



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.3.

12/5/2019

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### Subject:

Kim Fischer and Brian Scott Hall request a change of zoning classification from BU-1 and BU-2 with a BDP, to all BU-2 and removal of the existing BDP. (19PZ00113) (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 change of zoning classification from BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing, and Wholesale Commercial) with a BDP (Binding Development Plan) to all BU-2 and removal of the existing BDP.

### Summary Explanation and Background:

The applicant is seeking a zoning change from BU-1 and BU-2 to all BU-2 for a warehouse and office complex. The existing BDP limited the "truck and trailer rental, sales and service" to the southerly 200' (rear) of the property.

The property is 1.12 acres, located on the south side of State Road 520, approximately 0.24 miles west of Lake Poinsett Road. The existing zoning was adopted under Zoning Resolution **Z-9939** on July 28, 1997. At that time, the Board was concerned with allowing the storage of vehicles along the SR 520 corridor. There is BU-2 zoning to the East of the subject property, however it does not have road frontage to SR 520.

The applicant is requesting this action due to the western half of the original parcel being sold to the State of Florida in June, 2001, for a retention pond.

The Board may wish to consider whether the proposed BU-2 uses are compatible with the surrounding development patterns and the adjacent Single-Family Residential (RU-1-9), Agricultural Residential (AU), and Estate-Use Residential (EU-1) zoning classifications.

On November 4, 2019, the Planning and Zoning Board heard the request and unanimously recommended approval.

### Clerk to the Board Instructions:

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

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## ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

### Administrative Policy 1

The Brevard County zoning official, planners and the director of the Planning and Development 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**

**19PZ00113**

**Kim Fischer and Brian Scott Hall**

**BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing, and Wholesale Commercial) with a BDP (Binding Development Plan) to all BU-2 and Removal of BDP**

Tax Account Number: 2444757  
 Parcel I.D.: 24-35-34-00-45  
 Location: South side of State Road 520, approximately 0.24 miles west of Lake Poinsett Road. (No assigned address. In the Cocoa area.) (District 1)  
 Acreage: 1.12 acres

Planning and Zoning Board: 11/04/19  
 Board of County Commissioners: 12/05/19

**Consistency with Land Use Regulations**

- Current zoning can 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)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	BU-1 & BU-2 with BDP	All BU-2 and removal of BDP
<b>Potential*</b>	12,337 square feet	13,660 square feet
<b>Can be Considered under the Future Land Use Map</b>	YES Community Commercial	YES Community Commercial

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

**Background and Purpose of Request**

The applicant is seeking a zoning change from BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing, and Wholesale Commercial) with a BDP (Binding Development Plan) limiting the BU-2 area to the single use "truck and trailer rental sales and service" to all BU-2 zoning for a warehouse and office complex and removal of the existing BDP. The existing zoning was adopted under Zoning Resolution **Z-9939** on July 28, 1997. The western half of the original parcel was sold to the State of Florida in June 2001. The property appraiser notes that a borrow pit was constructed upon that western portion identified as lot #14 and upon the lot to its west (lot # 45) as one single borrow pit on October 4, 2015. The retention area (lake surface) is about 2.2 acres in area. This eastern portion (this lot) has remained undeveloped. The applicant has owned this property since November 2017.

## **Land Use Compatibility**

This site retains the Community Commercial FLU (Future Land Use) designation. The existing zoning classifications BU-1 and BU-2 are consistent with the Future Land Use designation.

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

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

#### **Criteria:**

- A. Permitted/prohibited uses;*
- B. Existing commercial zoning trends in the area;*
- C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;*
- D. Impact upon Level of Service (LOS) standards for roads, potable water service, sanitary sewer service and solid waste disposal;*
- E. Impact upon natural resources, including wetlands, floodplains, and endangered species; and*
- F. Other issues which may emerge specific to a particular property which may be addressed through performance based zoning criteria.*

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

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

- a) Existing strip commercial;*
- b) Transient commercial uses;*
- c) Tourist commercial uses;*
- d) Professional offices;*
- e) Personal service establishments;*
- f) Retail establishments;*
- g) Non-retail commercial uses;*
- h) Residential uses;*

- i) Institutional uses;*
- j) Recreational uses;*
- k) Public facilities;*
- l) Transitional uses pursuant to Policy 2.12; and*
- m) Planned Industrial Park development (as permitted by PIP zoning).*

**FLUE Policy 2.14 - Transitional Commercial Activities**

*As a result of their intrinsic nature and scale of intensity, offices, non-retail and neighborhood commercial activities may be utilized as transitional activities to afford buffering between higher and lower intensity uses, including transportation corridors. The criteria listed below, as summarized by Table 2.3, should serve as locational guidelines for employing such development as transitional uses. Projects which are approved as transitional uses may be subject to special requirements by the County, such as buffers, lighting, hours of operation, access/egress points, etc. in order to minimize impact upon adjacent lower intensity uses. In residential land use designations, strict adherence to development parameters outlined in Policies 2.6 and 2.8 must be maintained to qualify for consideration as a transitional activity under this policy. Once a transition is achieved between a higher and lower intensity land use, this policy should not be construed to justify the extension or enlargement of such uses onto adjacent lower intensity lands.*

**Criteria:**

*A. Non-retail commercial land uses shall be limited to those areas where nonretail commercial or industrial characteristics are established or planned so as to protect residential areas from their influence. Non-retail uses, including wholesaling, contracting, heavy repair services, paint and body shops, storage and warehousing uses, may serve as a transitional use between the following higher intensity and lower intensity uses, in the following listed Future Land Use designations:*

*Higher Intensity Uses: Heavy Industrial or Light Industrial activities.*

*Lower Intensity Uses: Community Commercial, Planned Industrial Park or Planned Business Park uses.*

*Future Land Use designations: Community Commercial, Heavy/Light Industrial or Planned Industrial (Planned Industrial permits PIP zone uses only).*

*Roadway Access Requirements: Convenient access to a major transportation corridor or along a railroad corridor with visual buffering from such corridors.*

The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 of the Future Land Use Element, outlined in the Administrative Policies.

## **Environmental Constraints**

The parcel is covered with Saint John's River Water Management District Florida Land Use and Cover Classification System (FLUCCS) code 4200 – Upland Hardwood Forest. A tree survey identifying Protected and Specimen trees will be required at time of site plan submittal. The applicant is encouraged to contact Natural Resources Management at 321-633-2016 prior to any plan design to identify tree mitigation requirements that may impact plan design. Natural Resources Management reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

## **Preliminary Transportation Concurrency**

The closest concurrency management segment to the subject property is State Road 520, between State Road 524 and Friday 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 39.73% of capacity daily. The maximum development potential from the proposed rezoning does increase the proposed trip generation by 0.12% if developed as a warehouse facility. The corridor is anticipated to continue to operate at 39.85% of capacity daily (LOS C). The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as the development potential of this site does not include residential development.

The subject property is not currently served by potable water or sewer. This site could obtain potable water service from the City of Cocoa. Sewer needs can be accomplished by connection to the county sewer system. Both utility connections can be serviced from the State Road 520 right-of-way.

## **Applicable Land Use Policies**

The applicant is seeking a zoning change from BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing, and Wholesale Commercial) with a BDP (Binding Development Plan) limiting the BU-2 area to the single use "truck and trailer rental sales and service" to all BU-2 zoning for a warehouse and office complex and removal of the existing BDP. The existing zoning was adopted under Zoning Resolution **Z-9939** on July 28, 1997. The western half of the original parcel was sold to the State of Florida in June 2001. The property appraiser notes that a borrow pit was constructed upon that western portion identified as lot #14 and upon the lot to its west (lot # 45) as one single borrow pit on October 4, 2015. The retention area (lake surface) is approximately 2.2 acres. This eastern portion (this lot) has remained undeveloped. The applicant has owned this property since November 2017.

The BU-1 classification allows retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling. The BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square-foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities.

To the north of this site lies State Road 520 and upon the north right-of-way line is property zoned RU-1-7 (Single-family Residential). The 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.

To the east of this site is a facility owned by the City of Cocoa but is zoned Agricultural Residential, AU. The AU zoning classification permits single-family residences and agricultural pursuits 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 AU classification also permits the raising/grazing of animals, fowl and beekeeping.

To the south of this site is an undeveloped residential project zoned EU-1 (Estate-Use Residential). The EU-1 zoning classification is an estate singlefamily residential zoning classification. The minimum lot size is 12,000 square feet with minimum lot width and lot depth of 100 feet. The minimum living area is 1,800 square feet.

To the west of this site is a retention pond owned by the State of Florida zoned under this same zoning action: BU-1 and BU-2 with a BDP limiting the BU-2 area to the single use "truck and trailer rental sales and service."

There have been only two zoning actions within a half-mile of the subject property in the last three years and both were regarding actions by Cocoa Expo. Both of these actions are on property located between 1,000 – 2,500 feet in a northeast direction from this lot, divided by Friday Road right-of-way. On December 16, 2016, application **16PZ00061** amended the existing BDP in a BU-1 zoning classification, located at 500 Friday Road. The BDP is recorded in Official Records Book 7778, Pages 2439-2447. The second zoning action, **16PZ00062**, covered Cocoa Expo property located on the west side of Friday Road. This request was also an amendment to the existing BDP in a BU-1 zoning classification and is recorded under the same Official Records Book and page number noted above.

The other BDP in the area is located 500 feet to the east, **15PZ00046**. This BDP was approved limited to manufacturing, compounding, processing, packaging, storage, treatment, or assembly of electronics; professional, scientific, photographic and optical instruments; technical and scientific products and materials; and retaining the existing buffers established by a previous BDP, in the AU, BU-1 and BU-2 zoning classifications, recorded in Official Records Book 7504, Pages 2905 – 2910.

### **For Board Consideration**

The applicant is seeking a zoning change from BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing, and Wholesale Commercial) with a Binding Development Plan (BDP) limiting the BU-2 area to the single use "truck and trailer rental sales and service" to all BU-2 zoning for a warehouse and office complex and removal of the existing BDP. The existing zoning was adopted under Zoning Resolution **Z-9939** on July 28, 1997. The western half of the original parcel was sold to the State of Florida in June, 2001. The property appraiser notes that a borrow pit was constructed upon that western portion identified as lot #14 and upon the lot to its west (lot # 45) as one single borrow pit on October 4, 2015. The retention area (lake surface) is approximately 2.2 acres. This eastern portion (this lot) has remained undeveloped. The applicant has owned this property since November, 2017.

As the character of the area and development pattern has not changed within the past three years, the Board may wish to consider the following options:

- The Board may wish to approve the applicants' zoning request to all BU-2 with removal of the existing BDP.
- The Board may wish to replace the BDP with other criterion as the adjacent residential zoning to the south remains undeveloped.
- The Board may wish to retain BU-1 zoning along the S.R. 520 road frontage.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT  
Zoning Review & Summary**

**Item # 19PZ00113**

**Applicant:** Kim Fischer & Brian Hall

**Zoning Request:** BU-1 & BU-2 w/BDP to BU-2

**Note:** Applicant wants to develop warehouse and office

**P&Z Hearing Date:** 11/4/19; **BCC Hearing Date:** 12/05/19

**Tax ID Nos:** 2444757

- 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:**

- Hydric Soils
- Heritage Specimen Trees
- Protected Species

The parcel is covered with SJRWMD Florida Land Use and Cover Classification System (FLUCCS) code 4200 – Upland Hardwood Forest. A tree survey identifying Protected and Specimen trees will be required at time of site plan submittal. The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan design to identify tree mitigation requirements that may impact plan design. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

**Land Use Comments:**

**Hydric Soils**

The subject parcel has mapped hydric soils (Malabar sand) over the entire parcel as shown on the USDA Soil Conservation Service Soils Survey map. This is an indicator that hydric soils and wetlands may be present on the property. Section 62-3694(c)(3)b has allowances for wetland impacts for commercial uses along Mitigation Qualified Roadways (MQRs). Highway

520 is an MQR. Should wetlands be identified, the applicant shall complete High Function and Landscape Level wetlands assessments prior to the allowance of any wetland impacts. Board approval may be required for impacts. Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) and 62-3696. A wetland determination/delineation may be required at time of building permit submittal. If the owner/applicant has any questions regarding any potential limitations, s/he is encouraged to contact NRM at 321-633-2016 prior to any land clearing activities or design of any plans.

### **Heritage Specimen Trees**

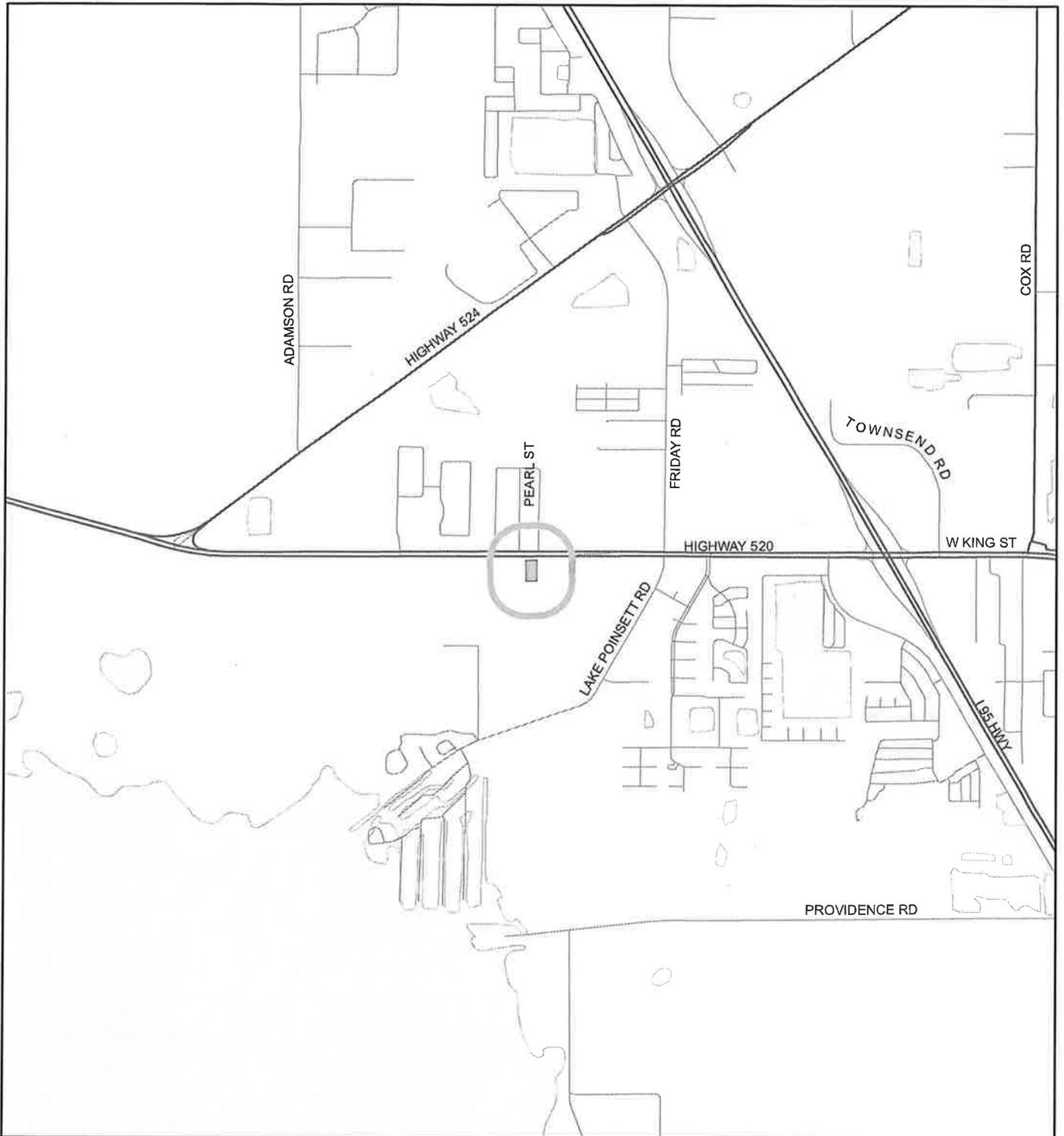
The entire parcel is within a mapped polygon of SJRWMD Florida Land Use and Cover Classification System (FLUCCS) code 4200 – Upland Hardwood Forest. Heritage Specimen Trees (greater than or equal to 24 inches in diameter), and Protected Trees (greater than or equal to 10 inches in diameter) are included in this FLUCCS code. Aerials indicate that Heritage Specimen and Protected Trees reside on subject property. Section 62-4331(3), Purpose and Intent, Brevard County Landscaping, Land Clearing and Tree Protection ordinance: The Brevard County Board of County Commissioners finds that the health, safety and welfare of its citizens can best be protected by land use regulations that support, enforce, and encourage the protection of Heritage or Specimen Trees. In addition, per Section 62-4341(18), Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. At the time of site plan submittal, a tree survey identifying Protected and Specimen trees will be required. 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. The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan design, clearing activities or permit submittal.

### **Protected Species**

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

# LOCATION MAP

FISCHER, KIM AND HALL, BRIAN SCOTT  
19PZ00113



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

Buffer Distance: 500 feet

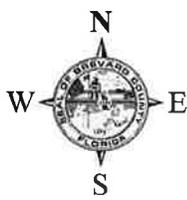
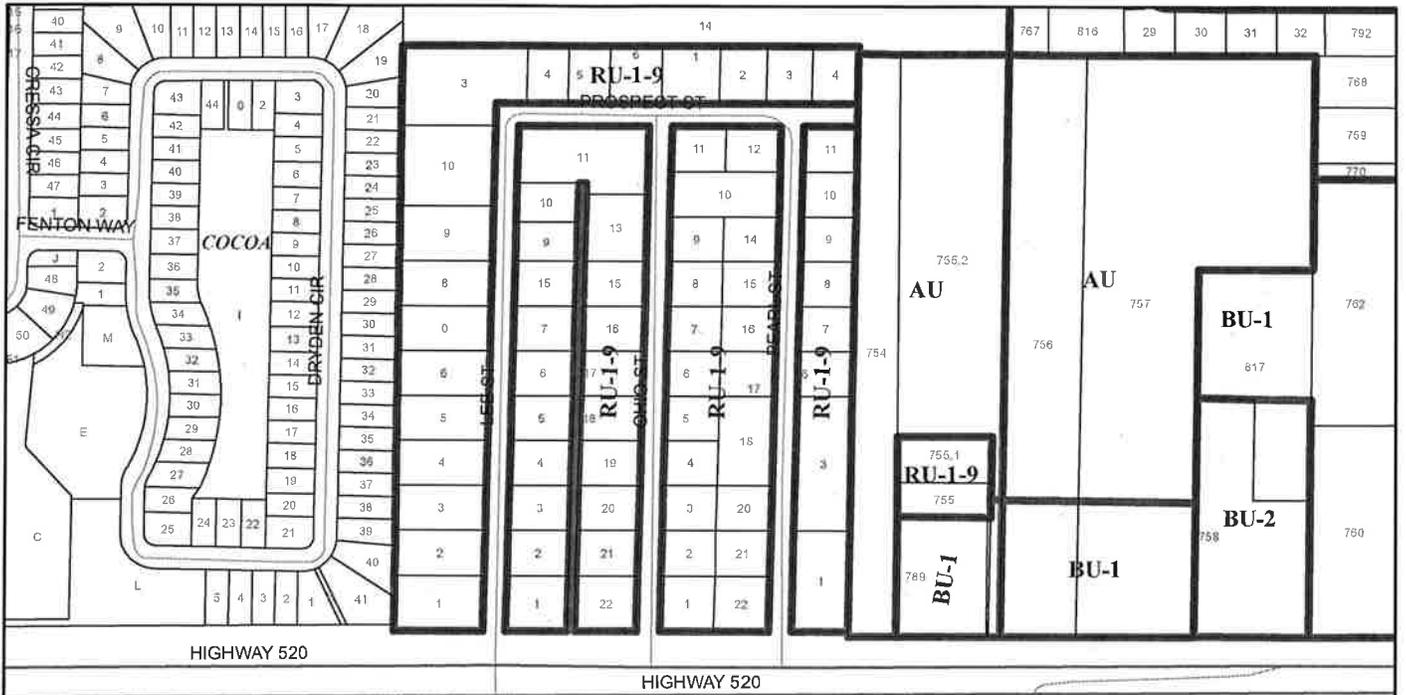
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 9/10/2019

-  Buffer
-  Subject Property

# ZONING MAP

FISCHER, KIM AND HALL, BRIAN SCOTT  
19PZ00113



1:4,800 or 1 inch = 400 feet

-  Subject Property
-  Parcels
-  Zoning

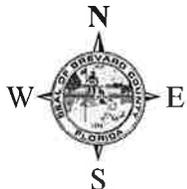
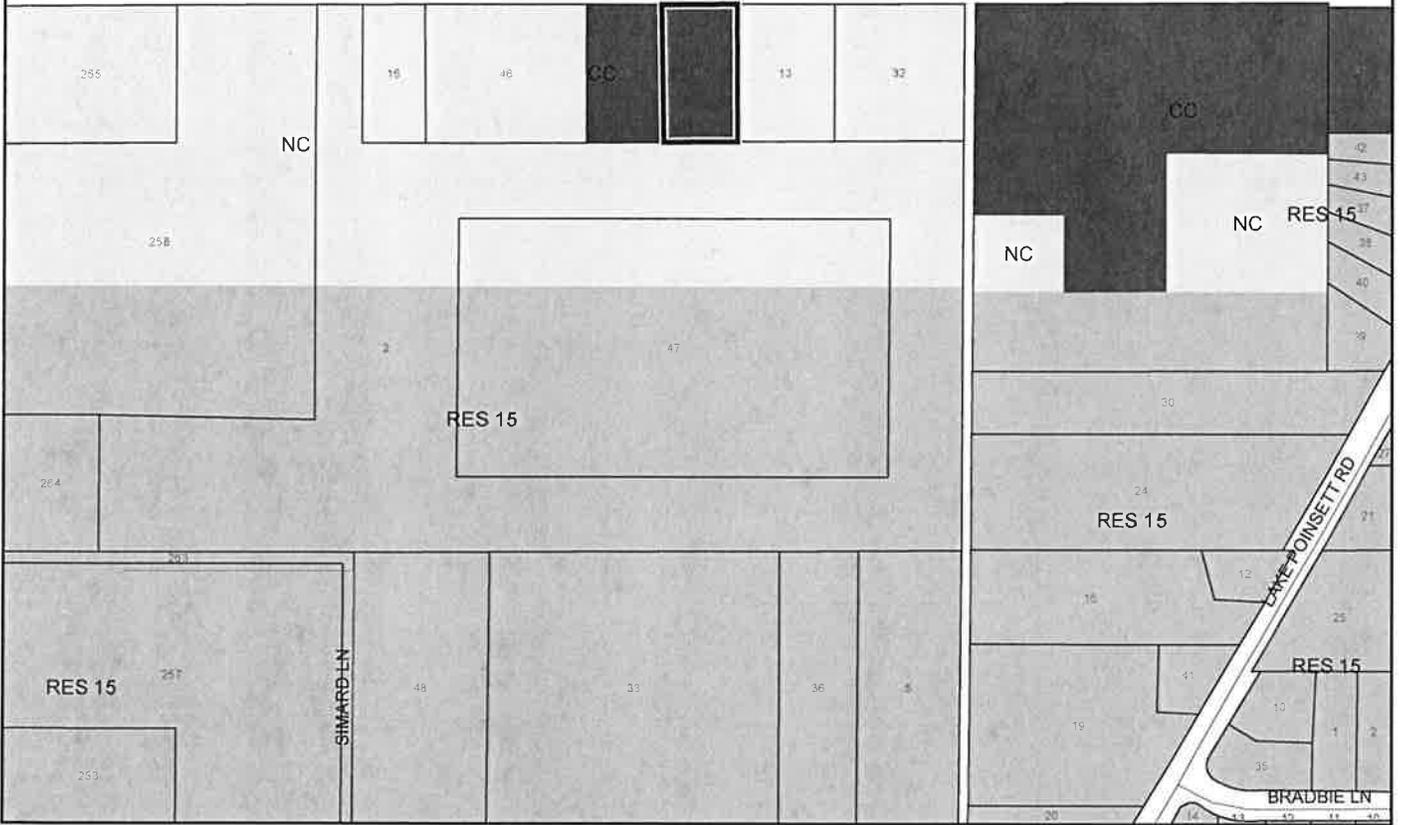
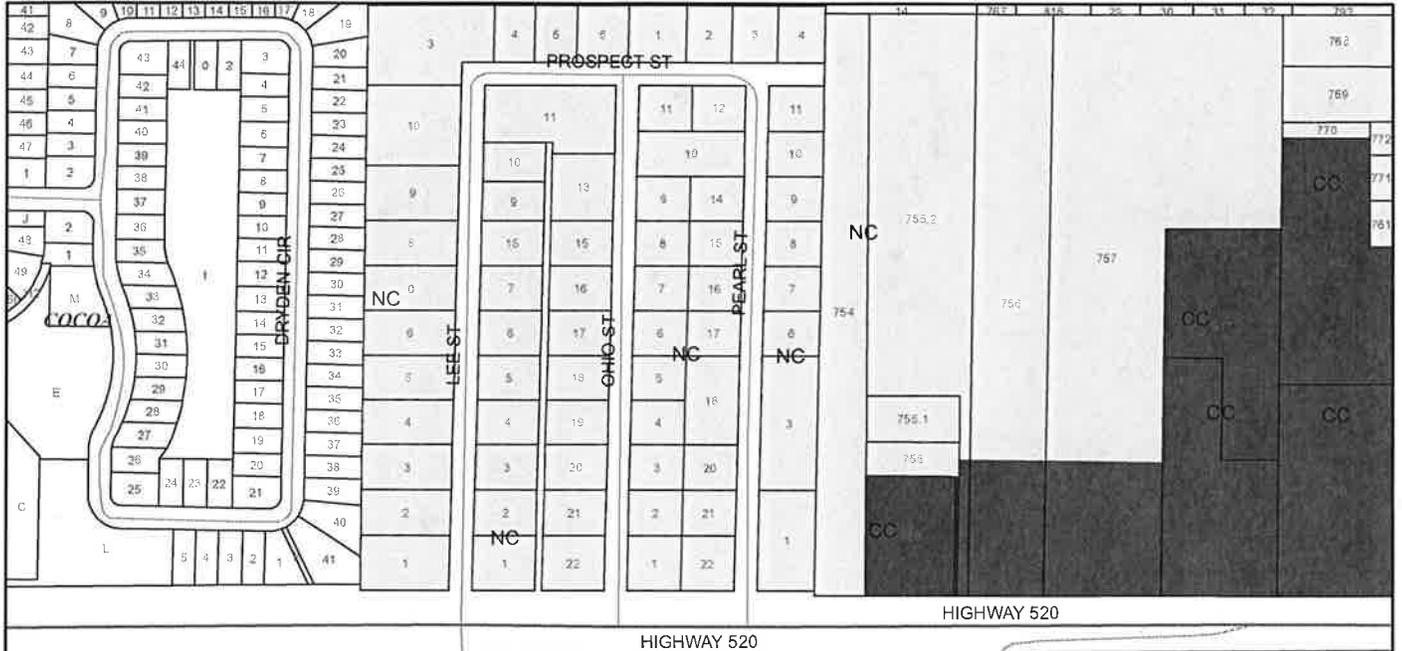
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 9/10/2019

# FUTURE LAND USE MAP

FISCHER, KIM AND HALL, BRIAN SCOTT

19PZ00113



1:4,800 or 1 inch = 400 feet

- Subject Property
- Parcels

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Produced by BoCC - GIS Date: 9/10/2019

# AERIAL MAP

FISCHER, KIM AND HALL, BRIAN SCOTT  
19PZ00113



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2019

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Produced by BoCC - GIS Date: 9/10/2019

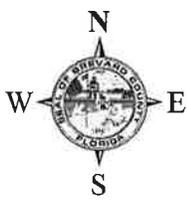
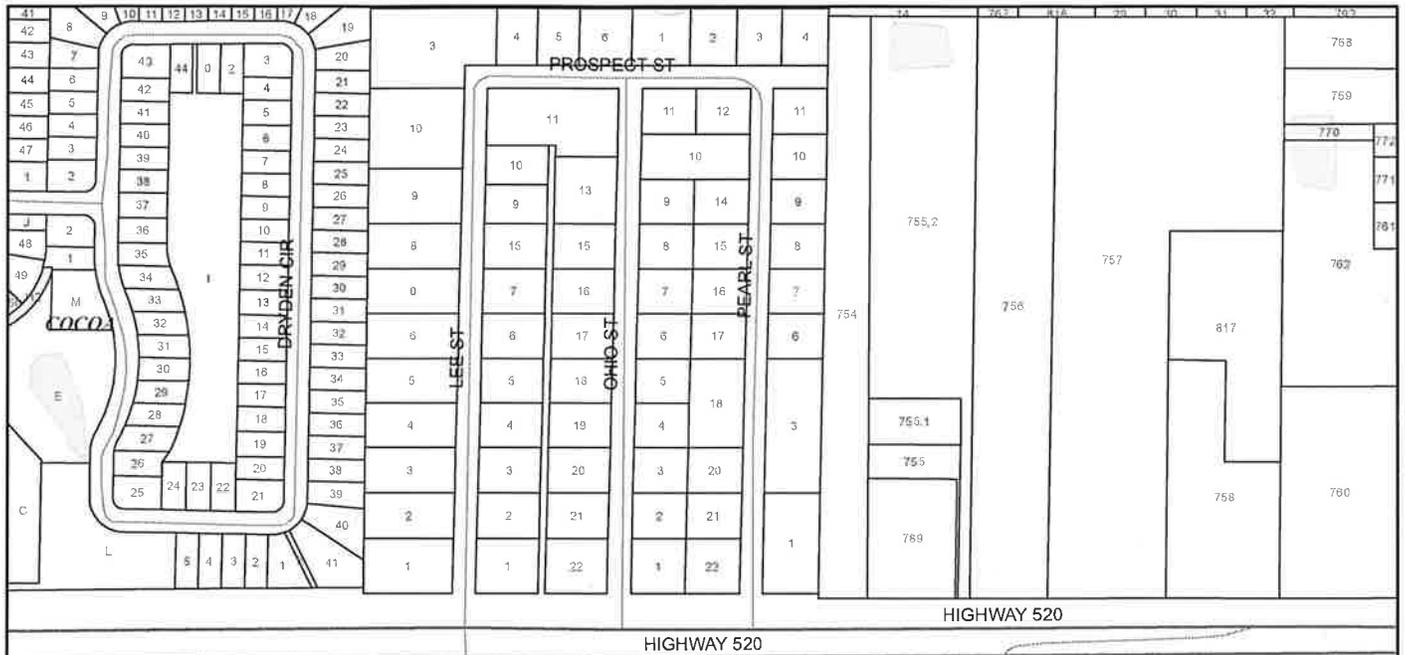
— Subject Property

▭ Parcels

# NWI WETLANDS MAP

FISCHER, KIM AND HALL, BRIAN SCOTT

19PZ00113



1:4,800 or 1 inch = 400 feet

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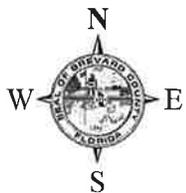
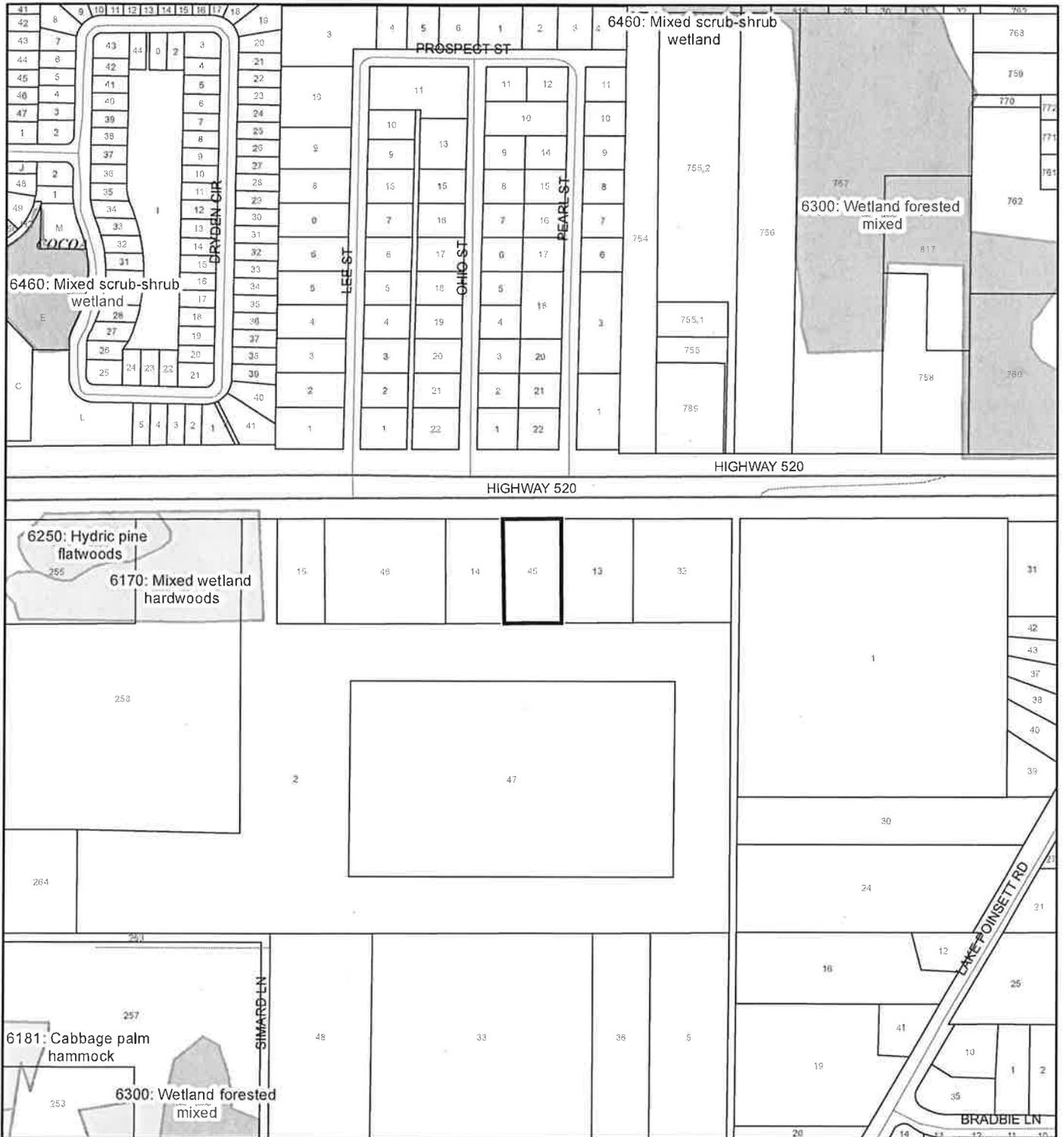
Produced by BoCC - GIS Date: 9/10/2019

- National Wetlands Inventory (NWI)**
- Estuarine and Marine Deepwater
  - Estuarine and Marine Wetland
  - Freshwater Emergent Wetland
  - Freshwater Forested/Shrub Wetland
  - Freshwater Pond
  - Lake
  - Other
  - Riverine
  - Subject Property
  - Parcels

# SJRWMD FLUCCS WETLANDS - 6000 Series MAP

FISCHER, KIM AND HALL, BRIAN SCOTT

19PZ00113



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: 9/10/2019

## SJRWMD FLUCCS WETLANDS

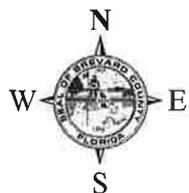
-  Wetland Hardwood Forests - Series 6100
-  Wetland Coniferous Forest - Series 6200
-  Wetland Forested Mixed - Series 6300
-  Vegetated Non-Forested Wetlands - Series 6400
-  Non-Vegetated Wetland - Series 6500

 Subject Property  Parcels

# USDA SCSSS SOILS MAP

FISCHER, KIM AND HALL, BRIAN SCOTT

19PZ00113



1:4,800 or 1 inch = 400 feet

### USDA SCSSS Soils

-  Aquifer and Hydric
-  Aquifer
-  Hydric
-  None

 Subject Property

 Parcels

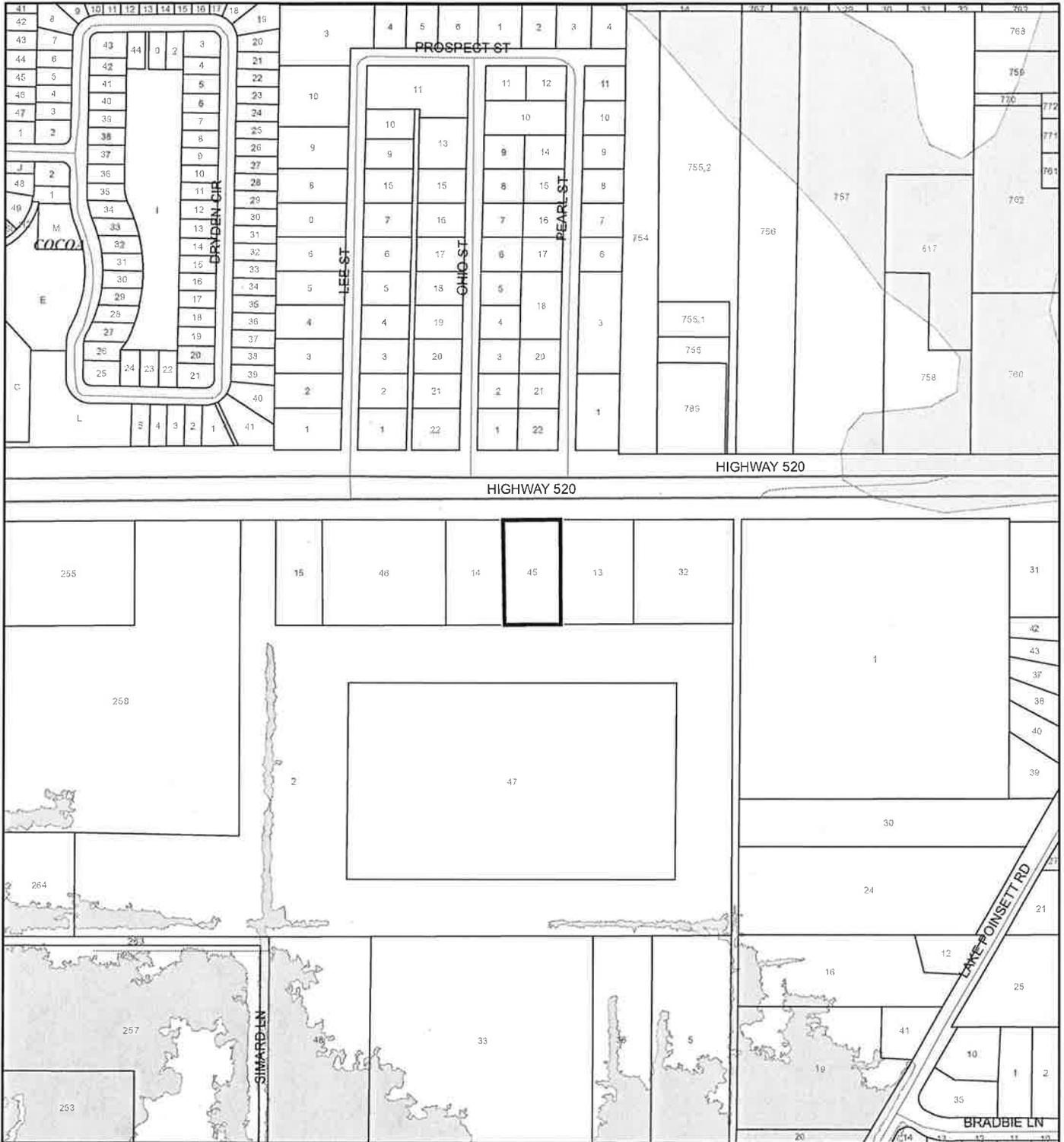
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 9/10/2019

# FEMA FLOOD ZONES MAP

FISCHER, KIM AND HALL, BRIAN SCOTT

19PZ00113



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 9/10/2019

### FEMA Flood Zones

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

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

FISCHER, KIM AND HALL, BRIAN SCOTT

19PZ00113



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 9/10/2019

— Subject Property

□ Parcels

**Septic Overlay**

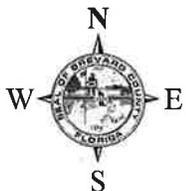
■ 40 Meters

■ 60 Meters

■ All Distances

# EAGLE NESTS MAP

FISCHER, KIM AND HALL, BRIAN SCOTT  
19PZ00113



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 9/10/2019

Subject Property

Parcels

Eagle Nests  
FWS 2010

# SCRUB JAY OCCUPANCY MAP

FISCHER, KIM AND HALL, BRIAN SCOTT

19PZ00113



1:4,800 or 1 inch = 400 feet

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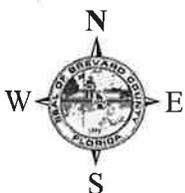
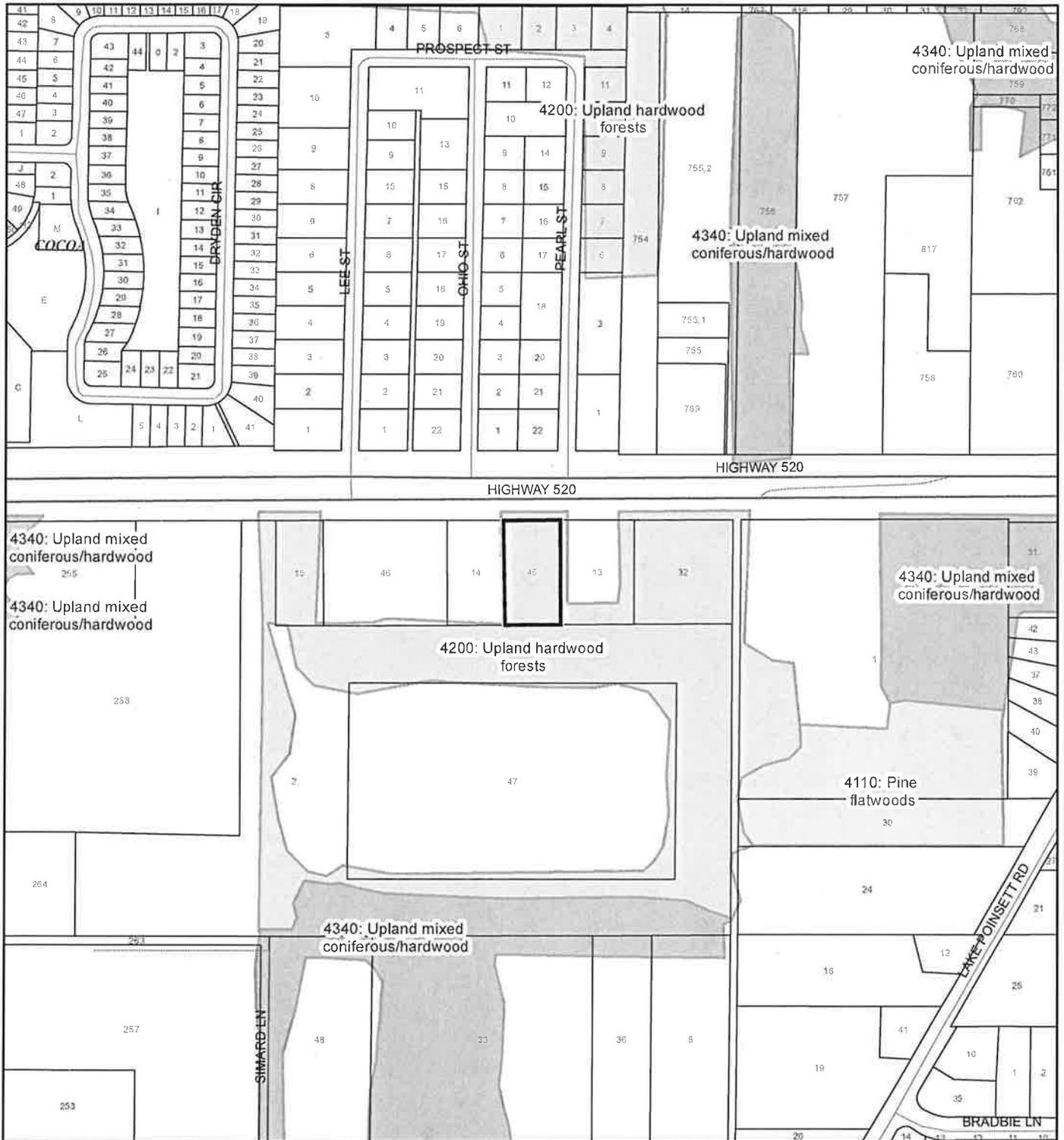
-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

Produced by BoCC - GIS Date: 9/10/2019

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

FISCHER, KIM AND HALL, BRIAN SCOTT

19PZ00113



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 9/10/2019

## 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

RETURN: Clerk to the Board

Existing BDP  
19PZ00113  
Fischer-Hall



CFN 97128839 07-28-97 11:48 am  
OR Book/Page: 3693 / 4737

Prepared By: Judy J. Parrish  
Address: 29 Riverside Dr. Cocoa, FL 32922

**Sandy Crawford**  
Clerk Of Courts, Brevard County  
#Pgs: 4 #Names: 2  
Trust: 2.50 Rec: 17.00 Serv 0.00  
Deed: 0.00 Excise: 0.00  
Mtg: 0.00 nt Tax: 0.00

**BINDING DEVELOPMENT PLAN**

THIS AGREEMENT, entered into this 23rd day of July, 1997 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and HENRY U. PARRISH, JR. (hereinafter referred to as "Developer/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 desires to develop the property as commercial use 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 participated 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 use of the southerly 200 feet of the subject property (described in Exhibit "A") to truck and trailer rental, sales and service.

178

2 9939



CFN 97128839

OR Book/Page: 3693 / 4738

3. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This 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 County the cost of recording this Agreement in Brevard County, Florida.

5. This agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject property.

6. This agreement may be modified and/or terminated upon mutual agreement of the County and Developer/Owner.

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

ATTEST:  
*James C. Talbot*  
Chief Deputy Clerk  
*Sandy Crawford*, Clerk  
(SEAL)

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

*Randy O'Brien*  
Chairman  
As approved by the Board on 4-24-97

STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 23rd day of July, 1997, by Randy O'Brien, Chairman of the Board of County Commissioners of Brevard County, Florida, who is personally known to me or who has produced as identification.

My commission expires

SEAL

Commission



Bernadotte S. Talbert  
MY COMMISSION # CC640700 EXPIRES  
May 10, 2000  
BONDED THRU TROY FAIR INSURANCE, INC.

*Bernadotte S. Talbert*  
Notary Public

STATE OF FLORIDA  
COUNTY OF BREVARD

This is to certify that the foregoing is a true and correct copy of Agreement witness my hand

(Name typed, printed or stamped)

and official seal this 1st day of August, 1997

SANDY CRAWFORD  
Clerk Circuit Court  
Brevard County, Florida

7 9939

WITNESSES:

[Signature]  
Heather G. Covington  
(Witness Name typed or printed)

\_\_\_\_\_  
(Witness Name typed or printed)

DEVELOPER/OWNER

[Signature]  
(Address)

[Signature]  
President

\_\_\_\_\_  
(Name typed, printed or stamped)

STATE OF Florida §

COUNTY OF Brevard §

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of July, 1997, by Henry U. Parrish, DEVELOPER/OWNER President of [Signature] in this document who is personally known to me or who has produced Florida driver license as identification.

My commission expires  
SEAL  
Commission No.:

[Signature]  
Notary Public

\_\_\_\_\_  
(Name typed, printed or stamped)



JUDITH A SMITH  
My Commission CC482138  
Expires Jul. 19, 1999  
Bonded by HAI  
800-422-1555



CFN 97128839  
OR Book/Page: 3693 / 4739

LEGAL DESCRIPTION



CFN 97128839

OR Book/Page: 3693 / 4740

Township 24S Range 35E Section 34 Sub 00 Block 14 Lot 00

ORB 2339 PAGE 234

For a point of beginning commence at the intersection of the East line of the NW 1/4 of the NE 1/4 of Section 34, Township 34 South, Range 35 East, and the South right-of-way line of State Road 520, as presently located; thence run west on said South right-of-way line of State Road 520 a distance of 840 feet to a point; thence run South and parallel with the West line of said NW 1/4 of the NE 1/4 a distance of 300 feet to a point; thence run East and parallel to said first course a distance of 840 feet to said East line of the NW 1/4 of the NE 1/4; thence run North on said East line a distance of 300 feet to the Point of Beginning; less and except the West 510 feet of the East 510 feet of said parcel, said excepted property being the same property conveyed to the City of Cocoa, Florida, by Warranty Deed recorded in Official Records Book 508, page 862 of the public records of Brevard County, Florida. The East 300 feet of said parcel is subject to the lien of a mortgage to The Barnett Bank of Brevard County, N.A.

THIS IS THE LEGAL DESCRIPTION TO BE  
USED FOR ADVERTISING PURPOSES.

Judy J. Pavis  
Signature

181  
Pvi

7 9939

## PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, November 4, 2019**, at **3:00 p.m.**, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

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

Board members present were: Ron Bartcher; Ian Golden; Brian Hodgers; Ben Glover; Mark Wadsworth, Chair; Bruce Moia; Peter Filiberto, Vice Chair; and Dane Theodore.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Jad Brewer, Assistant County Attorney; George Ritchie, Planner III; Darcie McGee, Assistant Director, Natural Resources Management; Bach McClure, Engineer, Natural Resources Management; John Denninghoff, Assistant County Manager; and Jennifer Jones, Special Projects Coordinator.

### Excerpt of Complete Agenda

#### 3. Kim Fischer and Brian Scott Hall

A request for a change of zoning classification from BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing, and Wholesale Commercial) with a BDP (Binding Development Plan), to all BU-2 and removal of BDP. The property is 1.12 acres, located on the south side of State Road 520, approximately 0.24 miles west of Lake Poinsett Road. (No assigned address. In the Cocoa area.) (Tax Account 2444757) (19PZ00113) (District 1)

Jeffrey Ball pointed out that the existing BDP limits the sales and trailer storage to the back 200 feet, so the removal of the BDP would allow for the storage of those vehicles anywhere within the property.

Kim Fischer, 1614 White Dove Drive, Winter Springs, Florida, stated having split zoning makes it difficult since they will not be selling trucks and trailers. She said their intent is to have an office warehouse, and having consistent zoning would give them more opportunities.

Bruce Moia asked the purpose of removing the existing BDP. Ms. Fischer replied the BDP was for trucks and tractors, and they will not have anything that intense on the property. Mr. Moia asked if they would be doing more of a contractor office, showroom, and storage. Ms. Fischer replied yes, and any materials would be stored inside the building, there will not be any outdoor storage. She said there would be space for three or four tenants.

Mr. Ball advised the board that BU-2 allows for outside storage, so regardless of if the BDP is removed, BU-2 allows for outside storage.

Mark Wadsworth called for public comment.

Mary Sphar, 825 Clifton's Cove Court, Cocoa, Florida, stated the subject property is different than most of the properties along the south side of State Road 520 in that it has great potential to be a beautiful commercial development. The portion near the road has lovely specimen Live Oaks, with a grassy area in the back, and then more Live Oaks. She asked that the specimen Oaks be preserved and incorporated into the landscape design. One drawback to the property is that it is not served by water and sewer, although both are available from State Road 520. She suggested the board approve the request with a replacement BDP with the conditions of sewer connection and preservation of the specimen Oaks.

Ms. Fischer stated Florida Statutes and Environmental Health will require sewer connection within a certain distance of the property. She said as far as the trees, they will meet all of the codes.

Bruce Moia stated the property has Community Commercial land use, it's on a major arterial corridor, and Ms. Fischer is correct that the State will dictate whether the project gets sewer or septic, and the specimen tree ordinance will dictate that they have to preserve or mitigate for them, so he does not see the need for another BDP on the property.

Motion by Bruce Moia, seconded by Brian Hodgers, to approve the change of zoning classification from BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing, and Wholesale Commercial) with a BDP (Binding Development Plan), to all BU-2 and removal of BDP.