



AGENDA REPORT
December 18, 2018

**Public Hearing, Re: Anthony Lopes and Eugene R. Lomando (Scott Knox)
request a change of zoning classification from BU-1 and TR-3, to all BU-1.
(18PZ00077) (District 3)**

SUBJECT:

Public Hearing, Re: Anthony Lopes and Eugene R. Lomando (Scott Knox) request a change of zoning classification from BU-1 (General Retail Commercial) and TR-3 (Mobile Home Park), to all BU-1. The property is 1.96 acres, located on the west side of U.S. Hwy 1, approximately 655 feet south of Garretts Rd. (8480 & 8490 U.S. Hwy 1, Micco) (18PZ00077) (District 3)

FISCAL IMPACT:

None.

DEPT/OFFICE:

Planning and Development

REQUESTED ACTION:

It is requested that the Board of County Commissioners conduct a public hearing to consider the request for a change of zoning classification from BU-1 and TR-3 to all BU-1.

SUMMARY EXPLANATION and BACKGROUND:

The applicant is seeking a change of zoning classification on two parcels from BU-1 (General Retail Commercial and TR-3 (Mobile Home Park) to all BU-1 for the purpose of developing a hotel and restaurant. The eastern portion of each parcel already retains the BU-1 zoning classification and is developed as a 1,944 square-foot restaurant and a duplex.

On December 11, 2018, the applicant submitted a revised Binding Development Plan (BDP), as a companion to the concept plan and renderings which the Board previously considered. That revised BDP includes the following conditions pertaining to the potential development of a hotel within the BU-1 zoning classification. The conditions do not apply to other uses, including but not limited to, convenience stores, automobile repair, banks, restaurants, professional offices, medical buildings, etc. allowed in the BU-1 zoning classification.

- a. the Developer/Owners agree to construct the hotel in substantially the same

configuration and location shown on the Concept Plan attached hereto as Exhibit B and in conformance to County regulations. Where the Concept Plan conflicts with County code, the code will apply. Nothing herein constitutes a waiver to code requirements or a vesting of rights;

- b. The height of the hotel shall not exceed three stories;
- c. The maximum number of hotel rooms shall not exceed 70 rooms;
- d. The Developer/Owners agree to apply for any site plan approval required by County regulations.
- e. The Developer/Owners agree to provide such vegetative or other buffers as may be required by Brevard County Land Development regulations
- f. The Developer/Owners agree to install an 8-foot opaque fence where shown on the concept plan or, alternatively, an 8-foot wall where a wall is required by applicable county code regulations.
- g. The Developer/Owners agree to provide landscaping which will avoid the use of plants that drop excessive leaves or palm branches on the Summit Cove access drive. **Additional language in the attached BDP clarifies conveyance obligations and timeline details**
- h. At least forty-five (45) days prior to the submittal of a hotel site plan, the Developer/Owners will offer the HOA, through its President, Vice-President or other officer shown in the state's online corporate records, to file a permit application with Brevard County for the installation of the type of gate system set forth in Exhibit D, attached hereto provided the consent of the HOA is received within that 45 day period. **Additional language in this BDP condition clarifies permitting, timeline, and HOA consent details**
- i. The Developer/Owners agree to limit access to the hotel site to U.S. Highway 1. The Developer/Owners further agree to comply with any requirement for the construction of turn lanes on U.S. 1 serving the hotel site if those turn lanes are required by the Florida Department of Transportation or County regulations.
- j. The Developer/Owners agree that any change of use from a hotel to a facility allowing stays of over 90 days or apartments will require a revision to the Binding Development Plan following procedures established in the Brevard County Code of Ordinances.
- k. The Developer/Owners agree to comply with all environmental and endangered species regulations applicable to the hotel site.

The Board may wish to consider whether the proposed BU-1 zoning classification is consistent and compatible with the surrounding development and whether the proposed conditions, when applicable, demonstrate consistency and compatibility of the proposed uses with surrounding development. The BDP additionally provides clarification that nothing in the BDP prohibits the development of the property for other uses permitted under BU-1 and that the aforementioned conditions would only apply to the development of a hotel. The Board may wish to consider whether any of the other uses within BU-1 would produce any incompatibilities with surrounding development and whether buffering or landscaping conditions could mitigate any potential impacts.

This request for rezoning from TR-3 and BU-1 to all BU-1 accompanies a request for a change of Future Land Use designation from NC (Neighborhood Commercial) to CC (Community Commercial). If the Future Land Use change proposal is not supported by the Board, this zoning request cannot be heard.

On August 6, 2018, the Planning and Zoning Board heard the request and unanimously recommended approval.

This item was automatically tabled by the applicant from the September 6, 2018, Commission meeting to the October 4, 2018 Commission meeting.

On October 4, 2018, the Board tabled the request to the December 6, 2018 Commission meeting to allow the applicant time to meet with concerned neighbors, and to consider voluntarily agreeing to a binding development plan to address site development criteria.

On December 6, 2018, the Board tabled the request to the December 18, 2018, Regular Commission meeting.

Contact: Erin Sterk, Planning & Zoning Manager ext. 52640

ATTACHMENTS:

Description

- ▢ **Administrative Policies**
- ▢ **Staff Comments**
- ▢ **Addendum to Staff Comments**
- ▢ **Maps**
- ▢ **Power Point Presentation Submitted at 08/06/18 meeting**
- ▢ **Automatic Tabling Request**
- ▢ **FYI Submitted 10/04/18**
- ▢ **Notice of Second Request - Submitted 11/07/18**
- ▢ **Sworn Statement of Stuart Buchanan - Submitted 11/07/18**
- ▢ **Concept Plan and Renderings**
- ▢ **Draft BDP - Submitted 11/13/18**
- ▢ **Public Comment**
- ▢ **PZ/LPA Minutes - August 6, 2018**
- ▢ **Notice of Third Request 11-14-18**
- ▢ **Second Notice of Sworn Statement of Anthony Lopes 11-22-18**
- ▢ **Letter to Summit Cove**
- ▢ **Revised BDP 12/04/18**
- ▢ **Correspondence**
- ▢ **Disclosures**
- ▢ **BDP Revision Submitted 12-06-18**
- ▢ **BDP Revision Submitted 12-11-18**
- ▢ **BDP Revision 12-13-18**



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December 19, 2018

M E M O R A N D U M

TO: Tad Calkins, Planning and Development Director Attn: Erin Sterk

RE: Item H.5., Public Hearing for Anthony Lopes and Eugene R. Lomando Request for Zoning Classification from BU-1 and TR-3, to All BU-1

The Board of County Commissioners, in regular session on December 18, 2018, conducted the public hearing and approved request by Anthony Lopes and Eugene R. Lomando for a change of zoning classification from BU-1 and TR-3 to all BU-1; and approved changing the language in the Binding Development Plan to reflect eliminating gas stations and liquor stores in the back of said property.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

for: Danna Scott
Tammy Rowe, Deputy Clerk

/ds

cc: County Attorney

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 and 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 staff, 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 development 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 appeals, 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 re-zoning 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 per cent 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 an 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 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.
- 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:

Criteria:

- A. Whether adopted levels of service 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, odor, 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 that the following general standards are satisfied. The Board shall make the 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 MAI 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 thirty-five (35) feet higher than the highest residence within 1000 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 the 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 MPO 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 (ALOS): Acceptable Level of Service currently adopted by the County.

Current 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 LOS that a proposed development may generate on a roadway.

RESOLUTION NO. 18PZ00077

On motion by Commissioner Pritchett, seconded by Commissioner Lober, the following resolution was adopted by a unanimous vote:

WHEREAS, ANTHONY LOPES AND EUGENE LOMANDO have requested a change of zoning classification from BU-1 (General Retail Commercial) and TR-3 (Mobile Home Park) to all BU-1 on property described as Tax Parcels 272 and 275, as recorded in ORB 3108, Pages 2618 – 2619, of the Public Records of Brevard County, Florida. Section 14, Township 30S, Range 38E. (1.96 acres) Located on the west side of U.S. Hwy 1, approx. 655 ft. south of Garretts Rd. (8480 & 8490 U.S. Hwy 1, Micco)

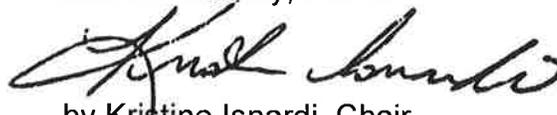
WHEREAS, a public hearing of the Brevard County Planning & Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning & Zoning Board recommended that the application be approved; and

WHEREAS, the Board, after considering said application and the Brevard County Planning & Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be Approved with a BDP (Binding Development Plan); now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from BU-1 and TR-3 to all BU-1, be approved with a BDP, recorded in ORB 8368, Pages 422 – 431, dated February 14, 2019. The Planning & Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of February 14, 2019.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida



by Kristine Isnardi, Chair
Brevard County Commission
As approved by Brevard County Commission on
February 12, 2019.

ATTEST:



SCOTT ELLIS, CLERK
(SEAL)

(P&Z Hearing – August 6, 2018)
(BCC Zoning Hearing – December 18, 2018)

Please note: A Conditional Use Permit will generally expire on the three year anniversary of its approval if the use is not established prior to that date. Conditional Use Permits for Towers and Antennas shall expire if a site plan for the tower is not submitted within one (1) year of approval or if construction does not commence within two years of approval. A PUD Preliminary Development Plan expires if a final development plan is not filed within three years. The granting of this zoning does not guarantee physical development of the property. At the time of development, said development must be in accordance with the criteria of the Brevard county Comprehensive Plan and other applicable laws and ordinances.

REZONING REVIEW WORKSHEET

18PZ00077

Commission District # 3

Hearing Dates: P&Z 08/06/18

BCC 09/06/18

Owner Name: ANTHONY LOPES AND EUGENE R. LOMANDO

Request: BU-1 & TR-3 to all BU-1

Subject Property:

Parcel ID# 30-38-14-00-272; 30-38-14-00-275

Tax Acct.# 3006468; 3006471

Location: West side of U.S. Hwy 1, approx. 655 ft. south of Garretts Rd.

Address: 8480 & 8490 U.S. Hwy 1, Micco

Acreage: 1.96 +/-

Consistency with Land Use Regulations

- Yes **Current zoning can be considered under the Future Land Use Designation. Sec. 62-1255**
- No** **Proposal can be considered under the Future Land Use Designation. Sec. 62-1255**
- Yes **Would proposal maintain acceptable Levels of Service (LOS) (XIII 1.6.C)**

	CURRENT	PROPOSED
Zoning	BU-1 & TR-3	All BU-1
Potential*	Duplex and a 1,944 sq. ft. restaurant	17,076 sq. ft. potential development or 7 Hotel units & 1,944 sq. ft. restaurant
Can be Considered under FLU MAP	BU-1 portion Yes is consistent With CC, TR-3 portion NC & RES 2 yes can be considered under Policy 2.13	NO**

*Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. **Requires Small Scale Amendment from NC and RES 2 to CC.

Maximum Development

	ADT	PM PEAK		
Trips from Existing Zoning	43	21	Segment Number	360A
Trips from Proposed Zoning	14,439	870	Segment Name	US Hwy 1 Ind Rvr CL-Micco
Maximum Acceptable Volume (MAV)	41,790	3,781	Acceptable LOS	D
Current Volume	22,750	2,048	Directional Split	0.5
Volume With Proposed Development	37,189	2,018	ITE CODE	
Current Volume / MAV	54.44%	54.44%	853	
Volume / MAV with Proposal	88.99%	77.57%		
Current LOS	C	C		
LOS With Proposal	C	C		
Findings	<input type="checkbox"/> Non-Deficiency		<input checked="" type="checkbox"/> Deficiency	

Proposed Hotel/Restaurant

	ADT	PM PEAK		
Trips from Existing Zoning	43	21	Segment Number	360A
Trips from Proposed Zoning	304	23	Segment Name	US Hwy 1 Ind Rvr CL-Micco
Maximum Acceptable Volume (MAV)	41,790	3,761	Acceptable LOS	D
Current Volume	22,750	2,048	Directional Split	0.5
Volume With Proposed Development	23,054	2,071	ITE CODE	
Current Volume / MAV	54.44%	54.44%	310/932	
Volume / MAV with Proposal	55.17%	55.05%		
Current LOS	C	C		
LOS With Proposal	C	C		
Findings	<input checked="" type="checkbox"/> Non-Deficiency		<input type="checkbox"/> Deficiency	

Background & Purpose of Request

The applicant is seeking a change of Zoning classification on two parcels from General Retail Commercial (BU-1) and Mobile Home Park (TR-3) to all BU-1 for the purpose of developing a hotel and restaurant. The eastern portion of each parcel already retains the BU-1 Zoning classification and is developed as a 1,944 square foot restaurant and a duplex.

August 05, 1965: the subject parcels were one parcel and rezoned (**Z-1786**) from General Use (GU) to General Retail Commercial (BU-1) for a depth of 200 feet west of Highway US 1 and Trailer Park on the remainder of the parcels.

June 05, 1973: a Special Use Permit (**Z-3293**) was approved for a Real Estate Office to be run out of the home.

1979: the parent Parcel was subdivided into the two parcels existing today, Parcel 275 to the north and Parcel 272 to the south.

December 06, 1984: the south parcel #272 was approved for a Conditional Use Permit (**Z-6927**) for the outside sale of Mobile Homes in a BU-1 zoning classification.

February 26, 1996: the south parcel #272 was **denied** a Conditional Use Permit (**DNZ-9681**) for Alcoholic Beverages for On-premises Consumption in a BU-1 zoning classification.

August 29, 1996: the south parcel #272 was approved for a Conditional Use Permit (**Z-9763**) for Alcoholic Beverages for On-premises Consumption in a BU-1 zoning classification with stipulation that it must be a private club, member parking must be in front of the structure, closing will be midnight on weekdays and 2:00 a.m. on weekends and that the Zoning classification related to the property remain unchanged.

March 06, 2003: the CUP (**Z-6927**) for the outside sale of Mobile Homes in a BU-1 zoning classification was administratively removed, per zoning resolution **Z-10781(50)** and that the Zoning classification related to the property be retained, after the Zoning Regulations were amended to change outside sale of Mobile Homes in a BU-1 zoning classification from a conditional use to a permitted use with conditions.

October 02, 2003: the CUP (**Z-9763**) for the Alcoholic Beverages for On-premises Consumption in a BU-1 zoning classification was administratively removed per zoning resolution **Z-10847** and that the zoning classification related to the property be retained.

May 28, 2009: the south parcel #272 was approved for a Conditional Use Permit (**Z-11500**) for Alcoholic Beverages for On-premises Consumption in a BU-1 Zoning classification as accessory to a restaurant only.

A companion application, **18PZ00076** was submitted accompanying this request for Future Land Use designation change on the portion of the parcels with Neighborhood Commercial (NC) and Residential 2 (RES 2) to all Community Commercial (CC) to be consistent with the BU-1 rezoning request.

Land Use Compatibility

The subject property currently retains the Community Commercial (CC), Neighborhood Commercial (NC) and Residential 2 (RES 2) Future Land Use (FLU) designation, but the applicants are seeking all CC in a companion application for a Small Scale Comprehensive Plan Amendment.

FLUE Policies 2.7, 2.8 and 2.15 outline the role of the Comprehensive Plan in the designation of commercial lands.

This request is to change the Zoning classifications from BU-1 and TR-3 to all BU-1 zoning classification. The BU-1 classification allows retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling.

The request for BU-1 zoning should be evaluated within the context of **Policy 2.7** of the Future Land Use Element, which identifies "development activities that may be considered within the Community Commercial Future Land Use Designation..."

Existing strip commercial;
Transient commercial uses;
Tourist commercial uses;
Professional offices;
Personal service establishments;
Retail establishments;
Non-retail commercial uses;
Residential uses;
Institutional uses;
Recreational uses;
Public facilities;
Transitional uses pursuant to Policy 2.14; and
Planned Industrial Park development (as permitted by PIP zoning).

The request for BU-1 Zoning should be evaluated within the context of **Policy 2.8** of the Future Land Use Element, which sets forth locational criteria for Community Commercial land use activities, as follows:

- A. Community Commercial clusters of up to ten (10) acres in size should be located at arterial intersections. Collector/arterial intersections area 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 intersections.
- B. Community Commercial complexes should not exceed 40 acres at an intersection.
- 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.
- 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.
- E. Floor Area Ratio (FAR) of up to 1.00 will be permitted for Community Commercial sites.

Floor Area Ratios are evaluated during site plan review, but the request for BU-1 Zoning further limits the site's potential floor area.

Given the zoning pattern in the area, **Policy 2.15**, which addressed infill vs. strip commercial development, should also be considered, as follows:

The creation/promotion of strip pattern of commercial development shall be discouraged. Infill within established strip commercial areas is preferred over extension of a strip commercial pattern. Extension of a commercial land use designation may be considered in circumstances where the proposed commercial parcel is located within a block in which at least fifty percent (50%) of the block face (in linear feet) is either currently developed with commercial land uses or is designated for commercial use. In either case, the proposed commercial land use extension shall not constitute an encroachment into a residential area. Judging the suitability of a location for an extension of strip commercial development activities shall be based upon the following minimum criteria:

- A. Impacts upon traffic circulation should be anticipated and mitigated through the reservation of right-of-way for road widening and marginal access streets. Access points for strip commercial

- complexes shall seek to minimize points of conflict by utilizing frontage roads, providing cross access between parcels or installing shared use curb cuts for access driveways to the maximum extent feasible, as determined by Brevard County.
- B. Setbacks and landscaped or other appropriate buffers shall be established to mitigate the visual impacts of strip commercial development.
 - C. A sidewalk or bicycle path shall be required where appropriate (as encouraged by Tables 2.1 and 2.2 of the FLUE) to provide convenient access to surrounding residents and to reduce traffic volumes on the roadways.

Environmental Constraints

Please refer to comments provided by the Natural Resource Management Department.

Applicable Land Use Policies

The parcels are located on the west side of U.S. Highway 1 (U.S. 1), an urban principal arterial roadway consisting of mostly commercial zoning uses which serve the surrounding neighborhoods, one half mile south of the Micco Road intersection. The east portion of the overall parcels was developed as a 1,944 square foot restaurant and a duplex. Across U.S. Highway 1 (U.S. 1) there is an existing marina. The restaurant and marina serve several neighborhoods and sub-regional areas.

The abutting parcel to the north of the subject property is zoned Mobile Home Park (TR-3) with a developed mobile home park, River Groves Mobile Home Village. There are four mobile home units from this mobile home park abutting the subject property.

The abutting parcels to the west and south of the subject property are zoned Medium-Density Multi-Family Residential (RU-2-10) with an existing condominium development, Summit Cove Condominium located on the parcels.

Within the last 10 years, only one rezoning action has occurred in the area along Highway U.S.1 from Garrets Road to the County line. That zoning action (**Z-11559**) was a change from Single-Family Residential, (RU-1-7) and General Retail Commercial, (BU-1) to Restricted Neighborhood Retail Commercial (BU-1-A) and was approved.

The development potential of the site has been calculated as follows: Under Section 62-1511 (4) of Brevard County Code, maximum hotel/motel development is limited to 30 units per acre in the mainland area, if certain locational parameters are met. As this site fails to meet those criteria, the maximum development potential is regulated by the Comprehensive Plan. Policy 2.13 of the Future Land Use Element clarifies that residential development is permissible in these commercial land use designations at density of up to one category higher than the closest residentially designated area on the Future Land Use Map (FLUM) which is on the same side of the street. As the parcels abut surrounding parcels with the Residential 2 (RES 2) Future Land Use designation, this property can anticipate increase the density to up to 4 units per acre, or a total unit count of seven (7) hotel or motel units, as this lot lies outside of the Coastal High Hazard area. If the site is used for other than hotel or motel use, the 1.96 acre site would allow up to 17, 076 square feet of commercial building space allocation (zoning's lot yield formula estimates a 20% threshold of the lot's area as the official estimate for the RP, BU-1-A or BU-1 zoned properties to estimate the building potential of the lot) or up to a one to one floor area ratio (FAR) for development within the CC designated area or 0.75 FAR under the NC FLU designation per Section 62-2110 of Brevard County Code.

A preliminary concurrency analysis indicates that the proposed change in FLU designation would not generate traffic that would cause deficiency of adopted roadway levels of service (LOS). Today, the traffic counts indicate that this section of the U.S. Highway 1 (U.S. 1) corridor is at 54.44% of the maximum acceptable volume (MAV). The highest traffic generating use allowable under within the BU-1 Zoning classification is projected to put the corridor at 88.99% of MAV and is not expected to impact the acceptable LOS.

For Board Consideration

The applicant is seeking a change of Zoning classification on two parcels from General Retail Commercial (BU-1) and Mobile Home Park (TR-3) to all BU-1 for the purpose of developing a hotel and restaurant. The eastern portion of each parcel already retains the BU-1 Zoning classification and is developed as a 1,944 square foot restaurant and a duplex.

The Board may wish to consider whether the proposed BU-1 Zoning classification is consistent and compatible with the surrounding development.

This request for rezoning from TR-3 and BU-1 to all BU-1 accompanies a request for a change of FLU designation from Neighborhood Commercial (NC) to Community Commercial (CC). If the Future Land Use change proposal is not supported by the Board, this zoning request cannot be heard.

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Rezoning Review

SUMMARY

Item #: 18PZ00077	Applicant: Lopes and Lomando
Zoning Request: BU-1, TR-3 to BU-1	
P&Z Board Hearing: 08/06/18	BCC Hearing: 09/06/18

This is a preliminary review based on environmental maps available to the Natural Resources Management Department (NRM) at the time of this review and does not include a site inspection to verify the accuracy of this information. This review does not ensure whether or not a proposed use, specific site design, or development of the property can be permitted under current Federal, State, County or Local Regulations. In that this process is not the appropriate venue for site plan review, specific site designs that may be submitted with the rezoning will be deemed conceptual and any comments or omissions relative to specific site design do not provide vested rights or waivers from these regulations, unless specifically requested by the owner and approved by the Board of County Commissioners. If the owner has any questions regarding this information, he/she is encouraged to contact NRM prior to submittal of any development or construction plans.

Natural Resource	Preliminary Assessment	Natural Resource	Preliminary Assessment
Hydric Soils/Wetlands	Not mapped	Coastal Protection	N/A
Aquifer Recharge Soils	Not mapped	Surface Waters	N/A
Floodplains	Not mapped	Wildlife	Potential

Comments:

**This review relates to the following property: Twp. 30, Rng. 38, Sec. 14;
Tax ID No. 3006471 & 3006468**

Information available to NRM indicates that federally and/or state protected species may be present on the property. There is a large mapped Florida Scrub Jay polygon over the site as shown on the Scrub Jay Occupancy Map. 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.

Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), the purpose and intent of the ordinance is to encourage the protection of Heritage Specimen Trees. In addition, per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, 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. Land clearing is not permitted without prior authorization by NRM.

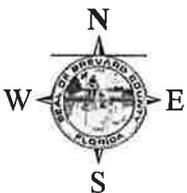
**ADDENDUM TO STAFF COMMENTS
SUMMARY OF 18PZ00077 BDP CONDITIONS**

Condition Type	Condition Number	Proposed BDP Changes (BCC) November 21, 2018	Staff Analysis of Proposed Conditions
Conditions related to Hotel Use	2	Upon receipt of Community Commercial Land Use and BU-1 Zoning, should the Owners decide to develop the property as a hotel site, the Developer/Owners agree to the following conditions	The Board should be aware that the conditions proposed by the applicant are only applicable if developed as a hotel. Although the applicant has noted that only a hotel or restaurant is intended to be developed on the property within the proposed Community Commercial Future Land Use designation and BU-1 Zoning classification, no limitations on use have been proposed within the BDP itself. There are no conditions proposed for the development of other uses permissible within the BU-1 Zoning classification.
Site Configuration	2.a.	The Developer/Owners agree to construct the hotel in substantially the same configuration and location shown on the Concept Plan attached hereto as Exhibit B and in conformance to County regulations;	The Board may wish to consider incorporating language allowing for the modification of the concept plan, as appropriate, when necessitated by compliance with other existing code provisions.
Height	2.b.	The height of the hotel shall not exceed three stories;	Sec. 62-1482 limits the height of this property to 35 feet, when adjacent to residential zoning classifications.
Density	2.c.	The maximum number of hotel rooms shall not exceed 70 rooms;	
Site Plan	2.d.	The Developer/Owners agree to apply for any site plan approval required by County regulations.	The proposed condition duplicates existing County code requirements.
Landscape Buffer	2.e.	The Developer/Owners agree to provide such vegetative or other buffers on the south and north side of the property as may be required by Brevard County Land Development regulations.	The proposed condition duplicates existing County code requirements.
Fence/Wall Buffer	2.f.	The Developer/Owners agree to install an 8-foot opaque fence where shown on the concept plan or, alternatively, an 8-foot wall where required by applicable county code regulations.	Code provisions necessitate a 6' wall separate commercial development from residentially zoned property. The proposed language for a fence would necessitate a waiver to the Land Development Code.

Landscape Buffer	2.g.	The Developer/Owners agree to work with Summit Cove on the west and south side of the project to provide landscaping which will avoid the use of plants that drop leaves or branches on the Summit Cove property, in particular, the access drive. In addition, with Summit Cove Homeowners Association consent, the Developer/Owner agrees to place some buffering landscaping on Association property where desirable.	The Board may wish to consider whether the language of this provision is enforceable.
Summit Cove Gated Entrance	2.h.	The Developer/Owners agree to install a gate system on the access drive toward the front of the Summit Cove landscaped median (currently in existence), along with a turnaround similar those used in gate communities with associated paving in that area. Developer further agrees that the gate system will be designed to conform to applicable engineering design standards for such systems.	The Board may wish to consider whether the condition, as proposed, could be memorialized within the BDP, as the improvements are proposed on the adjacent property, not under the same ownership. The improvements would necessitate both a site plan and permit be approved for the improvements to be made. Public Works' Engineering staff has confirmed that a gated entrance would need to meet the requirements of Exhibit 12 Sec. 62-2801 or would need to provide adequate length for a truck with a landscape trailer to perform appropriate turning movements. Autoturn and/or turning templates should be provided.
Access	2.i.	The Developer/Owners agree to limit access to the hotel site to U.S. Highway 1. The Developer/Owners further agree to comply with any requirement for the construction of turn lanes on U.S. 1 serving the hotel site if those turn lanes are required by the Florida Department of Transportation or County regulations.	
Use	2.j.	The Developer/Owners agree that any change of use from a hotel to a weekly rental or apartments will require a revision to the Binding Development Plan following procedures established in the Brevard County Code of Ordinances.	Our code defines that the hotel/motel use allows for stays up to 90 days. It does not have a definition for "weekly rentals." Apartments are not permissible within the BU-1 Zoning classification, unless constructed in the context of a mixed-use development.
Environmental Regulations	2.k.	The Developer/Owners agree to comply with all environmental and endangered species regulations applicable to the hotel site.	The proposed condition duplicates existing County code requirements.

LOCATION MAP

LOPES, ANTHONY AND LOMANDO, EUGENE R.
18PZ00077



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.

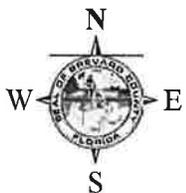
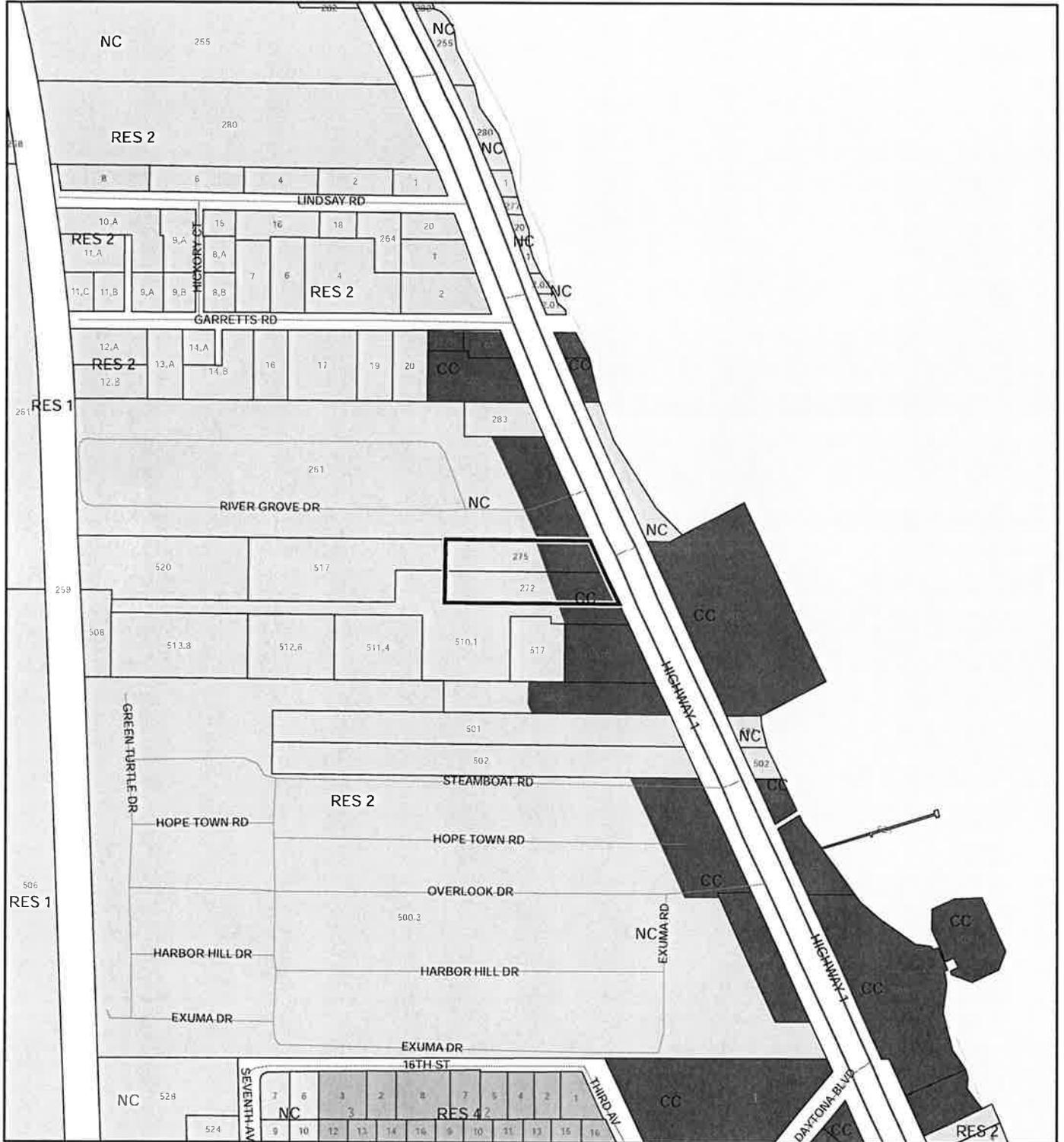
Produced by BoCC - GIS Date: 6/14/2018

-  Buffer
-  Subject Property

FUTURE LAND USE MAP

LOPES, ANTHONY AND LOMANDO, EUGENE R.

18PZ00077



1:4,800 or 1 inch = 400 feet

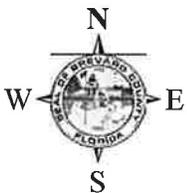
- Subject Property
- Parcels

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Produced by BoCC - GIS Date: 6/14/2018

AERIAL MAP

LOPES, ANTHONY AND LOMANDO, EUGENE R.
18PZ00077



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2018

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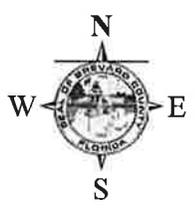
Produced by BoCC - GIS Date: 6/14/2018

 Subject Property

 Parcels

NWI WETLANDS MAP

LOPES, ANTHONY AND LOMANDO, EUGENE R.
18PZ00077



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/14/2018

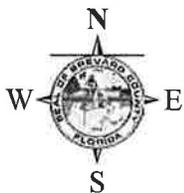
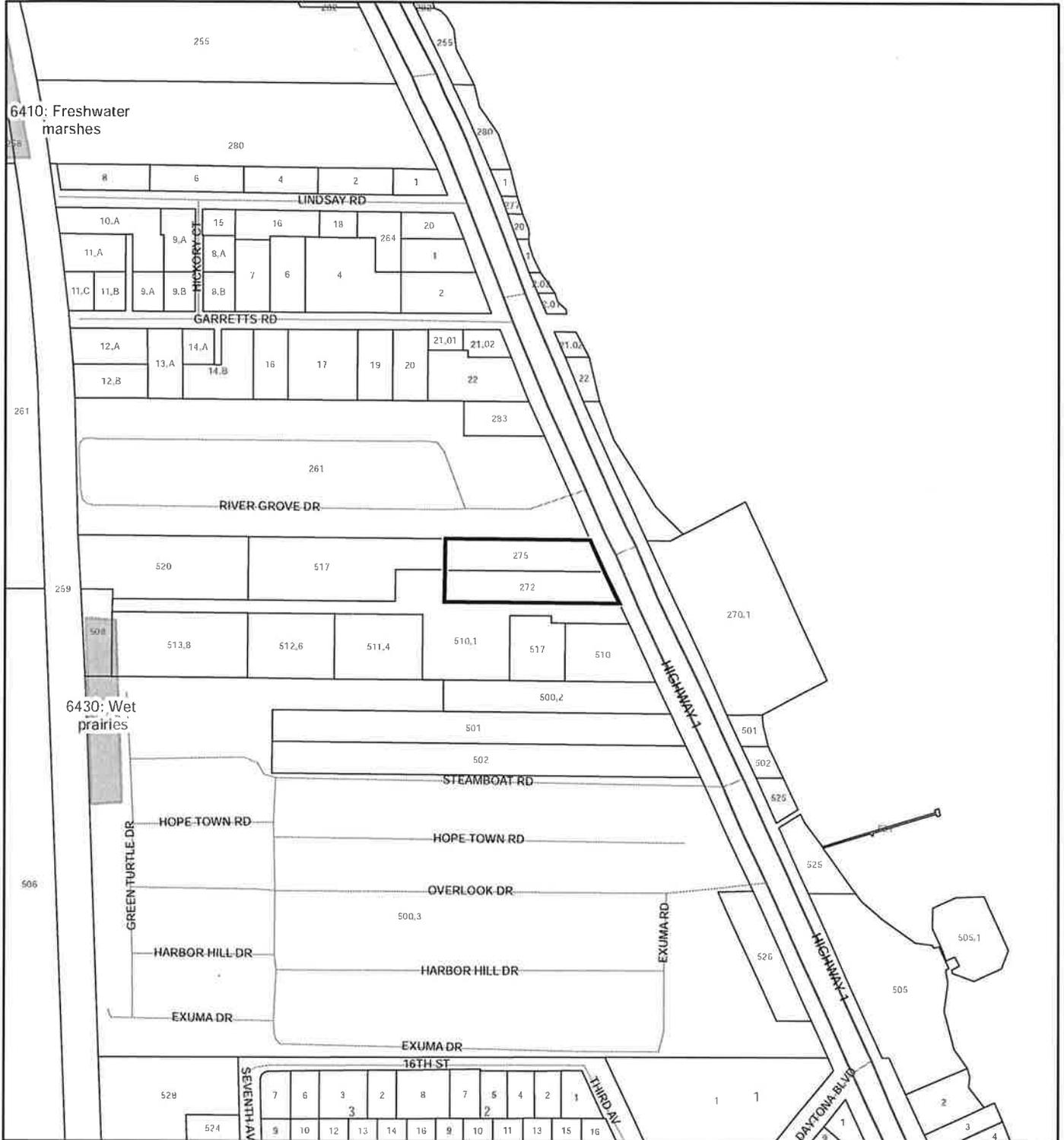
National Wetlands Inventory (NWI)

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

LOPES, ANTHONY AND LOMANDO, EUGENE R.

18PZ00077



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/14/2018

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

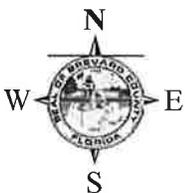
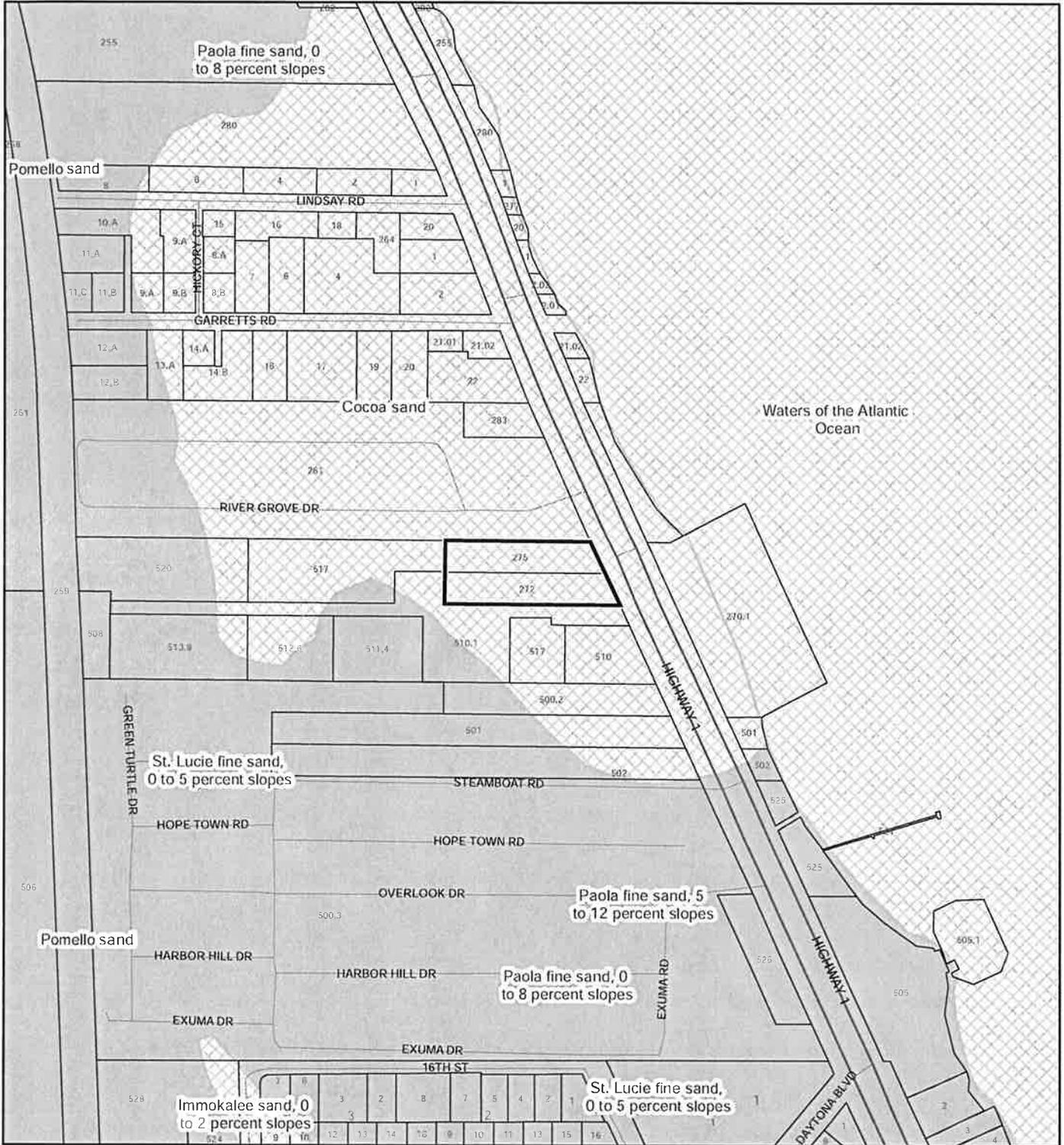
 Subject Property

 Parcels

USDA SCSSS SOILS MAP

LOPES, ANTHONY AND LOMANDO, EUGENE R.

18PZ00077



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/14/2018

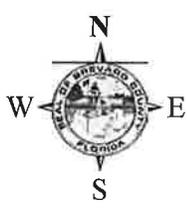
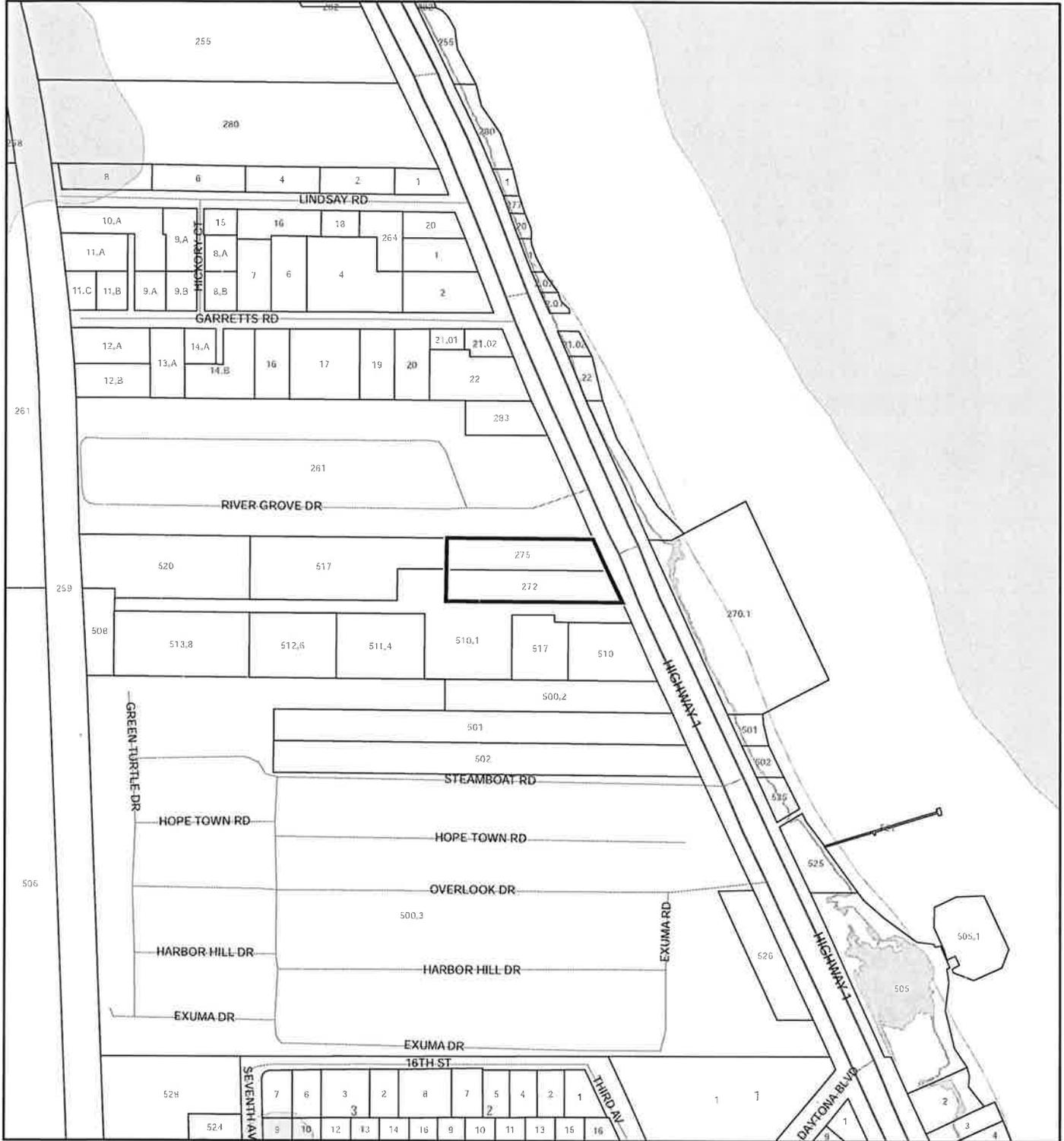
USDA SCSSS Soils

-  Aquifer and Hydric
-  Aquifer
-  Hydric
-  None
-  Subject Property
-  Parcels

FEMA FLOOD ZONES MAP

LOPES, ANTHONY AND LOMANDO, EUGENE R.

18PZ00077



1:4,800 or 1 inch = 400 feet

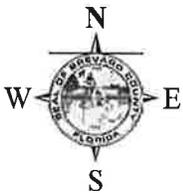
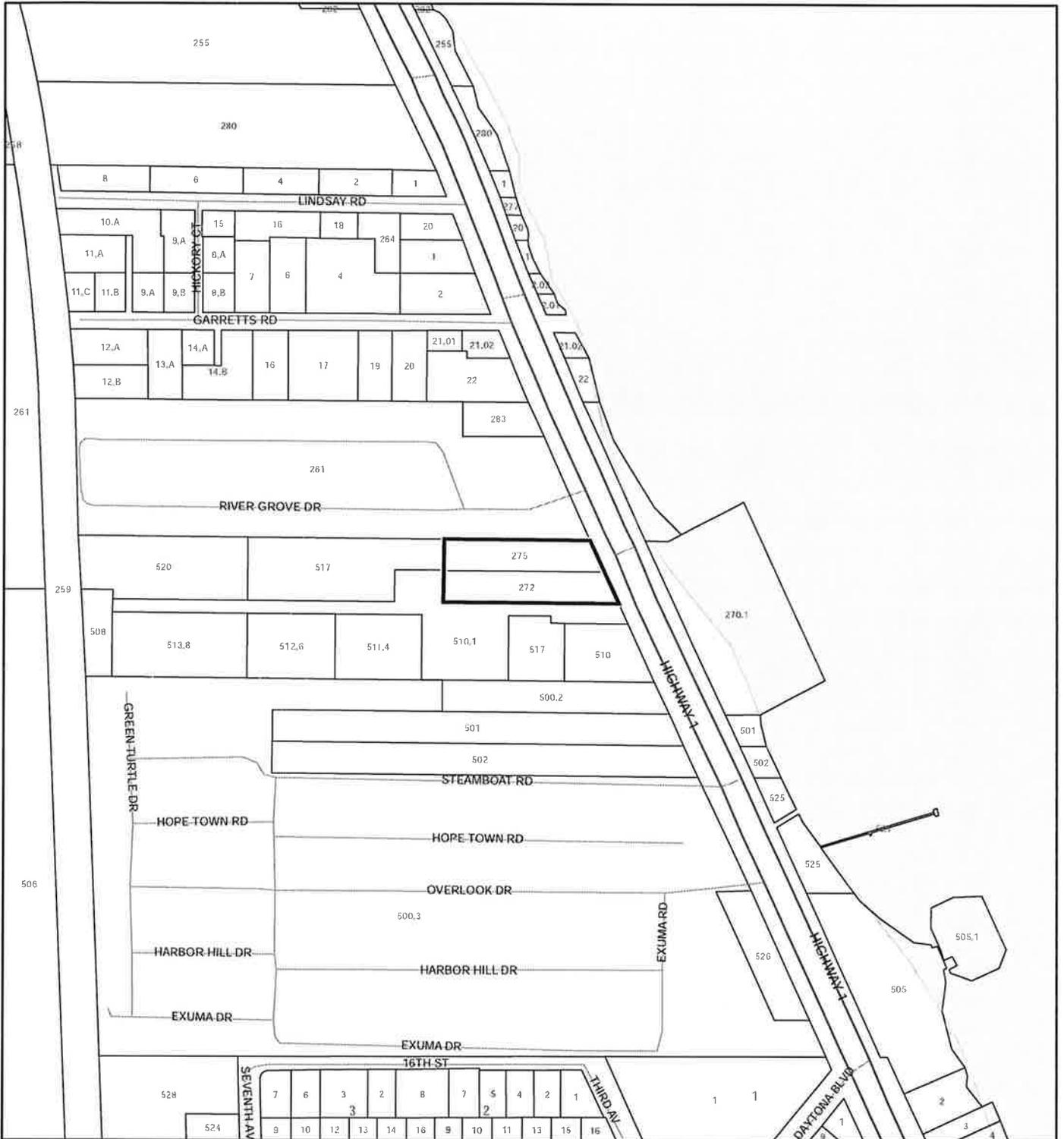
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions herein.

Produced by BoCC - GIS Date: 6/14/2018

- FEMA Flood Zones**
- A
 - AE
 - AH
 - 0.2 Percent Annual Chance Flood Hazard
 - 0.2 Percent Annual Chance Flood Hazard Contained in Channel
 - Subject Property
 - AO
 - Open Water
 - VE
 - X
 - X Protected By Levee
 - Parcels

EAGLE NESTS MAP

LOPES, ANTHONY AND LOMANDO, EUGENE R.
18PZ00077



1:4,800 or 1 inch = 400 feet

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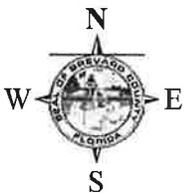
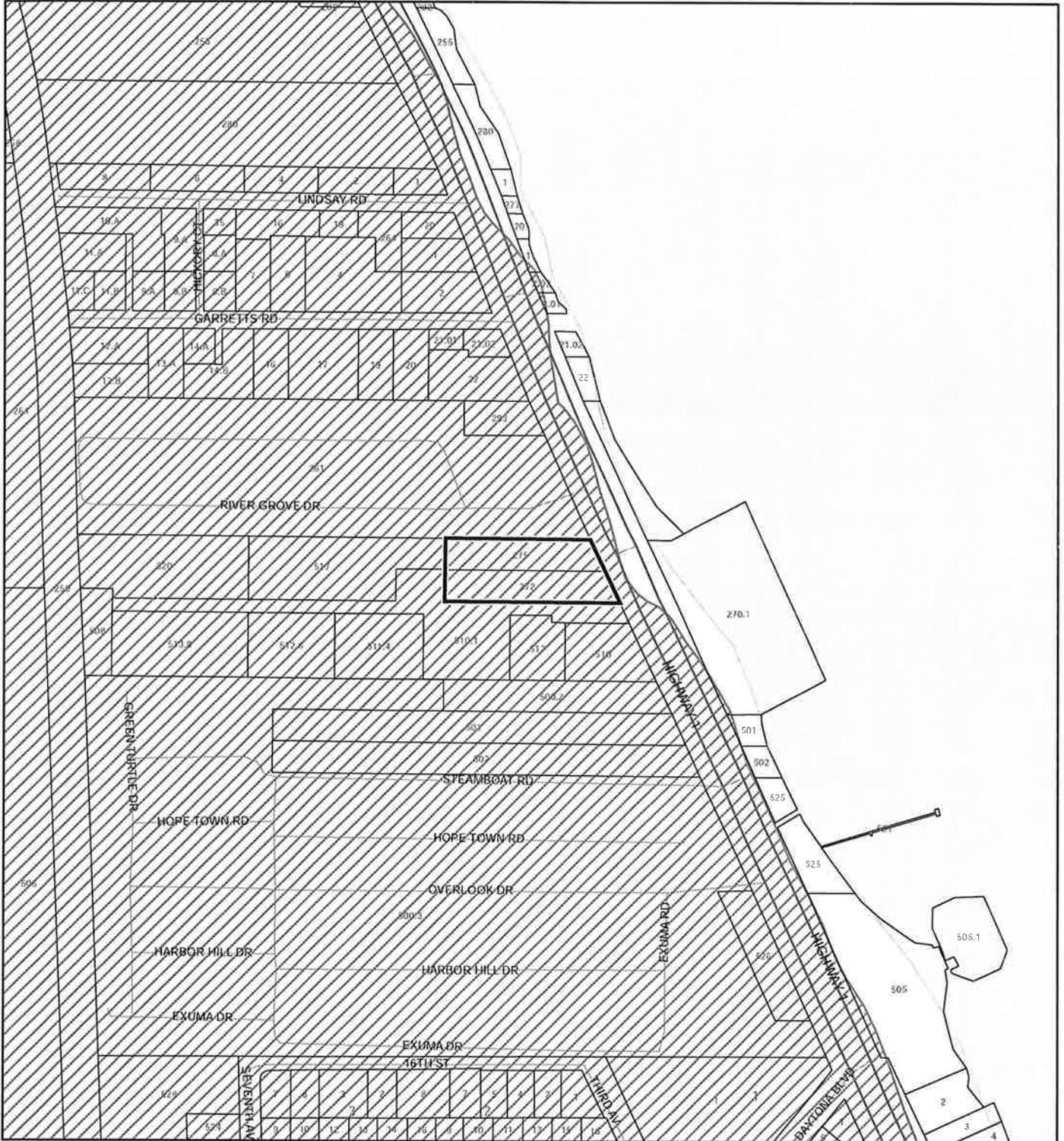
Produced by BoCC - GIS Date: 6/14/2018

-  Subject Property
-  Parcels
-  Eagle Nests FWS 2010

SCRUB JAY OCCUPANCY MAP

LOPES, ANTHONY AND LOMANDO, EUGENE R.

18PZ00077



1:4,800 or 1 inch = 400 feet

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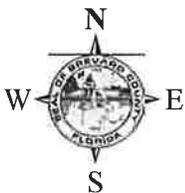
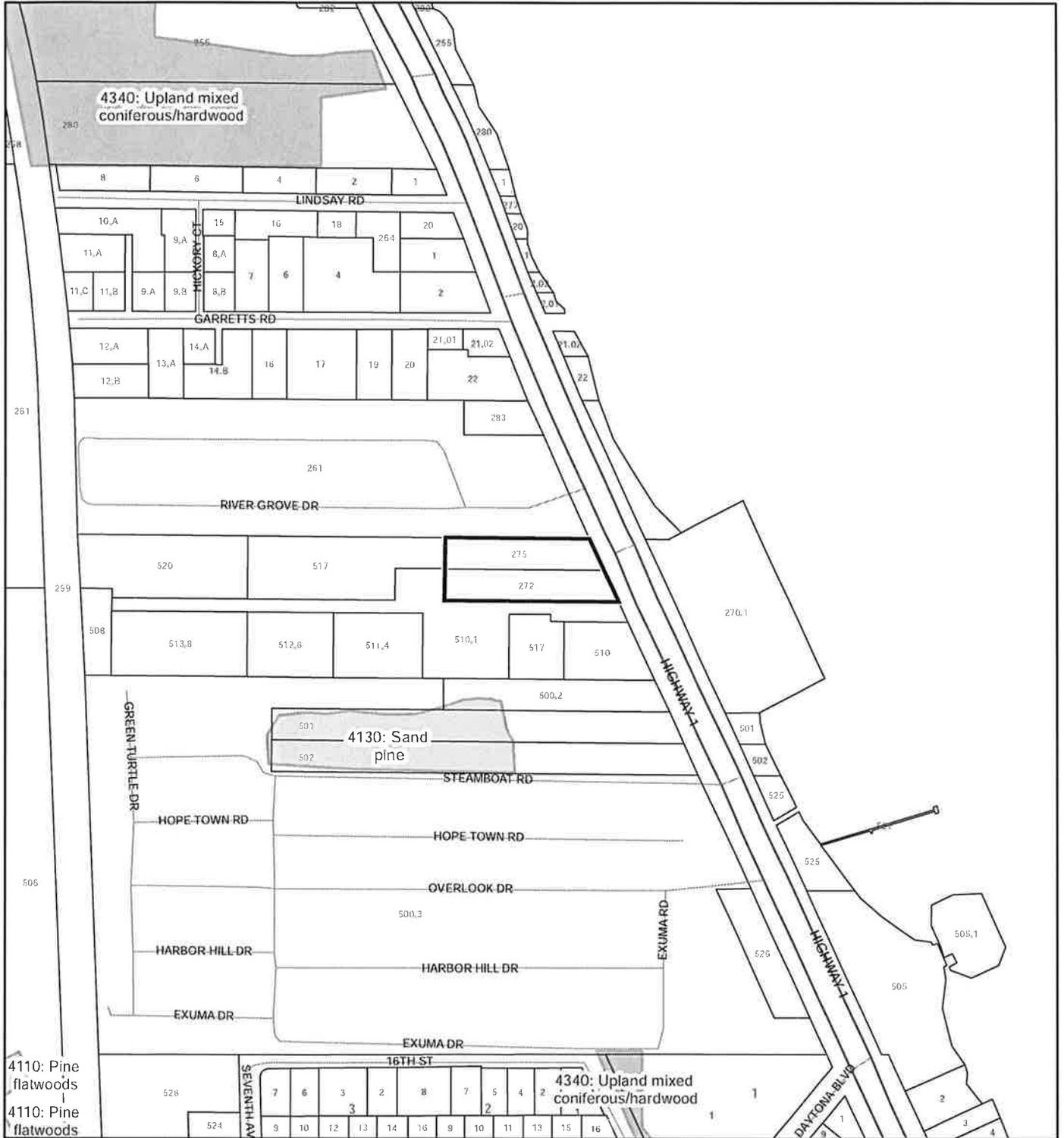
Produced by BoCC - GIS Date: 6/14/2018

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

LOPES, ANTHONY AND LOMANDO, EUGENE R.

18PZ00077



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/14/2018

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

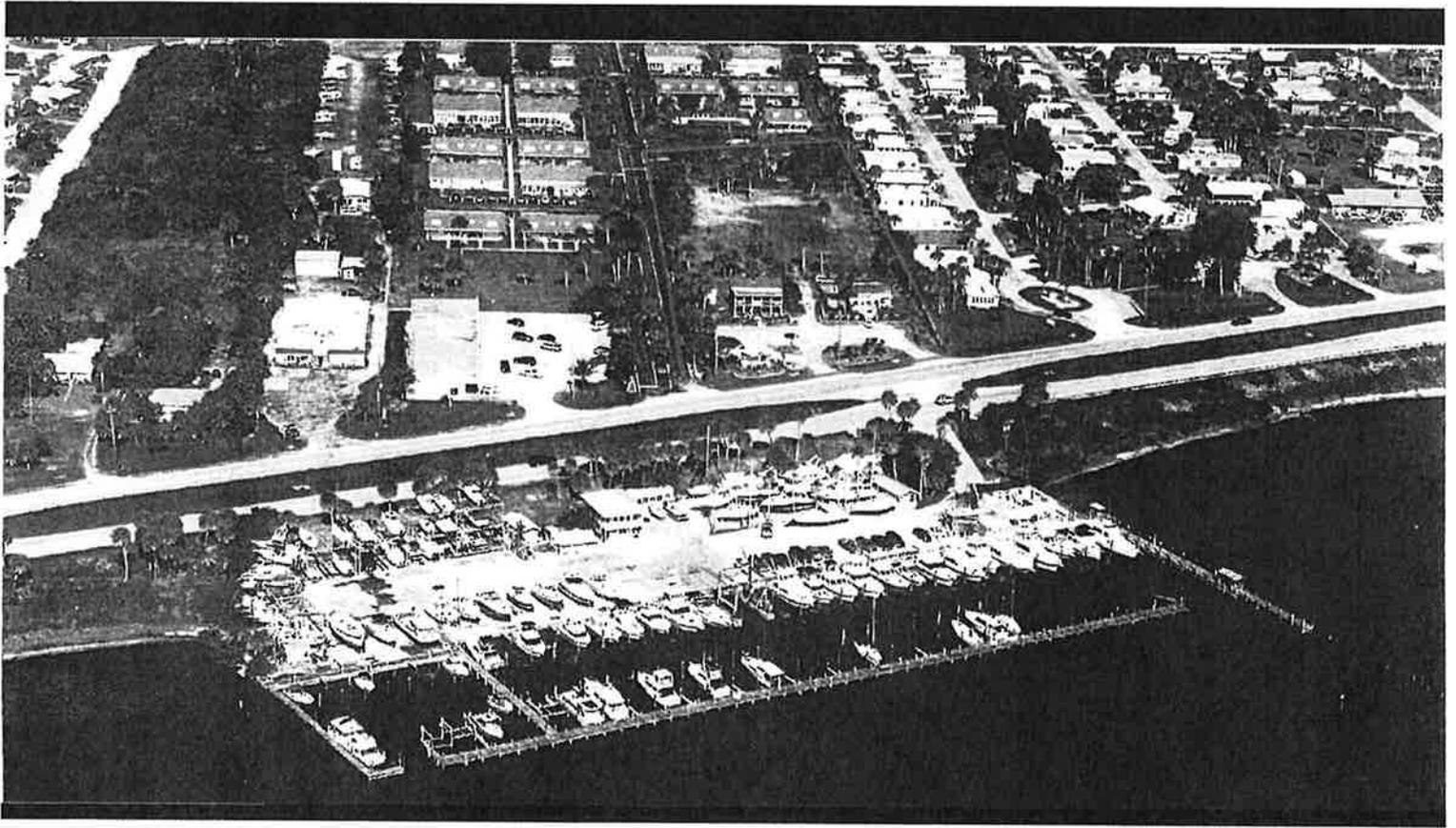
Parcels

FYI Powerpoint
18PZ00077
Lopes/Lomando
(Submitted by applicant 08/06/18)

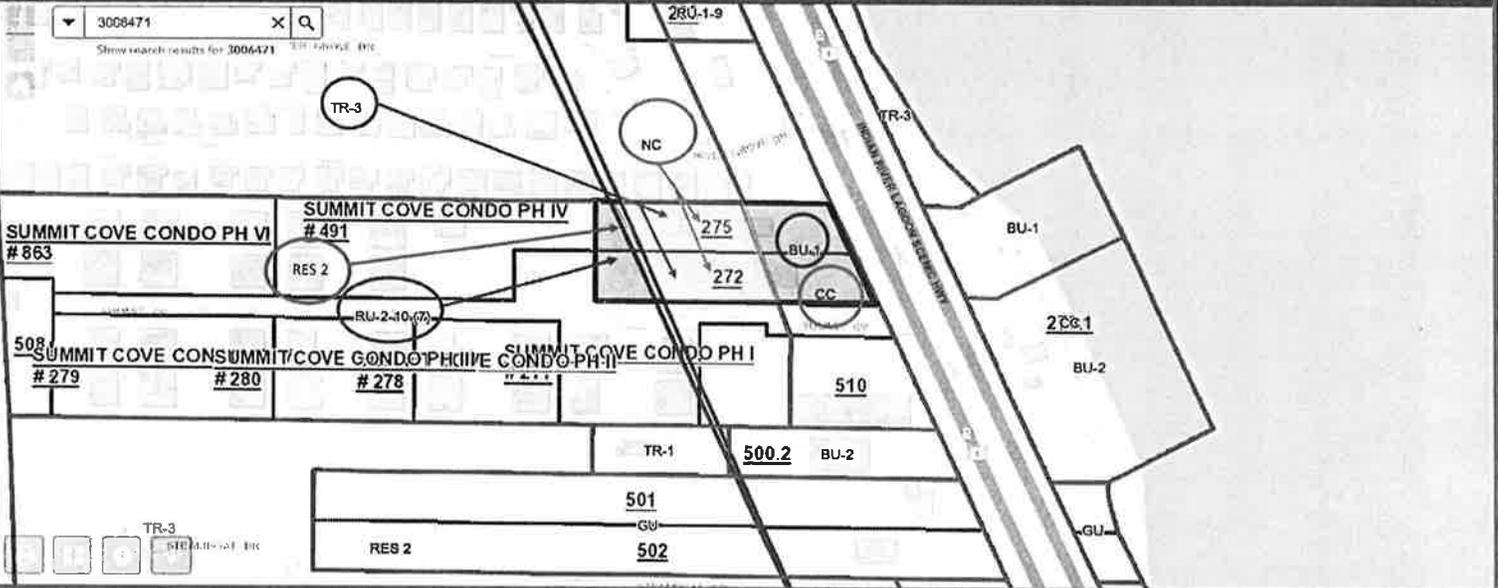
Research County Property Appraiser's Office | <https://www.bcpao.us/PropertySearch/#/bcpao/map/3006615>

RESEARCH | EXEMPTIONS | TANGIBLE | FORMS | GENERAL | CONTACTS

OWNERS: ANTHONY LOPES – EUGENE LOMANDO/ IN LOPES FAMILY FOR 38 YRS



Zoning and Future Land Use



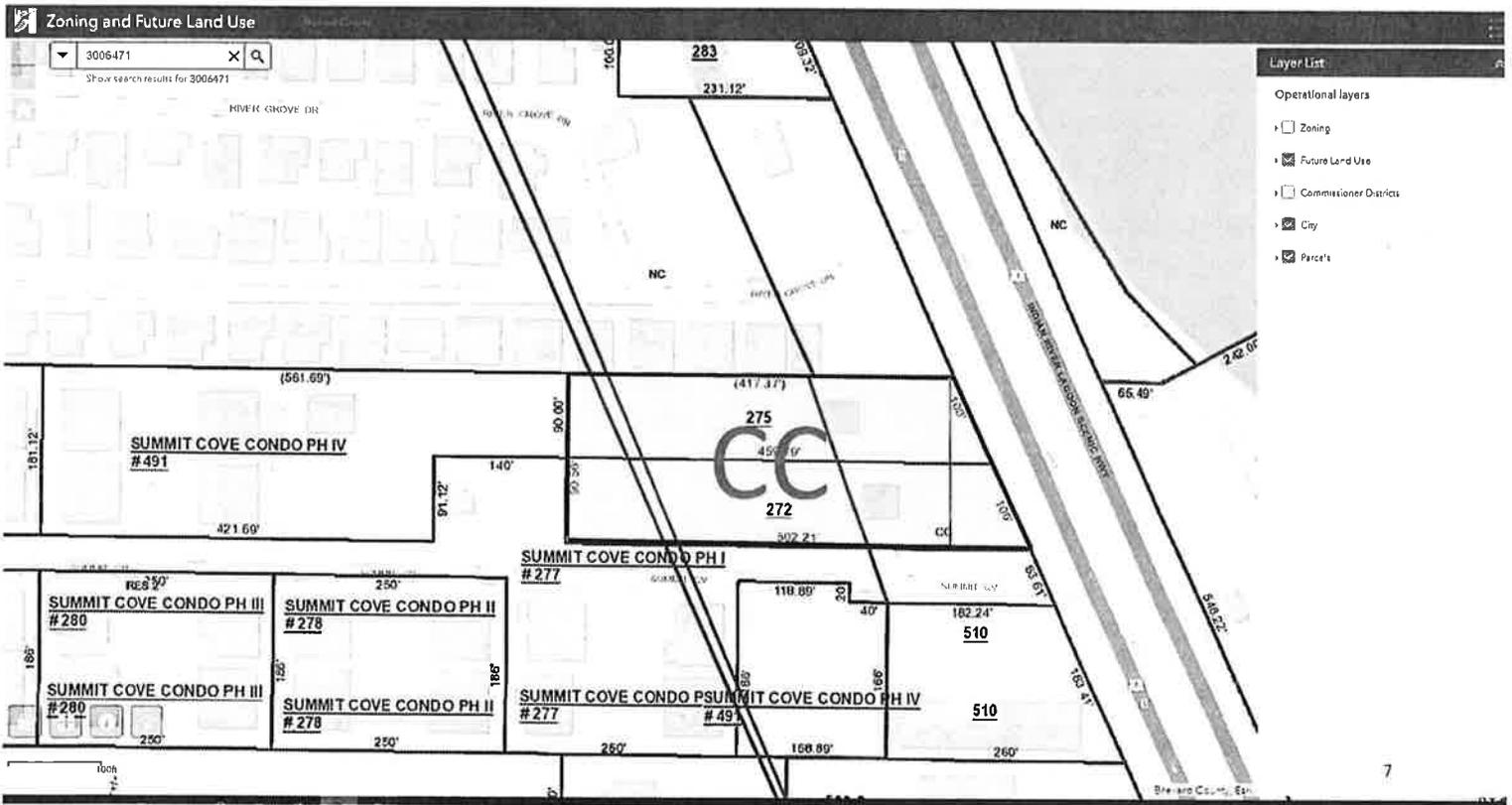
Board Adjustments to Commercial Future Land Use Boundaries
Policy 2.9

The boundaries of the Neighborhood Commercial and Community Commercial future land use designations are intended to be flexible in their application and may be extended up to 500 feet beyond the limits established on the Future Land Use Map by the Board of County Commissioners, provided that such proposed extensions adhere to the following criteria:

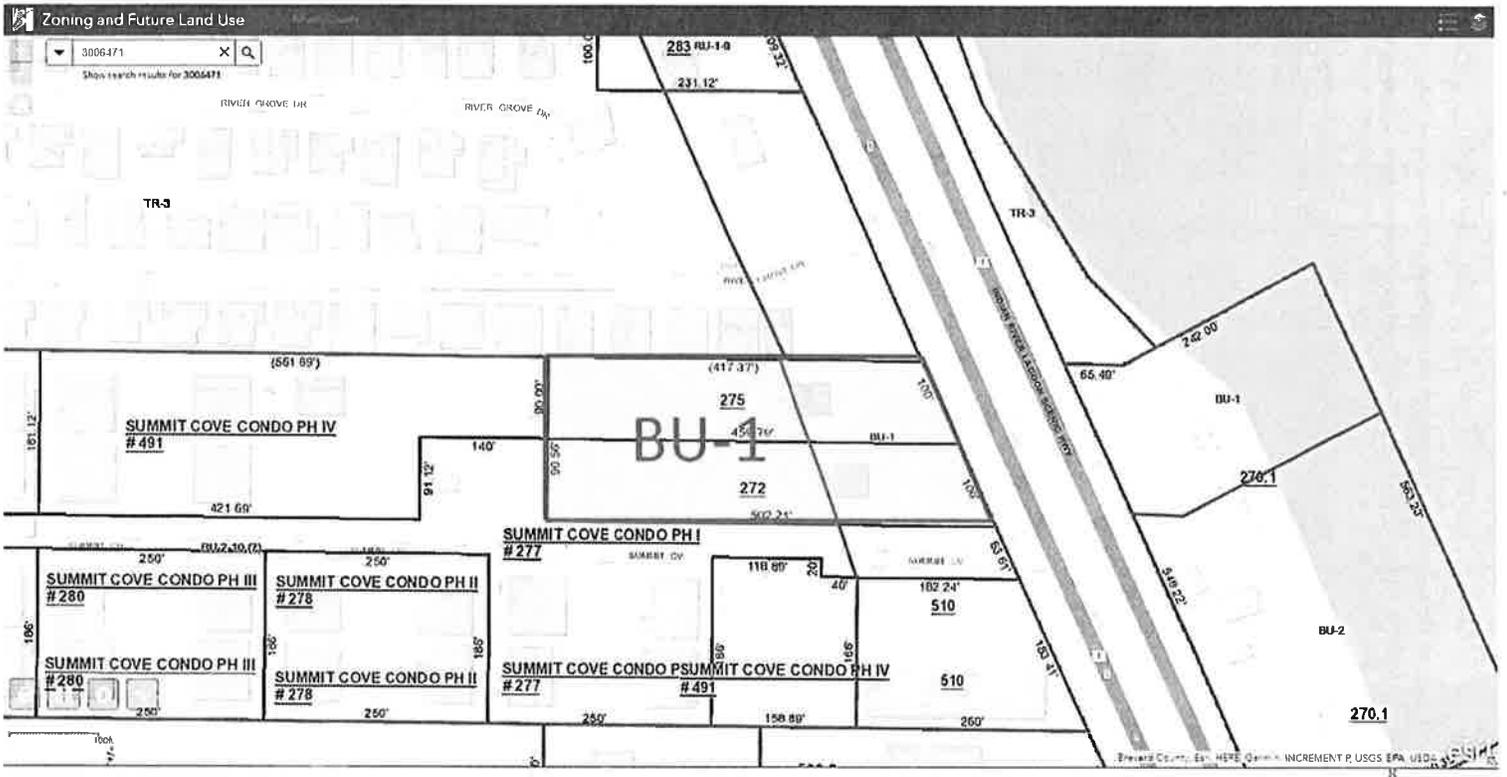
Criteria:

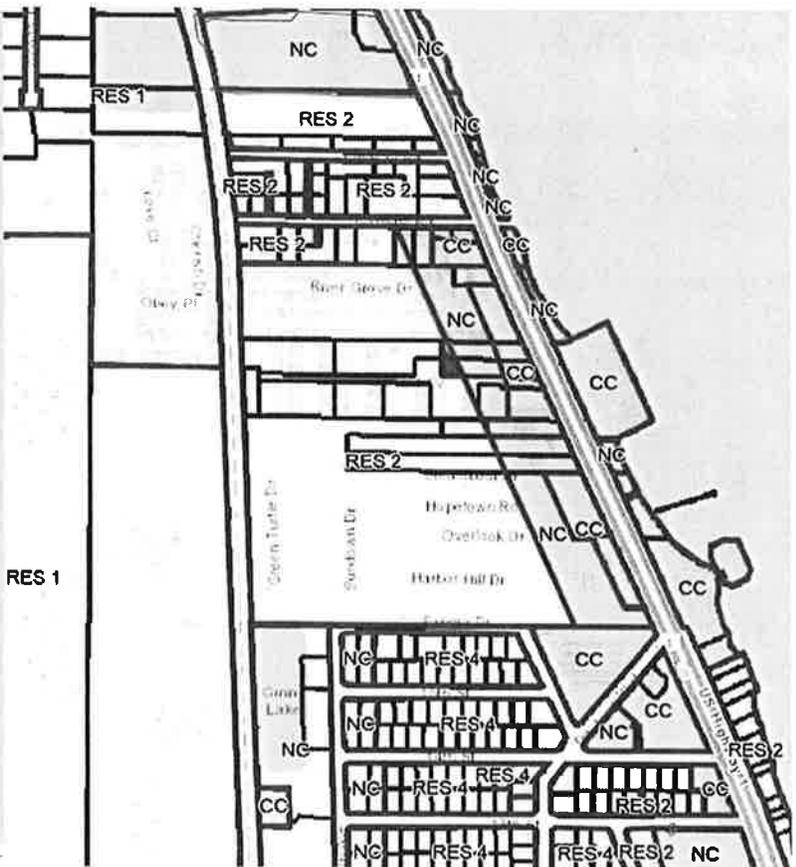
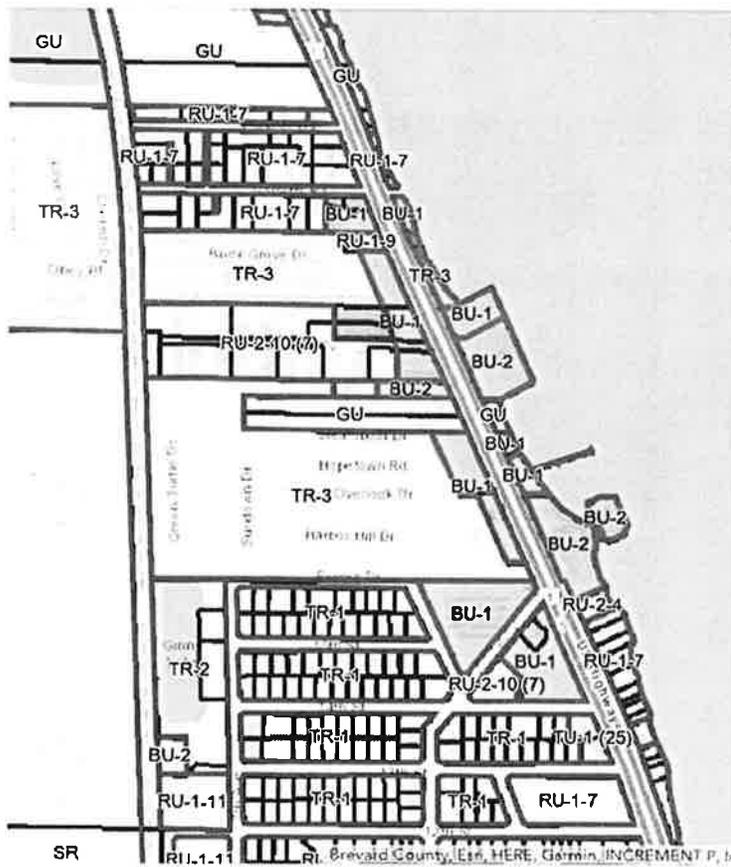
- A. said extension shall not encompass an area greater than one acre in size;
- B. said extension shall only be permitted for properties which are either contiguous to or partly located within the respective Neighborhood Commercial or Community Commercial designation sought by the extension;
- C. said extension does not result in expanding a boundary into established residential areas; and
- D. said extension does not exclusively abut a parcel which was previously granted such an expansion.

Proposed Land Use CC, Community Commercial over the entire property

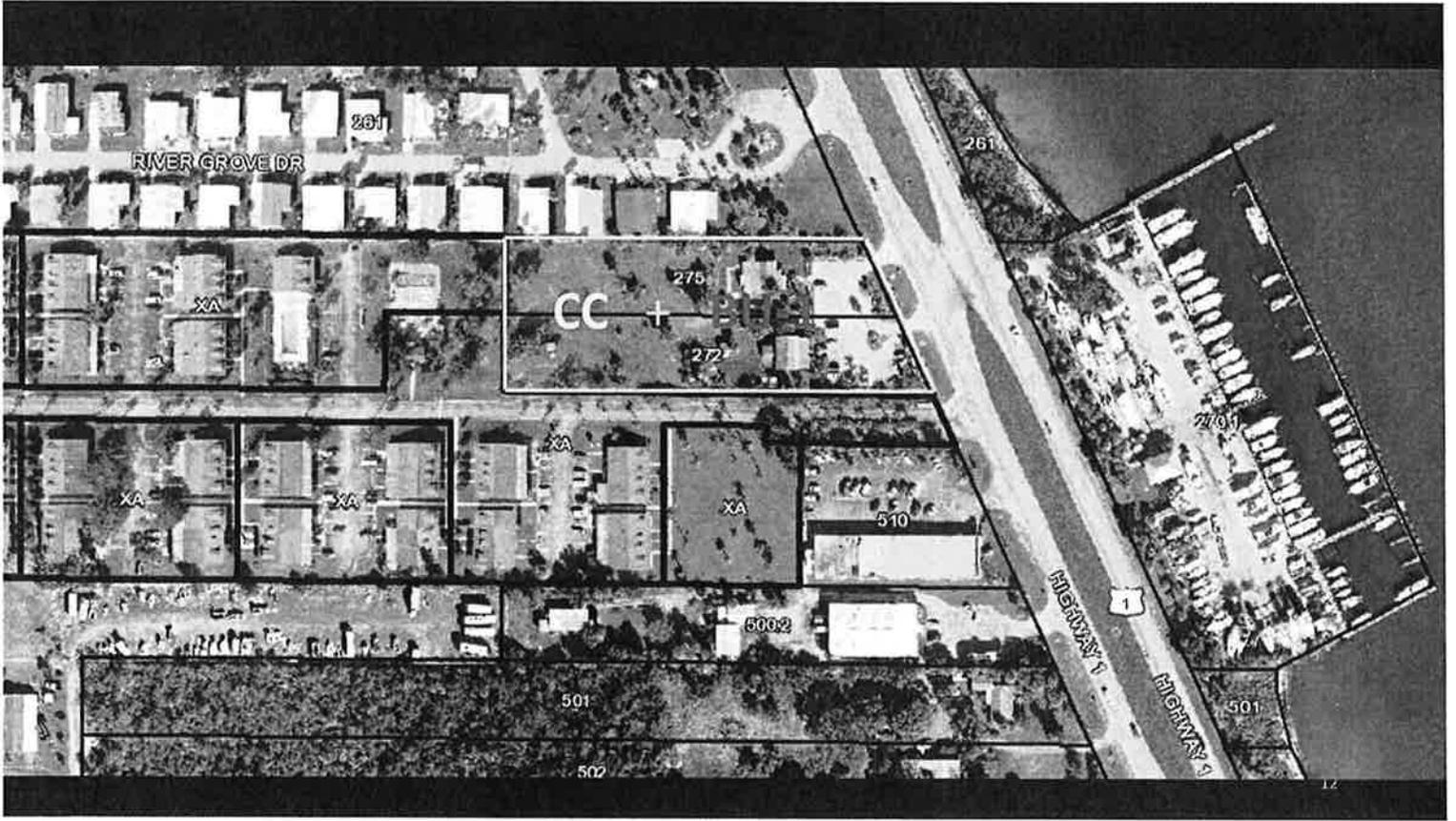


Proposed Zoning BU-1 on the entire parcel



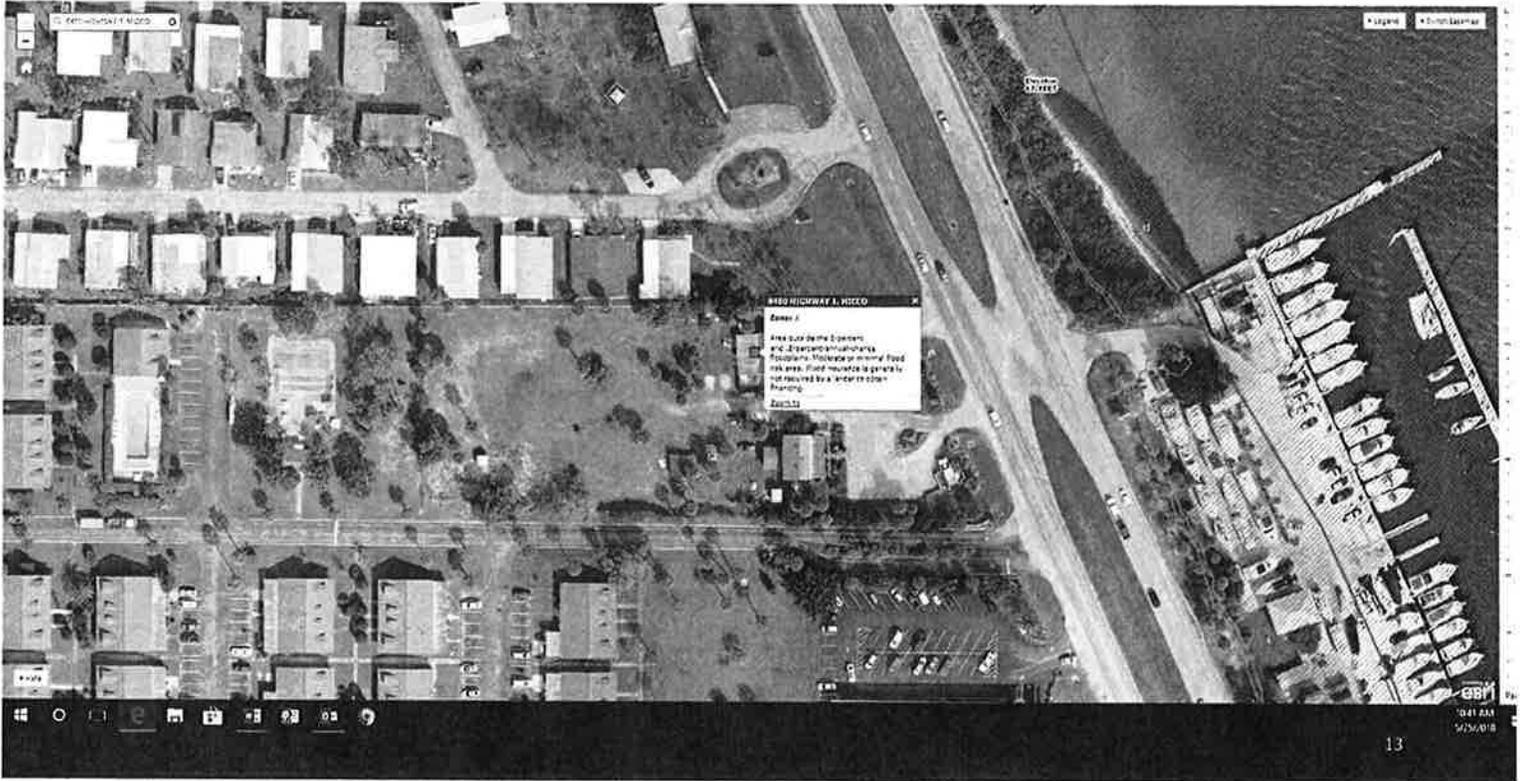


SR
 RI.1.1-1
 Rt. Brevard County, Est. HERE, Garmin INCREMENT P, b



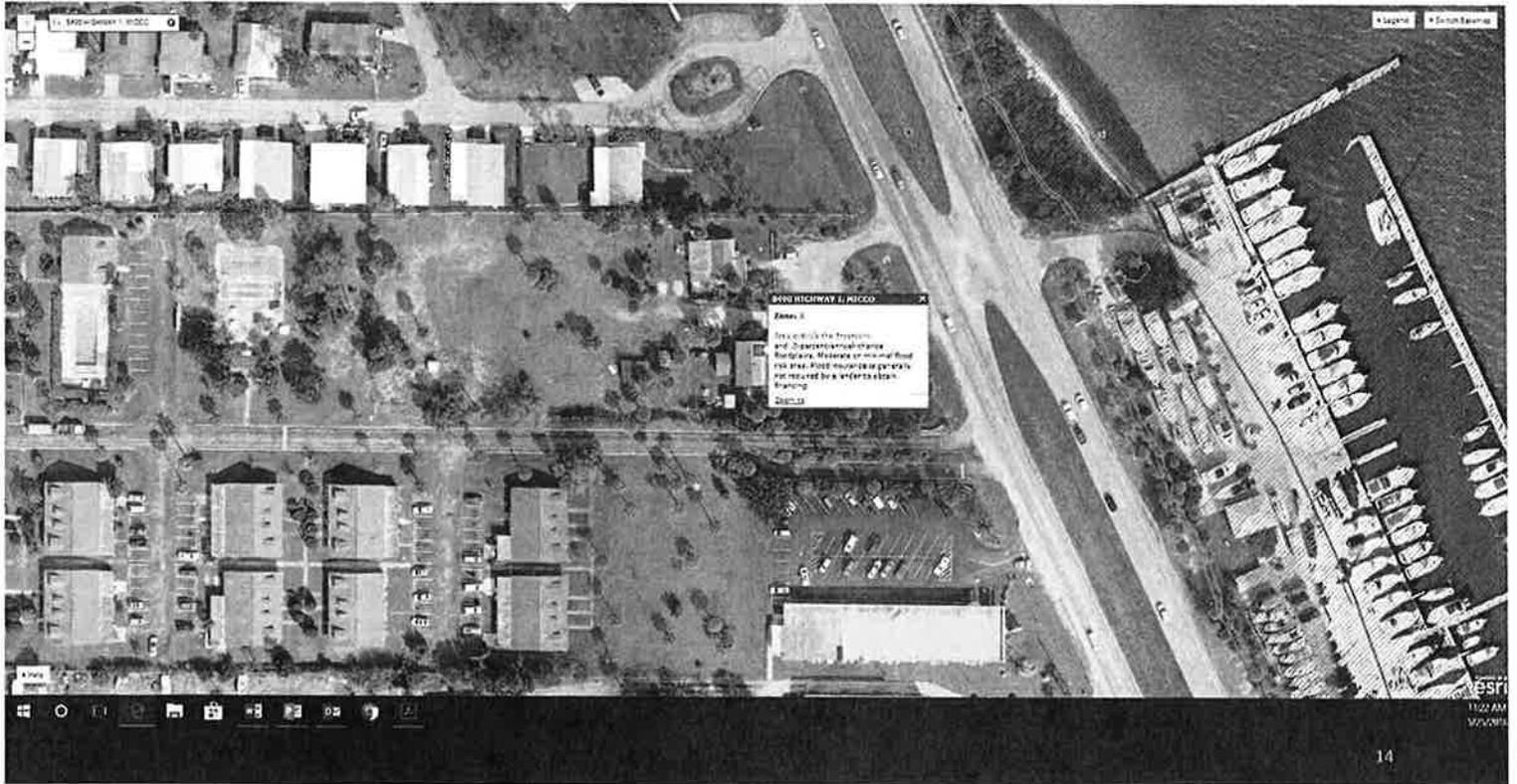


Flood Zone Map





Flood Zone Map





**Existing Use
Marina Café
Bar & Grill**



Looking West from the property showing significant existing buffering vegetation



Looking
South
from
Property



Looking
North
from the
Property



Looking
East from
the
property
across US 1



Looking
South
from
north
boundary
of the
property



Looking
north
from
south
boundary
of the
property



North
ingress to
property
from US 1



Looking
West to
rear
boundary
of the
property



Looking
southeast
from the
rear of the
property



**Looking East at strip
center and US 1
from rear of the
property line
abutting nearest
Summit Condo unit**



Looking
southeast
from rear
of the
property

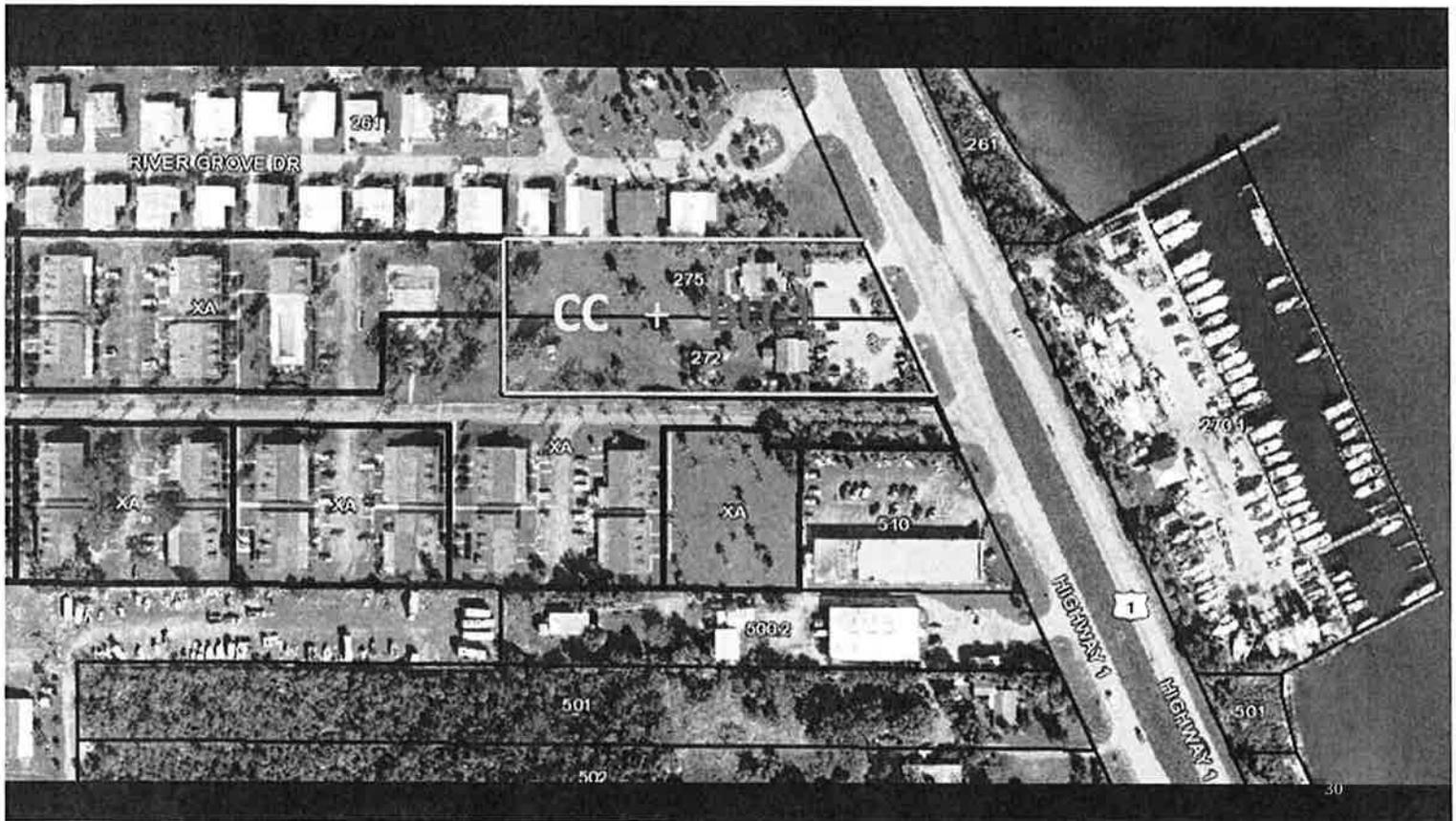


**Looking
northwest
from front
of the
property at
nearest
mobile
home**



**Looking northwest
from rear of the
property at Summit
Cove recreation area**





From: [Sterk, Erin](#)
To: [Scott Knox](#)
Cc: [Anthony Lopes](#); [Gene Lomando](#); [Bentley, Eden](#); [Jones, Jennifer](#); [Calkins, Tad](#); [Ragain, Rebecca](#)
Subject: Re: Lopes Comp plan-zoning application Continuance
Date: Tuesday, August 14, 2018 12:05:15 PM

Scott,

Thank you - Jennifer will update the BCC agenda item accordingly, to reflect the automatic tabling request.

Regards,
Erin

On Aug 14, 2018, at 11:37 AM, Scott Knox <sknox@uslegalteam.com> wrote:

Erin:

My clients, Anthony Lopes and Eugene Lomando are requesting a continuance of rezoning application No. 18PZ00077 and small scale plan amendment application No. 18PZ00076 from the September 6, 2018 County Commission public hearing to the October 4, 2018 County Commission public hearing.

Thank you in advance for your assistance.

Scott L. Knox, Esq.
Wideman Malek PL
1990 W. New Haven Ave., Second Floor
Melbourne, FL 32904
Tel. 321.255.2332
Fax 321.255.2351
sknox@uslegalteam.com

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Scott Knox, Attorney at Law
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Melbourne, Florida 32904
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(321) 255-2351 fax
<[pri_a67da214-7f81-4c21-810b-c77abfd26120.jpg](#)>

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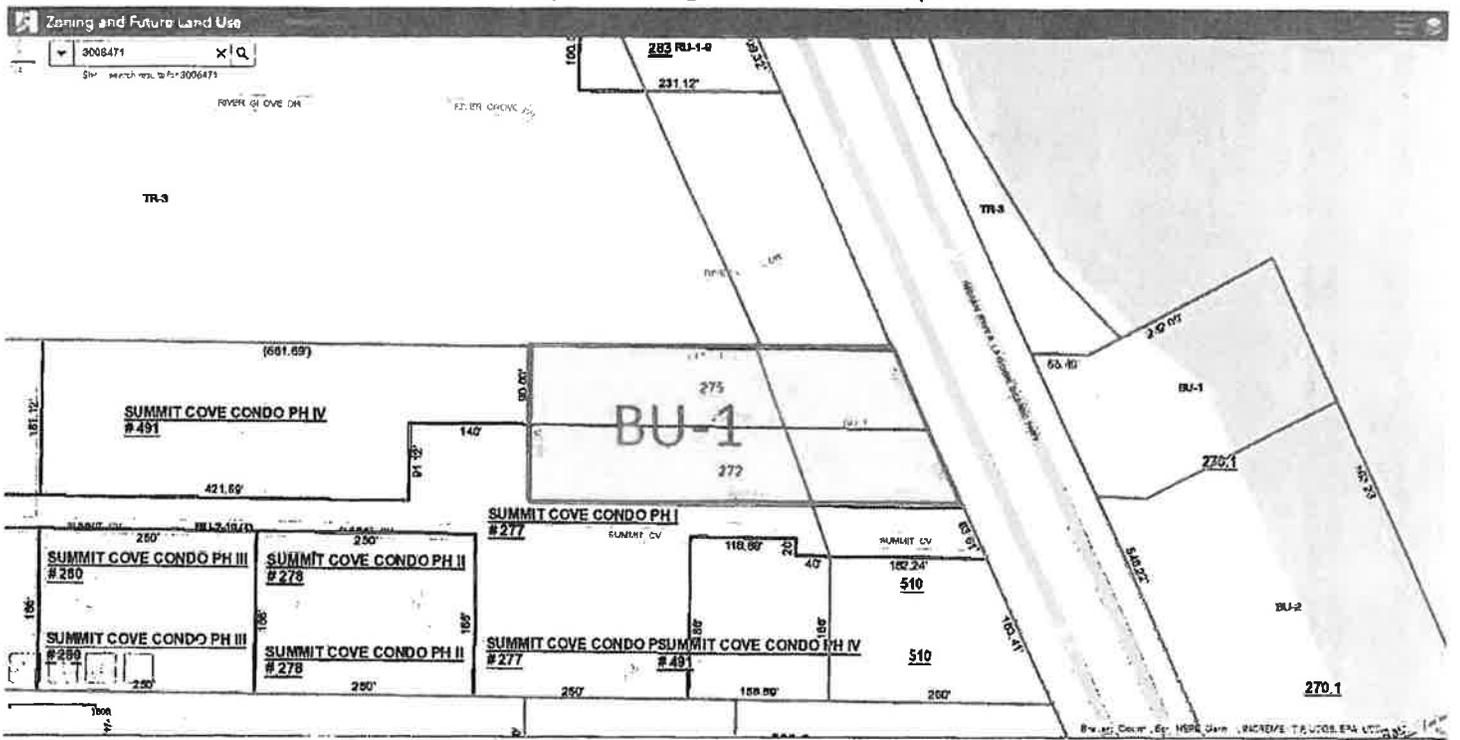
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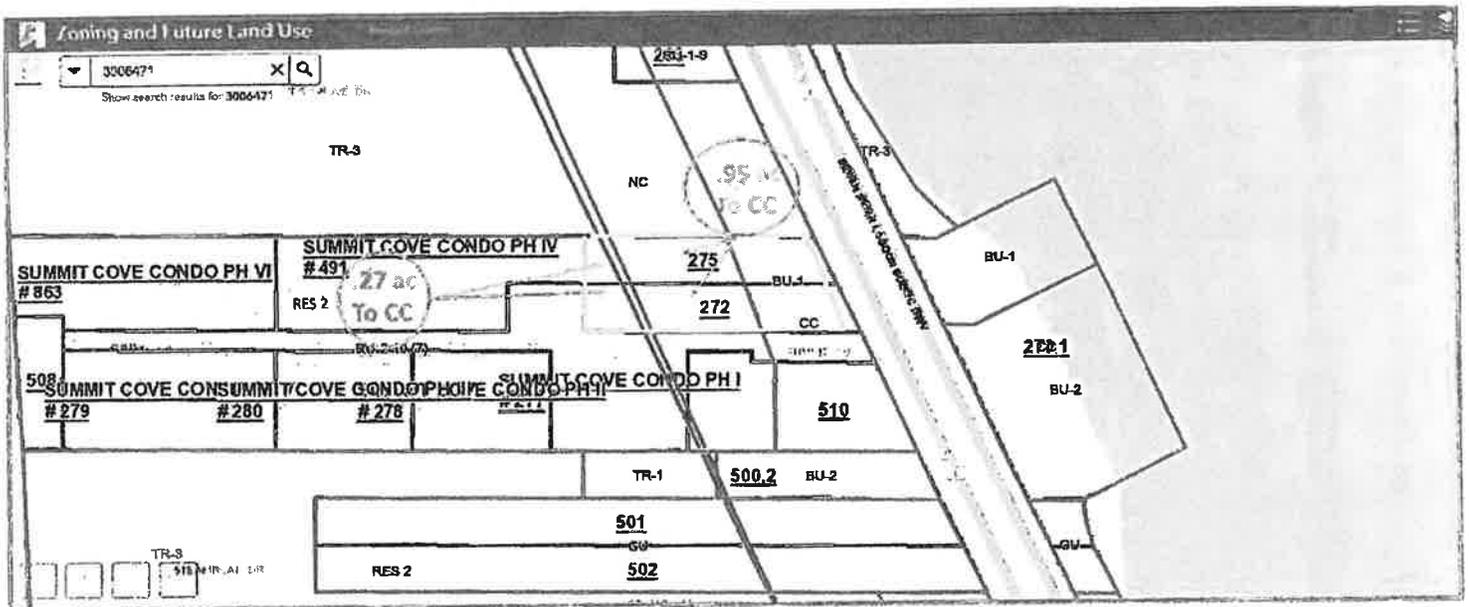
TABLE OF CONTENTS

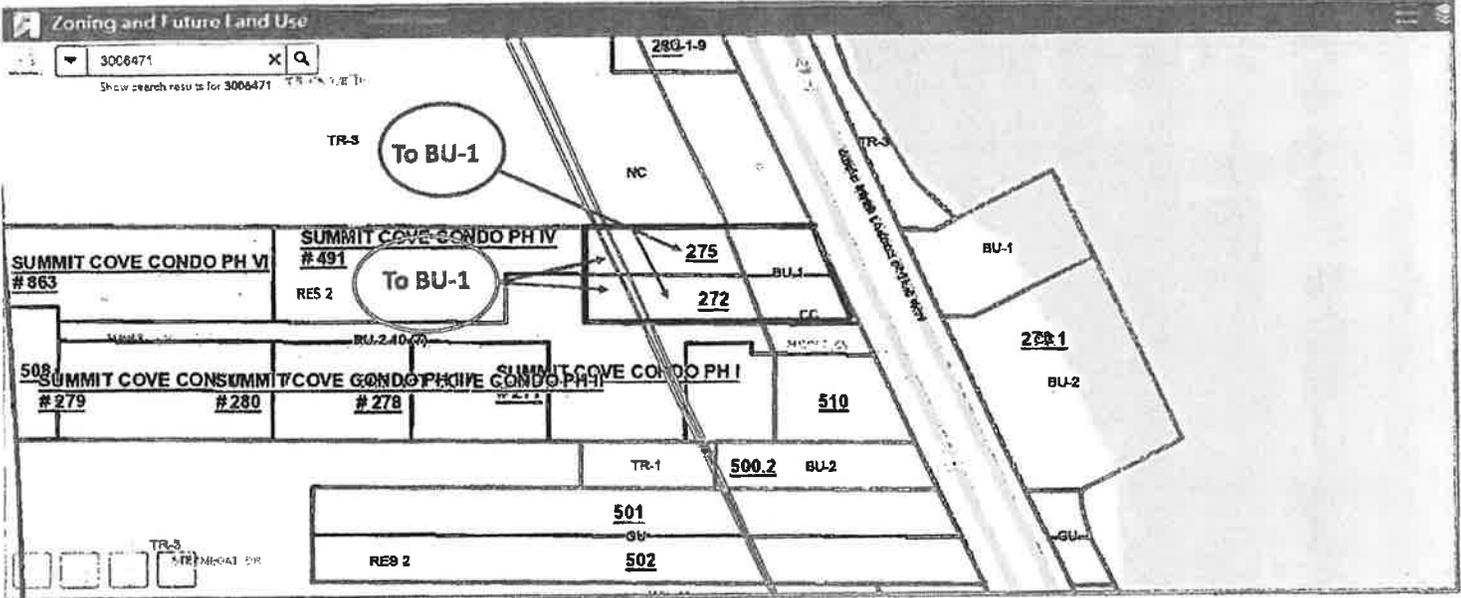
Power Point Presentation	pages 1-31
Request for Official Notice	pages 32-33
Exhibit 1 (Rezoning Worksheet)	pages 34-39
Exhibit 2 (FLU Amendment/Findings of fact)	pages 40-47
Exhibit 3 (9/18 Hearing Transcript)	pages 48-49
Exhibit 4 (Existing Zoning/Landuse Map)	page 50
Exhibit 5 (Charter sec.2.9.3.1)	page 51
Exhibit 6 (FLU Policy 2.8)	page 52-53
Exhibit 7 (FLU Policy 2.9)	page 54
Exhibit 8 (FLU Glossary P.XV-29)	page 55
Mr. Lopes Sworn Statement	page 56
9/18 Hearing Transcript	pages 57-58

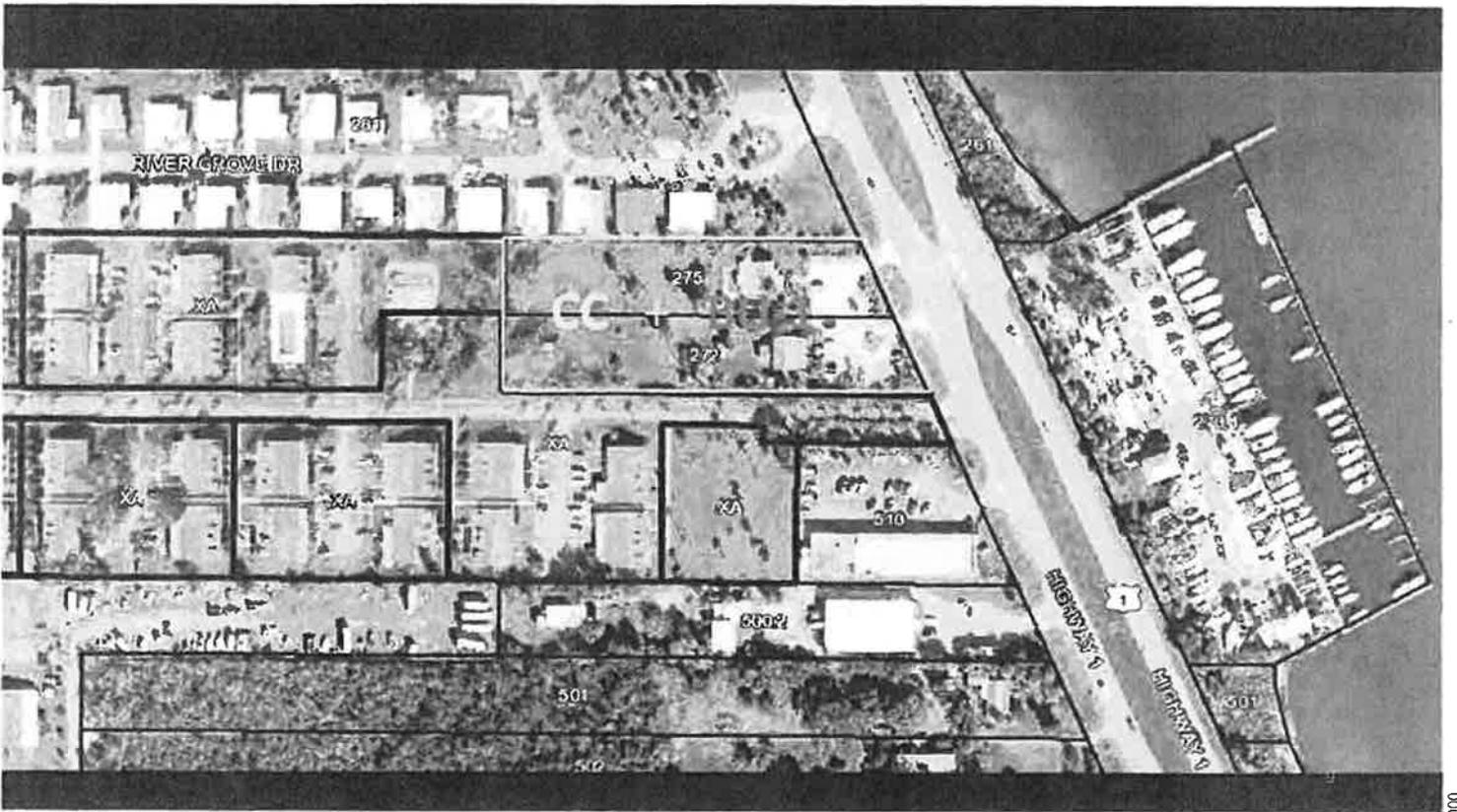


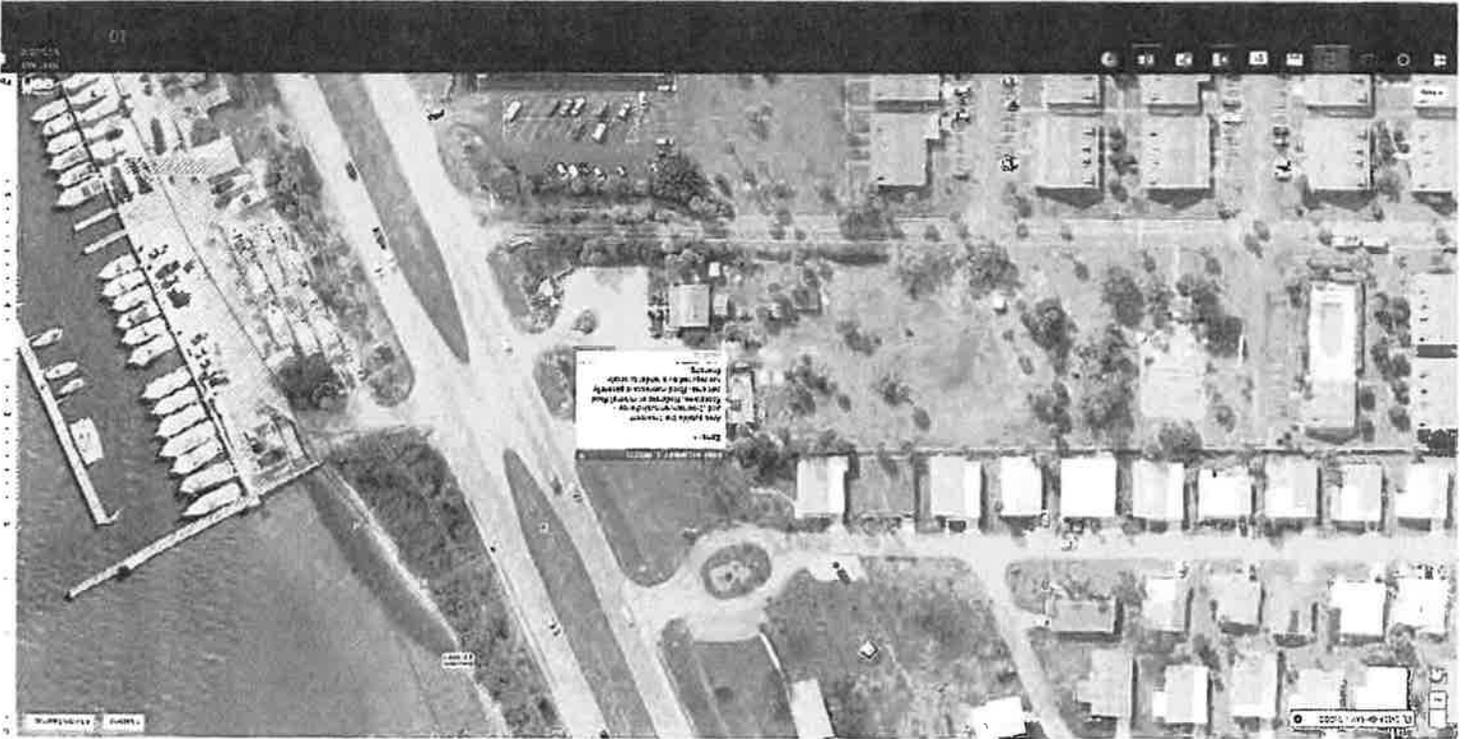
Proposed Zoning BU-1 on the entire parcel















Looking West from the property showing significant existing buffering vegetation



Looking
South
from
Property



Looking
North
from the
Property



Looking
East from
the
property
across US 1



Looking
South
from
north
boundary
of the
property



North
ingress to
property
from US 1



Looking
West to
rear
boundary
of the
property



Looking
southeast
from the
rear of the
property



**Looking East at strip
center and US 1
from rear of the
property line
abutting nearest
Summit Condo unit**



Looking
southeast
from rear
of the
property



Looking
northwest
from front
of the
property at
nearest
mobile
home





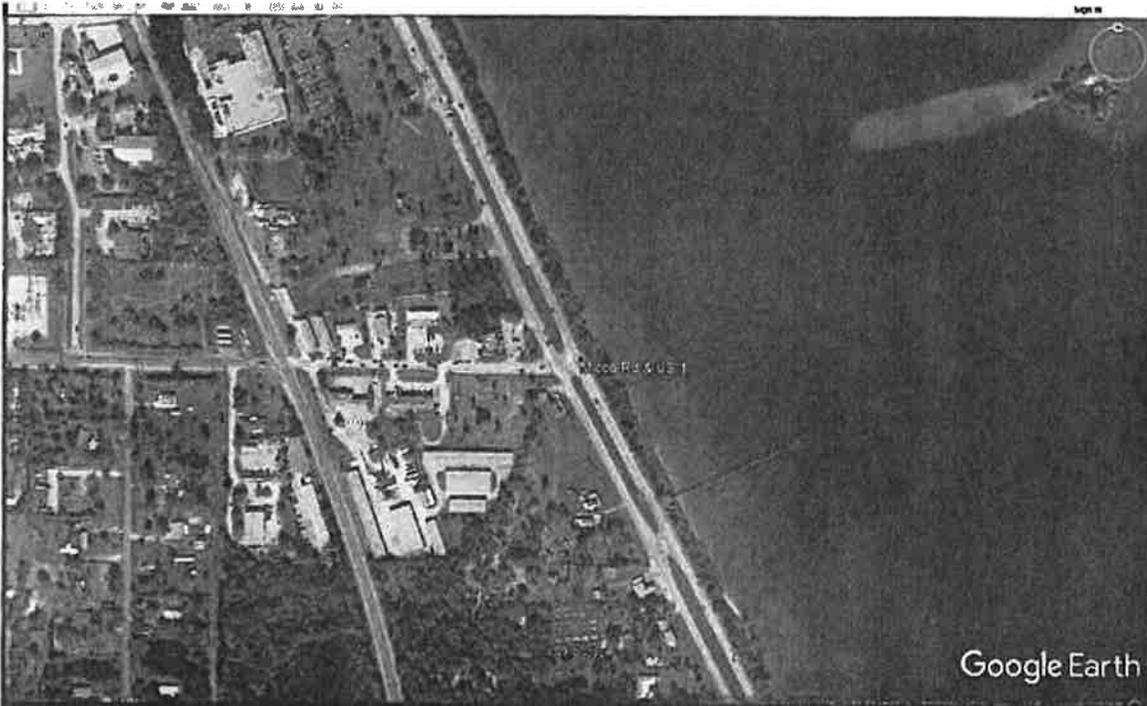
Abutting vacant
property to the
north zoned BU-1

**Looking northwest
from rear of the
property at Summit
Cove recreation area**





Micco Rd.
and US 1
Intersection
Existing
Land uses



**Micco Rd and
US 1 land uses**

Google Earth

BEFORE THE BREVARD COUNTY COMMISSION**IN RE: REZONING APPLICATION OF ANTHONY LOPES AND EUGENE LOMANDO****CASE NO: 18PZ00077****REQUEST FOR ADMINISTRATIVE OR OFFICIAL NOTICE**

The Applicants, ANTHONY LOPES and EUGENE LOMANDO, by and through their undersigned attorney, hereby request the Brevard County Board of County Commissioners, sitting in its capacity as a quasi-judicial Board in this rezoning application case, hereby requests the Board to take administrative or official notice of the following documents presented to the Board in this case for inclusion in the record:

1. All facts and matters set forth in the Rezoning Review Worksheet in this case, attached hereto as Exhibit 1, also referred to as "Staff Comments," which has been prepared by County Planning and Development Department staff and delivered to the Board of County Commissioners.
2. All facts and matters set forth in the document entitled Future Land Use Map Series Plan Amendment, Findings of Fact(Exhibit B)," attached hereto as Exhibit 2, which has been prepared by County Planning and Development Department staff and delivered to the Board of County Commissioners.
3. The Clerk to the Board's verbatim transcription of testimony by Anthony Lopes and Doug Hillman delivered at the public hearing on agenda item H.3. entitled "Ordinance R: General Tourist Commercial TU-1 Code Revision to Eliminate Hotel Density" at the Board of County Commissioners Zoning Meeting held on September 18, 2018, attached as Exhibit 3 hereto.
4. The portion of the Brevard County online zoning and land use base map showing Applicant's 1.96 acre combined property as parcel numbers 272 and 275, a copy of which attached hereto as Exhibit 4, said base map appearing at the following webpage:
<http://www.arcgis.com/apps/webappviewer/index.html?id=8401fea35fda4415aa48f0dfc61cedc&extent=-9060424.6779%2C3250925.5042%2C-8913665.5836%2C3321171.1332%2C102100>
5. Section 2.9.3.I. of the Brevard County Charter, as published on Municode.com at webpage, copy of which is attached hereto as Exhibit 5

https://library.municode.com/fl/brevard_county/codes/code_of_ordinances?nodeId=PTICH_AR_T2LEBRBOCOCO_S2.1CO

6. Policy 2.8 of the Future Land Use Element in the Brevard County attached hereto as Exhibit 6, entitled "Locataional and Development Criteria for Community Commercial" published as page XI-12 on the webpage <https://www.brevardfl.gov/docs/default-source/planning-and-development/chapter-11-future-land-use.pdf?sfvrsn=2>
7. Policy 2.15 of the Future Land Use Element in the Brevard County attached hereto as Exhibit 7 entitled "Strip Commercial Development," published as page XI-18 at the webpage <https://www.brevardfl.gov/docs/default-source/planning-and-development/chapter-11-future-land-use.pdf?sfvrsn=2>
8. Page XV-29 of the Glossary to the Furuter Land Use Element in the Brevard "County Comprehensive Plan, a copy os which is attached hereto as Exhibit 8, which is published on the webpage <https://www.brevardfl.gov/docs/default-source/planning-and-development/comprehensive-plan-glossary6b1884f0e17a6fe79a60ff01009b44fb.pdf?sfvrsn=2>



Scott L. Knox, Esq.
Wideman Malek PL
1900 West New Haven Ave.
Melbourne, FL 32904

REZONING REVIEW WORKSHEET

18PZ00077

Commission District # 3

Hearing Dates:

P&Z 08/06/18

BCC 09/06/18

Owner Name: ANTHONY LOPES AND EUGENE R. LOMANDO

Request: BU-1 & TR-3 to all BU-1

Subject Property:

Parcel ID# 30-38-14-00-272; 30-38-14-00-275

Tax Acct.# 3006468; 3006471

Location: West side of U.S. Hwy 1, approx. 655 ft. south of Garretts Rd.

Address: 8480 & 8490 U.S. Hwy 1, Micco

Acreage: 1.98 +/-

Consistency with Land Use Regulations

<u>Yes</u>	Current zoning can be considered under the Future Land Use Designation. Sec. 62-1255
<u>No**</u>	Proposal can be considered under the Future Land Use Designation. Sec. 62-1255
<u>Yes</u>	Would proposal maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	BU-1 & TR-3	All BU-1
Potential*	Duplex and a 1,944 sq. ft. restaurant	17,078 sq. ft. potential development or 7 Hotel units & 1,944 sq. ft. restaurant
Can be Considered under FLU MAP	BU-1 portion Yes is consistent With CC, TR-3 portion NC & RES 2 yea can be considered under Policy 2.13	NO**

*Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations.**Requires Small Scale Amendment from NC and RES 2 to CC.

Maximum Development

	ADT	PM PEAK		
Traps from Existing Zoning	43	31	Segment Number	388A
Traps from Proposed Zoning	14,430	870	Segment Name	US Hwy 1 Int Thr CL-Micco
Maximum Acceptable Volume (MAV)	41,700	3,701	Acceptable LOS	D
Current Volume	22,760	2,648	Directional Split	0.5
Volume With Proposed Development	37,190	2,918	ITE CODE 653	
Current Volume / MAV	54.6%	54.4%		
Volume / MAV with Proposed	60.0%	77.6%		
Current LOS	C	C		
LOS With Proposed	C	C		
Findings	<input checked="" type="checkbox"/> Non-Deficiency	<input type="checkbox"/> Deficiency		

Proposed Hotel/Restaurant

	ADT	PM PEAK		
Traps from Existing Zoning	43	31	Segment Number	388A
Traps from Proposed Zoning	904	22	Segment Name	US Hwy 1 Int Thr CL-Micco
Maximum Acceptable Volume (MAV)	41,700	3,701	Acceptable LOS	D
Current Volume	22,760	2,648	Directional Split	0.5
Volume With Proposed Development	23,664	2,871	ITE CODE 310022	
Current Volume / MAV	54.4%	54.4%		
Volume / MAV with Proposed	60.1%	68.0%		
Current LOS	C	C		
LOS With Proposed	C	C		
Findings	<input checked="" type="checkbox"/> Non-Deficiency	<input type="checkbox"/> Deficiency		



Staff Comments: Page 2
 (18PZ00077)
 08/06/18 PZ // 09/06/18 BCC

Background & Purpose of Request

The applicant is seeking a change of Zoning classification on two parcels from General Retail Commercial (BU-1) and Mobile Home Park (TR-3) to all BU-1 for the purpose of developing a hotel and restaurant. The eastern portion of each parcel already retains the BU-1 Zoning classification and is developed as a 1,944 square foot restaurant and a duplex.

August 05, 1965: the subject parcels were one parcel and rezoned (Z-1786) from General Use (GU) to General Retail Commercial (BU-1) for a depth of 200 feet west of Highway US 1 and Trailer Park on the remainder of the parcels.

June 05, 1973: a Special Use Permit (Z-3293) was approved for a Real Estate Office to be run out of the home.

1979: the parent Parcel was subdivided into the two parcels existing today, Parcel 275 to the north and Parcel 272 to the south.

December 06, 1984: the south parcel #272 was approved for a Conditional Use Permit (Z-6927) for the outside sale of Mobile Homes in a BU-1 zoning classification.

February 26, 1996: the south parcel #272 was denied a Conditional Use Permit (DNZ-9681) for Alcoholic Beverages for On-premises Consumption in a BU-1 zoning classification.

August 29, 1996: the south parcel #272 was approved for a Conditional Use Permit (Z-9763) for Alcoholic Beverages for On-premises Consumption in a BU-1 zoning classification with stipulation that it must be a private club, member parking must be in front of the structure, closing will be midnight on weekdays and 2:00 a.m. on weekends and that the Zoning classification related to the property remain unchanged.

March 06, 2003: the CUP (Z-6927) for the outside sale of Mobile Homes in a BU-1 zoning classification was administratively removed, per zoning resolution Z-10781(50) and that the Zoning classification related to the property be retained, after the Zoning Regulations were amended to change outside sale of Mobile Homes in a BU-1 zoning classification from a conditional use to a permitted use with conditions.

October 02, 2003: the CUP (Z-9763) for the Alcoholic Beverages for On-premises Consumption in a BU-1 zoning classification was administratively removed per zoning resolution Z-10847 and that the zoning classification related to the property be retained.

May 28, 2009: the south parcel #272 was approved for a Conditional Use Permit (Z-11500) for Alcoholic Beverages for On-premises Consumption in a BU-1 Zoning classification as accessory to a restaurant only.

A companion application, 18PZ00076 was submitted accompanying this request for Future Land Use designation change on the portion of the parcels with Neighborhood Commercial (NC) and Residential 2 (RES 2) to all Community Commercial (CC) to be consistent with the BU-1 rezoning request.

Land Use Compatibility

The subject property currently retains the Community Commercial (CC), Neighborhood Commercial (NC) and Residential 2 (RES 2) Future Land Use (FLU) designation, but the applicants are seeking all CC in a companion application for a Small Scale Comprehensive Plan Amendment.

FLUE Policies 2.7, 2.8 and 2.15 outline the role of the Comprehensive Plan in the designation of commercial lands.

Staff Comments: Page 3
 (18PZ00077)
 08/08/18 PZ // 09/08/18 BCC

This request is to change the Zoning classifications from BU-1 and TR-3 to all BU-1 zoning classification. The BU-1 classification allows retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling.

The request for BU-1 zoning should be evaluated within the context of Policy 2.7 of the Future Land Use Element, which identifies "development activities that may be considered within the Community Commercial Future Land Use Designation..."

Existing strip commercial;
 Transient commercial uses;
 Tourist commercial uses;
 Professional offices;
 Personal service establishments;
 Retail establishments;
 Non-retail commercial uses;
 Residential uses;
 Institutional uses;
 Recreational uses;
 Public facilities;
 Transitional uses pursuant to Policy 2.14; and
 Planned Industrial Park development (as permitted by PIP zoning).

The request for BU-1 Zoning should be evaluated within the context of Policy 2.8 of the Future Land Use Element, which sets forth locational criteria for Community Commercial land use activities, as follows:

- A. Community Commercial clusters of up to ten (10) acres in size should be located at 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 intersections.
- B. Community Commercial complexes should not exceed 40 acres at an intersection.
- 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.
- 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.
- E. Floor Area Ratio (FAR) of up to 1.00 will be permitted for Community Commercial sites.

Floor Area Ratios are evaluated during site plan review, but the request for BU-1 Zoning further limits the site's potential floor area.

Given the zoning pattern in the area, Policy 2.15, which addressed infill vs. strip commercial development, should also be considered, as follows:

The creation/promotion of strip pattern of commercial development shall be discouraged. Infill within established strip commercial areas is preferred over extension of a strip commercial pattern. Extension of a commercial land use designation may be considered in circumstances where the proposed commercial parcel is located within a block in which at least fifty percent (50%) of the block face (in linear feet) is either currently developed with commercial land uses or is designated for commercial use. In either case, the proposed commercial land use extension shall not constitute an encroachment into a residential area. Judging the suitability of a location for an extension of strip commercial development activities shall be based upon the following minimum criteria:

- A. Impacts upon traffic circulation should be anticipated and mitigated through the reservation of right-of-way for road widening and marginal access streets. Access points for strip commercial

Staff Comments: Page 4
 (18PZ00077)
 08/06/18 PZ // 09/08/18 BCC

- complexes shall seek to minimize points of conflict by utilizing frontage roads, providing cross access between parcels or installing shared use curb cuts for access driveways to the maximum extent feasible, as determined by Brevard County.
- B. Setbacks and landscaped or other appropriate buffers shall be established to mitigate the visual impacts of strip commercial development.
 - C. A sidewalk or bicycle path shall be required where appropriate (as encouraged by Tables 2.1 and 2.2 of the FLUE) to provide convenient access to surrounding residents and to reduce traffic volumes on the roadways.

Environmental Constraints

Please refer to comments provided by the Natural Resource Management Department.

Applicable Land Use Policies

The parcels are located on the west side of U.S. Highway 1 (U.S. 1), an urban principal arterial roadway consisting of mostly commercial zoning uses which serve the surrounding neighborhoods, one half mile south of the Micco Road intersection. The east portion of the overall parcels was developed as a 1,944 square foot restaurant and a duplex. Across U.S. Highway 1 (U.S. 1) there is an existing marina. The restaurant and marina serve several neighborhoods and sub-regional areas.

The abutting parcel to the north of the subject property is zoned Mobile Home Park (TR-3) with a developed mobile home park, River Groves Mobile Home Village. There are four mobile home units from this mobile home park abutting the subject property.

The abutting parcels to the west and south of the subject property are zoned Medium-Density Multi-Family Residential (RU-2-10) with an existing condominium development, Summit Cove Condominium located on the parcels.

Within the last 10 years, only one rezoning action has occurred in the area along Highway U.S.1 from Garrets Road to the County line. That zoning action (Z-11559) was a change from Single-Family Residential, (RU-1-7) and General Retail Commercial, (BU-1) to Restricted Neighborhood Retail Commercial (BU-1-A) and was approved.

The development potential of the site has been calculated as follows: Under Section 62-1611 (4) of Brevard County Code, maximum hotel/motel development is limited to 30 units per acre in the mainland area, if certain locational parameters are met. As this site fails to meet those criteria, the maximum development potential is regulated by the Comprehensive Plan. Policy 2.13 of the Future Land Use Element clarifies that residential development is permissible in these commercial land use designations at density of up to one category higher than the closest residentially designated area on the Future Land Use Map (FLUM) which is on the same side of the street. As the parcels abut surrounding parcels with the Residential 2 (RES 2) Future Land Use designation, this property can anticipate increase the density to up to 4 units per acre, or a total unit count of seven (7) hotel or motel units, as this lot lies outside of the Coastal High Hazard area. If the site is used for other than hotel or motel use, the 1.96 acre site would allow up to 17, 076 square feet of commercial building space allocation (zoning's lot yield formula estimates a 20% threshold of the lot's area as the official estimate for the RP, BU-1-A or BU-1 zoned properties to estimate the building potential of the lot) or up to a one to one floor area ratio (FAR) for development within the CC designated area or 0.75 FAR under the NC FLU designation per Section 62-2110 of Brevard County Code.

A preliminary concurrency analysis indicates that the proposed change in FLU designation would not generate traffic that would cause deficiency of adopted roadway levels of service (LOS). Today, the traffic counts indicate that this section of the U.S. Highway 1 (U.S. 1) corridor is at 54.44% of the maximum acceptable volume (MAV). The highest traffic generating use allowable under within the BU-1 Zoning classification is projected to put the corridor at 88.99% of MAV and is not expected to impact the acceptable LOS.

Staff Comments: Page 5
(18PZ00077)
08/06/18 PZ // 09/06/18 BCC

For Board Consideration

The applicant is seeking a change of Zoning classification on two parcels from General Retail Commercial (BU-1) and Mobile Home Park (TR-3) to all BU-1 for the purpose of developing a hotel and restaurant. The eastern portion of each parcel already retains the BU-1 Zoning classification and is developed as a 1,944 square foot restaurant and a duplex.

The Board may wish to consider whether the proposed BU-1 Zoning classification is consistent and compatible with the surrounding development.

This request for rezoning from TR-3 and BU-1 to all BU-1 accompanies a request for a change of FLU designation from Neighborhood Commercial (NC) to Community Commercial (CC). If the Future Land Use change proposal is not supported by the Board, this zoning request cannot be heard.

Staff Comments: Page 6
 (18PZ00077)
 08/06/18 PZ // 09/06/18 BCC

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Rezoning Review

SUMMARY

Item #: 18PZ00077	Applicant: Lopes and Lomando
Zoning Request: BU-1, TR-3 to BU-1	
P&Z Board Hearing: 08/06/18	BCC Hearing: 09/06/18

This is a preliminary review based on environmental maps available to the Natural Resources Management Department (NRM) at the time of this review and does not include a site inspection to verify the accuracy of this information. This review does not ensure whether or not a proposed use, specific site design, or development of the property can be permitted under current Federal, State, County or Local Regulations. In that this process is not the appropriate venue for site plan review, specific site designs that may be submitted with the rezoning will be deemed conceptual and any comments or omissions relative to specific site design do not provide vested rights or waivers from these regulations, unless specifically requested by the owner and approved by the Board of County Commissioners. If the owner has any questions regarding this information, he/she is encouraged to contact NRM prior to submittal of any development or construction plans.

Natural Resource	Preliminary Assessment	Natural Resource	Preliminary Assessment
Hydric Soils/Wetlands	Not mapped	Coastal Protection	N/A
Aquifer Recharge Soils	Not mapped	Surface Waters	N/A
Floodplains	Not mapped	Wildlife	Potential

Comments:

**This review relates to the following property: Twp. 30, Rng. 38, Sec. 14;
 Tax ID No. 3006471 & 3006468**

Information available to NRM indicates that federally and/or state protected species may be present on the property. There is a large mapped Florida Scrub Jay polygon over the site as shown on the Scrub Jay Occupancy Map. 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.

Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), the purpose and intent of the ordinance is to encourage the protection of Heritage Specimen Trees. In addition, per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, 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. Land clearing is not permitted without prior authorization by NRM.

**FUTURE LAND USE MAP SERIES
PLAN AMENDMENT**

FINDINGS OF FACT (EXHIBIT B)

*Small Scale Plan Amendment 18S.07 (18PZ00076)
Township 30, Range 38, Section 14*

Property Information

Owner / Applicant: Anthony Lopes and Eugene R. Lomando

Adopted Future Land Use Map Designation: NC, and RES 2

Requested Future Land Use Map Designation: all CC

Acreege: 1.96 acres **Tax Account #:** a portion of 3006468 & 3006471

Site Location: West side of U.S. Hwy 1, approx. 655 ft. south of Garretts Rd.

Current Zoning: BU-1 & TR-3

Requested Zoning: all BU-1

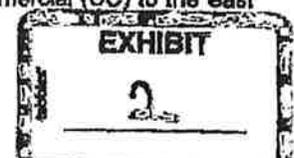
Surrounding Land Use Analysis

	Exlating Land Use	Zoning	Future Land Use
North	River Grove Mobile Home Village	TR-3	RES 2 and NC
South	Summit Cove Condo	RU-2-10 (7)	RES 2 and NC
East	Marina Cafe	BU-1	CC
West	Summit Cove Condo	RU-2-10 (7)	RES 2

Background & Purpose

The applicant is seeking to amend the Future Land Use designation on a portion of two (2) parcels of land totaling .27 acres of Residential 2 (RES 2) and .95 acres of Neighborhood Commercial (NC) to Community Commercial (CC) on a portion of the two (2) greater 1.96 acre parcels of land. The remaining .74 acre piece of the greater parcels already retains the CC Future Land Use designation. The subject parcels are located within unincorporated Brevard County in Micco, on the west side of U.S. 1 approximately 655' south of Garretts Road.

The subject portions of the greater two (2) parcels abut River Grove Mobile Home Village to the north, the Marina Cafe to the east across U.S. 1 and the Summit Cove Condominium Complex to the south and west. The two (2) parcels of land each have three (3) Future Land Use designations with Community Commercial (CC) to the east fronting on U.S. 1, which is currently developed as a restaurant.



The reason there are three (3) different land use designations is due to various County wide initiatives from 1988 to 2001. In 1988 the County adopted the Brevard County Comprehensive Plan to include a Future Land Use Map and a Residential Density Map. During an Evaluation and Appraisal Review (EAR) of the Comprehensive Plan in 2001, the Future Land Use Map and the Residential Density Map were combined to create a single map. During this Plan update, CC Future Land Use was designated along the County's major corridors to include this section of U.S. 1. In addition, the newly designated land uses were created based upon the underlying zoning. This Countywide Comprehensive Plan Amendment created situations where a parcel of land had more than one Future Land Use designation.

A companion rezoning application was submitted accompanying this request for a Future Land Use designation change, proposing to change the Zoning classification from Mobile Home Park (TR-3) to General Retail Commercial (BU-1).

Environmental Resources

Note: The Natural Resources Management Office will provide a detailed analysis at the time of the future for rezoning for of the following environmental factors: Wetlands, Floodplains, Aquifer Recharge, and Endangered or Threatened Species. Applicants are encouraged to contact the Brevard County Natural Resources Management Office concerning environmental considerations prior to planning and development. Any future development will be subject to Brevard County's land development regulations.

Historic Resources

There is one resource group of historic or archaeological sites on the project site according to the Master Site File from the Florida Division of Historic Resources. At the time of site plan review, the applicant will be required to submit a description of the ground disturbing activities to the Compliance and Review Division of the Florida Department of State Division of Historical Resources.

Comprehensive Plan Policies/Comprehensive Plan Analysis

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

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

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;

If developed together with the remainder of the Community Commercial (CC) portion of the parcels to the east, the site will have frontage on U.S. 1, an urban principal arterial roadway.

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

The subject portions of the overall parcels are adjacent to the developed Community Commercial (CC) portion to the east which has frontage along the U.S. 1 corridor. The majority the Future Land Use designations along the U.S. 1 corridor are Neighborhood Commercial (NC) and Community Commercial (CC). The existing commercial uses are restaurants, marinas, a storage facility, retail and professional offices with the remainder being vacant. There are two marinas along the east side of the U.S. 1 corridor, with the remainder of the properties having residential single-family houses or vacant land.

To the north, south and west the area is predominantly Residential 2 (RES 2) and Neighborhood Commercial (NC) and developed as a mobile home village and condominiums. However, along the U.S. 1 corridor the majority of the properties are developed as Community Commercial (CC) and Neighborhood Commercial (NC).

C. Existing commercial development trend in the area;

This section of the U.S. 1 corridor has both Neighborhood Commercial (NC) and Community Commercial (CC) Future Land Use designations. U.S. 1 is an urban principal arterial roadway consisting of community commercial uses which serve the surrounding neighborhoods. The east portion of the overall parcels was developed as a restaurant. Across U.S. 1 there is an existing marina. The restaurant and marina serve several neighborhoods and the region.

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

There is a new interchange proposed at Interstate 95 (I-95) just north of Micco Road. Anticipate that travel patterns will change once the new interstate connectivity is provided.

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

The subject parcel is not served with a potable water supply. There are no existing Brevard County Utilities sewer lines that run adjacent to this property.

If developed with the .74 acre portion of the overall parcel currently retaining the Community Commercial (CC) Future Land Use designation, there would be direct access to U.S. 1 and potential trips generated are not anticipated to affect Level of Service standards for this urban principle arterial road.

The preliminary transportation concurrency analysis indicates that the section of U.S. 1 from Micco Road to First Street has a maximum acceptable volume (MAV) of 41,790. Brevard County defers to the Space Coast Transportation Planning Organization's (TPO's) traffic count program, which indicates that in 2016 the roadway's trips were at 57.85% of the MAV. With this Future Land Use change to Community Commercial (CC), the subject parcel at its highest use would increase the Maximum Acceptable Volume (MAV) to 95.24%. Currently, this section of U.S. 1 has a Level of Service (LOS) of C. The Future Land Use change to Community Commercial (CC) would create a Level of Service (LOS) of D. This segment of U.S. 1 has a maximum Acceptable Level of Service (LOS) of D.

The Board should take note of the potential for certain land uses to result in extreme trip generation such as automobile washing and sales and convenience stores with or without gasoline pumps.

F. Spacing from other commercial activities;

The subject parcel is adjacent to commercially developed land to the east, which is a .74 acre portion of the two overall parcels that has been developed as a restaurant. Along the U.S. 1 corridor to the north and south are developed commercial properties and to the east there is a restaurant and two marinas within close proximity to the site.

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

The Future Land Use designation change from Residential 2 (RES 2) and Neighborhood Commercial (NC) to Community Commercial (CC) is proposed on a 1.22 acre portion of the combined two (2) 1.96 acre parcels of land. The remaining eastern portion of the overall parcels is a .74 acre piece that currently has a Community Commercial (CC) Future Land Use designation. Consistent with Policy 2.7 of the Future Land Use Element of the Comprehensive Plan, Community Commercial development is intended to serve several neighborhoods and sub-regional areas and provide an array of retail, personal and professional uses.

Along the U.S. 1 corridor, Community Commercial (CC) land uses extend to a depth of approximately 200 feet off of each side of the right-of-way, which was delineated as a part of the development of the Future Land Use Map in 2002. The depth of these two parcels is set back approximately 460 feet in depth for the U.S. 1 corridor right-of-way line. There are several parcels to the south with a Community Commercial (CC) land use depth of approximately 400 feet deep off of the U.S. 1 right-of-way on parcels approximately 1,176 feet deep.

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

The Natural Resource Management (NRM) Department has provided a preliminary summary of adherence to the objectives/policies of the Conservation Element and the minimization of impacts upon natural resources and systems. (See attached NRM Department Summary).

I. Integration of open space; and

Open space will be evaluated during the site plan review process.

J. Impacts upon strip commercial development.

This area of the U.S. 1 corridor is comprised of Neighborhood Commercial (NC) and Community Commercial (CC) land uses. The promotion of strip pattern commercial development is discouraged within the Future Land Use Element for Community Commercial (CC) property. Infill within established strip commercial areas is preferred over the extension of a strip commercial pattern.

**Activities Permitted in Community Commercial (CC) Future Land Use Designations
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 2.12; and
- m) Planned Industrial Park development (as permitted by PIP zoning).

The applicant has indicated that the proposed use will include hotel and restaurant.

Locational and Development Criteria for Community Commercial Uses

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 parcels combined are less than 10 acres and there are no principal arterial/principal arterial intersections located within close proximity to this site.

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

The subject combined parcels are 1.96 total acres in size with .74 acres already having the Community Commercial (CC) Future Land Use designation. The subject parcel is not located at an intersection.

There is limited access to an intersection both to the north and south of the subject site. The nearest intersection to the north is approximately one half mile at the signalized intersection of Micco Road and U.S. 1. Micco Road is the southernmost signalized intersection in Brevard County lying approximately 1.4 miles north of the County line.

The F.E.C. Railroad is approximately 1,000 feet west with very limited connectivity with U.S. 1.

- 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.

The subject parcel is less than 10 acres and is not within five (5) miles of a community commercial cluster.

- 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.

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

- E. Floor Area Ratio (FAR) of up to 1.00 will be permitted for Community Commercial sites.

This portion of the two subject parcels has the potential for 54,143 square feet of commercial development. Combined with the existing .74 acre portion of the property that currently has a Future Land Use designation of Community Commercial, the total potential square footage of the site is approximately 85,377. The FAR is regulated through the land development regulations at the time of site plan review.

- 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.

This parcel does meet the criteria to be developed as a recreational vehicle park because it does have access to an interstate exchange from the U.S. 1 corridor.

Policy 2.15 of the Future Land Use Element Judging the suitability of a location for an extension of strip commercial development activities shall be based upon the following minimum criteria:

Criteria:

- A. Impacts upon traffic circulation should be anticipated and mitigated through the reservation of right-of-way for road widening and marginal access streets. Access points for strip commercial complexes shall seek to minimize points of conflict by utilizing frontage roads, providing cross-access between parcels or installing shared use curb cuts for access driveways to the maximum extent feasible, as determined by Brevard County.

The subject portions of the overall parcels do not have frontage on a roadway. These portions of the overall site, if developed together with the remainder of the Community Commercial (CC) portions of the parcels, would have frontage on U.S. 1, an urban principal arterial roadway.

- B. Setbacks and landscaped or other appropriate buffers shall be established to mitigate the visual impacts of strip commercial development.

When developed with a community commercial use, the site plan associated with it will be reviewed for setbacks, landscape and buffering as part of that review to meet the current Land Development Regulations at the time of development.

The Board may wish to consider whether any buffers would serve to decrease any perceived encroachment on surrounding residential property.

- C. A sidewalk or bicycle path shall be required where appropriate, as encouraged by Tables 2.1 and 2.2 to provide convenient access to surrounding residents and to reduce traffic volumes on the roadways.

At the time of Site Plan review, the proposed commercial development will be reviewed taking into consideration the integration of both vehicular and non-vehicular access into the site.

For Board Consideration

This request is seeking a change in Future Land Use (FLU) designation from Residential 2 (RES 2) and Neighborhood Commercial (NC) to Community Commercial (CC) on 1.22 acres of the total 1.88 acres on two parcels. A portion of the parcels closest to US-1 already retains the CC FLU designation. This area of unincorporated Brevard County is comprised of mainly NC and CC development along U.S. 1, a principal north/south arterial roadway in the Micco area.

A preliminary concurrency analysis indicates that the proposed change in Future Land Use designation would not generate traffic that would cause deficiency of adopted roadway levels of service, but that certain potential commercial land uses could come very close to doing so. Today, the traffic counts indicate that this section of the U.S. 1 corridor is at 58% of the maximum acceptable volume (MAV).

The Board may wish to consider whether the Community Commercial Future Land Use designation is consistent and compatible with the surrounding commercial and residential development.

This request is accompanied by a companion proposal for a change of Zoning classification from Mobile Home Park (TR-3) to General Retail Commercial (BU-1).

**NATURAL RESOURCES MANAGEMENT DEPARTMENT
Rezoning Review**

SUMMARY

Item #: 18PZ00076

Applicant: Lopes and Lomando

FLU Request: CC, NC & RES-2 to CC

P&Z Board Hearing: 08/06/18

BCC Hearing: 09/06/18

This is a preliminary review based on environmental maps available to the Natural Resources Management Department (NRM) at the time of this review and does not include a site inspection to verify the accuracy of this information. This review does not ensure whether or not a proposed use, specific site design, or development of the property can be permitted under current Federal, State, County or Local Regulations. In that this process is not the appropriate venue for site plan review, specific site designs that may be submitted with the rezoning will be deemed conceptual and any comments or omissions relative to specific site design do not provide vested rights or waivers from these regulations, unless specifically requested by the owner and approved by the Board of County Commissioners. If the owner has any questions regarding this information, he/she is encouraged to contact NRM prior to submittal of any development or construction plans.

Natural Resource	Preliminary Assessment	Natural Resource	Preliminary Assessment
Hydric Soils/Wetlands	Not mapped	Coastal Protection	N/A
Aquifer Recharge Soils	Not mapped	Surface Waters	N/A
Floodplains	Not mapped	Wildlife	Potential

Comments:

**This review relates to the following property: Twp 30, Rng. 38, Sec. 14;
Tax ID No. 3006471 & 3006468**

Information available to NRM indicates that federally and/or state protected species may be present on the property. There is a large mapped Florida Scrub Jay polygon over the site as shown on the Scrub Jay Occupancy Map. 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.

Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), the purpose and intent of the ordinance is to encourage the protection of Heritage Specimen Trees. In addition, per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, 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. Land clearing is not permitted without prior authorization by NRM.

Verbatim of Anthony Lopes and Doug Hillman

Item H.3., Ordinance, Re: General Tourist Commercial TU-1 Code Revision to Eliminate Hotel Density

Zoning Meeting, Brevard County

September 18, 2018

Anthony Lopes - Actually Pensacola is not a bad place, but I'm from Franklin, Tennessee, at the moment. My name is Anthony Lopes. I'm here in reference to the item that we're discussing. My partner, Gene Lomando, and I own two acres of property down in Micco, on 8480 and 8490 U.S. 1. We've owned that property together, jointly for 38 years. My family was involved with that property four years prior to that, so I've been involved with the property now for 42 years. Okay? And in those 42 years, we've maintained the property, we've made repairs to the property because of hurricane damage, we have put quite a bit of money into the property to maintain it, upgrade it, and keep it looking good. At one time, I was involved with the ownership of the Marina across the street, which is now the Sebastian River Marina, at that time it was called the Neptune Marina. Doug Hillman is here. Doug is now the owner of the marina. And during the entire time that we've owned this property we've seen very little development on the south end of Brevard County, especially in Micco. We've seen most of the development now go south of the Sebastian River Bridge in Indian River County, with very little bleeding over into Brevard County. The most recent is the Sebastian Inlet Marina, who did a ton of work to his building. So, there's a little bit going on but not much. But we think there's a reason that we could have a development in that area and I will tell you why. Um, hold on one second. Did this computer go to sleep for a little bit? Okay, so what are we trying to accomplish? Right now the property is zoned three, it has three different zonings. The front of the property is zoned BU-1, the middle of the property is zoned TR-3, the back of the property is zoned TR-2, so it's a little convoluted. It is hard to utilize the property effectively with those types of zonings. So what are we trying to do? What we are trying to do is, looking at the years, if looking at this and seeing that there is not one major hotel flag between Vero Beach and actually I did it last night, Melbourne, Florida, on U.S. 1, not one major hotel flag except for Best Western. Now you are talking about a beautiful, beautiful area, beautiful views, beautiful vistas, great boating, but there's not one major hotel other than Best Western on, on U.S. 1. So, we think there is a need now to fill that void, and what is the void? Where would the people be coming from? There's a group of people that come over regularly and have been coming over regularly from Orlando to go boating. Sebastian area, the Sebastian Inlet is the perfect place for them to boat. But there's also numbers of people who come up from south Florida, who spend the weekend up in our area. Now presently they're staying at Captain Hiram's in Sebastian, which is Indian River County. So those tourist dollars are parking themselves in Indian River County. We would like to take that and try to create a tourist destination to have them spend that money in Brevard County. Now why do we think it's possible now? We think it is possible now because as you all know the new exits going in on I-95 on Micco Road, and the uh...it's funny, I'm staying at the Holiday Express on Malabar Road. I remember 35 years ago, before that exit was built, it was nothing; there was nothing there on Malabar Road. Now it's, it's booming. I think eventually, if you look forward, look, you'll see that that's a possibility for farther south in, in Brevard County because we'll be, people from Orlando will be easily able to get to the South Brevard area. And then the people coming up from South Florida will have an alternative to North Indian River County. Now what benefit? Now, now let me back up for a second, this is important and I know this is an issue, the people before us were discussing it. This is only possible because they're putting in a new sewer line in, in Micco. I'm sure you're all aware that there's a sewer line under development in



Micco as we speak, and our goal, when available, is to tie into that sewer line. No project that we're looking at could possibly happen without a sewer line. We are very aware of the environment, we own property, we don't just own this property we own property literally around the corner, residential property, a house, and a vacant lot which we intend to build on and live in. And we understand the issues with the Indian River Lagoon, we understand the algae bloom issues, we understand how it kills the sea grass and that's necessary for fish to spawn and for manatees to eat, so we're extremely concerned about the environment. We love the area because of the boating potential and that's the Indian River.

Doug Hillman - Good Morning. Doug Hillman, 8525 North U.S. 1, we call it Sebastian, but it's Micco, Florida. My wife and I purchased the oldest marina in South Brevard 28 years ago, coincidentally right across the street from Anthony Lopes and Gene Lomando. Slowly but surely we've tried to redevelop the marina and it's been quite place, quite a location. We love the area. I've been in business 51 years. We've owned marinas in other counties, in Indian River County, and we love what's going on in Brevard County. To back up, the reason I'm here is I'm 100 percent behind Anthony and Gene in their development. We think it's time for South Brevard to get some, some revenue, some tax revenue from, that we're missing. We watch it happen all the time. People come in from Orlando, they stop at our place for boating and they go and stay in Indian River County. It doesn't make any sense, it really doesn't. There's just no place near us that works. Again, we love the County; we'd like to see it developed responsibly. People don't have to tell me about the environment, I've lived in the environment where the water, where the tide changes, for a long time. We're committed to that and we would like to see the development happen. It has to be guided; it has to be done according to the current structure. I think what they're looking for is well within keeping of responsible development and we'll see how it goes. The sewer is...We've been paying property taxes to the County for a long time. Basically Micco is out there on the ragged edge; we have real estate and that's about it. We have no water, we have no sewer. This is a welcome development for us and what we hope is a future expansion in South Brevard County. Any questions?

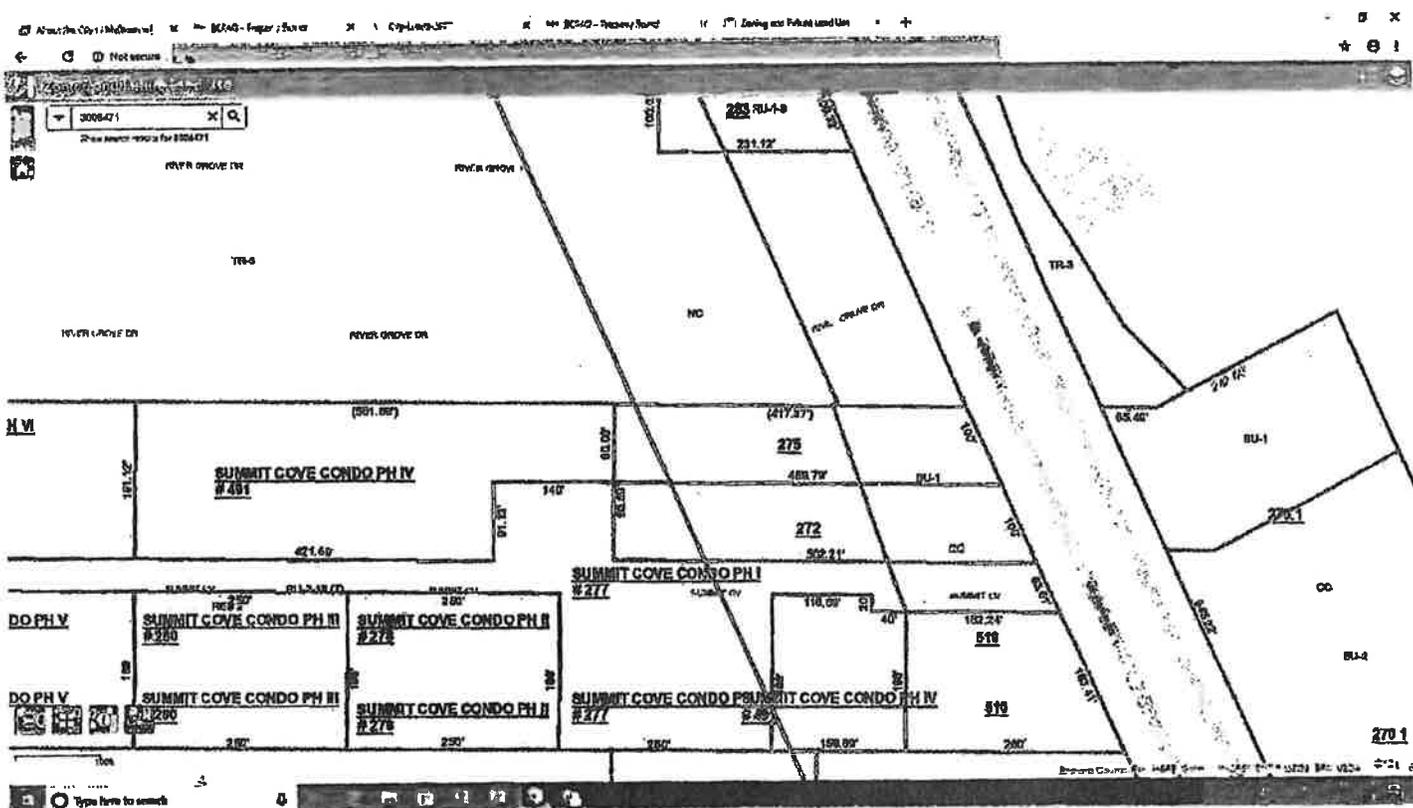


EXHIBIT
4

000050

Brevard County, Florida - Code of Ordinances - CHARTER ARTICLE 2. - LEGISLATIVE BRANCH: BOARD OF CO. (Amd. of 11-2-10)

CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA VOLUME I

SUPPLEMENT HISTORY TABLE

CHARTER

ARTICLE 1. - CREATION, POWERS AND ORDINANCES OF HOME RULE CHARTER GOVERNMENT



- Sec. 2.1. - Composition.
- Sec. 2.2. - Redistricting.
- Sec. 2.3. - Qualifications.
- Sec. 2.4. - Terms of office.
- Sec. 2.5. - Candidacy and election.
- Sec. 2.6. - Salary and other compensation.
- Sec. 2.7. - Vacancies and suspensions.
- Sec. 2.8. - Meetings.
- Sec. 2.8.1. - Organizational meeting.
- Sec. 2.8.2. - Special meeting.
- Sec. 2.8.3. - Location of meetings.

2.9.3.1. Limitations on growth in ad valorem tax revenues.

- (a) Unless otherwise allowed by this subsection 2.9.3.1, the Board of County Commissioners shall not impose any ad valorem tax for county purposes at a millage rate which causes the budgeted revenue therefrom to the County to increase over the budgeted ad valorem revenue for the previous fiscal year by more than the lesser of (1) three percent, or (2) the percentage change in the Consumer Price Index from the preceding calendar year, as measured in accordance with Section 193.155(1)(b), Florida Statutes (as that Section exists in 2008 or may thereafter be amended or transferred).
- (b) Unless otherwise allowed by this subsection 2.9.3.1, the Board of County Commissioners shall not impose any ad valorem tax for municipal purposes within any municipal services taxing unit, or for district purposes of any district for which the Board has the power to fix or approve the millage rate, at a rate which, for such unit or district, causes the budgeted revenue of the unit or district from ad valorem taxes to increase over the budgeted ad valorem revenue for the previous fiscal year by more than the lesser of (1) three percent, or (2) the percentage change in the Consumer Price Index from the preceding calendar year, as measured in accordance with Section 193.155(1)(b), Florida Statutes (as that Section exists in 2008 or may thereafter be amended or transferred).
- (c) Notwithstanding paragraphs (a) and (b) of this subsection, the Board of County Commissioners may impose an ad valorem tax for county, municipal or district purposes at a rate which exceeds the limitations in paragraphs (a) and (b), if a supermajority of the Board concurs in a finding that such an excess is necessary because of emergency or critical need. The finding shall set forth the ultimate facts upon which it is based, and shall be valid for a single budget year.
- (d) In calculating the allowable increase in ad valorem revenues over the ad valorem revenues budgeted for the previous year under paragraphs (a) and (b) of this subsection, the Board of County Commissioners shall exclude from the anticipated revenues all revenue changes from the following kinds of property not appearing on the previous year's roll: (1) new construction; (2) additions to or deductions in whole or in part of existing construction; (3) changes in the value of improvements that have undergone renovation to an extent of not less than 100% increase in assessed value (as measured from the last year of assessment prior to commencement of renovation); and (4) in the case of municipal service taxing units or districts, any properties added since the previous year's roll by reason of boundary changes.
- (e) Nothing in this subsection shall authorize imposition of a millage rate which exceeds the rate prohibited by the constitution or general laws of Florida, or prohibit imposition of a millage rate which is required by the constitution or general laws of Florida or by any final order of a court of competent jurisdiction. Nothing in this subsection shall apply to any millage necessary to the payment of general obligation bonds in accordance with all bond covenants, or to any other millage approved by referendum of the electors, whether before or after the effective date of this subsection.

(Amd. of 11-4-08; Amd. of 11-3-10)

This subsection does not grant the County any power of review of the budget of the School District.



- D. Neighborhood commercial development clusters should be spaced at least 1/2 mile apart, except in the south beaches where neighborhood commercial clusters should be spaced at least three (3) miles apart.
- E. The gross floor area of neighborhood commercial complexes should not exceed 21,800 square feet and the Floor Area Ratio (FAR) should not exceed 0.75.
- 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.

In summary, Table 2.1 reiterates the specific development parameters and issues for consideration discussed in Policies 2.1 and 2.6 when evaluating requests for NC land use designations. This table also outlines issues which affect decision making for rezoning requests and for site plan review, as described in Policies 2.2 and 2.3.

Activities Permitted in Community Commercial (CC) Future Land Use Designations 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 2.12; and
- m) Planned Industrial Park development (as permitted by PIP zoning).

Locational and Development Criteria for Community Commercial Uses 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.
- B. Community commercial complexes should not exceed 40 acres at an intersection.
- 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.
- 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.
- E. Floor Area Ratio (FAR) of up to 1.00 will be permitted for Community Commercial sites.
- 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.

In summary, Table 2.2 reiterates the specific development parameters and issues for consideration, as discussed in Policies 2.1 and 2.8, when evaluating requests for CC land use designations. This table also outlines issues which affect decision making for rezoning requests and for site plan review, as described in Policies 2.2 and 2.3.

Strip Commercial Development

Policy 2.15

The creation/promotion of strip pattern of commercial development shall be discouraged. Infill within established strip commercial areas is preferred over extension of a strip commercial pattern. Extension of a commercial land use designation may be considered in circumstances where the proposed commercial parcel is located within a block in which at least fifty percent (50%) of the block face (in linear feet) is either currently developed with commercial land uses or is designated for commercial use. In either case, the proposed commercial land use extension shall not constitute an encroachment into a residential area. Refer to Figure 1 in the Appendix, "Illustrative Examples of Commercial Infill vs. Extension of Strip Development." Judging the suitability of a location for an extension of strip commercial development activities shall be based upon the following minimum criteria:

Criteria:

- A. Impacts upon traffic circulation should be anticipated and mitigated through the reservation of right-of-way for road widening and marginal access streets. Access points for strip commercial complexes shall seek to minimize points of conflict by utilizing frontage roads, providing cross access between parcels or installing shared use curb cuts for access driveways to the maximum extent feasible, as determined by Brevard County.
- B. Setbacks and landscaped or other appropriate buffers shall be established to mitigate the visual impacts of strip commercial development.
- C. A sidewalk or bicycle path shall be required where appropriate, as encouraged by Tables 2.1 and 2.2 to provide convenient access to surrounding residents and to reduce traffic volumes on the roadways.

Periodic Review of Commercial Area Allocations

Policy 2.16

As part of each Evaluation and Appraisal Report (EAR), Brevard County shall analyze the allocation of commercial acreage in the Future Land Use Map. The evaluation of said allocations shall be based upon the following minimum criteria:

Criteria:

- A. Commercial development trends;
- B. The types, intensities, locations, and land areas of commercial land use designations; and
- C. Commercial acreage allocations shall consider all commercial development, whether within or outside of commercial land use designations.

Policy 2.17

Because of the contrasting nature of institutional activities, two types of institutional land uses are identified below. Institutional uses shall be evaluated according to the following location and development criteria:



shelters are identified by two categories; *general population* and *special needs*. Private shelters consist of structures privately owned.

Shoreline means the point where the water meets the land at any point in time.

Shoreline Protection Buffer - a setback established from the mean or ordinary high water line or safe upland line whichever the applicant chooses. Within the shoreline protection buffer, passive recreation, hunting, fish and wildlife management open space, nature trails and limited amounts and types of shoreline access facilities shall be allowed. The amounts and types of development allowed within the shoreline protection buffer and other development restrictions are found in Conservation Element Policies 3.3, 3.4, and 3.5.

Short Shoot - The area between the rhizome (root) and the blade of a seagrass.

Should - expresses obligation; mandatory action necessary unless it can be clearly demonstrated that:

- a. Strict application will be contrary to the public interest;
- b. The public values being protected are insignificant and strict application will result in an excessive hardship to the project;
- c. Strict application will place an excessive hardship on the project, and an alternative action is available which is equal to or superior than the original requirements in reaching the policy's objective, and;
- d. The activity is not financially feasible for the local government.

Significant Adverse Impacts means that within the sphere of influence of a proposed boating facility, death or injury to manatees or destruction of manatee habitat can be reasonably expected to occur as a result of the construction, expansion, or increase in powerboat densities and activities associated with boating facility.

Significant Manatee Habitat Features - each of the following five habitat features is considered significant as described.

1. Seagrass - 5% or more seagrass present on the proposed project site is considered significant.
2. Manatee Abundance - five (5) or more observations/overflight within a 5 mile radius of the site. If more than one survey falls within the 5-mile radius, the number of manatees observed will be counted for each survey, divided by the number of overflights and then the normalized values will be summed.
3. Significant Manatee Mortality - the number of watercraft mortality within a 5 mile radius, divided by the total number of watercraft mortalities in Brevard County, A value of 0.03 or larger is considered significant.
4. Manatee Freshwater Source/Calving/Cavorting/Feeding/Resting Area is within a 1/2 mile of the proposed site.



BEFORE THE BREVARD COUNTY COMMISSION

IN RE: REZONING APPLICATION OF ANTHONY LOPES AND EUGENE LOMANDO

CASE NO: 18PZ00077

SWORN STATEMENT OF ANTHONY LOPES

Before me the undersigned authority, did appear ANTHONY LOPES, who being duly sworn and deposed did say as follows:

1. That he is an owner of the 1.96 acre property described in the zoning application in Case No. 18PZ0007 as the tax account number being a portion of 3006468 & 3006471.
2. That he appeared before the Board of County Commissioners on September 18, 2018 and spoke on agenda item H.3. under Public Hearings.
3. That the attached copy of the verbatim transcript of his comments before the County Commission are a true and accurate account of what he said on that date.
4. That he has reviewed the Power Point Presentation presented in his behalf as applicant and states that the information in that presentation is accurate, in particular the photographs depicting the property, surrounding uses and access conditions as they exist as of the date of this sworn statement.


 ANTHONY LOPES

Sworn to and subscribed before me, the undersigned notary public:


 Notary Public

My Commission expires: 10/09/2018



Verbatim of Anthony Lopes and Doug Hillman**Item H.3., Ordinance, Re: General Tourist Commercial TU-1 Code Revision to Eliminate Hotel Density****Zoning Meeting, Brevard County****September 18, 2016**

Anthony Lopes - Actually Pensacola is not a bad place, but I'm from Franklin, Tennessee, at the moment. My name is Anthony Lopes. I'm here in reference to the Item that we're discussing. My partner, Gene Lomando, and I own two acres of property down in Micco, on 8480 and 8490 U.S.1. We've owned that property together, jointly for 38 years. My family was involved with that property four years prior to that, so I've been involved with the property now for 42 years. Okay? And in those 42 years, we've maintained the property, we've made repairs to the property because of hurricane damage, we have put quite a bit of money into the property to maintain it, upgrade it, and keep it looking good. At one time, I was involved with the ownership of the Marina across the street, which is now the Sebastian River Marina, at that time it was called the Neptune Marina. Doug Hillman is here. Doug is now the owner of the marina. And during the entire time that we've owned this property we've seen very little development on the south end of Brevard County, especially in Micco. We've seen most of the development now go south of the Sebastian River Bridge in Indian River County, with very little bleeding over into Brevard County. The most recent is the Sebastian Inlet Marina, who did a ton of work to his building. So, there's a little bit going on but not much. But we think there's a reason that we could have a development in that area and I will tell you why. Um, hold on one second. Did this computer go to sleep for a little bit? Okay, so what are we trying to accomplish? Right now the property is zoned three, it has three different zonings. The front of the property is zoned BU-1, the middle of the property is zoned TR-3, the back of the property is zoned TR-2, so it's a little convoluted. It is hard to utilize the property effectively with those types of zonings. So what are we trying to do? What we are trying to do is, looking at the years, if looking at this and seeing that there is not one major hotel flag between Vero Beach and actually I did it last night, Melbourne, Florida, on U.S. 1, not one major hotel flag except for Best Western. Now you are talking about a beautiful, beautiful area, beautiful views, beautiful vistas, great boating, but there's not one major hotel other than Best Western on, on U.S. 1. So, we think there is a need now to fill that void, and what is the void? Where would the people be coming from? There's a group of people that come over regularly and have been coming over regularly from Orlando to go boating. Sebastian area, the Sebastian Inlet is the perfect place for them to boat. But there's also numbers of people who come up from south Florida, who spend the weekend up in our area. Now presently they're staying at Captain Hiram's in Sebastian, which is Indian River County. So those tourist dollars are parking themselves in Indian River County. We would like to take that and try to create a tourist destination to have them spend that money in Brevard County. Now why do we think its possible now? We think it is possible now because as you all know the new exits going in on I-95 on Micco Road, and the uh...It's funny, I'm staying at the Holiday Express on Malabar Road. I remember 35 years ago, before that exit was built, it was nothing; there was nothing there on Malabar Road. Now it's, it's booming. I think eventually, if you look forward, look, you'll see that that's a possibility for farther south in, in Brevard County because we'll be, people from Orlando will be easily able to get to the South Brevard area. And then the people coming up from South Florida will have an alternative to North Indian River County. Now what benefit? Now, now let me back up for a second, this is important and I know this is an issue, the people before us were discussing it. This is only possible because they're putting in a new sewer line in, in Micco. I'm sure you're all aware that there's a sewer line under development in

Micco as we speak, and our goal, when available, is to tie into that sewer line. No project that we're looking at could possibly happen without a sewer line. We are very aware of the environment, we own property, we don't just own this property we own property literally around the corner, residential property, a house, and a vacant lot which we intend to build on and live in. And we understand the issues with the Indian River Lagoon, we understand the algae bloom issues, we understand how it kills the sea grass and that's necessary for fish to spawn and for manatees to eat, so we're extremely concerned about the environment. We love the area because of the boating potential and that's the Indian River.

Doug Hillman - Good Morning. Doug Hillman, 8525 North U.S. 1, we call it Sebastian, but it's Micco, Florida. My wife and I purchased the oldest marina in South Brevard 26 years ago, coincidentally right across the street from Anthony Lopes and Gene Lomando. Slowly but surely we've tried to redevelop the marina and it's been quite place, quite a location. We love the area. I've been in business 51 years. We've owned marinas in other counties, in Indian River County, and we love what's going on in Brevard County. To back up, the reason I'm here is I'm 100 percent behind Anthony and Gene in their development. We think it's time for South Brevard to get some, some revenue, some tax revenue from, that we're missing. We watch it happen all the time. People come in from Orlando, they stop at our place for boating and they go and stay in Indian River County. It doesn't make any sense, it really doesn't. There's just no place near us that works. Again, we love the County; we'd like to see it developed responsibly. People don't have to tell me about the environment, I've lived in the environment where the water, where the tide changes, for a long time. We're committed to that and we would like to see the development happen. It has to be guided; it has to be done according to the current structure. I think what they're looking for is well within keeping of responsible development and we'll see how it goes. The sewer is...We've been paying property taxes to the County for a long time. Basically Micco is out there on the ragged edge; we have real estate and that's about it. We have no water, we have no sewer. This is a welcome development for us and what we hope is a future expansion in South Brevard County. Any questions?

BEFORE THE BREVARD COUNTY COMMISSION

**IN RE: REZONING APPLICATION OF ANTHONY LOPES AND
EUGENE LOMANDO**

CASE NO: 18PZ00077

NOTICE OF SECOND REQUEST FOR OFFICIAL NOTICE

Notice is hereby given of the filing of a Second Request for Official Notice in the above-styled zoning case.

Sincerely,

WIDERMAN MALEK, PL

A handwritten signature in black ink, appearing to read 'S. Knox', with a stylized flourish at the end.

Scott L. Knox, Esquire
SKnox@USLegalTeam.com

BEFORE THE BREVARD COUNTY COMMISSION

IN RE: REZONING APPLICATION OF ANTHONY LOPES AND EUGENE LOMANDO

CASE NO: 18PZ00077

SECOND REQUEST FOR ADMINISTRATIVE OR OFFICIAL NOTICE

The Applicants, ANTHONY LOPES and EUGENE LOMANDO, by and through their undersigned attorney, hereby request the Brevard County Board of County Commissioners, sitting in its capacity as a quasi-judicial Board in this rezoning application case, hereby requests the Board to take administrative or official notice of the following documents presented to the Board in this case for inclusion in the record:

1. The Planning and Zoning Board minutes of Public Comments, more specifically Lisa Hubert, Vice-President of Summit Cove at the Planning and Zoning Meeting held on August 6th, 2018, which is attached hereto.



Scott L. Knox, Esq.
Wideman Malek PL
1900 West New Haven Ave.
Melbourne, FL 32904

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, August 6, 2018, at 3:00 p.m.**, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order by the Chair, Henry Minneboo, at 3:00 p.m.

Board members present were: Henry Minneboo, Chair; Robert LaMarr, Vice Chair; Ron Bartcher; Andy Barber; Brian Hodgers; Ben Glover; Robert Solito; Mark Wadsworth; Bruce Moia; Scott Langston; and Dane Theodore.

Staff members present were: Erin Sterk, Planning and Zoning Manager; Christine Valliere, Assistant County Attorney; Rebecca Ragain, Planning and Development Assistant Director; and Jennifer Jones, Special Projects Coordinator II.

Henry Minneboo, Chair, announced that the Board of County Commissioners will have the final vote on the recommendations made by the Planning and Zoning Board on Thursday, August 2, 2018, at 5:00 p.m.

APPROVAL OF JULY 9, 2018, MINUTES

Motion by Robert LaMarr, seconded by Scott Langston, to approve the minutes of July 9, 2018. The motion passed unanimously.

INTRODUCTION OF SCHOOL BOARD MEMBER DANE THEODORE

Dave Lindeman, Manager of Facilities Planning and Intergovernmental Coordination with Brevard Public Schools, introduced the board to its newest member, Dane Theodore. He stated Mr. Theodore is currently the Assistant Superintendent of Facilities Services at Brevard Public Schools, and they are thrilled to have his experience on the board. He said the Interlocal Agreement for Public Schools Facilities Planning and Intergovernmental Coordination allows the School Board to appoint one member to the County Planning board, and this relationship and coordination has been helpful, and the School Board looks forward to continuing coordination with Brevard County.

Henry Minneboo stated the board looks forward to having Mr. Theodore on the board.

CHAIR DISCUSSION

Henry Minneboo asked the board to consider changing start time of the Planning and Zoning meetings to better ensure quorums, noting that most of the members have jobs that may sometimes prevent them from attending meetings. He asked the board to let him know their thoughts at the end of the meeting.

PLANNING AND ZONING BOARD AGENDA

1. **Anthony Lopes and Eugene R. Lomando** (Scott Knox) request a Small Scale Comprehensive Plan Amendment (18S.06) to change the Future Land Use designation from Community Commercial (CC), Neighborhood Commercial (NC), and Residential 2 (RES 2), to all CC. The property is 1.96 acres, located on the west side of U.S. Highway 1, approximately 655 feet south of Garretts Road. (8480 & 8490 U.S. Highway 1, Micco) (18PZ00076) (District 3)
2. **Anthony Lopes and Eugene R. Lomando** (Scott Knox) request a change of zoning classification from General Retail Commercial (BU-1) and Mobile Home Park (TR-3), to all BU-1. The property is 1.96 acres, located on the west side of U.S. Highway 1, approximately 655 feet south of Garretts Road. (8480 & 8490 U.S. Highway 1, Micco) (18PZ00077) (District 3)

Scott Knox, representing the applicants, stated the subject property is located in Micco, about a half-mile south of Micco Road, and it's comprised of two different parcels, which are being combined. (Mr. Knox referred to a PowerPoint Presentation. The PowerPoint presentation is part of zoning files 18PZ00076 and 18PZ00077.)

He explained the property is on U.S. 1, with frontage on U.S. 1. On the south side of the property is a heavy buffer all the way to the rear of the property; and there's also a buffer on the north side of the property. There is vacant property to the south and north; across U.S. 1 is the Sebastian River Marina. He stated the dilemma is that the property has three different land uses and zonings, and his clients are trying to combine them into one. The east side of the property is zoned BU-1 (General Retail Commercial) and has a Community Commercial Future Land Use designation; in the middle is Neighborhood Commercial; and on the western boundary is Residential 2. He said what is being asked today is an extension of the Community Commercial from the eastern part of the property to the very back of the property, which is possible under Policy 2.9 of the Future Land Use plan. Likewise, they're looking for BU-1 zoning on the entire piece, since it is currently split into three different zoning classifications. In total, they're looking for BU-1 and Community Commercial on the entire piece. He stated the existing use is a duplex that has been used in the past as an office on the northern piece; and on the southern portion is the Marina Café Bar and Grill, which has been in use for a while and has a Conditional Use Permit for alcoholic beverage sales onsite. Looking to the west from the boundary of the property abutting U.S. 1, on the south side, is the entrance to Summit Cove and the thick buffer to the back. To the north is property that's vacant, but it's also zoned commercial. Across the street is the marina, and further to the south is another marina. He noted there is water onsite that has been provided through a State-approved system that serves the restaurant, and in two years there is the possibility of a sewer connection.

Henry Minneboo asked if there will be access to the private road to the south. Mr. Knox replied not yet, but the subject property has two entrance points on U.S. 1. Mr. Minneboo asked if they are going to try to get access to the southern driveway. Mr. Knox replied the owners are looking to eventually put a hotel on the property, and if they do, they would probably like to get access to the southern road. Mr. Minneboo asked if that is why they are rezoning for a potential hotel. Mr. Knox replied a potential hotel or restaurant. He said certain things have to happen for a hotel on the property, and the County Commission will be considering an ordinance that will make that possible.

Public Comment

Lisa Ubitz, Summit Cove Vice President, stated Summit Cove has been talking with the neighbor and today is the first time she is hearing they want access on Summit Cove's road, but that will never happen. She said Summit Cove doesn't have a problem with the property being developed, but they cannot go onto Summit Cove's property to do it.

Bruce Moia stated it is time something happens in that area, and he is aware of the sewer project. He noted the County Commission annexed the marina to the south of the marina across the street, so they are running a force main from the Sebastian River Marina up to Winn-Dixie. He said there's an opportunity for all these properties that are on septic to be able to connect to sewer, and it's being funded by the Indian River Lagoon clean-up efforts.

Motion by Bruce Moia, seconded by Mark Wadsworth, to approve the Small Scale Comprehensive Plan Amendment from Community Commercial, Neighborhood Commercial, and Residential 2, to all Community Commercial. The vote was unanimous.

Motion by Bruce Moia, seconded by Mark Wadsworth, to approve the change of zoning classification from BU-1 (General Retail Commercial) and TR-3 (Mobile Home Park), to all BU-1. The vote was unanimous.

3. **Eva McMillan, Trustee** (Clayton Bennett) requests a Small Scale Comprehensive Plan Amendment (18S.07) to change the Future Land Use designation from Private Conservation (PRIV CON) to Residential 1 (RES 1). The property is 0.30 acres, located on the west side of Highway A1A, approximately 0.83 mile south of Budris Road. (8344 Highway A1A, Melbourne Beach) (18PZ00063) (District 3)
4. **Eva McMillan, Trustee** (Clayton Bennett) requests a change of zoning classification from Environmental Areas (EA) and Suburban Residential (SR), to all SR. The property is 0.77 acres, located on the west side of Highway A1A, approximately 0.83 mile south of Budris Road. (8344 Highway A1A, Melbourne Beach) (18PZ00087) (District 3)

Clayton Bennett, representing the applicant, stated the subject parcel is located in the 8300 block of A1A, almost to the Sebastian Inlet. He stated the lines of the Future Land Use seemed to be placed arbitrarily on the map. He had an environmental consultant find the wetlands on the property, and what his client would like to do is shift the Private Conservation Future Land Use line to the west to be consistent with the actual conditions, and then move the Suburban Residential zoning towards the west to align with the actual conditions. He noted this has been done on other parcels in the past, but it was done at the staff level. Staff has made the determination that it is to come before the board for approval. He said the density is not being increased; the property is approved for one single-family residence and that's what it will be.

Bruce Moia asked if the residence is this going to be within the distance of the Lagoon that will require the upgraded septic. Mr. Bennett replied he believes the moratorium covers all of beachside.

Scott Langston asked how far the line will be shifted westerly. Mr. Bennett replied currently, the line is approximately 100 feet from the A1A right-of-way line, and it would be shifted to the west about twice that line. He said it's an irregular shaped line that follows the wetlands line. Mr. Langston asked who delineated that line for them. Mr. Bennett replied Atlantic Environmental Services delineated the line, and the Florida Department of Environmental Protection came out and accepted the line.

Mr. Moia stated he sees this happen a lot where conservation is placed on a property based on whatever they used at the time, and then when they go to develop the property specialists come in and determine where the line should really be. He said over 50% of the property is still going to be in conservation, but now there's enough uplands to build a home.

Motion by Bruce Moia, seconded by Mark Wadsworth to approve the Small Scale Comprehensive Plan Amendment from Private Conservation to Residential 1. The vote was unanimous.

Motion by Bruce Moia, seconded by Mark Wadsworth to approve the change of zoning classification from Environmental Areas to Suburban Residential. The vote was unanimous.

CHAIR DISCUSSION CONTINUED

Upon consensus of the board, the start time of the Planning and Zoning Board meetings will remain 3:00 p.m.

Upon consensus of the board, the meeting adjourned at 3:27 p.m.

BEFORE THE BREVARD COUNTY COMMISSION

**IN RE: REZONING APPLICATION OF ANTHONY LOPES AND
EUGENE LOMANDO**

CASE NO: 18PZ00077

**NOTICE OF FILING SUPPLEMENTAL SWORN STATEMENT
OF STUART BUCHANAN**

Notice is hereby given of the supplemental filing of the attached sworn statement of Stuart Buchanan in the above-styled zoning case.

Sincerely,

WIDERMAN MALEK, PL



Scott L. Knox, Esquire
SKnox@USLegalTeam.com

BEFORE THE BREVARD COUNTY COMMISSION

**IN RE: REZONING APPLICATION OF ANTHONY LOPES AND EUGENE
LOMANDO**

CASE NO: 18PZ00077

SWORN STATEMENT OF STUART BUCHANAN

Before me the undersigned authority, did appear, STUART BUCHANAN who being duly sworn and deposed did say as follows:

1. That the resume attached hereto is an accurate representation of the work experience and work history of the undersigned, in particular, in the area of urban planning, zoning and comprehensive planning.
2. That he has reviewed the location of the properties that have been combined as the subject of the above numbered companion small-scale amendment and rezoning cases, as well as aerial photographs showing land uses, future land use map designations and zoning on properties in area surrounding and within an approximate ½ mile radius of the subject properties.
3. That the undersigned has concluded, from a review of the land use and zoning maps that the predominant land use designations and assigned zoning districts to the north and south of the subject properties along the west side of U.S. 1 from Garretts Rd. on the North to 14th Street on the south are zoned or designated as commercial, some to a depth of more than 400 feet.
4. That the pattern of land use and zoning described in paragraph 3 is classic strip commercial in an established commercial corridor on an arterial roadway.
5. That the undersigned has been requested to provide his expert opinion upon the question as to whether Policy 2.8 of the Future Land Use Element of the Brevard County Comprehensive Plan (Attached hereto as Exhibit 1) applies to the infill of strip commercial zoning.
6. That, as a planner for Brevard County, the undersigned prepared several memoranda to the County Commission addressing the applicability of Policy 2.8 to strip commercial zoning and land use and in those memoranda concluded that Policy 2.8 does not apply to strip commercial since the purpose of that policy is to address the location and criteria for new commercial development nodes or clusters located at intersections of major county roads.

7. That the County Commission acted upon and adopted the undersigned's interpretation of Policy 2.8 as indicated in the documents attached as Composite Exhibit 2 to this sworn statement.
8. That the undersigned has also opined to the Brevard County Commission in the form of memoranda, that the applicable land use policy to be applied to strip commercial infill is Policy 2.15 of the Future Land Use Element, attached hereto as Exhibit 3.
9. That the above-numbered application for rezoning and land use amendment fit squarely within the parameters of Policy 2.15.
10. That, due to the commercial land uses and zoning classifications assigned to property to the north and south of the subject property in the manner described in paragraph 3 above, and specifically in the area immediately east, south and north of the subject property, the approval of Community Commercial land use and BU-1 commercial zoning on the subject property would not encroach on existing residential uses due to the depth of approved commercial land use and zoning on the surrounding properties.
11. As demonstrated in prior staff reports for similar properties (attached Exhibit 2), Future Land Use Element Policy 2.1 (Attached as Exhibit 4) sets the role of the Comprehensive Plan for the broad criteria in the evaluation of requests for commercial land use designations. This request for community commercial land use on the subject parcel is further supported by and consistent with Policy 2.15 which states that infill of commercial property within existing strip commercial is preferred.

SI *Stuart Buchanan*

STUART BUCHANAN

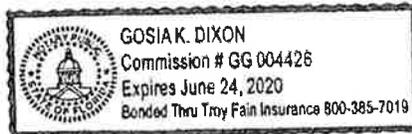
Sworn to and subscribed before me, the undersigned notary public:

Gosia K. Dixon

Notary Public

My Commission expires:

Seal



STUART A. BUCHANAN
1745 BAHAMA STREET
TITUSVILLE, FLORIDA 32780
(321)362-0689

EDUCATIONAL HISTORY:

- 2007 Graduated from University of Central Florida with a Bachelor's of Arts degree in Psychology.
- 1997 Graduated from the University of Central Florida with a Master's degree in Business Administration
- 1995 Graduated from the University of Central Florida with a Bachelor's of Arts degree in Liberal Studies, completing a minor in Business Administration and concentrations in Psychology and Criminal Justice.

EMPLOYMENT HISTORY:

- 2015 - **City of Palm Bay - Director of Growth Management**
2017 Responsible for supervising divisions of Building, Code Enforcement, Housing, Land Development, and Planning & Zoning. Recruited developers and builders to increase the total value of building permits issued to \$159,000,000 in first 12 months, followed by \$189,000,000 in second 12 months. Commercial development was increased from 10% to 20% of total permit valuation.
- 2008 - **Brevard County Planning & Development Dept/Public Works Dept.**
2015 - **Planner III/Grants Administrator**
Responsible for the preparation of all large scale comprehensive plan amendments. Brought County into compliance with adoption of mandated amendments for Public School Concurrency, Water Supply Plan, and Capital Improvements Element. Successfully awarded over \$12 million in grant funding for capital roadway projects in 18 months.
- 2006 - **Innovative Zoning Solutions, Inc. - Owner**
2008 Responsible for achieving private sector land use and zoning approvals for high density condominium and mixed use development throughout the State of Florida.
- 2005 - **City of Holly Hill - Community Development Director**
2006 Responsible for oversight of all urban planning and redevelopment Citywide. This included: Planning; Zoning; Community Redevelopment Agency; Code Enforcement; Animal Control; Site Plan Review; Grant Administration; and Economic Development.
- 2003 - **City of South Daytona - Senior Planner/Special Projects Coordinator**
2005 Responsible for all urban planning tasks, including: site plan review; comprehensive plan amendments; rezonings; Community Redevelopment Agency; and economic development. Prepared and administered City grant applications. Managed capital construction projects including U.S. 1 corridor improvements, regional stormwater facility, and undergrounding of utilities. Entitled four high-rise condominium projects.

- 2001 - **City of Daytona Beach - Capital Project Coordinator/Grant Administrator**
2003 Prepared and administered City grant applications. Managed capital construction projects including regional stormwater facility, parks, roadway projects, and other capital projects. This included the hiring of design consultants, bidding of the construction, construction administration, and closing of the grant funding sources.
- 2000 - **City of Deltona - Senior Planner**
2001 Responsible for all comprehensive urban planning tasks, including: annexations; comprehensive plan amendments; rezonings; and variances. Performed site plan review as needed. Achieved State approval of City's first Comprehensive Pplan, subsequently assisted in development of City's first Land Development Regulations with Prepared City grant applications.
- 1998 - **Lifestream Behavioral Center - Director of Human Resources and**
1999 **Director of Transportation**
Responsible for the management of the County transit system, Lake County Transit consisting of 62 buses and support facilities. Promoted at six months to director of all non-medical departments including: Human Resources; Transportation; Building & Facilities Maintenance; Management Information Systems; and Marketing. Supervised five departments and 120+ employees supporting a 430+ employee behavioral health facility.
- 1998 **Lake County Dept of Public Works - Alternative Transportation Planner**
Responsible for all modes of alternative transportation, including coordination, development, planning, and contract management of county-wide transit system, marketing, engineering, and development of new transportation systems. Managed oversight of Transportation Disadvantaged Program, including; invoicing; funding applications; reporting; and planning functions. Performed site plan review of all new development in Lake County, coordinated five-year capital improvements program. Prepared various grant applications to support Public Works projects.
- 1996 - **Brevard County Housing & Human Services - Planner**
1997 Responsible for Comprehensive planning of each of the departments five program areas: Housing & Community Development; Veteran Affairs; Family & Children Services; Animal Control; and the Medical Examiner's Office. Linked measurable program goals to supervisor's annual performance evaluations based upon a five-year work plan for each program area.
- Contract manager for Community Based Organizations Grant Program, responsible for funding various non-profits throughout the County. Managed other departmental contracts, including behavioral health center and public health facilities.

- 1995 - **City of Cocoa - Planner**
 1996 Responsible for all urban planning tasks, including: site plan review; comprehensive plan amendments; rezonings; redevelopment agency; and economic development. Prepared and administered City grant applications.
- Acted as interim coordinator of housing and community development programs including CDBG, SHIP, and HOME. Prepared program budgets and submitted annual reports to funding agencies.
- 1994 - **City of Cocoa - Planning Technician**
 1995 Responsible for assisting city planners with their duties, including; site plan review; occupational license review; preparation of the City's Economic Plan; Enterprise Zone application; and other urban planning tasks. Developed special projects including economic development promotional material, development of infill housing program, and prepared grant applications.
- 1993 - **City of Cocoa - Administrative Secretary to the City Clerk**
 1994 Responsible for assisting the City Clerk in the daily operations of the office. Duties included the maintenance of records and scheduling of public meeting in accordance of State Statutes.
- 1987 - **United States Army – Fire Team Leader**
 1989 Enlisted in United States Army Infantry. assigned to 1/18th Vanguard, 197th Mechanized Infantry Brigade, 18th Airborne Corp. Rapidly promoted to Corporal and Fire Team Leader of four-man heavy weapons team. Graduate of Basic & Advanced courses Infantry Training Center; Heavy Anti-Armor TOW Academy; Opposing Force (OPFOR) Academy trained and uniformed in Warsaw Pact weapons and tactics; Nuclear, Biological, Chemical Warfare Academy as secondary specialty; qualified expert M-16A1, M-60, TOW II.

CIVIC HISTORY:

- 1982 - Active member of the Civil Air Patrol, promoted 1986 to Cadet Commander,
 1987 responsible for the welfare and training of 40 cadets in leadership, emergency services, and aerospace education.

MEMBERSHIPS/ASSOCIATIONS/SEMINARS:

- 2004 Graduated from Advanced Public Information Officer's Training Course
 2001 Certified Florida Standard Urban Transportation Model Structure - Basic Course
 2000 Graduated from State Attorney's Crime Prevention Through Environmental Design.

SPECIAL SKILLS:

- Possess a working knowledge of spoken Spanish
- Successfully written and administered State and Federal grant applications.
- Ability to conceive, design, fund, and coordinate capital projects.
- Knowledgeable of current software, able to produce outstanding presentation materials.
- Ability to manage personnel from diverse backgrounds as a team.
- Familiar with administering programs within State and Federal guidelines.

EXHIBIT 1

- D. Neighborhood commercial development clusters should be spaced at least 1/2 mile apart, except in the south beaches where neighborhood commercial clusters should be spaced at least three (3) miles apart.
- E. The gross floor area of neighborhood commercial complexes should not exceed 21,800 square feet and the Floor Area Ratio (FAR) should not exceed 0.75.
- 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.

In summary, Table 2.1 reiterates the specific development parameters and issues for consideration discussed in Policies 2.1 and 2.6 when evaluating requests for NC land use designations. This table also outlines issues which affect decision making for rezoning requests and for site plan review, as described in Policies 2.2 and 2.3.

Activities Permitted in Community Commercial (CC) Future Land Use Designations 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 2.12; and
- m) Planned Industrial Park development (as permitted by PIP zoning).

Locational and Development Criteria for Community Commercial Uses Policy 2.8

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

Criteria:

EXHIBIT 2

- 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.
- B. Community commercial complexes should not exceed 40 acres at an intersection.
- 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.
- 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.
- E. Floor Area Ratio (FAR) of up to 1.00 will be permitted for Community Commercial sites.
- 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.

In summary, Table 2.2 reiterates the specific development parameters and issues for consideration, as discussed in Policies 2.1 and 2.8, when evaluating requests for CC land use designations. This table also outlines issues which affect decision making for rezoning requests and for site plan review, as described in Policies 2.2 and 2.3.

EXHIBIT 3

Strip Commercial Development

Policy 2.15

The creation/promotion of strip pattern of commercial development shall be discouraged. Infill within established strip commercial areas is preferred over extension of a strip commercial pattern. Extension of a commercial land use designation may be considered in circumstances where the proposed commercial parcel is located within a block in which at least fifty percent (50%) of the block face (in linear feet) is either currently developed with commercial land uses or is designated for commercial use. In either case, the proposed commercial land use extension shall not constitute an encroachment into a residential area. Refer to Figure 1 in the Appendix, "Illustrative Examples of Commercial Infill vs. Extension of Strip Development." Judging the suitability of a location for an extension of strip commercial development activities shall be based upon the following minimum criteria:

Criteria:

- A. Impacts upon traffic circulation should be anticipated and mitigated through the reservation of right-of-way for road widening and marginal access streets. Access points for strip commercial complexes shall seek to minimize points of conflict by utilizing frontage roads, providing cross access between parcels or installing shared use curb cuts for access driveways to the maximum extent feasible, as determined by Brevard County.
- B. Setbacks and landscaped or other appropriate buffers shall be established to mitigate the visual impacts of strip commercial development.
- C. A sidewalk or bicycle path shall be required where appropriate, as encouraged by Tables 2.1 and 2.2 to provide convenient access to surrounding residents and to reduce traffic volumes on the roadways.

Periodic Review of Commercial Area Allocations

Policy 2.16

As part of each Evaluation and Appraisal Report (EAR), Brevard County shall analyze the allocation of commercial acreage in the Future Land Use Map. The evaluation of said allocations shall be based upon the following minimum criteria:

Criteria:

- A. Commercial development trends;
- B. The types, intensities, locations, and land areas of commercial land use designations; and
- C. Commercial acreage allocations shall consider all commercial development, whether within or outside of commercial land use designations.

Policy 2.17

Because of the contrasting nature of institutional activities, two types of institutional land uses are identified below. Institutional uses shall be evaluated according to the following location and development criteria:

EXHIBIT 4

commercial land use designations to areas which are determined to be appropriate based upon a suitability analysis, character of the area, compatibility with surrounding land uses, and public facilities and services. These uses shall be directed to sites where there are sufficient uplands for the intended use and for all other measures to ensure wetland function. During the review of proposed amendments to the Future Land Use Map, which would allow commercial uses, Brevard County shall ensure that the site is suitable for the proposed use with regard to environmental features. The proposed designation shall be consistent with the following suitability criteria:

Criteria:

- A. Floodplain policies contained within Conservation Objective 4;
- B. Aquifer protection policies contained within Conservation Objective 11;
- C. Types, values, conditions, functions, and locations of wetlands, and wetlands protection policies contained in Conservation Objective 5.

Role of the Comprehensive Plan in the Designation of Commercial Lands

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:

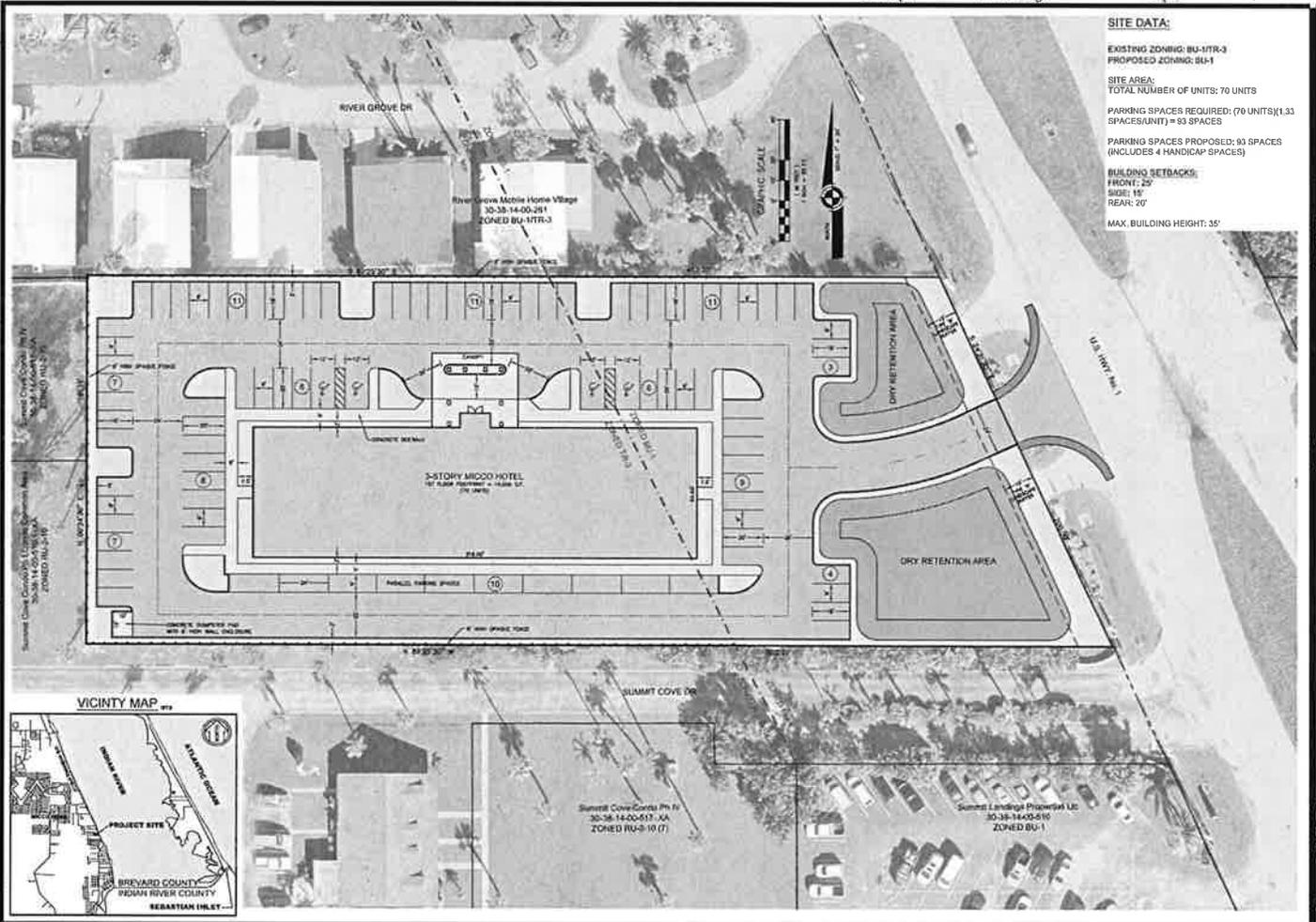
Criteria:

- A. Overall accessibility to the site;
- B. Compatibility and inter-connectivity with adjacent adopted Future Land Use designations and land uses;
- C. Existing commercial development trend in the area;
- D. Fundamental changes in the character of an area prompted by infrastructure improvements undertaken by the County;
- E. Availability of required infrastructure at/above adopted levels of service;
- F. Spacing from other commercial activities;
- G. Size of proposed commercial designation compared with current need for commercial lands;
- H. Adherence to the objectives/policies of the Conservation Element and minimization of impacts upon natural resources and systems;
- I. Integration of open space; and
- J. Impacts upon strip commercial development.

Role of Zoning Regulations in the Designation of Commercial Lands

Policy 2.2

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:



SITE DATA:
 EXISTING ZONING: BU-1TR-3
 PROPOSED ZONING: BU-1
 SITE AREA:
 TOTAL NUMBER OF UNITS: 70 UNITS
 PARKING SPACES REQUIRED: (70 UNITS)(1.33 SPACES/UNIT) = 93 SPACES
 PARKING SPACES PROPOSED: 83 SPACES (INCLUDES 4 HANDICAP SPACES)
BUILDING SETBACKS:
 FRONT: 20'
 SIDE: 15'
 REAR: 20'
 MAX. BUILDING HEIGHT: 35'

Scale: 1" = 20'
Page: 02 Sheets
Sheet: 02 of 02
JOSEPH W. MAVER, P.E. LICENSE NO. 35407 Florida Bussen-Mayer Engineering Group, Inc. 1000 S. US HWY 1, SUITE 100 VERO BEACH, FL 32909 TEL: 888-888-8888 FAX: 888-888-8888 WWW.BUSSEN-MAYER.COM
MICCO HOTEL Brevard County
Date: 02/08/2019 Scale: 1" = 20' File No: 18PZ00077 Project Name: Concept Plan
Sheet: 1 of 1



3-Story Hotel
1st Floor-14,056 SF
70 Units

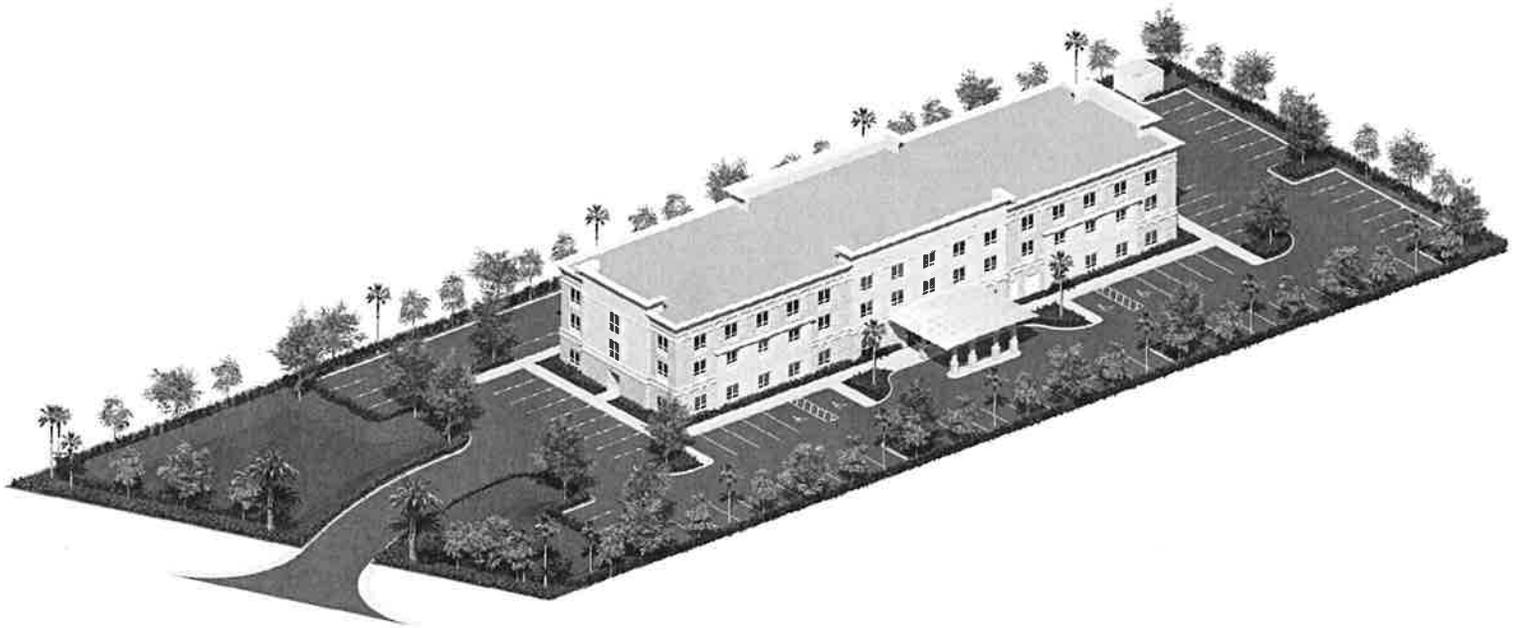
Sebastian River
Marina & Boatyard

Summit Cove Drive

Micco Cove Drive

U.S. Highway 1



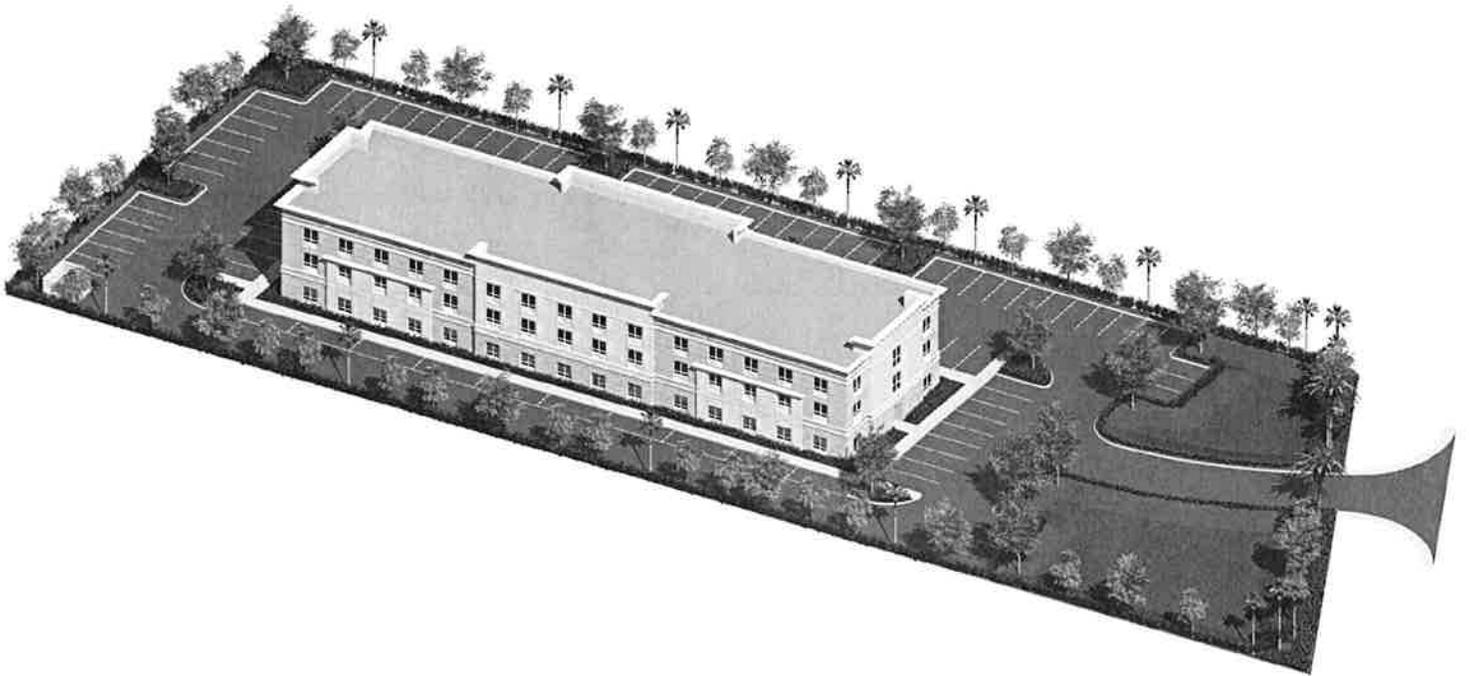


 NASHVILLE
UNIVERSITY OF THE SOUTH ALABAMA

Micco Hotel

8490 U.S. Highway 1 - Micco, FL





Micco Hotel

8490 U.S. Highway 1 - Micco, FL



Prepared by: Scott L. Knox, Esq.
Address: 1990 W. New Haven Ave
Melbourne, FL 32904

BINDING DEVELOPMENT PLAN

THIS BINDING DEVELOPMENT PLAN AGREEMENT, entered into this ____ day of _____, 201____ between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Anthony Lopes and Eugene Lomando (referred to as "Developer/Owners")

RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner has requested a BU-1 zoning classification for the property as well as Community Commercial Land Use designation allowing the commercial development of the property which may include the development of a hotel; and

WHEREAS, as part of its plan for development of the Property, Developer/Owners wish to mitigate potential negative impacts on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owners, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.
2. Upon receipt of Community Commercial Land Use and BU-1 Zoning, should the Owners decide to develop the property as a hotel site, the Developer/Owners agree to the following conditions:
 - a. the Developer/Owners agree to construct the hotel in substantially the same configuration and location shown on the Concept Plan attached hereto as Exhibit B and in conformance to County regulations;
 - b. The height of the hotel shall not exceed three stories;
 - c. The maximum number of hotel rooms shall not exceed 70 rooms;
 - d. The Developer/Owners agree to apply for any site plan approval required by County regulations.

e. The Developer/Owners agree to provide such vegetative or other buffers on the south and north side of the property as may be required by Brevard County Land Development regulations

f. The Developer/Owners agree to limit access to the hotel site to U.S. Highway 1.

3. The Developers/Owners shall comply with all regulations and ordinances of Brevard County, Florida.

4. Nothing in this Binding Development Plan shall prevent the Developer/Owners from developing the property for other uses permitted under BU-1 zoning should they decide not to proceed with the development of a hotel on the property.

5. This Agreement constitutes Developer's/Owners' agreement to meet the foregoing additional standards or restrictions in developing the Property.

6. This agreement provides no vested rights against future changes to the Comprehensive Plan or land development regulations as they may apply to this Property.

7. Developer/Owners, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in the Public Records of Brevard County, Florida.

8. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on _____, 2019.

9. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

10. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as it may be amended.

11. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owners may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 10 above.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

(Signatures appear on the next page)

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA
2725 Judge Fran Jamieson Way
Viera, FL 32940

Scott Ellis, Clerk
(SEAL)

Rita Pritchett, Chair
(As approved by the Board on _____)

WITNESSES 1:

DEVELOPER/OWNERS

(Witness Name typed or printed) (Address)

Anthony Lopes

Eugene Lomando

WITNESS 2:

(Witness Name typed or printed) (Name typed, printed or stamped)

STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Anthony Lopes and Eugene Lomando who are personally known to me or who produced a Florida Driver's License as identification.

Notary Public (Name typed, printed or stamped)

My commission expires

SEAL _____
Commission No.:

Objection
18PZ00077
Lopes/Lomando

From: Ralph G Buron

Subject ID 18PZ00077

8520 us hwy 1 apt b3

Micco fl. 32976

This relates to the proposed zoning request for the property located on the west side of Garretts RD (8480 and 8490 US HWY 1 Micco)

I would like to voice my opposition for the subject's property being approved for all CC and BU-1 (general retail commercial) and any future additional request for height variances. At the present time the subject property is and has created an intense music and noise disruption during the afternoon hours extending to late in the evenings. The evening vehicular traffic has also resulted in added congestion. The conditional use permit for Alcoholic beverages (z-11500) for BU1 Zoning classification as accessory to the restaurant only, seems to have migrated or has been allowed to be extended for use under a painters tarp next to the entrance of summit cove condo associations drive way. This is less than 33 yards from the first and second row of multifamily condo association located on 10 acers with 84 family units.

Thank you

Ralph G Buron

Ralph G Buron

Objection
18PZ00077
Lopes/Lomando
(Received 10/04/18)

Brevard County Board of Commissioners
Planning & Development Department

RE: Rezoning 18PZ00077 & 18PZ00076
Proposed Future use as Hotel
Amendment for an additional 35 feet in height

Parcel ID 30-38-14-00-272; 30-38-14-22-275
Address: 8480 & 8490 U.S. Hwy 1 Micco

As residents of (#8520 US 1) Summit Cove, we believe rezoning the property that is currently a lunch café will be detrimental to our community. Our community is set back from U.S 1 and quiet and private. A multiple story hotel would affect our quiet enjoyment of the residences as we know it. The proposed hotel would be 24-7 hours of operation, exterior lighting every night -all night, and noise levels may increase at odd hours, litter thrown onto our property and our one lane entrance/exit may be made more difficult. We are also concerned with the more transient hotel clientele so close to our homes. The small close-knit community feel is what attracted us to live here and worry how our property values would hold up with the change proposed. The proposed amendment for an additional 35 feet in height for a new structure is not consistent or compatible with the existing neighborhood.

We had been told the property owners planned a bed and breakfast with a full restaurant. That would seem to conform to the current charm and small town feel we currently enjoy. Now we hear of multiple story structure and parking garage that may lead to our community being another over-developed traffic area and U.S 1 has already increased in traffic flow tremendously in the past few years.

We feel rezoning for a resort right up against our homes it will no longer be a place to enjoy a peaceful, old charm Florida lifestyle as it has been enjoyed to present day.

[Handwritten signature] A-2
[Handwritten signature] B-11

[Handwritten signature]

FAX TO ERIN STERK
321-633-2087

Oct 4 2018 11:31am

P002/003

Objection
18PZ00077
Lopes/Lomando
(Received 10/04/18)

Brevard County Board of Commissioners
Planning & Development Department

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Karen Oaks C-9

Lore Jean Johnston Melillo C-7

Ralph D. Bunker B-3

FAX TO ERIN STERK
321-633-2087

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, August 6, 2018, at 3:00 p.m.**, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order by the Chair, Henry Minneboo, at 3:00 p.m.

Board members present were: Henry Minneboo, Chair, Robert LaMarr, Vice Chair; Ron Bartcher; Andy Barber; Brian Hodgers; Ben Glover; Robert Solito; Mark Wadsworth; Bruce Moia; Scott Langston; and Dane Theodore.

Staff members present were: Erin Sterk, Planning and Zoning Manager; Christine Valliere, Assistant County Attorney; Rebecca Ragain, Planning and Development Assistant Director; and Jennifer Jones, Special Projects Coordinator II.

Henry Minneboo, Chair, announced that the Board of County Commissioners will have the final vote on the recommendations made by the Planning and Zoning Board on Thursday, August 2, 2018, at 5:00 p.m.

Excerpt from complete agenda.

- 1. Anthony Lopes and Eugene R. Lomando** (Scott Knox) request a Small Scale Comprehensive Plan Amendment (18S.06) to change the Future Land Use designation from Community Commercial (CC), Neighborhood Commercial (NC), and Residential 2 (RES 2), to all CC. The property is 1.96 acres, located on the west side of U.S. Highway 1, approximately 655 feet south of Garretts Road. (8480 & 8490 U.S. Highway 1, Micco) (18PZ00076) (District 3)
- 2. Anthony Lopes and Eugene R. Lomando** (Scott Knox) request a change of zoning classification from General Retail Commercial (BU-1) and Mobile Home Park (TR-3), to all BU-1. The property is 1.96 acres, located on the west side of U.S. Highway 1, approximately 655 feet south of Garretts Road. (8480 & 8490 U.S. Highway 1, Micco) (18PZ00077) (District 3)

Scott Knox, representing the applicants, stated the subject property is located in Micco, about a half-mile south of Micco Road, and it's comprised of two different parcels, which are being combined. (Mr. Knox referred to a PowerPoint Presentation. The PowerPoint presentation is part of zoning files 18PZ00076 and 18PZ00077.) He explained the property is on U.S. 1, with frontage on U.S. 1. On the south side of the property is a heavy buffer all the way to the rear of the property; and there's also a buffer on the north side of the property. There is vacant property to the south and north; across U.S. 1 is the Sebastian River Marina. He stated the dilemma is that the property has three different land uses and zonings, and his clients are trying to combine them into one. The east side of the property is zoned BU-1 (General Retail Commercial) and has a Community Commercial Future Land Use designation; in the middle is Neighborhood Commercial; and on the western boundary is Residential 2. He said what is being asked today is an extension of the Community Commercial from the eastern part of the property to the very back of the property, which is possible under Policy 2.9 of the Future Land Use plan. Likewise, they're looking for BU-1 zoning on the entire piece, since it is currently split into three different zoning classifications. In total, they're looking for BU-1 and Community Commercial on the entire piece. He stated the existing use is a duplex that has been used in the past as an office on the northern piece; and on the southern portion is the Marina Café Bar and Grill, which has been in use for a while and has a Conditional Use Permit for alcoholic beverage sales onsite. Looking to the west from the boundary of the property abutting U.S. 1, on the south side, is the entrance to Summit Cove and the thick buffer to the back. To the north is property that's vacant, but it's also zoned commercial. Across the street is the marina, and further to the south is another marina. He noted there is water onsite that has been provided through a State-approved system that serves the restaurant, and in two years there is the possibility of a sewer connection.

Henry Minneboo asked if there will be access to the private road to the south. Mr. Knox replied not yet, but the subject property has two entrance points on U.S. 1. Mr. Minneboo asked if they are going to try to get access to the southern driveway. Mr. Knox replied the owners are looking to eventually put a hotel on the property,

and if they do, they would probably like to get access to the southern road. Mr. Minneboo asked if that is why they are rezoning for a potential hotel. Mr. Knox replied a potential hotel or restaurant. He said certain things have to happen for a hotel on the property, and the County Commission will be considering an ordinance that will make that possible.

Public Comment

Lisa Hubert, Summit Cove Vice President, stated Summit Cove has been talking with the neighbor and today is the first time she is hearing they want access on Summit Cove's road, but that will never happen. She said Summit Cove doesn't have a problem with the property being developed, but they cannot go onto Summit Cove's property to do it.

Bruce Moia stated it is time something happens in that area, and he is aware of the sewer project. He noted the County Commission annexed the marina to the south of the marina across the street, so they are running a force main from the Sebastian River Marina up to Winn-Dixie. He said there's an opportunity for all these properties that are on septic to be able to connect to sewer, and it's being funded by the Indian River Lagoon clean-up efforts.

Motion by Bruce Moia, seconded by Mark Wadsworth, to approve the Small Scale Comprehensive Plan Amendment from Community Commercial, Neighborhood Commercial, and Residential 2, to all Community Commercial. The vote was unanimous.

Motion by Bruce Moia, seconded by Mark Wadsworth, to approve the change of zoning classification from BU-1 (General Retail Commercial) and TR-3 (Mobile Home Park), to all BU-1. The vote was unanimous.

BEFORE THE BREVARD COUNTY COMMISSION

IN RE: REZONING APPLICATION OF ANTHONY LOPES AND EUGENE LOMANDO

CASE NO: 18PZ00077

THIRD REQUEST FOR ADMINISTRATIVE OR OFFICIAL NOTICE

The Applicants, ANTHONY LOPES and EUGENE LOMANDO, by and through their undersigned attorney, hereby request the Brevard County Board of County Commissioners, sitting in its capacity as a quasi-judicial Board in this rezoning application case, hereby requests the Board to take administrative or official notice of the following documents presented to the Board in this case for inclusion in the record and of the following facts:

1. Pages 2 and 4 (listing the Micco Sewer Line Extension to Sebastian Inlet Marina) found in the 2017 Supplement to the Save Our Indian River Lagoon Project Plan for Brevard County, Florida (copies of those pages being attached hereto) retrieved November 14, 2018 at <https://www.brevardfl.gov/docs/default-source/save-our-lagoon-documents/save-our-indian-river-lagoon-project-plan-2017-supplement.pdf?sfvrsn=2>
2. That Sebastian Inlet Marina is located on U.S. Highway 1 south of the property that is the subject matter of this rezoning.



Scott L. Knox, Esq.
Widerman Malek PL
1900 West New Haven Ave.
Melbourne, FL 32904

2017 Supplement to the Save Our Indian River Lagoon Project Plan for Brevard County, Florida



Prepared by:



Tetra Tech, Inc.
1558 Village Square Blvd, Suite 2
Tallahassee, Florida 32309
Phone: (850) 536-8115

Prepared for:

Brevard County
Natural Resources Management Department
2725 Judge Fran Jamieson Way, Building A
Viera, Florida 32940



February 2017

Section 2. 2017 Project Revisions

Local municipalities and partners were invited to submit substitute projects for inclusion in the SOIRLPP. The projects submitted were required to deliver comparable nutrient removal benefits at similar costs as those projects listed in the original SOIRLPP for each sub-lagoon. To determine the amount of funding that a project would be eligible to receive from the Save Our Indian River Lagoon Trust Fund, the estimated total nitrogen (TN) reductions from the project were multiplied by the allowable cost/lb/yr of TN shown below in **Table 1** for that project type. The costs shown in **Table 1** are an average of the cost per pound of TN removed from the projects listed in the original SOIRLPP.

The requesting partners each submitted a "Save Our Indian River Lagoon Project Plan Project Submittal Request Form" to Brevard County for review of the proposed projects. The project forms were provided to the Citizen Oversight Committee to evaluate the potential for inclusion in the plan. The projects recommended by the Citizen Oversight Committee were presented to the Brevard County Board of County Commissioners for approval to include in this plan supplement.

Table 1: Cost per Pound of TN Removed by Project Type

Project Type	Average Cost/lb/yr of TN
WWTF Upgrades for Reclaimed Water	\$214
Septic System Removal	\$852
Septic System Upgrades	\$802
Stormwater Projects	\$88
Muck Removal	\$408
Oyster Reef/Living Shorelines	\$473

2.1. New Projects

The approved projects for inclusion in the 2017 SOIRLPP Supplement are summarized in **Table 2**. This table lists the responsible entity, project description, sub-lagoon location, TN and total phosphorus (TP) reductions, and the amount of Save Our Indian River Lagoon Trust Fund funding that is being applied to each project. Once the Supplement is approved by the County Commission, the projects are part of the SOIRLPP, and are reflected in the updated plan tables shown in **Section 3**.

2017 Supplement to the Save Our Indian River Lagoon Project Plan

Project Name	Responsible Entity	Project Description	Sub-Lagoon	TN Reduction (lbs/yr)	TP Reduction (lbs/yr)	Plan Funding
Micco Sewer Line Extension	Sebastian Inlet Marina	Connecting 34 businesses and homes to sewer.	Central IRL	1,633	N/A	\$1,391,316
Hoag Sewer Conversion	City of Melbourne	Installation of 4" forcemain to allow for 7 existing homes and potential 5 others to tie into municipal sewer and either come off existing septic tanks or, once lots are built, never install septic tanks.	Central IRL	101	N/A	\$86,031
Penwood Sewer Conversion	City of Melbourne	Installation of 4" forcemain to allow for 4 existing homes and 8 potential homes to tie into municipal sewer and either come off existing septic tanks or, once lots are built, never install septic tanks.	Central IRL	48	N/A	\$40,632
Long Point Park Upgrade	Brevard County Parks Department	This will be a denitrification wall to remove nitrogen from the ground water flowing from the Long Point campground rapid infiltration wet pond to the IRL. An 18"-24" denitrification wall will be constructed around the outside perimeter fence of the existing system.	Central IRL	127	N/A	\$101,854
Cocoa Palms LID	City of Cape Canaveral	Exfiltration with treatment train.	Banana	13	10	\$1,144
Carver Cove Swale	City of Cape Canaveral	Dry retention with treatment train.	Banana	32	9	\$2,816
Holman Road Baffle Box	City of Cape Canaveral	Upgrade first generation boxes to 2nd generation baffle boxes.	Banana	71	2	\$6,248
Center Street Baffle Box	City of Cape Canaveral	Upgrade first generation boxes to 2nd generation baffle boxes.	Banana	297	9	\$26,136
International Drive Baffle Box	City of Cape Canaveral	Upgrade first generation boxes to 2nd generation baffle boxes.	Banana	443	4	\$34,700
Angel Isles Baffle Box	City of Cape Canaveral	Upgrade first generation boxes to 2nd generation baffle boxes.	Banana	131	3	\$11,528
Central Blvd Baffle Box	City of Cape Canaveral	Upgrade first generation boxes to 2nd generation baffle boxes.	Banana	481	14	\$34,700
Church Street Type II Baffle Box	City of Cocoa	Retrofitting the Church Street discharge point with a Type 2 Nutrient Separating Baffle Box will be the third component of a complete neighborhood restoration and water quality project. The Church Street outfall currently discharges untreated, urban stormwater from a total area of approximately 73 acres.	North IRL	237	29	\$20,856

BEFORE THE BREVARD COUNTY COMMISSION

IN RE: REZONING APPLICATION OF ANTHONY LOPES AND EUGENE LOMANDO

CASE NO: 18PZ00077

SECOND SWORN STATEMENT OF ANTHONY LOPES

Before me the undersigned authority, did appear ANTHONY LOPES, who being duly sworn and deposed did say as follows:

1. That he is an owner of the 1.96 acre property described in the zoning application in Case No. 18PZ0007 as the tax account number being a portion of 3006468 & 3006471.
2. That he appeared before the Board of County Commissioners on September 18, 2018 and spoke on agenda item H.3. under Public Hearings.
3. That the attached Exhibit 1 depicts a copy of Project Documents relating to a Micco Sewer Study is part of his regularly kept business records relating the property that is the subject of this rezoning application.
4. That the attached Exhibit 1, lines 25 and 26, document sewer capacity reserved by Brevard County for the property that is the subject matter of this rezoning application.
5. That Anthony Lopes and his co-owner, Eugene Lomando have paid the required capacity reservation fees to Brevard County for the reservation described in Exhibit 1, lines 25 and 26.

S/ 
ANTHONY LOPES

Sworn to and subscribed before me, the undersigned notary public:



Notary Public

My Commission Expires: 10/11/2022

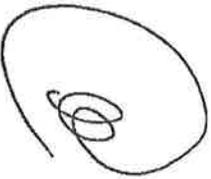


Milco FM Property List
BMEG Project No: 389005

Property No.	Property Owner	Address	Other Address	Tax ID	Building Size (sq ft)	ZONING	Building Type	Restaurants No. of Seats	BQUD EST. FLOW	BQUD ENCS	Percentage of Total
1	Piero, Ronald	5620 Milco Rd		3006336	3,686	AU	Storage	150	1.0	1.0	1.2%
2	Gyrov, Zsolt	5600 Milco Rd		3006399	1,020		SFR	150	1.0	1.0	1.2%
3	AAA Family LTD Partnership	5640 Milco Rd		3006399	4,480	BU-1	Storage	150	1.0	1.0	1.2%
4	Merge Frigo Realty Inc.	5660 Milco Rd		3006399	1,568	BU-1	Office	150	1.0	1.0	1.2%
5	CTS Automotive Inc	5680 Milco Rd		3006399	3,056	BU-2	Auto Shop	150	1.0	1.0	1.2%
6	DHWing Perca LLC	5700 Milco Rd		3006399	4,000	BU-2	Auto Shop	306	2.0	2.0	2.4%
7	Cumberhand Farms Inc.	8930 US 1		3006448	2,400	AU	Gas Station	400	2.7	2.7	3.1%
8	Pegasus Holdings of Vero Beach	1975 Compass Co	5715 Milco Rd	3006577	Vacant	GU		400	2.7	2.7	3.1%
9	Lorch, Leo	8150 US 1	5725 Milco Rd	3006581	1,530	BU-1	Office	0	0.0	0.0	0.0%
10	Vilco Milco LLC	5675 Milco Rd		3006582	5,250	BU-1	Retail	150	1.0	1.0	0.0%
11	Barrfoot Mini Storage & Milco Bay	5655 Milco Rd		3006449	59,976	BU-2	Storage	525	3.5	3.5	4.1%
12	Llanoch, Leo	8130 US 1		3006452	1,831	GU	SFR	150	1.0	1.0	1.2%
13	Timber, Joseph	8250 US 1		3006453	2,503	GU	Auto Shop	150	1.0	1.0	1.2%
14	Straub, Walter	8220 US 1		3010216	3,283	RU-1-11	SFR	150	1.0	1.0	1.2%
15	Parents, Eugene	8300 US 1		3006476	2,388	GU	SFR	150	1.0	1.0	1.2%
16	Stephanson, Dale	8330 US 1		3006540	1,640	RU-1-7	SFR	150	1.0	1.0	1.2%
17	Derrick, Russell W	8564 Lindsey Rd		3006592	1,432	RU-1-7	SFR	150	1.0	1.0	1.2%
18	Hippe, Christopher	8300 US 1		3006593	1,200	RU-1-7	SFR	150	1.0	1.0	1.2%
19	Holmes, Josephine	8330 US 1		3006622	2,886	GU	SFR	150	1.0	1.0	1.2%
20	Varnon, Ray	5880 Garratts Rd		3006593	Vacant	BU-1		0	0.0	0.0	0.0%
21	Cumberhand Farms Inc	8070 US 1		3006593	2,600	BU-1	Bar	63	0.0	0.0	0.0%
22	Re8 Coal Inc	8400 US 1		3006622	2,504	BU-1	SFR	150	1.0	1.0	1.2%
23	Turquois, Rose	8420 US 1		3006622	2,504	BU-1	SFR	150	1.0	1.0	1.2%
24	Douglas, Bonnie F Trustee	8440 US 1		3010260	1,326	RU-1-7	SFR	150	1.0	1.0	1.2%
25	Lofranco, Eugene R	8480 US 1		3006471	1,336	BU-1	Duplex	150	1.0	1.0	1.2%
26	Lofranco, Eugene R	8480 US 1		3006471	1,336	BU-1	Duplex	150	1.0	1.0	1.2%
Summit Landings Properties, LLC											
27	John Bayard, Inc.	8520 US 1		3006489	5,720	BU-1	Retail	40	2.0	2.0	2.3%
28	John Bayard, Inc.	8525 US 1		3006489	5,720	BU-1	Retail	40	2.0	2.0	2.3%
29	AAA Family LTD Partnership	8540 US 1	8485 US 1	3006466	3,753	BU-2	Marina	592	10.7	10.7	12.4%
30	McOwen Kristine	8560 US 1	8536 US 1	3006479	6,840	BU-2	Warehouse	150	1.0	1.0	1.2%
31	Brider, John	8560 US 1		3006481	984	GU	SFR	150	1.0	1.0	1.2%
32	Abbott Manufactured Housing Inc.	8560 US 1		3006482	960	GU	SFR	150	1.0	1.0	1.2%
33	Abbott Manufactured Housing Inc.	N/A	N. of 8070 US 1	3006383	Vacant			0	0.0	0.0	0.0%
34	Sebastian InterMarine	N/A	W. of 290 Barrfoot	3010400	Vacant			0	0.0	0.0	0.0%
Notes								78	3,120	20.8	24.2%
1) 150 gpd/ENC								Total (gpd)	12,893	86.0	100.0%
2) Restaurant: 40 gpd/feet								Average Flow (gpm)	9.0		
3) Other Commercial: 0.1 gpd/1,000 sf								Peaking Factor	3		
								Peak Flow (gpm)	26.9		

4/19/2018

ROS/GNS
2/2/19



1) Project Documents and Permit Status: Milco Sewer Study V4.03 Calculations/Appendix FM PROPERTY LIST - Summary



November 29, 2018

Ms. Gail Daberko and members of the Summit Cove HOA:

I would like to, again, thank you for the opportunity to come before the Summit Cove homeowners on November 27th, 2018 to present the concept plan for a proposed hotel project on the Anthony Lopes and Gene Lomando property abutting Summit Cove access drive on the north. Your members had many good questions and raised several issues that I promised to bring back to my clients for their consideration.

I am pleased to report that my clients reacted favorably to all your concerns. My notes relating to your concerns appear below, along with my client's responses and commitments to modify the Binding Development Plan to meet those concerns:

1. An 8-foot opaque fence in place of a 6-foot fence on the south and west portions of the property abutting the Summit Cove access drive and Association recreation area

My Client agrees to include this condition in the Binding Development Plan.

2. Working with Summit Cove on the west and south side of the project on landscaping to avoid using plants that drop leaves or branches on the Summit Cove property, in particular, the access drive; with Summit Cove Association consent, some landscaping can be placed on Association property where desirable.

My client agrees to include this condition in the Binding Development Plan.

3. Would the owners be willing to install a gate system on the access drive toward the front of the Summit Cove landscaped median (currently in existence), along with a turnaround similar those used in gate communities with associated paving in that area.

My client agrees to include this condition in the Binding Development Plan.

4. A few folks asked if turn lanes would be built on U.S. 1 to get traffic to the hotel site, given the questioners perception of danger with the current access configuration.

This will be determined by County and Florida Dept. of Transportation requirements which my clients will comply with.

5. Concerns about conversion of any hotel to weekly rentals or apartments were raised.

My client agrees to include a BDP condition requiring any such change to undergo the BDP review process required by the County code.

MAIN OFFICE
1990 W. NEW HAVEN AVE.
SECOND FLOOR
MELBOURNE, FL 32904
321.255.2332

USLEGALTEAM.COM



6. Concerns about gopher tortoises and eagles' nests were raised.

My client will agree to a BDP condition requiring compliance with any endangered species regulations applicable to the site.

7. One person raised the possibility that the "Blue House" on the property was on the national historic registry.

My client is aware of the history of the house, but indicates the house is not on the National Historic Registry.

8. Will your clients support a request that the County Commission use Tourist Development Tax funds to expand the Barefoot Bay sewer system capacity in order to provide sewer service for new growth and connection of existing private package plants to the Barefoot Bay system in the Micco area?

Yes.

Once again, I thank you for the courtesy shown by your members at the meeting on November 27th, and for the opportunity to address the concerns raised at that meeting.

Respectfully,



Scott L. Knox, Esq.



Prepared by: Scott L. Knox, Esq.
Address: 1990 W. New Haven Ave
Melbourne, FL 32904

BINDING DEVELOPMENT PLAN

THIS BINDING DEVELOPMENT PLAN AGREEMENT, entered into this ____ day of _____, 201____ between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Anthony Lopes and Eugene Lomando (referred to as "Developer/Owners")

RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner has requested a BU-1 zoning classification for the property as well as Community Commercial Land Use designation allowing the commercial development of the property which may include the development of a hotel; and

WHEREAS, as part of its plan for development of the Property, Developer/Owners wish to mitigate potential negative impacts on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owners, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.
2. Upon receipt of Community Commercial Land Use and BU-1 Zoning, should the Owners decide to develop the property as a hotel site, the Developer/Owners agree to the following conditions:
 - a. the Developer/Owners agree to construct the hotel in substantially the same configuration and location shown on the Concept Plan attached hereto as Exhibit B and in conformance to County regulations;
 - b. The height of the hotel shall not exceed three stories;
 - c. The maximum number of hotel rooms shall not exceed 70 rooms;
 - d. The Developer/Owners agree to apply for any site plan approval required by County regulations.

e. The Developer/Owners agree to provide such vegetative or other buffers on the south and north side of the property as may be required by Brevard County Land Development regulations.

f. The Developer/Owners agree to install an 8-foot opaque fence where shown on the concept plan or, alternatively, an 8-foot wall where required by applicable county code regulations.

g. The Developer/Owners agree to work with Summit Cove on the west and south side of the project to provide landscaping which will avoid the use of plants that drop leaves or branches on the Summit Cove property, in particular, the access drive. In addition, with Summit Cove Homeowners Association consent, the Developer/Owner agrees to place some buffering landscaping on Association property where desirable.

h. The Developer/Owners agree to install a gate system on the access drive toward the front of the Summit Cove landscaped median (currently in existence), along with a turnaround similar those used in gate communities with associated paving in that area. Developer further agrees that the gate system will be designed to conform to applicable engineering design standards for such systems.

i. The Developer/Owners agree to limit access to the hotel site to U.S. Highway 1. The Developer/Owners further agree to comply with any requirement for the construction of turn lanes on U.S. 1 serving the hotel site if those turn lanes are required by the Florida Department of Transportation or County regulations.

j. The Developer/Owners agree that any change of use from a hotel to a weekly rental or apartments will require a revision to the Binding Development Plan following procedures established in the Brevard County Code of Ordinances.

k. The Developer/Owners agree to comply with all environmental and endangered species regulations applicable to the hotel site.

3. The Developers/Owners shall comply with all regulations and ordinances of Brevard County, Florida. The Developer/Owners further agree that the County shall have the authority to enforce the provisions of this Binding Development Plan, including the conditions set forth in section 2 above.

4. Nothing in this Binding Development Plan shall prevent the Developer/Owners from developing the property for other uses permitted under BU-1 zoning should they decide not to proceed with the development of a hotel on the property.

5. This Agreement constitutes Developer's/Owners' agreement to meet the foregoing additional standards or restrictions in developing the Property.

6. This agreement provides no vested rights against future changes to the Comprehensive Plan or land development regulations as they may apply to this Property.

7. Developer/Owners, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in the Public Records of Brevard County, Florida.

8. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on December 6, 2018.

9. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

10. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as it may be amended.

11. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owners may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 10 above.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

(Signatures appear on the next page)

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA
2725 Judge Fran Jamieson Way
Viera, FL 32940

Scott Ellis, Clerk
(SEAL)

Kristine Isnardi, Chair
(As approved by the Board on _____)

WITNESSES 1:

DEVELOPER/OWNERS

Anthony Lopes

(Witness Name typed or printed) (Address)

Eugene Lomando

WITNESS 2:

(Witness Name typed or printed) (Name typed, printed or stamped)

STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____,
by Anthony Lopes and Eugene Lomando who are personally known to me or who produced a Florida
Driver's License as identification.

Notary Public (Name typed, printed or stamped)

My commission expires

SEAL _____
Commission No.:

From: [Sterk, Erin](#)
To: [Knox, Scott L](#)
Cc: [Jones, Jennifer](#)
Subject: FW: LOPES/PROPOSED HOTEL DEV MICCO
Date: Wednesday, December 5, 2018 12:40:36 PM

Mr. Knox,

Please find the feedback from the Engineering team regarding the requirements for the construction of a gated entrance at Summit Cove.

From: Holman, Lauren
Sent: Tuesday, December 4, 2018 3:20 PM
To: Sterk, Erin
Cc: Gerena, Rachel
Subject: RE: LOPES/PROPOSED HOTEL DEV MICCO

Hi Erin,

To add a gated entrance at Summit Cove, the entrance would need to meet the requirements of Brevard County Land Development - Exhibit 12 or the entrance design would need to provide adequate length for a truck with landscape trailer to completely pull off of US 1 and provide for the turning radius for the truck with landscape trailer to turn around prior to the gate. Autoturn and/or turning templates would need to show that all wheels stay within the entrance pavement.

Thanks,

Lauren M. Holman, PE
Brevard County Public Works Engineering Program
2725 Judge Fran Jamieson Way, Bldg A
Viera, FL 32940
Ph. 321-637-5437, Ext# 52301

From: Sterk, Erin
Sent: Tuesday, December 4, 2018 12:38 PM
To: Holman, Lauren
Subject: FW: LOPES/PROPOSED HOTEL DEV MICCO

Lauren,

An applicant going through the rezoning public hearing process hopes to make improvements to provide a gated entrance to an adjacent developed property, Summit Cove in the Micco area. The entrance itself is on Tax Account # 3009737.

Could you advise whether the engineering standards codified in the attached Exhibit 12 of 62-2801 are applicable in a condo situation, outside of a formal subdivision, or whether there are alternative design standards that could be evaluated by the applicant and proposed?

Thanks,

Erin

From: Scott Knox [<mailto:sknox@uslegalteam.com>]
Sent: Monday, December 3, 2018 4:37 PM
To: Sterk, Erin
Cc: 'Anthony Lopes'; 'Eugene Lomando'
Subject: RE: LOPES/PROPOSED HOTEL DEV MICCO

Erin:

I will pass on your position to my clients. The folks on the north have not appeared in opposition or contacted my clients with any issue concerning the proposal. As requested by the Commissioners, we met with the Summit Cove HOA to address the specific concerns they raised at the P&Z and BCC hearings, as well as the HOA meeting I attended.

Summit Cove's entryway ownership appears on the Property Appraiser's maps as being 63 + feet in width at the interface with US 1 and 59 feet in perpendicular width along the portion of the entrance where the gate would be located. My client has put the gate commitment in writing to the HOA and I would certainly recommend to them that the letter to the HOA be attached to the BDP. But I would point out that the 61 foot width requirement could be accomplished by easement, variance, or adding 2 feet of HOA property from areas owned by HOA to the east of the existing 40' wide paved area.

Of course the foregoing options to widen the access assume that the Exhibit 12 gate configuration you reference is applicable to a condominium, as opposed to a gated subdivision which is specifically what Exhibit 12 pertains to. I would note that, as a condominium, Summit Cove does not fall within the definition of a subdivision and, in my opinion, Exhibit 12 does not apply at all.

That said, I will advise my client to remain committed to putting in the gate and the associated paving as indicated in the letter I copied to you. Any engineer retained to design the gate system will have to design that system in accordance with applicable engineering design standards. I will recommend to my client that we add such language to the BDP to meet your concerns.

As to your concern about a BDP setting forth improvements for abutting property, if the BDB vests the County with authority to enforce the BDP commitments the situation is no different than deed restrictions granting the County the authority (standing), though not the obligation, to enforce restrictions on private property in which the county has no ownership or regulatory involvement—a provision that is often found in deed restrictions. I will recommend to my client that the BDP be modified to grant that authority to the County.

Scott Knox, Esq.
1990 W. New Haven Ave, Second Floor
Melbourne, FL 32904
Tel: 321.255.2332
Fax: 321.255.2351



Scott Knox, Attorney at Law
1990 W New Haven Ave Ste. 201
Melbourne, Florida 32904
(321) 255-2332
(321) 255-2351 fax



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From: Sterk, Erin <Erin.Sterk@brevardfl.gov>
Sent: Monday, December 3, 2018 11:49 AM
To: Scott Knox <sknox@uslegalteam.com>
Cc: Julie S. Hochard <Julie@uslegalteam.com>; Jones, Jennifer <jennifer.jones@brevardfl.gov>; Ragain, Rebecca <Rebecca.Ragain@brevardfl.gov>
Subject: RE: LOPES/PROPOSED HOTEL DEV MICCO

Mr. Knox,

Thank you for submitting the attached letter to the Summit Cove HOA. While your letter speaks to additional conditions being incorporated into the draft BDP (attached) that we have on file for this application, we have not yet received those conditions memorialized in a BDP draft for the BCC's consideration.

Additionally, in review of the attached, I have the following comments:

- Concern #1 - A commercial development, when constructed adjacent to residential zoning, is required to be separated by a WALL, rather than a FENCE. The zoning code would allow for that wall to be a minimum of 6' high and a maximum of 10' high, or 12' with a BDP. Please be aware of that when memorializing commitments regarding separation. A BDP cannot be used to waive code requirements.

- Concern #3 – A BDP cannot be utilized to provide commitments regarding improvements on adjacent properties. Additionally, in review of our requirements for gated entrances, I will call your attention to Exhibit 12 in the subdivision code, which demonstrates what is necessary for the engineering of such entrances. At a first glance at an aerial, I believe the pavements width at the Summit Cove entrance is 40' or so. The regulations call for a minimum of 61' total pavement width. Additionally, the median appears to currently be less than 10' wide when the code calls for it to be a minimum of 22' wide. Please be aware that the entrance today cannot support the revision to a gated entrance without a significant overhaul. Exhibit 12 is attached and can be found here:

https://library.municode.com/fl/brevard_county/codes/code_of_ordinances?nodeId=COORBRCOFLVOII_CH62LADERE_ARTVIISUPL_DIV1GE_S62-2801DERUCO

Please advise when you anticipate submitting the revised draft BDP with those commitments so that staff can evaluate the language.

Also, when the Board last heard this item, they directed the applicants to have a meeting with the neighbors. I have documentation of the meeting with the Summit Cove HOA in the file, but do not have any information about whether the abutting property owners to the north, the River Grove Mobile Home village, was contacted, met with, etc. and whether any conditions meeting their concerns are planned to be incorporated into the BDP. **Please advise whether we are waiting on additional information regarding contact with those neighbors.**

Thank you,
Erin

From: Julie S. Hochard [<mailto:Julie@uslegalteam.com>]
Sent: Thursday, November 29, 2018 11:41 AM
To: Commissioner, D3; Sterk, Erin; Jones, Jennifer
Cc: Scott Knox
Subject: LOPES/PROPOSED HOTEL DEV MICCO

Good morning,

Please find attached the letter that was sent via email to the board members of the Summit Cove HOA this morning.

Thank you,
Julie



Julie S. Hochard, Legal Assistant to Scott L. Knox
1990 W New Haven Ave., Ste. 201

Melbourne, Florida 32904

(321) 255-2332

(321) 255-2351 fax



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BOARD OF COUNTY COMMISSIONERS

Rita Pritchett, District 1 Commissioner

2000 South Washington Avenue, Ste. 2

Titusville, FL 32780

(321) 607-6901

D1.commissioner@brevardfl.gov

Planning and Development
Zoning Meeting December 6, 2018
Lopes (18PZ00077)

Commissioner Pritchett met with Attorney Scott Knox, who represents Anthony Lopes and Eugene Lomando, on December 3, 2018. Have met with the neighbors and have revised BDP to include suggestions by neighbors. Will have sewer hookup. Rooms have been reduced from 100 to 70, gone from four to three stories, plan to install 8 foot fence and landscaping buffer, reduced entrances from two to one off of US1 and moved parking spaces to the other side of hotel away from homes. In addition applicants have agreed to install a gate on Summit Cove Road, as requested by the neighbors.



BOARD OF COUNTY COMMISSIONERS

Rita Pritchett, District 1 Commissioner

2000 South Washington Avenue, Ste. 2

Titusville, FL 32780

(321) 607-6901

D1.commissioner@brevardfl.gov

From: [Sterk, Erin](#)
To: [Jones, Jennifer](#)
Subject: FW: Micco Hotel
Date: Wednesday, December 5, 2018 12:22:24 PM

Jen, please add to Board's package.

From: Prasad, Billy
Sent: Wednesday, December 5, 2018 12:15 PM
To: Sterk, Erin
Subject: FW: Micco Hotel

Ms. Sterk,

Please include the following communication in the files of H6, H10, and H11.

Thank you,

Billy M. Prasad
Chief of Staff to Commissioner Tobia, District 3
Billy.Prasad@BrevardFL.gov
(321) 633-2075
2539 Palm Bay Rd.
Suite 4
Palm Bay, FL 32905

From: Scott Knox [<mailto:sknox@uslegalteam.com>]
Sent: Wednesday, December 5, 2018 12:08 PM
To: Prasad, Billy
Subject: RE: Micco Hotel

Billy:

No, I am going to request a tabling of the Happy Landings item. Is there a reason I should be thinking about tabling the hotel item?

Scott L. Knox, Esq.
Wideman Malek PL
1990 W. New Haven Ave., Second Floor
Melbourne, FL 32904
Tel. 321.255.2332
Fax 321.255.2351
sknox@uslegalteam.com



Scott Knox, Attorney at Law
1990 W New Haven Ave Ste. 201
Melbourne, Florida 32904
(321) 255-2332
(321) 255-2351 fax



Member, International Society of Primerus Law Firms

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From: Prasad, Billy <Billy.Prasad@brevardfl.gov>
Sent: Wednesday, December 5, 2018 12:06 PM
To: Scott Knox <sknox@uslegalteam.com>
Subject: Micco Hotel

Mr. Knox,

Do you have any intention of requesting to table the Micco Hotel rezoning/FLU amendment request at tomorrow's meeting?

Best regards,

Billy M. Prasad
Chief of Staff to Commissioner Tobia, District 3
Billy.Prasad@BrevardFL.gov
(321) 633-2075
2539 Palm Bay Rd.
Suite 4

Palm Bay, FL 32905

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From: [Sterk, Erin](#)
To: [Tobia, John](#)
Cc: [Jones, Jennifer](#)
Subject: RE: Meeting Disclosure
Date: Wednesday, December 5, 2018 12:44:31 PM

Commissioner Tobia,

We will add your disclosures to the Board's package.

Thank you,
Erin

From: Tobia, John
Sent: Wednesday, December 5, 2018 12:44 PM
To: Sterk, Erin
Subject: Meeting Disclosure

To: Erin Sterk, Planning & Zoning Manager
From: John Tobia, Brevard County Commissioner, District 3
Re: Meeting Disclosure

Ms. Sterk:

In regards to the upcoming agenda item H 10 & 11 (Anthony Lopes and Eugene R. Lomando) for the Planning & Zoning meeting on December 6, 2018, please be advised in advance that a meeting that took place on December 4th, at 10:30 AM at Commissioner Tobia's office, located at:

2539 Palm Bay Rd. NE
Ste. 4
Palm Bay, FL 32908

The parties present were Commissioner Tobia, Daryl Leonard and Gail Daberko. This meeting lasted approximately thirty minutes, during which the above individuals voiced their concerns regarding the item.



John Tobia
Commissioner
Brevard County, District 3
[321.633.2075](tel:321.633.2075) Fax: [321.633.2196](tel:321.633.2196) | John.Tobia@brevardfl.gov
2539 Palm Bay Road NE Suite 4
Palm Bay, FL 32905

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.



Bryan A. Lober, Commissioner, District 2
2575 N. Courtenay Pkwy, Suite 200
Merritt Island, FL 32953

Telephone: (321) 454-6601
Fax: (321) 454-6602
www.brevardcounty.us
D2.commissioner@brevardfl.gov

Planning and Development
Zoning Meeting December 6, 2018

Lopes and Lomando (18PZ00076, 18PZ00077)

- On December 3, 2018, District 2 staff met with Attorney Scott Knox, who represents the applicant. Discussion included the following: building height; impact on neighborhood; ingress/egress; perimeter enhancements; and sewer capacity.

District 2 Includes

Cocoa • Kennedy Space Center • Merritt Island • Port Canaveral • Cape Canaveral • Avon by the Sea • Cocoa Beach • Snug Harbor • Patrick AFB • Rockledge

revision presented at
12/6/2018 BCC

e. The Developer/Owners agree to provide such vegetative or other buffers on the south and north side of the property as may be required by Brevard County Land Development regulations

f. The Developer/Owners agree to install an 8-foot opaque fence where shown on the concept plan or, alternatively, an 8-foot wall where a wall is required by applicable county code regulations.

g. The Developer/Owners agree to work with Summit Cove on the west and south side of the project to provide landscaping which will avoid the use of plants that drop leaves or branches on the Summit Cove property, in particular, the access drive. In addition, with Summit Cove Homeowners Association consent, the Developer/Owner agrees to place some buffering landscaping on Association property where desirable.

h. The Developer/Owners agree to install a gate system on the access drive toward the front of the Summit Cove landscaped median (currently in existence), along with a turnaround similar those used in gate communities with associated paving in that area. Developer further agrees that the gate system will be designed with a length adequate to allow appropriate turning movements by a truck with a landscape trailer. Turnaround templates will be provided in the application for site plan approval.

i. The Developer/Owners agree to limit access to the hotel site to U.S. Highway 1. The Developer/Owners further agree to comply with any requirement for the construction of turn lanes on U.S. 1 serving the hotel site if those turn lanes are required by the Florida Department of Transportation or County regulations.

j. The Developer/Owners agree that any change of use from a hotel to a facility allowing stays of over 90 days or apartments will require a revision to the Binding Development Plan following procedures established in the Brevard County Code of Ordinances.

k. The Developer/Owners agree to comply with all environmental and endangered species regulations applicable to the hotel site.

~~l. The Developer/Owners agree to limit access to the hotel site to U.S. Highway 1.~~

3. The Developers/Owners shall comply with all regulations and ordinances of Brevard County, Florida. The Developer/Owners further agree that the County shall have the authority to enforce the provisions of this Binding Development Plan, including the conditions set forth in section 2 above.

4. Nothing in this Binding Development Plan shall prevent the Developer/Owners from developing the property for other uses permitted under BU-1 zoning should they decide not to proceed with the development of a hotel on the property.

5. This Agreement constitutes Developer's/Owners' agreement to meet the foregoing additional standards or restrictions in developing the Property.

6. This agreement provides no vested rights against future changes to the Comprehensive Plan or land development regulations as they may apply to this Property.

Prepared by: Scott L. Knox, Esq.
Address: 1990 W. New Haven Ave
Melbourne, FL 32904

BINDING DEVELOPMENT PLAN

THIS BINDING DEVELOPMENT PLAN AGREEMENT, entered this ____ day of _____, 201 ____ between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Anthony Lopes and Eugene Lomando (referred to as "Developer/Owners")

RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner has requested a BU-1 zoning classification for the property as well as Community Commercial Land Use designation allowing the commercial development of the property which may include the development of a hotel; and

WHEREAS, as part of its plan for development of the Property, Developer/Owners wish to mitigate potential negative impacts on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owners, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.
2. Upon receipt of Community Commercial Land Use and BU-1 Zoning, should the Owners decide to develop the property as a hotel site, the Developer/Owners agree to the following conditions:
 - a. the Developer/Owners agree to construct the hotel in substantially the same configuration and location shown on the Concept Plan attached hereto as Exhibit B and in conformance to County regulations. Where the Concept Plan conflicts with County code, the code will apply. Nothing herein constitutes a waiver to code requirements or a vesting of rights;
 - b. The height of the hotel shall not exceed three stories;
 - c. The maximum number of hotel rooms shall not exceed 70 rooms;
 - d. The Developer/Owners agree to apply for any site plan approval required by County regulations.

e. The Developer/Owners agree to provide such vegetative or other buffers as may be required by Brevard County Land Development regulations

f. The Developer/Owners agree to install an 8-foot opaque fence where shown on the concept plan or, alternatively, an 8-foot wall where a wall is required by applicable county code regulations.

g. The Developer/Owners agree to provide landscaping which will avoid the use of plants that drop excessive leaves or palm branches on the Summit Cove access drive. In addition, at least 45 days before filing an application for site plan approval for a hotel and with Summit Cove Homeowners Association (HOA) consent, the Developer/Owner shall offer to deliver the Summit Cove Homeowners Association the landscaping plants shown on Exhibit C for use by the HOA on Association property. At the time or before the submittal of a hotel site plan, the Developer/Owner shall present to the County either (1) a delivery receipt or invoice indicating either HOA consent to the delivery or the actual delivery of the plants to an HOA board member or officer at HOA property or (2) a delivered email or receipt for delivery of a certified letter addressed to the HOA President, Vice-President or other officer listed in the online corporate records kept by the Florida Secretary of State, division of corporations (hereafter called "the state's online corporate records") showing that the offer was made. If the HOA refuses to consent to the delivery of the plants or does not respond to the offer within the 45 day period this BDP condition shall be deemed null and void.

h. At least forty-five (45) days prior to the submittal of a hotel site plan, the Developer/Owners will offer the HOA, through its President, Vice-President or other officer shown in the state's online corporate records, to file a permit application with Brevard County for the installation of the type of gate system set forth in Exhibit D, attached hereto provided the consent of the HOA is received within that 45 day period. If that HOA consent is given within forty-five (45) days of receipt of the Developer/Owner offer, the Developer/Owner shall install a county-permitted gate system on the access drive toward the front of the Summit Cove landscaped median (currently in existence), along with a turnaround similar those used in gated communities and associated paving in that turnaround area. Developer agrees that the gate system will be designed with a length adequate to allow appropriate turning movements by a truck with a landscape trailer. At the time of submittal of a hotel site plan for approval, the Developer/Owner shall present to the County a gate system/turnaround template and either (1) a delivered email or receipt for a certified letter delivered to the HOA offering to install a county-approved gate system, if no HOA consent has been received, or (2) an email or other writing from the HOA consenting to the installation of the gate system on the HOA-owned access drive to Summit Cove. If the HOA refuses to consent to approve installation of a county-approved gate system or does not respond to the offer within the 45 day period, this BDP condition shall be deemed null and void.

i. The Developer/Owners agree to limit access to the hotel site to U.S. Highway 1. The Developer/Owners further agree to comply with any requirement for the construction of turn lanes on U.S. 1 serving the hotel site if those turn lanes are required by the Florida Department of Transportation or County regulations.

j. The Developer/Owners agree that any change of use from a hotel to a facility allowing stays of over 90 days or apartments will require a revision to the Binding Development Plan following procedures established in the Brevard County Code of Ordinances.

k. The Developer/Owners agree to comply with all environmental and endangered species regulations applicable to the hotel site.

3. The Developers/Owners shall comply with all regulations and ordinances of Brevard County, Florida. The Developer/Owners further agree that the County shall have the authority to enforce the provisions of this Binding Development Plan, including the conditions set forth in section 2 above.

4. Nothing in this Binding Development Plan shall prevent the Developer/Owners from developing the property for other uses permitted under BU-1 zoning should they decide not to proceed with the development of a hotel on the property.

5. This Agreement constitutes Developer's/Owners' agreement to meet the foregoing additional standards or restrictions in developing the Property.

6. This agreement provides no vested rights against future changes to the Comprehensive Plan or land development regulations as they may apply to this Property.

7. Developer/Owners, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in the Public Records of Brevard County, Florida.

8. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on _____, 2019.

9. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

10. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as it may be amended.

11. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owners may implement the approved use(s),

unless stated otherwise in this BDP, provided the inability to obtain the consent required in 2g and 2h above, where applied for in good faith and denied shall not require implementation of the landscaping on Summit Cove Homeowner's Association property required in 2g or the installation of the gate system required in 2g. The failure to timely comply with any mandatory condition is a violation of this Agreement constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 10 above.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA
2725 Judge Fran Jamieson Way
Viera, FL 32940

Scott Ellis, Clerk
(SEAL)

BY: _____
Kristine Isnardi, Chair
(As approved by the Board on _____)

WITNESSES 1:

DEVELOPER/OWNERS

Anthony Lopes

(Witness Name typed or printed) (Address)

Eugene Lomando

WITNESS 2:

(Witness Name typed or printed) (Name typed, printed or stamped)

STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Anthony Lopes and Eugene Lomando who are personally known to me or who produced a Florida Driver's License as identification.

Notary Public (Name typed, printed or stamped)

My commission expires SEAL _____
Commission No.:

(Notary Acknowledgement for County on next page 5)

STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this ____ day of _____, 20_____,
by _____, __ chair or ___ vice-chair of the Brevard County Board of County
Commissioners who are personally known to me or who produced a Florida Driver's License as
identification.

Notary Public (Name typed, printed or stamped)

My commission expires SEAL _____
Commission No.:

EXHIBIT C

LIST OF PLANTS

Five (5) trees at least 10 feet high

Ten (10) trees at least 7 feet high

Twenty-five (25) shrubs of the same type to be used by the Developer on the hotel site.

EXHIBIT D

GATE SYSTEM

Prepared by: Scott L. Knox, Esq.
Address: 1990 W. New Haven Ave
Melbourne, FL 32904

BINDING DEVELOPMENT PLAN

THIS BINDING DEVELOPMENT PLAN AGREEMENT, entered this ____ day of _____, 201 ____ between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Anthony Lopes and Eugene Lomando (referred to as "Developer/Owners")

RECITALS

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WHEREAS, Developer/Owner has requested a BU-1 zoning classification for the property as well as Community Commercial Land Use designation allowing the commercial development of the property which may include the development of a hotel; and

WHEREAS, as part of its plan for development of the Property, Developer/Owners wish to mitigate potential negative impacts on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owners, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.
2. Upon receipt of Community Commercial Land Use and BU-1 Zoning, should the Owners decide to develop the property as a hotel site, the Developer/Owners agree to the following conditions:
 - a. the Developer/Owners agree to construct the hotel in substantially the same configuration and location shown on the Concept Plan attached hereto as Exhibit B and in conformance to County regulations. Where the Concept Plan conflicts with County code, the code will apply. Nothing herein constitutes a waiver to code requirements or a vesting of rights;
 - b. The height of the hotel shall not exceed three stories;
 - c. The maximum number of hotel rooms shall not exceed 70 rooms;
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e. The Developer/Owners agree to provide such vegetative or other buffers as may be required by Brevard County Land Development regulations

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h. At least forty-five (45) days prior to the submittal of a hotel site plan, the Developer/Owners will offer the HOA, through its President, Vice-President or other officer shown in the state's online corporate records, to file a permit application with Brevard County for the installation of the type of gate system set forth in Exhibit D, attached hereto provided the consent of the HOA is received within that 45 day period. If that HOA consent is given within forty-five (45) days of receipt of the Developer/Owner offer, the Developer/Owner shall install a county-permitted gate system on the access drive toward the front of the Summit Cove landscaped median (currently in existence), along with a turnaround similar those used in gated communities and associated paving in that turnaround area. Developer agrees that the gate system will be designed with a length adequate to allow appropriate turning movements by a truck with a landscape trailer. The gate turnaround template or design submitted with by the Developer/Owner with the application for site plan approval shall be designed to substantially conform to applicable design standards approved by the County for gated residential communities in the portion of the Viera Development of Regional Impact located west of I-95.

At the time of submittal of a hotel site plan for approval, the Developer/Owner shall present to the County a gate system/turnaround template and either (1) a delivered email or receipt for a certified letter delivered to the HOA offering to install a county-approved gate system, if no HOA consent has been received, or (2) an email or other writing from the HOA consenting to the installation of the gate system on the HOA-owned access drive to Summit Cove. If the HOA refuses to consent to approve installation of a county-approved gate system or does not respond to the offer within the 45 day period, this BDP condition shall be deemed null and void.

i. The Developer/Owners agree to limit access to the hotel site to U.S. Highway 1. The Developer/Owners further agree to comply with any requirement for the construction of turn lanes on U.S. 1 serving the hotel site if those turn lanes are required by the Florida Department of Transportation or County regulations.

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8. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on _____, 2019.

9. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

10. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as it may be amended.

11. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owners may implement the approved use(s), unless stated otherwise in this BDP, provided the inability to obtain the consent required in 2g and 2h above, where applied for in good faith and denied shall not require implementation of the landscaping on Summit Cove Homeowner's Association property required in 2g or the installation of the gate system required in 2g. The failure to timely comply with any mandatory condition is a violation of this Agreement constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 10 above.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA
2725 Judge Fran Jamieson Way
Viera, FL 32940

Scott Ellis, Clerk
(SEAL)

BY: _____
Kristine Isnardi, Chair
(As approved by the Board on _____)

WITNESSES 1:

DEVELOPER/OWNERS

Anthony Lopes

(Witness Name typed or printed) (Address)

Eugene Lomando

WITNESS 2:

(Witness Name typed or printed) (Name typed, printed or stamped)

STATE OF FLORIDA §

COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this ____ day of _____, 20_____, by Anthony Lopes and Eugene Lomando who are personally known to me or who produced a Florida Driver's License as identification.

Notary Public (Name typed, printed or stamped)

My commission expires SEAL _____
Commission No.:

(Notary Acknowledgement for County on next page 5)

STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this ____ day of _____, 20_____, by _____, __ chair or ___ vice-chair of the Brevard County Board of County Commissioners who are personally known to me or who produced a Florida Driver's License as identification.

Notary Public (Name typed, printed or stamped)

My commission expires SEAL _____
Commission No.:

EXHIBIT C

LIST OF PLANTS

Five (5) trees at least 10 feet high

Ten (10) trees at least 7 feet high

Twenty-five (25) shrubs of the same type to be used by the Developer on the hotel site.

EXHIBIT D

GATE SYSTEM

Gates with motors and a minimum boom arm length sufficient to provide a barrier for one lane of ingress and one lane of egress traffic on the Summit Cove access drive. Gate arms will be equipped with controls to allow remote operation by Summit Cove residents.

The gate shall resemble the gate shown below and the gate/turnaround system shall conform to the design criteria set forth in the BDP.

