District 1	Present	
Chuck Nelson	Commissioner District 2	Present	
Trudie Infantini	Commissioner District 3	Present	
Mary Bolin	Chairman / Commissioner District 4	Present	
Andy Anderson	Vice Chairman/ Commissioner District 5	Present	

ZONING STATEMENT

The Board of County Commissioners acts as a Quasi Judicial body when it hears requests for rezonings and Conditional Use Permits. Applicants must provide competent substantial evidence establishing facts, or expert witness testimony showing that the request meets the Zoning Code and the Comprehensive Plan criteria. Opponents must also testify as to facts, or provide expert testimony; whether they like, or dislike, a request is not competent evidence. The Board must then decide whether the evidence demonstrates consistency and compatibility with the Comprehensive Plan and the existing rules in the Zoning Ordinance, property adjacent to the property to be rezoned, and the actual development of the surrounding area. The Board cannot consider speculation, non-expert opinion testimony, or poll the audience by asking those in favor or opposed to stand up or raise their hands. If a Commissioner has had communications regarding a rezoning or Conditional Use Permit request before the Board, the Commissioner must disclose the subject of the communication and the identity of the person, group, or entity, with whom the communication took place before the Board takes action on the request. Likewise, if a Commissioner has made a site visit, inspection, or investigation, the Commissioner must disclose that fact before the Board takes action on the request. Each applicant is allowed a total of 15 minutes to present their request unless the time is extended by a majority vote of the Board. The applicant may reserve any portion of the 15 minutes for rebuttal. Other speakers are allowed five minutes to speak. Speakers may not pass their time to someone else in order to give that person more time to speak.

INVOCATION

The invocation was given by David Dingley, Special Assistant to District 4 Commissioner Bolin.

PLEDGE OF ALLEGIANCE

Commissioner Andy Anderson led the assembly in the Pledge of Allegiance.

RESOLUTION, RE: PROCLAIMING DECEMBER AS GIVE THE GIFT OF LIFE FOR THE HOLIDAYS MONTH AND KICKING OFF THE GUNS AND HOSES BLOOD DRIVE COMPETITION

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Commissioner Andy Anderson read aloud a resolution proclaiming December as Give the Gift of Life for the Holiday Month and kicking off the Guns and Hoses Blood Drive competition.

Linda Scott, representative from Florida Blood Centers, stated her thanks to the Commission for the support of the mission in saving lives in Brevard County. She advised the event will kick off at the Melbourne Chamber of Commerce; it is going to be a great month; good competition between law enforcement and the firefighters in helping to get blood donations in the community to help the blood centers through the holiday season; and she truly appreciates everyone donating blood.

Tanya Costa, representative from Florida Blood Centers, stated the hospitals are very low on platelets; and when he or she donates one unit of blood it can save up to three lives, because the Blood Center subtracts platelets from a unit of blood. She added, it is imperative that the hospitals have enough platelets on their shelves, and enough blood products on their shelves, because while people are celebrating during the holiday seasons, unfortunately there are accidents and fires.

REPORT, RE: DIAMOND COMMUNITY SCHOOL

Commissioner Trudie Infantini stated she was able to attend the ribbon cutting ceremony for the Diamond Community School playground; she would like to thank the supporters who helped make it happen; Harris Cooperation had over 240 volunteers sign up within two hours of posting a volunteer sign-up sheet. She added, Carrabba's Italian Grill provided food for the event; Orlando Magic teammates and cheerleaders were there to support; and KaBoom playground also helped put on the ceremony. She stated she would like to thank all of the community organizations who volunteered to help other organizations in need in the community.

REPORT, RE: COATS FOR KIDS DRIVE

Commissioner Andy Anderson stated the "Coats for Kids" drive has been enormously successful; it will probably be approaching 400 jackets and coats donated; and anybody who knows of a child in need of warm clothing please call his office, so it can start handing out the jackets to children who need them.

REPORT, RE: EMBRAER

Commissioner Andy Anderson stated he had the opportunity to go to the Embraer and Economic Development Commission (EDC) update meeting; the good news is there are jobs on the horizon; their order seems strong; it looks like the first phase of construction is done, and getting ready to move into the second; and they have already hired a lot of management for the Melbourne site. He stated it is another win for Brevard County as it gets more jobs located before the end of the shuttle program. Commissioner Bolin noted the people Embraer hired were all from Brevard County.

PUBLIC HEARING, RE: PLANNING AND ZONING BOARD RECOMMENDATIONS OF NOVEMBER 8, 2010; AND NORTH MERRITT ISLAND DEPENDENT SPECIAL DISTRICT BOARD OF NOVEMBER 18, 2010

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Chairman Fisher called for a public hearing to consider Planning and Zoning Board recommendations of November 8, 2010; and North Merritt Island Dependent Special District Board of November 18, 2010.

V.B.1. (NMI10111) - TIMOTHY CARLILE requests a change from RR-1 to AU on 3.35 acres. Located on the south side of Chase Hammock Rd., approx. 0.69 mile east of Judson Rd.

Cindy Fox, Planning and Zoning Enforcement Manager, stated the applicant is seeking the AU zoning classification for the purpose of having horses on the property; right now RR-1 permits horses, but only accessory to a single family residence; and since this property does not contain a residence, horses would not be permitted.

Wendi James stated she is requesting to change the zoning from RR-1 to AU for the purpose of putting up a fence and to put two horses on the property.

Commissioner Nelson stated he does not have a problem with the request, but could staff do a Binding Development Plan which says that she can do all the things in RR-1, but she will be in AU zoning. He explained there are some things she can do in AU zoning that would be fairly egregious; for example, horses, chickens, all those kinds of animals; she is getting what she asked for, but it means she cannot go beyond where she is today. He added, there are certain requirements if she ever decides to build a house; but she does not lose anything, she actually gains the ability to have horses.

There being no further comments of objections, the Board approved the request with a Binding Development Plan, eliminating the RR-1 requirement that horses be accessory to a primary dwelling.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Chuck Nelson, Commissioner District 2
SECONDER:	Andy Anderson, Vice Chairman/ Commissioner District 5
AYES:	Fisher, Nelson, Infantini, Bolin, Anderson

V.B.2. (Z1011201) - BOBBY L. COX - (David & Pam Buckner) - requests a change from GU to RU-1-11 on 2.94 acres. Located on the southeast corner of Fenner Rd. & Cox Rd. (4185 Fenner Rd., 665 Cox Rd. & 685 Cox Rd., Cocoa).

Cindy Fox, Planning and Zoning Enforcement Manager, stated this is a request of GU to RU-1-11; the parcel actually consists of three other parcels; all contain single-family residences; the RU-1-11 is requested in order to fix some substandard lots sizes. She added, the applicant wishes to build one additional residence on the property, which is how it has become before the Board, because nothing right now is consistent with the GU zoning.

David Buckner stated he would like to change the zoning, which was originally zoned GU many years ago; there are currently two homes on the three lots that exist; and he would like to add the fourth lot on the east end of it, which would equate out to 1.25 acres for an eventual residence, hopefully at the end of next year.

Commissioner Nelson stated he would ask that no lot created is less than a half-acre; that would be consistent with the neighbors; and inquired if it needed a Binding Development Plan, which is a document stating the applicant will comply with what the Board has asked. He

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reiterated no lot less than a half-acre of the new lots created, and a total of four, which is what Mr. Buckner has asked for.

There being no further comments or objections, the Board approved the request of Bobby L. Cox with a Binding Development Plan stipulating no new lot created be less than a half-acre.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Chuck Nelson, Commissioner District 2
SECONDER:	Andy Anderson, Vice Chairman/ Commissioner District 5
AYES:	Fisher, Nelson, Infantini, Bolin, Anderson

V.B.3 (Z1011301) JOHN L. & BECKY M. BONCEK - (Becky Boncek) request a change from RU-1-7 & BU-1-A on 0.63 acre. Located on the west side of U.S.1, approx 375 ft. south of 10th St. (9050 Hwy. 1, Micco)

Cindy Fox, Planning and Zoning Enforcement Manager, stated the request is from RU-1-7 and BU-1, to BU-1-A for the purpose of developing the property for professional offices and restricted neighborhood retail uses.

Commissioner Trudie Infantini advised she spoke to the applicant, Becky Boncek, on the phone.

There being no further comments or objections, the Board approved the request by John L. & Becky M. Boncek, as recommended by the Planning and Zoning Board.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Trudie Infantini, Commissioner District 3
SECONDER:	Andy Anderson, Vice Chairman/ Commissioner District 5
AYES:	Fisher, Nelson, Infantini, Bolin, Anderson

V.B.4 (Z1011401) - STILL POINT LAKE, LLC - (David Ring) requests a change from RR-1 to AU on 3.28 acres. Located on the south side of Lake Washington Rd., approx 1,000 ft. west of Turtle Mound Rd.

Cindy Fox, Planning and Zoning Enforcement Manager, stated Still Point Lake, LLC, requests a change from RR-1 to AU in order to have horses on the property without a single-family residence.

Commissioner Nelson inquired if the Board would like to do something similar to V.B.1, because the adjacent zoning is all RR-1. Mr. Ring stated one side is AU, which is the same as what he is requesting; the lot to the west is AU; and then opposite is AU also.

Ms. Fox stated the property is actually located in the City of Melbourne Joint Planning Area; and there is a comment from the City of Melbourne in the package.

There being no further comments or objections, the Board approved the request of Still Point Lake, LLC, as recommended by the Planning and Zoning Board.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Mary Bolin, Chairman / Commissioner District 4
SECONDER:	Andy Anderson, Vice Chairman/ Commissioner District 5
AYES:	Fisher, Nelson, Infantini, Bolin, Anderson

PUBLIC HEARING, RE: COASTAL SETBACK AND CONTROL LINES ORDINANCE AMENDMENT

Ernie Brown, Natural Resources Management Director, stated what is before the Board today is a recommendation of amendments to the current coastal code; it addresses two issues and the design to build greater flexibility as it relates to public access and water dependent facilities along the Atlantic shoreline. He explained, specifically, it expands the options available to properties that are offering public access to allow them to have variances from certain elements of the code; and to allow them to build minor structures that would not otherwise be allowed to be built. He added, the second variance relates to water dependent facilities that are on the waterfront, and have structures that are necessary for their operations; and should one not be able to build it, or construct it, one would not be able to have that commercial enterprise, which is water dependent. He advised this actually provides greater flexibility for those types of activities within the Atlantic coastal area; and this comes with unanimous recommendations from the Building and Construction Advisory Board (BCAC), and the Local Planning Agency (LPA).

Cliff Repperger, Gray/Robinson Attorneys at Law, stated the he represents Sebastian Beach Inn (SBI); part of what the Board sees before it arose out of a Code Enforcement action related to SBI and the deck that is located on the property. He added, the Ordinance before the Board is part of what arose out of a prior directive from the Board to take whatever action is necessary to try to remedy the problems that SBI has faced as a result of the Code Enforcement action; and he knows there are several other properties in the south beaches that will benefit from the Ordinance, should they face similar circumstances as SBI. He stated he fully supports the Board's adoption of the Ordinance as drafted, and appreciates staffs help in trying to remedy the problem, and trying to address this by way of the code amendment that is being proposed tonight; and he is available for any questions.

Commissioner Bolin stated Mr. Repperger has an item pending on this particular Ordinance, as far as Code Enforcement; and she inquired if there are several others that are going to be affected by this Ordinance. Mr. Brown stated there is another that is specifically affected at this point in time; but other properties would enjoy this variance process should they need it.

Commissioner Infantini stated her only problem is she does not think the changes go quite far enough; she inquired if the Board adopted the Florida Department of Environmental Protection Statutes 63B-33,34, would that not cover the same information that the Board is changing. She added, from her understanding Brevard County is more restrictive than the State of Florida; it cannot be less restrictive, but it can be more restrictive; and inquired if the Board were to adopt just the Florida Statute guidelines, rather than have their own set, would Mr. Repperger not be able to do the same thing. Mr. Repperger stated he does not have the Statute reference in front of him; he is not sure how it interplays with the Ordinance; staff might have more comments on it. He added, the Ordinance as proposed is acceptable for his client's purposes, because it allows the them to apply for variances that give the Board some control over the rebuilding of these types of structures; and there are certain conditions that it can evaluate and place on the rebuild of the structures; but, in terms of whether it is too restrictive for what Commissioner Infantini is looking for, he thinks staff would be best to address it. Commissioner Infantini

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inquired if it is correct that the County can be more restrictive, but not less restrictive than the State. Mr. Brown stated in this particular instance, in order to meet Chapter 9J5, which is the Growth Management Act, there are very specific requirements that the State mandates local governments to enforce; and for example, the State requires the County to, "Restrict development activities that would damage or destroy coastal resources". He added, the unfortunate situation is under the Growth Management Act staff is absolutely prohibited from removing provisions from local code that address that issue, while there are State code and County code, staff is obligated under Chapter 9J5 to address that; it is a little deeper of an issue, or more complex of an issue, than just simply defaulting to the State in that regard. Commissioner Infantini stated her understanding is Chapter 9J5 would meet the Board's compliance requirement with Growth Management because the State has also adopted the Growth Management rules. Mr. Brown stated he cannot speak to whether the State has adopted Growth Management rules; he knows Chapter 9J5 is specific to local governments, and that is where staff has obligations to satisfy it; that is where staff is right now with the Comprehensive Plan; and it has satisfied Chapter 9J5. He added the amendments that are before the Board today still satisfy the requirements, but provide flexibility of the commercial enterprises and other entities that are achieving to provide public access.

Commissioner Nelson stated his concern is the State could approve something that in the long run could cost Brevard County money; he agrees with trying to simplify and make sure not to duplicate, but in this particular setting the Board could approve things that cause erosion at some point in time, which then the Board ends up having to foot the bill. He went on to say there are some conditions here that the Board may place on the Ordinance; his preference would be to have the applicant relieved of the conditions, as opposed to the Board being the bad guys; and it is a more positive place for the Board to be, to be able to say it has looked at it and agree that the applicant should not have to this based on the testimony, or evidence given to the Board. He explained if the Board required the applicant to restore the dune, or be responsible for restoring the dune based on the Board's approval, which is one of the conditions, then it becomes a different type of argument; it is more productive, from the Board's perspective, to agree to take the conditions out, as opposed to force the applicant to put them in; and it sets up this Board, and future Boards. Mr. Repperger stated before the language was changed in a second draft it required certain conditions, in the way of a perpetual dune maintenance plan to be required as part of the Ordinance; at that point in time the firm did not support the Ordinance, because it did not want to have an absolute. He added, the way it is written right now, it gives staff the flexibility to look at the projects as they come for a variance application; and if a perpetual dune maintenance plan, or some other condition is needed, the applicant can propose it to the Board as a condition on the variance; and then the Board, as part of the variance presentation, will say either it agrees with the conditions or it does not. Commissioner Nelson stated it puts the Board in a different position; it is up to the applicant to show the Board that he or she does not need it; and he would rather have the ability to say yes, the Board agrees, versus he wants the applicant to do this, because at that point the Board is the bad guys. He explained the Board will be saying it is going to cost the applicant \$20,000 to put sand back on the beach every time it erodes from under the deck; and that is a precarious place for the Board to be; and he worries about the long-term effect of multiple applicants getting approved. He stated his preference is that the Board have the conditions in there as a requirement to begin with, and then the Board can opt out based on testimony and staff review; and he thinks, as a Board, it would be in a more favorable position from the beginning, as opposed to having to put things in and being accused of overextending.

Commissioner Anderson stated he feels this is a good compromise Ordinance because it should be less restrictive; he gets really nervous with additional restrictions and he prefers not to do that; and he would rather have the final say so. He added, why set staff up for failure to then have the Commission come in and change it; and it makes staff look bad. He commented it can always come back and look at whether it wants to go with the State requirements, make it less

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lenient, or whether the Board can put additional restrictions in there as Commissioner Nelson would like to. He stated let the Board move forward with what it has in front of it; and let Commissioner Nelson and Commissioner Infantini look at their issues and then come back and revisit it.

Commissioner Infantini advised page five of eleven states, "Minor structures shall be elevated above dune vegetation and shall allow adequate light penetration"; however, if one looks at the corresponding Statute from the State, 62B33, it does not even require minor structures to come into play and require permitting. She added, if one looked at the wording on page four, paragraph 5(a), it starts listing numbers one, two, and three; it says number one 'and' two; but after one gets to number two it does not say 'and' number three, or number three; so the problem is, how is everyone going to interpret this; is that an 'and' or an 'or' after item number two. She went on to say there is another section where this happens; it does not tell one if they are subjected to all four rules; is it one, two, three 'or' four on page one and two of eleven; it is missing the word 'and' or 'or'; and she does not know how staff is going to apply this legally. Mr. Richardson read aloud Section 1, "The setback provisions of sections shall not apply to any modifications provided that such modification", and then there is a list of four items; and inquired the intent of Natural Resources Director, Ernie Brown. Mr. Brown responded that it is existing language. Mr. Richardson stated it is existing language and Commissioner Infantini's question is, are the applicants supposed to be conjunctive; meaning one cannot do any of those things, or any one of the things; he thinks the intent there is to not trigger any one of the items, because 'you shall not'; and inquired if there is a way to clarify this. Mr. Brown stated it is a matter of application; it has been applied for several years because that has not changed; it is intended to be 'can not' do any of the four items. Chairman Fisher stated it is a 'shall not'; with Mr. Brown responding correct, "shall not apply to any modification, maintenance or repair of any nonconforming structure, provided that such modification, maintenance or repair" does not do the following. Commissioner Infantini stated if one looks at page four of eleven, number five, staff has added a number three; there is a conjunction between 'one' and 'two' and the word is 'and'; but there is nothing between numbers 'two' and 'three'; so is it number one 'and' number two 'and' number three; or is in 'or' number three. Mr. Richardson suggested there be a semicolon and an 'and' at the end of number two, as that is the intent. Mr. Brown stated staff can make that happen, it is an easy point of clarification.

Commissioner Nelson stated often, the regulations that are in place tend to place the hardship of failure on the owner of the property; and in this case, the failure is going to fall on the taxpayers. He explained if a structure causes erosion downstream, which takes out the house next to an approved area, the taxpayers are going to pay for it, and that is his concern; if there is a failure to keep sand underneath the structure, and the property next door erodes, the County is on the hook; because the owner could walk away and go bankrupt; and the County is going to be the one on the hook to fix it. He commented it is setting up citizens and Boards in the future for financial hardship; and it is unusual in the Board's case, because usually it is with a failed drainage system problem of the property owner, not the County. He concluded, dune construction is extremely expensive.

Commissioner Anderson stated section six, starting on page five of eleven, addresses this issue; the final language added was, "Failure of property owner to maintain the dune in accordance with the approved plan shall constitute a violation of this article"; and 'a' through 'e' above, does that not make him feel better. Commissioner Nelson responded if it were part of the original application discussion, as opposed to the Board having to have staff say it should do these things, it is better to have it out there as part of the original discussion, so when staff brings in the evaluation it will have addressed all the points, and not be in a position to be adding something. He stated he thinks the Board should evaluate just on merit as part of the original process; take them out based on the discussion; and not be forced to put them in.

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Commissioner Fisher inquired if it would change anything with Mr. Repperger's client, SBI. Mr. Repperger stated he does not know if he completely understands exactly the way the Board wants the language rewritten; but if the suggestion is that it absolutely has to have a perpetual dune maintenance plan, then that would be something his client would not support; if the language was changed to say that a perpetual dune maintenance plan shall be evaluated as part of the criteria, and that it is not mandatory, then they would not have a problem with that; and that is essentially what is now in section six. Mr. Richardson inquired if the Ordinance would read so that is a 'shall' requirement that may be waived by the Board if the petitioner demonstrates that it is unnecessary, rather than how it reads now where it is something that is required at the Commission's discretion. Commissioner Nelson stated in the end he could still end up with it as a condition, even if the Board approved it today; he is just looking to have the discussion as part of the original application process. Mr. Repperger stated the problem with that, at least from his client's perspective with regards to their specific problem, if he was required to deal with a perpetual dune maintenance plan, and with the assumption it had to come to the Board and argue against it, the client is going to be required to get a coastal engineer, and bring in people to testify to the Board. He added, otherwise he could deal with staff; and if he needs the coastal engineer and others, staff is going to tell him he does need a perpetual dune maintenance plan, at which time he could go out and get the coastal engineer; but the client does not necessarily need to incur that expense if it is not mandatory. Commissioner Nelson stated he is not looking to add a cost; what he is really saying is if staff is in a position to say it thinks one needs a perpetual dune maintenance plan, it really will not matter whether it is before or after. Mr. Repperger commented from an applicant's perspective, to deal with staff in the course of filling out the application before it ever gets to the Board, so the issues can be dealt with rather than having to come into the meeting without knowing what everyone has agreed upon, or what the Board is willing to support.

Mr. Brown stated there is one element that may shed some light on this, and is very pertinent to the conversation; on page five, both the variances 'b' and 'c', at the last one B6, and then C3 reads the same; he read aloud C3, "The granting of the variance shall not be injurious to adjacent properties, or contrary to the public interest." He explained this opens the door to the very discussion, because the variances is a 'shall not'; to give an example of public interest in this regard is the Beach Management Program; if it causes the public to incur greater cost associated with the Beach Management Program, then the applicant will have to demonstrate their efforts to mitigate through either a perpetual dune maintenance plan, a bonding system where it can provide financial insurances that they can meet the financial obligations of maintaining the dunes where their structure has created an exacerbated erosions event. He added, which does happen when one builds out on the dunes, it destabilizes the dunes systems and additional efforts are needed to maintain the dunes. He stated the elements B6 and C3 do open the door to staff evaluating whether or not sufficient mitigating factors are in place to ensure it does not injure adjoining properties, or it is contrary to public interest; that may be the place where staff would put language to say, which could 'include' items in identified in six; if that would satisfy the Board to provide greater clarification. He explained that was the intent of B6 and C3, to ensure that is a standard evaluation so that staff does not permit something that is injurious to adjacent properties, or contrary to the public interest.

Chairman Fisher asked Mr. Richardson if there was some language that he could come up with, or does this an item need to come back to the Board. Mel Scott, Assistant County Manager, read aloud the way the section would read on page five of eleven, paragraph (c), "And meets the following criteria"; the new paragraph (c) would read, "And meets the following criteria or such reasonable conditions as the Board deems necessary to maintain the purpose and intent of this article." He explained that is how the paragraph would end, then staff would delete the rest of the language that is not underlined in 6; and would take all the underlined language that starts with the words, "Such conditions may include"; and staff would make that a number four, so now it would have 4(c); and it would then be (a), (b), (c), (d), and (e) still intact; but at the end

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of the new paragraph it would say, "The Board may consider waiving the above listed criteria of 62-4209, (6) one, two, three, and four if the applicant provides substantial competent evidence supporting the waiver of said provisions." He stated that is how the Ordinance would read to accomplish that; what the new language has done is place additional criteria, which is not identified as 'may consider' in 6 (a) through (e) and it would make that a number four (a) through (e). Mr. Richardson explained it essentially becomes a rebuttal, presumption is the way it would work; one could come in and overcome that, and he does not know if there would need to be the full extent of an engineer's report if preliminary; and staff was in agreement with him. He added, he thinks working with staff, and staff's report, could probably meet that burden. Mr. Repperger stated he is not sure he agrees, based on the language that the applicant has to provide competent substantial evidence that the conditions are not needed; the only way for he or she to do this, is to provide some kind of expert testimony; and if staff evaluates the application and states there are no adverse affects of this structure on any adjacent properties, he does not think that the applicant needs to do anything additional, in terms of dune maintenance. He explained with that language in place, even with staff's recommendation he still cannot get over the hurdle without bringing in some type of competent substantial evidence. Mr. Richardson stated under the County's code, staff's opinion on matters such as that, is treated as expert opinion and that would constitute competent substantial evidence; he could just proffer the staff analysis. Mr. Repperger stated if that is the case, then that is fine.

Mr. Scott stated he had listed as placing the burden of the competent substantial evidence to one, two, three, and four; to modify his idea to just include the new four; so one, two, and three, as presented, would always be in play; the new language would allow four to be taken out of play upon consideration of competent substantial evidence by the Board, which could be offered, by way of staffs opinion, that would be presented to the Board. Mr. Richardson stated or even the property owners testimony; as one knows, property owner testimony could be competent substantial evidence, it does not have to be expert opinion. Mr. Repperger explained with regard to dune maintenance and the welfare of the dune, he is not sure his client is capable of giving that type of testimony.

Mr. Scott stated the language that he is going to read will become a new number seven, under 62-4209 (b), and will become a new number four under 62-4209(c); at the end of the sentence of paragraph (c), "and meets the following criteria", staff will add, "for such reasonable conditions as the Board deems necessary to maintain the purpose and intent of this article." He added, that will cover the new number seven under (b) and new number four under (c) which will read: "The Board may consider waiving the above listed criteria of 62-4209, 6(c)4, if the applicant provides competent substantial evidence supporting the waiver of said provision."

Commissioner Infantini stated when the Board was approaching revising some of the Code Enforcement rules, staff suggested to put in the body of the document the 'intent and purpose' so it could be interpreted; and she realizes that staff has 'whereas', but it does not have the definition of the 'intent and purpose', which leaves it strictly up to interpretation. She added she cannot be in favor of this until some of the language is cleaned up; if staff is going to put 'intent and purpose', then have an 'intent and purpose' so it has it defined and everyone is on the same page knowing what the wording is.

Mr. Scott stated for the Board's consideration, in this instance the 'whereas' speaks to such broad banner issues as protecting public health, safety, and welfare; he does not know that adding that into Section 62-4207 gives or takes away any additional clarity, or gives staff additional latitude to create interpretations. He added having it in, or not having it in, speaks to the \$57 billion economic benefit to tourism that Brevard County's waterways and healthy beaches provide; and also strives to promote recreational and commercial working waterfront communities.

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Commissioner Nelson stated the language has always been in the document, so it has not added any; it is just where in the document it appears; and that gives him a comfort level.

There being no objections, the Board adopted Ordinance No. 10-25, amending Code of Ordinances, Chapter 62, Article XII Code of Ordinances of Brevard County, Florida, relating to Coastal Setback and Control Lines, specifically amending Sections 62-4207, Nonconforming Structures, 62-4209, Variances; and 62-4213, Permitted Structures Seaward of Coastal Setback Line; providing for the interpretation of conflicting provisions; providing for severability; providing for area encompassed and an effective date.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Mary Bolin, Chairman / Commissioner District 4
SECONDER:	Chuck Nelson, Commissioner District 2
AYES:	Fisher, Nelson, Infantini, Bolin, Anderson

CITIZEN REQUEST, RE: COCOA RECYCLING

Don Brintle stated he has lived in Brevard County for 50 years, and the woods by his house have caught on fire two times in two weeks; and homeless people are living in the woods again. He added, Cocoa Recycling is piling up old trailers and burning them on the property right where they are; and something is going to have to be done. He asked the Board to do something about it, as it gets worse every day.

Commissioner Nelson stated the County would look into Cocoa Recycling burning; outside burning is not permitted; and he will inform Social Services of the homeless people and try to get them some help.

The Board reached consensus to adjourn the meeting at 6:01 p.m.

ATTEST:

SCOTT ELLIS, CLERK

ROBIN L. FISHER, CHAIRMAN
BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA