



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

H.7.

8/5/2021

### Subject:

Timothy and Diane Lystlund request a Small Scale Comprehensive Plan Amendment (21S.03) to change the Future Land Use designation from RES 1 to RES 2. (21PZ00026) (Tax Account 30009665) (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 a Small Scale Comprehensive Plan Amendment (21S.03) to change the Future Land Use designation from RES 1 (Residential 1) to RES 2 (Residential 2).

### Summary Explanation and Background:

The applicant is requesting to amend the FLU (Future Land Use) designation on 0.55 acres of vacant, undeveloped land from RES 1 (Residential 1) to RES 2 (Residential 2). A companion rezoning application has been submitted for a zoning change from RU-1-7 (Single-Family Residential) to SR (Suburban Residential).

Existing development of the surrounding area is generally described as single-family homes on lots that are undersized to meet the one dwelling unit per acre density allowed by RES 1. The applicant intends to build one, single-family home, and a FLU designation of RES 2 is necessary to legitimize the parcel to meet development requirements.

The general area is residential in character with single-family homes on one-half acre lots or smaller along both the east and west sides of Hibiscus Avenue. Although all of the lots along Hibiscus Avenue have RES 1 FLU and are undersized to meet requirements for development, all have been developed as single-family residential with the exception of the subject parcel.

The Board may wish to consider if the request to introduce RES 2 is consistent with the Comprehensive Plan and compatible with the surrounding area.

The Board may wish to consider Chapter 2021-195, Laws of Florida, and the potential delay until the following elements are incorporated into the Comprehensive Plan.

1. The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

2. The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.
3. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.
4. The right of a property owner to dispose of his or her property through sale or gift.

At a minimum, the above listed rights should be considered as part of the Board's decision.

On July 12, 2021, the Local Planning Agency heard the request and unanimously recommended approval.

**Clerk to the Board Instructions:**

Upon receipt of resolution, please execute and return to Planning and Development.

ORDINANCE NO. 21- \_\_\_\_

AN ORDINANCE AMENDING ARTICLE III, CHAPTER 62, OF THE CODE OF ORDINANCES OF BREVARD COUNTY, ENTITLED "THE 1988 COMPREHENSIVE PLAN", SETTING FORTH THE THIRD SMALL SCALE PLAN AMENDMENT OF 2021, 21S.03, TO THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN; AMENDING SECTION 62-501 ENTITLED CONTENTS OF THE PLAN; SPECIFICALLY AMENDING SECTION 62-501, PART XVI (E), ENTITLED THE FUTURE LAND USE MAP APPENDIX; AND PROVISIONS WHICH REQUIRE AMENDMENT TO MAINTAIN INTERNAL CONSISTENCY WITH THESE AMENDMENTS; PROVIDING LEGAL STATUS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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

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

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

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

WHEREAS, Brevard County initiated amendments and accepted application for small scale amendments to the Comprehensive Plan for adoption in calendar year 2021 as Plan Amendment 21S.03; and

WHEREAS, Brevard County established Technical Advisory Groups consisting of County technical employees grouped according to their operational relationship to the subject of a plan element or sub-element being prepared or amended, and these Technical Advisory Groups have provided technical expertise for the Amendment 21S.03; and

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

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

WHEREAS, on July 12, 2021, the Brevard County Local Planning Agency held a duly noticed public hearing on Plan Amendment 21S.03, and considered the findings and advice of the Technical Advisory Groups, and all interested parties submitting comments; and

WHEREAS, on August 5, 2021, the Brevard County Board of County Commissioners held a duly noticed public hearing, and considered the findings and recommendations of the Technical Advisory Group, and all interested parties submitting written or oral comments, and the recommendations of the Local Planning Agency, and upon thorough and complete consideration and deliberation, approved for adoption Plan Amendment 21S.02; and

WHEREAS, Plan Amendment 21S.03 adopted by this Ordinance comply with the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Plan Amendment 21S.03 adopted by this Ordinance is based upon findings of fact as included in data and analysis.

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

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

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

Section 3. Adoption of Comprehensive Plan Amendments. Pursuant to Plan Amendment 21S.03 to the 1988 Comprehensive Plan, Article III, Chapter 62-504, Brevard County Code, the 1988 Brevard County Comprehensive Plan is hereby amended based on documentation shown in Exhibit A and as specifically shown in Exhibit B. Exhibits A and B are hereby incorporated into and made part of this Ordinance.

Section 4. Legal Status of the Plan Amendments. After and from the effective date of this Ordinance, the plan amendment, Plan Amendment 21S.03, shall amend the 1988 Comprehensive Plan and become part of that plan and the plan amendment shall retain the legal status of the 1988 Brevard County Comprehensive Plan established in Chapter 62-504 of the Code of Laws and Ordinances of Brevard County, Florida, as amended.

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

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

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

DONE AND ADOPTED in regular session, this \_\_\_\_ day of \_\_\_\_\_, 2021.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

\_\_\_\_\_  
Rachel M. Sadoff, Clerk

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

As approved by the Board on \_\_\_\_\_, 2021.

Retracted

ORDINANCE NO. 21- \_\_\_\_

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

WHEREAS, Brevard County initiated amendments and accepted application for small scale amendments to the Comprehensive Plan for adoption in calendar year 2021 as Plan Amendment 21S.03; and

WHEREAS, Brevard County established Technical Advisory Groups consisting of County technical employees grouped according to their operational relationship to the subject of a plan element or sub-element being prepared or amended, and these Technical Advisory Groups have provided technical expertise for the Amendment 21S.03; and

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

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WHEREAS, on July 12, 2021, the Brevard County Local Planning Agency held a duly noticed public hearing on Plan Amendment 21S.03, and considered the findings and advice of the Technical Advisory Groups, and all interested parties submitting comments; and

WHEREAS, on August 5, 2021, the Brevard County Board of County Commissioners held a duly noticed public hearing, and considered the findings and recommendations of the Technical Advisory Group, and all interested parties submitting written or oral comments, and the recommendations of the Local Planning Agency, and upon thorough and complete consideration and deliberation, approved for adoption Plan Amendment 21S.02; and

WHEREAS, Plan Amendment 21S.03 adopted by this Ordinance comply with the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Plan Amendment 21S.03 adopted by this Ordinance is based upon findings of fact as included in data and analysis.

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DONE AND ADOPTED in regular session, this \_\_\_\_ day of \_\_\_\_\_, 2021.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

\_\_\_\_\_  
Rachel M. Sadoff, Clerk

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

As approved by the Board on \_\_\_\_\_, 2021.



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ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

\_\_\_\_\_  
Rachel M. Sadoff, Clerk

By:   
Rita Pritchett, Chair

As approved by the Board on \_\_\_\_\_, 2021.

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

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

### **Administrative Policy 1**

The Brevard County zoning official, planners and the director of the Planning and Development 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 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 percent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through analysis of:

1. historical land use patterns;
  2. actual development over the immediately preceding three years; and
  3. development approved within the past three years but not yet constructed.
- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

#### **Administrative Policy 4**

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

##### **Criteria:**

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

#### **Administrative Policy 5**

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the use(s) shall be considered. In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following criteria:

##### **Criteria:**

- A. Whether adopted levels of services will be compromised;
- B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;

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

#### **Administrative Policy 6**

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

#### **Administrative Policy 7**

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

#### **Administrative Policy 8**

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

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

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.

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

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

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

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

- (b) Approval procedure. An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in Section 62-1151. The approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved. If the applicant meets its initial burden, then the Board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the Board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use. In stating grounds in support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odors, glare and noise, particulates, smoke, fumes, and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.
- (c) General Standards of Review.
  - (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon

a consideration of the factors specified in Section 62-1151(c) plus a determination whether an application meets the intent of this section.

- a. The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1), the number of persons anticipated to be using, residing or working under the conditional use; (2), noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3), the increase of traffic within the vicinity caused by the proposed conditional use.
  - b. The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.
  - c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an M A I certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.
- (2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:
- a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1), adequate to serve the proposed use without burdening adjacent and nearby uses, and (2), built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at Level of Service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable Brevard County standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.
  - b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.
  - c. Noise levels for a conditional use are governed by Section 62-2271.

- d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
- e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
- f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.
- g. Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.
- h. Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.
- i. The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.
- j. Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

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

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

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

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.

- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.”

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

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

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

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

## DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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



**FUTURE LAND USE MAP SERIES  
PLAN AMENDMENT**

**STAFF COMMENTS**

*Small Scale Plan Amendment 21S.03 (21PZ00026)  
Township 30G, Range 38, Section 20*

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**Property Information**

Owner / Applicant: **Diane and Tim Lystlund**

Adopted Future Land Use Map Designation: Residential 1 (RES 1)

Requested Future Land Use Map Designation: Residential 2 (RES 2)

Acreage: 0.55 acres

Tax Account #: 3009665

Site Location: On the east side of Hibiscus Avenue, approximately 240 feet south of  
Jonquil Lane

Commission District: 3

Current Zoning: Single-Family Residential (RU-1-7)

Requested Zoning: Suburban Residential (SR) (21Z00014)

**Background & Purpose**

The applicant is requesting to amend the Future Land Use designation on 0.55 acres of vacant, undeveloped land from Residential 1 (RES 1) to Residential 2 (RES 2). The subject property, which was originally created out of a larger parcel in 1996, has a Future Land Use designation of RES 1 that was adopted with the Comprehensive Plan in September of 1988.

Existing development of the surrounding area is generally described as single-family homes on lots that are undersized to meet the one dwelling unit per acre (1du/ac) density allowed by the RES 1 future land use. The applicant intends to build one, single-family home, and a FLU designation of RES 2 is necessary to legitimize the parcel to meet development requirements of RES 2.

A companion rezoning application (21Z00014) was submitted accompanying this request for a Zoning change from Single-Family Residential (RU-1-7) to Suburban Residential (SR).

The preliminary concurrency analysis did not indicate that the proposed development would cause a deficiency in the transportation adopted level of service. The parcel is not serviced by public water or sewer. The closest available Brevard County potable water line is approximately 0.7 miles northeast of the subject property. The closest available Brevard County sewer line is approximately 1.4 miles northwest of the subject property. No school concurrency information has been provided as the development potential is considered de minimis and falls below the minimum number of new residential lots that would require a formal review.

### Surrounding Land Use Analysis

	Existing Land Use	Zoning	Future Land Use
<b>North</b>	One (1) Single-Family residence	RU-1-7	RES 1
<b>South</b>	One (1) Single-Family residence	RU-1-7	RES 1
<b>East</b>	One (1) Single-Family residence	RU-1-7	RES 1
<b>West</b>	Across Hibiscus Avenue: Two (2) Single-Family residences	RU-1-7	RES 1

To the north and south of the subject property are single-family residences. West of the subject property (across Hibiscus Avenue) are single-family residences, and to the east (beyond a fifty foot (50') wide utility easement) is a single-family residence.

### 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.

### 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:**

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

1. historical land use patterns;

*The general area is residential in character with single-family homes on one-half acre lots or smaller along both the east and west sides of Hibiscus Avenue. Although all of the lots along Hibiscus Avenue have RES 1 Future Land Use and are undersized to meet requirements for development, all have been developed as single-family residential with the exception of the subject parcel.*

*The property that is the subject of this Comprehensive Plan amendment does not have a legal nonconforming status in that it was created subsequent to the adoption of the Comprehensive Plan in 1988. Therefore, a Future Land Use Map amendment from Residential 1 to Residential 2 (along with a rezoning to SR) is required for development of this property.*

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

*There has not been any new development adjacent to the subject property in the preceding three (3) years.*

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

*There have not been any development approvals for parcels adjacent to the subject property within the past three (3) years.*

**Residential 2 (maximum of 2 dwelling units per acre)**

**Policy 1.8**

The Residential 2 land use designation permits lower density residential development with a maximum density of up to two (2) units per acre, except as otherwise may be provided for within this element. The Residential 2 land use designation may be considered for lands within the following generalized locations, unless otherwise limited by this Comprehensive Plan:

**Criteria:**

- A. Areas adjacent to existing Residential 2 land use designation; or

*The subject parcel is not adjacent to existing Residential 2 land use designation. The closest Residential 2 land use designation is approximately 530 feet to the east, across Primrose Drive.*

- B. Areas which serve as a transition between existing land uses or land use designations with density greater than two (2) units per acre and areas with density of less than two (2) units per acre; or

*The subject parcel does not serve as a transition between greater and lesser densities.*

- C. Unincorporated areas which are adjacent to incorporated areas and may be considered a logical transition for Residential 2.

*The subject parcel is not adjacent to an incorporated area.*

### **Environmental Resources**

*No noteworthy land use issues were identified. Please refer to comments provided by the Natural Resource Management Department at the end of this report.*

### **Historic Resources**

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

### **For Board Consideration**

The Board may wish to consider if the request to introduce RES 2 is consistent with the Comprehensive Plan and compatible with the surrounding area.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT  
Future Land Use (FLU) Request Review & Summary  
Item # 21PZ00026**

**Applicant:** Timothy and Diane Lystlund

**FLU Request:** RES 1 to RES 2

**Note:** Applicant wants to legitimize lot to build a single-family residence.

**P&Z Hearing Date:** 07/12/21; **BCC Hearing Date:** 08/05/21

**Tax ID No:** 3009665

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

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

- Protected and Specimen Trees
- Protected Species

No noteworthy land use issues were identified. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

**Land Use Comments:**

**Protected and Specimen Trees**

Aerials show the parcel to be heavily wooded. Specimen Trees (greater than or equal to 24 inches in diameter) may exist on the parcel. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), a purpose and intent of the ordinance is to encourage the protection of Specimen Trees. 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 permissible without prior authorization from NRM. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

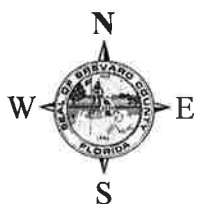
**Protected Species**

Information available to NRM indicates that federally and/or state protected species may be present on the property. Prior to any plan, permit submittal, or development activity,

including land clearing, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service, as applicable.

# LOCATION MAP

LYSTLUND, TIMOTHY AND DIANE  
21PZ00026 SMALL SCALE AMENDMENT 21S.03



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

Buffer Distance: 500 feet

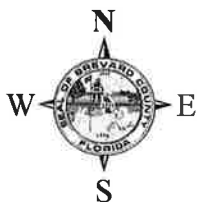
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 4/21/2021

— Buffer  
■ Subject Property

# ZONING MAP

LYSTLUND, TIMOTHY AND DIANE  
21PZ00026 SMALL SCALE AMENDMENT 21S.03



1:4,800 or 1 inch = 400 feet

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— Subject Property

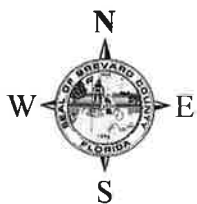
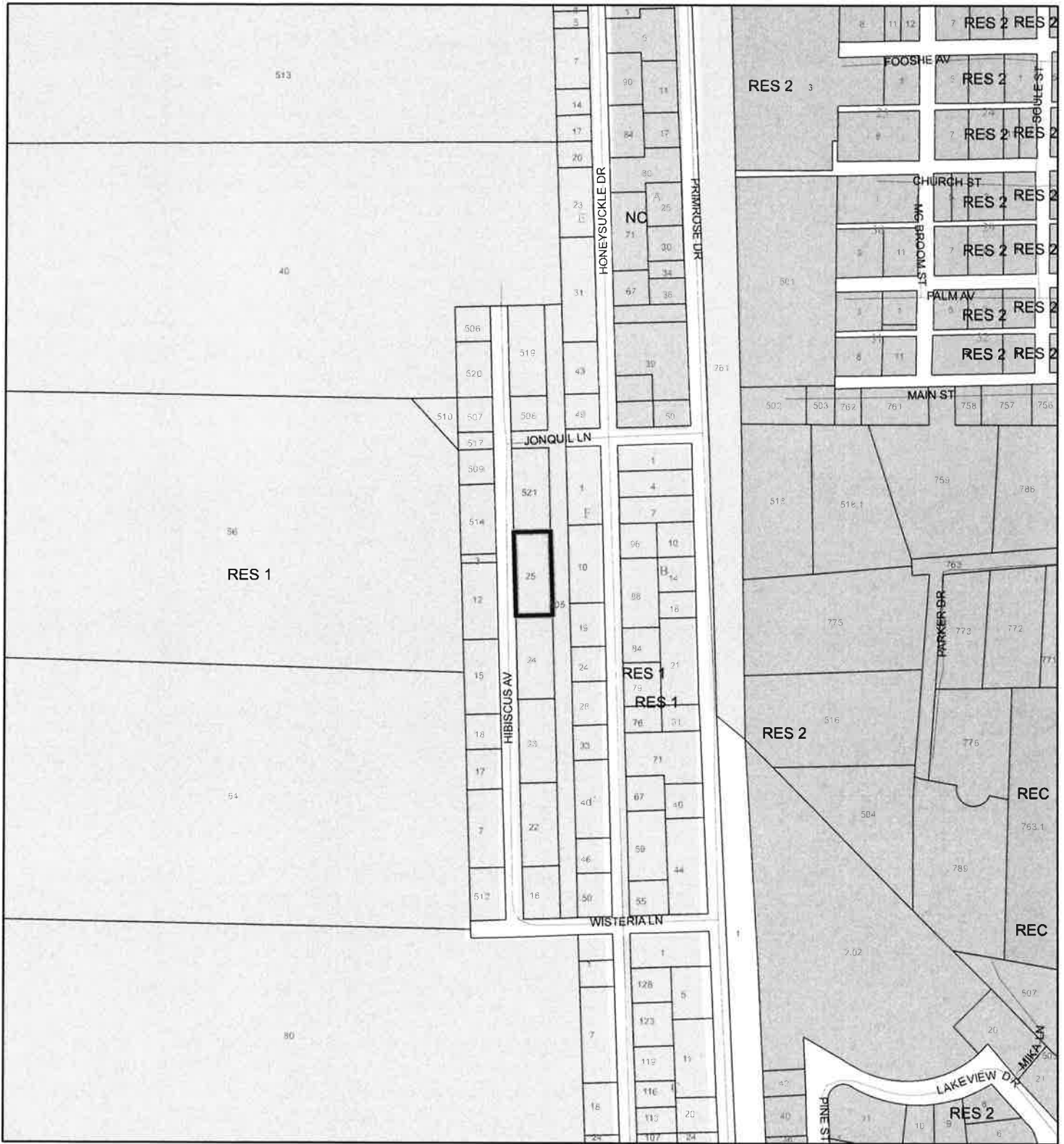
□ Parcels

□ Zoning



# FUTURE LAND USE MAP

LYSTLUND, TIMOTHY AND DIANE  
21PZ00026 SMALL SCALE AMENDMENT 21S.03



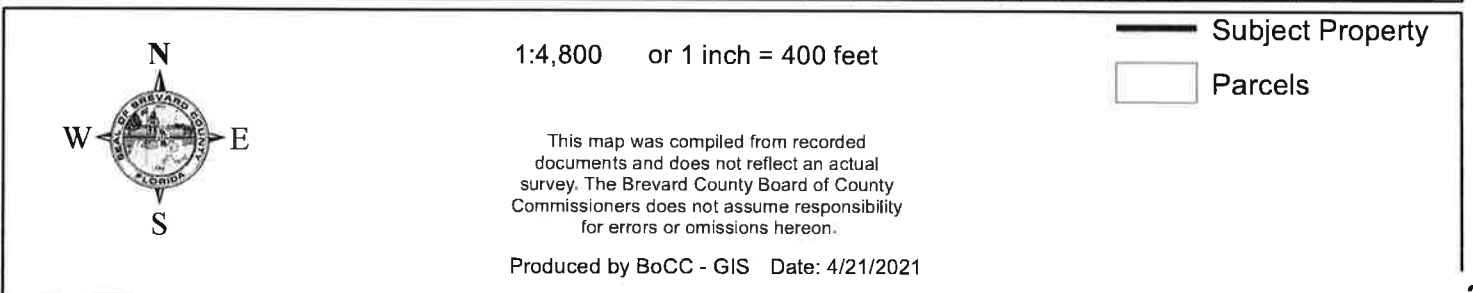
1:4,800 or 1 inch = 400 feet

— Subject Property  
□ Parcels

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

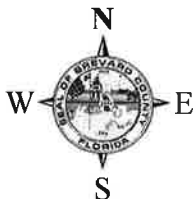
Produced by BoCC - GIS Date: 4/21/2021

LYSTLUND, TIMOTHY AND DIANE  
21PZ00026 SMALL SCALE AMENDMENT 21S.03



# AERIAL MAP

LYSTLUND, TIMOTHY AND DIANE  
21PZ00026 SMALL SCALE AMENDMENT 21S.03



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2020

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.

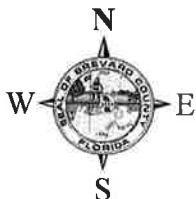
Produced by BoCC - GIS Date: 4/21/2021

 Subject Property

 Parcels

# NWI WETLANDS MAP

LYSTLUND, TIMOTHY AND DIANE  
21PZ00026 SMALL SCALE AMENDMENT 21S.03



1:4,800 or 1 inch = 400 feet

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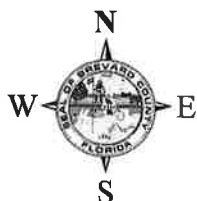
Produced by BoCC - GIS Date: 4/21/2021

## 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

LYSTLUND, TIMOTHY AND DIANE  
21PZ00026 SMALL SCALE AMENDMENT 21S.03



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/21/2021

## 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

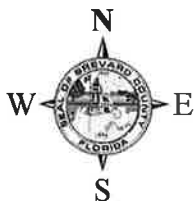
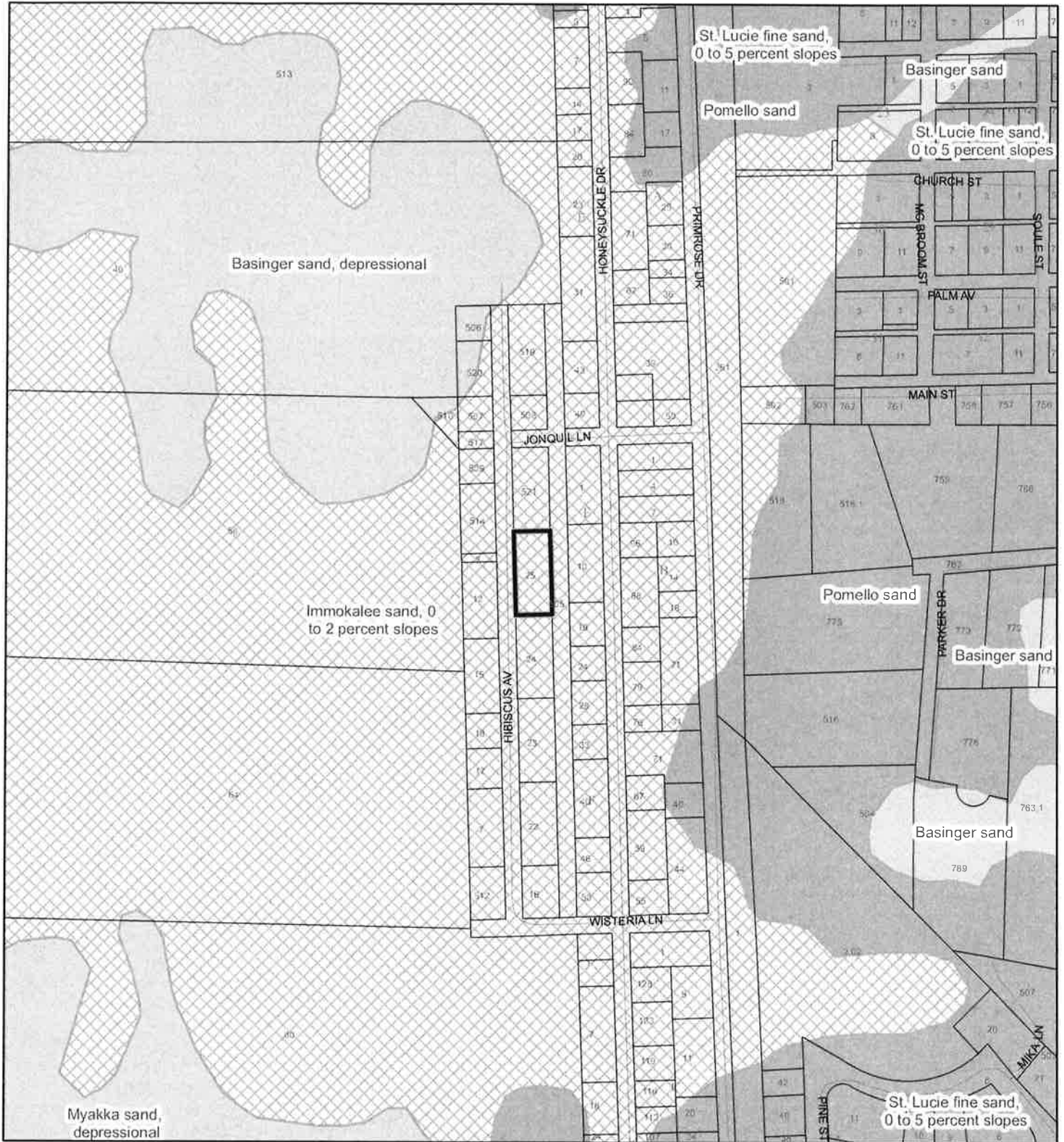
Parcels



# USDA SCSSS SOILS MAP

LYSTLUND, TIMOTHY AND DIANE

21PZ00026 SMALL SCALE AMENDMENT 21S.03



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/21/2021

## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

# National Flood Hazard Layer FIRMette



80°30'32"W 27°51'28"N



## Legend

SEE THIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

<b>SPECIAL FLOOD HAZARD AREAS</b>	<b>Without Base Flood Elevation (BFE)</b> <i>Zone A, V, A99</i>
	<b>With BFE or Depth</b> <i>Zone AE, AO, AH, VE, AR</i>
	<b>Regulatory Floodway</b>
	<b>0.2% Annual Chance Flood Hazard, Area of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile</b> <i>Zone X</i>
	<b>Future Conditions 1% Annual Chance Flood Hazard</b> <i>Zone X</i>
	<b>Area with Reduced Flood Risk due to Levee</b> <i>See Notes, Zone X</i>
	<b>Area with Flood Risk due to Levee</b> <i>Zone D</i>
<b>OTHER AREAS OF FLOOD HAZARD</b>	<b>NO SCREEN</b> <i>Area of Minimal Flood Hazard</i> <i>Zone X</i>
	<b>Effective LOMRs</b>
<b>OTHER AREAS</b>	<b>Area of Undetermined Flood Hazard</b> <i>Zone X</i>
<b>GENERAL STRUCTURES</b>	<b>Channel, Culvert, or Storm Sewer</b>
	<b>Levee, Dike, or Floodwall</b>
<b>Cross Sections with 1% Annual Chance Water Surface Elevation</b>	<b>Coastal Transect</b>
	<b>Base Flood Elevation Line (BFE)</b>
	<b>Limit of Study</b>
	<b>Jurisdiction Boundary</b>
<b>OTHER FEATURES</b>	<b>Coastal Transect Baseline</b>
	<b>Profile Baseline</b>
	<b>Hydrographic Feature</b>
<b>MAP PANELS</b>	<b>Digital Data Available</b>
	<b>No Digital Data Available</b>
	<b>Unmapped</b>

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

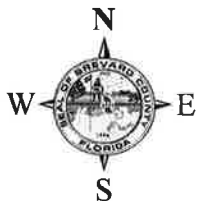
This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards.

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 4/21/2021 at 2:18 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

# COASTAL HIGH HAZARD AREA MAP

LYSTLUND, TIMOTHY AND DIANE  
21PZ00026 SMALL SCALE AMENDMENT 21S.03



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/21/2021

— Subject Property

□ Parcels

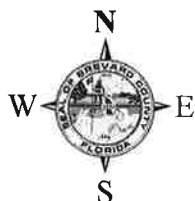
**Coastal High Hazard Area**

■ SurgeZoneCat1



# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

LYSTLUND, TIMOTHY AND DIANE  
21PZ00026 SMALL SCALE AMENDMENT 21S.03



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/21/2021

 Subject Property

 Parcels

## Septic Overlay

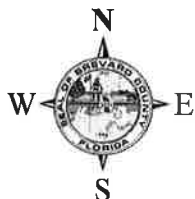
 40 Meters

 60 Meters

 All Distances

# EAGLE NESTS MAP

LYSTLUND, TIMOTHY AND DIANE  
21PZ00026 SMALL SCALE AMENDMENT 21S.03



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/21/2021

 Subject Property

 Parcels

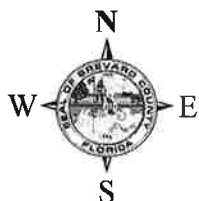


Eagle Nests  
FWS 2010



# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

LYSTLUND, TIMOTHY AND DIANE  
21PZ00026 SMALL SCALE AMENDMENT 21S.03



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/21/2021

## 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

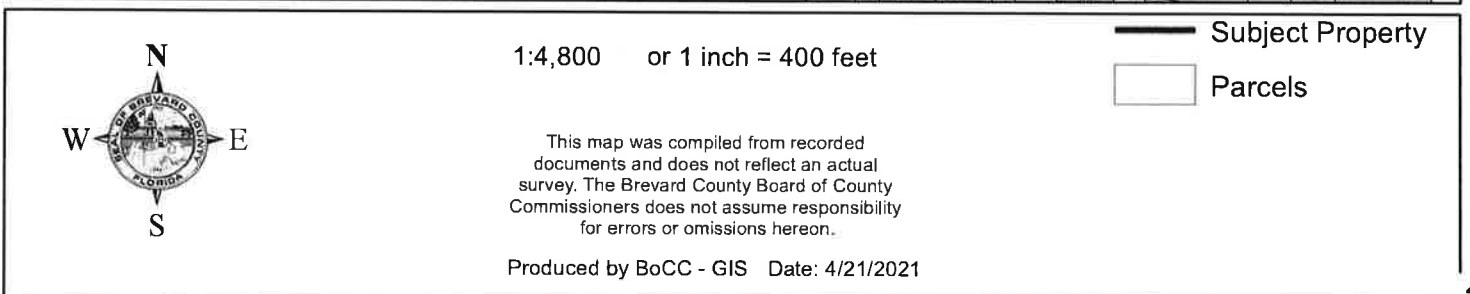
Parcels

**EXHIBIT A**  
**20S.03 SMALL SCALE**  
**COMPREHENSIVE PLAN AMENDMENT**

**Contents**

**1. Proposed Future Land Use Map**

LYSTLUND, TIMOTHY AND DIANE  
21PZ00026 SMALL SCALE AMENDMENT 21S.03



## **EXHIBIT B**

### **Contents**

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

NOTICE is hereby given pursuant to Chapters 125 & 163, FLORIDA STATUTES, and Chapter 62, Article VI of the Brevard County Code, that the Brevard County Planning and Zoning Board (Local Planning Agency) and the Board of County Commissioners will consider the following requests on MONDAY, JULY 12, 2021, and THURSDAY, AUGUST 5, 2021.

**DISTRICT 4 1. (21Z00012) CBH PROPERTIES MELBOURNE, LLC (Bruce Moia)** requests a change of classification from BU-1 (General Retail Commercial) with an existing BDP (Binding Development Plan) to BU-2 (Retail, Warehousing, and Wholesale Commercial) and an amendment to the existing BDP, on property described as Lot 1, Block A, Oakwood Landing Commercial, according to the Plat thereof, as recorded in Plat Book 68, Page 27, of the Public Records of Brevard County, Florida, Section 19, Township 26, Range 37 (1.15 acres) Located on the east side of N. Wickham Rd., approx. 0.13 mile south of Jordan Blass Dr. (6315 N. Wickham Rd., Melbourne) **DISTRICT 1 2. (21Z00017) JOSHUA E. MOTTA AND VIRGINIA L. RYMER** request a change of zoning classification from GU (General Use) to AU (Agricultural Residential), on property described as Lot 11, Block 12, Canaveral Groves Subdivision, as recorded in ORB 8990, Pages 300 - 301, of the Public Records of Brevard County, Florida, Section 33, Township 23, Range 35 (2.23 acres) Located on the west side of Fishtail Palm Ave., approx. 181 feet north of Cabbage Palm St. (5340 Fishtail Palm Ave., Cocoa) **DISTRICT 3 3. (21PZ00026) TIMOTHY AND DIANE LYSTLUND** request a Small Scale Comprehensive Plan Amendment (215.03) to change the Future Land Use designation from RES 1 (Residential 1) to RES 2 (Residential 2), on property described as Lot 25, Block HM, Camerons 500 A Tract, as recorded in ORB 8669, Page 2237, of the Public Records of Brevard County, Florida, Section 20, Township 30G, Range 38 (0.55 acres) Located on the west side of Hibiscus Ave., approx. 240 ft. south of Jonquil Lane, (9555 Hibiscus Ave., Micco) The following ordinance will also be considered in conjunction with the Small Scale Plan Amendment, 215.03: an ordinance amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, entitled "The Comprehensive Plan", amending Section 62-501, entitled Contents of the Plan; specifically amending Section 62-501, Part XI, entitled Future Land Use Element and Future Land Use Map Series; and provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date. **4. (21Z00014) TIMOTHY AND DIANE LYSTLUND** request a change of zoning classification from RU-1-7 (Single-Family Residential) to SR (Suburban Residential) on property described as Lot 25, Block HM, Camerons 500 A Tract, as recorded in ORB 8669, Page 2237, of the Public Records of Brevard County, Florida, Section 20, Township 30G, Range 38 (0.55 acres) Located on the west side of Hibiscus Ave., approx. 240 ft. south of Jonquil Lane, (9555 Hibiscus Ave., Micco) **DISTRICT 2 5. (21Z00015) SCHWAB CONSTRUCTION GROUP, INC. (Daniel Lee Schwab)** requests a change of zoning classification from BU-1 (General Retail Commercial) to RU-2-15 (Medium Density Multi-Family Residential), on property described as Tax Parcel 9, as recorded in ORB 8937, Pages 407 - 408, of the Public Records of Brevard County, Florida, Section 35, Township 24, Range 36 (0.94 acres) Located on the southeast corner of Palmetto Ave. and Burnwood Dr. (141 Burnwood Dr., and 165 Palmetto Ave., Merritt Island) **6. (21Z00018) 395 EAST, LLC (Alex Berkovich)** requests a change of zoning classification from SEU (Suburban Estate Use Residential) to EU (Estate Use Residential), on property described as Tax Parcel 31, as recorded in ORB 8888, Page 1802, of the Public Records of Brevard County, Florida, Section 24, Township 25, Range 36 (6.33 acres) Located on the southwest corner of Curry Dell Ln., and S. Courtenay Pkwy. (No assigned address in the Merritt Island

area.) **DISTRICT 5 7. (21PZ00030) 4090 AURORA PINES, LLC (Bruce Moia)** requests a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from RES 4 (Residential 4) to RES 6 (Residential 6), on property described as Lots E, F, and I, Mosley Gardens, a subdivision according to the plat thereof, recorded in Plat Book 10, Page 40, of the Public Records of Brevard County, Florida, Section 14, Township 27, Range 36 (6.21 acres) Located on the north side of Aurora Rd., approx. 677 ft. west of Turtlehound Rd. (4090 Aurora Rd., Melbourne) The following ordinance will also be considered in conjunction with the Small Scale Plan Amendment, 215.04: an ordinance amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, entitled "The Comprehensive Plan", amending Section 62-501, entitled Contents of the Plan; specifically amending Section 62-501, Part XI, entitled Future Land Use Element and Future Land Use Map Series; and provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date. **8. (21Z00016) 4090 AURORA PINES, LLC (Bruce Moia)** requests a change of zoning classification from TR-3 (Mobile Home Park) to TR-1-A (Single-Family Mobile Home), on property described as Lots E, F, and I, Mosley Gardens, a subdivision according to the plat thereof, recorded in Plat Book 10, Page 40, of the Public Records of Brevard County, Florida, Section 14, Township 27, Range 36 (6.21 acres) Located on the north side of Aurora Rd., approx. 677 ft. west of Turtlehound Rd. (4090 Aurora Rd., Melbourne) **DISTRICT 1 9. (21Z00013) GARY E. AND JOANNA L. MILLS** request a change of zoning classification from AU (Agricultural Residential) to RR-1 (Rural Residential), on property described as follows: Part of Tracts 2 & 3, Block 7, Section 21, Indian River Park, as recorded in Plat Book 2, Page 33, Public Records of Brevard County, Florida, being more particularly described as follows: Commence at the northwest corner of said Tract 2; thence N78deg58'29"E, along the north line of said Tract 2, also being the south right-of-way line of a 30-ft. road right-of-way as shown on said Plat of Indian River Park and being vacated in Deed Book 428, Page 539 of the Public Records of Brevard County, Florida, a distance of 8 ft. to the point of beginning of this description and the NW corner of property described in ORB 4193, Page 2777, Public Records of Brevard County, Florida; thence S17deg01'31"E, along the west line of said property described in ORB 4193, Page 2777, 173 ft.; thence S1deg19'29"W, 54 ft.; thence S39deg39'01"W, 124.31 ft. to the former easterly right-of-way line of the FECRR branch line (A 100-ft. right-of-way); thence S73deg30'29"W along said right-of-way line, 17.84 ft.; thence N34deg09'31"W, along said railroad right-of-way (A 66-ft. right-of-way), 348.28 ft. to the center line of said vacated 30-ft. road right-of-way; thence N78deg58'29"E, along said center line, 242.64 ft.; thence S17deg01'31"E, 15.08 ft. to the point of beginning. Section 21, Township 20G, Range 34. Containing 1.26 acres, more or less. Located on the south side of Arlington Ave., approx. 0.25 mile west of Cushman Dr. (4257 Arlington Ave., Mims) Public Hearing before the Planning and Zoning Board (Local Planning Agency) will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida on MONDAY, JULY 12, 2021, at 3:00 p.m. A Public Hearing will be held by the Board of County Commissioners at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Bldg. C, Viera, Florida, on THURSDAY, AUGUST 5, 2021, at 5:00 p.m. All interested parties can be heard at said time and place. If a person decides to appeal any decision of this Board with respect to any matter considered at these meetings or hearings, such a person will need a record of the proceedings and that, for such purposes, such person may need to ensure that a verbatim record of the proceedings is made, at his own expense, which record includes testimony and evidence upon which any such appeal is to be based. The Board may grant such other less intense zoning or land use classification as may be deemed appropriate. Final report of the above referenced agenda will be heard at this meeting. in

## Legal Notices

accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodations to participate in this proceeding should contact the Planning & Development Department no later than 48 hours prior to the meeting at 633-2069 for assistance. Brevard County Planning & Development Department, per: Tad Calkins, Planning and Development Director, By: Jennifer Jones, Special Projects Coordinator.



**From:** -Ashley -Harris  
**To:** Jones, Jennifer  
**Subject:** 21PZ00026 & 21Z00014  
**Date:** Saturday, July 10, 2021 4:52:05 PM

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

ID 21PZ00026 & 21Z00014

I'm writing in regards to the request for change of zoning for the property located at 9555 Hibiscus Ave in Micco, FL. I am a resident of the neighborhood and purchased a home in the area because it is not a busy neighborhood. Micco is the unique place it is because houses are not on top of each other. I vote no in regards to the request for change of zoning classification.

Sincerely,  
Ashley Harris

## **PLANNING AND ZONING BOARD MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, July 12, 2021**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

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

Board members present were: Ron Bartcher (D1); Brian Rodgers (D2); Mark Wadsworth, Chair (D4); Joe Buchanan (D4 Alt); Peter Filiberto (D5); and David Bassford (D5 Alt).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; George Ritchie, Planner III; Paul Body, Planner II; Kyle Harris, Planner I; Abigail Jorandby, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

At the outset of the meeting, David Bassford announced he had a conflict of interest on Items H.1., H.7., and H.8., and would need to abstain from voting.

### **Excerpt of Complete Minutes**

#### **Timothy and Diane Lystlund**

A Small Scale Comprehensive Plan Amendment (21S.03) to change the Future Land Use designation from RES 1 (Residential 1) to RES 2 (Residential 2). The property is 0.55 acres, located on the west side of Hibiscus Ave., approx. 240 ft. south of Jonquil Lane. (9555 Hibiscus Ave., Micco) (21PZ00026) (Tax Account 3009665) (District 3)

#### **Timothy and Diane Lystlund**

A change of zoning classification from RU-1-7 (Single-Family Residential) to SR (Suburban Residential). The property is 0.55 acres, located on the west side of Hibiscus Ave., approx. 240 ft. south of Jonquil Lane. (9555 Hibiscus Ave., Micco) (21Z00014) (Tax Account 3009665) (District 3)

Timothy Lystlund, 1501 East Lake Lane, Sebastian, stated when they purchased the property they found out the zoning was incorrect for the size of the lot, and so they would like to change the zoning.

Mark Wadsworth asked the approximate square footage of the house they want to build. Mr. Lystlund replied the house would be a little under 2,300 square feet.

No public comment.

Mr. Lystlund stated he is familiar with one letter in opposition to our request.

Brian Rodgers asked if the board should consider the letter if the person is not present to speak. Abby Jorandby replied that the board can consider it.

Mr. Rodgers pointed out there are several RU-1-7-zoned properties in the area with houses on them that were built before the zoning changed.

Paul Body explained the problem is that the subject property was subdivided in 1996; the abutting properties were subdivided around the same time, so the Future Land Use is the problem, at Residential 1. When it was subdivided, it did not meet the requirements for Residential 1. The abutting properties should have also rezoned. The subject property is a little over a half-acre and the SR zoning seemed to be the better fit because it requires a half-acre and cannot be re-subdivided.

Mr. Wadsworth asked if the neighbor who wrote the letter of objection lives in the neighborhood. Mr. Lystlund replied the neighbor who wrote the letter lives on Honeysuckle, behind the subject property, four lots down, on a quarter-acre lot.

Mr. Wadsworth stated in looking at the neighborhood, there are three streets. There are approximately five or six lots that are roughly the same size as the subject property and the rest of the lots in the area are smaller.

Mr. Body replied most of the lots in the area were subdivided before Comprehensive Plan was adopted, mostly to the west. The lots to the east and abutting the subject property were all subdivided at the same time and did not meet the Comprehensive Plan.

Peter Filiberto stated it seems like this is the last lot to be built out in the three-street area, so he doesn't see a domino effect happening if the board approves the request.

Motion by Peter Filiberto, seconded by Joe Buchanan, to approve the requested Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from RES 1 to RES 2. The motion passed unanimously.

Motion by Peter Filiberto, seconded by Joe Buchanan, to approve the requested change of zoning classification from RU-1-7 to SR. The motion passed unanimously.



BOARD OF COUNTY COMMISSIONERS

**Planning and Development**

2725 Judge Fran Jamieson Way  
Building A, Room 114  
Viera, Florida 32940  
321-633-2070

215.03

**Application for Zoning Action, Comprehensive Plan Amendment, or  
Variance**

Applications must be submitted in person. Please call 321-633-2070 for an appointment at least 24 hours in advance. Mailed, emailed, or couriered applications will not be accepted.

PZ # 21 PZ00026

Existing FLU: RES 1 Existing Zoning: RU-1-7

Proposed FLU: RES 2 Proposed Zoning: \_\_\_\_\_

**PROPERTY OWNER INFORMATION**

If the owner is an LLC, include a copy of the operating agreement.

Diane Lystlund, Tim Lystlund  
Name(s) Company

9555 Hibiscus Ave Micco FL 32976  
Street City State Zip Code

tim.t166k@gmail.com 772-453-9635  
Email Phone Cell

**APPLICANT INFORMATION IF DIFFERENT FROM OWNER:**

☐ Attorney ☐ Agent ☐ Contract Purchaser ☐ Other \_\_\_\_\_

\_\_\_\_\_  
Name(s) Company

\_\_\_\_\_  
Street City State Zip Code

\_\_\_\_\_  
Email Phone Cell

**APPLICATION NAME**

- ☐ Large Scale Comprehensive Plan Amendment (CP) (greater than 10 acres)
- ☒ Small Scale Comprehensive Plan Amendment (CP) (less than 10 acres)
- ☐ Text Amendment (CP): Element \_\_\_\_\_
- ☐ Other Amendment (CP): \_\_\_\_\_
- ☐ Rezoning Without CUP (RWOC)
- ☐ Combination Rezoning and CUP (CORC)
- ☐ Conditional Use Permit (CUP)
- ☐ Binding Development Plan (BDP)
- ☐ Binding Development Plan (BDP) (Amendment)
- ☐ Binding Development Plan (BDP) (Removal)
- ☐ Variance(s) (V) (building permits will not be approved until 30 days after the date the order is signed)
- ☐ Administrative Approval of Setbacks, Lot Size, or Accessory Structures
- ☐ Administrative Approval of Flag Lot or Easement
- ☐ Administrative Approval of On-Premises Consumption of Alcoholic Beverages for Restaurants / Snack Bars
- ☐ Other Action: \_\_\_\_\_

Acreage of Request: 0.55

Reason for Request: *To have FLU consistant with  
Rezoning From RU-1-7 to SR*

The undersigned understands this application must be complete and accurate prior to advertising a public hearing:

- ☐ I am the owner of the subject property, or if corporation, I am the officer of the corporation authorized to act on this request.
- ☐ I am the legal representative of the owner of the subject property of this application. (Notarized Authorization to Act must be submitted with application)
- ☐ An approval of this application does not entitle the owner to a development permit.
- ☐ For Variances, I understand that building permits will not be approved until 30 days after the date the order is signed, in order to comply with the appeal procedure.
- ☒ I certify that the information in this application and all sketches and data attached to and made part hereof are true and accurate to the best of my knowledge.

Timothy Lystlund  
Signature of Property Owner or  
Authorized Representative

4-14-2021  
Date

State of FL  
County of Indian River

Subscribed and sworn before me, by ✓ physical presence or \_\_\_\_\_ online notarization,  
this 14<sup>th</sup> day of, April, 2021, personally appeared

Timothy Lystlund & Diane Lystlund, who is personally known to me or produced  
FL DL & FL DL as identification, and who did / did not take an oath.

Heather A. Akey  
Notary Public Signature Heather A. Akey

Seal



HEATHER A. AKEY  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# GG205202  
Expires 4/16/2022

Office Use Only:

Accela No. 21P200036 Fee: \$1219<sup>00</sup> Date Filed: 4/19/21 District No. 3

Tax Account No. (list all that apply) 3009665

Parcel I.D. No.

30 G 38 20 HM \* 25  
Twp Rng Sec Sub Block Lot/Parcel

Planner: J.H. Sign Issued by: Code Engr. (21200014) Notification Radius: 500ft

MEETINGS

☒ P&Z

☐ PSJ Board

☐ NMI Board

☐ LPA

☐ BOA

☒ BCC

DATE

7/12/21

TIME

3pm

Wetland survey required by Natural Resources ☐ Yes ☒ No Initials PR

Is the subject property located in a JPA, MIRA, or 500 feet of the Palm Bay Extension?

☐ Yes

☒ No

If yes, list \_\_\_\_\_

Location of subject property:

East ~~West~~ side of Hibiscus Ave, approx. 240ft.  
South of Tongvil Lane

Description of Request:

Change FLU from RES1 to RES2

## Notice to Applicants for Change of Land Use

The Planning and Zoning Office staff will be preparing a package of written comments concerning your request. These comments will be provided to the Planning and Zoning Board and Board of County Commissioners. The comments will address the following:

The current zoning of the property along with its current development potential and consistency with the Brevard County Comprehensive Plan use and density restrictions.

The proposed zoning of the property along with its development potential and Consistency with the Board County Comprehensive Plan use and density restrictions.

The proposal's impact on services, such as roads and schools.

The proposal's impact upon hurricane evacuation, if applicable.

Environmental factors.

Compatibility with surrounding land uses.

Consistency with the character of the area.

You may place your own written comments regarding these items into the record. Up to two typewritten pages can be included in the package if received 10 working days prior to the Planning and Zoning Board hearing. You are not required to provide written comments. *An Applicant presentation to the Planning and Zoning Board is required regardless of written submittals.* The board may approve the requested classification or a classification which is more intensive than the existing classification, but less intensive than the requested classification.

Staff comments will be available approximately one week prior to the Planning and Zoning Board hearing. These comments will be made available to you at that time. In order to expedite receipt of staff's comments, please provide an e-mail address or fax number below. Alternatively, a copy of staff's comments will be mailed via the U.S. Postal Service.

### NOTES:

- ☐ If your application generates public opposition, as may be expressed in letters, petitions, phone calls, testimony, etc., you are advised to meet with concerned parties in an effort to resolve differences prior to the BCC taking final action on the request; therefore, you are encouraged to meet with affected property owners prior to the public hearing by the Planning & Zoning Board/Local Planning Agency (P&Z/LPA). During the course of conducting the public hearing, if the P&Z/LPA finds the application is controversial, and the applicant has not met with affected property owners, the item shall be tabled to the next agenda to allow such a meeting to take place. If the item is controversial, despite the applicant's efforts to meet with affected property owners, the P&Z/LPA may include, in their motion, a requirement to meet with interested parties again prior to the BCC public hearing. The BCC may also table your request in order for you to meet with interested parties, if this has not occurred prior to the public hearing before the BCC. If you need assistance to identify these parties, please contact the Planning & Zoning Office.
- ☐ BCC approval of a zoning application does not vest a project nor ensure issuance of a permit. At the time of permit application, land development regulations and concurrency-related level of service standards must be met.

Please transmit staff's comments via:

tim.t1661@gmail.com ( ) or U.S. Mail \_\_\_\_\_  
e-mail address fax number

Yes/No

I have received a copy of this notice:

  
(APPLICANT SIGNATURE)



P<sub>2</sub>

192

193

501

192

191

N68°17'51"E 105.00' (D.J)  
N87°34'40"E 105.00' (M.J)

FND. CAP  
CURD  
0.2N

Parcel ID: 30-38-23-00-521

OCCUPIED  
F.F. EL. = 23.2'  
CWELL OVER 100' AWAY

WELL RADIUS LINE  
(TYPICAL)

75R

75R

OCCUPIED

LOT 14

LOT 13

LOT 12

LOT 11

LOT 10

LOT 9

LOT 8