FLAGLER COUNTY PLANNING AND DEVELOPMENT BOARD
Government Services Building
Board Chambers
1769 East Moody Blvd., Bldg 2, Bunnell, Florida 32110
MEETING
AGENDA
DATE – December 11, 2018
TIME – 6:00 P.M.

1. Roll Call.

2. Pledge to the Flag.

3. Approval of November 13, 2018 regular meeting minutes.

Quasi-Judicial Process: The audience should refrain from clapping, booing or shouts of approval or disagreement. To avoid potential legal ramification and possible overturning of a decision by the Courts, a public hearing must be fair in three respects: form, substance and appearance.

Time limits will be observed:

- **Staff** – 10 minute presentation.
- **Applicant** – 15 minute presentation (unless time extended by consensus of Board).
- **Public Comment** – 3 minutes per speaker, 5 minutes if speaking on behalf of a group.
- **Applicant Rebuttal and Closing Staff Comments** – 10 minutes each.

4. Quasi-judicial requiring disclosure of ex parte communication:
   Application #3160 – APPLICATION FOR VARIANCE IN THE PUD (PLANNED UNIT DEVELOPMENT) DISTRICT – request for Rear Yard Setback Variance from the required 10 foot rear setback in the Ocean Ridge PUD located at 39 Ocean Ridge Boulevard South; Parcel Number: 04-11-31-4900-00000-0630; 0.23 +/- acres. Owner: William and Suzanne Tobin/Applicant: Dan Priotti, Agua Pools & Spas.
   Project #2018100046 (TRC, PDB)

5. DISCUSSION OF ORDINANCE RELATED TO MEMBERSHIP ON THE PLANNING AND DEVELOPMENT BOARD – request by Chair Langello with consensus of the Board to discuss.

6. Staff Comments.

7. Board Comments.
8. Public Comments – Each speaker will be allowed up to three minutes to address the Planning and Development Board on any item or topic not on the agenda.

9. Adjournment

PLEASE TAKE NOTICE THAT INDIVIDUAL COMMISSIONERS OF THE BOARD OF COUNTY COMMISSIONERS MAY ATTEND THIS EVENT. THE COMMISSIONERS WHO ATTEND WILL NOT TAKE ANY ACTION OR TAKE ANY VOTE AT THIS MEETING. THIS IS NOT AN OFFICIAL MEETING OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY. THIS NOTICE IS BEING PROVIDED TO MEET THE SPIRIT OF THE SUNSHINE LAW TO INFORM THE PUBLIC THAT COMMISSIONERS MAY BE PRESENT AT THESE DISCUSSIONS.

PURSUANT TO SECTION 286.0105, FLORIDA STATUTES STATES THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY A BOARD AGENCY, OR COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT A MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, HE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT, PERSONS NEEDING ASSISTANCE TO PARTICIPATE IN THIS MEETING SHOULD CONTACT THE PLANNING & ZONING DEPARTMENT AT (386)313-4009 AT LEAST 48 HOURS PRIOR TO THE MEETING.
MEMBERS PRESENT: Chairman Mark Langello, Michael Boyd, Timothy Conner (arrived at 6:10 pm), Laureen Kornel and Anthony Lombardo.

MEMBERS ABSENT: None

STAFF PRESENT: Craig Coffey, County Administrator; Sally Sherman, Deputy County Administrator and Growth Management Director; Adam Mengel, Planning Director; Gina Lemon, Development Review Planner III; and Wendy Hickey, Planner.

BOARD COUNSEL: Kate Stangle, of Broad and Cassel

Chairman Langello called the meeting to order

1. Roll Call.
   Attendance was confirmed by Ms. Lemon and a quorum was present.

2. Pledge of Allegiance.
   Chairman Langello led the Pledge of Allegiance to the Flag.

3. Approval of the October 9, 2018 regular meeting minutes.
   Motion to approve made by Mr. Boyd seconded by Mr. Lombardo
   Motion carried unanimously

Chairman Langello announced that there had been public notice for applications #3050 and #3058 for the rezoning and site development plan for Beachwalk, which was not on tonight’s agenda. He asked if there was anyone there to speak on either of these items giving them an opportunity to speak on the record seeing none he continued on with the published agenda.

4. Quasi-judicial requiring disclosure of ex parte communication:
   Application #3156 – APPLICATION FOR SITE DEVELOPMENT PLAN FOR A PUBLIC USE IN C-2 (GENERAL COMMERCIAL AND SHOPPING CENTER) DISTRICT – request for review of a Site Development Plan for a Public Use in the C-2 (General Commercial and Shopping Center) District located at 5862 North Oceanshore Blvd; Parcel Number: 40-10-31-3150-0000-0180; 7.45+/- acres. Owner: Flagler County Board of County Commissioners/Applicant: Captain’s Bait, Tackle & BBQ, LLC.

Chairman Langello asked for ex-parte disclosures; no disclosures were made.

Mr. Mengel, presented the staff report and recommendation.
Draft

Staff recommends that the Planning and Development Board approve Application #3156, adopting a Site Development Plan for a total of 7.45 acres, more or less, identified as Parcel Number 40-10-31-3150-00000-0180, and developed as Bing’s Landing Park, and existing Public Use in the C-2 (General Commercial and Shopping Center) District.

Jay Livingston Esq., Livingston and Sword, P.A., 383 Palm Coast Pkwy. SW, Palm Coast, attorney for the applicant. Gave an overview of the current conditions on site and challenges of repairing the existing building and reasoning for the proposal of a newly constructed building.

Chairman Langello asked when the new building is constructed, and the old building demolished what will happen in that footprint.

Mr. Livingston state there was discussion about using the area to expand parking, but at the A1A meeting their recommendation was they did not want any net loss of greenspace. The hope is – and the applicant supports this – that this will become an enhancement to this part of the park.

Chairman Langello asked if there was a need for additional parking.

Mr. Livingston responded there is sufficient parking per code based on the size of the existing and proposed building. There was an email sent by Mr. Clark (attached to these minutes as Attachment “A”) about the signage, and the sign plan. Except for the existing monument sign, the elevations provided for the building have changed a little bit so we put signs on all the fronts to see how they looked. We don’t know if there are going to be three signs or one sign or a smaller sign, that is all dictated by code; they were on the plan for conceptual use only.

Mr. Mengel stated as far as parking is concerned, we know there is a need for additional parking. This is something that we as the owners of the park will be taking care of. Our engineering staff is working on providing additional parking. The existing monument sign and maybe additional signage on the Intracoastal and maybe some wayfinding signage that will be part of the overall park plan.

Mr. Lombardo asked if the applicant is funding the construction and building it or just funding it and the County building it.

Mr. Livingston we will be getting the General Contractor.

Mr. Lombardo so you will be funding and building.
Ms. Kornel asked if the County has any input on which GC is being selected?

Mr. Livingston stated this the technical part of the process and we have had discussions with the Planning Department and we will go through a review and the second part of this which is not part of the Planning Board’s purview, is the Lease Amendment which would go before the Board of County Commissioners at their next or following meeting. We will incorporate any recommendation the Planning Board has for the site plan that needs to go into the lease.

Chairman Langello opened the public hearing

Dennis Clark, 5784 N Oceanshore Boulevard, provided a handout to the Board, and presented a Power Point Presentation (attached to these minutes as Attachment “A”), spoke of moving to the area in 2005 and its natural beauty. He went on to discuss how the parks parking has increased over the years and the need for it. He spoke in opposition and his reasons are that the proposed location is the center of the park, the only spot under the trees with an unobstructed view of the Intracoastal. The park is already 34% covered with structures, parking and sidewalks, which is twice as much as another fully developed park, Holland Park. The proposed increase of seating by 50% to 150 seats creates the need for additional parking, which will turn the park into a parking lot on environmentally sensitive lands.

Joy Ellis, 85 Ocean Oaks Lane, provided a handout to the Board (attached to these minutes as Attachment “B”) and spoke in opposition of the project her reasons is that this is a unique environmental and recreational historic park and should be maintained as such without additional impacts.

Dr. Lynn Bravo Rosewater, 200 Ocean Crest Drive, Apt. 815, provided a handout to the Board (attached to these minutes as Attachment “C”) spoke in opposition of the project. This project is not consistent with the Land Development Code, SEC. 3.06.058 that this use is consistent with the Comprehensive Plan and that the use is necessary viable to support community needs, this is a park. The proposed building is bigger than the existing building. It is injurious to the county because it is a park. It takes up area that people use as a park. As public land there is a responsibility to take care of the land for all citizens to utilize it. You should look at is it in the best interest of the citizens to relocate this building to the proposed location. It should not happen on public land. This is a public park not a public restaurant.

Jonathan Dunham, 15 Pamela Parkway, spoke in opposition to the expansion and relocation of the restaurant, thinks they should use the existing foot print.
Janet Sullivan, 35 Nantucket Drive, spoke in opposition to the expansion and relocation of the restaurant quoting sections of the Flagler County Comprehensive Plan.

Randy Odom, 30 Carolina Highway, spoke in opposition to the project. He shared his concerns about public notice for this item he also had concerns that the applicant has over reached in their scope of their business multiple times since the origination of the lease starting as only a bait and tackle no food to packaged food BBQ restaurant. The 5200 square foot proposed building and 3600 square feet used for eating area leaving a lot of additional space for something else. He also is concerned that by having 150 seats the applicant may be able to get a liquor license which there is one available in this area that also include package sales. Another concern is parking this group has come forward as recently as six months ago requesting additional parking they have been approved on some and denied on some but they keep coming back last time they asked for an additional 35 spaces in the park area. This will turn Bing’s Landing into a parking lot and a septic drainfield. The septic system will require approximately a half acre drainfield, 6,000 gallons for the restaurant alone plus for the park use. To put in a drainfield you have to get rid of the trees. The process should be equitable on how it is handled and transparent there are many people concerned I believe if Captain’s BBQ wants to expand they should buy their own land and not use this process to accomplish it.

Joanne Ritter, 3462 North Oceanshore Boulevard spoke in opposition to the expansion and relocation of the restaurant. It is a public subsidization of a private enterprise. Concern of the removal of oak trees for the expansion Let them rebuild in the same footprint not expanding into the park.

Bruce Page, 1520 Lambert Avenue, spoke in support of the project. Feels Captain’s BBQ is an asset to the county.

Chairman Langello, closed the public hearing and asked if the applicant would like to respond.

Mr. Livingston, provided a full size survey of Bings Landing, there was some information given about the location of the location of the new building I just want to make sure everyone is clear. He showed the park and the existing building, he then produces a copy of the siteplan that was submitted depicting the existing and proposed building footprint. He then noted that by taking into consideration Scenic A1A’s recommendation of not creating this as a parking lot as it was part of the initial discussion with the county but by enhancing this area we are creating additional green space for the park. It is not in any way in the middle of the park. It is just on the opposite side of the existing sidewalk. Responding to why we cannot rebuild in the current location that would shut down the restaurant and cost 15-17 people their jobs and significantly impact revenue of the business owner. It would require some negotiation of the lease and or which would put some liability on the county for not supplying the facility that was leased that was not the intention
of the applicant and this seem like a better option a fine location the site plan that was submitted included a tree survey and you can see we have minimized the impacts to trees. Mr. Clark provided some information from an arborist on how we could further minimize impacts to the trees and they will all be taken into account. The drainfield of the septic system which is not our responsibility. It is the County’s responsibility to enhance and upgrade the septic system. It is my understanding that it will be designed in a way to meander through as to not create any impact to existing trees. There is more than enough space throughout the park to do this. The issue of a restaurant within a park was brought up at A1A. Restaurants in parks is something you will find throughout the state of Florida and in most states and countries. In Flagler County we have Bull Creek, which is a park we have Hijackers which is on county property, the Funky Pelican is on a municipal pier and we have Captains BB-Q at Bings Landing. I grew up in south Dade County and they have a Black Point Marina which is a county facility has a restaurant which has a full bar which we are not proposing for this project. Mr. Odom mentions something about the seating count and the liquor license. There is no intention to purchase a $100,000 (one hundred thousand) dollar liquor license or have any package sales. The seating requirement is to recoup the expense the estimated cost for this building is $1,000,000 (one million dollars) the business owner has agreed to fund and dedicate it to the County. The added seating the more efficient use of space. The original RFP is include BBQ the actual use has always been a BBQ restaurant as well as a bait and tackle shop that amenity will still be available at some location on site as part of the lease requirement. It is a fishermen’s park.

Mr. Boyd, We have heard that the new building is the same size as the existing building and we have heard its going to be larger than the existing building which is it?

Mr. Livingston, responded the new building will encompass everything that is cover by the existing lease. There is a little difference between what is leased and the actual structure. The eating area, kitchen area, bar lounge area, ordering counter, rest rooms, smoker area and additional kitchen storage area, and deck. All those uses are housed on the space that is leased, the smoker area is outside the wood storage area is outside, and we are proposing that all of this will be under roof except for the smoker.

Mr. Boyd, so the footprint will be close to the same thing.

Mr. Livingston, respond yes

Mr. Boyd, if the building is built what will be done with the existing site?

Mr. Livingston, there were discussions of using it for additional parking A1A recommended it be enhanced for a zero net loss of greenspace which we support and since the location of the existing building is closer to the water there is an opportunity to create some amenity once the
existing building is demoed. We are not responsible for the parking part as stated in the application
there is a raw parking requirement and the number of existing parking spaces in the park is noted.
The park as a whole may need additional parking spaces. That is something that will be discussed
as part of the lease and the lease amendment. Our application is only this building and the
monument sign which already exists and will not change. The rest is the park and under the
jurisdiction of the county. So people should make sure they talk to their elected officials and
county staff.

Mr. Boyd, I guess if they are willing to spend so much they must have a good business there.
Somebody must be enjoying the restaurant. But I can also understand the problem with the
aesthetics, and people wanting to maintain the integrity of the park.

Chairman Langello, to clarify the applicant is not responsible when they tear the building down
that is the county that is going to be doing that and replacing it.

Mr. Livingston, responded yes

Mr. Lombardo, How much in depth did you go into in regards to replacing the actual building
ad not having to build something new? Did you really do the research to put in the time frame
cost wise before just making the decision to build something new?

Mr. Livingston, The cost would be about the same, we would probably replace it with a similar
structure that is proposed in the plan. The problem is it is going to take better part of a year to go
through permitting, the archeology component has to be gone through we cannot disturb dirt out
at the landing without going through archeology review and that shuts the business down for a
significant amount of time. From the perspective of the applicant they are tenant under a lease.
They were provided a building that is not suitable for the use it is leased for. This is a compromise
in the sense that finding a new premises without having any interference with lease rights of the
tenant as well as enhancing what is a building that is falling apart. The most egregious example
is of many is an employee fell through the floor and the toilet in the bathroom literally fell through
the floor this is how bad the structural integrity of the building is. Whether the applicant twill be
willing to shut the restaurant down for an extended period of time the answer is no, and it will
consistent with our rights in the lease.

Mr. Lombardo, I don’t know if I can make a decision on this without knowing what is going to
happen to the existing location. I would like to see a plan or conceptual design.
Chairman Langello, the applicant would not be doing what you are asking technically the County would be doing it.

Mr. Mengel, which is the County’s obligation. Within the draft lease amendment there is a data table indicating 71 caliper inches of hardwood and palms would be removed with the new building. We proposed in the lease revision would be they would come back with at least 5 trees and additional shrubs in the building area with an additional 10 hardwood trees and 10 palm trees to plant in the park for mitigation for trees removed. It is an attempt to mitigate the impacts it is our obligation and we take it seriously to preserve the natural aspects. I am not a tenant where I can commit to its future use. We are responsible for master planning the park. It is our obligation and it does not concern the applicant.

Mr. Craig Coffey, County Administrator, as far as where the existing building is we are tasked by the Board of County Commissioners to do 2 things it is all in relation to parking and this goes back 2 years, first we acquired the southern property, to sat there is no trees or landscaped area there is a whole southern area that just has a trail. When we acquired that we received a grant and originally there were obligations for trails, and a pier and parking as a requirement of that. The State is more lenient on that but there is a requirement for 35 parking spaces as a condition of the grant, we built everything else but the 35 parking spaces. We did try to get out of that they let us out during the down-turn they would still let us out today but we have a real problem with parking. We have time when we are all full at Bing’s Landing, it is great if you live 4 doors down or you can bike there we do have a growing community and people like to go to Bing’s Landing. We were tasked by the Late Commissioner Meeker to reevaluate the current parking on the north side of the drainage canal to see what parking we could put in that area. We did look at that and we think we can gain about 10 spaces. We are in a dilemma and we are going to address parking and that has been the mandate from the Board to the Staff. There is 2 ways we can do it we can create a new parking lot on the south parcel, south of the man ditch which is not as attractive with very little tree removal, it is not good for access, or we can relocate and build parking here which helps with folks launching canoes and kayaks it is right near the water we can attractively landscape and add seating areas and we can have a caretakers place up there effectively where the building is, we would be working around trees it would be unpaved parking between there and the caretaker is we could likely get 35 to 40 parking spaces we have been working on those designs. It is our intent as part of the lease to something like that. We want Bing’s Landing not only for the people who can walk or bike there but to be able to drive there.

Chairman Langello, asked if the future plan would come before the Planning Board?
Mr. Coffey, It might depending if we built another one to the south it would be if we reconfigured the existing one probably not. We have reconfigured it about 3 times to gain additional parking space for the biking trail, the restaurant and for people going there for different reasons, pavilion rentals we have had a lot of demand for parking at the park.

Mr. Lombardo, this south addition part of Bing’s?

Mr. Coffey, yes there is a large area that is not shown on the drawing provided, there is no tree removal there is no parking on it is 3 or 4 parcels

Mr. Lombardo, did you consider rebuilding there instead of disrupting the center of the park?

Mr. Coffey, that was considered the problem we have is the septic system we would have to introduce another septic system on the other side of the ditch, you would have to introduce parking.

Chairman Langello, isn’t that natural except for the path that runs through?

Mr. Coffey, Yes

Chairman Langello, so we would be interfering with more native vegetation and wildlife that is living there.

Mr. Coffey, Yes,

Ms. Kornel, I love this park and it is dear to my heart. In 2001 we wrote a number of grants through the Trust for Historic Preservation had us acquiring lots of money to do projects on that site between 2001-2004. My predecessor wrote the Phase 1 and Phase 2 for that site I wrote Phase 3 along with the guidance of Mr. Hadeed. We went up to Tallahassee and was successful in getting a FRDAP (Florida Recreation Development Assistance Program) Grant for $250,000. There is a lot of information out on that site. The Archeological surveys have been completed. I would suggest the county pull those out and see what is there in the site proposed. I do support the project. The surveys completed by Environmental Systems ESI. It was nationally designated and it did win an award by the Florida Trust and what is really significant about this site besides the environmental characteristic and everything else is. The plantation was owned by Joseph Hernandez who was Florida’s first voice in the U.S. Congress and its first Hispanic member. I am just pointing out this site is very important to the citizens of Flagler County including myself and should be hundreds of thousands of dollars have been spent on this site. The applicant does have an excellent proven track record it is a great business. I would like to know exactly what is square
footage under roof of the existing building and what is the square footage underroof of the new
building.

Mr. Livingston, square footage under roof including the covered porch is 1612 plus outside area
by the door of 330 square feet and deck is about 1200 square feet, that is the under roof portion.

Ms. Kornel, I am just trying to establish the difference in square footage. I understand the
footprint is not that much larger, I am just trying to get the difference in square footage.

Mr. Livingston, There is very little difference in usable space. The best way to understand is that
features that are outside of the building now will be part of the new building and footprint. If you
take the area internal and external of the leased space it now be under roof. Foot print of the
building is about 1,000 square feet difference we currently have 4,486 square feet including all
additions and storage space.

Ms. Kornel, the County was not required to do a legal ad.

Mr. Mengel, correct. Sec. 207.00 of the Land Development Code there is no requirement.

Ms. Kornel, so the county followed the rules on having a public meeting and they did meet with
scenic A1A Pride on October 26, ant it is not exactly a noticed meeting but it is along the lines of
having a neighborhood meeting. This is where the County on my humble opinion can make an
improvement in the Land Development Code by requiring a neighborhood meeting. I think it is a
good project. I support the project I am not sure I support it at the location proposed I am not sure
I support it under the conditions it is being proposed I wish there had been a neighborhood
meeting. I wish more input from the public would have been garnered under the circumstances it
is a public piece of property. Here we are at a Planning Board meeting once again debating the
details and there doesn’t seem to be a Master Plan for this site. I remember when we wrote a
Management Plan for the Old Brick Road and we wrote one for the rail trail as well. I do not
believe there is a Management Plan for this site. I am in support of this project but not in this
location and I am having a hard time thinking if I am going to vote for this project. When the
County makes a point of saying they cannot commit to a Master Plan or an overall concept for
parking showing everything together all encompassing for the site.

Mr. Livingston, We did look at the archeological report to make sure the location was not an
issue. At the end of the day if you do not disturb the surface ground and you put a foundation
cap on top of it archeologists love that because you are preserving what is below the ground as
long as you are not disturbing below the ground below if you do then you have to catalog anything
artifacts you find.
Chairman Langello, I was here when this item was brought to the County to become Bing’s Lading Captains BBQ it was right from the beginning it was supposed to be a bait shop and BBQ food place. I have lived here a long time and on this property, I remember when it was a private landing and I didn’t know there was an historical thing on it. When they were building the building there I didn’t know what that was but I did find out when I went to Captains BBQ. I think a lot of people have visited that site the archeological site because the BBQ was there. As far as the archeological site I think this is enhancing it. Because of the people that show up at this park they wouldn’t know it was there. The idea of making the private use on a public property is done all over the place. I think Mr. Page but it very well there is 100,000 people in the community and outside the community and they can come to this park and enjoy it and people do. They don’t just go for the BBQ they go for a lot of reasons. That is why there are parking issues there is boating there are people on the trail on the south part of the property, I bike through there. The natural trail that goes through there to tear out that and put the building back there would do more harm and that is probably prudent. That building is in pretty bad shape, it was in pretty bad shape when they took it and they put the work into it. I remember building so I am giving testimony from my point of view. It most likely had had its time. The project is going to benefit the community in every way. This park has been enhanced because they are there, the jobs in the community has helped the economy, but moreover, this park the public can use it and enjoy it more.

I think as a business owner if they had to shut down to but it back in the same place they would not be here. When this was advertised with just the bait shop no one would have showed up they could not get anyone to rent this building because the guy who had the bait thing went out of business. So when this concept came up and these applicants brought this forward it was a big success. I will bet the bait is a very small part of the business. There is more going on there than just people showing up to fish. The building is unsafe with the fall through the fall it is just going to get worse and if they would have to move out of their business for a year and try to open back up it probably wouldn’t happen. I do not see this as unreasonable to ask about the footprint because there is definitely outdoor stuff that is not as attractive as it could be now under one roof is going to enhance the park. It is probably better than we see here. I would argue that removal of this building is going to be a better view because this building right now is at the mouth where the boats come in and moving the building over would probably enhance that better view looking straight out. I don’t think we are hurting the view any yes there will have to be a few trees that have to come out and some trees are going to die new trees will be planted and in time there will be more canopy. Looking at the pictures shown there is a pretty dense canopy right now. This is not a property that is starved of a canopy I personally think it is a big issue. I do appreciate the view from the public of the area wanting to keep it the way it was we see this on this Board a lot. People don’t want anything to change but to most of their own testimony they weren’t opposed to the BBQ they were why do you have to do it there. Because it is not feasible to do it any other way. I am in favor of it the way it is.
Mr. Connor, as I understand it we have a lease that has been in existence since 2011. That lease obligates the County to provide space for the tenant. He is currently operating a successful business as pointed out by Mr. Boyd and the information we have before us is that the disruption of that business would be costly. I presume as the landlord under this lease Flagler County would have the responsibility to cover those losses if that were to occur. So we are looking for a way to keep our lease obligations intact and the applicant is willing to invest a million dollars for a building that is going to be dedicated to Flagler County.

Motion to approve made by Mr. Connor, seconded by Mr. Boyd.
Motion passed 4-1 with Ms. Kornel dissenting

Chairman Langello, introduced the new member of the Planning Board, Mr. Michael Goodman, noting that he was not seated until after the previous item was presented. He also noted that the asked for an item to be placed on the agenda concerning the makeup of the Board and the change in the code which dictates the makeup of the Board. He then asked the Board for a consensus to add this item to the agenda.

Chairman Langello, distributed a handout attached to these minutes as attachment “D”. He spoke of the establishment and the selection criteria for the Planning and Development Board and the changes made by the Board of County Commissioners through Ordinance 2018-15 adopted on September 5, 2018, restricting Board membership to Unincorporated County residents only.

Mr. Boyd, spoke of his history on County Boards over the years and how at time though planning for Unincorporated Flagler County he was the only member from Unincorporated Flagler County all the other members were from Palm Coast or Flagler Beach. The Cities do not let others sit on their board and determine their future. I don’t see the need for anybody determining the future of Unincorporated Flagler County who is not resident of Unincorporated Flagler County. A Board that is going to determine the future and the only thing that is left to plan is west of US 1 with a few areas in the hammock. That planning should be done by the people from unincorporated area of Flagler County.

Chairman Langello, I just think it should be 3 or 4 from the Unincorporated County.

Mr. Lombardo, I agree with 3 seats unincorporated western Flagler County and other seats fills by other areas.
Chairman Langello, just think this is too limiting with the districts but even farther with limiting it to Unincorporated Flagler County.

Ms. Kornel, I believe there was reason why originally the representation was set up the way it was.

Chairman Langello, asked Mr. Coffey for his version on how this has changed.

Mr. Coffey, What we tried to do not by electoral district but create a diverse board with diverse interests, form business and legal and planners. I think we have that up there, geography you get representation from all area of the county. We just loosed some of the requirements to encourage membership.

Chairman Langello, questioned the time it took for Mr. Goodman’s application to go before the Board of County Commissioners for consideration, additional discussion continued about applications that and not been addressed.

Sally Sherman, Deputy County Administrator, I think the way the Ordinance is structured is working.

Chairman Langello, what I was looking for tonight was to get a consensus that this should be revisited and dumb it down and bring it before the next County Commission Meeting to see if they agree with that concept and then it can go back to staff to draft it differently.

Ms. Kornel, this went before the Board of County Commissioners with discussion and adopted.

Ms. Sherman, yes

Chairman Langello, it was supposed to go before our Board which it didn’t there was very little discussion on the night it got adopted. I came to the next meeting and brought it up and they asked questions. If fell on deaf ears with staff and I think it falling through the cracks. Do you think I am on the right track?

Mr. Lombardo, I would like to look at it a little more.

Mr. Conner, If we were supposed to see the item before it went to the Board procedurally and been consulted then I would like to see it.
Kate Stangle, of Broad and Cassel, Board Counsel, technical the Land Development Code requirements, there are areas that are not crystal clear. The code does not expressly require that the Board of County Commissions consult you on this issue. Your role is broad but there is not a provision in the Land Development Code that says any change whatsoever to the Land Development Code requires your input. There is nothing that say they had to consult you, should they have or would you have preferred it that is for you to decide.

Mr. Coffey, When they sunset the old board and combined 2 boards they didn’t bring that before the board either.

Chairman Langello, agreed that Planning Board review was not required but should have been reviewed for our input. Mr. Coffey, I believe you stated the reason was that because it concerned the makeup of the Board.

Mr. Coffey, typically the Board of County Commissioners reserves the right to organize Boards and establish Boards it doesn’t mean it can never receive input from any Board it creates or establishes regardless if there is a rule or not.

Ms. Kornel, I don’t think we have to see it. I do not see the point and it has been adopted.

Ms. Stangle, so they want more time to review this Ordinance.

Chairman Langello, I think we can do that with an agenda item for the next meeting. We open up the item ask the Board what do they think if it’s all fine in ends in 5 minutes. Or if you want to discuss it we can.

Ms. Kornel, Has this ship not sailed, will anything this Board says do anything.

Chairman Langello, if there is no objection it will go on the next agenda.

5. Staff Comments

None.

6. Board Comments

None.

7. Public Comments - Each speaker will be allowed up to three minutes to address the Planning and Development Board on any item or topic not on the agenda.
8. Adjournment

Motion made by Mr. Boyd at 8:04 p.m.

Prepared by: Wendy Hickey
Reviewed by: Adam Mengel
Dennis Clark statement to Planning & Development Board - 11/13/2018  
Re: Captain's BBQ proposed relocation

I'm Dennis Clark and I live on A1A four lots south of Bings Landing. Today I'm speaking for the man who visited Bings Landing in 2004. He looked a lot like me, except with more hair. He and his wife had traveled much of Florida looking for a location to retire when, purely by accident, they visited friends in this area. Here they discovered a beautiful little park on the intracoastal. It made such an impression, along with the surrounding area, that they decided this would be it. They moved in 2005 and have lived here ever since. Since then, the park has doubled the parking area with the addition of the north parcel.

I understand why you want this. Who wouldn't want to get a free restaurant donated to the County? The problems I have are:

1. The spot chosen for the building is the center of the park - the only spot left to sit under the trees with an unobstructed view of the Intracoastal while not sitting up against a building.
2. This small park is already 34% covered with structures, parking, and sidewalks. That's over twice as much as another heavily developed park we know, Holland Park.
3. The new building increases the seating by 50% to 150 seats. That creates a need for more parking. Well, guess what? We can use the space where the old building was. How convenient.
4. When will it be enough? This park is already built to capacity. This plan will turn it into a parking lot with a restaurant and a boat ramp and an archaeological pavilion.

This is not about rules and regulations, or what is allowed or not allowed, or even what is considered efficient and practical. This is about taking the last bit of natural resources in a beautiful small park and putting a building in its place. It might be a great looking building, but what is lost is much more beautiful. Many of us can remember the park before the archeological shelter was constructed. We went along with that because we should preserve history. But this is pure destruction.

People I’ve spoken to would be just as satisfied if the current building were completely removed and nothing put in its place. There are other restaurants, even across the street, and more coming all the time, including one planned to be on the Intracoastal.

This park is a beautiful intrinsic resource of the National Scenic Byway and of Flagler County. It is not a parking lot for a restaurant. It was purchased with Environmentally Sensitive Land funds, as was the north addition which became a parking lot. There is lots of parking, but precious little park remaining.

To nature lovers, this is like oxygen. You don't notice it until it's gone. We should not allow this to happen.

Dennis Clark  
5784 N Oceanshore Blvd
Dennis Clark

on Captain's BBQ Relocation Proposal

Planning & Development Board

11/13/2018
Current View from Parking Lot
Proposed New Building
<table>
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<tr>
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<th>Acres</th>
<th>Sq Ft</th>
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**Total Area of Park**

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Marina  
S. addition water  
N. addition water  

Total uplands 11.7126

**Current Non-Green Space**

(parking, buildings and sidewalks) 34%
From the current Captain's lease.

Lessee acknowledges that Bings Landing Park is a unique environmental, recreational and historical park facility that: is located on the AI National Scenic Byway; is part of the Flagler County Coastal Greenway; is within the National Estuarine Research Reserve of the United States, includes historical resources that are listed on the National Register of Historic Places, and has received national and state awards for its historical, environmental, and scenic qualities. Lessee acknowledges that Lessor has achieved these characteristics and attributes with substantial investments of its funds and staff, numerous grants from the State of Florida and the federal government, and broad based volunteerism from its citizens and civic groups. Lessee further acknowledges that it will operate its facilities and services to the public in recognition of and in respect for these attributes and the park's importance to the citizens of Flagler County and the State of Florida, and accordingly will not compromise or harm the quality or reputation of this unique park or its resources. Lessor desires that Lessee be free to utilize the attributes and qualities of the park in its promotion of its business interests and in its service to the public.
From the Land Development Code
3.06.05. Public, semi-public and special uses.

B. Public and semipublic uses. Public and semipublic uses excluding special uses as defined by this Article, may be permitted as follows:

1. Any public or semipublic uses may be permitted in any land use district provided that the request for such use is officially made to the planning board by the public body or semipublic body desiring such use. The planning board shall determine whether or not such requested use is consistent with the adopted comprehensive plan and whether the use is necessary or desirable to support projected community needs. Public or semi-public uses and structures determined to be consistent with the comprehensive plan and necessary or desirable may be located in any land use district upon recommendation of the planning board, based in part on the submittal of a site plan showing site alterations, improvements to be made, and proposed buffers and conceptual landscaping plans. The site plan need not be engineered. The permitted location of public or semi-public uses or structures shall be such as not to be injurious to the health, safety and welfare of the public and shall protect the existing character of the surrounding properties or neighborhoods. The planning board shall consider the impact of the proposed use on land development patterns, on important natural resources, and, where applicable, the cost effectiveness of service delivery. The planning board also shall determine whether the proposed use will impose any substantial detrimental effects on the living or working conditions in the neighborhood.

Flagler County Comprehensive Plan
Recreation and Open Space Element

Objective 3: The natural, recreational, archaeological, scenic, historical and cultural resources of the A1A Scenic Highway shall be preserved and enhanced for Flagler County residents and visitors.

Policy 3.3: The County supports the River and Sea Scenic Highway Corridor Management Plan.

Policy 3-6: The County shall identify historical, cultural and educational tourist opportunities and improve recreational facilities without adversely impacting natural resources along the Scenic Corridor.
ORDINANCE NO. 2018-15

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA AMENDING THE FLAGLER COUNTY LAND DEVELOPMENT CODE; AMENDING AND RESTATING SECTION 2.02.02, BOARD MEMBERSHIP AND OFFICERS; PROVIDING FOR PLANNING AND DEVELOPMENT BOARD MEMBERS TO BE SELECTED FROM UNINCORPORATED RESIDENTS AND PROHIBITING DUAL-OFFICE HOLDING AS PROVIDED IN ARTICLE II, SECTION 5(A), FLORIDA CONSTITUTION; PROVIDING FOR CODIFICATION AND SCRIVENER’S ERRORS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Flagler County’s Land Development Code became effective on March 18, 1991; and

WHEREAS, among other things, the Land Development Code established criteria for the selection of the Planning and Development Board members; and

WHEREAS, the Land Development Code’s criteria for the selection of Planning and Development Board members was subsequently amended through Ordinance Nos. 95-06, 97-05, 2009-07, and 2009-10; and

WHEREAS, presently there are two vacancies for membership on the Planning and Development Board which have remained vacant for several months; and

WHEREAS, in assessing the challenges associated with obtaining qualified applicants for these Board vacancies and through staff’s review of applications received for the vacancies on the Planning and Development Board, staff has prepared this ordinance amending the provisions related specifically to eligibility requirements; and

WHEREAS, the Planning and Development Board provides recommendations and/or approvals on matters dealing with land use policies, the Comprehensive Plan and Land Development Code for unincorporated areas only, the County is best served by having the membership on the Planning and Development Board be from unincorporated residents; and
WHEREAS, it is the intent of the Board of County Commissioners that this ordinance and its changes to the makeup of the Planning and Development Board shall apply to new applicants for membership on the Planning and Development Board and shall not apply to incumbents currently serving on the Planning and Development Board or be a factor in their reappointment; and

WHEREAS, public notice of the adoption of this ordinance has been provided in accordance with Chapter 125.66(2)(a), Florida Statutes.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1: FINDINGS

1. The above Recitals are incorporated herein as Findings of Fact.

2. This Ordinance is consistent with the goals, objectives and policies of the Flagler County 2010-2035 Comprehensive Plan.

SECTION 2: CODE AMENDMENT

The Flagler County Code of Ordinances, Appendix C, Flagler County Land Development Code, Article II, Administrative Mechanisms, Section 2.02.02, Board membership and officers, is hereby amended as follows (additions are shown in double-underline format and deletions are shown as strikethrough format):

* * * * * *

2.02.02. Board membership and officers.

1. The Planning and Development Board shall have seven (7) members appointed by the Flagler County Commission meeting the following requirements in addition to any other overall County requirements:
   a. Each member shall be an elector of Flagler County.
   b. Each member shall be a full-time permanent resident of Flagler County.
   c. Members shall be selected from one of the following areas specifically from within unincorporated County and with only one member selected per area. To be eligible for membership, the selectee shall be a full-time permanent unincorporated resident of the area as verified by a valid homestead exemption in their his/her name maintained throughout their term in office. The areas are:
      i. East of the Intracoastal Waterway
      ii. West of US 1 and south of SR 100
iii. West of US 1 and north of SR 100
iv. Between US 1 and the Intracoastal Waterway, North of SR 100
v. Between US 1 and I-95, south of SR 100
vi. Between I-95 and the Intracoastal Waterway, south of SR 100
vii. One At-Large member
viii. Should an area be deemed by the Board of County Commissioners to no longer be a viable area for drawing qualified volunteers, the Board may designate an additional at-large members from unincorporated County residents by simple majority vote of the Board.

Whenever there are competing applications for a board opening those applicants with experience in the field of planning and zoning shall receive special preference/consideration and, whenever possible, the County Commission board should attempt to include applicants selected from each of the following fields/professions:

1. An architect, landscape architect or urban planner.
2. A neighborhood or environmental activist.
3. An agricultural interest (farmer, timber/sod, cattle).
4. A person engaged in real estate sales or development.
5. A businessman or an attorney.
6. An engineer or botanist, biologist, geologist or similar geo-science professional.

2. Each member of the Planning and Development Board shall not, by direct employment or otherwise, derive a substantial portion of their income from matters related to actions which come before the Planning and Development Board and all members shall comply with all conflict of interest provisions of Chapter 112, Florida Statutes.

3. Members shall be appointed in accordance with established board of County Commission policies and procedures related to the establishment of and appointment of boards and committees.

4. Members may be removed without notice and without assignment of cause by a majority vote of the County Commission.
5. The members of the Planning and Development Board shall annually elect a 
chair and vice-chair from among the members and may create and fill other 
offices as the board deems needed.

6. The County Administrator or designee shall appoint a county employee to serve 
as secretary of the Planning and Development Board, who shall serve as the 
recorder and custodian of all board records.

7. Members shall not be compensated, but may be paid for travel and other 
expenses incurred on board business under procedures prescribed in advance 
by the County Commission.

8. The County Commission may appropriate funds to permit the Planning and 
Development Board to perform its prescribed functions.

9. If any member fails to attend three successive meetings or workshops that have 
been noticed, the secretary of the Planning and Development Board shall notify 
the County Administrator.

10. A Planning and Development Board member may not be a current elected official 
or employee of any city or county government.

1140. The Flagler County Commission shall serve as the land development 
regulation commission pursuant to Florida Statutes, Chapter 163. Florida 
Statutes. The Planning and Development Board may provide recommendations 
to the County Commission concerning any necessary or desirable 
amendments to the county's Land Development Code, this appendix.

1244. The Flagler County Commission may waive the elector, full-time 
permanent unincorporated residency, homestead, and geographic area 
representation limits (i.e., no more than one (1) representative selected from 
each area) as listed at Section 2.02.02.1.a. through c., respectively, through a 
super-majority vote of the County Commission.

*****

SECTION 3: CODIFICATION AND SCRIVENER'S ERRORS

1. The provisions of this Ordinance shall be included and incorporated into the Code of 
Ordinances of Flagler County, Florida, as additions or amendments thereto, and
shall be appropriately renumbered or relettered to conform to the uniform numbering system of the Code. Scrivener errors may be corrected as deemed necessary.

2. Only Section 2 herein shall be codified within the Flagler County Code of Ordinances.

SECTION 4: SEVERABILITY

If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 5: EFFECTIVE DATE

This ordinance shall take effect upon filing with the Secretary of State as provided in Section 125.66, Florida Statutes.

PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA THIS 5TH DAY OF SEPTEMBER 2018.

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS
Gregory E. Hansen, Chair

ATTEST:
Tom Bexley, Clerk of the Circuit Court and Comptroller

APPROVED AS TO FORM:
Al Hadeed, County Attorney

as approved by the Board of County Commissions
September 5, 2018

Honorable Tom Bexley  
Clerk of the Circuit Court  
Flagler County  
1769 East Moody Boulevard, Building 1  
Bunnell, Florida 32110

Attention: Ms. Lisa Funicello

Dear Mr. Bexley:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Flagler County Ordinance No. 2018-15, which was filed in this office on September 5, 2018.

Sincerely,

Ernest L. Reddick  
Program Administrator

ELR/lb
SUBJECT: QUASI-JUDICIAL – Application #3160 – Request for Rear Yard Setback Variance in the PUD (Planned Unit Development) District at 39 Ocean Ridge Boulevard South; Parcel #04-11-31-4900-00000-0630; 0.23 +/- acres. Owner: William and Suzanne Tobin/Applicant: Dan Priotti, Agua Pools & Spas.

DATE OF MEETING: December 11, 2018

OVERVIEW/SUMMARY: This request is quasi-judicial in nature and requires disclosure of ex parte communication. The request is for approval of a rear yard pool/spa setback variance in the PUD (Planned Unit Development) District for relief from the 10 foot minimum rear yard pool/spa setback. This parcel is 0.23 +/- acres in size, identified as parcel # 04-11-31-4900-00000-0630.

On October 19, 2018, Mr. Priotti with Agua Pools & Spas submitted an application for a rear yard pool/spa setback variance, requesting a 0.7 foot variance from the minimum 10 foot rear yard pool/spa setback for a spa. This is an after-the-fact request.

This application was discussed by the Technical Review Committee on November 21, 2018. All staff comments were satisfactorily addressed by the applicant in advance of the Planning and Development Board meeting.

Public notice has been provided for this application according to LDC Section 2.07.00.

This agenda item is:

X quasi-judicial, requiring disclosure of ex-parte communication; or

___ legislative, not requiring formal disclosure of ex-parte communication.
**DEPT./CONTACT/PHONE #:** Planning & Zoning/Adam Mengel/386-313-4065

**RECOMMENDATION:** The Planning and Development Board finds that all the variance criteria as listed in the guidelines at Land Development Code Section 3.07.03.E have been met and therefore approves a 0.7 foot variance from the minimum 10 foot rear yard setback for a pool/spa at 39 Ocean Ridge Boulevard South (Parcel #04-11-31-4900-00000-0630).

Alternative Denial Language: The Planning and Development Board finds that all variance criteria as listed in the guidelines at Land Development Code Section 3.07.03.E have not been met and therefore denies the rear yard pool/spa setback variance at 39 Ocean Ridge Boulevard South (Parcel #04-11-31-4900-00000-0630).

**ATTACHMENTS:**
1. Technical Staff Report
2. Application and supporting documents
3. Public notice
Application #: 3160

Project #: 2018100046

Address: 39 Ocean Ridge Boulevard South

Owner: William and Suzanne Tobin

Applicant: Dan Priotti, Agua Pools & Spas

Parcel #: 04-11-31-49000-00000-0630

Parcel Size: 9,697 sq. ft. (0.23+/ acres)

Legal Description
Lot 63 of the subdivision plat of Ocean Ridge according to the plat thereof as recorded at Map Book 30, Pages 91 through 95, Public Records of Flagler County, Florida.

Existing Zoning and Land Use Classification:
Zoning: PUD (Planned Unit Development) District
Land Use: MUL (Mixed Use: Low Intensity, Low to Medium Density)

Future Land Use Map Classification/Zoning of Surrounding Land:
North: Lot 62 (currently vacant); MUL (Mixed Use: Low Intensity, Low to Medium Density/PUD (Planned Unit Development) District
East: Tract “C” Preservation Zone (Common Area Tract); MUL (Mixed Use: Low Intensity, Low to Medium Density/PUD (Planned Unit Development) District
South: Tract “D” (Buffer Tract); MUL (Mixed Use: Low Intensity, Low to Medium Density/PUD (Planned Unit Development) District
West: Lot 64 and Ocean Ridge Boulevard South (Private Roadway Tract); MUL (Mixed Use: Low Intensity, Low to Medium Density/ PUD (Planned Unit Development) District

Land Development Code Sections Affected: Land Development Code (LDC) Section 3.07.03, Procedure for variances and special exceptions, and Section 3.07.03.E, Variance guidelines.

Summary of Request: This is an after-the-fact variance request. Mr. Priotti is seeking the variance for a pool and screen constructed by his company through Permit #2017100198; the site plan submittal approved with the building permit showed the minimum 10-foot rear pool/spa setback, but the final as-built A1A East Coast Land Surveying, LLC, survey (bearing a July 26, 2017 signature date and a pool as-built date of August 21, 2018) placed the spa and pool deck at 9.3 feet from the rear property line.
The development of the Ocean Ridge subdivision was subject to a Plat Agreement recorded at Official Records Book 571, Pages 1802 through 1807, Public Records of Flagler County, Florida. Section 6 of this agreement states:

6. **SETBACKS**

   “Setback Line” is defined in Section 3.08.02 of the Land Development Code of Flagler County. The minimum setbacks for the Ocean Ridge Subdivision shall be as follows:

   **Front Yard** - 20 feet from the front property line.

   **Rear Yard** - 20 feet from the rear property line.
   10 feet for swimming pools, screened enclosures, get-wet pools, hot tubs, patios and porches.

   **Side Yard** - Minimum 7.5 feet
   20 feet abutting any street
   Side Yard set-back for Lots 63 and 64 on side adjacent to Tract D shall be 2 feet.

   All setbacks will be measured from the adjacent property line to the nearest point of the dwelling unit. The construction of dune walkovers shall not be subject to the foregoing Rear and Side Yard setbacks.

   If an easement exists adjacent to the side property line, the setback shall be 2.5 feet from the easement line but not less than the side yard setbacks previously defined.

The variance application submittal included the A1A East Coast Land Surveying, LLC, survey depicting the original pool, deck, and screen enclosure, bearing a signature date of July 26, 2017 (with an office work date of July 26, 2017 and a field work date of July 11, 2017), showing the existing “screened pool and paver deck” with an 8.1 foot rear setback.

**Variance Guideline Analysis**

LDC Section 3.07.03.E, *Variance Guidelines*, states that a variance may be granted only upon a finding by the Planning and Development Board that all of the criteria listed in the guidelines have been found in favor of the applicant and that a literal enforcement of the provisions of this article will result in an unnecessary hardship. These criteria are listed below followed by the applicant’s statements (included below in part and attached in their entirety) and staff’s analysis:

1. *There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, topography, or other unique*
features that, when considered in whole or in part, creates an unnecessary hardship; and

Applicant’s response: “Rear property line angles in towards the house from South to North. North side being the closest and where the .07’ error occurred. Rear of Property also slopes off into a wooded preserve. Approximately 21.8’ of the 46’ construction area is only part that is in the 10’ rear setback.”

Staff analysis: The parcel itself is unique based on its meandering, angular shape, as it is also acknowledged within the plat agreement to allow for a reduction in the side setback where it abuts Tract D. From the onset at platting, this lot was recognized as unique due to its configuration.

2. Such conditions were not created by the affirmative actions of the applicant and the applicant has acted at all times in good faith; and

Applicant’s response: “This error wasn’t purposefully made to benefit the homeowners or Agua Pools in any way. The wall on the back of deck is a raised structural wall with waterfalls and part of the raised spa construction. Can’t be fixed without totally demolishing and rebuilding.”

Staff analysis: The applicant had applied for and received a permit indicating the required setbacks would be met as shown on the proposed plan. The applicant’s statement that the encroachment was unintentional should be at the Board’s discretion; it is recognized that the encroachment – at 0.7 feet – is minimal, with the rear setback bordering the common area to the East.

3. The variance, if granted, would not cause substantial detriment to the public health, welfare, safety, and morals of the community or impair the purpose and intent of this article; and

Applicant’s response: “Original pool, deck and screen enclosure were built into 10’ setback by 2’. New construction is .07’ in 10’ rear setback only partially. Actually brings new pool, spa, deck, and screen enclosure more compliant with setback.”

Staff analysis: The new construction is a reduction in the encroachment from the original non-conforming pool and enclosure on this property. The proposed variance, if granted, would not cause substantial detriment to the public health, safety, and morals; this variance does not set a precedent for future similar variances.

4. No variance may be granted for a use of land or building that is not permitted by this article.

Applicant’s response: “All construction for the pool, spa, deck, and screen enclosure were permittable and permitted. Permit #2017100198.”
Staff analysis: The property is zoned PUD (Planned Unit Development) and is developed with a single family dwelling with an associated pool, spa, deck and screen enclosure, an allowable use within the Ocean Ridge PUD.

A variance, if granted, shall be the minimum variance necessary to alleviate the hardship. For purposes of this section, an unnecessary hardship shall mean that without the granting of the variances the owner will be deprived of all reasonable use of the property as allowed in the zoning district.

Staff analysis: While this statement is not criteria for the issuance of the variance, these are included in the LDC text as a thematic statement providing the framework for the Planning and Development Board’s consideration of variance requests. Arguably this owner is not deprived of all reasonable use in the event of denial of this variance; however, denial of the variance will require removal of a portion of the wall adjoining the spa.
Zoning Map
# APPLICATION FOR VARIANCE

**FLAGLER COUNTY, FLORIDA**
1769 E. Moody Blvd, Suite 105
Bunnell, FL 32110
Telephone: (386) 313-4009  Fax: (386) 313-4109

Application/Project #: 3160/2018/100% (Redacted)

---

## PROPERTY OWNER(S)

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<tr>
<th>Name(s):</th>
<th>William &amp; Suzanne Tobin</th>
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<tr>
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<td>Palm Coast</td>
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<td>32137</td>
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## APPLICANT/AGENT

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<tr>
<th>Name(s):</th>
<th>Dan Prioratti / Agua Pools &amp; Spas</th>
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<tr>
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<tr>
<td>E-Mail Address:</td>
<td><a href="mailto:carmen@aguapools.com">carmen@aguapools.com</a></td>
</tr>
</tbody>
</table>

---

## SUBJECT PROPERTY

<table>
<thead>
<tr>
<th>SITE LOCATION (street address):</th>
<th>39 Ocean Ridge Blvd, Palm Coast</th>
</tr>
</thead>
<tbody>
<tr>
<td>LEGAL DESCRIPTION: (briefly describe, do not use &quot;see attached&quot;)</td>
<td>Ocean Ridge SUBD Lot 63</td>
</tr>
<tr>
<td>Parcel # (tax ID #):</td>
<td>04-11-31-4900-00000-0630</td>
</tr>
<tr>
<td>Parcel Size:</td>
<td>9697 sq ft.</td>
</tr>
<tr>
<td>Current Zoning Classification:</td>
<td>Residential</td>
</tr>
<tr>
<td>Current Future Land Use Designation:</td>
<td>Residential</td>
</tr>
</tbody>
</table>

**Subject to A1A Scenic Corridor IDO?**

- [ ] YES
- [x] NO

**Relief Requested:** Allow for the Newly Built Inground Swimming Pool - Spa - Deck - Enclosure to remain 0.7' into 10' Rear Setback.

**Signature of Owner(s) or Applicant/Agent**

[Signature]

**Date:** 10/16/2018

---

**OFFICIAL USE ONLY**

<table>
<thead>
<tr>
<th>PLANNING BOARD RECOMMENDATION/ACTION:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>APPROVED</strong></td>
<td>[ ]</td>
</tr>
<tr>
<td><strong>APPROVED WITH CONDITIONS</strong></td>
<td>[ ]</td>
</tr>
<tr>
<td><strong>DENIED</strong></td>
<td>[ ]</td>
</tr>
</tbody>
</table>

**Signature of Chairman:**

----------

**Date:**

---

*approved with conditions, see attached.

---

**NOTE:** The applicant or a representative, must be present at the Public Hearing since the Board, at its discretion, may defer action, table, or take decisive action on any application.  Rev. 09/16
APPLICATION FOR VARIANCE
FLAGLER COUNTY, FLORIDA
1769 E. Moody Blvd, Suite 105
Bunnell, FL 32110
Telephone: (386) 313-4009  Fax: (386) 313-4109

Subject Property: 39 Ocean Ridge Blvd, Palm Coast, FL 32137

E. Variance guidelines. A variance may be granted, upon application, from the terms and provisions of this article as will not be contrary to the public health, safety, welfare and morals where, owing to special conditions, a literal enforcement of the provisions of this article will, in an individual case, result in unnecessary hardship. Such variances may be granted by the planning board in such individual case of unnecessary hardship upon a written finding that:

1. There are extraordinary and exceptional conditions pertaining to particular piece of property in question because of its size, shape, topography, or other unique features that, when considered in whole or part, creates an unnecessary hardship; and Rear property line angles in toward the house from South to North, North Side being the closest and where the 0.7' Error Occurred; Rear of Property also slopes off into a wooded Preserve. Approx 21.8' of the 46' Construction area is only part that is in the 10' Rear Setback.
2. Such conditions were not created by the affirmative actions of the applicant and the applicant has acted at all times in good faith; and this error wasn't purposefully made to benefit the home owners or Aqua Pools in any way. The wall on back of Deck is a Raised structural wall with water falls & Part of Raised Spa construction. Can't be fixed without totally demolishing & Rebuilding.
3. The variance, if granted, would not cause substantial detriment to the public health, welfare, safety, and morals of the community or impair the purpose and intent of this article; and Original Pool, Deck, & Screen Enclosure were built into 10' Setback by 2'.
New construction is 0.7' in 10' Rear Set back only Partially. Actually brings New Pool, Spa, Deck, & Screen Enclosure more compliant with Setback.
4. No variance may be granted for a use of land or building that is not permitted by this article.

All construction for the Pool, Spa, Deck, & Screen Enclosure were permissible and permitted. Permit # 3017100198

A variance, if granted, shall be the minimum variance necessary to alleviate the hardship. For purposes of this section, an unnecessary hardship shall mean that without the granting of the variance the owner will be deprived of all reasonable use of the property as allowed in the zoning district.

NOTE: The applicant or a representative, must be present at the Public Hearing since the Board, at its discretion, may defer action, table, or take decisive action on any application. Rev. 09/16
General Warranty Deed

Made this 4th day of August 2017 by, Foxworth Properties LLC, a Tennessee Limited Liability Company, whose post office address is: 745 S Church St., Murfreesboro, TN 37130 hereinafter referred to as the Grantor to: William Tobin and Suzanne Tobin, Husband and Wife; whose Post Office Address is: 39 Ocean Ridge, Palm Coast, FL 32137 hereinafter referred to as the Grantee;

(Whenever used herein the term “grantor” and “grantee” include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth, that the grantor, for and in consideration of the sum of Ten Dollars, ($10.00) and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in Flagler County, Florida, viz:

Lot 63, Subdivision Plat of Ocean Ridge, according to the map or plat thereof, as recorded in Map Book 30, Page 91 through 95, inclusive, of the Public Records of Flagler County, Florida.

Said property is not the homestead of the Grantors under the laws and constitution of the State of Florida in that neither Grantors nor any members of the household of Grantors reside thereon.

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances except taxes accruing subsequent to December 31, 2015.
In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence

[TWO DIFFERENT WITNESSES REQUIRED]

Sign: [Signature]
Witness #1 Printed Name: David Pilinsky

Sign: [Signature]
Witness #2 Printed Name: Ralph Cates

Foxworth Properties, LLC
Nil S Quino

State of Florida
County of Flagler

The foregoing instrument was acknowledged before me this 4th day of August, 2017, by Nil S Quino for Foxworth Properties, LLC who is/are personally known to me or has produced a Drivers License as identification.

Print Name: Nil S Quino
My Commission Expires: (SEAL)

Page 2 of 2
Areal view of **Original Pool & Screen Enclosure Location**.

Current surrounding locations are the same now. (Oct. 2018)

- **Lot 62 (Still Vacant)**
- **North**
- **Preservation Zone**
- **Current Buffer & Public Area**
NOTES:
1. Description furnished by client. No Title work provided.
2. No known/underground improvements or utilities are located, unless shown.
3. Bearings are approximated and are based on plat datum.
4. Dimensional category is shown in parenthesis ( ), values which differ from record dimensions. Measurements that fall within the subdivision closure of 1:7500 [or per 51-17.05(12)(1854)] are not differentiated.
5. Flood Zone AE 9, Map & Parcel No. 12003C 0133 0, 7/17/06, as best ascertained from the Flood Insurance Rate Map.

DESCRIPTION:
LOT 63, OCEAN RIDGE SUBDIVISION, AS RECORDED IN MAP BOOK 30, PAGE 95, OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA

Currently Vacant

LOT 63
60 FT (P) SQUARE FEET
30 FT DEEP
528.51 FT (M)
116.20 (P)
116.32 (M)

TRACT "D" (BUFFER)
TRACT "E" (BUFFER)

Common Area
Jungle Hut Park

All Wooded Natural Habitat

All Wooded Natural Habitat

UNPLANTED

LEGEND:

L.B. Licensed Business
L.S. Licensed Surveyor
FNC Fence or Fencing Corral
P.W. Professional Surveyor & Mapper
FSM Permanent Control Points
P.C.P. Permanent Control Points
G.T. Gutter
P.O.W. Public Water Supply
U.B. Utility Burial
A.O.W. Underground Utility
W.O. Waist Out
C.P. Civil Plan

A14 EAST COAST LAND SURVEYING, LLC
8306 US Highway 1 Suite 502, Ormond Beach FL 32174
Phone (386) 810-3523 Fax (386) 473-1423 772 (772) 952-3529

ANTE SANTONI, PSML 5309
1888107

Exact Location of Original Pool & Deck & Screen Enclosure was 2' into Setback
Raised Wall on Back side of Pool & Is Structural Part of Raised Spa.

21.8' of the 46' Deck length is 0.7' into Rear 10' Setback. It is a Structural Wall and the Screen Enclosure also sits on top of it.
Raised Wall on Back side of Pool with Waterfalls.

Artistic conception

This 24.2' is in compliance with 10' Setback.
Attaching departmental comments regarding your submittal to Flagler County for the above referenced project. Any questions regarding any of the comments should be addressed to the department providing the comment.

Flagler County Building Department 386-313-4002
Flagler County Planning Department 386-313-4009
Flagler County Development Engineering 386-313-4082
Flagler County General Services (Utilities) 386-313-4184
County Attorney 386-313-4005
Flagler County Fire Services 386-313-4258
E-911 GIS Specialist 386-313-4274
Environmental Health Department 386-437-7358
Flagler County School Board 386-586-2386
REVIEWING DEPARTMENT: BUILDING DEPARTMENT

No comments.

REVIEWING DEPARTMENT: DEVELOPMENT ENGINEERING

No comments at this time.

REVIEWING DEPARTMENT: PLANNING DEPARTMENT

No comments at this time

REVIEWING DEPARTMENT: FIRE INSPECTOR

No issues
#3160 Tobin Variance

<table>
<thead>
<tr>
<th>ParcelId</th>
<th>Owner</th>
<th>Address</th>
<th>City, State, Zip</th>
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<tr>
<td>04-11-31-4900-00000-0000</td>
<td>OCEAN HAMMOCK POA, INC</td>
<td>5455 A1A SOUTH</td>
<td>ST AUGUSTINE, FL 32080</td>
</tr>
<tr>
<td>04-11-31-4900-00000-0000</td>
<td>OCEAN HAMMOCK POA, INC</td>
<td>5455 A1A SOUTH</td>
<td>ST AUGUSTINE, FL 32080</td>
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<tr>
<td>04-11-31-2984-00000-00B2</td>
<td>FLAGLER COUNTY BOCC</td>
<td>1769 E MOODY BLVD BLDG #2</td>
<td>BUNNELL, FL 32110</td>
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<tr>
<td>07-11-31-7085-01010-0030</td>
<td>FLAGLER COUNTY BOCC</td>
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<td>BUNNELL, FL 32010</td>
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<tr>
<td>04-11-31-4900-00000-0600</td>
<td>HOFFMAN FAMILY LIMITED PARTNERSHIP</td>
<td>1225 E WARNER ROAD STE 17</td>
<td>TEMPE, AZ 85284</td>
</tr>
<tr>
<td>04-11-31-4900-00000-0590</td>
<td>A.W.SR &amp; JOYCE &amp; A.W. JR. &amp; CHRISTINA GENNA</td>
<td>30 OCEAN RIDGE BLVD S</td>
<td>PALM COAST, FL 32137</td>
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<tr>
<td>04-11-31-4900-00000-0580</td>
<td>ROBERT M &amp; STACEY S TROLLINGER</td>
<td>102 WINDY GAP ROAD</td>
<td>ASHEVILLE, NC 28804</td>
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<td>04-11-31-4900-00000-0680</td>
<td>HAMMOCK PARKWAY PROPERTIES LLC</td>
<td>200 EXECUTIVE WAY #200</td>
<td>PONTE VEDRA BEACH, FL 32082</td>
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<tr>
<td>04-11-31-4900-00000-0690</td>
<td>ANTHONY W SR &amp; JOYCE GENNARO</td>
<td>30 OCEAN RIDGE BLVD S</td>
<td>PALM COAST, FL 321373377</td>
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<td>04-11-31-4900-00000-0640</td>
<td>PETER H &amp; BARBARA C LENDRUM TRUSTEES</td>
<td>40 OCEAN RIDGE BLVD S</td>
<td>PALM COAST, FL 32137</td>
</tr>
<tr>
<td>04-11-31-4900-00000-0650</td>
<td>DANNY DESIMONE</td>
<td>375 SHADY TREE COURT</td>
<td>MORRISVILLE, PA 19067</td>
</tr>
<tr>
<td>04-11-31-4900-00000-0630</td>
<td>WILLIAM &amp; SUZANNE TOBIN</td>
<td>39 OCEAN RIDGE BLVD</td>
<td>PALM COAST, FL 32137</td>
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<tr>
<td>04-11-31-4900-00000-0620</td>
<td>FOXWORTH PROPERTIES LLC</td>
<td>4620 FRANKLIN ROAD</td>
<td>MURFREESBORO, TN 37129</td>
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<tr>
<td>04-11-31-4900-00000-0670</td>
<td>LARRY P &amp; THERESA A SYMTEK</td>
<td>546 W KELLY PARK RD</td>
<td>APOPKA, FL 32712</td>
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<tr>
<td>04-11-31-4900-00000-0610</td>
<td>ALSH INVESTMENTS LLC</td>
<td>9511 GNOME LANE</td>
<td>BELTON, TX 76513</td>
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<tr>
<td>04-11-31-4900-00000-0660</td>
<td>WILLIAM R &amp; MELODY R MITCHELL</td>
<td>1234 SALT CREEK ISLAND DRIVE</td>
<td>PONTE VEDRA, FL 32082</td>
</tr>
<tr>
<td>04-11-31-4900-00000-00F0</td>
<td>OCEAN HAMMOCK POA, INC</td>
<td>5455 A1A SOUTH</td>
<td>ST AUGUSTINE, FL 32080</td>
</tr>
<tr>
<td>04-11-31-2984-00030-0000</td>
<td>HAMMOCK DUNES CLUB INC</td>
<td>30 AVENUE ROYALE</td>
<td>PALM COAST, FL 321372237</td>
</tr>
</tbody>
</table>

I hereby affirm mailed notice to each owner on November 26, 2018 for the Planning & Development Board Meeting on December 11, 2018 at 6:00 pm.

Wendy Rickey, Planner
November 26, 2018

FLAGLER COUNTY BOCC
1769 E MOODY BLVD BLDG #2
BUNNELL, FL 32110

RE: Application #3160 - Variance Request in the PUD (Planned Unit Development) Zoning District.

Dear Property Owner:

As an owner of property within 300’ of the property referenced herein, the Flagler County Planning Department, in accordance with Section 2.07.00 of the Flagler County Land Development Code, advises you that:

A request has been made by Agua Pools & Spas representing property owners William and Suzanne Tobin for a 0.7 foot rear pool setback variance from the minimum 10 foot setback requirement on .23 +/- acres located at 39 Ocean Ridge Blvd Identified as parcel # 04-11-31-4900-00000-0630

You are hereby notified that a public hearing before the Flagler County Planning and Development Board, required by law, will be held in the Flagler County Government Services Building, Board Chambers, at 1769 E. Moody Boulevard, Building 2, Bunnell, Florida, on December 11, 2018, beginning at 6:00 p.m., or as soon thereafter as possible.

You are welcome to attend and express your opinion.

Sincerely,

Wendy Hickey
Planner

NOTE: PURSUANT TO SECTION 286.0105, FLORIDA STATUTES, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD, AGENCY OR COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, HE OR SHE WILL NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS ADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.
APPLICATION # 3160

NOTICE OF PUBLIC HEARING

THE FLAGLER COUNTY PLANNING AND DEVELOPMENT BOARD WILL HOLD A PUBLIC HEARING AT:

FLAGLER COUNTY GOVERNMENT SERVICES BUILDING BOARD CHAMBERS
1769 E. MOODY BOULEVARD, BLDG 2; BUNNELL, FL 32110

DECEMBER 11, 2018 - 6:00 P.M.

REQUEST: REAR SETBACK VARIANCE
APPLICANT: AGUA POOLS & SPAS

Parcel Number: 04-11-31-4900-00000-0630
Zoning District: PUD (PLANNED UNIT DEVELOPMENT)

THE PUBLIC HEARING IS BEING HELD FOR THE PURPOSE OF HEARING ANY AND ALL INTERESTED PARTIES AND PERSONS WHO MAY BE FOR OR AGAINST THE APPLICATION, RELATIVE TO THE PROPERTY WHEREON THIS NOTICE IS POSTED.

For additional information visit web page at: www.flaglercounty.org or call Flagler County Planning & Zoning Department at (386) 437-4029
DO NOT REMOVE THIS NOTICE PRIOR TO THE PUBLIC HEARING DATE ABOVE
FLAGLER COUNTY PLANNING AND DEVELOPMENT BOARD
DISCUSSION / AGENDA ITEM #5

SUBJECT: DISCUSSION OF ORDINANCE RELATED TO MEMBERSHIP ON THE PLANNING AND DEVELOPMENT BOARD – request by Chair Langello with consensus of the Board to discuss.

DATE OF MEETING: December 11, 2018

OVERVIEW/SUMMARY: The request is for discussion related to Ordinance No. 2018-15 as adopted by the Board of County Commissioners at their meeting on September 5, 2018 (Agenda Item #9a). Chair Langello initially discussed this ordinance at the Planning and Development Board’s November 13, 2018 regular meeting; at the meeting, there was consensus to place the ordinance on the Planning and Development Board’s next meeting agenda for discussion.

The objective through the ordinance was to limit membership to the County’s Planning and Development Board to County residents, while also preventing dual-office holding as it is defined in the Florida Constitution. Staff’s rationale is that residents would be best suited to make land use decisions within their own jurisdiction, much the same as the incorporated cities would seek out residents of their own respective jurisdictions (as opposed to unincorporated residents or residents of another jurisdiction) for Board membership, especially where land use decisions were concerned.

As was previously discussed, in accordance with the provisions of the Ordinance, the Board of County Commissioners may still waive membership requirements, including the elector, unincorporated residency, homestead, and geographic representation limits. As was also mentioned at the November meeting, the Board of County Commissioners can take any action it deems appropriate regarding adoption of ordinances, including amendments to the Land Development Code related to Planning and Development Board membership, with or without input from the Planning and Development Board. Additionally, as provided in the Land Development Code, the Board of County Commissioners may appoint, re-appoint, or remove a Planning and Development Board member (along with any advisory board member) with or without cause.

Since the adoption of Ordinance No. 2018-15, the Planning and Development Board is now fully-seated, with all seven members now appointed and no vacancies.

ATTACHMENTS:
1. Ordinance No. 2018-15
2. September 5, 2018 BCC regular meeting minutes (in part)
3. Current Planning and Development Board membership
4. December 6, 2018 email from Chair Langello
ORDINANCE NO. 2018 - 15

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA AMENDING THE FLAGLER COUNTY LAND DEVELOPMENT CODE; AMENDING AND RESTATING SECTION 2.02.02, BOARD MEMBERSHIP AND OFFICERS; PROVIDING FOR PLANNING AND DEVELOPMENT BOARD MEMBERS TO BE SELECTED FROM UNINCORPORATED RESIDENTS AND PROHIBITING DUAL-OFFICE HOLDING AS PROVIDED IN ARTICLE II, SECTION 5(A), FLORIDA CONSTITUTION; PROVIDING FOR CODIFICATION AND SCRIVENER’S ERRORS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Flagler County’s Land Development Code became effective on March 18, 1991; and

WHEREAS, among other things, the Land Development Code established criteria for the selection of the Planning and Development Board members; and

WHEREAS, the Land Development Code’s criteria for the selection of Planning and Development Board members was subsequently amended through Ordinance Nos. 95-06, 97-05, 2009-07, and 2009-10; and

WHEREAS, presently there are two vacancies for membership on the Planning and Development Board which have remained vacant for several months; and

WHEREAS, in assessing the challenges associated with obtaining qualified applicants for these Board vacancies and through staff’s review of applications received for the vacancies on the Planning and Development Board, staff has prepared this ordinance amending the provisions related specifically to eligibility requirements; and

WHEREAS, the Planning and Development Board provides recommendations and/or approvals on matters dealing with land use policies, the Comprehensive Plan and Land Development Code for unincorporated areas only, the County is best served by having the membership on the Planning and Development Board be from unincorporated residents; and
WHEREAS, it is the intent of the Board of County Commissioners that this ordinance and its changes to the makeup of the Planning and Development Board shall apply to new applicants for membership on the Planning and Development Board and shall not apply to incumbents currently serving on the Planning and Development Board or be a factor in their reappointment; and

WHEREAS, public notice of the adoption of this ordinance has been provided in accordance with Chapter 125.66(2)(a), Florida Statutes.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1: FINDINGS

1. The above Recitals are incorporated herein as Findings of Fact.

2. This Ordinance is consistent with the goals, objectives and policies of the Flagler County 2010-2035 Comprehensive Plan.

SECTION 2: CODE AMENDMENT

The Flagler County Code of Ordinances, Appendix C, Flagler County Land Development Code, Article II, Administrative Mechanisms, Section 2.02.02, Board membership and officers, is hereby amended as follows (additions are shown in double-underline format and deletions are shown as strikethrough format):

********

2.02.02. Board membership and officers.

1. The Planning and Development Board shall have seven (7) members appointed by the Flagler County Commission meeting the following requirements in addition to any other overall County requirements:
   a. Each member shall be an elector of Flagler County.
   b. Each member shall be a full-time permanent resident of Flagler County.
   c. Members shall be selected from one of the following areas specifically from within unincorporated County and with only one member selected per area. To be eligible for membership, the selectee shall be a full-time permanent unincorporated resident of the area as verified by a valid homestead exemption in their name maintained throughout their term in office. The areas are:
      i. East of the Intracoastal Waterway
      ii. West of US 1 and south of SR 100
iii. West of US 1 and north of SR 100
iv. Between US 1 and the Intracoastal Waterway, North of SR 100
v. Between US 1 and I-95, south of SR 100
vi. Between I-95 and the Intracoastal Waterway, south of SR 100
vii. One At-Large member
viii. Should an area be deemed by the Board of County Commissioners to no longer be a viable area for drawing qualified volunteers, the Board may designate an additional at-large member from unincorporated County residents by simple majority vote of the Board.

Whenever there are competing applications for a board opening those applicants with experience in the field of planning and zoning shall receive special preference consideration and, whenever possible, the County Commission should attempt to include applicants selected from each of the following fields/professions:

1. An architect, landscape architect or urban planner.
2. A neighborhood or environmental activist.
3. An agricultural interest (farmer, timber/sod, cattle).
4. A person engaged in real estate sales or development.
5. A businessman or an attorney.
6. An engineer or botanist, biologist, geologist or similar geo-science professional.

2. Each member of the Planning and Development Board shall not, by direct employment or otherwise, derive a substantial portion of their income from matters related to actions which come before the Planning and Development Board, and all members shall comply with all conflict of interest provisions of Chapter 112, Florida Statutes.

3. Members shall be appointed in accordance with established policies and procedures related to the establishment of and appointment of boards and committees.

4. Members may be removed without notice and without assignment of cause by a majority vote of the County Commission.
5. The members of the Planning and Development Board shall annually elect a chair and vice-chair from among the members and may create and fill other offices as the board deems needed.

6. The County Administrator or designee shall appoint a county employee to serve as secretary of the Planning and Development Board, who shall serve as the recorder and custodian of all board records.

7. Members shall not be compensated, but may be paid for travel and other expenses incurred on board business under procedures prescribed in advance by the County Commission.

8. The County Commission may appropriate funds to permit the Planning and Development Board to perform its prescribed functions.

9. If any member fails to attend three successive meetings or workshops that have been noticed, the secretary of the Planning and Development Board shall notify the County Administrator.

10. A Planning and Development Board member may not be a current elected official or employee of any city or county government.

1140. The Flagler County Commission shall serve as the land development regulation commission pursuant to Florida Statutes Chapter 163, Florida Statutes. The Planning and Development Board may provide recommendations to the County Commission concerning any necessary or desirable amendments to the county's Land Development Code [this appendix].

1244. The Flagler County Commission may waive the elector, full-time permanent unincorporated residency, homestead, and geographic area representation limits (i.e., no more than one (1) representative selected from each area) as listed at Section 2.02.02.1.a. through c., respectively, through a super-majority vote of the County Commission.

* * * * *

SECTION 3: CODIFICATION AND SCRIVENER’S ERRORS

1. The provisions of this Ordinance shall be included and incorporated into the Code of Ordinances of Flagler County, Florida, as additions or amendments thereto, and
shall be appropriately renumbered or relettered to conform to the uniform numbering system of the Code. Scrivener errors may be corrected as deemed necessary.

2. Only Section 2 herein shall be codified within the Flagler County Code of Ordinances.

SECTION 4: SEVERABILITY

If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 5: EFFECTIVE DATE

This ordinance shall take effect upon filing with the Secretary of State as provided in Section 125.66, Florida Statutes.

PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA THIS 5TH DAY OF SEPTEMBER 2018.

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS

Gregory J. Hansen, Chair

ATTEST:

Lisa Fenicello, D.C.
Tom Bexley, Clerk of the Circuit Court and Comptroller

APPROVED AS TO FORM:

Al Hadeed, County Attorney

as approved by the Board of County Commis's
September 5, 2018

Honorable Tom Bexley
Clerk of the Circuit Court
Flagler County
1769 East Moody Boulevard, Building 1
Bunnell, Florida 32110

Attention: Ms. Lisa Funicello

Dear Mr. Bexley:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Flagler County Ordinance No. 2018-15, which was filed in this office on September 5, 2018.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb
FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS

SEPTEMBER 5, 2018

REGULAR MEETING

Present: Chair Gregory Hansen, Vice Chair Donald O’Brien, Commissioners Charles Ericksen, Nate McLaughlin and David Sullivan, County Administrator Craig Coffey, County Attorney Al Hadeed and Deputy Clerk Rhea Cosgrove

Chair Hansen called the meeting to order at 9:00 a.m. in the Board Chambers of the Government Services Building in Bunnell, Florida.

ITEM 1 - PLEDGE TO THE FLAG AND MOMENT OF SILENCE

Chair Hansen led the Pledge to the Flag and requested a moment of silence.

ITEM 2 - ADDITIONS, DELETIONS AND MODIFICATIONS TO THE AGENDA

None

ITEM 3 - ANNOUNCEMENTS BY THE CHAIR

Chair Hansen announced the following:

- Flagler Baseball kickoff – Saturday, September 8 at 9:00 a.m.
- 9/11 Memorial Ride – Sunday, September 9 at 8:30 a.m.
- Flagler County Citizens Academy Fall Session – now accepting applications
- To register for Special Needs shelter contact Emergency Management at www.flaglercounty.org
- Flagler County soliciting registered voters residing in Flagler County for various citizen volunteer boards and councils
- Upcoming meetings:
  - Workshop – September 5 at 1:00 p.m. in the Emergency Operations Center
  - First Budget Public Hearing – September 6 at 5:30 p.m. in the Board Chambers
  - Regular Meeting – September 17 at 5:00 p.m. in the Board Chambers

ITEM 4A - RECOGNITIONS

None
PUBLIC HEARINGS

ITEM 9A - LEGISLATIVE - CONSIDERATION OF AN AMENDMENT TO THE LAND DEVELOPMENT CODE TO ADD THE REQUIREMENT FOR UNINCORPORATED RESIDENCY AND PROHIBITING DUAL-OFFICE HOLDING CONSISTENT WITH THE FLORIDA CONSTITUTION – FIRST READING AND ADOPTION

The following information was provided by Craig Coffey, County Administrator:

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS
PUBLIC HEARING / AGENDA ITEM # 9a

SUBJECT: LEGISLATIVE – Consideration of an Amendment to the Land Development Code to Add the Requirement for Unincorporated Residency and Prohibiting Dual-Office Holding Consistent with the Florida Constitution – First Reading and Adoption.

DATE OF MEETING: September 5, 2018

OVERVIEW/SUMMARY: This request is legislative in nature (not quasi-judicial) and does not require disclosure of ex parte communication. Staff is seeking approval of an ordinance amending Section 2.05.02 of the Land Development Code pertaining to membership on the Planning and Development Board. The last amendment to the membership requirements, approved by the Board of County Commissioners through Ordinance No. 2009-10 on November 2, 2009, provided for relief of the requirements related to elector status, residency requirements, and homestead for Planning and Development Board membership. To address current challenges associated with obtaining qualified applicants for the Planning and Development Board, staff has prepared an ordinance to amend the provisions related to eligibility requirements. More specifically, the ordinance would require that a selectee be an unincorporated resident, coinciding with the jurisdictional area under the authority of the Planning and Development Board. Additionally, the amended ordinance incorporates the dual-office holding prohibition of Article II, section 5(a), of the Florida Constitution, which prohibits elected and certain other officials from serving on the Planning and Development Board.

The ordinance retains all of the prior provisions including, but not limited to, the following:

- When competing applications for a board opening are received, those applicants with experience in the field of planning and zoning shall receive special consideration.
- Whenever possible, the Commission should attempt to include applicants in specific field/professions as outlined within the ordinance.
- County Commission may waive the elector, full-time permanent unincorporated residency, homestead, and geographic area representation limits.

DEPT/CONTACT/PHONE #: Planning & Zoning / Adam Mengel / (386) 313-4065

RECOMMENDATION: Request the Board adopt on first and final reading an amendment to Section 2.05.02 of the Land Development Code to provide for members to be selected from unincorporated areas and the incorporation of the prohibition on dual-office holding from Article II, section 5(a), Florida Constitution.

ATTACHMENTS:
1. Ordinance Section 2.05.02 of the Land Development Code
2. Legal Notice

[Signature]
Craig M. Coffey, County Administrator

Date
(Item 9a – continued)

Adam Mengel, Planning and Zoning Director, stated staff was trying to coincide the eligible membership of the Planning Board with people that were within the jurisdiction of the unincorporated county, and prohibit dual office holding and members from being city or county employees.

County Administrator Coffey stated the County was trying to clarify that the Planning Board was strictly unincorporated Flagler County and had no jurisdiction over any city. Pointed out it also would allow the BCC to waive the requirements if someone could not be found.

Commissioner O’Brien stated he raised the issue after being contacted by a couple of residents who received a letter stating they would not be considered because they were residents of Palm Coast or another city, so he asked that the wording be cleaned up. Noted it could affect the cities when dealing with a contiguous parcel and he wanted to know what other counties did. Pointed out unincorporated Flagler County was scattered around the county and not all in one area. Wondered if a disservice was being done to all of the residents in Flagler County because they might need representation.

Questioned if the County Attorney had looked at it and if it should have been run through the Planning Board first because it was a change to the Land Development Code.

Mr. Mengel noted it would take a super majority to waive the requirements and stated the Planning Board did not review the item, even though the Land Development Code did require it to review, provide changes and provide a recommendation to the BCC.

Commissioner O’Brien stated he understood if they wanted to limit representation to mainly unincorporated residents, but noted there was an interest from other residents in the activity of this board.

County Administrator Coffey replied the BCC could organize the Planning Board however it wanted, but he did not think unincorporated residents were allowed on a city board. Stated if the BCC wanted he could propose an interlocal agreement that each jurisdiction appoint a member to each other’s board. Noted city decisions impact unincorporated residents, as well, and the statute provided for a joint planning board, if the BCC wanted to do that.

Commissioner Sullivan asked if development of the Airport area was covered by the County’s planning board.

County Administrator Coffey replied it did, noting it was covered by the interlocal agreement that required a swapping of plans between the City of Palm Coast and the County for certain areas in and around the Airport.

Commissioner McLaughlin commented this was the first and final reading.
September 5, 2018
Regular Meeting

(Item 9a – continued)

County Administrator Coffey pointed out it did not go before the Planning Board because it was not a land development issue; it was the organizational makeup of that board.

A motion was made by Commissioner McLaughlin to approve Item 9a as presented. Seconded by Commissioner Sullivan.

Chair Hansen requested public comments. There was none.

Chair Hansen called the question. Motion carried 4 to 1 with Commissioner O’Brien dissenting.
Council: Planning and Development Board

Established: Reference Land Development Code, Appendix C, Section 2; Resolution 2009-07 and 2009-10.

Function:

- Review and act upon applications for development pursuant to the county Land Development Code and other applicable ordinances;
- Monitor and oversee the operation, effectiveness and status of the county Land Development Code and recommend amendments to the County Commission that are consistent with the Comprehensive Plan;
- Obtain and maintain information on population, property values, the land economy, land use and other information necessary to assess the amount, direction and type of development to be expected in the county;
- Advise on the land use policies of the county through their regular meetings and ad hoc scheduled workshops;
- Conduct public hearings to gather information necessary for the drafting, establishment, amendment, and maintenance of various elements of the county Comprehensive Plan and Land Development Code; and
- Review redevelopment plans prepared under Chapter 163, Part III, Florida Statutes.

Membership: Consists of 7 members residing in specific geographic areas of the County. Wherever possible, applicants will be selected from each of the following fields/professions: (1) architect, landscape architect or urban planner; (2) neighborhood or environmental activist; (3) agricultural interest (farmer, timber/sold or cattle); (4) real estate sales or development; (5) businessman or attorney; and (6) engineer, botanist, biologist, geologist or geo-science professional.

Appointment Terms: Three year terms following initial staggering of terms.

Meeting Info.: Second Tuesday of the month @ 5:00 p.m. in the Board Chambers at the Government Services Building.
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<tr>
<td>Email: <a href="mailto:mboyd@bellsouth.net">mboyd@bellsouth.net</a></td>
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<tr>
<td><strong>East of Intracoastal Waterway</strong></td>
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<tr>
<td>Mark Langello</td>
<td>(appt to fill term &amp; 3yr terms)</td>
<td>09/21/15</td>
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<tr>
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<td>12/04/17</td>
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<tr>
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<tr>
<td><strong>At-Large</strong>*</td>
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<tr>
<td>Laureen Kornel</td>
<td>09/21/09</td>
<td>09/21/11</td>
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<tr>
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<tr>
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<tr>
<td>Anthony Lombardo</td>
<td>12/04/17</td>
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<tr>
<td>5 Winslow Place</td>
<td></td>
<td></td>
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<tr>
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<tr>
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<tr>
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Dated: November 19, 2018
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<tr>
<td>Mike Goodman</td>
<td>13 Capri Court</td>
<td></td>
</tr>
<tr>
<td>Palm Coast, FL 32137</td>
<td>Home: 386-864-8295</td>
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</tr>
<tr>
<td>Cell: 516-852-4229</td>
<td>Email: <a href="mailto:mikecheesecake1@gmail.com">mikecheesecake1@gmail.com</a></td>
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<tr>
<td>Jack Corbett</td>
<td>40 Treetop Circle</td>
<td></td>
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<tr>
<td>Ormond Beach, FL 32174</td>
<td>Cell: 386-569-1872</td>
<td></td>
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<tr>
<td>Email: <a href="mailto:corbettteam@gmail.com">corbettteam@gmail.com</a></td>
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*Ms. Kornel was chosen “At Large” and the position “West of US 1 and North of SR 100” remained vacant with the Board waiving the area requirements at the time of initial appointments on 09/21/09.

**At Large position appointed in lieu of a citizen residing “Between US 1 and Intra-coastal Waterway, North of SR 100”.

Dated: November 19, 2018

Page 3
Adam, 

Please incorporate the attached report into your packet to the other board members for this next meeting.

If you have any questions, please give me a call.

Thanks,

Mark 

Mark Langello
M&M Development & Construction, LLC
2323 N. State Street, Unit #58
Bunnell, FL 32110
(386) 437-4111
RG291103911
FC11917
Issues with the current land development code, 2.02.02 Board Membership:

Presentation for discussion by Mark Langello, 12/6/2018

Flagler County LDC, 2.02.02.1.c states:

Members shall be selected from one of the following areas specifically from within unincorporated county and with only one member selected per area. To be eligible for membership, the selectee shall be a full-time permanent unincorporated resident of the area as verified by a valid homestead exemption in his/her name maintained throughout the term in office. The areas are:

The requirements in this section and the actual specific areas (zones) make it hard to find qualified people to serve on this board and hinder proper representation in the rural and other areas of the county. This is evident in many ways including by considering the one year vacancy and 7 month vacancy of the last two seats that have just been filled to this board, neither of whom came from the vacant zones. The concept that you must claim your residency in unincorporated areas to truly be able to both understand the issues relating to planning and zoning in that area or be affected by those decisions is flawed. A person can own land in unincorporated area, or own or operate a business (including a farm) in that area and would understand the issues and be affected by the board's decisions. Also, someone may have had many years of living in, or land ownership in, or having a business (farm) in unincorporated areas who can (and have in the past) represent the interests and people and interests of that area. The current method of picking only one member from a given area, by default, is only allowing one member from the "west side" of the county to sit on the planning board. This is because only one of the zones has ever produced anyone who has served on any board of the county (to my knowledge). Also, having a homestead exemption in the name of the member doesn't go to the quality of the applicant, but rather is only a simple way of determining residency that may omit actual residents. This is because someone can live in an area and not have homestead exemption for several reason. There any many ways to show residency and limiting members to having homestead exemption is not the only means. This is true for at least one member of our current board, myself.

The zones listed in the ordinance are very problematic and not all will produce quality membership. Zone iii (West of US 1 and North of SR 100 is an area that is mostly uninhabited (Espanola and a few farms). To my knowledge, we have never had a member from that area in the 20 plus years we have a county planning board. Zone iv (Between US 1 and the Intracoastal, North of SR100) is another area that, if following the new change to the code allowing only unincorporated residents, would be very hard to fill. While this is probably the most inhabited of the zones if you include city residents, only a single subdivision, and a few vacant lots are unincorporated. To date, we have never had anyone from those narrow areas apply to serve on this, or any board in the county. However, we have had several members of the planning boards, and other county boards from that area who were City of Palm Coast residents, and who have served well. Most notable is that many of the county commissioners have lived in that
area within City of Palm Coast limits. Zone i, (East of the Intracoastal) is an area that has had several members over the years, including 3 current board members. If the regulation requiring only one member from each zone was practical, we would not have this makeup. The argument that the City of Palm Coast doesn't allow non city residents to serve on their board so the county should do the same is childish. The county doesn't make its regulations based on what Palm Coast does, why would we do this now. The fact that Palm Coast has 10 times the amount of residents as unincorporated residents is the most relevant reason for their rationale. Consider the City of Bunnell, who has a small population like the unincorporated county and who also have vast tracks of rural land. Bunnell allows non residents to serve on their board. At one time a few years ago, all 5 members of the Bunnell PZA were non residents. Also, while there is language in the current code (Section 2.02.02.12) that allows the commission to put aside any of these requirements for a single application if they desire or determine a "zone" is not viable, it is not as easy as it sounds to make this change. It takes a vote of a supermajority of the commission (4 of 5 commissioners), and there is currently no method established of bringing these applications to the commission.

SOLUTION: A more reasonable approach to seating board members is to "dumb down" the current regulations but still strive for good representation on the planning board. My suggestion is to require at least 4 members of the 7 board to reside in, or to own land in, or own/operate a business or farm in unincorporated areas. This would then allow more than one from any given unincorporated area, especially from the west side of the county to serve on the board. The remaining 3 members could come from any area of the county, including unincorporated, if there are quality applicants from those areas, or could be applicants that demonstrate needed expertise with listed backgrounds from any area including people who live within any city limits. The requirement that the member be from within the county and not from outside the county is probably still a good idea. With the current method of using a zone as the overriding factor in membership, it is easy to have a less qualified applicant have a seat over a better applicant due only to where they reside. The background and attributes a potential applicant can bring to the board is just as important as to where they live, and having two members who are well qualified to sit on this board who happen to come from the same zone should not disqualify one.

When it comes to overriding any of the requirements of this section for an applicant, it should only need a majority vote of the commission, the same way almost every other decision the commission has to make. There is no reason to require a supermajority for such a minor issue when major issues concerning the business of the county are done with a simple majority. Also, there have been several applications for membership to the planning board by both qualified and non qualified applicants over the past year that
were not advanced to the commission for their consideration. In fact, to date, several of these applications have never been disclosed to the commission. That board never had the opportunity to consider these applications or to wave any qualifications. The administration had selectively omitted applicants effectively deciding who would eventually sit on the planning board, and who would not. This was never the intent of the LDC, and the commission. To avoid this in the future, a policy should be established that ALL applications, no matter how qualified, should be advanced to the commission within 30 days of submittal. This would then allow the elected commission, and only the elected commission to decide if any application should be considered and if qualifications should be put aside. Also, in order to allow the commission to seat quality members, once presented to the commission an application can be either acted upon at that meeting, held for consideration for another meeting to allow for more applications to be received, or the application be rejected. Then the applications not rejected should be held by the staff and re-introduced for future vacancies for a period of one year from submittal. Most applicants already assume this is being done, but the practice has been once the application has been reviewed by the commission, it is not brought up again. If two quality applicants were considered for one seat, only one is chosen, it is only logical that if another seat becomes vacant within a reasonable time (one year), that this quality candidate still be considered. It's not practical to expect the citizens to constantly be monitoring the agendas for vacancies and keep resubmitting the same application over and over.

When the current board was established around 9 years ago, the requirement that all the members be unincorporated residents was not in the code. Despite the testimony of Craig Coffee during the last PZA meeting that "not requiring only unincorporated residents" be able to serve was an "oversight" and that this requirement was the intent all along, many of the past board members under that code have been City residents, both Flagler Beach and Palm Coast, including some current members. In fact, the change to make it only unincorporated residents a few months ago did NOT come from any commissioner's request, it was an administration decision and this change was never presented to our board for review, instead just put in front of the commission without much information. The debate at that meeting was from one commissioner who questioned the action, but didn't have adequate information to discuss it. In our last meeting it was questioned "why we are talking about this", and "the ship has already sailed". The reason we must talk about it is that this change, along with reviewing the LDC itself is our responsibility.

The Land Development Code 2.02.05.3 states:
The planning and development board shall, with advice from county staff, monitor and oversee the operation, effectiveness and status of the county land development code and recommend amendments to the county commission that are consistent with the comprehensive plan.

And 2.02.05.6
The planning and development board shall conduct public hearings to gather information necessary for the drafting, establishment, amendment, and maintenance of the various elements of the county comprehensive plan and land development code.
This language is clear that it is our responsibility to oversee the LDC, and we shall, not may, conduct public hearings for changes (including amendment and maintenance) of the Comp Plan and LDC. Our deliberations and the input from the public should be given to the commission for them to consider before changes or new issues be adapted. This was never done, and according to the code needs to be done. Also, no changes or revisions to the code are irreversible, in fact, the very change we are discussing to the LDC a few months ago shows that the code can be changed, or changed again.

Two other areas of this section that should be reviewed, at the end of Section 2.02.02.c this paragraph states:

Whenever there are competing applications for a board opening those applicants with experience in the field of planning and zoning shall receive special preference/consideration and, whenever possible, the county commission should attempt to include applicants selected from each of the following fields/professions:

Directly below this paragraph is a list of professions for members. It seems out of place that a person with planning background should be considered ahead or of greater importance than the other professions/fields listed. It seems more reasonable to consider the planning profession with the same importance as all the other professions/fields listed. The planning board is already represented by staff with planning and zoning background and training, and a board attorney who also has similar background. If you were to play out a possible scenario with this language, if every vacancy was filled with this preference, the board would be skewed with only planners and not represented by the other fields. The public who comes in front of this board and the county commission would not be served well with a "single point of view" orientated board. If this is really the desired mindset for the planning board, it should just be the staff. Of course this is not preferable as the multi member board with varied backgrounds offer a truly diverse point of view that would serve all the public better than a one sided voice. I suggest we take the planning professions and add it to the list below and remove the other language.

The other issue can be found in Section 2.02.02.9 which states:

If any member fails to attend three successive meetings or workshops that have been noticed, the secretary of the planning and development board shall notify the county administrator.

While the attendance of members is an important factor, according to this language the only reporting of non-attendance is to the county administrator, not the county commission. This again beckons who is in control of the membership of this board. Perhaps a better method would add to the end of this section ...

*shall notify the county administrator, who shall report this attendance to the county commission at the next regular meeting of their board.*
It was my hope that upon proper discussion and reflection of these matters, we can find consensus in what qualifications should be considered to serve on this board, and give the general outline of this to the commission to determine if they agree. If they agree something should be changed, the staff would then prepare the changes and those changes come to our board for review, public comment, and upon majority vote affirming the changes or revisions made in the meeting, be presented to the commission for consideration. This is how the code was intended to work, and allows plenty of good minds to consider these matters and give that advice to our elected officials for their action.

Note: Sections of the LDC were copied verbatim from Municode, however some elements of the actual sections have been underlined, bolded, or italicized by the author of this report to make reference to those words or parts of the language for illustrative purposes.