



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.4.

5/4/2023

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### Subject:

Austin A. and Kailey R. Mahan request a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from NC to CC. (22SS00013)(Tax Account 3030132) (District 1)

### Fiscal Impact:

None

### Dept/Office:

Planning & Development

### Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from NC (Neighborhood Commercial) to CC (Community Commercial).

### Summary Explanation and Background:

The applicant is seeking to amend the Future Land Use designation from NC to CC on 0.77 acres in order to establish a consistent Future Land Use. The companion application changing the zoning classification from AU (Agricultural Residential) to BU-2 (Retail, Warehousing, and Wholesale Commercial) will provide that consistency as established in 62-1255. The applicant is proposing to develop the property as outdoor storage and warehousing for a kayak business.

Parcels in the surrounding area range from 0.43 acres to 11.15 acres. The parcel to the north is a motel on 2.98 acres zoned BU-2. The parcels to the west and southwest are 1 acre in size, developed with single-family residences, and zoned RR-1 (Rural Residential). The parcel to the south is vacant commercial land zoned BU-1 (General Retail Commercial) on 5.54-acres. Across U.S. Highway 1 is a retail store zoned BU-1 on 1.48 acres.

The Board may wish to consider if the request is consistent with the Comprehensive Plan and compatible with the surrounding area.

On April 17, 2023, the Local Planning Agency heard the request and unanimously recommended approval.

### Clerk to the Board Instructions:

Once filed with the State, please return two copies of the ordinance to Planning and Development.



## FLORIDA DEPARTMENT *of* STATE

**RON DESANTIS**  
Governor

**CORD BYRD**  
Secretary of State

May 5, 2023

Honorable Rachel M. Sadoff  
Board of County Commissioners  
Brevard County  
Post Office Box 999  
Titusville, FL 32781-0999

Attention: Kimberly Powell

Dear Honorable Rachel Sadoff,

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 23-07, which was filed in this office on May 5, 2023.

Sincerely,

Anya Owens  
Director  
Administrative Code and Register

ACO/wlh



May 5, 2023

**MEMORANDUM**

**TO:** Tad Calkins, Planning and Development Director

**RE:** Item H.4., Small Scale Comprehensive Plan Amendment (22S.15)

The Board of County Commissioners, in regular session on May 4, 2023, conducted the public hearing and adopted Ordinance No. 23-07, setting forth the twenty-first Small Scale Comprehensive Plan Amendment (22S.15) to change the Future Land Use designation from NC to CC. (22SS00013). Enclosed are two fully-executed Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script, reading "Kimberly Powell".

Kimberly Powell, Clerk to the Board

Encl. (2)

ORDINANCE NO. 23- 07

AN ORDINANCE AMENDING ARTICLE III, CHAPTER 62, OF THE CODE OF ORDINANCES OF BREVARD COUNTY, ENTITLED "THE 1988 COMPREHENSIVE PLAN", SETTING FORTH THE TWENTY-FIRST SMALL SCALE PLAN AMENDMENT OF 2022, 22S.15, TO THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN; AMENDING SECTION 62-501 ENTITLED CONTENTS OF THE PLAN; SPECIFICALLY AMENDING SECTION 62-501, PART XVI (E), ENTITLED THE FUTURE LAND USE MAP APPENDIX; AND PROVISIONS WHICH REQUIRE AMENDMENT TO MAINTAIN INTERNAL CONSISTENCY WITH THESE AMENDMENTS; PROVIDING LEGAL STATUS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 163.3161 et. seq., Florida Statutes (1987) established the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Section 163.3167, Florida Statutes, requires each County in the State of Florida to prepare and adopt a Comprehensive Plan as scheduled by the Department of Economic Opportunity; and

WHEREAS, on September 8, 1988, the Board of County Commissioners of Brevard County, Florida, approved Ordinance No. 88-27, adopting the 1988 Brevard County Comprehensive Plan, hereafter referred to as the 1988 Plan; and

WHEREAS, Sections 163.34 and 163.3187, and 163.3189, Florida Statutes, established the process for the amendment of comprehensive plans pursuant to which Brevard County has established procedures for amending the 1988 Plan; and

WHEREAS, Brevard County initiated amendments and accepted application for small scale amendments to the Comprehensive Plan for adoption in calendar year 2022 as Plan Amendment 22S.15; and

WHEREAS, Brevard County established Technical Advisory Groups consisting of County technical employees grouped according to their operational relationship to the subject of a plan element or sub-element being prepared or amended, and these Technical Advisory Groups have provided technical expertise for the Amendment 22S.15; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida, have provided for the broad dissemination of proposals and alternatives, opportunity for written comments, public hearings after due public notice, provisions for open discussion, communication programs and consideration of and response to public comments concerning the provisions contained in the 1988 Plan and amendments thereto; and

WHEREAS, Section 62-181, Brevard County Code designated the Brevard County Planning and Zoning Board as the Local Planning Agency for the unincorporated areas of Brevard County, Florida, and set forth the duties and responsibilities of said local planning agency; and

OFFICIALLY FILED WITH THE SECRETARY OF STATE ON MAY 15, 2023

WHEREAS, on April 17, 2023, the Brevard County Local Planning Agency held a duly noticed public hearing on Plan Amendment 22S.15, and considered the findings and advice of the Technical Advisory Groups, and all interested parties submitting comments; and

WHEREAS, on May 4, 2023, the Brevard County Board of County Commissioners held a duly noticed public hearing, and considered the findings and recommendations of the Technical Advisory Group, and all interested parties submitting written or oral comments, and the recommendations of the Local Planning Agency, and upon thorough and complete consideration and deliberation, approved for adoption Plan Amendment 22S.15; and

WHEREAS, Plan Amendment 22S.15 adopted by this Ordinance comply with the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Plan Amendment 22S.15 adopted by this Ordinance is based upon findings of fact as included in data and analysis.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Section 1. Authority. This ordinance is adopted in compliance with, and pursuant to the Local Government Comprehensive Planning and Land Development Regulations Act, Sections 163.3184 and 163.3187, Florida Statutes.

Section 2. Purpose and Intent. It is hereby declared to be the purpose and intent of this Ordinance to clarify, expand, correct, update, modify and otherwise further the provisions of the 1988 Brevard County Comprehensive Plan.

Section 3. Adoption of Comprehensive Plan Amendments. Pursuant to Plan Amendment 22S.15 to the 1988 Comprehensive Plan, Article III, Chapter 62-504, Brevard County Code, the 1988 Brevard County Comprehensive Plan is hereby amended based on documentation shown in Exhibit A and as specifically shown in Exhibit B. Exhibits A and B are hereby incorporated into and made part of this Ordinance.

Section 4. Legal Status of the Plan Amendments. After and from the effective date of this Ordinance, the plan amendment, Plan Amendment 22S.15, shall amend the 1988 Comprehensive Plan and become part of that plan and the plan amendment shall retain the legal status of the 1988 Brevard County Comprehensive Plan established in Chapter 62-504 of the Code of Laws and Ordinances of Brevard County, Florida, as amended.

Section 5. Severability. If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair,

invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 6. Effective Date. The effective date of this small scale plan amendment shall be 31 days after adoption, unless the amendment is challenged pursuant to Section 163.3187(3), Florida Statutes. If challenged, the effective date of this amendment shall be the date a final order is issued by the Department of Economic Opportunity, or the Administration Commission, finding the amendment in compliance with Section 163.3184, Florida Statutes. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten days of enactment.

DONE AND ADOPTED in regular session, this 4<sup>th</sup> day of May, 2023.

ATTEST:

  
Rachel M. Sadoff, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

  
By: \_\_\_\_\_  
Rita Pritchett, Chair

As approved by the Board on May 4, 2023.

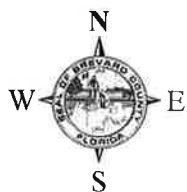
**EXHIBIT A**  
**22S.15 SMALL SCALE**  
**COMPREHENSIVE PLAN AMENDMENT**

**Contents**

**1. Proposed Future Land Use Map**

# PROPOSED FUTURE LAND USE MAP

MAHAN, AUSTIN and KAILEY  
22SS00013



1:4,800 or 1 inch = 400 feet

— Subject Property  
□ Parcels

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/23/2023



## **EXHIBIT B**

### **Contents**

#### **1. Legal Description**

 / View News

## Public Hearing - Planning and Zoning Board / Local Planning Agency Meeting - April 17, 2023

NOTICE is hereby given pursuant to Chapters 125 & 163, FLORIDA STATUTES, and Chapter 62, Article VI of the Brevard County Code, that the Brevard County Planning and Zoning Board (Local Planning Agency) and the Board of County Commissioners will consider the following requests on MONDAY, APRIL 17, 2023, and THURSDAY, MAY 4, 2023.

### DISTRICT 1

**(22SS00013) Austin A. and Kailey R. Mahan** request a Small Scale Comprehensive Plan Amendment (22S.15), to change the Future Land Use designation from NC (Neighborhood Commercial) to CC (Community Commercial), on property described as Tax Parcel 289, as recorded in ORB 9744, Pages 1859 - 1860, of the Public Records of Brevard County, Florida. **Section 06, Township 21, Range 35.** (.77 acres) Located on the north corner of U.S. Highway 1 and E.R. Smyth Dr., Mims. (No assigned address. In the Mims area.)

### DISTRICT 1

**(22Z00054) Austin A. and Kailey R. Mahan** request a change of zoning classification from AU (Agricultural Residential) to BU-2 (Retail, Warehousing, and Wholesale Commercial), on property described as Tax Parcel 289, as recorded in ORB 9744, Pages 1859 - 1860, of the Public Records of Brevard County, Florida. **Section 06, Township 21, Range 35.** (.77 acres) Located on the north corner of U.S. Highway 1 and E.R. Smyth Dr., Mims. (No assigned address. In the Mims area.)

### DISTRICT 1

**(23Z00010) Matthew and Christine Morak** request a change of zoning classification from AU (Agricultural Residential) to RR-1 (Rural Residential), on property described as Lot 7, Block 3, Indian River Park, as recorded in ORB 9527, Pages 442 - 443, of the Public Records of Brevard County, Florida. **Section 20, Township 20G, Range 35.** (2.22 acres) Located on the north side of Burkholm Rd., approx. 0.38 mile east of U.S. Highway 1 (3660 Burkholm Rd., Mims)

### DISTRICT 3

**(23Z00011) Rebecca and Allen Potter** request a change of zoning classification from RR-1 (Rural Residential) and AU (Agricultural Residential) to all AU, on property described as Tax Parcel 265, as recorded in ORB 9676, Pages 823 - 825, of the Public Records of Brevard County, Florida. **Section 11, Township 30, Range 38.** (3.53 acres) Located on the east side of U.S. Highway 1, approx. 0.24 mile north of Barefoot Bay Blvd. (7660 U.S. Highway 1, Micco)

### DISTRICT 1

**(22Z00056) Melanie Rondeau and Zackry Corter** request a change of zoning classification from GU (General Use) to RRMH-1 (Rural Residential Mobile Home), on property described as the north 100 ft. of the south 290 ft. of the west 413 ft. of Tract 4, Block 7, Section 3, Township 20S, Range 34E, of Indian River Park, according to the Plat thereof, as recorded in Plat Book 12, Page 33, of the Public Records of Brevard County, Florida. (1 acre) Located on the east side of Blounts Ridge Rd., approx. 835 ft. north of Patty Ln. (No assigned address. In the Mims area.)

### DISTRICT 1

**(22SS00017) Terrance P. and Peggy A. Mulreany** (Kelly Hyvonen) requests a Small Scale Comprehensive Plan Amendment (22S.20), to change the Future Land Use designation from NC (Neighborhood Commercial) and RES 4 (Residential 4) to CC (Community Commercial), on property described as Lots 10 - 13, Block 12, Canaveral Groves Subdivision, as recorded in ORB 9653, Pages 292 - 293, of the Public Records of Brevard County, Florida; Lot 14, Block 12, Canaveral Groves Subdivision, as recorded in ORB 9653, Page 289, of the Public Records of Brevard County, Florida; and Lot 16, Block 12, Canaveral Groves Subdivision, as recorded in ORB 9653, Page 288, of the Public Records of Brevard County, Florida. **Section 01, Township 24, Range 35.** (8.89 +/- acres) Located on the east side of Grissom Parkway, approx. 0.68 miles south of Canaveral Groves Boulevard. (No assigned address. In the Cocoa area.) The following ordinance will also be considered in conjunction with the Small Scale Plan Amendment, 22S.20: An ordinance amending Article III, Chapter 62, of the Code of Ordinances of Brevard County; entitled "The Comprehensive Plan", amending Section 62-501, entitled Contents of the Plan; specifically amending Section 62-501, Part XI, entitled Future Land Use Element and Future Land Use Map Series; and provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date.

**(22Z00073) Terrance P. and Peggy A. Mulreany** (Kelly Hyvonen) requests a change of zoning classification from GU (General Use) to BU-2 (Retail Warehousing, and Wholesale Commercial), on property described as Lots 10 - 13, Block 12, Canaveral Groves Subdivision, as recorded in O Pages 292 - 293, of the Public Records of Brevard County, Florida; Lot 14, Block 12, Canaveral Groves Subdivision, as recorded in ORB 9653, 289, of the Public Records of Brevard County, Florida; and Lot 16, Block 12, Canaveral Groves Subdivision, as recorded in ORB 9653, Page 21



the Public Records of Brevard County, Florida. **Section 01, Township 24, Range 35.** (8.89 +/- acres) Located on the east side of Grissom Parkway, approx. 0.68 miles south of Canaveral Groves Boulevard. (No assigned address. In the Cocoa area.)

#### **DISTRICT 1**

**(22SS00014) Norman Leigh Sherman, Jr., and Karen Denise Turowski** request a Small Scale Comprehensive Plan Amendment (22S.17) to change the Future Land Use designation from AGRIC (Agricultural) to RES 1:2.5 (Residential 1:2.5), on property described as Lot 4.02, Block 2, Indian River Park, as recorded in ORB 9701, Pages 600 - 603, of the Public Records of Brevard County, Florida (3.53 +/- acres); and AGRIC to RES 1 (Residential 1), on property described as Lot 4.03, Block 2, Indian River Park, as recorded in ORB 9701, Pages 604 - 607, of the Public Records of Brevard County, Florida (1 acre). Section 22, Township 20G, Range 34. (4.53 +/- acres total) Located on the southeast corner of Pine Needle St. and Hog Valley Rd. (4791 Pine Needle St., Mims) The following ordinance will also be considered in conjunction with the Small Scale Plan Amendment, 22S.18: An ordinance amending Article III, Chapter 62, of the Code of Ordinances of Brevard County; entitled "The Comprehensive Plan", amending Section 62-501, entitled Contents of the Plan; specifically amending Section 62-501, Part XI, entitled Future Land Use Element and Future Land Use Map Series; and provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date.

#### **DISTRICT 1**

**(23Z00016) Norman Leigh Sherman and Karen Denise Turowski** request a change of zoning classification from RRMH-1 (Rural Residential Mobile Home) to AU (Agricultural Residential), on property described as Lot 4.02, Block 2, Indian River Park, as recorded in ORB 9701, Pages 600 - 603, of the Public Records of Brevard County, Florida. **Section 22, Township 20G, Range 34.** (3.53 +/- acres) Located on the south side of Pine Needle St, approx. 300 ft. east of Hog Valley Rd. (4791 Pine Needle St., Mims)

#### **DISTRICT 1**

**(23Z00006) David C. Ramage and Cynthia R. Ramage Trust** (Jack Kirschenbaum) requests a change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial), on property described as Tax Parcel 298, as recorded in ORB 8486, Pages 1787 - 1791, of the Public Records of Brevard County, Florida. **Section 17, Township 21, Range 35.** (4.83 acres) Located on the east side of U.S. Highway 1, approx. 0.23 mile north of E. Main St. (2615 U.S. Highway 1, Mims)

#### **DISTRICT 4**

**(23Z00009) Ranger Storage, LLC** (Jim Trauger) requests an amendment to an existing BDP (Binding Development Plan) in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification, on property described as Lots 1 - 6, Block 20, plus the N ½ of the vacated streets on the south, Plat of Town of Pineda, according to the plat thereof, as recorded in Plat Book 1, Page 41, of the Public Records of Brevard County, Florida. AND Lots 7 - 16, inclusive, Block 20, Plat of Town of Pineda, as per plat thereof, as recorded in Plat Book 1, Page 41, of the Public Records of Brevard County, Florida. **Section 12, Township 26, Range 36.** (2.21 +/- acres) Located on the south side of Freeman Lane, approx. 480 ft. east of Waelti Dr. (3335 Freeman Lane, Melbourne)

#### **DISTRICT 4**

**(23SS00002) FMKT Mel Owner, LLC** (Bruce Moia) requests a Small Scale Comprehensive Plan Amendment (23S.02), to change the Future Land Use designation from PI (Planned Industrial) and CC (Community Commercial), to all CC, on property described as a part of Lot 7, Pineda Landings, according to the Plat thereof, as recorded in Plat Book 61, Pages 45 - 48, of the Public Records of Brevard County, Florida, more particularly described as follows: commence at the intersection of the NW corner of Lot 6 of said Plat of Pineda Landings and the easterly right-of-way line of Wickham Rd.; thence run N80deg32'04"E along the north line of said Lot 6, a distance of 278.20 ft. to the NW corner of said Lot 7 for the point of beginning; thence the next 10 courses and distances run along the boundary of said Lot 7; run N80deg32'04"E, a distance of 699.66 ft.; thence run S18deg50'32"E, a distance of 792.27 ft.; thence run S53deg54'42"W, a distance of 390.59 ft.; thence run N36deg05'18"W, a distance of 362.50 ft.; thence run S53deg54'52"W, a distance of 223 ft.; thence run N36deg05'18"W, a distance of 1.29 ft.; thence run S53deg54'42"W, a distance of 12 ft.; thence run N36deg05'18"W, a distance of 73.71 ft.; thence run N53deg54'42"E, a distance of 235 ft.; thence run N36deg05'18"W, a distance of 632.68 ft. to the point of beginning. **Section 13, Township 26, Range 36.** (11.48 acres) Located on the east side of N. Wickham Rd., approx. .20 miles south of Pineda Ct. (In the Melbourne area.)

#### **DISTRICT 4**

**(23Z00008) FMKT Mel Owner, LLC** (Bruce Moia) requests a change of zoning classification from BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing, and Wholesale Commercial) to PUD (Planned Unit Development) on property described as a part of Lot 7, Pineda Landings, according to the Plat thereof, as recorded in Plat Book 61, Pages 45 - 48, of the Public Records of Brevard County, Florida, more particularly described as follows: commence at the intersection of the NW corner of Lot 6 of said Plat of Pineda Landings and the easterly right-of-way line of Wickham Rd.; thence run N80deg32'04"E along the north line of said Lot 6, a distance of 278.20 ft. to the NW corner of said Lot 7 for the point of beginning; thence the next 10 courses and distances run along the boundary of said Lot 7; run N80deg32'04"E, a distance of 699.66 ft.; thence run S18deg50'32"E, a distance of 792.27 ft.; thence run S53deg54'42"W, a distance of 390.59 ft.; thence run N36deg05'18"W, a distance of 362.50 ft.; thence run S53deg54'52"W, a distance of 223 ft.; thence run N36deg05'18"W, a distance of 1.29 ft.; thence run S53deg54'42"W, a distance of 12 ft.; thence run N36deg05'18"W, a distance of 73.71 ft.; thence run N53deg54'42"E, a distance of 235 ft.; thence run N36deg05'18"W, a distance of 632.68 ft. to the point of beginning. **Section 13, Township 26, Range 36.** (11.48 acres) Located on the east side of N. Wickham Rd., approx. .20 miles south of Pineda Ct. (In the Melbourne area.)

#### **DISTRICT 5**

**(23Z00007) Mehran Ghaeenezadeh** (Scott Glaubitz) requests a change of zoning classification from BU-1 (General Retail Commercial) with an existing BDP (Binding Development Plan) to BU-2 (Retail, Warehousing, and Wholesale Commercial), and removal of the existing BDP, on property described as Tax Parcel 750, as recorded in ORB 8423, Pages 2213 - 2214, of the Public Records of Brevard County, Florida. **Section 02, Township**

**28, Range 36.** (8.87 acres) Located on the south side of W. New Haven Ave., approx. 250 ft. east of New York St. (3865 W. New Haven Ave., Melbourne)

Public Hearing before the Planning and Zoning Board (Local Planning Agency) will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida on **MONDAY, APRIL 17, 2023, at 3:00 p.m.** A Public Hearing will be held by the Board of County Commissioners at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Bldg. C, Viera, Florida, on **THURSDAY, MAY 4, 2023, at 5:00 p.m.** All interested parties can be heard at said time and place. If a person decides to appeal any decision of this Board, agency or commission (as appropriate) with respect to any matter considered at this meeting or hearing, such a person will need a record of this proceeding and that, for such purposes, such person may need to ensure that a verbatim record of the proceedings is made, at his own expense, which record includes testimony and evidence upon which any such appeal is to be based. The Board may grant such other less intense zoning or land use classification as may be deemed appropriate. Final report of the above referenced agenda will be heard at this meeting. In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing special accommodations or an interpreter to participate in this proceeding should contact the Planning & Development Department no later than 48 hours prior to the meeting at 321-633-2069 for assistance. Brevard County Planning & Development Department, per: Tad Calkins, Planning and Development Director. By: Jennifer Jones, Special Projects Coordinator.

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#### Brevard County Board of County Commissioners

2725 Judge Fran Jamieson Way  
Viera, FL 32940

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## **ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT**

Administrative Policies in the Future Land Use Element establish the expertise of staff with regard to zoning land use issues and set forth criteria when considering a rezoning action or request for Conditional Use Permit, as follows:

### **Administrative Policy 1**

The Brevard County zoning official, planners and the Director of the Planning and Development, however designated, are recognized as expert witnesses for the purposes of Comprehensive Plan amendments as well as zoning, conditional use, special exception, and variance applications.

### **Administrative Policy 2**

Upon Board request, members of the Brevard County planning and zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan amendments, vested rights, or other applications for development approval that come before the Board of County Commissioners for quasi-judicial review and action. The Board may table an item if additional time is required to obtain the analysis requested or to hire an expert witness if the Board deems such action appropriate. Staff input may include the following:

#### **Criteria:**

- A. Staff shall analyze an application for consistency or compliance with comprehensive plan policies, zoning approval criteria and other applicable written standards.
- B. Staff shall conduct site visits of property which are the subject of analysis and recommendation. As part of the site visit, the staff shall take a videotape or photographs where helpful to the analysis and conduct an inventory of surrounding existing uses. Aerial photographs shall also be used where they would aid in an understanding of the issues of the case.
- C. In cases where staff analysis is required, both the applicant and the staff shall present proposed findings of fact for consideration by the Board.
- D. For development applications where a specific use has not been proposed, the worst case adverse impacts of potential uses available under the applicable land use classification shall be evaluated by the staff.

### **Administrative Policy 3**

Compatibility with existing or proposed land uses shall be a factor in determining where a rezoning or any application involving a specific proposed use is being considered. Compatibility shall be evaluated by considering the following factors, at a minimum:

#### **Criteria:**

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use.

- B. Whether the proposed use(s) would cause a material reduction (five percent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through analysis of:
  - 1. historical land use patterns;
  - 2. actual development over the immediately preceding three years; and
  - 3. development approved within the past three years but not yet constructed.
- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

#### **Administrative Policy 4**

Character of a neighborhood or area shall be a factor for consideration whenever a rezoning or any application involving a specific proposed use is reviewed. The character of the area must not be materially or adversely affected by the proposed rezoning or land use application. In evaluating the character of an area, the following factors shall be considered:

##### **Criteria:**

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types of intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, et cetera), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.
- B. In determining whether an established residential neighborhood exists, the following factors must be present:
  - 1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.
  - 2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.
  - 3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

#### **Administrative Policy 5**

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the

use(s) shall be considered. In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following:

**Criteria:**

- A. Whether adopted levels of services will be compromised;
- B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;
- C. Whether the surrounding existing road system is of sufficient width and construction quality to serve the proposed use(s) without the need for substantial public improvements;
- D. Whether the surrounding existing road system is of such width and construction quality that the proposed use(s) would realistically pose a potential for material danger to public safety in the surrounding area;
- E. Whether the proposed use(s) would be likely to result in such a material and adverse change in traffic capacity of a road or roads in the surrounding area such that either design capacities would be significantly exceeded or a de facto change in functional classification would result;
- F. Whether the proposed use(s) would cause such material and adverse changes in the types of traffic that would be generated on the surrounding road system, that physical deterioration of the surrounding road system would be likely;
- G. Whether projected traffic impacts of the proposed use(s) would materially and adversely impact the safety or welfare of residents in existing residential neighborhoods.

**Administrative Policy 6**

The use(s) proposed under the rezoning, conditional use or other application for development approval must be consistent with, (a), all written land development policies set forth in these administrative policies; and (b), the future land use element, coastal management element, conservation element, potable water element, sanitary sewer element, solid waste management element, capital improvements element, recreation and open space element, surface water element, and transportation elements of the comprehensive plan.

**Administrative Policy 7**

Proposed use(s) shall not cause or substantially aggravate any, (a), substantial drainage problem on surrounding properties; or (b), significant, adverse and unmitigatable impact on significant natural wetlands, water bodies or habitat for listed species.

**Administrative Policy 8**

These policies, the staff analysis based upon these policies, and the applicant's written analysis, if any, shall be incorporated into the record of every quasi-judicial review application for development approval presented to the Board including rezoning, conditional use permits, and vested rights determinations.

Section 62-1151(c) of the Code of Ordinances of Brevard County directs, "The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.
- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.

The minutes of the planning and zoning board shall specify the reasons for the recommendation of approval or denial of each application."

#### **CONDITIONAL USE PERMITS (CUPs)**

In addition to the specific requirements for each Conditional Use Permit (CUP), Section 62-1901 provides that the following approval procedure and general standards of review are to be applied to all CUP requests, as applicable.

- (b) Approval procedure. An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in Section 62-1151. The approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved. If the applicant meets its initial burden, then the Board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the Board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use. In stating grounds in



support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odors, glare and noise, particulates, smoke, fumes, and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.

(c) General Standards of Review.

- (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon a consideration of the factors specified in Section 62-1151(c) plus a determination whether an application meets the intent of this section.
  - a. The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1), the number of persons anticipated to be using, residing or working under the conditional use; (2), noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3), the increase of traffic within the vicinity caused by the proposed conditional use.
  - b. The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.
  - c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an M A I certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.
- (2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:

- a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1), adequate to serve the proposed use without burdening adjacent and nearby uses, and (2), built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at Level of Service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable Brevard County standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.
- b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.
- c. Noise levels for a conditional use are governed by Section 62-2271.
- d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
- e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
- f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.
- g. Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.
- h. Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.
- i. The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.

- j. Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

#### **FACTORS TO CONSIDER FOR A REZONING REQUEST**

Section 62-1151(c) sets forth factors to consider in connection with a rezoning request, as follows:

"The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.
- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare."

These staff comments contain references to zoning classifications found in the Brevard County Zoning Regulations, Chapter 62, Article VI, Code of Ordinances of Brevard County. These references include brief summaries of some of the characteristics of that zoning classification. Reference to each zoning classification shall be deemed to incorporate the full text of the section or sections defining and regulating that classification into the Zoning file and Public Record for that item.

These staff comments contain references to sections of the Code of Ordinances of Brevard County. Reference to each code section shall be deemed to incorporate this section into the Zoning file and Public Record for that item.

These staff comments contain references to Policies of the Brevard County Comprehensive Plan. Reference to each Policy shall be deemed to incorporate the entire Policy into the Zoning file and Public Record for that item.

These staff comments refer to previous zoning actions which are part of the Public Records of Brevard County, Florida. These records will be referred to by reference to the file number. Reference to zoning files are intended to make the entire contents of the cited file a part of the Zoning file and Public Record for that item.

## DEFINITIONS OF CONCURRENCY TERMS

**Maximum Acceptable Volume (MAV):** Maximum acceptable daily volume that a roadway can carry at the adopted Level of Service (LOS).

**Current Volume:** Building permit related trips added to the latest TPO (Transportation Planning Organization) traffic counts.

**Volume with Development (VOL W/DEV):** Equals Current Volume plus trip generation projected for the proposed development.

**Volume/Maximum Acceptable Volume (VOL/MAV):** Equals the ratio of current traffic volume to the maximum acceptable roadway volume.

**Volume/Maximum Acceptable Volume with Development (VOL/MAV W/DEV):** Ratio of volume with development to the Maximum Acceptable Volume.

**Acceptable Level of Service (CURRENT LOS):** The Level of Service at which a roadway is currently operating.

**Level of Service with Development (LOS W/DEV):** The Level of Service that a proposed development may generate on a roadway.

**FUTURE LAND USE MAP SERIES  
PLAN AMENDMENT**

**STAFF COMMENTS**

*Small Scale Plan Amendment 22S.15 (22SS00013)  
Township 21, Range 35, Section 06*

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**Property Information**

Owner / Applicant: **Austin and Kailey Mahan**

Adopted Future Land Use Map Designation: Neighborhood Commercial (NC)

Requested Future Land Use Map Designation: Community Commercial (CC)

Acreage: 0.77

Tax Account #: 3030132

Site Location: West of Highway 1 and north of ER Smyth Drive

Commission District: 1

Current Zoning: Agricultural Residential (AU)

Requested Zoning: Retail, Warehousing and Wholesale Commercial (BU-2)  
(22Z00054)

**Background & Purpose**

The applicant is seeking to amend the Future Land Use designation from Neighborhood Commercial (NC) to Community Commercial (CC) on the front parcel off Highway 1 and north of E R Smyth Rd. totaling 0.77 acres in order to establish a consistent Future Land Use with the requested BU-2 zoning classification. Currently, the subject property is designated as NC FLU with AU zoning and is undeveloped.

A companion rezoning application was submitted accompanying this request to change the zoning classification from Agricultural Residential (AU) to Retail, Warehousing and Wholesale Commercial (BU-2) (**22Z00054**).

The existing AU zoning classification may be considered consistent with the existing NC Future Land Use designation under FLUE Policy 2.10.

## Comprehensive Plan Policies/Comprehensive Plan Analysis

The proposed BU-2 zoning classification may not be considered consistent with the existing NC Future Land Use designation; however, the proposed BU-2 zoning classification may be considered consistent with the requested Community Commercial (CC) Future Land Use designation.

Comprehensive Plan Policies are shown in plain text; Staff Findings of Fact are shown in **bold**.

**Notice:** The Comprehensive Plan establishes the broadest framework for reviewing development applications and provides the initial level of review in a three layer screening process. The second level of review entails assessment of the development application's consistency with Brevard County's zoning regulations. The third layer of review assesses whether the development application conforms to site planning/land development standards of the Brevard County Land Development Code. While each of these layers individually affords its own evaluative value, all three layers must be cumulatively considered when assessing the appropriateness of a specific development proposal.

### Role of the Comprehensive Plan in the Designation of Commercial Lands FLUE Policy 2.1

The Comprehensive Plan takes into consideration broad criteria for evaluating requests for commercial land use designations within Brevard County. At a minimum, these criteria address the following:

Criteria:

A. Overall accessibility to the site;

**The subject property has frontage on E R Smyth Drive and Highway 1, an urban principal arterial operating at 24.93% of Maximum Acceptable Volume. With the proposed commercial use being storage and warehousing for the applicant's kayak business, traffic volume is not anticipated to increase higher than 0.03%. Please refer to the preliminary concurrency section for more details.**

B. Compatibility and inter-connectivity with adjacent adopted Future Land Use designations and land uses;

**There are NC and CC future land use map designations adjacent to the subject property.**

C. Existing commercial development trend in the area;

**Existing commercial development in the immediate area includes a general retail store on east side of ROW Highway 1. Additional commercial uses are located along Highway 1. This area of Highway 1 can be considered a commercial corridor with either NC or CC FLU designations.**

D. Fundamental changes in the character of an area prompted by infrastructure improvements undertaken by the County;

**No fundamental changes in the character of the area prompted by infrastructure improvements undertaken by the County have been identified.**

- E. Availability of required infrastructure at/above adopted levels of service;

**The preliminary concurrency analysis did not indicate that the maximum development potential from the proposed Future Land Use designation would cause a deficiency in the transportation adopted level of service. The subject site is within the City of Cocoa's service area for potable water. There is no centralized sanitary sewer service available. The closest connection for sanitary sewer is located east of US Highway 1, approximately 250-feet away.**

- F. Spacing from other commercial activities;

**The closest Community Commercial facilities are located immediately to the north of the subject site with frontage on Highway 1 and immediately east across Highway 1 of the subject site. Additional commercial activities can be found along this section of US Highway 1.**

- G. Size of proposed commercial designation compared with current need for commercial lands;

**The 0.77-acre subject property is designated as NC. There is already 27.04-acres of CC in the immediate surrounding area, this request would add an additional 0.77-acres.**

- H. Adherence to the objectives/policies of the Conservation Element and minimization of impacts upon natural resources and systems;

**The applicants will work with Natural Resources to ensure that their site planning will not harm the ecosystem on the subject property.**

- I. Integration of open space; and

**The provisions of this Criterion will be addressed at the site plan stage.**

- J. Impacts upon strip commercial development.

**The applicant is proposing to develop outside storage and warehousing for his business. Highway 1 is an existing commercial corridor, the proposal would not extend strip commercial development, which is discouraged within the Future Land Use element of the Comprehensive Plan.**

**Activities Permitted in the Community Commercial (CC) Future Land Use Designations**  
**FLUE Policy 2.7**

Community Commercial (CC) development activities are intended to serve several neighborhoods, sub-regional and regional areas and provide an array of retail, personal and professional uses. Development activities which may be considered within the Community Commercial (CC) Future Land Use designation, provided that the guidelines listed in Table 2.2 are met, include the following:

- a) Existing strip commercial;
- b) Transient commercial uses;
- c) Tourist commercial uses;
- d) Professional offices;
- e) Personal service establishments;
- f) Retail establishments;
- g) Non-retail commercial uses;
- h) Residential uses;
- i) Institutional uses;
- j) Recreational uses;
- k) Public facilities;
- l) Transitional uses pursuant to Policy 2.1; and
- m) Planned Industrial Park development (as permitted by PIP zoning).

**The applicant's proposed use can be considered consistent with these commercial and residential uses.**

**Locational and Development Criteria for Community Commercial Uses**  
**FLUE Policy 2.8**

Locational and development criteria for community commercial land uses are as follows:

Criteria:

- A. Community Commercial clusters of up to ten (10) acres in size should be located at arterial/arterial intersections. Collector/arterial intersections are acceptable for clusters of up to ten (10) acres in size, however, the collector roadways must serve multiple residential areas. Intrusion of these land uses into the surrounding residential areas shall be limited. For Community Commercial clusters greater than ten (10) acres in size, they must be located at principal arterial/principal arterial intersections.

**The subject site is not located within a commercial cluster but, rather along an existing commercial corridor (Highway 1).**

- B. Community commercial complexes should not exceed 40 acres at an intersection.

**The subject site is not located at an intersection and will not exceed 40 acres.**



- C. Community commercial clusters up to 10 acres in size should be spaced at least 2 miles apart and community commercial clusters up to 40 acres in size should be spaced at least five (5) miles apart.

**Highway 1, a major arterial roadway, which is an existing commercial corridor serving the community and the surrounding region. As such, the development pattern in this area does not allow itself to cluster commercial analysis.**

- D. The gross floor area of community commercial complexes should not exceed 150,000 square feet for commercial clusters up to 10 acres in size and shall not exceed 400,000 square feet for commercial clusters greater than 10 acres but less than 40 acres in size unless within a Planned Unit Development (PUD) zoning classification. The square footage may be increased if it is located within a PUD zoning classification.

**The gross floor area is regulated through the land development regulations and reviewed at the time of site plan review.**

- E. Floor Area Ratio (FAR) of up to 1.00 will be permitted for Community Commercial sites unless accompanied with a PUD zoning classification wherein the FAR may be increased up to 1.75.

**The overall subject site has the potential for a 33,541 sq. ft. building. The Floor Area Ratio (FAR) of up to 1.00 is permitted for CC designated sites. The Floor Area Ratio (FAR) is evaluated at the time of site plan review and regulated through the land development regulations. The applicant has not requested PUD zoning.**

- F. Recreational vehicle parks shall be located in areas which serve the needs of tourists and seasonal visitors to Brevard County. The location of recreational vehicle parks shall have access to interstate interchanges via arterial and principal collector transportation corridors or the property shall be located on a major multi-county transportation corridor.

**The requested zoning classification of BU-2 does not permit recreational vehicle parks.**

### **Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area.**

Compatibility shall be evaluated by considering the following factors, at a minimum:  
Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use;

**The applicant proposes to utilize the subject parcel for outdoor equipment storage and wholesale/retail items for their business. The hours of**

operation, lighting and traffic is not anticipated to affect the quality of life in the existing neighborhood. There is no anticipation of odor, noise level or site activity more so than already exists. However, CC FLU allows for an array of retail, personal and professional uses which may.

**Per Brevard County Code of Ordinances, Section 62-1483 all business uses and all materials and products shall be confined within substantial buildings completely enclosed with walls and a roof, however, retail items of substantial size or which of necessity must remain outside of a building may be permitted to be displayed outside the building.**

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

**Only a certified MAI (Member Appraisal Institute) appraisal can determine if material reduction has or will occur due to the proposed request.**

- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

1. historical land use patterns;

**The developed character of the surrounding area along Highway 1 corridor from Mc Cullough Road to the north down to Gloria Ave. to the south east. To the immediate north and south across E R Smyth Drive is Community Commercial (CC) FLU. Across US Highway 1 is also Community Commercial (CC) land use. All immediate surrounding areas to the north, south and east of US Highway 1 are commercial uses within 500-feet of this site.**

**The latest FLU amendment was approved under 20S.04, 20PZ00051, which changed the FLU from NC to CC on August 6, 2020 (Ordinance 20-11) roughly 650-feet to the northeast of the subject properties.**

**The subject site is located within the Mims Small Area Study, which was accepted by the Board on April 10, 2007. Recommendations of the Study recognized the Highway 1 corridor as a primary commercial area, particularly south of Grantline Road, which includes the area where the subject site is located. The Study recommendations also highlighted that commercial development should generally focus on providing goods and services to Mims residents, as opposed to larger regional markets.**

2. actual development over the immediately preceding three years; and

**There have been six commercial and residential developments within this area over the past three (3) years:**

- 19PZ00127 was a rezoning from AU to RR-1 (Rural Residential) approved April 9, 2020 located approximately 0.5-miles from the subject property to legitimize the undersized lot to build a SFR.
- 20Z00003 was an approved rezoning from AU to BU-1 (General Retail Commercial) approximately 960-feet north of the subject property for future commercial development effective August 6, 2020.
- Indian River Preserve Estates is an ongoing project for a Planned Unit Development (PUD), 22PUD00005, as of April 11, 2022, adding 1,375 single-family residential units.
- A 9,100 square foot retail commercial store was constructed, 21BC10252, across the ROW of US Highway 1 in February 2022.
- 22Z00018 was a rezoning from AU to RR-1 approved November 2, 2022 located approximately 650-feet east of the subject property with the purpose of subdividing the property into two lots.
- 22Z00050 was a rezoning from AU and RU-1-9 (Single-family Residential) to SR (Suburban Residential). The location is 0.5-miles from the subject property and the purpose was to legitimize the lot size to build a SFR.

3. development approved within the past three years but not yet constructed.

**There has not been any approved development within this area in the preceding three (3) years that has not been constructed.**

D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

**No material violation of relevant policies has been identified.**

#### **Analysis of Administrative Policy #4 - Character of a neighborhood or area.**

Character of a neighborhood or area shall be a factor for consideration whenever a rezoning or any application involving a specific proposed use is reviewed. The character of the area must not be materially or adversely affected by the proposed rezoning or land use application. In evaluating the character of an area, the following factors shall be considered:

**Criteria:**

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

**Parcels in the surrounding area range from 0.43-acres to 11.15-acres. The parcel to the north is zoned BU-2 (Retail, Warehousing & Wholesale Commercial) on 2.98-acres and is a motel. The parcels to the west and southwest across E R Smyth Drive are zoned RR-1 (Rural Residential), both single-family residences on 1-acre. The parcel to the south is vacant commercial land zoned BU-1 (General Retail Commercial) on 5.54-acres. Across the ROW US Highway 1 is a retail store zoned BU-1 on 1.48-acres.**

- B. In determining whether an established residential neighborhood exists, the following factors must be present:
1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.

**The parcel is located in a residential and commercial area directly west of Highway 1.**

2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.

**The subject property is requesting to be rezoned for commercial uses. The parcel to the north and parcels across ROW Highway 1 are also zoned for commercial use.**

**There were two zoning actions within a half-mile radius of the subject properties within the last three years. 20Z00003, approved by the Board on August 6, 2020, was a request to change AU (Agricultural Residential) to BU-1 (General Retail Commercial) on 1.32 acres located at the northwest corner of US Highway 1 and McCullough Road. 19PZ00127, approved April 9, 2020, was a request to change AU (Agricultural Residential) to RR-1 (Rural Residential) on 2-acres located on the south side of Richy Road and west of US Highway 1.**

3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-

residential uses have been applied for and approved during the previous five (5) years.

**The subject parcel is located to the east of a residential neighborhood. The parcel is located on a commercial corridor directly off Highway 1.**

### **Surrounding Land Use Analysis**

	<b>Existing Land Use</b>	<b>Zoning</b>	<b>Future Land Use</b>
<b>North</b>	Motel	BU-2	CC
<b>South</b>	Vacant	BU-1	CC
<b>East</b>	(across ROW US Hwy. 1) Retail Store	BU-1	CC
<b>West</b>	Single-family	RR-1	NC

Neighborhood Commercial (NC) Land Use designation are intended to be low-impact in nature and serve the needs of the immediate residential area. Development activities include professional offices and convenience stores without drive through lanes, institutional uses, recreational and residential uses as well as public facilities and transitional uses.

Community Commercial (CC) Land Use designation are intended to serve several neighborhoods, sub-regional and regional areas and provide an array of retail, personal and professional uses.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is US Highway 1, between SR 46 to Lionel Road, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 24.93% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.03%. The corridor is anticipated to operate at 24.96% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as the development proposal is for commercial use.

### **Environmental Constraints**

- Wetlands Protection
- Aquifer Recharge
- Protected and Specimen Trees
- Protected Species

The subject property contains a small area of hydric soils (St. Johns sand, 0 to 2 percent slopes), an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities. The wetland delineation shall be verified at time of site plan submittal.

Approximately 75% of the Pine flatwoods property was cleared in 2021/2022. The parent parcel was split, leaving the subject property in violation of Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection.

### **Historic Resources**

There are no recorded historical or archaeological sites on the project site according to the Master Site File from the Florida Division of Historic Resources.

### **For Board Consideration**

The Board may wish to consider if the request is consistent with the Comprehensive Plan and compatible with the surrounding area.

**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT  
Zoning Review & Summary  
Item #22SS00013**

**Applicant:** Austin Mahan

**Zoning Request:** NC to CC

**Note:** Request to make property consistent with BU-2 zoning requirements.

**LPA Hearing Date:** 04/17/23; **BCC Hearing Date:** 05/04/23

**Tax ID Nos:** 3030132

- This is a preliminary review based on best available data maps reviewed by the Natural Resources Management Department (NRM) and does not include a site inspection to verify the accuracy of the mapped information.
- In that the rezoning process is not the appropriate venue for site plan review, specific site designs submitted with the rezoning request will be deemed conceptual. Board comments relative to specific site design do not provide vested rights or waivers from Federal, State or County regulations.
- **This review does not guarantee whether or not the proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations.**

**Summary of Mapped Resources and Noteworthy Land Use Issues:**

- Wetlands Protection
- Aquifer Recharge
- Protected and Specimen Trees
- Protected Species

The subject property contains a small area of hydric soils (St. Johns sand, 0 to 2 percent slopes), an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities. The wetland delineation shall be verified at time of site plan submittal.

Approximately 75% of the Pine flatwoods property was cleared in 2021/2022. The parent parcel was split, leaving the subject property in violation of Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection.

## **Land Use Comments:**

### **Wetlands**

The subject property contains a small area of hydric soils (St. Johns sand, 0 to 2 percent slopes), an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities. The wetland delineation shall be verified at time of site plan submittal.

Section 62-3694(c)(3)b has allowances for wetland impacts for commercial land development activities along Mitigation Qualified Roadways (MQRs). U.S. Highway 1 is an MQR in this location. E. R. Smyth Drive is not an MQR. An amendment to the Comprehensive Plan shall be required to add a mitigation qualified roadway to Map 8 and the associated table. For a project that encompasses multiple properties assembled under one site plan development order, wetland impacts for those properties without direct frontage on the mitigation qualified roadway may be permitted only if the properties are combined so that any proposed wetland impact is contained within a property with direct frontage on the mitigation qualified roadway. The assemblage shall be deed restricted for commercial or industrial use.

Wetlands proposed for impact shall be assessed using methodologies established in the Countywide Wetlands Study, prepared BKL, Inc. Consulting Ecologists (September 30, 2013) to determine if they meet the criteria of High Functioning Wetlands or Landscape Level Wetlands. Impacts to high functioning and/or landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or of overriding public benefit. Approval by the Brevard County Board of County Commissioners may be required for impacts.

Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. Any unpermitted wetland impacts may result in Code Enforcement action. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any site plan design or permit submittal.

### **Aquifer Recharge Soils**

St. Johns sand, 0 to 2 percent slopes, can also function as an aquifer recharge soil. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

### **Protected and Specimen Trees**

Approximately 75% of the property was cleared in 2021/2022. The parent parcel was split, leaving the subject property in violation of Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection. The property is mapped as Pine flatwoods. Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees may exist on the parcel. The applicant shall perform a tree survey prior



to any site plan design in order to incorporate the remaining valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any more land clearing activities.

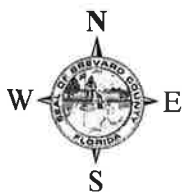
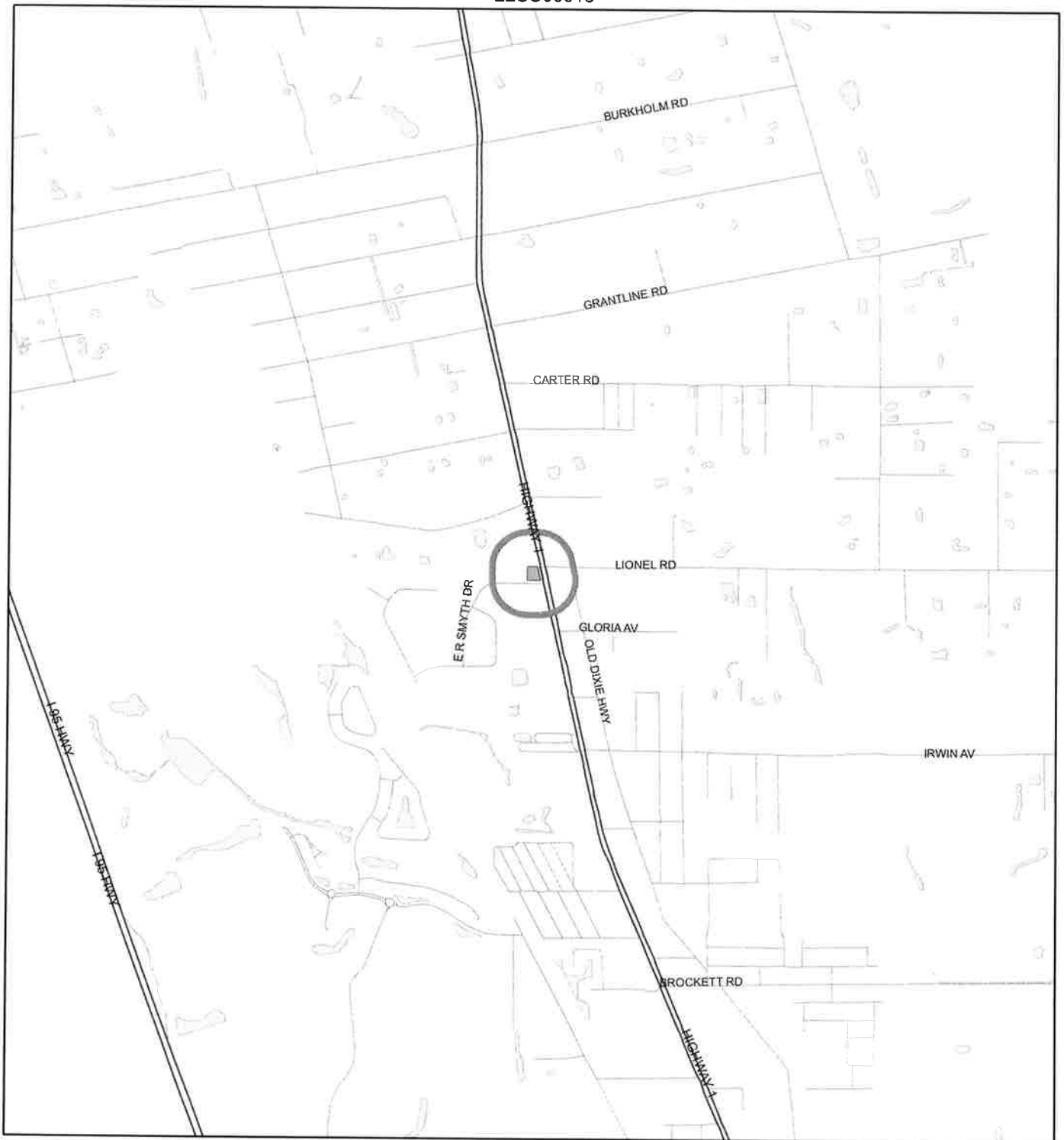
### **Protected Species**

Information available to NRM indicates that federally and/or state protected species may be present on the property. Prior to any plan, permit submittal, or development activity, including land clearing, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service, as applicable.

# LOCATION MAP

MAHAN, AUSTIN and KAILEY

22SS00013



1:24,000 or 1 inch = 2,000 feet

Buffer Distance: 500 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

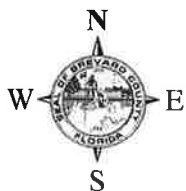
Produced by BoCC - GIS Date: 3/24/2023

Buffer  
Subject Property

# ZONING MAP

MAHAN, AUSTIN and KAILEY

22SS00013



1:4,800 or 1 inch = 400 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

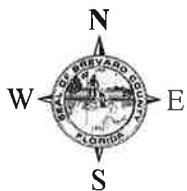
Produced by BoCC - GIS Date: 3/23/2023

- Subject Property
- Parcels
- Zoning

# FUTURE LAND USE MAP

MAHAN, AUSTIN and KAILEY

22SS00013



1:4,800 or 1 inch = 400 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/23/2023

— Subject Property  
□ Parcels

# PROPOSED FUTURE LAND USE MAP

MAHAN, AUSTIN and KAILEY

22SS00013



1:4,800 or 1 inch = 400 feet

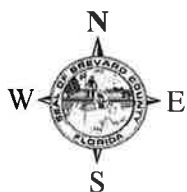
— Subject Property  
 □ Parcels

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/23/2023

# AERIAL MAP

MAHAN, AUSTIN and KAILEY  
22SS00013



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2022

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

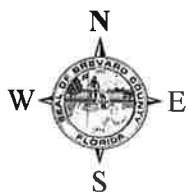
Produced by BoCC - GIS Date: 3/23/2023

— Subject Property  
□ Parcels

# NWI WETLANDS MAP

MAHAN, AUSTIN and KAILEY

22SS00013



1:4,800 or 1 inch = 400 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/23/2023

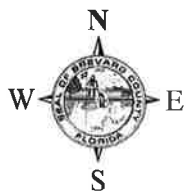
## National Wetlands Inventory (NWI)

	Estuarine and Marine Deepwater		Freshwater Pond
	Estuarine and Marine Wetland		Lake
	Freshwater Emergent Wetland		Other
	Freshwater Forested/Shrub Wetland		Riverine
	Subject Property		Parcels



# SJRWMD FLUCCS WETLANDS - 6000 Series MAP

MAHAN, AUSTIN and KAILEY  
22SS00013



1:4,800 or 1 inch = 400 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/23/2023

## SJRWMD FLUCCS WETLANDS

- Wetland Hardwood Forests - Series 6100
- Wetland Coniferous Forest - Series 6200
- Wetland Forested Mixed - Series 6300
- Vegetated Non-Forested Wetlands - Series 6400
- Non-Vegetated Wetland - Series 6500

Subject Property

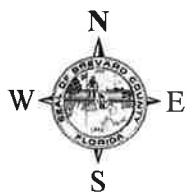
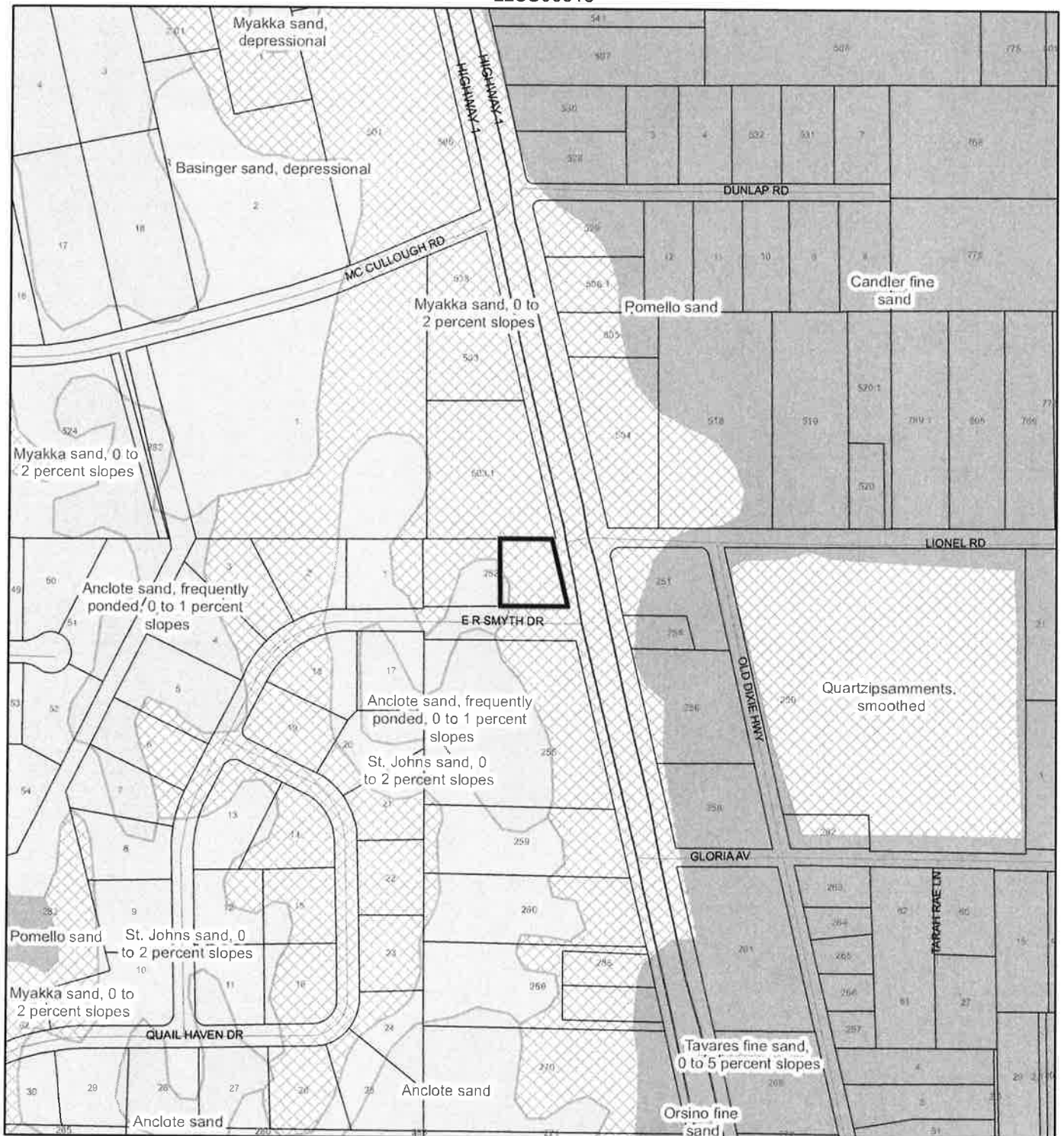
Parcels



# USDA SCSSS SOILS MAP

MAHAN, AUSTIN and KAILEY

22SS00013



1:4,800 or 1 inch = 400 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/23/2023

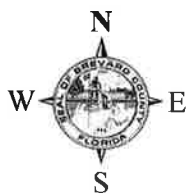
## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

# FEMA FLOOD ZONES MAP

MAHAN, AUSTIN and KAILEY  
22SS00013



1:4,800 or 1 inch = 400 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/23/2023

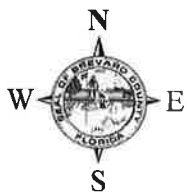
## FEMA Flood Zones

A	AO	X
AE	Open Water	
AH	VE	
Subject Property	Parcels	

# COASTAL HIGH HAZARD AREA MAP

MAHAN, AUSTIN and KAILEY

22SS00013



1:4,800 or 1 inch = 400 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/23/2023

— Subject Property

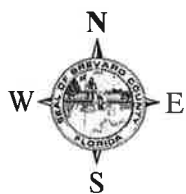
□ Parcels

**Coastal High Hazard Area**

■ SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

MAHAN, AUSTIN and KAILEY  
22SS00013



1:4,800 or 1 inch = 400 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/23/2023

 Subject Property

 Parcels

**Septic Overlay**

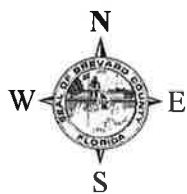
 40 Meters

 60 Meters

 All Distances

# EAGLE NESTS MAP

MAHAN, AUSTIN and KAILEY  
22SS00013



1:4,800 or 1 inch = 400 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/23/2023

 Subject Property

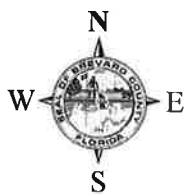
 Parcels

 Eagle Nests FWS

# SCRUB JAY OCCUPANCY MAP

MAHAN, AUSTIN and KAILEY




22SS00013



1:4,800 or 1 inch = 400 feet

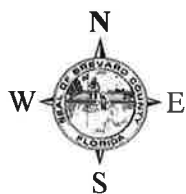
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/23/2023

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

MAHAN, AUSTIN and KAILEY  
22SS00013







1:4,800 or 1 inch = 400 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/23/2023

## SJRWMD FLUCCS Upland Forests

-  Upland Coniferous Forest - 4100 Series
-  Upland Hardwood Forest - 4200 Series
-  Upland Mixed Forest - 4300 Series
-  Tree Plantations - 4400 Series

 Subject Property

 Parcels

**From:** [Thorneatomicred](#)  
**To:** [Jones, Jennifer](#); [Thorneatomicred](#)  
**Subject:** issue with rezoning notice  
**Date:** Wednesday, December 21, 2022 2:16:18 PM

---

**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hello Jennifer, My husband and I are reaching out to you concerning the rezoning notice # 22Z00054. We do not agree with this property being allowed to be rezoned from AU to commercial. This property is located at the front entrance to the Quail Haven subdivision. With the increased population to the area we are already experiencing difficulty at times entering and exiting our neighborhood. We are concerned with the potential use as well of ER Smyth itself as an entrance/exit to that property for a business. There are many times we struggle to turn around in the median and try to get across the lanes to turn into our neighborhood with the US 1 traffic coming from the north and people trying to cross from and to Lionel Road. There would be a definite increase in potential accidents with us trying to turn into our neighborhood itself and then having to deal with vehicles entering and exiting into a potential business in that area. We appreciate your time and attention into this concern. We also realize this family has a kayak business and has a need to make a living, but at what cost to the rest of the neighborhood? They only recently built that home and we were told by Natural Resource Management that the Mahans/their builder were told they could only clear a certain amount and they went well beyond that. It is an eyesore at this time due to being "leveled" and so sad to see more and more wildlife be displaced as more and more people move into the area. Anyways, thanks again for your time, Van and Thea Thorne 3780 ER Smyth Drive, Mims FL 32754 (Quail Haven Subdivision)



**From:** [Thorneatomicred](#)  
**To:** [Jones, Jennifer](#)  
**Subject:** addendum to prior email sent  
**Date:** Sunday, April 16, 2023 5:26:05 PM

---

**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Jennifer, This email is an addendum to our prior email dated 12-21-2022 for zoning # 22Z00054. The prior request was tabled per the Mahans' request and is now back on the agenda. We had said the land was an eyesore, but they have now placed an 8 foot fence around the .77 acre parcel that they split off from the original 1.77. Their house has been built on the one acre that was split from the original 1.77 acre parcel which the entire 1.77 parcel was designated as AU at the time of their purchase. The fence looks nice and once again we realize they have a kayak business and they should be able to use the land that belongs to them, but to change to commercial at the entrance to an established neighborhood is not acceptable. There are openings in the fence at this time for entering and exiting-one on the US 1 side and the other on the ER Smyth side which is the entrance road and only established road into the Quail Haven neighborhood. We feel there could be issues with a potential commercial use of our only established road into our neighborhood. The Mahans knew this land was AU when they purchased it and maybe they should have considered the potential effects on the Quail Haven community beforehand. We realize commercial property can be expensive, but to try to circumvent the system for their own personal benefit at the expense of an established community should not even be considered. Not to mention what if this land was allowed to be zoned commercial and then the Mahans chose to sell it? What could go in then? We do not want any type of business along our only established road into the neighborhood. Thank you once again for your time, Van and Thea Thorne

BOARD OF ADJUSTMENT

2825 JUDGE FRAN JAMIESON WAY

VIERA, FL 32940

RE APPLICATION # 5616

ATTENTION JENNIFER JONES

Dear Ms. Jones,

We would like to express our opposition to Future Land Use designation and zoning classification changes to the property at the entrance to Quail Haven, Mims, FL in the above referenced matter.

I am concerned that in the future a business could be established that could have a detrimental impact on our property values as well as the quality of life we now enjoy.

Thank you for your consideration.

Sincerely,



Coen Gilmore



Barbara Gilmore

3635 Wood Duck Dr.

Mims, FL 32754

**From:** [Thorneatomicred](#)  
**To:** [Commissioner, DJ; Jones, Jennifer](#)  
**Subject:** Rezoning Notice 22Z00054 and the attached 22SS00013  
**Date:** Tuesday, December 27, 2022 9:03:22 AM

---

**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Good Morning Commissioner Rita and Jennifer, We saw the aerial map photo on page 4 of the packet which is quite deceptive due to that being a picture after they already cleared the lot. You can see in the attachment below that the entire property was wooded prior to the sale. We had made a phone call to Planning and zoning when we saw the land being leveled and also called Natural Resources Management and spoke to Mackie. We were told at the time that they were not given permission to clear that amount of land and that the home would not receive a CO until the land was restored. Well that obviously did not happen and the house received the CO and the land remains leveled for the area that the Mahans have chosen to place their business on. I see they have split the parcel now from the 1.77 to the two separate parcels. Thank you for your time and attention into this matter. Van and Thea Thorne also, Jennifer, we did receive your response to the prior email sent on 12/21 and appreciate your time.

[3716 Er Smyth Dr, Mims, FL 32754 | realtor.com®](#)

**From:** [Commissioner, D1](#)  
**To:** [Bill Metzger](#)  
**Cc:** [Pritchett, Rita](#); [Schmadeke, Adrienne](#)  
**Subject:** RE: zone  
**Date:** Tuesday, March 21, 2023 11:14:16 AM  
**Attachments:** [Approved Plot Plan \(1\).pdf a.pdf](#)

---

Good morning Mr. Metzger,

On behalf of Commissioner Pritchett I want to acknowledge receipt of your email, it will be shared with her. I have attached the approved permit drawing you requested for the fence on the subject property. The zoning item for the property is schedule to come before the Planning and Zoning Board on April 17<sup>th</sup> at 3:00 PM and before the Board of County Commissioners on May 4<sup>th</sup> at 5:00 PM. I will let the commissioner know about you and your neighbors desire for the egress to be off of US1.

Thanks,

*Keith Alward*



**Keith Alward**  
Brevard County Commission, District 1  
Commissioner Rita Pritchett  
321-621-4711 | [Keith.Alward@Brevardfl.Gov](mailto:Keith.Alward@Brevardfl.Gov)  
7101 S US Hwy 1  
Titusville, FL 32780

**From:** Bill Metzger <[f4phantomv10@yahoo.com](mailto:f4phantomv10@yahoo.com)>  
**Sent:** Monday, March 20, 2023 4:16 PM  
**To:** Commissioner, D1 <[D1.Commissioner@brevardfl.gov](mailto:D1.Commissioner@brevardfl.gov)>  
**Subject:** zone

**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hi my name is Bill Metzger at 3685 wood Duck DR Mims. In regard to the up coming meeting with Mr Mahanan his request zoning change' I will not be able to attend as I FINALLY got a meeting with the VA and it happens to be at the same time as your meeting. I do not know if you can deliver my message, if so then what I want to say is that I an other neighbors have concerns that the egress to an from his business

be done on US1 only, E R Smyth is not to be used. We want our sub division to remain absolutely separate from any commercial enterprise.

Thank You Bill Metzger

PS I see that a perimeter fence is being put up. Where do I find a permit drawing off that..

The AU (Agricultural Residential) zoning classification allows for the sales of commodities raised on the premises in line with all agricultural pursuits. BU-2 (Retail, Warehousing & Wholesale Commercial) zoning classification would allow for both outdoor storage.

### Land Use

The subject property is currently designated as Neighborhood Commercial (NC) FLU. The proposed BU-2 zoning is not consistent with the existing NC FLU designation. A companion application, **22SS00013**, if approved, would change the Future Land Use designation on the parcel to Community Commercial (CC) FLU.

Residential development or the integration of residential development with commercial development can be permitted in the Community Commercial (CC) land use designation, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and area designated for residential use on the Future Land Use Map.

Activities permitted in Community Commercial (CC) Future Land Use designations Policy 2.7 are intended to serve several neighborhoods, sub-regional and regional areas and provide an array of retail, personal and professional uses. Residential, Institutional and Transient commercial uses are just a few of permitted development activities that are permitted.

### Applicable Land Use Policies

#### FLU Policy 2.2 – Role of Zoning Regulations in the Designation of Commercial Lands

The zoning process regulates the types and intensities of uses for a parcel of land. Criteria which aid in assessing zoning compatibility, shall include consideration of the following standards:

#### Criteria:

A. Permitted/prohibited uses;

**The applicant proposes to use the subject parcel to house his company's kayaks and conduct warehouse/retail business. Section 62-1483 provides that retail sales, warehousing and wholesale commercial may be permitted in BU-2 zoning in areas designated as Community Commercial on the Future Land Use Map.**

B. Existing commercial zoning trends in the area;

**There have been two (2) zoning actions within 0.5-mile over the past 3 years. 20Z00003 took place August 5, 2020 to rezone a parcel from AU (Agricultural Residential) to BU-1 (General Retail Commercial). 19PZ00127 was to rezone from AU (Agricultural Residential) to RR-1 (Rural Residential) with a BDP (Binding Development Plan) to restrict density to one single-family residence on April 8, 2020.**

C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;

**This zoning classification change could be considered to be consistent with the immediate surrounding area zonings.**



ER Smyth Drive

DUNLAP ACRES  
FOWL HAVEN  
HORSE HAVEN  
QUAIL HAVEN  
PINEWOOD VIEW

02/04/2020 < 1 of 60 > Select Date

6/6

Buy Equity Today

Market

Interested in selling your home?

in March 28, 2022 for

55,000



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

2725 Judge Fran Jamieson Way

Building A, Room 114

Viera, Florida 32940

(321)633-2070 Phone / (321)633-2074 Fax

<https://www.brevardfl.gov/PlanningDev>

**STAFF COMMENTS**

**22Z00054**

**Austin & Kailey R. Mahan**

**AU (Agricultural Residential) to BU-2 (Retail, Warehousing & Wholesale Commercial)**

Tax Account Number: 3030132

Parcel I.D.: 21-35-06-00-289

Location: West of US Highway 1 and north of E R Smyth Drive (District 1)

Acreage: 0.77 acres

Planning & Zoning Board: 4/17/2023

Board of County Commissioners: 5/04/2023

**Consistency with Land Use Regulations**

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal cannot be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	AU	BU-2
<b>Potential*</b>	1 SF unit	33,541 sq. ft.
<b>Can be Considered under the Future Land Use Map</b>	YES NC	YES** CC

\* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations.

\*\*Approval is pending approval of companion request **22SS00013** which proposes to change the Future Land Use Designation from Residential Neighborhood Commercial (NC) to Community Commercial (CC).

**Background and Purpose of Request**

The applicants are seeking a change of zoning classification from AU (Agricultural Residential) to BU-2 (Retail, Warehousing & Wholesale Commercial) for the purpose of allowing outdoor equipment storage as well as sell wholesale/retail items for his kayak business. The subject parcel is currently undeveloped.

The subject parcel was recorded into the current configuration per Official Records Book 9456, Page 2390, on March 28, 2022. The subject parcel has frontage on E R Smyth Drive and US Highway 1. The parcel is zoned AU (Agricultural Residential) since its formation.





# FENCE GOOD SIDE OUT

Height of fence measured from the lowest grade on either side of the property line per Section 62-2109(E). It is the applicant's responsibility to verify site conditions.

## LEGEND:

- Found iron rebar, size and cap
- Set 1/2" iron rebar with cap # PSM 6545
- △ Set nail and disk # PS
- ▲ Found nail and disk, identification # as shown
- Found concrete monument
- 2' Existing spot elevation
- 3' Proposed spot elevation
- Denotes concrete area
- Denotes undisturbed area



Zoning Division  
**REVIEWED**  
By M. Meyer

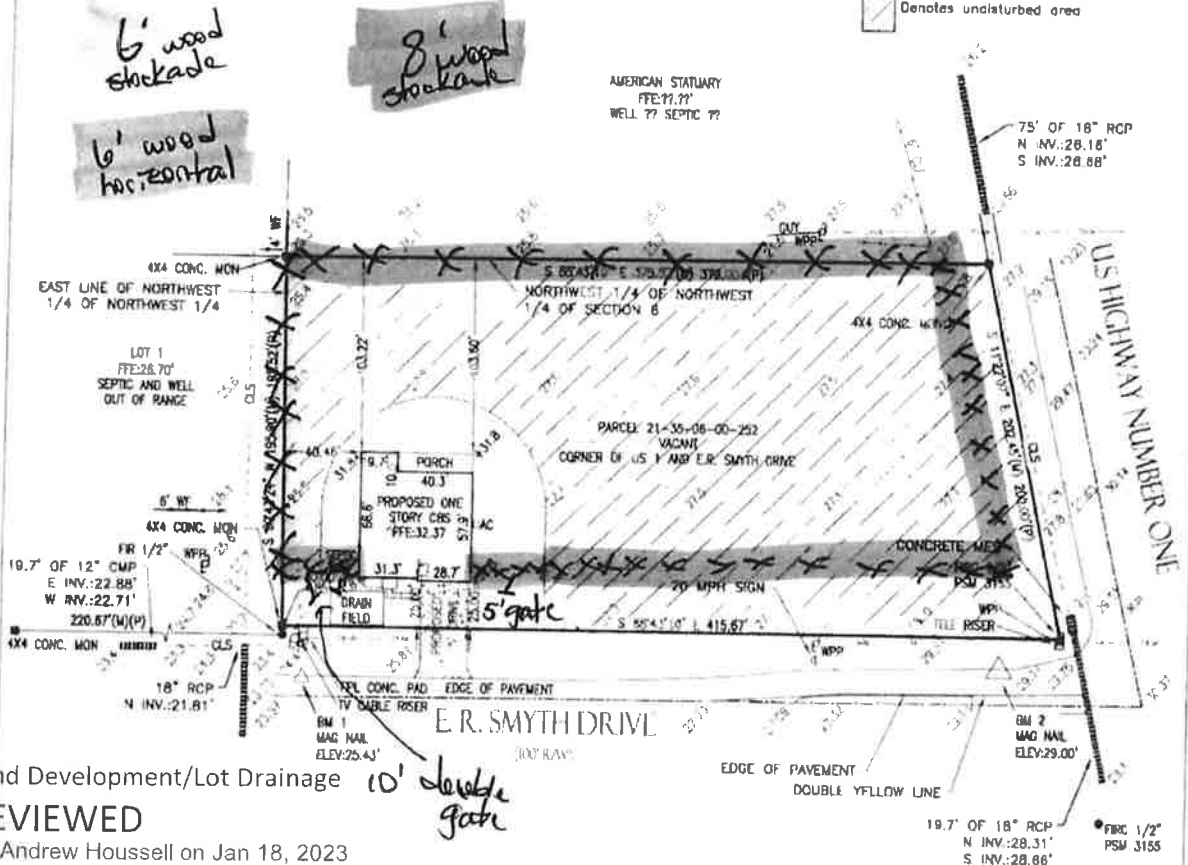
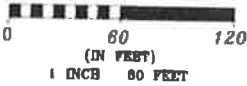
## LEGAL DESCRIPTION:

Part of NE 1/4 of NW 1/4, according to the map or plat thereof, as recorded in Deed Book 433, Page(s) 447, of the Public Records of Brevard County, Florida.

## SURVEYOR'S NOTES:

- Unless otherwise noted, only plotted easements are shown hereon.
- P.U.D.E. denotes Public Utilities and Drainage Easement. P.U.E. denotes Public Utilities Easement.
- No underground utilities or improvements were located unless otherwise shown.
- Bearings shown hereon are based on the RIGHT OF WAY LINE OF E. R. SMYTH DRIVE being  $N 88^{\circ}43'10" W$  according to the plat described hereon, and may not be a True North Azimuth.
- This site appears to be within FIRM Zone  $AC \& X$  per Community Panel Number 12059C 0105H dated 1/29/21.
- Elevations shown are based on NAVD 1988.

## MAP OF SURVEY GRAPHIC SCALE



\*Land Development/Lot Drainage

## REVIEWED

By Andrew Houssell on Jan 18, 2023

\*DAMAGE TO ROADWAY, ROW, & EASEMENTS MUST BE RESTORED AND ROW MUST BE RE-SODDED.

\*FENCING SHALL NOT BE INSTALLED OVER SEPTIC DRAIN FIELDS OR UNDERGROUND TANKS



\*Natural Resources Management

## APPROVED

By Stefanie Jansson on Jan 24, 2023



\*APPROVED FOR CONSTRUCTION

Permit No. 23BC00831

Date: March 02, 2023

NAVD	NORTH AMERICAN VERTICAL DATUM	(M)	MEASURED DISTANCE
ELEV	ELEVATION	(F)	PLAT DISTANCE
BFE	BASE FLOOD ELEVATION	SD	SET FROM ROD
FTE	FINISHED FLOOR ELEVATION	WD	WOOD POULN POLE
NM	NATURAL MONUMENT	OW	OVERHEAD WIRE
CLF	CHAIN LINK FENCE		

Drawn by:	OS	
Checked by:	JZ	
Scale:	1" = 60'	
Date:	3/11/21	
Project:	21-111	
DATE	REVISIONS	

Section 6, Township 21S, Range 35E  
BOUNDARY & TOPOGRAPHIC SURVEY  
Certified to: COOP CONSTRUCTION

I hereby certify that the survey shown hereon is true and correct to the best of my knowledge and belief, based on actual measurements taken in the field. This survey meets the Standards of Practice as set forth by the Florida Board of Professional Land Surveyors in Chapter 51-17, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

UNLESS IT BEARS THE SIGNATURE AND ORIGINAL HARDED SEAL OF A FLORIDA LICENSED SURVEYOR AND BARELY THIS DRAWING SKETCH, PLAT OR MAP IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT VALID.

James Zimmerman  
Professional Land Surveyor No. 6545  
Certificate of Authorization No. 7540  
State of Florida

**From:** [Thorneatomicred](#)  
**To:** [Commissioner, D1](#)  
**Cc:** [Schmadeke, Adrienne](#); [Alward, Keith A](#); [Pritchett, Rita](#)  
**Subject:** Re: Opinion on request for rezoning  
**Date:** Tuesday, December 27, 2022 10:00:07 AM

---

**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Thank you. Van and Thea Thorne

Sent from the all new AOL app for iOS

On Tuesday, December 27, 2022, 9:54 AM, Commissioner, D1 <[D1.Commissioner@brevardfl.gov](mailto:D1.Commissioner@brevardfl.gov)> wrote:

Good morning Mr. and Mrs. Thorne,

On behalf of Commissioner Pritchett, I want to acknowledge receipt of your email regarding zoning # 22Z00054.

Kind Regards,

Adrienne Schmadeke



**Adrienne Schmadeke**

Legislative Aide  
Brevard County Commission, District 1  
Commissioner Rita Pritchett  
[321.607.6901](tel:321.607.6901) | [Adrienne.Schmadeke@brevardfl.gov](mailto:Adrienne.Schmadeke@brevardfl.gov)

7101 S. US Hwy 1  
Titusville, FL 32780

***Please note:***

*Florida has a very broad public records law. Most written communications to or from the offices of elected officials are public records available to the public and media upon request.*

*Your email communications may, therefore, be subject to public disclosure.*

**From:** Thorneatomicred <[thorneatomicred@aol.com](mailto:thorneatomicred@aol.com)>

**Sent:** Monday, December 26, 2022 9:38 AM

**To:** Jones, Jennifer <jennifer.jones@brevardfl.gov>; Commissioner, D1  
<D1.Commissioner@brevardfl.gov>; Thorneatomicred <thorneatomicred@aol.com>  
**Subject:** Opinion on request for rezoning

**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.
















Hello Commissioner Rita, I am sending the below email to you since it will eventually come to the board on February 2nd after planning and zoning vote on this on January 9th. I am also resending this to Jennifer since I am not sure she received it, for I have received no reply at this time. I did only send it on December 21st and with the holidays I can understand the potential delay for a response. Thank you both for your time and attention to this matter and hope you both had a Merry Christmas and a Happy New Year! Van and Thea Thorne:)

Hello Jennifer, My husband and I are reaching out to you concerning the rezoning notice # 22Z00054. We do not agree with this property being allowed to be rezoned from AU to commercial. This property is located at the front entrance to the Quail Haven subdivision. With the increased population to the area we are already experiencing difficulty at times entering and exiting our neighborhood. We are concerned with the potential use as well of ER Smyth itself as an entrance/exit to that property for a business. There are many times we struggle to turn around in the median and try to get across the lanes to turn into our neighborhood with the US 1 traffic coming from the north and people trying to cross from and to Lionel Road. There would be a definite increase in potential accidents with us trying to turn into our neighborhood itself and then having to deal with vehicles entering and exiting into a potential business in that area. We appreciate your time and attention into this concern. We also realize this family has a kayak business and has a need to make a living, but at what cost to the rest of the neighborhood? They only recently built that home and we were told by Natural Resource Management that the Mahans/their builder were told they could only clear a certain amount and they went well beyond that. It is an eyesore at this time due to being "leveled" and so sad to see more and more wildlife be displaced as more and more people move into the area. Anyways, thanks again for your time, Van and Thea Thorne 3780 ER Smyth Drive, Mims FL 32754 (Quail Haven Subdivision)

**From:** The Beach  
**To:** Schmadeke, Adrienne  
**Subject:** Phone Log - Bill Metzger - 3685 Wood Duck Dr...  
**Date:** Wednesday, December 28, 2022 10:14:14 AM

---

 Bill Metzger - 3685 Wood Duck Dr... has been changed

 Schmadeke, Adrienne  
12/28/2022 10:13 AM  
**Name/Company** Bill Metzger - 3685 Wood Duck Dr Mims  
**Phone Number** 321-567-5060  
**Date/Time Call Received** 12/27/2022 12:00 PM  
**Purpose of Call:**  Voicemail left 12/22 at 2:53 pm Edited  
 Wants to talk with Commissioner or staff  
 about zoning change with home at entrance  
 to development, NC to CC.  
  
 12/28/2022 10:00 am  
 His call was regarding the Mahan property  
 changes to zoning 22Z00054 and land use  
 22SS00013. I returned his call. Gave him  
 information for when the property will be on  
 the P&Z Board Meeting Agenda, time &  
 location, and how to look up additional  
 information via BASS.  
**Follow Up Needed:**  Edited  
**Date Received** 12/27/2022

[Modify my alert settings](#) | [View Phone Log](#)

**From:** [Commissioner, D1](#)  
**To:** [Bill Metzger](#)  
**Cc:** [Pritchett, Rita](#); [Alward, Keith A](#); [Schmadeke, Adrienne](#); [Jones, Jennifer](#)  
**Subject:** RE: zone request Mr Mahan  
**Date:** Friday, January 27, 2023 9:55:00 AM

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Good morning Mr. Metzger,

On behalf of Commissioner Pritchett, I want to acknowledge receipt of your email regarding Zoning request 22Z00054 and 22SS00013.

Although these items are scheduled for the Feb. 2, 2023 Board of County Commissioners Zoning meeting, their agenda items will have a notation that they are automatically being tabled to the April 17, 2023 Local Planning Agency meeting and May 4, 2023 Board of County Commissioners Zoning meeting, at the request of the applicant.

Kind Regards,

*Adrienne Schmadeke*



**Adrienne Schmadeke**  
Legislative Aide  
Brevard County Commission, District 1  
Commissioner Rita Pritchett  
[321.607.6901](tel:321.607.6901) | [Adrienne.Schmadeke@brevardfl.gov](mailto:Adrienne.Schmadeke@brevardfl.gov)  
7101 S. US Hwy 1  
Titusville, FL 32780

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**From:** Bill Metzger <f4phantomv10@yahoo.com>  
**Sent:** Thursday, January 26, 2023 12:37 PM  
**To:** Commissioner, D1 <D1.Commissioner@brevardfl.gov>  
**Subject:** Fw: zone request Mr Mahan

**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

----- Forwarded Message -----

**From:** Bill Metzger <[f4phantomv10@yahoo.com](mailto:f4phantomv10@yahoo.com)>

**To:** [D1Commissioner@BrevardFL.gov](mailto:D1Commissioner@BrevardFL.gov) <[d1commissioner@brevardfl.gov](mailto:d1commissioner@brevardfl.gov)>

**Sent:** Thursday, January 26, 2023 at 12:33:13 PM EST

**Subject:** Fw: zone request Mr Mahan

----- Forwarded Message -----

**From:** Bill Metzger <[f4phantomv10@yahoo.com](mailto:f4phantomv10@yahoo.com)>

**To:** [D1Commissioner@brevardfl.gov](mailto:D1Commissioner@brevardfl.gov) <[d1commissioner@brevardfl.gov](mailto:d1commissioner@brevardfl.gov)>

**Sent:** Thursday, January 26, 2023 at 11:51:29 AM EST

**Subject:** zone request Mr Mahan

Hi my IS Bill Metzger 3685 Wood Duck Dr in the Quail Haven development an I,m an interested party to the zoning request of Mr Mahan. The first thing I,d like to see happen is grass planted an kept as a green space. That 's not going to happen as Mr Mahan has the right to do what he wants to do so as he comply 's with all that is required . What I am looking at is that he has no egress on to Smythe, a divide along property line, no signage or other blockage to obstruct of view to exit Smythe on to US1. The divide I'd like to see is a 2 rail fence with a tall plantings between each segment the length of the property.

I do not want to see Quail Haven becoming a drive way for commercial endeavors,I don't want it to become a "flag lot" I want the entrance to be seen as entrance to the "Quail Haven" development not a entrance to their business.

I understand that there is some sort of issue with the natural resource people I don't know what it is, how would I find out. The next meeting is in April ? how do i find that out. The south side of Quail Haven will develop some day all things would apply to that endeavor.

Thank You Bill Metzger

**From:** [Thorneatomicred](#)  
**To:** [Pritchett, Rita; Commissioner, D1](#)  
**Subject:** information for upcoming Commissioner meeting on May 4th,2023  
**Date:** Friday, April 28, 2023 7:07:42 PM  
**Attachments:** [addendum\\_email\\_for\\_zoning\\_22Z00054.pdf](#)  
[3716 ER Smyth Drive prior to clearing.pdf](#)  
[Picture of neighborhood entrance as related to the parcel split from the original whole.pdf](#)  
[page 1 of staff comments for 22Z00054.pdf](#)  
[Page 2 of Staff Comments for 22Z00054.pdf](#)

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Dear Commissioner Rita Pritchett, My husband and I were unable to attend the Planning and Zoning meeting on 4/17 for zoning request 22Z00054 and the companion request of 22SS00013 due to the recent passing of our disabled adult son and we did not feel we could present at this time due to our grief and healing process. We had put in a second email to be under public comments, but it was not listed on the agenda for the 4/17 meeting and I spoke to Jennifer and she said it would be handed out to the planning and zoning board members prior to the meeting on 4/17. Neither emails were read and only briefly mentioned at the 4/17 meeting. As of today, Friday, April 28th the agenda for the 5/4 meeting has not been posted therefore I am emailing you to make sure there is an awareness to our concerns. I have attached above the second email we put in after reading the Mahan requests for the 4/17 meeting(they had tabled their prior request from January). I will note that Austin Mahan did not state one time before the board that he intended to do retail sales and only said he needed the BU-2 for storage, because he did not know AU would not allow for the storage. We have no issue with storage, but we do have an issue with retail sales. As you can see on the last two attachments of the page1 and page 2 of staff comments, the Mahans have requested for more than just storage. I included on the second and third attachments aerial photos of the property at 3716 ER Smyth Drive. It was purchased as 1.77 and then split to one acre in which they built their house and split off the .77 for this current request they have made. They have installed an 8 foot fence on the .77 parcel which has two openings in the fence- one on the US1 side and the other on the ER Smyth side. We have a concern with the potential use of ER Smyth Drive being the only access for this potential future business. Planning and zoning recommended all of BU-1 and storage of BU-2 and they also are allowing the use of ER Smyth Drive up to the southwest corner of their property. They also said the Mahans could only use the US-1 side of the fence opening for entering and exiting and the ER Smyth side fence opening for exiting only "in case of an emergency" as Austin Mahan stated at the meeting. The fence has been placed far enough back from the actual property line to allow for possible parking spaces and to allow for entering at the ER Smyth side solely and driving around to the front of their property and then entering the US-1 fence opening and avoiding an actual entrance and exit on US-1 itself. We hope we are wrong about their intentions for the use of the only entrance into our neighborhood. We do not want retail of any kind at the front of our already established neighborhood. Thanks so much for your time and attention into this matter, Van and Thea Thorne

**From:** thomeatomicred@aol.com,  
**To:** jennifer.jones@brevardfl.gov,  
**Subject:** addendum to prior email sent  
**Date:** Sun, Apr 16, 2023 5:25 pm

Jennifer, This email is an addendum to our prior email dated 12-21-2022 for zoning # 22Z00054. The prior request was tabled per the Mahans' request and is now back on the agenda. We had said the land was an eyesore, but they have now placed an 8 foot fence around the .77 acre parcel that they split off from the original 1.77. Their house has been built on the one acre that was split from the original 1.77 acre parcel which the entire 1.77 parcel was designated as AU at the time of their purchase. The fence looks nice and once again we realize they have a kayak business and they should be able to use the land that belongs to them, but to change to commercial at the entrance to an established neighborhood is not acceptable. There are openings in the fence at this time for entering and exiting-one on the US 1 side and the other on the ER Smyth side which is the entrance road and only established road into the Quail Haven neighborhood. We feel there could be issues with a potential commercial use of our only established road into our neighborhood. The Mahans knew this land was AU when they purchased it and maybe they should have considered the potential effects on the Quail Haven community beforehand. We realize commercial property can be expensive, but to try to circumvent the system for their own personal benefit at the expense of an established community should not even be considered. Not to mention what if this land was allowed to be zoned commercial and then the Mahans chose to sell it? What could go in then? We do not want any type of business along our only established road into the neighborhood. Thank you once again for your time, Van and Thea Thorne



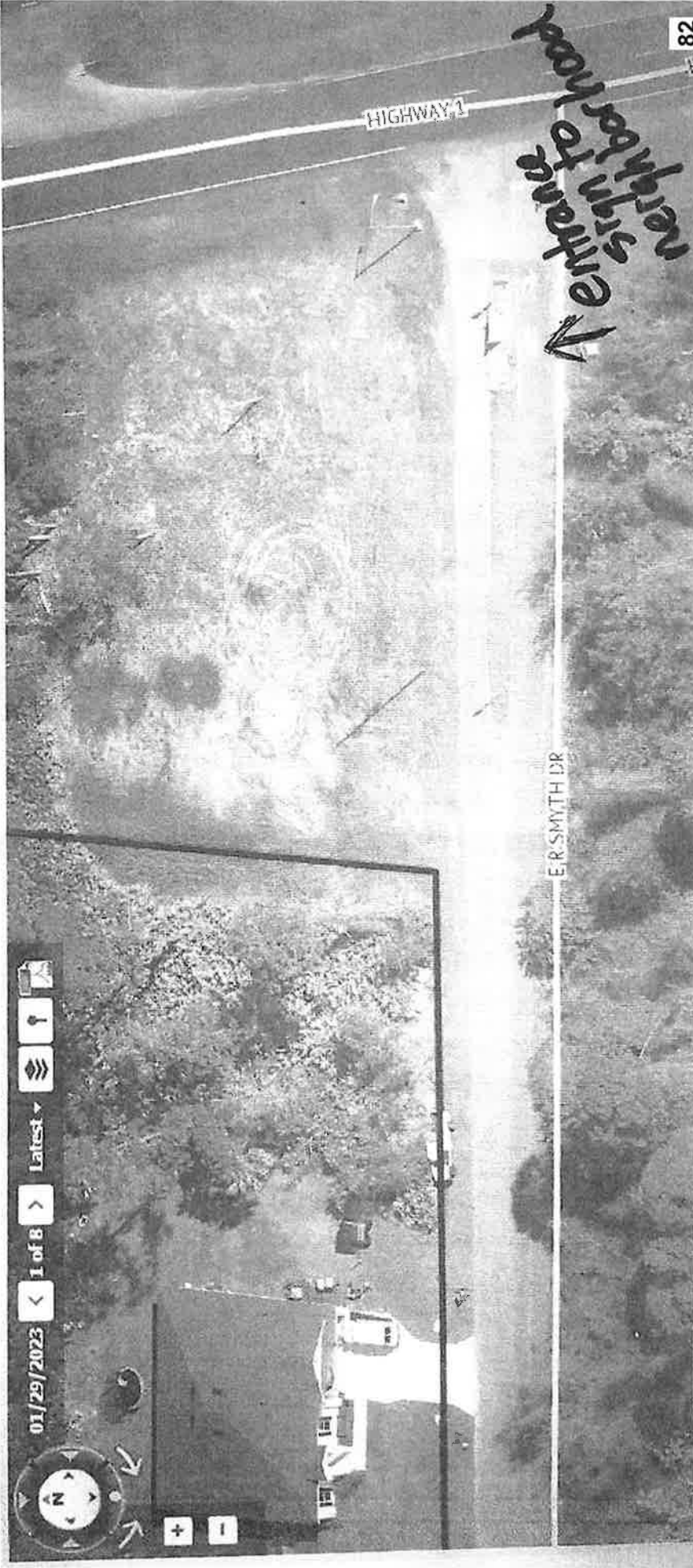
https://www.bcpao.us/PropertySearch/#/map/2102061

My | Brev | Brev | Brev | Pub | GIS | Adm | Staff | GIS | Staff | Pub | New | Cha | AR7 | Live | X

RESEARCH EXEMPTIONS TANGIBLE FORMS GENERAL CONTACTS

MapView

EagleView



The AU (Agricultural Residential) zoning classification allows for the sales of commodities raised on the premises in line with all agricultural pursuits. BU-2 (Retail, Warehousing & Wholesale Commercial) zoning classification would allow for both outdoor storage.

### Land Use

The subject property is currently designated as Neighborhood Commercial (NC) FLU. The proposed BU-2 zoning is not consistent with the existing NC FLU designation. A companion application, **22SS00013**, if approved, would change the Future Land Use designation on the parcel to Community Commercial (CC) FLU.

Residential development or the integration of residential development with commercial development can be permitted in the Community Commercial (CC) land use designation, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and area designated for residential use on the Future Land Use Map.

Activities permitted in Community Commercial (CC) Future Land Use designations Policy 2.7 are intended to serve several neighborhoods, sub-regional and regional areas and provide an array of retail, personal and professional uses. Residential, Institutional and Transient commercial uses are just a few of permitted development activities that are permitted.

### Applicable Land Use Policies

#### FLU Policy 2.2 – Role of Zoning Regulations in the Designation of Commercial Lands

The zoning process regulates the types and intensities of uses for a parcel of land. Criteria which aid in assessing zoning compatibility, shall include consideration of the following standards:

#### Criteria:

- A. Permitted/prohibited uses;  
**The applicant proposes to use the subject parcel to house his company's kayaks and conduct warehouse/retail business. Section 62-1483 provides that retail sales, warehousing and wholesale commercial may be permitted in BU-2 zoning in areas designated as Community Commercial on the Future Land Use Map.**
- B. Existing commercial zoning trends in the area;  
**There have been two (2) zoning actions within 0.5-mile over the past 3 years. 20Z00003 took place August 5, 2020 to rezone a parcel from AU (Agricultural Residential) to BU-1 (General Retail Commercial). 19PZ00127 was to rezone from AU (Agricultural Residential) to RR-1 (Rural Residential) with a BDP (Binding Development Plan) to restrict density to one single-family residence on April 8, 2020.**
- C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;  
**This zoning classification change could be considered to be consistent with the immediate surrounding area zonings.**



HIGHWAY 1

USA



ER Smyth Drive

DUNLAP ACHES  
FOWL HAVEN  
HORSE HAVEN  
QUAIL HAVEN  
PINEWOOD

02/04/2020 < 1 of 60 > Select Date



6/6

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in March 28, 2022 for

55,000



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

2725 Judge Fran Jamieson Way

Building A, Room 114

Viera, Florida 32940

(321)633-2070 Phone / (321)633-2074 Fax

<https://www.brevardfl.gov/PlanningDev>

**STAFF COMMENTS**

**22Z00054**

**Austin & Kailey R. Mahan**

**AU (Agricultural Residential) to BU-2 (Retail, Warehousing & Wholesale Commercial)**

Tax Account Number: 3030132

Parcel I.D.: 21-35-06-00-289

Location: West of US Highway 1 and north of E R Smyth Drive (District 1)

Acreage: 0.77 acres

Planning & Zoning Board: 4/17/2023

Board of County Commissioners: 5/04/2023

**Consistency with Land Use Regulations**

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal cannot be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	<b>AU</b>	<b>BU-2</b>
<b>Potential*</b>	1 SF unit	33,541 sq. ft.
<b>Can be Considered under the Future Land Use Map</b>	YES NC	YES** CC

\* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations.

\*\*Approval is pending approval of companion request **22SS00013** which proposes to change the Future Land Use Designation from Residential Neighborhood Commercial (NC) to Community Commercial (CC).

**Background and Purpose of Request**

The applicants are seeking a change of zoning classification from AU (Agricultural Residential) to BU-2 (Retail, Warehousing & Wholesale Commercial) for the purpose of allowing outdoor equipment storage as well as sell wholesale/retail items for his kayak business. The subject parcel is currently undeveloped.

The subject parcel was recorded into the current configuration per Official Records Book 9456, Page 2390, on March 28, 2022. The subject parcel has frontage on E R Smyth Drive and US Highway 1. The parcel is zoned AU (Agricultural Residential) since its formation.



## **PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, April 17, 2023**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order at 3:00 p.m.

Board members present were: Board members present were: Ron Bartcher (D1); Robert Sullivan (D2); Debbie Thomas (D4); Mark Wadsworth, Chair (D4); Logan Luse (D4-Alt.); and John Hopengarten (BPS). Robert Brothers' presence was noted at 3:09 p.m.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Alex Esseeesse, Deputy County Attorney; Jane Hart, Planner III; Paul Body, Planner III; Trina Gilliam, Planner II; and Jennifer Jones, Special Projects Coordinator.

### **Excerpt of Complete Agenda**

#### **Austin A. and Kailey R. Mahan**

A Small Scale Comprehensive Plan Amendment (22S.15), to change the Future Land Use designation from NC (Neighborhood Commercial) to CC (Community Commercial). The property is 0.77 acres, located on the north corner of U.S. Highway 1, and E.R. Smyth Drive, Mims. (3716 E.R. Smyth Dr., Mims) (22SS00013) (Tax Account 3030132) (District 1)

#### **Austin A. and Kailey R. Mahan**

A change of zoning classification from AU (Agricultural Residential) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The property is 0.77 acres, located on the north corner of U.S. Highway 1, and E.R. Smyth Drive, Mims. (3716 E.R. Smyth Dr., Mims) (22Z00054) (Tax Account 3030132) (District 1)

Austin Mahan, 3716 E.R. Smyth Drive, Mims, stated his father was interested in ecotourism and the outdoors, and he bought a kayaking company in 2004. Since then, the company has grown, and their credibility is very important to them. He said the business has over 2,700 reviews on Trip Advisors and 2,400 of those are five out of five stars; and they have thriving partnerships with the Brevard County Parks Department and the Merritt Island National Wildlife Refuge. He stated he understands the subject property is currently zoned as agricultural residential, but when he was investigating the lot for purchase, he contacted the Planning and Zoning Department about storing kayaks and equipment on the premises, and at the time was told it shouldn't be an issue. He said after building a home, he again sought to confirm the information before moving the equipment. At that time, when he again contacted Planning and Zoning, he was given different information. Since then, he has worked with the County to determine an appropriate zoning for the .77-acre portion of the property, and he is requesting BU-2 zoning. He emphasized that the business's services are rendered at the water's edge, guests are not transported, and there are not in-person ticket sales; and the .77 acres is strictly used for storing vehicles, kayaks, and related equipment. He said he believes the outdoor equipment storage will have minimal impact on the neighborhood. He has installed an 8-foot fence with additional plans to do aesthetic landscaping to keep the area secure and pleasing to people driving through the area. He said he is committed to taking whatever measures necessary to minimize noise and other disturbances, and is committed to being a responsible neighbor to everyone in the area. He stated he will work with the County to ensure all necessary permits and requirements are met, and will maintain open communication with the community to address any concerns or issues that arise. He said he believes rezoning will allow the business to continue providing high-quality outdoor experiences for residents and visitors while also supporting the local economy in promoting outdoor stewardship.

Ron Bartcher asked if Mr. Mahan plans to provide the landscaping on the outside of the fence. Mr. Mahan replied yes, the landscaping will be on the outside of the fence.

No public comment.

Motion by Debbie Thomas, seconded by Logan Luse, to recommend approval of the Small Scale Comprehensive Plan amendment to change the Future Land Use designation from NC to CC.

\*Robert Brothers' presence was noted.

Mr. Bartcher asked the applicant if he would be willing to add a BDP (Binding Development Plan) that says the only BU-2 use on the property would be for outdoor storage of products related to the business. He stated all of the BU-1 uses would be allowed as well, but BU-2 is a very wide-open zoning and there are some businesses he would not like to see in Mims. He said he would like to restrict it so the applicant can have all of the BU-1 uses, but for BU-2, only the outdoor storage of products related to the business.

Mr. Ball explained a BDP is a legal document that gets recorded and is attached to the rezoning when it goes to the Board of County Commissioners. It is a voluntary agreement between an applicant and the Board, and there are certain restrictions an applicant and the board agree upon. He said Mr. Bartcher is requesting a BDP that would only allow BU-1 uses and the only BU-2 use of outdoor storage of kayaks.

Mr. Mahan stated he would agree to a BDP.

Motion by Ron Bartcher to recommend approval of the zoning change to BU-2, with a Binding Development Plan retaining all BU-1 uses and limiting the BU-2 use to outdoor storage of kayaks.

Robert Sullivan noted there is an objection from the neighborhood, and they are not against what the applicant wants to do, but they don't want the neighborhood entrance on E.R. Smyth Road. He asked if Mr. Mahan would restrict the access to only the commercial property.

Mr. Mahan replied that is the intent. He asked if Mr. Sullivan is specifying there will not be any commercial vehicles moving past the .77-acre parcel, and the vehicles would only be transporting up to that property and not any further into the neighborhood.

Mr. Sullivan replied yes. Mr. Mahan stated he would want to preserve that as well, and would only plan to do that.

John Hopengarten asked Mr. Mahan if there will be any repair work on the kayaks. Mr. Mahan replied he does some minor welding to them on the premises. He clarified it is not fabrication welding, it is more like a heat gun.

Mr. Ball clarified the motion on the table is for approval subject to a BDP limiting the use of the property to all BU-1 uses and the only BU-2 use of outdoor storage of kayaks, and limiting the access to U.S. Highway 1 only.

Mr. Mahan stated there is a gap in the fence on the U.S. Highway 1 side, and a gap in the fence on the E.R. Smyth Drive side, offering two modes of leaving the property in case of an emergency. He

asked if he would only be entering and exiting through the U.S. 1 side. He said it was his understanding that the board is asking for only entering on the E.R. Smyth or the U.S. 1 side.

Mr. Sullivan stated if he could use the E.R. Smyth Drive side as an egress only, that would be fine. He said the neighbors have stated they don't want trucks in the neighborhood, transports entering in, but if only leaving the property on an egress, that would be easy.

Mr. Mahan stated he would agree to that.

Mr. Ball clarified that the access would be limited to ingress and egress from U.S. Highway 1, and egress only from E.R. Smyth Drive. Mr. Mahan stated he would agree to that.

Motion by Ron Bartcher, seconded by Robert Sullivan, to recommend approval of the change of zoning classification from AU to BU-2, with a BDP retaining all BU-1 uses, limiting the BU-2 use to kayak storage only, and limiting egress only to E.R. Smyth Drive, with ingress and egress to U.S. Highway 1. The motion passed unanimously.

H.4  
Objection  
22SS00013 &  
22Z00054  
Mahan

**From:** [Thorneatomicred](#)  
**To:** [Pritchett, Rita; Commissioner, D1](#)  
**Subject:** information for upcoming Commissioner meeting on May 4th, 2023  
**Date:** Friday, April 28, 2023 7:07:42 PM  
**Attachments:** [addendum\\_email\\_for\\_zoning\\_22Z00054.pdf](#)  
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**From:** thomeatomicred@aol.com,

**To:** jennifer.jones@brevardfl.gov,

**Subject:** addendum to prior email sent

**Date:** Sun, Apr 16, 2023 5:25 pm

---

Jennifer, This email is an addendum to our prior email dated 12-21-2022 for zoning # 22Z00054. The prior request was tabled per the Mahans' request and is now back on the agenda. We had said the land was an eyesore, but they have now placed an 8 foot fence around the .77 acre parcel that they split off from the original 1.77. Their house has been built on the one acre that was split from the original 1.77 acre parcel which the entire 1.77 parcel was designated as AU at the time of their purchase. The fence looks nice and once again we realize they have a kayak business and they should be able to use the land that belongs to them, but to change to commercial at the entrance to an established neighborhood is not acceptable. There are openings in the fence at this time for entering and exiting-one on the US 1 side and the other on the ER Smyth side which is the entrance road and only established road into the Quail Haven neighborhood. We feel there could be issues with a potential commercial use of our only established road into our neighborhood. The Mahans knew this land was AU when they purchased it and maybe they should have considered the potential effects on the Quail Haven community beforehand. We realize commercial property can be expensive, but to try to circumvent the system for their own personal benefit at the expense of an established community should not even be considered. Not to mention what if this land was allowed to be zoned commercial and then the Mahans chose to sell it? What could go in then? We do not want any type of business along our only established road into the neighborhood. Thank you once again for your time, Van and Thea Thorne

