



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.5.

5/5/2022

Subject:

Robert F. Erario and Jeremy Sothea Sun request a change of zoning classification from BU-1 and AU to all AU. (22Z00008) (Tax Account 2001826) (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 AU (Agricultural Residential) to all AU.

Summary Explanation and Background:

The applicants are seeking a change of zoning classification from AU and BU-1 to all AU. BU-1 zoning occupies a one-acre portion of their 7.24-acre property along Highway 1. The applicant seeks to have AU across the entire parcel for agricultural purposes. The applicants would also like to have farm animals in the future (horses and goats). 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, and minimum living area of 750 square feet. The AU classification also permits the raising/grazing of animals and plants nurseries.

The most recent zoning request, 21Z00027, was approved by the Board on November 4, 2021 with a BDP (Binding Development Plan) requiring a 25-foot natural buffer along the property lines abutting residentially zoned properties. However, the applicants stated they could not meet the conditions of the BDP and withdrew the application on February 4, 2022.

In general, lots in the area fronting Highway 1 have a mix of residential and commercial zoning classifications, including AU, RRMH-1, BU-1, and SR. There is BU-1 zoning adjacent to Highway 1 directly south of the subject property. There is AU zoning directly across the highway to the east, approximately 388 feet to the south, and approximately 550 feet to the north on the same side of the road as the subject property. Within 500 ft. of the subject property, there are no AU zoned properties with an Agricultural Exemption through the Property Appraiser.

The Board may wish to consider whether the request is consistent and compatible with the surrounding area. The Board may also wish to consider the potential impacts of agritourism activities in the area.

On April 18, 2022, 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 a copy to Planning & Development.

Resolution 22Z00008

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

WHEREAS, Robert F. Erario and Jeremy Sothea Sun, have requested a change of zoning classification from BU-1 (General Retail Commercial) and AU (Agricultural Residential) to all AU, on property described as Tax Parcel 1.01, as recorded in ORB 8359, Pages 486 - 489, of the Public Records of Brevard County, Florida. **Section 17, Township 20G, Range 34.** (7.24 acres) Located on the west side of U.S. Highway 1, approx. 500 ft. south of Aurantia Road. (4740 N. U.S. Hwy 1, Mims) (Tax Account 2001826) (District 1); and

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

WHEREAS, the Board, after considering said application and the Planning and Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be approved; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from BU-1 to AU, be approved. The Planning and Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of May 5, 2022.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida

Kristine Zonka, Chair
Brevard County Commission
As approved by the Board on May 5, 2022.

ATTEST:



RACHEL SADOFF, CLERK

(SEAL)

P&Z Board Hearing – April 18, 2022

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

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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STAFF COMMENTS

22Z00008

Robert F. Erario and Jeremy Sothea Sun

BU-1 (General Retail Use) and AU (Agricultural Residential) to all AU

Tax Account Number: 2001826
 Parcel I.D.s: 20g-34-17-MK-*-1.01
 Location: 4740 US Highway 1 Mims, FL (District 1)
 Acreage: 7.24 acres

Planning & Zoning Board: 4/18/2022
 Board of County Commissioners: 5/05/2022

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)

	CURRENT	PROPOSED
Zoning	BU-1 & AU	AU
Potential*	Up to 43,560 sq. ft. (1.0 FAR) in BU-1 and one single-family unit in AU	2 SF units and Agricultural Pursuits
Can be Considered under the Future Land Use Map	YES CC & RES 1:2.5	YES CC & RES 1:2.5

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

Background and Purpose of Request

The applicants are seeking a change of zoning classification from AU (Agricultural Residential) and BU-1 (General Retail Commercial) to all AU. BU-1 zoning occupies a one-acre portion of their 7.24-acre property along Highway 1. The applicant seeks to have AU across the entire parcel for agricultural purposes. The applicants would also like to have farm animals in the future (horses and goats).

The original zoning on the property was AU. The most recent zoning request, Zoning Action # **21Z00027**, was approved by the Board on November 4, 2021. The BDP stipulated that a 25-foot natural buffer along the property lines abutting residentially zoned properties would be required. However, the application was later withdrawn on February 4, 2022. The applicant stated they

couldn't meet the conditions of the proposed Binding Development Plan (BDP). Recently, four variances were approved under **21PZ00050** adopted on September 22, 2021. The variances approved were to: 1) Section 62-1334(4), to permit a variance of 27.0 feet from the required 150.0 foot minimum lot width; 2) Section 62-1334(5), to permit a variance of 9.0 feet from the required 15.0 foot side setback for an accessory structure; 3) Section 62-1334(5)(b), to permit an accessory structure located forward of the front building line of a principal structure; 4) Section 62-1334(5)(b), to permit an accessory structure located forward of the front building line of a principal structure, in an AU zoning classification. This variance approval legitimized three existing accessory buildings and allowed a reduced lot frontage along the US Highway 1 corridor. In this application the applicants stated the existing accessory structures were built by a previous owner and have been in this configuration for over 10 years. Under Zoning Resolution **Z-9116** adopted on April 26, 1993, the remaining AU western portion of the lot received a temporary Conditional Use Permit for a Security Trailer use. Under Zoning Resolution **Z-7061** adopted on April 15, 1985, the eastern portion was rezoned from AU to BU-1.

Florida Statute 570.86 defines "agritourism activity" as "any agricultural related activity consistent with a bona fide farm, livestock operation, or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, civic, ceremonial, training and exhibition, or harvest-your-own activities and attractions." Local government is prohibited from adopting ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land that has been classified as agricultural land.

Wedding venues may be considered an agritourism activity. The applicant had previously submitted a site plan for a wedding/event venue (**20SP00021**), but subsequently withdrew it. Within a 500 ft. buffer area around the subject property, there are no AU zoned property with an Agricultural Exemption from the Property Appraiser.

Land Use

The subject property is currently designated Community Commercial (CC) and Residential 1:2.5 (RES 1:2.5). The AU request could be considered consistent with both the Community Commercial (CC) and Residential 1:2.5 FLU designations.

Applicable Land Use Policies

FLUE Policy 1.10 The Residential 1:2.5 Future land use designation. The Residential 1:2.5 land use designation, which establishes the lowest density of all the residential future land use designations, permits a maximum density of up to one (1) unit per 2.5 acres, except as otherwise may be provided for within this element. Development in the Residential 1:2.5 land use designation should seek to maximize the integration of open space within the development and promote inter-connectivity with surrounding uses.

FLUE Policy 1.4 – 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. The Board should evaluate the compatibility of this application within the context of Administrative Policies 3 - 5 of the Future Land Use Element.

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

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

Criteria:

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

The owners state the existing use/business is in operation and will continue to be an 8-5 (5-days a week, M-F) wholesale operation. Expansions of use may require site plan review. Development will need to be in compliance with Brevard County's Performance Standards identified in Sections 62-2251 – 62-2271 of Brevard County Code.

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

Only a certified MAI appraisal can determine if material reduction has or will occur due to the proposed request.

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

- 1. historical land use patterns;

All of the parcels directly adjacent to Highway 1 have a FLU designation of CC or Neighborhood Commercial (NC). There are two convenience stores on the southwest and southeast corners of Aurantia and Highway 1, but otherwise the only commercial use is a retail building currently used for used motorcycle sales. The rest of the parcels adjacent to the highway are currently vacant or contain site-built or manufactured homes. Review of the 2018 – 2021 aerials do not indicate any properties in the area utilizing agricultural pursuits.

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

There has not been any actual development within this area in the preceding three (3) years.

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

There has not been any actual development within this area in the preceding three (3) years.

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

With the approval of the recent variance request, no material violation of relevant policies have been identified.

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

In general, lots fronting Highway 1 have a mix of residential and commercial zoning classifications. Zoning classifications along the highway include AU, RRMH-1, BU-1, and SR. There is BU-1 zoning adjacent to Highway 1 directly south of the subject property. There is AU zoning directly across the highway to the east, approximately 388 feet to the south, and approximately 550 feet to the north on the same side of the road as the subject property.

Many of the residential lots along Aurantia Road obtain access through flag lots and/or access easements. While the subject property has a 75-foot wide flag “stem” going from the interior north toward Aurantia Road, it does not have approval as a flag lot and therefore must continue to use Highway 1 for access. Flag stem access per Section 62-102 (b) is to provide access for residential building permit purposes and is not to be utilized for commercial purposes.

Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	SF residence	AU	RES 1:2.5
South	SF residence	AU	RES 1:2.5
East	SF residence	SR & BU-1	NC & CC
West	Vacant	AU & RRMH-1	RES 1:2.5

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 AU classification also permits the raising/grazing of animals and plants nurseries. Conditional uses in AU include hog farms, zoological parks, and land alteration.

The RRMH-1 classification permits single-family mobile homes and detached single-family residential land uses on minimum one acre lots, with a minimum width and depth of 125 feet. This classification permits horses, barns and horticulture as accessory uses. The minimum house size is 600 square feet.

The SR classification permits single family residences on minimum half acre lots, with a minimum width of 100 feet and a depth of 150 feet. The minimum house size in SR is 1,300 square feet.

The GU classification permits allows single-family residences on five acre lots with a minimum width and depth of 300 feet. The minimum house size in GU is 750 square feet.

SR classification permits single family residences on minimum half acre lots, with a minimum width of 100 feet and a depth of 150 feet. The minimum house size in SR is 1,300 square feet.

The current 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. BU-1 permits plant nurseries with no outside bulk storage of mulch, topsoil, etc. BU-1 does not permit the raising and grazing of animals.

There was one zoning action within a half-mile radius of the subject property within the last three years. That action was **21Z00019** which was approved by the Board on February 3, 2022. The request was to change RRMH-2.5 (Rural Residential Mobile Home) to RRMH-1 (Rural Residential Mobile Home) on a 3.48-acre lot. This lot is located 1,560 feet in a southwest direction abutting the end/terminus (east side) of Springfield Avenue.

Preliminary Concurrency

The closest concurrency management segment to the subject property is US Highway 1, between Burkholm Road to the Volusia County line, which has a Maximum Acceptable Volume (MAV) of 40,300 trips per day, a Level of Service (LOS) of C, and currently operates at 10.16% of capacity daily. The maximum development potential from the proposed rezoning decreases the percentage of MAV utilization by 1.16%. The corridor is anticipated to operate at 9.00% of capacity daily. 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 falls below the minimum number of new residential lots that would require a formal review.

Public water or centralized sewer is not available. The applicants will be required to utilize onsite well and septic system. The closest water line to the parcel is approximately 2.06 miles to the south on Highway 1, while the closest sewer line is approximately 4.6 miles south on Highway 1.

Environmental Constraints

- Hydric Soils/Wetlands
- Aquifer Recharge Soils
- Floodplain
- Indian River Lagoon Nitrogen Reduction Overlay
- Protected Species
- Land Clearing and Landscape Requirements

The portion of parcel requesting the rezoning to AU contains mapped hydric soils, an indicator that wetlands may be present on the property. A wetland determination was performed by Toland Environmental Consulting (TEC) on the subject parcel eastern portion, and no wetlands were found. The remaining portion of the parcel has mapped National Wetland Inventory (NWI) wetlands,

SJRWMD wetlands, and hydric soils, and will require a wetland determination prior to any land clearing activities, site plan design, or building permit submittal. The applicant is encouraged to contact NRM at 321-633-2016. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696.

For Board Consideration

The Board may wish to consider whether the request is consistent and compatible with the surrounding area. The Board may also wish to consider the potential impacts of agritourism activities in the area.

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Zoning Review & Summary

Item #22Z00008

Applicant: Robert Erario

Zoning Request: BU-1 and AU to all AU

Note: Applicant wants entire parcel for agricultural pursuits.

P&Z Hearing Date: 04/18/22; **BCC Hearing Date:** 05/05/22

Tax ID No: 2001826 – east portion

- 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/Wetlands
- Aquifer Recharge Soils
- Floodplain
- Indian River Lagoon Nitrogen Reduction Overlay
- Protected Species
- Land Clearing and Landscape Requirements

The portion of parcel requesting the rezoning to AU contains mapped hydric soils, an indicator that wetlands may be present on the property. A wetland determination was performed by Toland Environmental Consulting (TEC) on the subject parcel eastern portion, and no wetlands were found. The remaining portion of the parcel has mapped National Wetland Inventory (NWI) wetlands, SJRWMD wetlands, and hydric soils, and will require a wetland determination prior to any land clearing activities, site plan design, or building permit submittal. The applicant is encouraged to contact NRM at 321-633-2016. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696.

Land Use Comments:

Hydric soils/Wetlands

The portion of parcel requesting the rezoning to AU contains mapped hydric soils (Tomoka muck) as shown on the USDA Soil Conservation Service Soils Survey map, an indicator that wetlands may be present on the property. A wetland determination was performed by Toland Environmental Consulting (TEC) on the subject parcel portion, and no wetlands were found. The remaining portion of the parcel has mapped National Wetland Inventory (NWI) wetlands, SJRWMD wetlands, and hydric soils, and will require a wetland determination prior to any land clearing activities, site plan design or building permit submittal. The applicant is encouraged to contact NRM at 321-633-2016. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696.

Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. **The Brevard County Property Appraiser's Office establishes Bona Fide Agricultural land classification, and should be contacted at 321-264-5393 for specific requirements to meet this classification.**

Section 62-3694 states that non-bona fide agricultural and forestry operations utilizing best management practices are permitted in wetlands provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design.

Aquifer Recharge Soils

The subject parcel contains mapped aquifer recharge soils (Pomello sand) as shown on the USDA Soil Conservation Service Soils Survey map. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Floodplain

The entire parcel is mapped as being within an isolated floodplain as identified by the Federal Emergency Management Agency and as shown on the FEMA Flood Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Per Section 62-3724(3)(d), compensatory storage shall be required for fill in excess of that which will provide an upland buildable area within the isolated floodplain greater than one third (1/3) acre in size.

Indian River Lagoon Nitrogen Reduction Overlay

Portions of the parcel that are not included in the rezoning are mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If adequate sewer for any future development within the overlay is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage

treatment processes, shall be required. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

Protected Species

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

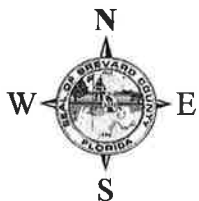
Land Clearing and Landscape Requirements

Aerials show the parcel to be wooded. Per Section 62-4339, the parcel has requirements for Canopy, Protected and Specimen tree(s) preservation. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), a purpose and intent of the ordinance is to encourage the protection of Specimen Trees. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for tree preservation and canopy coverage requirements. The applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities. Information available to NRM indicates that recent, unpermitted land clearing activities may have occurred along U.S. Highway 1. The discovery of unpermitted land clearing activities may result in enforcement action. Land clearing is not permitted without prior authorization by NRM.

LOCATION MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA

22Z00008





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.

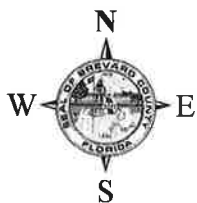
Produced by BoCC - GIS Date: 2/11/2022

-  Buffer
-  Subject Property

ZONING MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA




22Z00008



1:4,800 or 1 inch = 400 feet

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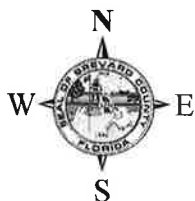
Produced by BoCC - GIS Date: 2/11/2022

-  Subject Property
-  Parcels
-  Zoning



FUTURE LAND USE MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA

22Z00008



1:4,800 or 1 inch = 400 feet

 Subject Property
 Parcels

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AERIAL MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA

22Z00008



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2021

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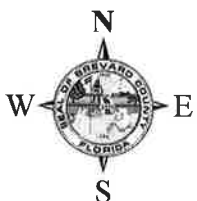
Produced by BoCC - GIS Date: 2/11/2022

 Subject Property

 Parcels

NWI WETLANDS MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA
22Z00008



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Produced by BoCC - GIS Date: 2/11/2022

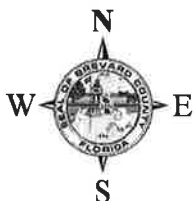
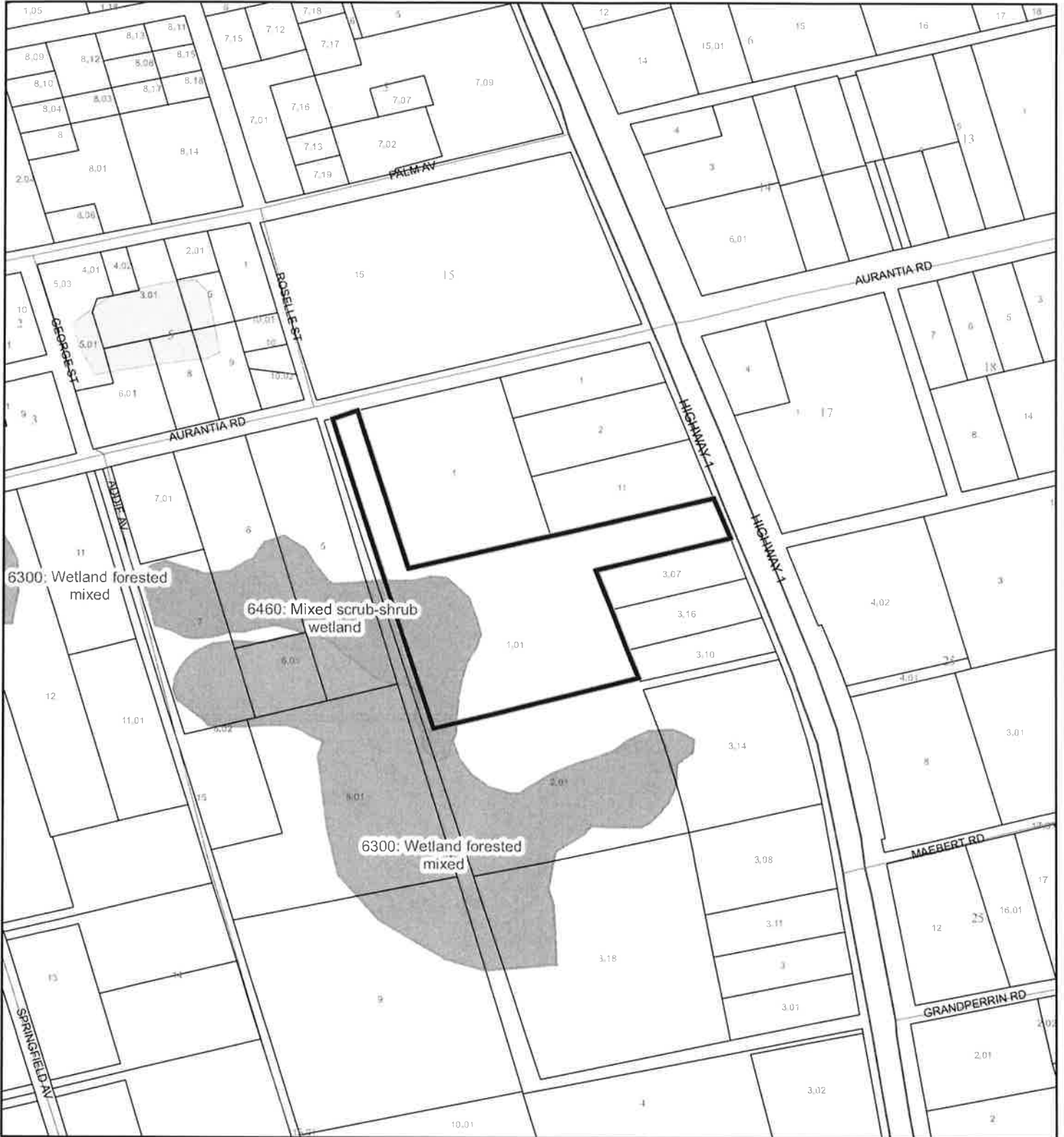
National Wetlands Inventory (NWI)

- | | |
|-----------------------------------|------------------|
| 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

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA

22Z00008



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/11/2022

SJRWMD FLUCCS WETLANDS

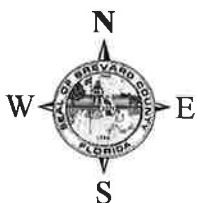
-  Wetland Hardwood Forests - Series 6100
-  Wetland Coniferous Forest - Series 6200
-  Wetland Forested Mixed - Series 6300
-  Vegetated Non-Forested Wetlands - Series 6400
-  Non-Vegetated Wetland - Series 6500

 Subject Property  Parcels

USDA SCSSS SOILS MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA

22Z00008









1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/11/2022

USDA SCSSS Soils

-  Aquifer and Hydric
-  Aquifer
-  Hydric
-  None

-  Subject Property
-  Parcels

FEMA FLOOD ZONES MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA









22Z00008



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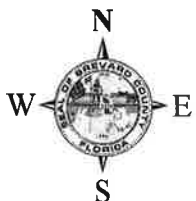
Produced by BoCC - GIS Date: 2/11/2022

FEMA Flood Zones			
	A		X
	AE		Open Water
	AH		VE
	Subject Property		Parcels

COASTAL HIGH HAZARD AREA MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA

22Z00008



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 Subject Property

 Parcels

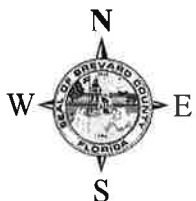
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA

22Z00008



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/11/2022

 Subject Property

 Parcels

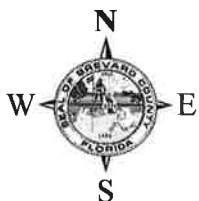
Septic Overlay

 40 Meters

 60 Meters

 All Distances


EAGLE NESTS MAP
 ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA
 22Z00008



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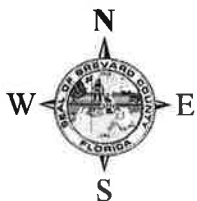
Produced by BoCC - GIS Date: 2/11/2022

-  Subject Property
-  Parcels
-  Eagle Nests FWS 2010

SCRUB JAY OCCUPANCY MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA




22Z00008



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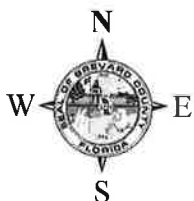
Produced by BoCC - GIS Date: 2/11/2022

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA

22Z00008



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Produced by BoCC - GIS Date: 2/11/2022

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

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, April 18, 2022**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

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

Board members present were: Board members present were: Henry Minneboo (D1); Ron Bartcher (D1); Brian Hodgers (D2); Robert Sullivan (D2); Ben Glover (D3); Mark Wadsworth, Chair (D4); Liz Alward (D4); Logan Luse (Alt. D4); Bruce Moia (D5); David Bassford (Alt. D5); and John Hopengarten (BPS).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Peter Martin, Planner II; George Ritchie, Planner III; Alex Esseesse, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Agenda

Robert F. Erario and Jeremy Sothea Sun

A change of zoning classification from BU-1 (General Retail Commercial) and AU (Agricultural Residential) to all AU. The property is 7.24 acres, located on the west side of U.S. Highway 1, approx. 500 ft. south of Aurantia Road. (4740 N. U.S. Hwy 1, Mims) (22Z00008) (Tax Account 2001826) (District 1)

Jack Spira, 5205 Babcock Street, Palm Bay, representing the applicant, stated the front 1-acre of the property is zoned BU-1, with the remainder zoned AU. The entire property was once all AU and it was changed in 1985 to BU-1 on the front. This request was approved by this board in October 2021, and was approved by the County Commission in November 2021 with a BDP asking for a 25-foot buffer along the property lines. The basis of that request was that the property owner to the north voiced some concerns about having a wedding venue next to her property. The application was withdrawn and now they are back before this board. The BDP requires consent by a mortgage holder and this is a private mortgage holder who may have seller's remorse and wasn't willing to give consent. He stated his client has had discussions with the neighbor to the north and they have reached an agreement where he will construct a wood fence along her property line; she indicated she was fine with that and that she would not oppose the rezoning. A wood fence would be consistent and conducive with the surrounding area.

No public comment.

Mr. Bartcher stated the applicant previously submitted a site plan for a wedding event venue, and asked if he intends to use this property in the future for weddings.

Mr. Spira replied the idea is to have that option available in the future, but not at the present time.

Mr. Bartcher asked if the applicant plans to have horses and goats and to raise them for family purposes or for sale.

Robert Erario, 4740 U.S. Highway 1, Mims, replied yes, he will be possibly breeding and possibly a stallion for a stud horse.

Motion by Ron Bartcher, seconded by Robert Sullivan, to recommend approval of the change of zoning classification BU-1 and AU to all AU. The vote was unanimous.