



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.4.

2/4/2021

Subject:

Ag Ventures (Chad Genoni) requests a BDP limiting density to 4 units per acre for consistency with the Residential 4 Future Land Use designation in an RU-1-7 zoning classification. (20PZ00101) (Tax Accounts 2102924, 2102925, and 2112294) (District 1)

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 BDP (Binding Development Plan) limiting density to 4 units per acre for consistency with the RES 4 (Residential 4) Future Land Use designation in an RU-1-7 (Single-Family Residential) zoning classification.

Summary Explanation and Background:

The applicant is requesting a BDP (Binding Development Plan) for the purpose of developing a single-family subdivision, Hamlin Grove, which will limit the density on the parcels to four units per acre, 440 units on 110 acres, for the zoning classification to be consistent with the RES 4 FLU designation. The property is located on the north side of Wiley Avenue and the east side of Old Dixie Highway, approximately 0.047 mile east of U.S. Highway 1.

On December 4, 2014, the Board changed the zoning from RU-1-11 to RU-1-7. However, the companion BDP which limited the development to 370 residential units was not recorded. RU-1-7 is not considered to be consistent with the RES 4, since the lot standards will allow for more than 4 units per acre. The current RU-1-7 classification permits single family residences on minimum 5,000 square foot lots with minimum widths of 50 feet and depth of 100 feet, and a minimum house size of 700 square feet. Pursuant to Section 62-1157(b)(2), the Board may approve an application if the applicant limits the project to a density equal to or less than the maximum density threshold for the subject property.

The parcels and proposed subdivision will be serviced by Brevard County water and sewer.

The character of the surrounding area is a mixture of single-family residential, agricultural residential, commercial, industrial, and government managed lands. The parcel to the west directly across Old Dixie Highway has BU-1 (General Retail Commercial) zoning, RU-1-11 and RU-1-7 zoning. This parcel is also owned by the applicant and the BU-1 and RU-1-7 portions will be used for ingress to the proposed Hamlin Grove subdivision along with stormwater retention for the subdivision and future commercial uses on the remainder

of the BU-1. The abutting parcels to the north are an undeveloped 2.12 acre parcel with GML (Government Managed Lands) and an undeveloped 10 acre parcel with RU-1-11 (Single-Family Residential) zoning.

The Board may wish to consider whether this request is consistent and compatible with the surrounding area and whether the proposed Binding Development Plan mitigates the potential impacts of the request.

The applicant has provided a conceptual plan showing the anticipated location, lot configuration, ingress/egress access, and stormwater tracts for the proposed new subdivision and plat. Please note the concept plan does not meet the minimum requirements of the County's subdivision code and cannot be used to satisfy that requirement. Also, interdepartmental departmental reviews have not been conducted, and feasibility of the layout cannot be confirmed without a formal subdivision review.

On January 11, 2021, the Planning and Zoning Board heard the request and voted 4:2 to recommend denial.

Clerk to the Board Instructions:

Once resolution is received, please execute and return Planning and Development.

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.



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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

STAFF COMMENTS

20Z00101

Ag Ventures, LLC

RU-1-7 to RU-1-7 with BDP

Tax Account Number: 2102924, 2112294 and 2102925
Parcel I.D.: 21-35-08-00-501, 21-35-08-00-569 and 21-35-08-00-503
Location: On the northeast corner of Wiley Avenue and Old Dixie Highway,
in the Mims area (District 1)
Acreage: 110 acres

Planning & Zoning Board: 01/11/2021

Board of County Commissioners: 02/04/2021

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	RU-1-7	RU-1-7 with BDP**
Potential*	0 units	440 units
Can be Considered under the Future Land Use Map	No, RU-1-7 requires RES 6 (Residential 6)	Yes, BDP** (Binding Development Plan) proposes to limit density to 4 units per acre, 440 units

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

** The applicant has submitted a BDP (Binding Development Plan) to limit density to 4 units per acre to be consistent with the density requirement of RES 4 Future Land Use (FLU).

Background and Purpose of Request

The applicant is requesting a BDP (Binding Development Plan) for the purpose of developing a single-family subdivision, Hamlin Grove, which will limit the density on the parcels to four units per acre, 440 units on 110 acres, for the zoning classification to be consistent with the RES 4 FLU designation.

The applicant has provided a conceptual plan showing the anticipated location, the lot configuration, ingress/egress access and stormwater tracts for the proposed new subdivision and plat, Hamlin

Grove. Please note the concept plan does not meet the minimum requirements of the County's subdivision code and cannot be used to satisfy that requirement. Also, Interdepartmental Departments have not been conducted review and feasibility of the layout cannot be confirmed without a formal subdivision application review. The applicant has submitted a site plan (20SD00018) for subdivision and plat review.

March 01, 2005, Zoning action **Z-11036** changed the zoning from AU (Agricultural Residential) and RU-1-7 to RU-1-11 with a BDP limiting development of the property to a density of 3 units per acre, with a maximum of 300 units.

December 04, 2014, Zoning action **14PZ-00091** changed the zoning from RU-1-11 to RU-1-7 and removed the BDP. This Zoning action **14PZ-00091** also was to include a revised BDP to limit the density to 370 units. This revised BDP was overlooked at the Planning & Zoning and Brevard County Commission meeting and the revised BDP was never approved or recorded with this zoning action.

Land Use

The subject property retains the RES 4 (Residential 4) FLU (Future Land Use) designation. The current RU-1-7 zoning is not consistent with the RES 4 Future Land Use designation per 62-1255 (2). The proposed BDP (Binding Development Plan) limiting the density to 4 units per acres, 440 units on 110 acres, is for the RU-1-7 zoning to be consistent with the RES 4 FLU designation density.

Environmental Constraints

Summary of Mapped Resources and Noteworthy Land Use Issues:

- National Wetland Inventory (NWI) Wetlands
- SJRWMD Wetlands
- Hydric Soils
- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Overlay
- Protected and Specimen Trees
- Protected Species

The subject parcel contains mapped NWI wetlands, SJRWMD wetlands, and hydric soils. Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For subdivisions greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e), including avoidance of impacts, and 62-3696. A wetland delineation will be required prior to any site plan design, land clearing activities, or building permit submittal.

Please see NRMD comments at the end of this report for further details.

Preliminary Concurrence

The closest concurrency management segment to the subject property is Highway US 1, between State Highway 46 and Lionel Road, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 26.35% of capacity daily. The maximum development potential from the proposed BDP, limiting the development to 440 units, increases the percentage of MAV utilization by 10.02%. With the maximum development potential for the proposed BDP, the corridor is anticipated to operate at 36.37% of capacity daily (LOS D). The maximum development potential of the proposed BDP would not create a deficiency in LOS.

According to the School Impact Analysis Capacity Determination Letter (SCADL-2020-17) dated October 20, 2020, the proposed development for the subject property is projected to generate 123 elementary students, 35 middle school students, and 70 high school students. SCADL-2020-17 concludes: "At this time, Pinewood Elementary School is not projected to have enough capacity for the total of the projected and potential student from the Hamlin Grove development. Because there is a shortfall of available capacity in the concurrency service areas of the Hamlin Grove development, the capacity of adjacent concurrency service areas must be considered. The adjacent elementary school concurrency service area is Mims Elementary School. Considering the adjacent elementary school concurrency service area, there is sufficient capacity for the total projected student membership to accommodate the Hamlin Grove development.

The parcels and proposed subdivision will be serviced by Brevard County sewer.

The parcels and proposed subdivision will be serviced by Brevard County water.

Land Use Policy 1.2 addresses residential density requirements for sewer and potable water.

Applicable Land Use Policies

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 through 8 of the Future Land Use Element, outlined in the Administrative Policies.

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

The abutting parcels to the north have FLU designations of RES 4 (Residential 4) and REC (Recreation). The abutting parcels to the east and south have FLU designation of RES 4 (Residential 4). The parcels to the west, west of Old Dixie Way, have a FLU designation of CC (Community Commercial). The RU-1-7 zoning classification is not consistent with RES 4 FLU.

The current RU-1-7 classification permits single family residences on minimum 5,000 square foot lots with minimum widths of 50 feet and depth of 100 feet. The minimum house size is 700 square feet.

The RU-1-11 classification permits single family residences on minimum 7,500 square foot lots, with a minimum width and depth of 75 feet. The minimum house size is 1,100 square feet.

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.

Analysis of Administrative Policy #4 - Character of a neighborhood or area. The subject parcels are currently zoned RU-1-7 and are currently undeveloped vacant land. There is a neighborhood of RU-1-7 zoning abutting the south of the subject parcel and along the north side of Wiley Avenue that is developed with single-family homes along with undeveloped lots.

The surrounding area of the subject parcel has FLU designations RES 4 and REC which are not consistent with the current RU-1-7 zoning classification.

There have been two recent zoning actions within a half-mile of the subject property within the last four years.

On October 13, 2016, application **16PZ00070**, changed the zoning from AU to SR on a 0.55 acre parcel, located on the west side of Folsom Road, approximately 1,795 feet southwest of the subject property.

On August 24, 2017, application **17PZ00009** changed the zoning from BU-1 to BU-2 with a Binding Development Plan (BDP) limiting development to include mini-warehouse, trailer, truck and boat storage, located on the west side of Highway US 1, approximately 714 feet southwest of the subject property.

Surrounding Properties

The abutting parcels to the north are an undeveloped 2.12 acre parcel with GML (Government Managed Lands) and an undeveloped 10 acre parcel with RU-1-11 (Single-Family Residential) zoning.

The abutting parcels to the east are an undeveloped 30 acre parcel with RR-1 (Rural Residential) and an undeveloped 58.95 acre parcel with RU-1-11 zoning. Also, to the east is a 16.07 parcel with IU (Light Industrial) zoning which is developed with commercial buildings and being used as a storage yard. This IU zoned parcel also has a RES 4 FLU which is not consistent with IU zoning. However, this parcel was rezoned from AU to IU on July 3, 1969 per zoning action **Z-2466** and the buildings were built before the Future Land Use of the Comprehensive plan was adopted in 1988.

The abutting parcels to the south have IN(L) (Institutional Use Low Intensity) zoning which is developed with a church; RU-1-7 (Single-Family Residential) parcels which are developed with single-family residences and a vacant 0.5 acre parcel with RU-1-11 zoning. Also, to the south is a 1.01 acre parcel with AU (Agricultural Residential) zoning which is developed with multi-family units for the Housing Authority of Brevard County. The AU zoning on this parcel is the original zoning and the multi-family units were built before zoning was adopted by Brevard County in 1958.

The parcel to the west directly across Old Dixie Highway has BU-1 (General Retail Commercial) zoning, RU-1-11 and RU-1-7 zoning. This parcel is also owned by the applicant and the BU-1 and RU-1-7 portions will be used for ingress to the proposed Hamlin Grove subdivision along with retention for the subdivision and future commercial uses on the remainder of the BU-1.

The IN(L) Institutional (Light) classification is intended to promote low impact private, nonprofit, or religious institutional uses to service the needs of the public for facilities of an educational religious, health or cultural nature. Minimum lot size shall be at least 7,500 square feet, with a minimum width

and depth of at least 75 feet. Where listed as a permitted use with conditions in the low intensity designation, institutional uses must be at least one (1.0) acre in size.

The AU zoning classification permits single-family residences and agricultural uses on 2.5 acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet.

The GML government managed lands zoning classification is to recognize the presence of lands and facilities which are managed by federal, state and local government, special districts, nongovernmental organizations (NGOs) providing economic, environmental and/or quality of life benefits to the county, electric, natural gas, water and wastewater utilities that are either publicly owned or regulated by the Public Service Commission, and related entities. GML required a minimum lot size and area of not less than 7,500 square feet is required, having a width and depth of at least 75 feet.

The IU zoning classification permits light industrial land uses within enclosed structures. The minimum lot size is 20,000 square feet, with a minimum width of 100 feet and a minimum depth of 200 feet.

For Board Consideration

The Board may wish to consider whether this request is consistent and compatible with the surrounding area and whether the proposed Binding Development Plan mitigates the potential impacts of the request.

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Zoning Review & Summary
Item # 20PZ00101

Applicant: Chad Genoni

Zoning Request: BDP to limit density to four units per acre to be consistent with FLU.

Note: Applicant wants to develop subdivision with approximately 440 units.

P&Z Hearing Date: 01/11/2021; **BCC Hearing Date:** 02/04/2021

Tax ID Nos: 2102924, 2112294, 2102925

- 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:

- National Wetland Inventory (NWI) Wetlands
- SJRWMD Wetlands
- Hydric Soils
- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Overlay
- Protected and Specimen Trees
- Protected Species

The subject parcel contains mapped NWI wetlands, SJRWMD wetlands, and hydric soils. Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For subdivisions greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e), including avoidance of impacts, and 62-3696. A wetland delineation will be required prior to any site plan design, land clearing activities, or building permit submittal.

The subject property may contain mapped Type 2 aquifer recharge soils that are found within aquifer recharge areas with elevations greater than or equal to 30 feet mean sea level (NGVD 1929). Per Section 62-3636, within Type 2 aquifer recharge soils, the maximum impervious surface shall be 35 percent, private lakes shall be prohibited, and land alteration shall not alter the recharge or storage characteristics of the area. A topographic survey will be required to at time of site plan review to

determine elevations in aquifer recharge areas. Information available to NRM indicates that recent, unpermitted land clearing activities may have occurred. The discovery of unpermitted land clearing activities may result in enforcement action.

Portions of the property are mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If adequate sewer for the development is not available, then the use of alternative septic systems designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required.

The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design or permit submittal.

Land Use Comments:

Wetlands

The subject parcel contains mapped NWI wetlands, SJRWMD (Mixed scrub-shrub wetlands and mixed wetland hardwoods), and hydric soils (Anclote sand – depressional, and St. Johns sand - depressional) as shown on the NWI Wetlands, SJRWMD Florida Land Use & Cover Codes, and USDA Soil Conservation Service Soils Survey maps, respectively. All are indicators that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities.

Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For subdivisions greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) including avoidance of impacts, and 62-3696.

Aquifer Recharge Soils

A large area of the subject parcel contains mapped aquifer recharge soils (Paola fine sand, Orsino fine sand, and Pomello sand) as shown on the USDA Soil Conservation Service Soils Survey map. Topographic maps available to NRM indicate elevations greater than or equal to 30 feet mean sea level (NGVD 1929) in portions of the aquifer recharge areas. Per Section 62-3636, Type 2 aquifer recharge areas, the maximum impervious surface shall be 35 percent of the Type 2 aquifer recharge area on the site. Private lakes as described in article XIII, division 5, of this chapter shall be prohibited. Land alteration shall not alter the recharge or storage characteristics of the area. This includes the removal high permeability soils or replacement with lower-permeability soils. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance. Information available to NRM indicates that recent, unpermitted land clearing activities may have occurred. The discovery of unpermitted land clearing activities may result in enforcement action.

Indian River Lagoon Nitrogen Reduction Overlay

Portions of the subject property are mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If adequate sewer for the development is not available, then the use of alternative septic systems designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required. This could amount to over 100 new septic systems within the 60-meter Nitrogen Reduction Overlay area.

Protected and Specimen Trees

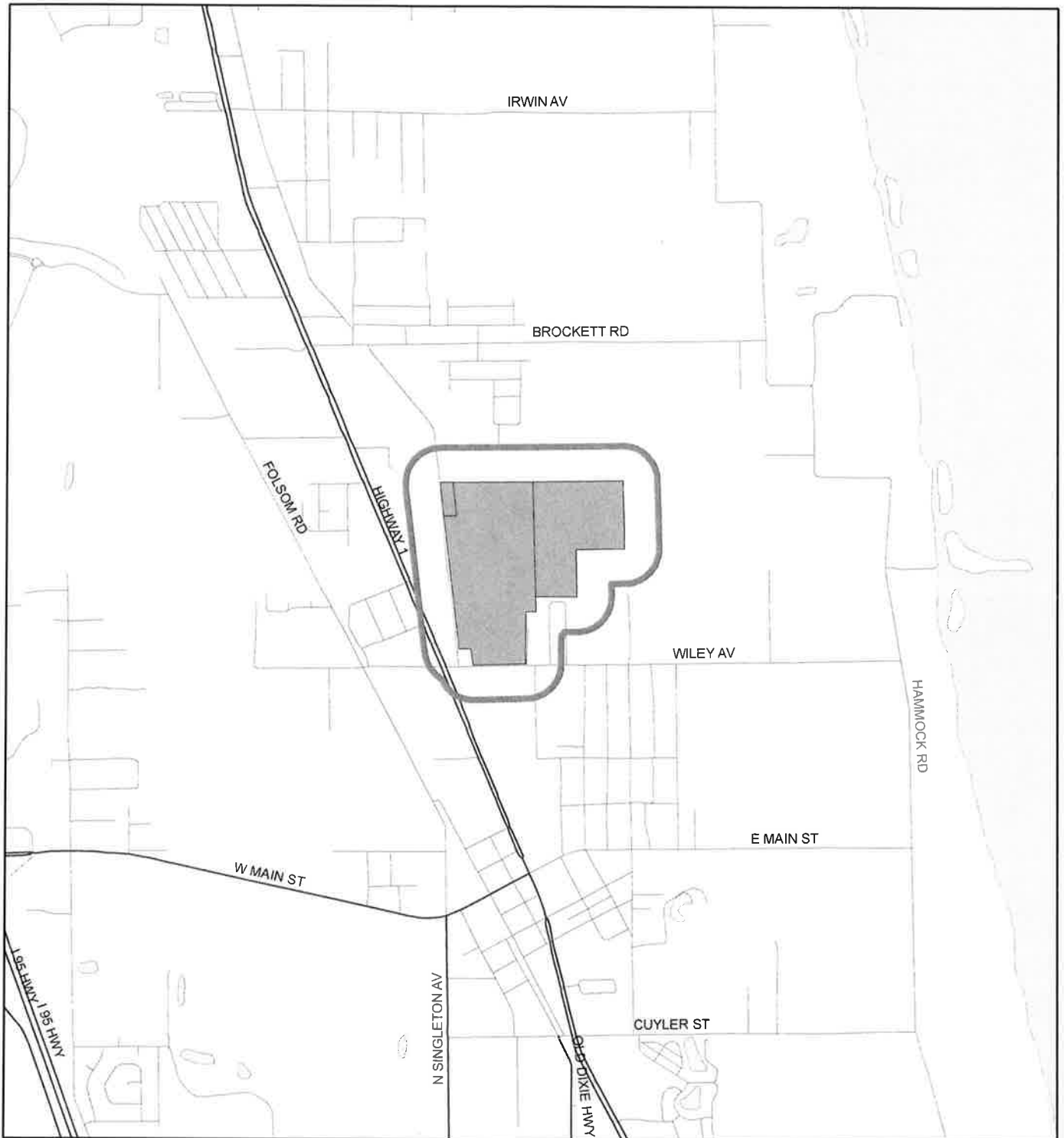
Aerials indicate that Protected (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) may exist on subject property. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4341(18), Protected and Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, 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 tree preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.

Protected Species

Information available to NRM indicates that federally and/or state protected species may be present on the property. Specifically, gopher tortoises can be found in areas of aquifer recharge soils. In addition, a Florida Scrub Jay polygon is mapped on the northern end of 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

AG VENTURES, LLC
20PZ00101



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

Buffer Distance: 500 feet

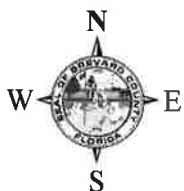
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 10/28/2020

Buffer
Subject Property

ZONING MAP

AG VENTURES, LLC
20PZ00101



1:4,800 or 1 inch = 400 feet

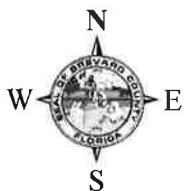
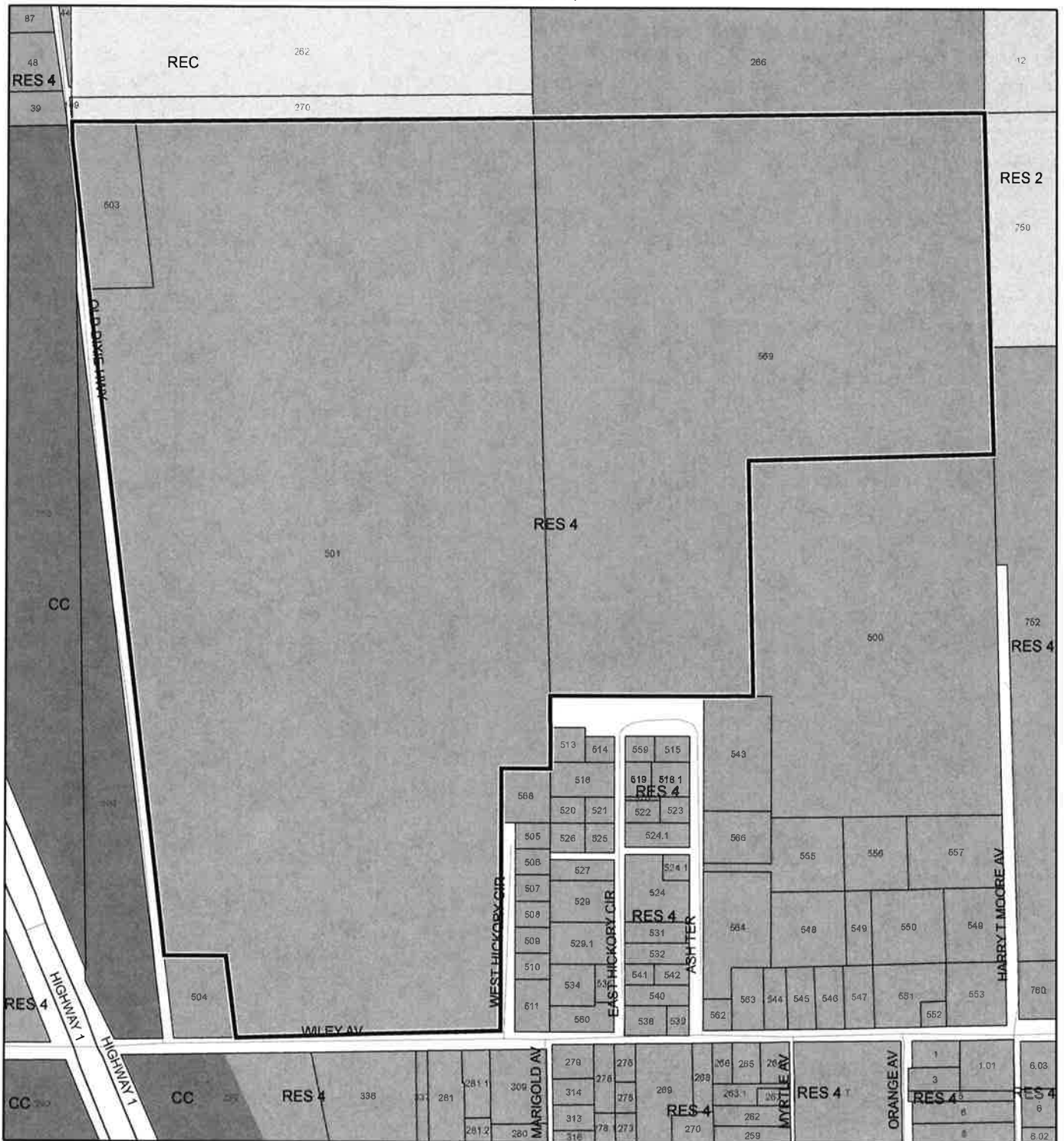
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 10/28/2020

- Subject Property
- Parcels
- Zoning

FUTURE LAND USE MAP

AG VENTURES, LLC
20PZ00101



1:4,800 or 1 inch = 400 feet

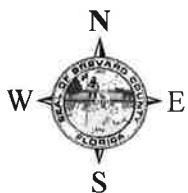
Subject Property
Parcels

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Produced by BoCC - GIS Date: 10/28/2020

AERIAL MAP

AG VENTURES, LLC
20PZ00101



1:6,000 or 1 inch = 500 feet

PHOTO YEAR: 2020

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Produced by BoCC - GIS Date: 10/28/2020

— Subject Property
□ Parcels

NWI WETLANDS MAP

AG VENTURES, LLC
20PZ00101



1:4,800 or 1 inch = 400 feet

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

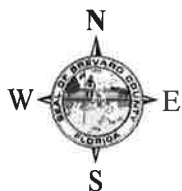
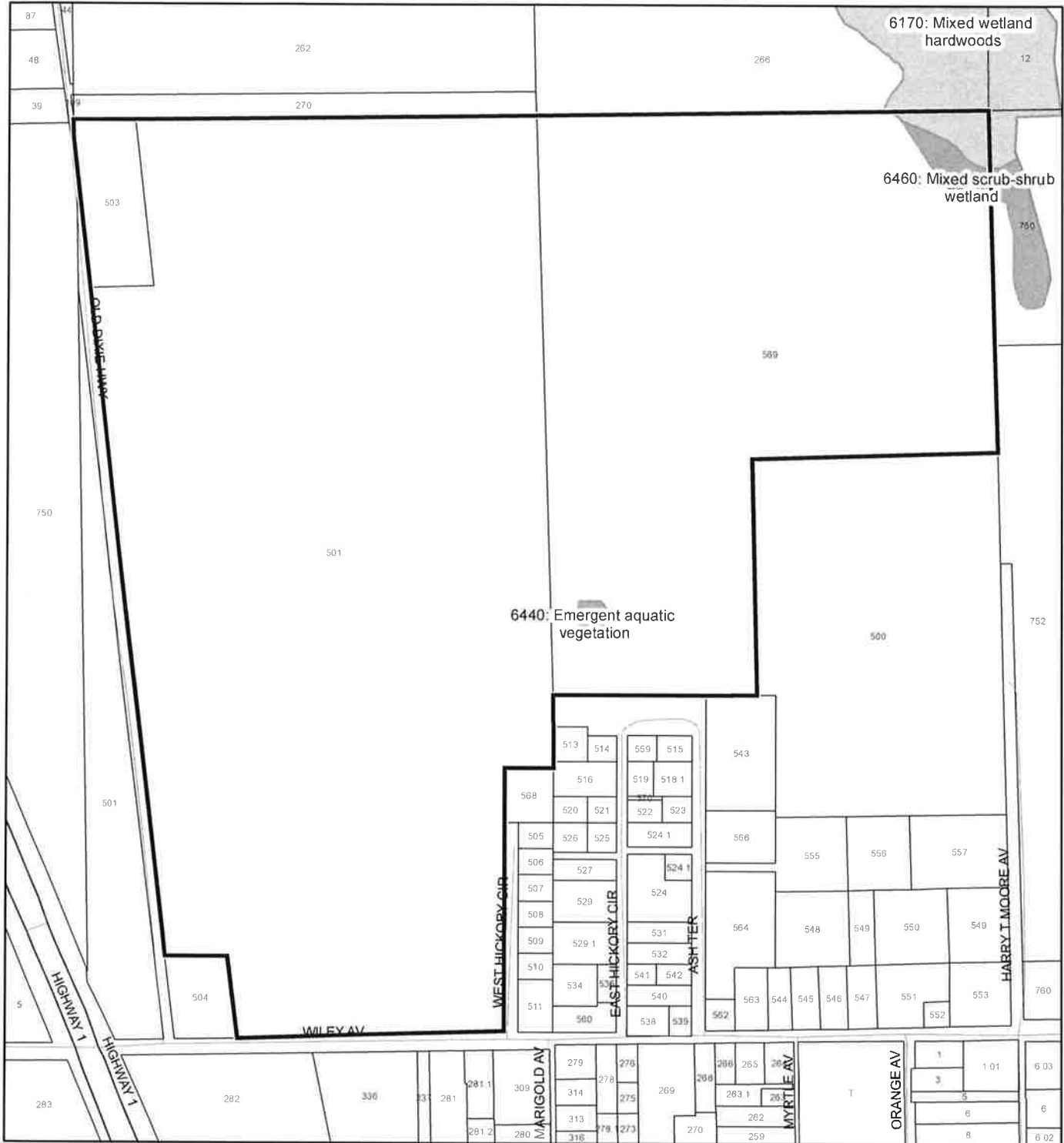
Produced by BoCC - GIS Date: 10/28/2020

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

AG VENTURES, LLC
20PZ00101



1:4,800 or 1 inch = 400 feet

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

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SJRWMD FLUCCS WETLANDS

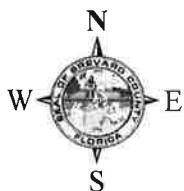
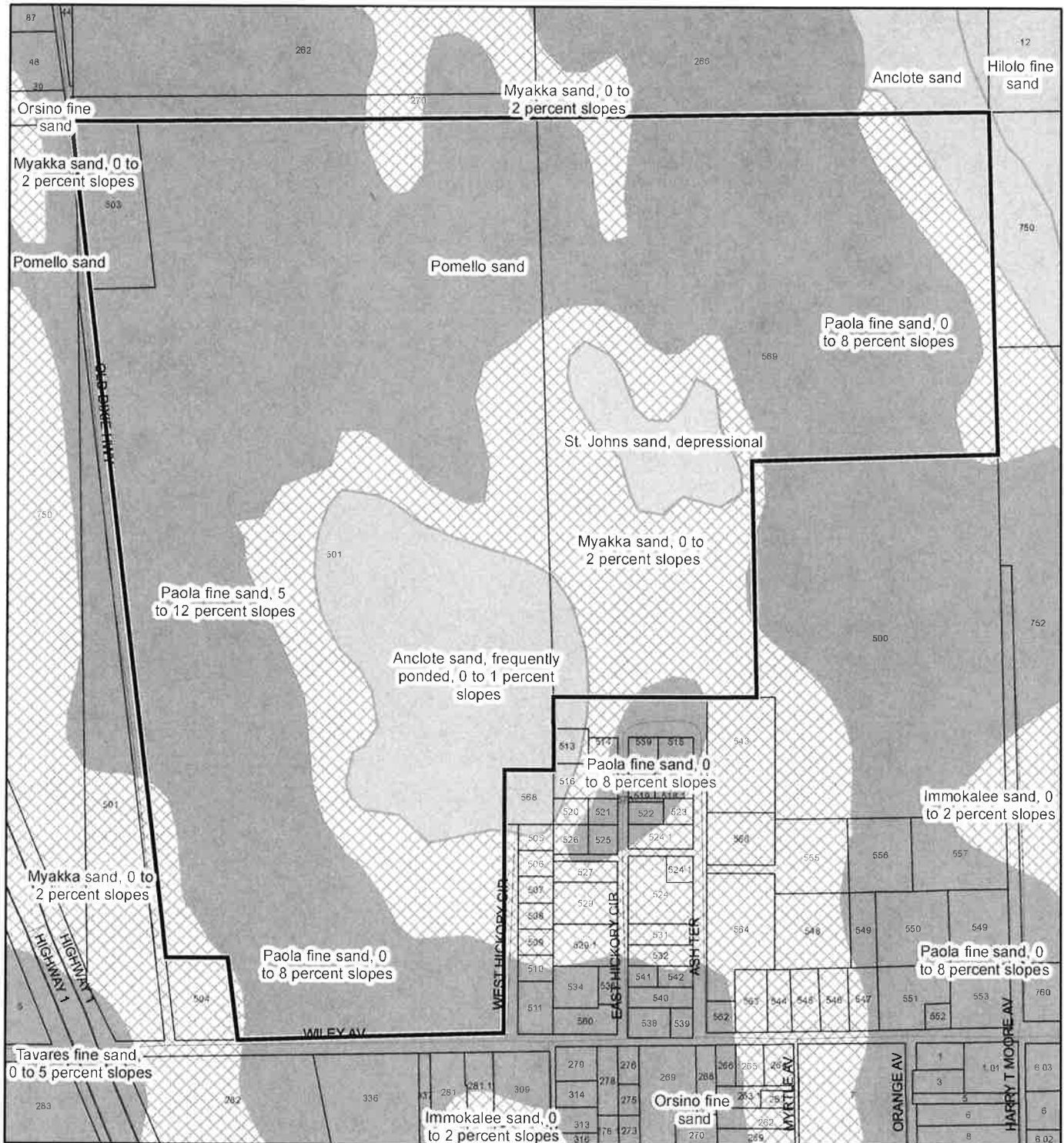
- Wetland Hardwood Forests - Series 6100
- Wetland Coniferous Forest - Series 6200
- Wetland Forested Mixed - Series 6300
- Vegetated Non-Forested Wetlands - Series 6400
- Non-Vegetated Wetland - Series 6500

Subject Property

Parcels

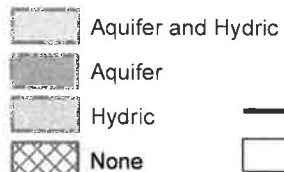
USDA SCSSS SOILS MAP

AG VENTURES, LLC
20PZ00101



1:4,800 or 1 inch = 400 feet

USDA SCSSS Soils



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.

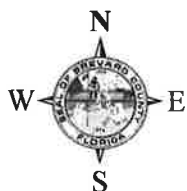
— Subject Property
□ Parcels

Produced by BoCC - GIS Date: 10/28/2020

FEMA FLOOD ZONES MAP

AG VENTURES, LLC

20PZ00101



1:4,800 or 1 inch = 400 feet

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

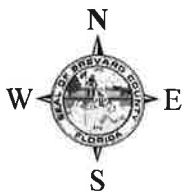
Produced by BoCC - GIS Date: 10/28/2020

FEMA Flood Zones

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

COASTAL HIGH HAZARD AREA MAP

AG VENTURES, LLC
20PZ00101



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 10/28/2020

— Subject Property

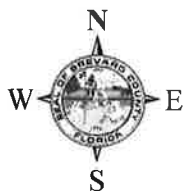
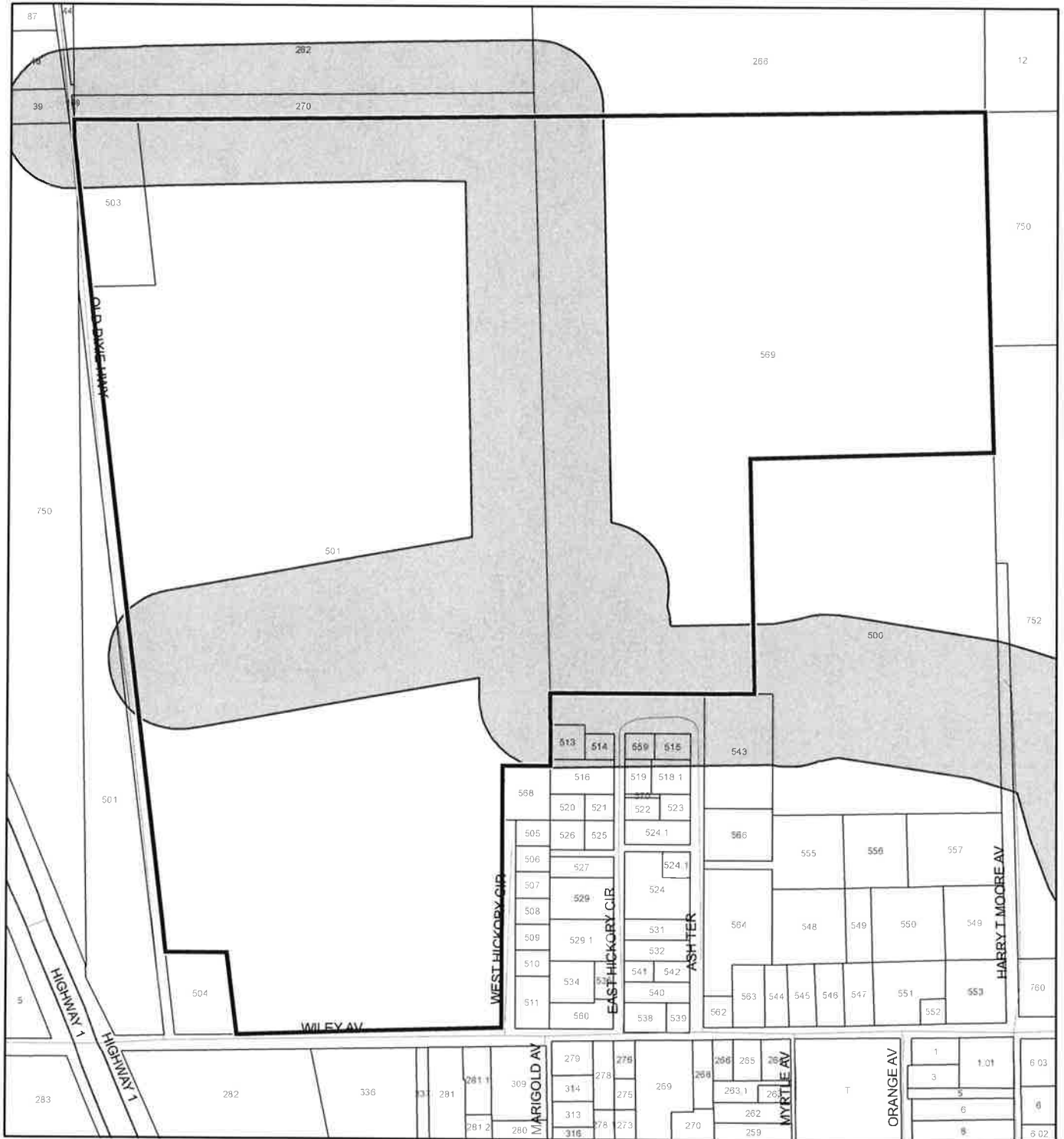
□ Parcels

Coastal High Hazard Area

■ SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

AG VENTURES, LLC
20PZ00101



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 10/28/2020

— Subject Property

□ Parcels

Septic Overlay

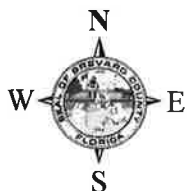
■ 40 Meters

■ 60 Meters

■ All Distances

EAGLE NESTS MAP

AG VENTURES, LLC
20PZ00101



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 10/28/2020

 Subject Property

 Parcels



Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP




AG VENTURES, LLC
20PZ00101



1:4,800 or 1 inch = 400 feet

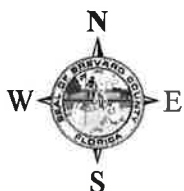
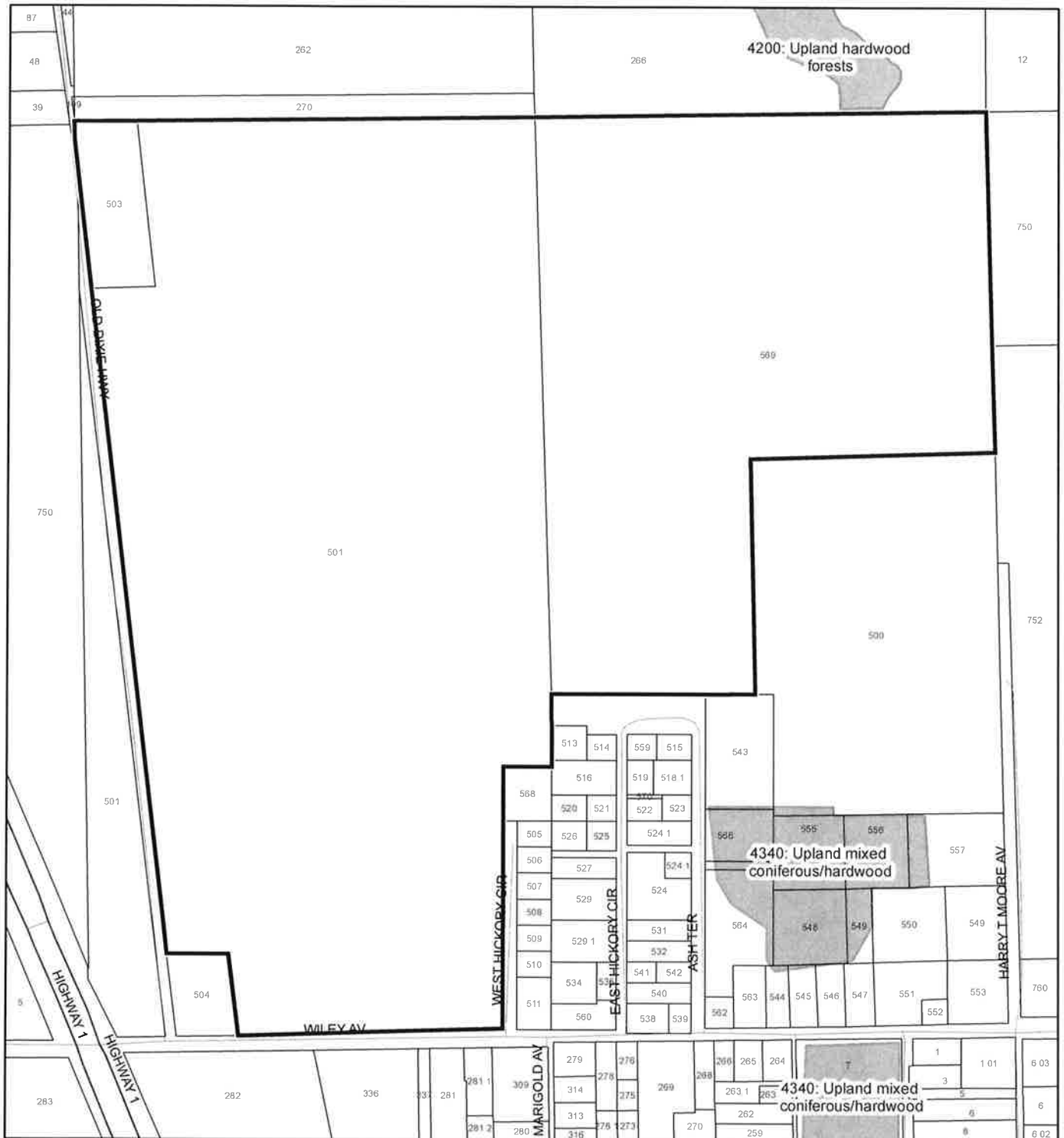
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 10/28/2020

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

AG VENTURES, LLC
20PZ00101



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 10/28/2020

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



BOARD OF COUNTY COMMISSIONERS

Planning and Development

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

**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 # 20PZ 00101

Existing FLU: RES 4 Existing Zoning: RU 1-7

Proposed FLU: RES 4 Proposed Zoning: RU 1-7

PROPERTY OWNER INFORMATION

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

Chad Genoni Ag Ventures, LLC
Name(s) Company
4760 N US1 #201 Melbourne FL 32935
Street City State Zip Code
chad@gendev.us 321-508-5052
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: _____

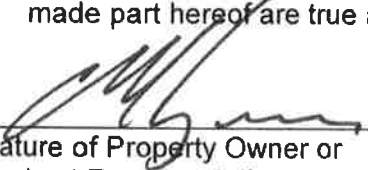
Acreage of Request: 110

Reason for Request:

To allow the zoning to be consistent with the future Land Use designation. The property was previously rezoned without a BDP.

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.



Signature of Property Owner or
Authorized Representative

10/22/2020

Date

State of Florida

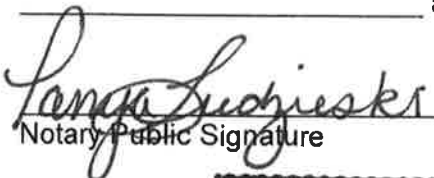
County of Brevard

Subscribed and sworn before me, by X physical presence or _____ online notarization,

this 22 day of, October, 20 20, personally appeared

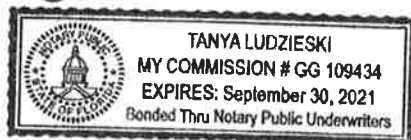
Charles Grenoni, who is personally known to me or produced

_____ as identification, and who did / did not take an oath.



Notary Public Signature

Seal



Office Use Only:

Accela No. 20PZ00101 Fee: Waived Date Filed: 10-23-2020 District No. 1

Tax Account No. (list all that apply) 2102924, 2102294, 2102925

Parcel I.D. No. 21-35-08-00-501

21-35-08-00-503

21 35 08 00 569
Twp Rng Sec Sub Block Lot/Parcel

Planner: PB Sign Issued by: _____ Notification Radius: 500ft

MEETINGS

DATE

TIME



P&Z

January 11, 2021

3:00pm.



PSJ Board



NMI Board



LPA



BOA



BCC

February 4, 2021

5:00p.m.

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

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: Northside of Wiley Ave.
350 feet East of Highway US-1

Description of Request: Binding Development plan
Limiting Density to 4 unit per acre
For R4-1-7 zoning to be consistent with
Res 4 FLLI

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:

TanyaLiob@outlook.com or () or U.S. Mail
e-mail address fax number

Yes/No

I have received a copy of this notice:

Tanya Liob
(APPLICANT SIGNATURE)

OPERATING AGREEMENT
OF
AG VENTURES, LLC

THE MEMBERSHIP INTERESTS PRESENTED BY THIS OPERATING AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH INTERESTS MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER SUBSTANTIAL RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN.

TABLE OF CONTENTS

ARTICLE I - DEFINITIONS	Page 1
ARTICLE II -OFFICES	
Section 2.1 Principal Offices	Page 2
Section 2.2 Registered Office	Page 2
Section 2.3 Other Offices	Page 2
ARTICLE III- ADMISSION OF MEMBERS; TRANSFER OF INTERESTS	
Section 3.1 Admission of Members	Page 3
Section 3.2 Restrictions on the Disposition of an Interest	Page 3
Section 3.3 Additional Members	Page 3
Section 3.4 Additional Restrictions and Option to Purchase a Membership Interest	Page 4
Section 3.5 Unauthorized Transfers	Page 5
Section 3.6 Withdrawal	Page 6
<u>ARTICLE IV- MEETINGS OF MEMBERS</u>	
Section 4.1 Place of Meeting	Page 6
Section 4.2 Annual Meetings	Page 6
Section 4.3 Special Meetings	Page 6
Section 4.4 Notice	Page 6
Section 4.5 Quorum	Page 7
Section 4.6 Voting	Page 7
Section 4.7 Action without a Meeting	Page 7

ARTICLE V - CAPITAL CONTRIBUTIONS

Section 5.1	Agreement to Contribute	Page 7
Section 5.2	Initial Contribution of the Members	Page 7
Section 5.3	Additional Contributions	Page 8
Section 5.4	Treatment of Advances; Interest and Withdrawals	Page 8
Section 5.5	Capital Accounts	Page 8

ARTICLE VI - RIGHTS, POWERS AND OBLIGATIONS OF THE MANAGERS

Section 6.1	Management of Company Business	Page 8
Section 6.2	Number, Term of Office and Qualifications	Page 9
Section 6.3	Removal	Page 9
Section 6.4	Authority of the Managers	Page 9
Section 6.5	Major Decisions	Page 11
Section 6.6	Compensation	Page 11
Section 6.7	Conflicts of Interest	Page 11

ARTICLE VII- RIGHTS AND OBLIGATIONS OF THE MEMBERS

Section 7.1	Management of Business	Page 11
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ARTICLE VIII- PROFITS, LOSSES AND DISTRIBUTIONS

Section 8.1	Profits and Losses	Page 11
Section 8.2	Allocation of Profits & Losses	Page 12
Section 8.3	Determination and Distribution of Net Cash Flow	Page 12

ARTICLE IX - RECORDS, REPORTS AND TAXES

Section 9.1	Fiscal Year	Page 12
Section 9.2	Books and Records	Page 12
Section 9.3	Tax Returns; Elections	Page 12

Section 9.4 Tax Matters Partner Page 12

Section 9.5 Bank Accounts Page 13

ARTICLE X- DISSOLUTION, LIQUIDATION AND TERMINATION OF THE COMPANY

Section 10.1 Dissolution Page 13

Section 10.2 Liquidation Page 13

Section 10.3 Termination Page 14

Section 10.4 Deficit Capital Accounts Page 14

ARTICLE XI- INDEMNIFICATION

Section 11.1 Liability of Managers Page 14

Section 11.2 Indemnity Page 15

ARTICLE XII- CERTIFICATES AND MEMBERS

Section 12.1 Certificates Page 15

Section 12.2 Replacement Certificates Page 15

Section 12.3 Transfers Page 15

ARTICLE XIII - GENERAL

Section 13.1 Arbitration Page 16

Section 13.2 Applicable Law and Litigation Page 16

Section 13.3 Entire Agreement Page 16

Section 13.4 Amendments Page 16

Section 13.5 Benefit Page 16

Section 13.6 Captions Page 16

Section 13.7 Severability of Provisions Page 16

Section 13.8 Execution Page 17

**OPERATING AGREEMENT
OF
AG VENTURES, LLC
a Florida Limited Liability Company**

**ARTICLE I
DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings set forth below, unless the context clearly requires otherwise:

"Act" means the Florida Limited Liability Company Act, as amended from time to time.

"Agreement" means this Operating Agreement as the same from time to time may be amended, modified, supplemented or restated in accordance with the provisions of this Agreement.

"Articles" means the Articles of Organization filed in the office of the Department of State of Florida in Tallahassee, as the same may be from time to time amended, modified or supplemented in accordance with the provisions of this Agreement.

"Capital Account" when used in respect of any Member means the account established and maintained pursuant to Section 5.5 of this Agreement.

"Capital Transactions" means the refinancing, sale or other disposition of any assets of the Company.

"Company" means **AG VENTURES, LLC**.

"Contributions of the Members" means all of the Members' Contributions.

"Dispose," "Disposing" or "Disposition" means a sale, assignment, transfer, exchange, mortgage, pledge, grant of a security interest, or other disposition or encumbrance (including, without limitation, by operation of law), or acts thereof.

"Managers" means the Managers named in the Articles and any persons who may succeed them as Managers of the Company pursuant to this Agreement, and any person who may be admitted as an additional Manager of the Company pursuant to this Operating Agreement.

"Members" means the Members named herein and any additional Members admitted to the Company pursuant to the provisions of this Agreement.

"Membership Interest" means the interest of a Member in the Company, including, without limitation, rights to distributions (liquidating or otherwise), allocations, information, and to consent or approve.

"Net Cash Flow" means for any year or fraction thereof, all cash receipts of the Company excluding (i) Contributions of the Members; (ii) funds received by the Company from indebtedness incurred by the Company; and (iii) net proceeds from Capital Transactions less the sum of (iv) all cash expenses or other debts of the Company paid during such period; and (v) such working capital or reserves or other amounts as the Managers reasonably determine to be necessary or appropriate for the proper operation of the Company's business.

"Permitted Transferee" means a person licensed as a Registered Investment Advisor with the United States Securities and Exchange Commission.

"Person" includes an individual, partnership, limited partnership, limited liability company, foreign limited liability company, trust, estate, corporation, custodian, trustee, executor, administrator, nominee or entity in a representative capacity.

"Recoupment" means capital distributions to a Member equal to the Contributions of the Member.

"Required Interest" means one or more Members owning among them more than sixty (60) of all Membership Interests.

"State" means the State of Florida.

ARTICLE II OFFICES

2.1 PRINCIPAL OFFICES. The principal office of the Company shall be located at 4760 N. US1 #201, Melbourne, Florida 32935, or such other location as the Managers may from time to time determine.

2.2 REGISTERED OFFICE. The registered office of the Company required by the Act to be maintained in the State of Florida, may be, but need not be, identical with the principal office.

2.3 OTHER OFFICES. The Company may have offices at such other places, either within or without the State of Florida, as the Managers from time to time may determine, or as the affairs of the Company may require.

ARTICLE III
ADMISSION OF MEMBERS; TRANSFER OF INTERESTS

3.1 ADMISSION OF MEMBERS

(a) The initial Members of the Company are the Persons named in this Operating Agreement as Members, each of which is admitted to the Company as a Member effective as of the date of execution of this Operating Agreement.

(b) After the formation of this Company, a Person becomes a new Member:

(1) in the case of a Person acquiring a Membership Interest directly from this Company, on compliance with the provisions of this Operating Agreement governing admission of new Members; and

(2) in the case of an assignee of a Membership Interest, as provided by this Operating Agreement and the Act.

3.2 RESTRICTIONS ON THE DISPOSITION OF AN INTEREST.

(a) Except as specifically provided in this Operating Agreement, a Disposition of Membership Interest may not be effected without the consent of all Members. Any attempted Disposition by a Person of an interest or right, or any part thereof, in or in respect of the Company other than in accordance with this Operating Agreement shall be, and is hereby declared, null and void *ab initio*.

(b) An assignee who becomes a Member has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a Member under this Operating Agreement and the Act. Unless otherwise provided by this Operating Agreement, an assignee who becomes a Member also is liable for the obligations of the assignor to make contributions but is not obligated for liabilities unknown to the assignee at the time the assignee became a Member and which could not be ascertained from this Operating Agreement. Whether or not an assignee of a Membership Interest becomes a Member, the assignor is not released from the assignor's liability to this Company.

3.3 ADDITIONAL MEMBERS. Additional Persons may be admitted to the Company and Members and Membership Interests may be created and issued to those Persons and to existing Members at the direction of a Required Interest, on such terms and conditions as a Required Interest may determine at the time of admission. Any such admission also must comply with the requirements described elsewhere in this Operating Agreement and is effective only after the new Member has executed and delivered to a Required Interest a document including the new Member's notice address and its agreement to be bound by this Operating Agreement. The provisions of this Section shall not apply to Dispositions of Membership Interests.

3.4 ADDITIONAL RESTRICTIONS AND OPTION TO PURCHASE A MEMBERSHIP INTEREST. Notwithstanding anything herein to the contrary, no Member shall voluntarily or involuntarily sell or assign a Membership Interest in the Company to any Person or Persons, firms, or other limited liability company not a Member, or pledge the same or any part thereof by endorsement resulting in delivery to a transferee who is not a Member without first offering such Membership Interest for sale to the remaining Members in the same proportion as their respective Membership Interests, in the following manner:

(a) If a Member, at any time, desires to dispose of its Membership Interest, and if the Disposing Member has received a bona fide written offer to purchase its Membership Interest from a Permitted Transferee which the Member desires to accept, such Member shall give written notice to each of the other Members of record, stating the percentage of Membership Interest offered for sale, the price and terms upon which the sale is being made, and the name and address of the prospective third party Permitted Transferee. Such notice shall be sent by certified or registered mail addressed to each Member at its last address as it appears on the books of the Company. For a period of thirty (30) days after receipt of such written offer, each such Member shall have the option to purchase, in the same proportion as its Membership Interest bears to the total Membership Interests of all Members (excluding the Disposing Member) all or any portion of the Membership Interest so offered for the same price and on the same terms as contained in the written offer. Within thirty (30) days after the mailing of said notices, any Member desiring to purchase part or all of such Membership Interest shall deliver by mail or otherwise to the Managers of the Company, a written notice specifying the portion of Membership Interest desired to be purchased by it.

(b) In the event that the proportion of said Membership Interest which any Member would be entitled to purchase is more than the portion of Membership Interest it desires to purchase, each remaining Member desiring to purchase additional Membership Interests shall be entitled to purchase such proportion of the excess as the percentage of Membership Interests which it holds bears to the total percentage of Membership Interests held by all Members desiring to participate in such purchase. The date of closing of all such purchases shall be thirty (30) days after the date of the last notice by a Member of the exercise the option granted in Paragraph (a) above.

(c) If none or only a part of the Membership Interest offered for sale is purchased by the Members, then the Member who offered the same for sale shall have thereafter the right, at any time during the period of sixty (60) days after the expiration of the thirty (30) day period referred to in Paragraph (a) above, to sell said Membership Interest not so purchased to such Permitted Transferee, provided however, that it shall not sell such Membership Interest at a lower price or on terms more favorable to the purchaser than those specified in the written notice it gave to the other Members, nor shall it sell such Membership Interest after the expiration of the said sixty (60) day period without again giving written notice as hereinabove required.

(d) No Membership Interest shall be sold or transferred on the books of the Company until the provisions of this Section have been complied with.

3.5 UNAUTHORIZED TRANSFERS.

(a) The Company will not be required to recognize the interest of any transferee who has obtained a Membership Interest as the result of a transfer of ownership which does not comply with the terms and conditions of this Operating Agreement. If the Membership Interest is in doubt, or if there is reasonable doubt as to who is entitled to a distribution of the income realized from a Membership Interest, the Company may accumulate the income until this issue is finally determined and resolved. Accumulated income will be credited to the Capital Account of the Member whose Membership Interest is in question.

(b) If any Person or agency should acquire the interest of a Member as the result of an order of a court of competent jurisdiction which the Company is required to recognize, or if a Member makes an unauthorized transfer of a Membership Interest which the Company is required to recognize, the interest of the transferee may then be acquired by the Company upon the following terms and conditions:

(1) The Company will have the option to acquire the Membership Interest by giving written notice to the transferee of its intent to purchase within ninety (90) days from the date it is finally determined that the Company is required to recognize the transfer.

(2) The Company will have one hundred eighty (180) days from the first day of the month following the month in which it delivers notice exercising its option to purchase the Membership Interest. The valuation date for the Membership Interest will be the first day of the month following the month in which notice is delivered.

(3) Unless the Company and the transferee mutually agree otherwise, the purchase price of a Membership Interest pursuant to this Section shall be its fair market value as shall be determined by an independent appraiser who shall be selected by the Company, and this determination, when made, shall be final and binding on the Company and all of the Members.

(4) Closing of the sale will occur at the registered office of the Company at 10 o'clock A.M. on the first Tuesday of the month following the month in which the purchase price is determined (called the "closing date"). The transferee will be considered a non-voting owner of the Membership Interest, and entitled to all items of income, deduction, gain or loss from the Membership Interest, plus any additions or subtractions therefrom until closing.

(5) In order to reduce the burden upon the resources of the Company, the Company will have the option, to be exercised in writing delivered at closing, to pay its purchase money obligation in ten (10) equal annual installments (or the remaining term of the Company if less than ten (10) years) with interest thereon at market rates, adjusted annually as of the first day of each calendar year at the option of the

Members. The term "market rates" will mean the rate of interest prescribed as the "prime rate" as quoted in the money rates section of the Wall Street Journal which is also the base rate on corporate loans at large United States money center commercial banks, as of the first day of the calendar year. If Sections 483 and 1274A of the Code apply to this transaction, the rate of interest of the purchase money obligation will be fixed at the rate of interest then required by law. The first installment of principal, with interest due thereon, will be due and payable on the first day of the calendar year following closing, and subsequent annual installments, with interest due thereon, will be due and payable, in order, on the first day of each calendar year which follows until the entire amount of the obligation, principal and interest, is fully paid. The Company will have the right to prepay all or any part of the purchase money obligation at any time without premium or penalty.

(6) A Required Interest may assign the Company's option to purchase to one or more of the Members (excluding the interest of the Member or transferee whose interest is to be acquired), and when done, any rights or obligations imposed upon the Company will instead become, by substitution, the rights and obligations of the Members who are assignees.

(7) Neither the transferee of an unauthorized transfer or the Member causing the transfer will have the right to vote during the prescribed option period, or if the option to purchase is timely exercised, until the sale is actually closed.

3.6 **WITHDRAWAL.** A Member does not have the right or power to withdraw from the Company as a Member.

ARTICLE IV MEETINGS OF MEMBERS

4.1 **PLACE OF MEETING.** All meetings of the Members shall be held at the principal office of the Company, or at such other place within or without the State of Florida as the Managers of the Company may designate in the notice of the meeting.

4.2 **ANNUAL MEETINGS.** An annual meeting of the Members shall be held on any business day during each year, such day to be determined by the Managers, for the purpose of electing the Managers of the Company and for the transaction of such other business as may be properly brought before the meeting.

4.3 **SPECIAL MEETINGS.** Special meetings of the Members may be called at any time by the Managers or whenever requested in writing by Members holding more than ten percent (10%) of Membership Interests in the Company.

4.4 **NOTICE.** The Managers shall cause notice of all Member meetings, whether annual or special, to be mailed to each Member of record entitled to vote at such meeting not less than ten (10) days nor more than sixty (60) days before such meeting, at its post

office address as it appears in the records of the Company. Notice shall be deemed delivered when deposited in the United States Mail, with postage prepaid, addressed to the Members as their addresses appear on the books of the Company.

4.5 QUORM. The presence of a Required Interest represented in person or by proxy, shall constitute a quorum at meetings of Members. If there is no quorum at the opening of the meeting of Members, such meeting may be adjourned from time to time with the vote of a majority of the Members voting on the motion to adjourn; and, at any adjourned meeting at which a quorum (as defined above) is present, the meeting may be reconvened and any business may be transacted which might have been transacted at the original meeting. At any meeting at which a quorum is present, should enough Members withdraw to leave less than a quorum, the remaining Members may continue to transact business until adjournment.

4.6 VOTING. Each Member shall be entitled to vote on each matter submitted to a vote at a meeting of Members. Each Member's right to vote shall be in proportion to its Membership Interest in the Company. A vote of a Required Interest on any matter at a meeting of the Members at which a quorum is present, shall be the act of the Members on that matter, unless the vote of a greater number is required by this Agreement, the Act or by the Articles of the Company, or by any contemporaneous agreements of the Members.

4.7 ACTION WITHOUT A MEETING. Any action required by the Act or the Articles to be taken at any annual or special meeting of the Members or any action which may be taken at annual or special meetings of the Members may be taken without a meeting, without prior notice and without a vote pursuant to a consent in writing, which sets forth the action so taken, which is signed by the Members that would otherwise be enough to carry such question if the requisite Members' meeting was duly held. Within ten (10) days after obtaining such authorization by written consent, notice shall be given to those Members who have not joined in the written consent. The notice shall fairly summarize the material features of the authorized action.

ARTICLE V CAPITAL CONTRIBUTIONS

5.1 AGREEMENT TO CONTRIBUTE. Each Member shall contribute to the capital of the Company at the time and in the manner hereinafter in this Article provided.

5.2 INITIAL CONTRIBUTION OF THE MEMBERS. Contemporaneously with the execution by such Member of this Operating Agreement, each Member shall make the capital contribution described for that Member in Exhibit "A" attached hereto in exchange for the Membership Interest specified therein.

5.3 ADDITIONAL CONTRIBUTIONS. Whenever deemed necessary by the Managers, each Member shall contribute additional capital in amount or amounts pro rata to each Member's Membership Interest in the Company. If any Member shall fail or be unwilling to make its pro rata additional capital contribution, the other Members may contribute the needed additional capital and thereby at the option of the contributor increase its pro rata share in the Company or consider such contribution a loan to the failing Member bearing interest at the highest rate allowed by law which shall be payable in full, principal and interest, one year from the date of contribution.

5.4 TREATMENT OF ADVANCES: INTEREST AND WITHDRAWALS.

(a) If any Member shall advance any funds to the Company other than as provided in Sections 5.2 and 5.3, the amount of any such advance shall not be an additional capital contribution to such Member, but shall be a debt due from the Company to such Member to be repaid at such times and with such interest as shall be expressly agreed upon or, in the absence of such agreement, upon the dissolution and liquidation of the Company and without interest.

(b) No interest shall be paid on any capital contributions. Except as otherwise provided herein, no Member shall be entitled to withdraw any part of its capital contributions until the dissolution and liquidation of the Company.

5.5 CAPITAL ACCOUNTS. A Capital Account for each Member shall be established and maintained for the Member for federal income tax purposes in accordance with the rules of Treasury Regulation Section 1.704-1(b)(2)(iv). Except as otherwise provided in such Regulations, each Member's Capital Account shall initially consist of the Member's cash contribution to the capital of the Company, and the fair market value of property contributed to the Company (as of the date of contribution and net of liabilities assumed by the Company or otherwise secured by such contributed property and with respect to which the Company is considered to assume, or to take subject to, under Code Section 752 of the Internal Revenue Code of 1986, as amended). Each Member's Capital Account shall be further credited with the Member's allocable share of the Company's net profits, and shall be debited by all distributions made by the Company to the Member, together with the Member's allocable share of the Company's net losses.

ARTICLE VI
RIGHTS, POWERS AND OBLIGATIONS OF THE MANAGERS

6.1 MANAGEMENT OF COMPANY BUSINESS. The Managers shall be solely responsible for and shall be fully vested with the power of the management of the Company's business, with all rights and powers to make all decisions affecting the business of the Company using their best efforts to protect the interests of the Members and the Company. Any person entering into any agreement or contract with the Company or otherwise dealing with the Company shall not be required, except for review of the

Company's Certificate of Organization, to inquire as to the authority of the Managers to act for and on behalf of the Company and, except as hereinabove set forth, such person may conclusively rely upon the act or acts of either Manager as being the act or acts of the Company and binding upon and enforceable against the Company.

6.2 **NUMBER, TERM OF OFFICE AND QUALIFICATIONS.** The number of Managers shall be set at two, **JOHN M. GENONI AND CHARLES B. GENONI**. They shall hold office until their death or resignation. If they is unable or willing to serve as Manager, a Successor Manager shall be appointed by a unanimous vote of the Members of the Company.

6.3 **REMOVAL.** Removal of a Manager shall require unanimous vote of all Members.

6.4 **AUTHORITY OF THE MANAGERS.**

(a) In addition to any other rights and powers which the Managers may possess under law or other sections of this Agreement, each Manager shall have all specific rights and powers required for or appropriate to the management of the Company's business which, byway of illustration but not by way of limitation, shall include the following rights and powers:

(i) To purchase, lease, rent or otherwise acquire, and sell, lease, rent, exchange or otherwise dispose of, any real or personal property necessary or convenient to the operation of the Company or its investments;

(ii) To cause the Company to employ persons in the operation and management of the Company's business, including, but not limited to, appraisers, attorneys, accountants and insurance brokers;

(iii) To expend the Company's capital and revenue in furtherance of the Company's business;

(iv) To manage, operate, advertise and improve any Company property or investment and enter into operating agreements with others with respect to properties and investments acquired by the Company containing such terms, provisions and conditions as they shall approve;

(v) To enter into and execute: (i) agreements and any and all documents and instruments customarily employed in connection with the Company's business; and (ii) all other instruments deemed by them to be necessary or appropriate to the proper operations of such properties and investments or in order to perform effectively and properly their duties or exercise their powers hereunder;

(vi) To borrow money from banks, other lending institutions and other lenders for any Company purpose, and in connection therewith, issue notes and other debt securities; hypothecate the Company's assets to secure repayment of the borrowed sums; no bank, other lending institutions or other lender to which application is made for a loan shall be required to inquire as to the purpose for which such loan is sought; and, as between this Company and such bank, other lending institution or other lender, it shall be conclusively presumed that the proceeds of such loan are to and will be used for the purposes authorized hereunder;

(vii) To invest Company assets in certificates of deposit, time or demand deposits in commercial banks or savings and loan associations, or money market instruments, or United States Treasury obligations;

(viii) To obtain replacements of any mortgage or mortgages related in any way to Company property, and repay in whole or in part (whether due or not), refinance, recast, modify, consolidate, or extend any mortgages affecting any such property;

(ix) To enter into agreements and contracts with parties and to give receipts, releases and discharges, with respect to all of the foregoing and any matters incident thereto as they may deem advisable or appropriate;

(x) To maintain, at the expense of the Company, records and accounts of all operations and expenditures;

(xi) To purchase from or through others policies of liability, casualty and other insurance which the Managers deem advisable, appropriate or convenient for the protection of any Company property or affairs of the Company or for any purpose convenient or beneficial to the Company;

(xii) To make such elections under the tax laws of the United States, the State of Florida and other relevant jurisdictions with regard to the treatment of items of Company income, gain, loss, deduction or credit, and with regard to all other relevant matters (including, without limitation, election under Sections 751-755 of the Internal Revenue Code, as amended) as they believe necessary or desirable;

(xiii) To arrange for the preparation of any required Federal, state or local tax returns, and the payment from Company funds of any tax due from the Company;

(xiv) To reinvest any cash from initial financing;

(xv) To appoint the Officers of the Company; and

(xvi) To do any other act deemed necessary for the day-to-day operations of the Company.

(b) The Officers of the Company, when named by the Managers, shall serve until their death, resignation, or removal by the Managers. Each Officer shall have the authority normally associated with such title unless modified in writing by the Managers.

6.5 MAJOR REVISIONS. Notwithstanding the provisions of Section 6.6, the Managers may not cause the Company to do any of the following without approval of Members having a Required Interest:

(a) Sell, lease, exchange, or otherwise dispose of (other than by way of a pledge, mortgage, deed of trust or trust indenture) all or substantially all of the Company's property and assets (with or without good will), other than in the usual and regular course of the Company's business; and

(b) Be a party to (i) a merger, or (ii) an exchange of interests.

6.6 COMPENSATION. The Managers shall receive no compensation. The Managers shall be entitled to be reimbursed for out-of-pocket costs and expenses incurred in the course of their services hereunder, including the portion of their overhead reasonably applicable to Company activities.

6.7 CONFLICTS OF INTEREST. Subject to the other provisions of this Agreement, each Manager and Member of the Company at any time and from time to time may engage in and possess interests in other business ventures of any and every type and description, independently or with others, including ones in competition with the Company, with no obligation to offer to the Company or any other Member or Manager the right to participate therein. The Company may transact business with any Manager, Member or affiliate thereof, provided the terms of those transactions are no less favorable than those the Company could obtain from unrelated third parties.

ARTICLE VII **RIGHTS AND OBLIGATIONS OF THE MEMBERS**

7.1 MANAGEMENT OF THE BUSINESS. No Member who is not a Manager shall take part in the management or control of the business of the Company or transact any business for or in the name of the Company, nor shall any Member who is not a Manager have the power to sign for or bind the Company. In addition, no Member who is not a Manager shall have any power or authority with regard to the Company's decisions except those expressly delineated in this Agreement.

ARTICLE VIII **PROFITS, LOSSES AND DISTRIBUTIONS**

8.1 PROFITS AND LOSSES. For purposes of this Agreement, the term "profits" and "losses" shall mean respectively the profits or losses of the Company for federal income tax purposes, as determined by the Company's accountants annually, and not cumulatively, for each year of the Company.

8.2 ALLOCATION OF PROFITS AND LOSSES. Except as may be required by section 704(c) of the Code and Treas. Reg. § 1.704-1(b)(2)(iv)(f)(4), all profits and losses of the Company and all items of income, gain, loss, deduction or credit which enter into the computation thereof shall be allocated to the Members in proportion to each Member's Membership Interest.

8.3 DETERMINATION AND DISTRIBUTION OF NET CASH FLOW. From time to time (but at least once each calendar year), the Managers shall determine the amount of Net Cash Flow available for distribution. In determining the amount of Net Cash Flow, the Managers in their sole discretion may create and maintain reserves in any case where the Managers deem it necessary or appropriate. Such Net Cash Flow shall be distributed to the Members in proportion to each Member's Membership Interest.

The Net Cash Flow shall be distributed within thirty (30) days after the determination of Net Cash Flow is made. In the event of dissolution, Net Cash Flow shall be determined within sixty (60) days after the event causing dissolution.

ARTICLE IX **RECORDS, REPORTS AND TAXES**

9.1 FISCAL YEAR. The fiscal year of the Company for both accounting and Federal income tax purposes shall end on December 31 of each year.

9.2 BOOKS AND RECORDS. At all times during the continuance of the Company, the Managers shall keep or cause to be kept full and faithful books of account in which shall be entered fully and accurately each transaction of the Company. All of the books of account shall at all times be maintained at the principal office of the Company or at such other place as the Managers shall determine and shall be open to inspection and examination by the Members or their representatives, by appointment, during normal business hours. The method of accounting shall be determined by the Managers.

9.3 TAX RETURNS; ELECTIONS.

(a) The Managers shall cause all income tax and information returns for the Company to be prepared by the Company's accountant, and shall cause such tax returns to be timely filed with the appropriate authorities.

(b) The Managers on behalf of the Company shall make elections for Federal income tax purposes.

9.4 TAX MATTERS PARTNER. Charles B. Genoni shall be the "Tax Matters Partner," as such term is defined in Section 6231(a) of the Internal Revenue Code.

9.5 BANK ACCOUNTS. The funds of the Company shall be deposited in the name of the Company in such bank accounts as shall be designated by the Managers and withdrawals therefrom shall be made by such persons as the Managers may designate.

ARTICLE X

DISSOLUTION, LIQUIDATION AND TERMINATION OF THE COMPANY

10.1 DISSOLUTION.

(a) Except as herein otherwise expressly provided, the Company shall be dissolved upon the occurrence of any of the following events, unless within sixty (60) days after the occurrence of such an event, the remaining Members elect to continue the business and affairs of the Company in accordance with the provisions of this Agreement and the Act:

(1) Bankruptcy of a Member or filing of voluntary bankruptcy by a Member;

(2) Assignment for the benefit of creditors of a Member;

(3) Appointment of trustee or receiver for substantially all assets of a Member;

(4) Death, disability or adjudicated incompetency of a Member;

(5) The vote of Members holding at least two-thirds (2/3) of the Membership Interests in the Company; or

(6) Any other event, which, under the Act, would cause the dissolution of a limited liability company.

(b) Dissolution shall be effective on the date of the event giving rise to the dissolution, but the Company shall not terminate until the assets thereof have been distributed in accordance with the provisions hereinafter set forth.

10.2 LIQUIDATION.

(a) Upon the occurrence of dissolution, the Managers shall wind up all Company affairs, and proceed to liquidate all Company assets as promptly as is consistent with obtaining their fair value, and shall apply and distribute the proceeds in the following order:

(1) Those liabilities to creditors, in the order of priorities as provided

by law, except those liabilities to Members on account of their contribution;

(2) Those liabilities to Members in respect of their shares of the profits and other compensation by way of income on their contributions as provided in Section 8.2; and

(3) Those liabilities to Members in respect of their contributions to capital.

(b) Members shall share in the Company's assets in respect to their claims for capital and in respect to their claims for profits or for compensation by way of income on their contributions, respectively, in proportion to the respective amounts of the claims.

10.3 TERMINATION. The Company shall be terminated when (a) all property owned by the Company shall have been disposed of and (b) the net proceeds, if any, after satisfaction of liabilities to creditors, shall have been distributed among the Members. If there are insufficient proceeds to satisfy all liabilities to creditors, the Company shall be terminated when all assets are disposed of. The Managers may establish such reserves as he shall deem reasonably necessary to provide for any contingent or unforeseen liabilities or obligations of the Company; provided, however, that the establishment of any reserves shall not extend the term of the Company. To effect termination of the Company, the Managers or authorized Member shall file Articles of Dissolution with the Secretary of State of Florida and take such other actions as may be necessary to terminate the Company. An "authorized Member" shall be a Member or Members appointed by the Managers.

10.4 DEFICIT CAPITAL ACCOUNTS. Notwithstanding anything to the contrary contained in this Operating Agreement, and notwithstanding any customary rule of law to the contrary, to the extent that the deficit, if any, in the Capital Account of any Member results from or is attributable to deductions and losses of the Company (including non-cash items such as depreciation), or distributions of money to Members pursuant to the provisions of Section 8.3, upon dissolution of the Company, such deficit shall not be an asset of the Company and such Member shall not be obligated to contribute such amount to the Company to bring the balance of such Member's Capital Account to zero.

ARTICLE XI **INDEMNIFICATION**

11.1 LIABILITY OF MANAGERS. No Manager shall be liable or accountable, in damages or otherwise, to the Company, any Member or to any other Manager for any error of judgment, for any mistakes of fact or law, for any act or omission performed or omitted by any Manager in good faith and in a manner reasonably believed by it to be within the scope of the authority granted it by this Operating Agreement and in, or not opposed to, the best interests of the Company, or for anything which it may do or refrain from doing hereafter in connection with the business and affairs of the Company, except in the case of fraud, willful misconduct, gross negligence, or for professional malpractice (negligent or otherwise).

11.2 INDEMNITY. The Company shall indemnify and shall hold each Manager harmless from any loss or damage, including without limitation, reasonable legal fees and court costs, incurred by it by reason of anything it may do or refrain from doing hereafter for and on behalf of the Company or in connection with its business or affairs; provided, however, that the Company shall not be required to indemnify such Manager for any loss or damage which it might incur as a result of such Manager's fraud, willful misconduct or gross negligence in the performance of its duties hereunder. The right of indemnification set forth in this Section shall be in addition to any rights to which a person or entity seeking indemnification may otherwise be entitled and shall inure to the benefit of the successors, assigns and heirs of any such person or entity. No Member shall be personally liable with respect to any claim for indemnification pursuant to this Section, but such claim shall be satisfied solely out of assets of the Company. The termination of any action, suit or proceeding shall not, of itself, create a presumption that the Manager did not act in good faith and in a manner that is reasonably believed to be in or not opposed to the best interests of the Company. Any indemnification under this Section, unless ordered by a court, shall be made by the Company only as authorized in the specific case and only upon a determination by independent legal counsel, in a written opinion, that indemnification of the Manager is proper in the circumstances because it has met the applicable standard of conduct set forth in this Section and the Act.

ARTICLE XII

CERTIFICATES AND MEMBERS

12.1 CERTIFICATES. Every Member shall be entitled to have a certificate, signed by all Managers, certifying the Membership Interest owned by it.

12.2 REPLACEMENT CERTIFICATES. The Managers may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Company alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Member claiming the certificates to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Managers may, in their discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or its legal representative, to advertise the same in such manner as they shall require and/or to give the Company a bond in such sum as they may direct as indemnity against any claim that may be made against the Company with respect to the certificates alleged to have been lost, stolen or destroyed.

12.3 TRANSFERS. Upon surrender to the Company or the transfer agent of the Company of a certificate for a Membership Interest duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the Company, provided that the transfer is in compliance with the terms of this Operating Agreement, to issue a new certificate to the person entitled thereto, cancel the old certificates and record the transaction upon its books.

ARTICLE XIII GENERAL

13.1 ARBITRATION. In the event of any controversy or claim arising out of or relating to this Agreement, the parties specifically and irrevocably agree to submit such controversy or dispute to resolution by arbitration to be conducted in Brevard County, Florida in accordance with the arbitration rules of the American Arbitration Association. A judgment upon any award or decision rendered by the arbitrator shall be entered by a court having subject matter jurisdiction therein and all parties expressly waive any challenge to the use of arbitration in accordance with this paragraph. The parties hereto agree that jurisdiction and venue for the entry of a judgment upon said arbitration award or decision shall be in Brevard County, Florida. The arbitrators are directed to award the expenses of the arbitration, including required travel and other expenses of the arbitrators and any representatives of the arbitrators, the costs and charges of the American Arbitration Association and all reasonable attorney's fees and costs to the prevailing party in the arbitration.

13.2 APPLICABLE LAW AND LITIGATION. This Agreement shall be construed and enforced under the laws of the State of Florida. If it becomes necessary for any party to this Agreement to institute litigation to enforce or construe any of its terms, then the prevailing party in such action shall be entitled to an award of reasonable attorney's fees and costs. Any aggrieved party may proceed to enforce its rights in the appropriate action at law or in equity. Venue for all suits arising out of this Agreement shall lie exclusively in the courts of Brevard County, Florida.

13.3 ENTIRE AGREEMENT. This instrument incorporates the entire agreement among the parties hereto, regardless of anything to the contrary contained in the Article or other instrument, memorandum or notice purporting to summarize the terms hereof, whether or not the same shall be recorded or published.

13.4 AMENDMENTS. This Agreement may not be modified or amended except as otherwise provided herein and with the unanimous consent of the Members.

13.5 BENEFIT. This Agreement is binding upon and shall inure to the benefit of the parties hereunder, and their respective heirs, legal representatives, successors and permitted assigns.

13.6 CAPTIONS. Captions are inserted for convenience only and shall not be given any legal effect.

13.7 SEVERABILITY OF PROVISIONS. Each provision of this Agreement shall be considered severable and if for any reason any provision which is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any then existing law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

13.8 EXECUTION. This Agreement may be executed in any number of counterparts, and each such counterpart will, for all purposes, be deemed an original instrument, but all such counterparts together with this document constitute but one and the same Agreement.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement or a counterpart as of the 30 day of October, 2015.



CHARLES B. GENONI



JOHN M. GENONI

EXHIBIT "A"

<u>Member</u>	<u>Capital Contribution</u>	<u>Membership Interest</u>
John M. Genoni		50%
Charles B. Genoni		50%



School Board of Brevard County

2700 Judge Fran Jamieson Way • Viera, FL 32940-6699
Mark W. Mullins, Ed.D., Superintendent

School Concurrency
20PZ00101
Ag Ventures



October 20, 2020

Mr. Paul Body
Planning & Development Department
Brevard County Board of County Commissioners
2725 Judge Fran Jamieson Way
Viera, Florida 32940

**RE: Proposed Hamlin Grove Development
School Capacity Availability Determination Letter SCADL-2020-17**

Dear Mr. Paul Body,

We received a completed *School Facility Planning & Concurrency Application* for the referenced development. The subject property consists of Tax Account 2102925 (Parcel ID: 21-35-08-00-503), Tax Account 2112294 (Parcel ID: 21-35-08-00-569), a portion of Tax Account 2102924 (Parcel ID: 21-35-08-00-501) and a portion of Tax Account 2102649 (Parcel ID: 21-35-07-00-750) containing approximately 117.84 acres in District 1 Brevard County, Florida. Four Hundred Forty (440) single family dwelling units are planned for completion. The School Concurrency Determination of this proposed development has been undertaken and the following information is provided for your use.

The calculations used to analyze the prospective student impact are consistent with the methodology outlined in Section 13.2 of the *Interlocal Agreement for Public School Facility Planning & School Concurrency (ILA-2014)*. The following capacity analysis is performed using capacities/projected students as shown in the *Brevard County Public Schools Financially Feasible Plan for 2019-20 to 2024-25* which is attached for reference.

Single Family Homes	440		
Students Generated	Student Generation Rates	Calculated Students Generated	Rounded Number of Students Generated
Elementary	0.28	123.2	123
Middle	0.08	35.2	35
High	0.16	70.4	70
Total	0.52		228

Planning & Project Management
Facilities Services
Phone: (321) 633-1000 x11418 • FAX: (321) 633-4646



An Equal Opportunity Employer

**FISH Capacity (including relocatables) from the
Financially Feasible Plan Data and Analysis for School Years 2019-20 to 2024-25**

School	2020-21	2021-22	2022-23	2023-24	2024-25
Pinewood	569	569	569	569	569
Madison	743	743	743	743	743
Astronaut	1,446	1,446	1,446	1,446	1,446

Projected Student Membership

School	2020-21	2021-22	2022-23	2023-24	2024-25
Pinewood	501	517	533	546	552
Madison	518	494	474	480	527
Astronaut	1,111	1,153	1,143	1,105	1,091

Students Generated by Previously Issued SCADL Reservations

School	2020-21	2021-22	2022-23	2023-24	2024-25
Pinewood	90	109	109	109	109
Madison	22	22	24	27	27
Astronaut	79	93	110	110	110

**Cumulative Students Generated by
Proposed Development**

School	2020-21	2021-22	2022-23	2023-24	2024-25
Pinewood	-	22	45	67	123
Madison	-	6	13	19	35
Astronaut	-	13	26	38	70

**Total Projected Student Membership (includes
Cumulative Impact of Proposed Development)**

School	2020-21	2021-22	2022-23	2023-24	2024-25
Pinewood	591	648	687	722	784
Madison	540	522	511	526	589
Astronaut	1,190	1,259	1,279	1,253	1,271

**Projected Available Capacity =
FISH Capacity - Total Projected Student Membership**

School	2020-21	2021-22	2022-23	2023-24	2024-25
Pinewood	(22)	(79)	(118)	(153)	(215)
Madison	203	221	232	217	154
Astronaut	256	187	167	193	175

At this time Pinewood Elementary School is not projected to have enough capacity for the total of projected and potential students from the Hamlin Grove development. Because there is a shortfall of available capacity in the concurrency service areas of the Hamlin Grove development, the capacity of adjacent concurrency service areas must be considered. The adjacent elementary school concurrency service area is Mims Elementary School. A table of capacities of the *Adjacent Schools Concurrency Service Area* that could accommodate the impacts of the Hamlin Grove development is shown:

**FISH Capacity (including relocatables) from the
Financially Feasible Plan Data and Analysis for School Years 2019-20 to 2024-25**

School	2020-21	2021-22	2022-23	2023-24	2024-25
Mims	725	725	725	725	725

Projected Student Membership

School	2020-21	2021-22	2022-23	2023-24	2024-25
Mims	483	500	523	538	550

Students Generated by Previously Issued SCADL Reservations

School	2020-21	2021-22	2022-23	2023-24	2024-25
Mims	6	6	6	14	23

**Cumulative Students Generated by
Proposed Development**

School	2020-21	2021-22	2022-23	2023-24	2024-25
Mims	-	22	45	67	123

**Total Projected Student Membership (includes
Cumulative Impact of Proposed Development)**

School	2020-21	2021-22	2022-23	2023-24	2024-25
Mims	489	528	574	619	696

**Projected Available Capacity =
FISH Capacity - Total Projected Student Membership**

School	2020-21	2021-22	2022-23	2023-24	2024-25
Mims	236	197	151	106	29

Considering the adjacent elementary school concurrency service area, there is sufficient capacity for the total projected student membership to accommodate the Hamlin Grove development. This letter is the official **School Concurrency Availability Determination Letter (SCADL)** for the Hamlin Grove development in accordance with Section 13.2(e) of the *Interlocal Agreement for Public School Facility Planning and School Concurrency (ILA)*.

This letter will become binding and capacity will be reserved in Brevard Public Schools for the projected student membership impact of this development when Brevard County determines final concurrency.

The School Capacity Reservation at the above schools is valid for 24 months from the date of this letter. At that time, if the project has not received approval from Brevard County, a Time Extension application can be submitted to the School Board through Brevard County. A maximum of 2 additional years can be requested. If the final plat approval has not been completed after the 2-year Time Extension is granted, a new application for School Concurrency must be submitted.

Also, in accordance with Section 13.2(f) of the ILA, so that the school district can track capacity reservations, please provide notification:

1. When this residential development has received a Concurrency Evaluation Finding of Nondeficiency or functional equivalent.
2. The date the development order expires, is extended, or is revoked.
3. When the concurrency reservations become vested.
4. When the school impact fees have been paid.

We appreciate the opportunity to review this proposed project. Please let us know if you require additional information.

Sincerely,



Karen M. Black, AICP Candidate
Manager – Facilities Planning & Intergovernmental Coordination
Planning & Project Management, Facilities Services

Enclosure: *Brevard County Public Schools Financially Feasible Plan for 2019-20 to 2024-25*

Copy: Susan Hann, Assistant Superintendent of Facilities Services
File SCADL-2020-17

David G. Lindemann, AICP, Director of Planning & Project Management, Facilities Services
File SCADL-2020-17

Brevard County Public Schools

Financially Feasible Plan To Maintain Utilization Rates Lower than the 100% Level of Service Data and Analysis for School Years 2019-20 to 2024-25



Summary		2019-20		2020-21		2021-22		2022-23		2023-24		2024-25			
Highest Utilization Elementary Schools		104%	99%	99%	98%	98%	98%	98%	98%	98%	98%	98%	98%		
Highest Utilization Middle Schools		95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%		
Highest Utilization High Schools		95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%		
School	Type	Grades	Utilization Factor	School Year 2019-20		School Year 2020-21		School Year 2021-22		School Year 2022-23		School Year 2023-24		School Year 2024-25	
				FISH Capacity	Member-ship	Future FISH Capacity	Student Projection	Future FISH Capacity	Student Projection	Future FISH Capacity	Student Projection	Future FISH Capacity	Student Projection	Future FISH Capacity	Student Projection
Elementary School Concurrency Service Areas															
New Vista	Elementary	K-6	100%	-	733	870	751	970	470	970	516	970	547	591	
Allen	Elementary	K-6	100%	751	718	751	741	795	785	839	815	839	835	835	
Andersen	Elementary	K-6	100%	884	718	884	884	884	884	884	884	884	884	884	
Apple	Elementary	K-6	100%	902	670	902	876	936	936	936	936	936	936	936	
Atlanta	Elementary	K-6	100%	735	610	735	591	735	722	735	733	735	735	735	
Audubon	Elementary	K-6	100%	761	533	761	469	761	475	761	465	761	465	696	
Cambodge	Elementary	K-6	100%	785	632	785	601	785	591	785	587	785	593	831	
Cape View	Elementary	K-6	100%	570	380	570	343	570	347	570	344	570	343	611	
Carol	Elementary	K-6	100%	751	670	751	710	751	707	751	707	751	711	707	
Chickadee 7	Elementary	K-6	100%	573	543	573	544	573	455	595	478	595	599	601	
Columbia	Elementary	K-6	100%	751	432	751	407	751	468	751	468	751	476	831	
Coral	Elementary	K-6	100%	1,154	520	1,154	843	1,154	831	1,154	813	1,154	815	711	
Crook	Elementary	K-6	100%	795	523	795	494	795	519	795	524	795	532	791	
Discovery	Elementary	K-6	100%	980	646	980	638	980	652	980	652	980	640	741	
Endeavour	Elementary	K-6	100%	980	662	980	640	980	602	980	595	980	600	741	
Enterprise	Elementary	K-6	100%	729	607	729	598	729	609	729	614	729	615	551	
Fairleigh	Elementary	K-6	100%	789	667	789	625	789	675	789	671	789	694	841	
Gannett	Elementary	K-6	100%	711	475	711	502	711	488	711	487	711	510	721	
Golfview	Elementary	K-6	100%	777	504	777	472	777	548	777	542	777	554	711	
Harbor City	Elementary	K-6	100%	629	366	629	361	629	403	629	403	629	398	691	
Holland	Elementary	K-6	100%	605	502	605	502	605	485	605	484	605	462	761	
Imperial Estates	Elementary	K-6	100%	729	628	729	610	729	618	729	625	729	633	891	
Indiantown	Elementary	K-6	100%	930	732	930	699	930	721	930	725	930	732	791	
Jupiter	Elementary	K-6	100%	882	632	882	672	882	652	882	698	882	662	569	
Lockhart	Elementary	K-6	100%	790	636	790	592	790	576	790	581	790	581	741	
Loughlin	Elementary	K-6	100%	958	645	958	635	958	807	958	790	958	821	841	
Manatee	Elementary	K-6	100%	958	985	958	885	958	807	958	807	958	821	841	
McCallum	Elementary	K-6	100%	518	740	518	719	518	708	518	710	518	710	711	
Meacham Intermediate	Elementary	K-6	100%	1,114	836	1,114	634	1,114	980	1,114	1,070	1,114	1,465	791	
Meadowdale	Elementary	K-6	100%	824	880	824	793	824	757	824	812	824	880	880	
Meadowdale Primary	Elementary	K-6	100%	707	463	707	469	707	487	707	469	707	509	721	
Mills	Elementary	K-6	100%	725	452	725	489	725	523	725	438	725	500	721	
Oak Park	Elementary	K-6	100%	968	642	968	637	968	566	968	551	968	531	551	
Ozann Breeze	Elementary	K-6	100%	654	559	654	586	654	585	654	585	654	584	654	
Palm Bay	Elementary	K-6	100%	993	641	993	627	993	656	993	741	993	600	761	
Pinewood	Elementary	K-6	100%	589	498	589	501	589	656	589	445	589	769	761	
Port Mauder	Elementary	K-6	100%	852	713	852	680	852	686	852	777	852	802	802	
Quest	Elementary	K-6	100%	1,152	1,196	1,152	968	1,152	945	1,152	1,021	1,152	1,007	1,007	
Riviera	Elementary	K-6	100%	777	699	777	707	777	785	777	785	777	802	802	
Roadview	Elementary	K-6	100%	589	345	589	317	589	237	589	275	589	232	471	
Sabal	Elementary	K-6	100%	785	563	785	567	785	584	785	592	785	581	731	
Salem	Elementary	K-6	100%	975	845	975	845	975	867	975	805	975	805	731	
Sea Park	Elementary	K-6	100%	461	338	461	308	461	341	461	342	461	317	681	
Shenwood	Elementary	K-6	100%	609	461	609	421	609	421	609	427	609	435	711	
South Lake	Elementary	K-6	100%	481	351	481	372	481	372	481	372	481	372	771	
Surfside	Elementary	K-6	100%	913	788	913	749	913	781	913	717	913	835	835	
Surfside	Elementary	K-6	100%	755	675	755	619	755	562	755	596	755	607	607	
Surfside	Elementary	K-6	100%	541	481	541	460	541	450	541	436	541	424	711	
Tropical	Elementary	K-6	100%	910	804	910	803	910	836	910	745	910	745	761	
Turner	Elementary	K-6	100%	874	565	874	577	874	538	874	528	874	503	503	
University Park	Elementary	K-6	100%	811	479	811	454	811	636	811	611	811	581	681	
Westside	Elementary	K-6	100%	857	773	857	734	857	702	857	709	857	750	891	
Williams	Elementary	K-6	100%	715	574	715	499	715	494	715	487	715	474	651	
Elementary Totals				41,984	33,013	42,866	32,578	43,108	33,238	43,306	34,093	43,594	34,580	43,804	

[illegible]

	Jr / Sr High PW 7-12	90%	2,067	1,610	78%	2,067	1,832	79%	2,067	1,822	88%	2,067	1,841	89%	2,067	1,913	92%
Cocoa Beach	Jr / Sr High 7-12	90%	1,466	1,003	68%	1,466	1,092	75%	1,466	1,426	97%	1,466	1,452	99%	1,466	1,466	100%
Sage Coast	Jr / Sr High 7-12	90%	1,857	1,584	85%	1,857	1,577	85%	1,857	1,594	86%	1,857	1,503	81%	1,857	1,513	81%
Jr / Sr High Totals			5,390	4,197		5,390	4,211		5,390	4,547		5,390	4,263		5,390	4,311	

Senior High School Concurrency Service Areas												
High	9-12	95%	1,446	1,055	75%	1,448	1,105	75%	1,446	1,105	75%	1,446
Astronaut	High	95%	2,267	1,646	75%	2,267	1,788	79%	2,257	1,788	79%	2,257
Bayview	High	95%	2,232	1,639	75%	2,232	1,738	76%	2,232	1,738	76%	2,232
Bay View	High	95%	2,314	1,689	82%	2,314	1,995	84%	2,314	1,995	84%	2,314
Bay View	High	95%	2,356	1,740	87%	2,356	2,037	87%	2,356	2,037	87%	2,356
Bay View	High	95%	1,815	1,527	80%	1,815	1,543	83%	1,815	1,543	83%	1,815
Bay View	High	95%	2,602	1,413	54%	2,602	1,626	63%	2,602	1,626	63%	2,602
Bay View	High	95%	1,701	1,518	88%	1,701	1,540	81%	1,701	1,540	81%	1,701
Bay View	High	95%	1,516	1,422	94%	1,516	1,484	94%	1,516	1,484	94%	1,516
Bay View	High	95%	1,848	1,310	71%	1,848	1,321	71%	1,848	1,321	71%	1,848
Bay View	High	95%	2,277	2,154	95%	2,277	2,195	96%	2,277	2,195	96%	2,277
Bay View	High	95%	2,264	1,763	78%	2,264	1,848	82%	2,264	1,848	82%	2,264
Bay View	High	95%	2,277	2,154	95%	2,277	2,195	96%	2,277	2,195	96%	2,277
Bay View	High	95%	2,264	1,763	78%	2,264	1,848	82%	2,264	1,848	82%	2,264
Bay View	High	95%	2,277	2,154	95%	2,277	2,195	96%	2,277	2,195	96%	2,277
Bay View	High	95%	2,264	1,763	78%	2,264	1,848	82%	2,264	1,848	82%	2,264
Bay View	High	95%	2,277	2,154	95%	2,277	2,195	96%	2,277	2,195	96%	2,277
Bay View	High	95%	2,264	1,763	78%	2,264	1,848	82%	2,264	1,848	82%	2,264
Bay View	High	95%	2,277	2,154	95%	2,277	2,195	96%	2,277	2,195	96%	2,277
Bay View	High	95%	2,264	1,763	78%	2,264	1,848	82%	2,264	1,848	82%	2,264
Bay View	High	95%	2,277	2,154	95%	2,277	2,195	96%	2,277	2,195	96%	2,277
Bay View	High	95%	2,264	1,763	78%	2,264	1,848	82%	2,264	1,848	82%	2,264
Bay View	High	95%	2,277	2,154	95%	2,277	2,195	96%	2,277	2,195	96%	2,277
Bay View	High	95%	2,264	1,763	78%	2,264	1,848	82%	2,264	1,848	82%	2,264
Bay View	High	95%	2,277	2,154	95%	2,277	2,195	96%	2,277	2,195	96%	2,277
Bay View	High	95%	2,264	1,763	78%	2,264	1,848	82%	2,264	1,848	82%	2,264
Bay View	High	95%	2,277	2,154	95%	2,277	2,195	96%	2,277	2,195	96%	2,277
Bay View	High	95%	2,264	1,763	78%	2,264	1,848	82%	2,264	1,848	82%	2,264
Bay View	High	95%	2,277	2,154	95%	2,277	2,195	96%	2,277	2,195	96%	2,277
Bay View	High	95%	2,264	1,763	78%	2,264	1,848	82%	2,264	1,848	82%	2,264
Bay View	High	95%	2,277	2,154	95%	2,277	2,195	96%	2,277	2,195	96%	2,277</

Schools of Choice (Not Concurrency Service Areas)									
	K-5	100%	475	404	85%	475	414	87%	475
Random 7	Elementary	100%	569	504	88%	569	504	88%	569
Westbourne	Elementary	100%	518	548	93%	518	548	93%	518
Develwood	Jr./Sr. High	90%	1,072	942	87%	1,072	942	87%	1,072
Vista Shore	Jr./Sr. High	90%	1,264	951	75%	1,264	951	75%	1,264
Schools of Choice			3,998	3,348		3,998	3,360		3,998
Totals			83,812	68,152		83,812	68,152		83,812

Notes

1. FISH Capacity is the sum of the factored permanent capacity and the factored relocatable capacity. Permanent and relocatable capacities for 2019-20 are reported from the FISH database as of October 9, 2019.
2. Student Membership is the sum of the current Fall Final Membership Count (10/1/19).
3. Davis Demographics is the Davis Unified School District's 2019-2020 Enrollment Projections Extension for ArcGIS estimates future student populations by analyzing the following data:
 - Davis Demographic Snapshot
 - Enrollment Projections from Board of Education Local Governmental Jurisdiction
 - Bayview County School Concurrent Student Enrollment Multiplier (SECM)
 - Fall Membership student addresses and corresponding concerning concerning service areas
 - Student Mobility Rates / Cohort Survival Rates
 - Bayview County Birth rates by zip code
4. Davis Demographics estimates are then adjusted using the following factors
 - PK, (Pre-K/Kindergarten) and AH (daycare) for students with infants/enrollment number are assumed to be constant
 - Current Fall/FY10 attendance patterns are assumed to remain constant
 - Nongeocoded student addresses are assumed to continue in their attendance schools
 - Charter School Growth
5. In order to maintain utilization rates lower than the 100% Level of Service, Permanent Capacity and Relocatable Classrooms are assumed to add future student stations as necessary
6. Relocatable Classrooms are assumed to add future student stations as listed below:
 - Primary relocatable classrooms (Grades K-3) = 18 student stations
 - Intermediate relocatable classrooms are proposed to be added at Apollo Elementary, Challenger 7 Elementary, Conquistador Elementary, Imperial Estates Elementary, Pinewood Elementary, Quest Elementary, Summit Elementary, Sunrise Elementary, DeLauna Middle School, Jackson Middle School, and Kennedy Middle (Total of 42 Classrooms).
 - High school relocatable classrooms are proposed to be added at Viera High (Total of 8 Classrooms)
7. Redistricting was approved for the 2020-21 school year and the projected enrollment for 2020-21 is adjusted for those areas. Future redistricting is planned for a new central area elementary school in 2020-21
8. The following proposals for additional permanent capacity are included in this analysis:
 - A new central area elementary is assumed to add 970 student stations starting in 2020-21
 - Student enrollment projections were adjusted for the 2020-21 school year

Hamlin
River

Pinewood
Elementary
School

Hamlin Grove
Development
440 Units

Mims
Elementary
School

Wiley

EastM

Owner's Name: Ag Ventures, LLC
Hearing Date: January 11, 2021

20P200101

THIS AFFIDAVIT IS TO BE PRESENTED AT THE PUBLIC HEARING

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF BREVARD

Before me, this undersigned authority, personally appeared, Brian Lock,
to me well known and known to me to be the person described in and who executed the foregoing
affidavit, after being first duly sworn, says:

1. That the affiant posted the notice provided by the Brevard County Planning & Zoning Office, which contains the time(s) and date(s) of the Public Hearing(s) involved.
2. Said posted notice contains the name of the applicant, the total acreage of the property in question, the existing land use classification, special use classification or conditional use designation, and the requested amendment to the official zoning maps. Said notice also contains the time and place of the public hearing on the consideration of said application by the Board of County Commissioners of Brevard County, if applicable.
3. The said notice has been posted in a conspicuous place on the subject property not more than twenty-five (25) days, nor less than fifteen (15) days prior to the first public hearing before the applicable board (as indicated on notice). If the property abuts a public road right-of-way, the notice has been posted within ten (10) feet of the road right-of-way in such a manner as to be visible from the road right-of-way.
4. The affiant understands that this affidavit is intended to be submitted as a requirement for a public hearing, and as such, will be officially filed with the Government of Brevard County, Florida.

B. Lock
Signature

Sworn and Subscribed before me, this 21st day of December.


(Print, Type, or Stamp Commissioned Name of Notary Public)

K. Kennedy
Notary Public, State of Florida

Personally known OR Produced Identification

Type of I.D. Produced: _____



THIS AFFIDAVIT IS TO BE PRESENTED AT THE PUBLIC HEARING

PHOTOGRAPHS



BREVARD COUNTY CODE ENFORCEMENT



Mo./Day/Year	Address	Zng App.#
12/21/2020	21-35-08-00-503	20Z200101



Brian Lock

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, January 11, 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; Harry Carswell; Brian Hodggers; Ben Glover; Joe Buchanan; and Peter Filiberto, Vice Chair.

Staff members present were: Tad Calkins, Planning and Development Director; George Ritchie, Planner III; Abigail Jorandby, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Minutes

Ag Ventures (Chad Genoni)

A BDP (Binding Development Plan) limiting density to 4 units per acre for consistency with the RES 4 (Residential 4) Future Land Use designation, in an RU-1-7 (Single-Family Residential) zoning classification. The property is 110 acres +/-, located on the north side of Wiley Ave., and the east side of Old Dixie Hwy., approx. 0.047 mile east of U.S. Hwy 1 (No assigned address. In the Mims area.) (20PZ00101) (Tax Accounts 2102924, 2102925, and 2112294) (District 1)

Chad Genoni stated he is available to answer any questions.

No public comment.

Ron Bartcher stated the request is to essentially change the residential density from 4 units per acre to 8 units per acre, almost more than that; lots of 5,000 square feet, house sizes of 700 square feet. He said the area is designated as RES 4, which is 4 units per acre and ¼ acre lots at 10,000 square feet, and the proposed lots are half that size. He said that kind of development is extremely dense for a rural area. He noted the board approved a development similar to this at the south end of Mims, right next to Titusville, and he knows Mr. Genoni tried to get his property annexed into the City and the City decided to not annex it. He stated Mr. Genoni then came to the Planning and Zoning Board with essentially the same development plan and now he's bringing that same development plan into the center of Mims. He said he is strongly opposed to it, as it doesn't go along with the Mims Small Area Study that was passed several years ago.

Peter Filiberto noted there would be a deficiency in schools, for Pinewood Elementary, which means the students who would move into the proposed development would have to go to Mims Elementary. He said he didn't see anything in the staff comments in regards to transportation or public safety.

Tad Calkins stated there were no issues with concurrency and there was nothing from Fire Rescue or Public Safety related to the project. He said the rezoning of the property was approved in 2014 with a proposed limitation of 370 units, so the applicant is coming back today and asking for 400 units.

Ben Glover asked if he can build 370 units on the property as of right now. Mr. Calkins stated the applicant needs a BDP for the 370 units. With the application for the zoning, it is inconsistent with the land use, so he needs to have the cap with the BDP to limit the density of the property to match, which is what Mr. Bartcher is indicating as his concern because with the zoning he can have a smaller lot, yet he's maintaining the density of the land use. It allows for a type of cluster development

where there can be smaller lots and greater open space but the whole area is not taken up in the lot size.

Joe Buchanan asked if the proposed subdivision will be serviced by Brevard County sewer and water. Mr. Calkins replied the applicant has indicated he will have sewer and water on the site.

Mr. Filiberto stated with the property's proximity to the Lagoon, it is an advantage to hook up to water and sewer.

Mr. Glover stated it is a lot of units per acre, but he likes the fact that there will not be septic tanks.

Mr. Bartcher stated he is split because he likes the idea of cluster development, and that's exactly what he's doing, but it's a rural area and those kinds of developments don't fit in a rural area. He said he is fine with the RES 4, it's the RU-1-7 zoning that is the problem for him.

Mr. Calkins noted if the board is concerned about the number of units, lot size could be something to discuss with the applicant.

Mr. Genoni stated the zoning was approved in 2014 as RU-1-7, and with that he could have 6 units per acre. He said he was asked by staff to file this request to limit it to four units per acre, and that's his understanding of why he is here. He said he has RU-1-7 zoning and he is here today as a formality to be consistent. He said he worked everything out with the community in 2014, and without the BDP he could have up to 6 units per acre in that zoning.

Mr. Calkins stated he believes Mr. Genoni would not be allowed to have that zoning classification with the land use limit without a BDP, and records indicate there was a proposed BDP in 2014 limited to 370 units.

Mr. Genoni stated that is not his recollection. He said he had an additional 20 acres that he was trying to rezone and he took that off the table, and that was his understanding of why the BDP was not required, because he took that land off the table. He said the property was rezoned and he has been proceeding the whole time as if he had RU-1-7 zoning, but when he came in with the site plan he was told he needed a BDP.

George Ritchie stated he thought there was a commercial component as well, as part of the applicant's request, so there was a lot of information going back and forth and the BDP was to make the zoning consistent. He said RU-1-7 is consistent with RES 6 in the higher Future Land Use designations, but it's not consistent with RES 4.

Mr. Bartcher stated in 2014 he was the President of the Mims Community Group and they followed the development very closely. There was some land that was going to be taken out of residential and put into commercial; that was part of the entire package, but as far as the 110 acres, that was going to be 370 houses. He said he remembers somebody saying there needed to be a BDP, but it's obvious there was a lot of other discussion at the same time and it fell through the cracks.

Motion by Ben Glover, seconded by Ron Bartcher, to deny the request for a BDP limiting density to 4 units per acre for consistency with the RES 4 Future Land Use designation, in an RU-1-7 zoning classification. The motion passed 4:2, with Hodgers and Buchanan voting nay.

Prepared by: Charles B. Genoni
Ag Ventures, LLC
4760 N. US1 #201
Melbourne FL 32935

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this _____ day of _____, 20__ between the BOARD OF COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Ag Ventures, LLC (hereinafter referred to as Owner").

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 rezoned the property to RU 1-7 zoning classification and desires to develop the Property as a Single-Family Subdivision, and pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact 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/Owner, 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. The Developer/Owner shall limit the project density to 4 units per acre to be consistent with the Future Land Use designation of RES 4
3. *Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This agreement provides no vested rights against*

changes to the Comprehensive Plan or land development regulations as they may apply to this Property.

4. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Courts the cost of recording this Agreement in the Public Records of Brevard County, Florida.

5. This Agreement shall be binding and shall insure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and 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 _____ 20____. In the event the subject Property is annexed into a municipality and rezoned, this agreement shall be null and void.

6. 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 may be amended.

7. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner 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 6 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 Jamison Way
Viera, FL 32940

Scott Ellis, Clerk
(SEAL)

Chair
As approved by the Board on _____

(Please note: you must have two witnesses and a notary for each signature required, the notary may serve as one witness.)

WITNESSES:

Tanya Ludzieski
Tanya Ludzieski

(Witness Name typed or printed)

Louise Boivin
Louise Boivin

(Witness Name typed or Printed)

OWNER

Ag Ventures, LLC

Charles B. Genoni as Manager Member
4760 N. US1 #201 Melbourne FL 32935

STATE OF Florida
COUNTY OF Brevard

The foregoing instrument was acknowledged before me this 22 day of Oct, 2020

by Charles Genoni, as MG&RM of AG Ventures, LLC

who is personally known or produced _____ as identification.

My commission expires 9/30/21
Commission no GG 109434
SEAL

Tanya Ludzieski
Notary Public
(Name typed, printed or stamped)

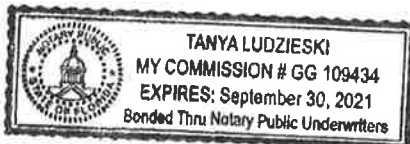


Exhibit "A"

1. W 1/2 OF SW 1/4 EX DB 357 PG 121, E 140 FT OF S 756 OF SW 1/4 OF SW 1/4 & RD R/W PAR 502 (EXCEPT PARTS THEREFROM DEEDED TO HOUSING AUTHORITY OF BREVARD COUNTY, FLORIDA, AS DESCRIBED IN DEED BOOK 356, PAGE 121; ALSO EXCEPT SOUTH 620 FEET OF THE EAST 100 FEET OF SOUTHWEST ONE-QUARTER OF SOUTHWEST ONE-QUARTER OF SAID SECTION 8).

Tax ID 2102924 (68 acres)

EXCEPTING RIGHT-OF-WAY FOR PUBLIC ROADS AND ALL LANDS DESCRIBED ABOVE LYING WEST OF OLD DIXE HWY.

2. TOGETHER WITH:

PART OF E 1/2 OF SW 1/4 AS DESC IN ORB 5424 PG 5046

Tax ID 2112294 (40 acres)

3. TOGETHER WITH:

PART OF NW 1/4 OF SW 1/4 AS DES IN DB 357 PG 121

Tax ID 2102925 (2 acres)

From: Woodard, Patrick
To: Jones, Jennifer
Cc: Schmadeke, Adrienne; Bellak, Christine
Subject: FW: Concerns regarding proposed BDP in Mims
Date: Monday, February 1, 2021 4:54:47 PM

Jennifer,

Please see that this public comment was sent to our office.

Regards,

Pat Woodard



Pat Woodard
Chief Legislative Aide to Commissioner
Smith
Brevard County, District 4
[321.633.2044](tel:321.633.2044) | Patrick.Woodard@brevardfl.gov
2725 Judge Fran Jamieson Way, Bldg. C - Suite
214,
Viera, FL 32940

Please note:

Florida has a very broad public records law. Most written communications to or from the offices of elected officials are public records available to the public and media upon request. Your email communications may, therefore, be subject to public disclosure.

From: Gabriel Quintas <laustibichriste94@gmail.com>
Sent: Monday, February 01, 2021 3:38 PM
To: Commissioner, D4 <D4.Commissioner@brevardfl.gov>
Subject: Concerns regarding proposed BDP in Mims

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

Dear Commissioner Smith,

My family and I are proud residents of Mims. We intentionally moved to an area of the County known for its rural and agricultural lifestyle where highly-dense urban-type developments would not be present. As a professional planner employed by a local municipality, I am well acquainted with planning theory and best planning practices as well as land-use trends and developments in the North Brevard area. I am not presenting an opinion on behalf of the municipality for which I work,

but I do wish to express my professional planning opinion on the binding development plan presented by AG Ventures for allowance of a 440-lot residential subdivision just north of Wiley Avenue in Mims which will be considered by the Commission this Thursday afternoon. It is my firm belief that approval of the binding development plan as submitted by the developer would defy the goals and objectives of the Comprehensive Plan and introduce a highly-dense, incompatible development pattern into an area where residents value low-density development patterns and a rural way of life.

I recognize that the existing zoning is incompatible with the underlying future land use designation per Section 62-1255 (b)(2) of the Land Development Regulations. With good reason, the most intense single-family detached residential zoning district permissible by the land development regulations in the Residential-4 land use category is RU-1-11 which requires a minimum lot size of 7,500 square feet and a minimum home size of 1,100 square feet. The RES4 land use category was not intended to allow high-density developments as proposed by the binding development plan. The character of the surrounding area consists mainly of single-family residential lots ranging between 7,500 - 11,000 square feet. The smallest lots in the immediate vicinity, located directly east of the subject site, are approximately 7,405 square feet. Furthermore, while a very small number of homes containing a living area of approximately 800 square feet exist east of the site, a review of the home sizes of single-family residences in the general vicinity of the site reveals that a majority of the homes in this area contain a minimum living area of approximately 1,000 square feet.

Additionally, the Comprehensive Plan prioritizes "the development of residential neighborhoods that offer *the highest quality of life to the citizenry*" by prioritizing "the compatibility of the new development with its surroundings" and the creation of "neighborhoods that complement adjacent land uses." The binding development plan and associated conceptual plan that will be considered Thursday would allow 5,000 square-foot lots and a minimum of 700 square-foot homes which presents a development that is completely out of character with the existing residential development in this of Mims. It is for this reason that I am urging you to vote to deny the development plan as presented and recommend a rezoning to, at a minimum, RU-1-11 to ensure consistency of the zoning district with the Future Land Use Map and with the established character and density of the area surrounding the development.

If the Commission deems it more practical to place conditions of approval on the binding development plan, rather than rezone the site as recommend above, then my recommendation to maintain consistency with the Comprehensive Plan and the prevailing character of the area is that the development be required to maintain a minimum lot size of 7,500 square feet with a minimum lot width of 75 feet and that the minimum home size be required to be 1,100 square feet as required for single-family lots in the RU-1-11 zoning district (LDR Section 62-1340). I would further encourage that any development on the site be required, at the developer's expense, to connect to County potable water and sanitary sewer facilities due to the proximity of the area to the Indian River and the continued detriment that the proliferation of septic tank systems could pose to the water quality in the Indian River Lagoon. Additional recommendations based on the conceptual plan submitted include the following: that the entire perimeter of the development, including subject development bordering US Highway 1, Wiley Avenue, and Old Dixie Highway, be required to incorporate 15-foot vegetative buffers with the exception of the perimeter buffer along the adjacent

parcel zoned IU, which should increase to 30 feet wide as proposed on the conceptual plan, with plantings meeting the minimum requirements of Appendix B referenced in Section 62-4342 of the Land Development Regulations; a requirement for a system of paved walking trails connecting the various proposed parks throughout the development as an amenity for the residents; that the entire length of Old Dixie Highway adjacent to the development be surfaced and improved to County standards including any necessary right-of-way dedication to the County by the development to arrive at the minimum right-of-way width required for the designated road classification; and that any dead-end roads within the development be required to terminate in a cul-de-sac to facilitate access and circulation of emergency vehicles.

Thank you for your consideration and for your dedication to our County.

Sincerely,

Gabriel Quintas
Mims, Florida

From: [Commissioner, D1](#)
To: [Jones, Jennifer](#)
Cc: [Mascellino, Carol](#)
Subject: Public Comment on Item H.4 for Zoning Meeting on Feb. 4th
Date: Tuesday, February 2, 2021 3:08:16 PM
Attachments: [image001.png](#)

Objection
20PZ00101
Ag Ventures

Hi Jennifer,

Please include the below email as public comment on Item H.4 for Zoning Meeting on Feb. 4th

Best Regards,

Nate Smith

Legislative Aide to Commissioner Rita Pritchett



District 1 Commission Office
2000 South Washington Avenue, Suite 2
Titusville, FL 32780
321-607-6901

Please note:

Florida has a very broad public records law. Most written communications to or from the offices of elected officials are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure.

From: Gabriel Quintas <laustibichriste94@gmail.com>
Sent: Monday, February 1, 2021 3:31 PM
To: Commissioner, D1 <D1.Commissioner@brevardfl.gov>
Subject: Concerns regarding proposed BDP in Mims

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

Dear Commissioner Pritchett,

I would like to congratulate you on your re-election to serve District 1. My family and I were eager to cast our votes for you back in November.

My family and I are proud residents of Mims. We intentionally moved to an area of the County known for its rural and agricultural lifestyle where highly-dense urban-type developments would not be present. As a professional planner employed by a local municipality, I am well acquainted with planning theory and best planning practices as well as land-use trends and developments in the North Brevard area. I am not presenting an opinion on behalf of the municipality for which I work, but I do wish to express my professional planning opinion on the binding development plan presented by AG Ventures for allowance of a 440-lot residential subdivision just north of Wiley Avenue in Mims which will be considered by the Commission this Thursday afternoon. It is my firm belief that approval of the binding development plan as submitted by the developer would defy the goals and objectives of the Comprehensive Plan and introduce a highly-dense, incompatible development pattern into an area where residents value low-density development patterns and a rural way of life.

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Additionally, the Comprehensive Plan prioritizes "the development of residential neighborhoods that offer *the highest quality of life to the citizenry*" by prioritizing "the compatibility of the new development with its surroundings" and the creation of "neighborhoods that complement adjacent land uses." The binding development plan and associated conceptual plan that will be considered Thursday would allow 5,000 square-foot lots and a minimum of 700 square-foot homes which presents a development that is completely out of character with the existing residential development in this of Mims. It is for this reason that I am urging you to vote to deny the development plan as presented and recommend a rezoning to, at a minimum, RU-1-11 to ensure consistency of the zoning district with the Future Land Use Map and with the established character and density of the area surrounding the development.

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Thank you for your consideration and for your dedication to our County.

Sincerely,

Gabriel Quintas
Mims, Florida

From: Prasad, Katelynne
To: Jones, Jennifer
Subject: Meeting Disclosures
Date: Wednesday, February 3, 2021 9:40:50 AM

Ms. Jones,

In regards to the upcoming agenda item H.4 for the Planning & Zoning meeting on January 4, 2021, please be advised in advance that Commissioner Tobia spoke with the following parties via telephone, separately, on January 1, 2021 & January 2, 2021

Chad Genani- 02/01/2021

Kim Rezanka- 02/02/2021

Each phone call lasted approximately ten minutes, during which the above individuals provided information regarding the above-referenced item.

Sincerely,

Katelynne Prasad

Constituent Affairs Director

County Commissioner John Tobia, District 3

PH: (321) 633-2075 * Fax: (321) 633-2196

2539 Palm Bay Road NE, Suite 4

Palm Bay, FL 32905