

**CITY OF PALM BAY, FLORIDA**  
**PLANNING AND ZONING BOARD/**  
**LOCAL PLANNING AGENCY**  
**SPECIAL MEETING NO. 2019-01**

Held on Wednesday, January 9, 2019, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Wendall Stroderd called the meeting to order at approximately 7:00 p.m.

Mr. Philip Weinberg led the Pledge of Allegiance to the Flag.

**ROLL CALL:**

<b>CHAIRPERSON:</b>	Wendall Stroderd	Present
<b>VICE CHAIRPERSON:</b>	Philip Weinberg	Present
<b>MEMBER:</b>	Leeta Jordan	Present
<b>MEMBER:</b>	Khalilah Maragh	Present
<b>MEMBER:</b>	William Pezzillo	Present
<b>MEMBER:</b>	Rainer Warner	Present
<b>MEMBER:</b>	Thomas "Woody" Woodrum	Absent (Excused)
<b>MEMBER:</b>	Donny Felix (School Board Appointee)	Present

**CITY STAFF:** Present were Mr. Patrick Murphy, Assistant Growth Management Director; Mr. Christopher Balter, Planner II; Ms. Chandra Powell, Recording Secretary; Mr. Rodney Edwards, Assistant City Attorney.

**ADOPTION OF MINUTES:**

1. Regular Planning and Zoning Board/Local Planning Agency Meeting No. 2018-12. Motion by Mr. Weinberg, seconded by Ms. Maragh to approve the minutes as presented. The motion carried with members voting unanimously.

**ANNOUNCEMENTS:**

1. Mr. Stroderd addressed the audience on the meeting procedures and explained that the Planning and Zoning Board/Local Planning Agency consists of volunteers who act as an advisory board to City Council.
2. Mr. Murphy was welcomed back to the City of Palm Bay.

**OLD BUSINESS:**

1. ♣V-27-2018 – DEVLIN MUNION (BRUCE MOIA, REP.)

Mr. Balter presented the staff report for Case V-27-2018. The applicant had requested a variance to allow an existing dumpster enclosure and parking area to encroach 5-feet into the 10-foot front setback as established by Section 185.036(H)(7)(b) of the Palm Bay Code of Ordinances. The board had to determine, based on the facts presented, the degree of minimal relief to meet the needs of the variance request, as required by Section 169.009 of the City of Palm Bay Code of Ordinances.

Mr. Weinberg questioned whether Waste Management had a problem with the initial dumpster location. Mr. Balter stated that the current dumpster location was approved by Waste Management during site plan review.

Mr. Bruce Moia, president of MBV Engineering, Inc. (representative for the applicant), explained that a fraternity house had existed on the subject site since 1964. He described how the property was unique because of its odd-shape; the Florida Department of Transportation creek that crossed the south end of the site; and the property fence that sat outside the property line. He explained how the problem with the dumpster location was not caused by the applicant but was the direct result of miscommunication between MBV Engineering, the contractor, Waste Management, and the City. A revision to the site plan by Waste Management was missed, which resulted in the dumpster encroachment, and the parking lot encroachment was inches into the 10-foot setback. During construction, the location of the old fraternity home and grade changes in the yard had prevented the dumpster from locating farther south.

Mr. Weinberg asked about the letter from Waste Management requesting the location change for the dumpster. Mr. Moia indicated that the letter would be provided to staff.

The floor was opened for public comments.

Mr. Devlin Munion, president of Pi Kappa Alpha House Foundation of Melbourne, Inc. (applicant), spoke in favor of the request. He stated that the new dumpster location should not cause issues with the neighboring property due to multiple fences and the three-foot high grass berm. The site looked its best in 54 years.

Ms. Linda Hufnagel (resident at Riverview Drive NE) spoke against the request. She commented on the difficulty the garbage truck would have maneuvering the parking lot to reach the new dumpster location, and she suggested moving the dumpster near the road for easier access.

The floor was closed for public comments.

Motion by Mr. Weinberg, seconded by Mr. Rainer to reopen the floor for public comments. The motion carried with members voting unanimously.

Mr. Brent Campbell (resident at Riverview Drive NE) spoke against the request. He commented that the dumpster location was originally near the street, and that the current location was within 10 to 15 feet to the closest residential neighbor. His issues were with the noise from the 5:00 a.m. garbage pickup; the swarms of flies present with the dumpster relocation; trash outside the dumpster, and an increase in possums and raccoons. He also objected to the variance submittal after the dumpster was moved.

In response to comments from the audience, Mr. Moia explained that the dumpster was purposely placed away from the street as the structure was unsightly, and it was dangerous for the garbage truck to back into the street for the pickup. Waste Management designed the turnaround area for the new dumpster location to permit easier truck access without having to back into the street. Noise during pick up might sound louder since the dumpster now sat on a concrete pad as required by code. The presence of flies, possums, and raccoons should be less at the current location since the trash disposed by the fraternity home remained the same, and the new dumpster location was enclosed.

Ms. Maragh wanted to know the impact of not granting the variance. Mr. Moia responded that it would be a financial burden on the applicant to tear down and rebuild the dumpster structure, pads and poles, walls, fences, and back out area.

The floor was reclosed for public comments, and there was no correspondence in the file.

Mr. Weinberg commented that the code was not meant to be punitive, and the cost of relocating the dumpster and parking area would be punitive.

Motion by Mr. Weinberg, seconded by Ms. Jordan to submit Case V-27-2018 to City Council for approval of a variance request to allow an existing dumpster enclosure and parking area to encroach 5-feet into the 10-foot front setback as established by Section 185.036(H)(7)(b) of the Palm Bay Code of Ordinances, subject to the condition that the applicant provide the City with a copy of the letter from Waste Management, Inc. requesting the dumpster change. The motion carried with members voting as follows:

Mr. Stroderd	Nay
Mr. Weinberg	Aye
Ms. Jordan	Aye
Ms. Maragh	Aye
Mr. Pezzillo	Nay
Mr. Warner	Aye

City Council will hear Case V-27-2018 on January 17, 2019.

Case CU-2-2019, New Business Item No. 2, was discussed at this time.

**2. ♣CU-2-2019 – CARMEL DEVELOPMENT (CARMINE FERRARO, REP.)**

For the benefit of the audience, Mr. Stroderd announced that Case CU-2-2019 was continued to the February 6, 2019 Planning and Zoning Board meeting. No board action was required to continue the request as Public Notification requirements had not been met.

The board resumed consideration of items in the order that was set by the agenda.

**NEW BUSINESS:**

**1. ♣CU-1-2019 – BABCOCK, LLC (DAVID AGEE AND  
ROBERT SCHWERER, REPS.)**

Mr. Balter presented the staff report for Case CU-1-2019. The applicant had requested a conditional use to allow proposed mining excavation of 60 acres of borrow pits by phases in a GU, General Use Holding District. Staff recommended Case CU-1-2019 for approval, subject to the conditions contained within the staff report.

Mr. Weinberg inquired whether the subject site was located south of the Yates property and the Deer Run development. Mr. Balter noted that this was correct, and at a mile away, the Yates residence was the closest residential property.

Mr. Robert Schwerer with Hayskar, Walker, Schwerer, Dundas & McCain P.A. (co-representative for the applicant) indicated a diagram of the subject property as the southernmost point in the City, a mile from the Yates residence and mining operation, and over a mile from the southern boundary line of Deer Run. He surmised how the proposed mining operation's distance from residential land alleviated any impact from sound, sight, and smells; and how agriculture, cattle, and trees abutted the property. He agreed, however, that all mining limitations and conditions within the staff report would be met, and a St. Johns River Water Management District permit would be obtained for consumptive use.

Mr. Stroderd questioned whether blasting and the use of crushers and grinders would occur during the mining operation. Mr. Schwerer stated that no blasting would occur at the site. A mining operator had not been selected for the site to determine the use of crushers and grinders, but the project would comply with the City's noise ordinance and Deer Run was over a mile away. There was no objection regarding the proposal from the president of the Deer Run Property Association and there were no Deer Run residents at the Citizen Participation Plan (CPP) meeting.

The floor was opened for public comments.

Mr. Ron Davis (Yates Mine partner) spoke against the request. He felt that in fairness, the proposed mine should be required to abide by the same rules as the Yates Mine since the two sites were adjacent.

In response to comments from the audience, Mr. Schwerer commented that Mr. David Agee with Agee Consulting, LLC (co-representative for the applicant) had confirmed that crushers would be used at the mining site. He explained that the proposed mine was different from the Yates mine. Some of the conditions placed on the Yates mine were site specific to protect the bordering Deer Run residents.

Mr. Stroderd wanted to know if the restriction to daylight hours would include all aspects of the mining operation. Mr. Davis confirmed that all activity, including hauling, loading, excavation, and crushing, would only occur during daylight hours. However, dewatering might need to occur earlier.

The floor was closed for public comments, and there was no correspondence in the file.

Mr. Weinberg spoke in favor of the request. The additional conditions on the Yates mine was due to its proximity to Deer Run, and there were no other residential parcels within close proximity.

Motion by Mr. Weinberg, seconded by Ms. Maragh to submit Case CU-1-2019 to City Council for approval of a conditional use to allow proposed mining excavation of 60 acres of borrow pits by phases in a GU, General Use Holding District, subject to the conditions contained within the staff report. The motion carried with members voting unanimously.

2. ♣CU-2-2019 – CARMEL DEVELOPMENT (CARMINE FERRARO, REP.)

Case CU-2-2019 was discussed prior to New Business.

3. ♣V-3-2019 - DAVID KITA

Mr. Balter presented the staff report for Case V-3-2019. The applicant had requested a variance to allow a proposed detached pole sign to encroach 5 feet into the 10-foot front setback, as established by Section 178.14, Appendix A, Palm Bay Code of Ordinances. The board had to determine, based on the facts presented, the degree of minimal relief to meet the needs of the variance request, as required by Section 169.009 of the City of Palm Bay Code of Ordinances.

Ms. Jordan questioned whether the detached sign would meet the sign code with the exception of its placement. Mr. Balter stated that this was correct.

Mr. David Kita (applicant) explained that the proposed change in the sign location would allow for more visibility, and that the proposed sign modifications in its current location would cause the loss of a needed parking space.

The floor was opened and closed for public comments; there were no comments from the audience and there was no correspondence in the file.

Motion by Ms. Jordan, seconded by Ms. Maragh to submit Case V-3-2019 to City Council for approval of a variance to allow a proposed detached pole sign to encroach 5 feet into the 10-foot front setback, as established by Section 178.14, Appendix A, Palm Bay Code of Ordinances. The motion carried with members voting unanimously.

4. ♣FD-4-2019 - CONSTRUCTION ENGINEERING GROUP, LLC (JAKE WISE)

Mr. Balter presented the staff report for Case FD-4-2019. The applicant had requested final development plan approval for a proposed Planned Unit Development (PUD) to allow a 98-lot, single-family residential development called Brentwood Lakes South Phase III. Staff recommended Case FD-4-2019 for approval, subject to the staff comments contained within the staff report.

Mr. Weinberg asked for clarification on the acreage of the proposed development. Mr. Balter confirmed that the development was 31.20 acres in size.

Mr. Jake Wise, P.E. of Construction Engineering Group, LLC (applicant) provided the board with an exhibit of the Brentwood Lakes development as approved in 2004-2005 with 75-foot wide lots and of the current proposal for Phase III to include a mix of 50-foot wide lots. Fourteen lots would be gained with the smaller lots, which would be less than a 4-percent increase for the overall project. He explained that the development had been put on hold for 7 to 8 years due to a downturn in the market. He addressed concerns from correspondence received from current Brentwood residents. The central mailbox location was a new standard imposed by the U.S. Postal Service. Traffic patterns had changed with the construction of the St. Johns Heritage Parkway and Heritage High School to necessitate the need for a new traffic signal, and no homes would be constructed until the traffic signal was installed by the development. The concern regarding stormwater had been resolved with the installation of a missing pipe connection, and the faulty stormwater pond in Phase I would be fixed during the permitting of Phase III. He planned to re-establish the agreement for the construction access down the eastern side of the development. The issue with Internet service was addressed by the installation of new fiber optics throughout the subdivision. He stated his agreement with all the conditions of the staff report.

The floor was opened for public comments.

There were three letters in the file in opposition to the request.



Mr. Steve Bewley (resident at Brentwood Lakes Estates) spoke against the request. His letter of opposition to the request was in the file. He commented on the design of the retention ponds in each of the four quadrants of the development and submitted pictures of the broken drainage system and eroded grounds that would eventually cause flooding and affect home foundations. The steep pond slopes were non-compliant with the St. Johns River Water Management District (SJRWMD). He noted that the park that was planned within the center of the development was no longer shown on the plans. He asked the board to deny the request until the existing problems with the drainage system were fixed.

Mr. Thomas Farrell (resident at Brentwood Lakes Estates) spoke against the request. His letter in opposition was in the file. He stated that an impartial impact study had not been done to determine the negative effect the reduced lot sizes would have on infrastructure, traffic, pollution, or current home values. Current residents were led to believe Phase III would be built similar to the previous phases. As the present residents could not renegotiate the terms in which their homes were purchased, the developer should not be permitted to do otherwise.

Mr. Jeffrey Mortenson (secretary/treasurer of Brentwood Lakes Homeowners Association) spoke against the request. He stated that the homeowner's association and homeowners had not been reimbursed for the elimination of the centralized park or made aware of the recent proposal. The two-story homes proposed at the back of Phase III would be across from the two firing ranges in the area and should require a safety barrier. He wanted the request to be tabled or building permits held until the existing SJRWMD problems were corrected.

Mr. Stan Swist (resident at Brentwood Lakes Estates) spoke against the request. He purchased his home in 2008 based on promises by the developer. He asked the board and City Council to protect current homeowners by requiring the development to be built as originally approved. The SJRWMD drainage issues had been going on for many years, and further development should be stopped until the faulty retention ponds were fixed.

Mr. Christopher West (resident at Brentwood Lakes Estates) spoke against the request. He indicated how the changes in the area since 2007-2008 with the construction of the St. Johns Heritage Parkway and Heritage High School were reasons to keep the larger-sized lots as originally approved. He was concerned about a decrease in house values, additional traffic, and the walking path that remained unpaved.



Mr. Wayne Crabtree (resident at Brentwood Lakes Estates) spoke against the request. He stated that the developer had ignored requests for information about the subject proposal. Existing homes were purchased in good faith based on advertisements and site plans from the developer depicting an exclusive development that did not include smaller lots. Home values would drop if adjacent, low-end track homes were allowed to be built. The developer was not taking care of the existing homeowners who had trusted and purchased based on developer promises.

The floor was closed for public comments.

In response to comments from the audience, Mr. Wise stated that he was not aware of any flooding in the development, and that the dramatic drop in the pond levels would allow for excess storage capacity. As previously mentioned, all washouts and broken structures would be addressed at one time during Phase III, including modifications to pond slopes. He explained that separate parks with amenities were built in two quadrants of Brentwood Lakes; however, the central area was designated for a lift station and the walkway was for lift station access. A recent, conservative traffic study had been done; the 50-foot wide lots would only back up to 50-foot wide lots; and the traffic signal and erosion and structure repairs were voluntarily being done prior to any building permits being issued for the subject phase of development. The current market supported smaller lots as substantiated by the built-out southwest quadrant with approved 50-foot wide lots.

Ms. Jordan noted that the proposed request would not exceed the 429 residential lots originally approved for the overall development. Mr. Wise confirmed that the subject request was in compliance with the original density for the overall development.

Mr. Pezzillo emphasized the wisdom of correcting the ponds before any other phases were constructed. Mr. Wise concurred that this was the plan for the project.

Ms. Maragh stated that the subject change was unconscionable. Property owners had bought into the initial idea, and there was nothing in their contracts to stipulate that their community was subject to change. Developers should responsibly keep their promises.

Mr. Weinberg commented that the subject change would not surpass the original 429 units approved for the overall development, and the project was in compliance with Future Land Use Element 8.3H.

Motion by Mr. Weinberg, seconded by Ms. Jordan to submit Case FD-4-2019 to City Council for final development plan approval for a proposed Planned Unit Development (PUD) to allow a 98-lot, single-family residential development called Brentwood Lakes South Phase III.

Mr. Stroderd commented that the developer should keep the promises made to the Brentwood Lakes community.

Motion amended by Mr. Weinberg, seconded by Ms. Jordan to submit Case FD-4-2019 to City Council for final development plan approval for a proposed Planned Unit Development (PUD) to allow a 98-lot, single-family residential development called Brentwood Lakes South Phase III, subject to the staff comments contained within the staff report with the condition that existing drainage issues were corrected prior to development. The motion failed with members voting as follows:

Mr. Stroderd	Nay
Mr. Weinberg	Aye
Ms. Jordan	Aye
Ms. Maragh	Nay
Mr. Pezzillo	Nay
Mr. Warner	Nay

#### **OTHER BUSINESS:**

1. Correspondence submitted from Mr. Woodrum was discussed regarding the Northrup meetings held with the individual board members and City staff.
2. Board members were reminded about the process for upcoming reappointments and selections to the board.

#### **ADJOURNMENT:**

The meeting was adjourned at approximately 9:00 p.m.

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Wendall Stroderd, CHAIRPERSON

Attest:

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Chandra Powell, SECRETARY

♣Quasi-Judicial Proceeding.

☒ Indicates item was considered out of sequence.