

## LOCAL PLANNING AGENCY/PLANNING AND ZONING BOARD MINUTES

The Brevard County Local Planning Agency/Planning & Zoning Board met in regular session on Monday, November 23, 2020, at 3:00 p.m., in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order by Chair Mark Wadsworth, at 3:00 p.m.

Board members present were: Ron Bartcher; Harry Carswell; Brian Hodgers; Ben Glover; Mark Wadsworth, Chair; Peter Filiberto, Vice Chair; and Joe Buchanan.

Staff members present were: Amanda Elmore, Interim Planning and Development Director; Cheryl Campbell, Comprehensive Planner; Abigail Jorandby, Assistant County Attorney; and Michelle Adams, Administrative Secretary.

### Excerpt of Complete Minutes

#### **5. Amendments to Chapter 62, Article VI, Zoning Regulations, Relating to Vacation Rental as a Permitted use in certain zoning classifications.**

Amanda Elmore stated approximately one year ago staff was asked to look into the possibility of whether or not vacation rentals could be made a permitted use in zoning classifications where short-term rentals/resort dwellings are not currently permitted. The County Attorney's Office researched the issue and found it could be done as long as a definition of vacation rental was adopted that was in conformance with the State definition. She said staff has added the definition of vacation rental, which is a little different than the existing resort dwelling definition, which will remain. In February, this item was brought back to the Board and there was a list of mostly single-family residential zoning classifications to add vacation rental to. On September 15, 2020, staff received legislative intent and permission to advertise the amendments. There is an exhibit in the board's packet that goes through the more than 50 zoning classifications in the County. Right now, resort dwellings are either permitted, permitted with conditions, or require a conditional use permit through the public hearing process. The permitted with conditions and the conditional use permits are rare because there are some other parameters that make finding those types of instances rare. Right now, resort dwellings are only in multi-family uses and residential attached uses, such as duplexes. This amendment would open it up to the rest of the single-family residential zoning classifications, and vacation rentals would be opened up to single-family residential, as well as the mobile home zoning classifications, and the PUD zoning classifications.

Ben Glover stated for clarification, the amendment is for unincorporated Brevard County only, and municipalities would regulate if it were allowed in their cities.

Ms. Elmore replied that is correct, it is for unincorporated Brevard County only and most of the towns have their own regulations that have been grandfathered-in. Brevard County's regulations have been on the books since prior to June 1, 2011. Approximately nine of the 12 municipalities have regulations similar to Brevard County that are also grandfathered-in.

Ron Bartcher stated when he read the proposed ordinance's whereas clauses, he didn't see any that identified a benefit to Brevard County residents. He asked if the County Commission gave staff any hint about what the benefits would be. Ms. Elmore replied staff's role is to draft the amendments in the accordance that the Commission gave, they did not give direction to quantify impacts or benefits at this point. She noted if staff receives direction like that on December 8<sup>th</sup> at the first public hearing, they will do that, but that was not part of the direction provided on September 15, 2020.

Public comment.

Jason Steele, 343 Orlando Boulevard, Indialantic, stated he is the lobbyist for the Cities of Indialantic and Satellite Beach, and he's an expert in the courts on real estate laws and zoning issues. He said the most important thing people do as individuals is decide where they are going to live, and when they do, they look at every piece of zoning information and determine whether they want to live by a church or a school, whether or not they want privacy, or whether or not they want ocean access, and they make that decision based on zoning ordinances. He stated people research the zoning ordinances to make the determination to protect their families and livelihoods. He said he has fought this piece of legislation in Tallahassee all through the last session and it is the most controversial piece of legislation. He stated he knows about property rights because he has been involved in real estate for over 50 years, and they include the right of private residential enjoyment. When people decide to go into a home in a zoning classification, the last thing they want to happen is for a county to tell them the zoning classification is no longer good and that it is now gone, because what you have now is party central right next door and not only one family but 10 families. He said he and his wife just bought a lot on East Coral Way in Indialantic and the first thing they did was determine whether or not they could have vacation rentals in the neighborhood, and the answer was no. He said they are going to put \$1 million into the home and his family needs privacy and the right to be able to enjoy the property. He asked the board not pass this piece of legislation onto the County Commission because in his opinion it's unconstitutional, it does away with zoning, and it is wrong.

Kirk Sauder, 345 Woody Circle, District 3, stated he and seven other residents met with Commissioner Tobia on the issue and found out that he has future interests in buying investment property beachside to turn into an Airbnb or Vrbo, so there may be a conflict of interest. He said he also knows Commissioner Tobia received a lot of campaign money from developers in the last campaign that were pushing him to pass this legislation. He said the County is not doing the hotel/motel industry any favors by passing the ordinance because that is tax revenue and if the ordinance passes and allows Airbnb's and short-term rentals it will put them out of business. He said the infrastructure on the island is already being taxed, such as emergency services, water, electric, and traffic. He stated allowing short-term rentals will bring more stress on the infrastructure.

James McGrath, 6400 Highway A1A, Melbourne Beach, stated he also organized a group of eight people to meet with Commissioner Tobia and he would like to point out a couple of things that bothered him from that meeting. He said he told Commissioner Tobia to take a pulse of the area of the South Beaches and see what the people really want. People are not going to put Airbnb's in Palm Bay or West Melbourne, they are going to put them in the most lucrative areas they can find, which are the beaches. He said Commissioner Tobia told him it was to make the language more like the State. He stated Commissioner Tobia also said property owners can do what they want to do, and that he believes in property rights. Mr. McGrath noted he believes in property rights, too, to the extent that they affect him. He said he asked Commissioner Tobia what brought this on, and he said he had somebody who didn't understand zoning. He noted Commissioner Tobia also said the County will get the tax money from Airbnb's. Mr. McGrath mentioned the court case in Palm Beach County where the County wanted the Airbnb's to pay the tax because the County knows the people aren't going to pay the tax. He concluded by saying he is against the proposed ordinance.

Robert Osters, 150 Seaview Street, Melbourne Beach, stated everyone knows about the ecosystem and the turtles in the area, but obviously no one has done an environmental study. He said he talked to Commissioner Tobia's Chief of Staff who said it's complicated and that they want to simplify. He

said he hopes he can get enough of the community to go along with him, because he doesn't know how anyone can see a benefit in this.

Cheryl Hernandez, 122 Pelican Drive, Melbourne Beach, stated the community outreach statistics as of today is 11,371 people reached through a Facebook page with over 300 followers; over 2,800 page views on a website in less than two weeks, 409 signatures on the original petition which ran until November 3<sup>rd</sup>, 319 signatures on a new petition, and 429 responses to an online survey in opposition to the ordinance change. She pointed out that the final draft of the ordinance revision shows the addition of vacation rentals in every residential area; the only areas not included are environmental areas, government managed lands, and institutional uses. She said the proposed ordinance virtually adds commercial use to residential areas; Brevard County Code Section 62-1102 defines resort dwelling as a rental less than 90 days and states that a resort dwelling is a commercial use; therefore, a vacation rental, since it's a rental less than 30 days, would be considered commercial as well. In 2006, a lot of time and research went into developing the current zoning regulations to protect residential neighborhoods from commercialization. She stated the Administrative Policies of the Future Land Use Element establishes criteria when considering a rezoning action, "The worst case impacts of potential uses available under applicable land use classifications shall be evaluated. The character of a neighborhood or area shall be a factor for consideration and must not be materially or adversely affected." In 2011, a State Statute was adopted to give control over vacation rentals to the State and limit the ability of local governments to regulate vacation rentals except where local laws or ordinances were in place prior to June 1, 2011, and Brevard had those. The County Attorney's Office gave an opinion to Commissioner Tobia's office on November 7, 2019, that says any new zoning classification that would allow vacation rentals would need to be permitted without any restrictions or conditions, and anything that is not changed would be allowed to stay in place. Allowing the changes will relinquish all local control over vacation rentals to the State and Brevard County would lose its grandfathered status. She stated the new classification comes with no restrictions, no limit on how frequently homes can be rented, or for how long. She noted Airbnb owners are not required to check government ID's for daily renters. There are currently designated areas where these places can exist and many hotels/motels with oversight on premises to host overnight guests. She said it may not lead to higher tax revenue; Palm Beach County lost its lawsuit against Airbnb's to collect those taxes, and it falls back on vacation rental owners to pay their taxes.

Jeff Graham, 6795 Highway A1A, Melbourne Beach, stated he has owned oceanfront property in Brevard County since 1976. He said he has spent weekends saving sea turtles, surf casting, and has even observed panthers crossing A1A. He stated he is an advocate of short-term rentals, and restricting income and freedoms is ludicrous. He said he was impacted in 2011 when he could do short-term rentals, and then that changed. Unfortunately, for the last 10 years he has had to have an annual rental, which means his children have not had the chance to experience what he had when he was raised. He said the 90 plus one days makes sense from a seasonal standpoint, but there weren't a lot of options in the duration of renting, so that's why he is renting annually. He stated a benefit of the proposed ordinance would be income, with no limitations or restrictions, and the onus should be on property managers to make sure they abide by the rules for rentals.

Lisa Jewel, 240 Ocean Ridge, Melbourne Beach, stated she has lived on Ocean Ridge for 20 years, and a new development is being built next door, Harbor Beach Club. She said one of the things Lennar is advertising for Harbor Beach Club is single-family floor plans varying from four to eight bedrooms, and "families and groups of all sizes can be accommodated, and with so much room in

each home, Harbor Beach Club is perfect to raise a family or rent out to vacationers.” She said her fear is that it will turn in to groups of all sizes, which is not what the community was built for.

Delores Conway, 123 Cardinal Drive, Melbourne Beach, stated she is opposed to the zoning code revisions and the creation of a new definition for vacation rental. With a broad brush, the Commissioners are seeking to re-define all of the unincorporated areas of Brevard County while keeping the 16 cities and towns un-touched. She said the proposed changes not only create a new definition for short-term rentals, but it applies to over 40 zoning classifications, allowing a hotel-like business anywhere and with no buffer. Melbourne Shores is a long-established community of single-family homes, varying in age, style, and size, with one road in and one road out; there are no public utilities or city water and sewer, very few hydrants, no causeway, and due to the lack of infrastructure, no future plans to build them. She stated changing the zoning to allow Airbnb’s and short-term rentals is in conflict with FEMA’s goal to keep the density down. With as many as 30 Airbnb guests checking in and out of just one home every few days is concealing the increase in density. She asked the board to vote no and leave everything as-is.

Toni Chan, 116 Medina Street, Melbourne Beach, stated there are plenty of rooms for rent along A1A, legally, right now, such as hotels and motels, and legal Airbnb’s. Hotels and motels require inspections and licenses. She said short-term rentals will not have to meet any requirements and they will put hotels and motels out of business. She stated the destruction she has seen from short-term rentals, particularly the 6700 and 6800 blocks of A1A, include destruction of the dunes and harassment of turtles during nesting season, because renters do not care about the neighborhood. She said there is no need for short-term rentals in residential neighborhoods when there are so many rental rooms available. She asked the board to oppose the proposed ordinance, as it’s very important to keep the beaches and neighborhoods private.

David Vreeland, South Melbourne Beach, stated the County is half-way through the 10-year plan to clean up the Indian River and people come in who don’t respect the environment like those who own property on the beaches, and the area doesn’t need that impact on top of what it already has had to deal with to get this far in cleaning it up. He said his community and a number of other communities in South Melbourne Beach have gates that require codes to get into, and now there will be people they don’t know giving the gate codes to strangers and security will go out the window. He stated he has owned his home for a long time and he has worried about the weekend bicyclers who love to use that stretch of road, and in many places the pavement from the white line outward is less than 12 inches. He said people who rent short-term in a residential neighborhood do not realize it’s not a resort and they treat it like a resort in that someone else is going to clean up after them, including on the beach. He stated the County isn’t going to clean up the beaches after the people leave. He said he hopes the board will advise the Commissioners accordingly.

Patricia Keller, 136 Regatta Street, Melbourne Beach, stated it came to her attention last month that an ordinance amending the zoning classifications to allow vacation rentals would affect her neighborhood. The purpose of zoning is to promote and protect public safety and general welfare, protect the character and stability of the neighborhood, and conserve the taxable values of the properties of the neighborhood, and the proposed ordinance will violate all of those. As far as public health, allowing transient visitors in a neighborhood could curtail the physical activities such as walking, biking, and jogging of the residents not feeling comfortable around people they don’t know. She said the feeling of well-being will be exchanged for worry, anxiety, discontent, fear, aggravation, and anger. The ordinance would change the character of the neighborhood by mixing a single-family

residential use with a short-term rental use daily, nightly, and weekly. She asked what will prevent investors from buying properties for short-term rental. She said Commissioner Tobia made an interesting comment regarding short-term rentals at the September 15, 2020, meeting, "short-term rentals are an economic driver, stability, bringing in short-term rentals may determine who buys properties in the future". She stated the ordinance may erode the value of homes, negatively affecting the property taxes, which would mean less money for the County. She said she has heard the argument on the other side that being able to rent short-term will help people stay in their homes, and asked if someone can afford another home, then what is their motive. She asked the board to not degrade the quality and tranquility of the neighborhoods for a monetary gain.

Lynn Gronoski, 393 Hiawatha Way, stated she has lived in the South Beaches for 30 years, she knows her neighbors and there are people who look out for each other, but allowing short-term rentals changes that, and it will create more traffic and noise, and it will be more transient. She said the community is family-oriented and she can't understand why anyone would want to change that. She stated she has heard a lot about trying to get Code Enforcement out, but that is difficult because the renters are only there for certain hours and then you have to call the Sheriff's Office, and the problems do not get resolved quickly. She noted she has eight properties, but they are long-term rentals, not weekly or anything else, and she knows there are a lot of bad landlords and a lot of bad property managers. She concluded by saying she is totally against the ordinance.

Ayn Samuelson, Sand Piper Drive, South Patrick Shores, stated she is the President of the South Patrick's Residents Association and a residential rental owner for over 50 years. She stated she was one of the individuals 15 years ago who worked with the County to craft the current ordinance because there was an issue in her neighborhood, and from 2005 to 2006 she and others worked to get the ordinance in place to protect their neighborhoods. She said they had no idea they didn't have that type of protection because they never thought there would be a hotel next to them in a residential area, but that's what has happened. She stated the ordinance created a balance of different types of properties, just not in the same place; there were designated areas. Putting a resort dwelling in a residential area is unbelievable; she lives next to one, and there was once 14 people at a time, there were animals, and a destination wedding. She said sees it as an issue of forcing homesteaded owners out and also causing a problem for affordable housing, which residents also pay for in County taxes. She stated land use and zoning are supposed to be used specifically for the health, safety, and welfare of people, which is something residents have been accustomed to in residential areas. She asked the board to not diminish the residents' protections or residential property rights.

Linda Lawton, 113 Margarita Road, Melbourne Beach, stated she is upset that Commissioner Tobia has proposed the ordinance in the middle of a pandemic where she has to risk her health to come the meeting to take care of important business for her neighborhood. She said this is the wrong time for the ordinance and the County will be diminished if it gets rid of neighborhoods.

Mark Shantzis stated he has lived in Brevard County for 23 years and he moved here for the safe neighborhoods. Since 1995, 90,000 new residents have moved here for the safe neighborhoods with the understanding they are residentially zoned. He said the analysis is not there in order to decide the issue; there is no data. The high risk of the amendment could trigger the loss of the County's grandfathered exemption. The Florida Association of County Attorneys (FACA) says it's a high risk; the Florida League of Cities (FLC) says it's a high-risk; and the attorney for Thousand Friends of Florida says it's a high risk. He asked if the ploy that vacation rentals are a different definition than resort rentals will work. The FACA, the FLC and Thousand Friends all believe that resort dwellings

and vacation rentals are the same thing. He said there are enough lawyers and owners who have rejected vacation rentals in many cities and counties throughout Florida, including nine in Brevard County. He said the board has to take all of it into consideration, besides the fact that the Comprehensive Plan says it cannot be done; the densities on the South Beaches cannot be changed. He stated there has not been good notification of the ordinance, and it is not an intelligent thing to do.

Dick Kirshner, 6537 Angeles Road, Melbourne Beach, stated he and his wife have the unofficial job of taking care of the south access and every weekend they have to clean up because renters trash the beaches. He said the County spends millions of dollars on beach and dune restoration, and he has seen kids running up and down them, destroying the seagrass, and they are not neighborhood kids, they are renters. He stated there are three or four Airbnb's near him operating illegally, and renters are there every weekend and they are very noisy. He said there is not any benefit to anybody who lives in Brevard County, and a lot of the properties are not owned by locals, they are owned by people from other states who buy them as investment properties and rent them out. He said he spoke to Commissioner Tobia and invited him to come to his neighborhood on a weekend for a tour so he could see for himself and he said no, but he extends the invitation to any of the board members if they would like to come down on a weekend. He asked the board to please not approve the ordinance.

Pamela Boardman, 6855 Angeles Road, Melbourne Beach, stated the South Beaches area are cohesive communities, not just neighborhoods; they look out for each other, they live together, they work together for the betterment of the communities, they go to church together, and they are there for each other in good times and bad. She said it took years to grow and nurture to make the communities what they are today. She said she and her neighbors sought out and established crime watch areas, sponsor portions of A1A clean up, and they are on the beach picking up debris on a daily basis. She asked the board to keep the current laws in place and vote no.

Mark Havican, Winona Road, stated he has only been in Brevard County for one year, but it took many years to decide this is where he wants to be. He said he researched the area before he bought his home and he bought his home because it is a neighborhood. He noted people who advertise through Airbnb pay a 3% fee to Airbnb based on the rental, and that makes his neighborhood commercial. He asked how to change the zoning, because obviously it has to be changed if it is commercial. He said he doesn't think Airbnb's or short-term rentals belong in residential neighborhoods.

Pat Widdowson, Winona Road, South Melbourne Beach, stated when she heard resort dwellings were now going to be vacation rentals, the impact didn't occur to her until she started reading about it. Because resort dwellings were allowed as commercial entities in certain areas, it didn't occur to her that if the name is changed there can be vacation rentals anywhere. She asked how could the Florida Legislature can say vacation rentals can be the same everywhere. She stated staff could not have looked at the criteria and conclude that there could be commercial entities right next to her.

Seeing no further public comment, Chair Mark Wadsworth closed the public comment and brought the item back to the board.

Joe Buchanan stated he studied all of the objections and the biggest one is the less than 90 and 30 days. He said the ordinance is very convoluted and very complex, and enough has been changed or pre-empted, so everything remains intact, and asked staff if that was true.

Ms. Elmore replied additional permissions would be given to have vacation rentals in additional zoning classifications. Resort dwellings would remain, but the proposed ordinance would open it up to additional zoning classifications.

Mr. Buchanan noted there are 54 zoning classifications. He stated there is no intent by staff or any of the commissioners to take away anybody's individual rights. They are trying to look at the issue that was mandated by the State to make sure it's carried out correctly throughout the State, and asked staff if that was correct.

Ms. Elmore stated the Board is not currently required to do anything, but what they asked was whether or not staff could add vacation rentals as a permitted use, and the County Attorney's Office believes staff can.

Mr. Buchanan stated some municipalities require additional annual applications and inspections, and asked if that was correct.

Ms. Elmore replied that is correct, but if vacation rentals are added, there would be no restrictions placed upon it regarding occupancy.

Mr. Buchanan stated the responsibility staff carried out in the last year is in depth, and a lot of work was done, and none of it is meant to be harmful to anybody. He said it is a tough thing to understand but he doesn't think it should be completely banned. He said it needs to be studied in depth and more information needs to get to the residents so that they understand it better, and find a solution.

Ron Bartcher stated what the new ordinance does is essentially open up all of the zoning classifications for vacation rentals with no restrictions. What exists today is a limited number of zoning classifications where someone can have a vacation rental with some restrictions. He stated he doesn't know how many board members have had experience with renters, but what he believes is that the change is actually going to replace the communities of permanent residents who know their neighbors and have a personal interest in maintaining the area, with transient communities of strangers who don't care about the area. He stated he thinks it is a very bad idea, and the laws that are in place should remain in place because they are adequate and they are working.

Motion by Ron Bartcher, seconded by Brian Rodgers, to deny the amendments to Chapter 62, Article VI, Zoning Regulations, Relating to Vacation Rental as a Permitted use in certain zoning classifications.

Brian Rodgers stated vacation rentals are all over the Keys; it's illegal what they are doing down there, and it's a variety of website upstarts that skirt the laws and are not doing it legitimately and not paying taxes, and it's easy to rent from an individual and skirt the laws. If vacation rentals are opened up, what will happen is there will be more and more upstart websites that are going to come in and make it worse than it already is. This board is not making the decision today, it can just give a recommendation to the County Commission, and everyone needs to go to that meeting and bring up the issues of how there are upstart websites out there that are doing it illegally, and it's not necessarily just the Airbnb's. The Board also has to listen to the comments that hotels will be hurt by the ordinance, and it may sound insensitive, but it is similar to Uber and Lyft, which put taxi's out of business. He said he doesn't see Airbnb going away, nor does he see vacation rentals going away, and it will come back even if it gets denied this time. He said the speakers need to be specific in their

arguments to the County Commission about why they are against the ordinance and ask the Board what they are going to do to stop it in the future. A lot of it comes from the issue of taxing. All of the speakers had valid reasons of why they don't want it, but they should be prepared for a long fight because it will come back next year and the year after that.

Mr. Wadsworth called for a vote on the motion as stated, and it passed 4:3, with Glover, Wadsworth, and Buchanan voting nay. Bartcher, Carswell, Hodgers, and Filiberto voted in favor of the motion.