



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.3.

10/3/2019

Subject:

Scott Merson requests a change of zoning classification from RU-2-10 to BU-1-A. (19PZ00090) (District 4)

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 RU-2-10 (Medium Density Multi-Family Residential) to BU-1-A (Restricted Neighborhood Commercial).

Summary Explanation and Background:

The applicant is seeking a change of zoning classification from RU-2-10 to BU-1-A on 0.46 acres, located at 2565 Sellers Lane, Melbourne, for the purposes of utilizing the existing single-family residence as a professional office and permitting future use and redevelopment of the property consistent with BU-1-A. The BU-1-A zoning classification allows for restricted neighborhood retail commercial uses.

The property across Sellers Lane to the north of the subject property retains RU-2-10 zoning and is developed as single-family residential, but abuts a BU-1 (General Retail Commercial) zoned and developed property to the west. The 3.04-acre abutting property to the south is in the Town of Palm Shores, retains C2 (General Commercial) zoning, and is developed as a commercial office building that fronts North Wickham Road to the west and Pineda Causeway to the south. The 0.46-acre abutting property to the east retains RU-2-10 zoning and is developed as a single-family residence. The 0.69-acre abutting property to the west is developed as a produce house and is under the same ownership as the subject property.

The Board may wish to consider whether there are any compatibility concerns between the proposed BU-1-A zoning for the subject property and the existing single-family residential uses on Sellers Lane in light of the RU-2-10 multi-family zoning and Neighborhood Commercial Future Land Use of those properties and the commercial Future Land Use, zoning, and use of other abutting and sounding properties.

On September 9, 2019, the Planning and Zoning Board heard the request and unanimously recommended approval limited to office uses only.

Clerk to the Board Instructions:

Once resolutions are received, please execute and return to Planning and Development.

40

Resolution 19PZ00090

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

WHEREAS, Scott Merson has requested a change of zoning classification from RU-2-10 (Medium Density Multi-Family Residential) to BU-1-A (Restricted Neighborhood Commercial), on property described as Tax Parcel 508.2, as recorded in Official Records Book 4313, Pages 1262 – 1263, of the Public Records of Brevard County, Florida. Section 19, Township 26, Range 37. (0.46 acres). Located on the south side of Sellers Lane, approximately 150 feet east of North Wickham Rd. (2565 Sellers Lane, Melbourne); 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 limited to office use only; and

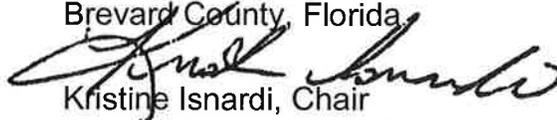
WHEREAS, the Board, after considering said application and Brevard County Planning and Zoning Board’s recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be approved as submitted; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from RU-2-10 to BU-1-A be approved as submitted. 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 October 3, 2019.

BOARD OF COUNTY COMMISSIONERS

Brevard County, Florida



Kristine Isnardi, Chair
Brevard County Commission

As approved by the Board on October 3, 2019.

ATTEST:



SCOTT ELLIS, CLERK

(SEAL)

Planning and Zoning Board Hearing – September 9, 2019

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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 (321)633-2070 Phone / (321)633-2074 Fax
<https://www.brevardfl.gov/PlanningDev>

STAFF COMMENTS

19PZ00090

Scott E. Merson

RU-2-10 (Medium-Density Multi-Family Residential) to BU-1-A (Restricted Neighborhood Commercial)

Tax Account Number: 2606120
 Parcel I.D.: 26-37-19-00-508.2
 Location: 2565 Sellers Lane, Melbourne (District 4)
 Acreage: 0.46 acres

Planning and Zoning Board: 09/09/19
 Board of County Commissioners: 10/03/19

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)

	CURRENT	PROPOSED
Zoning	RU-2-10	BU-1-A
Potential*	4 Units	4,008 Square Feet
Can be Considered under the Future Land Use Map	YES, NC	YES, NC

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

Background and Purpose of Request

The applicant is seeking a change of zoning classification from RU-2-10 to BU-1-A for the purposes of utilizing the existing single-family residence as a professional office and permitting future use and redevelopment of the property consistent with BU-1-A.

The original zoning of the subject lot of General Use (GU) was changed to Two Family Residential Zone (RU-2) under **Z-239** approved September, 1959. This RU-2 classification was changed to RU-2-10 by **Ordinance 73-13** approved May, 1979. There have been no other zoning actions requested on the subject property until the current request, which proposes to change the zoning on 0.46 acres from RU-2-10 to BU-1-A.

Land Use Compatibility

The subject property retains the Neighborhood Commercial (NC) Future Land Use (FLU) designation. The current RU-2-10 zoning, per FLUE Policy 2.13, and the proposed BU-1-A zoning are both consistent and compatible with the NC FLU designation. All the lots on Sellers Lane retain NC FLU designation.

FLUE Policy 2.5 addresses activities permitted in the NC FLU designation. Neighborhood Commercial (NC) development activities are intended to be low-impact in nature and serve the needs of the immediate residential area. Intrusion of these land uses into surrounding residential areas shall be limited. Existing BU-1-A uses, which were established as of the adoption date of this provision shall be considered consistent with this policy. Development activities which may be considered within the NC FLU designation, provided that listed criteria are met, include the following:

- a) Professional offices (no drive through lanes permitted);
- b) Personal Services (no drive through lanes permitted);
- c) Convenience stores (no drive through lanes permitted);
- d) Residential uses;
- e) Institutional uses;
- f) Recreational uses;
- g) Public facilities; and
- h) Transitional uses pursuant to Policy 2.12.

FLUE Policy 2.13 Residential development or the integration of residential development with commercial development shall be permitted in the Neighborhood Commercial and Community Commercial land use designations, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and areas designated for residential use on the Future Land Use Map. Residential development is permissible in these commercial land use designations at density of up to one category higher than the closest residentially designated area on the Future Land Use Map (FLUM) which is on the same side of the street. Increases in density beyond this allowance may be considered through a public hearing.

The proposed BU-1-A zoning is consistent with the NC FLU designation.

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

Environmental Constraints

No substantial natural resource land use issues were identified.

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, plan, or permit submittal. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Preliminary Concurrency Analysis

The closest concurrency management road segment to the subject property is North Wickham Road, between Pineda Causeway and Jordan Blass Road, which has a Maximum Acceptable Volume (MAV) of 39,800 trips per day, a Level of Service (LOS) of D, and currently operates at 70.63% of capacity daily. The parcel is developed with an existing single-family residence. The maximum development potential from the proposed rezoning increases the proposed trip generation by 565 Average Daily Trips (ADT) and four (4) trips at pm peak-hour. The corridor is projected to operate at 72.05% of capacity daily (LOS C), an increase of 1.42%. The proposal is not anticipated to create a deficiency in LOS.

The maximum density/intensity of the existing RU-2-10 zoning would require, and the proposed BU-1-A zoning may or may not require, depending on the use, central sanitary sewer and central potable water service. The subject property currently utilizes an on-site septic system and does not have sewer connection directly to the property. County sewer mains are located approximately 150 feet to the west of the subject property along the east side of North Wickham Road that would enable connection to central sanitary sewer collection system if required by the site plan review process. City of Cocoa Water Utilities potable water distribution pipes are in place to actively service the subject property.

This proposed zoning action would decrease potential dwelling units from four possible units down to one. This is below the eight-unit increase threshold that triggers school concurrency review, therefore, no school concurrency is required.

Applicable Land Use Policies

The developed character of the lots on Sellers Lane, proximity to Wickham Road and the intersection of Wickham Road and Pineda Causeway, and the commercial nature of abutting properties to the west and south of the subject property, are all consistent with the proposed BU-1-A zoning classification. All lots directly fronting Sellers Lane retain RU-2-10 zoning and NC FLU. The two corner lots on Sellers Lane that front Wickham Road retain BU-1 zoning.

The current RU-2-10 zoning classification permits multiple-family residential development or single-family residences at a density of up to 10 units per acre on minimum lot sizes of 7,500 square feet.

The BU-1-A classification permits restricted neighborhood retail and personal service uses to serve the needs of nearby low-density residential neighborhoods. Minimum lot size of 7,500 square feet is required with minimum width and depth of 75 feet. Conditional uses such as child care centers and private clubs are also permitted in this classification.

The 0.46-acre subject property is developed with one (1), 1,098 square-foot, single-family residence. The property across Sellers Lane to the north retains RU-2-10 zoning, is developed as single-family residential, but abuts a General Retail Commercial (BU-1) zoned and developed property to the west. The 3.04 acre abutting property to the south is in the Town of Palm Shores, retains General Commercial (C2) zoning, is developed as a 15,188 square foot multi-tenant, commercial office building that fronts North Wickham Road to the west and Pineda Causeway to the south. The 0.46 acre abutting property to the east retains RU-2-10 zoning and is developed as a single-family

residence. The 0.69 acre abutting property to the west is developed as a produce house and is under the same ownership as the subject property.

The following three (3) zoning actions have been approved by the Board within a half-mile of the subject property in the last five (5) years:

- **18PZ00162** approved March 7, 2019 changed the zoning classification from BU-1 and Light Industrial (IU) to Government Managed Lands – High Intensity (GML(H)) on 6 acres located on the southwest corner of Pineda Causeway and the Florida East Coast Railroad right-of-way, approximately 1,000 feet east of the subject property;
- **17PZ00109** approved April 25, 2018 changed the zoning classification from Planned Industrial Park (PIP) to Medium Density Multi-Family Residential (RU-2-15) with a Binding Development Plan (BDP) on 30.7 acres located on the east side of Wickham Road, approximately 2,150 feet north of the subject property;
- **16PZ00071** approved October 13, 2016 changed the FLU and zoning from Public and GML(H) to CC and BU-1 on 1.10 acres located between Pineda Causeway and Pineda Plaza Way approximately 500 feet southeast of the subject property.

For Board Consideration

The applicant is seeking a change of zoning classification from Medium-Density Multi-Family Residential (RU-2-10) to Restricted Neighborhood Commercial (BU-1-A) for the purposes of utilizing the existing single-family residence as a professional office and permitting future use and redevelopment of the property consistent with BU-1-A.

The Board may wish to consider whether there are any compatibility concerns between the proposed BU-1-A zoning for the subject property and the existing single-family residential uses on Sellers Lane in light of the RU-2-10 multi-family zoning and NC FLU of those properties and the commercial FLU, zoning, and use of other abutting and sounding properties.

The property across Sellers Lane to the north of the subject property retains RU-2-10 zoning, is developed as single-family residential, but abuts a General Retail Commercial (BU-1) zoned and developed property to the west. The 3.04 acre abutting property to the south is in the Town of Palm Shores, retains General Commercial (C2) zoning, is developed as a 15,188 square foot multi-tenant, commercial office building that fronts North Wickham Road to the west and Pineda Causeway to the south. The 0.46 acre abutting property to the east retains RU-2-10 zoning and is developed as a single-family residence. The 0.69 acre abutting property to the west is developed as a produce house and is under the same ownership as the subject property.

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

Item # 19PZ00090

Applicant: Scott Merson

Zoning Change Request: RU-2-10 to BU-1-A

Note: Applicant wants professional office

P&Z/LPA Hearing Date: 09/09/19; **BCC Hearing Date:** 10/03/19

Tax ID No: 2606120

- 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.**

Substantial Natural Resources Land Use Issues:

No substantial natural resource land use issues were identified. 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, plan, or permit submittal. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Summary of Mapped Natural Resources Present on the Subject Property:

Protected Species - Florida Scrub Jay

Land Use Comments:

Protected Species

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

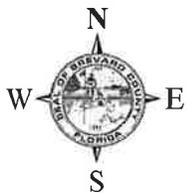
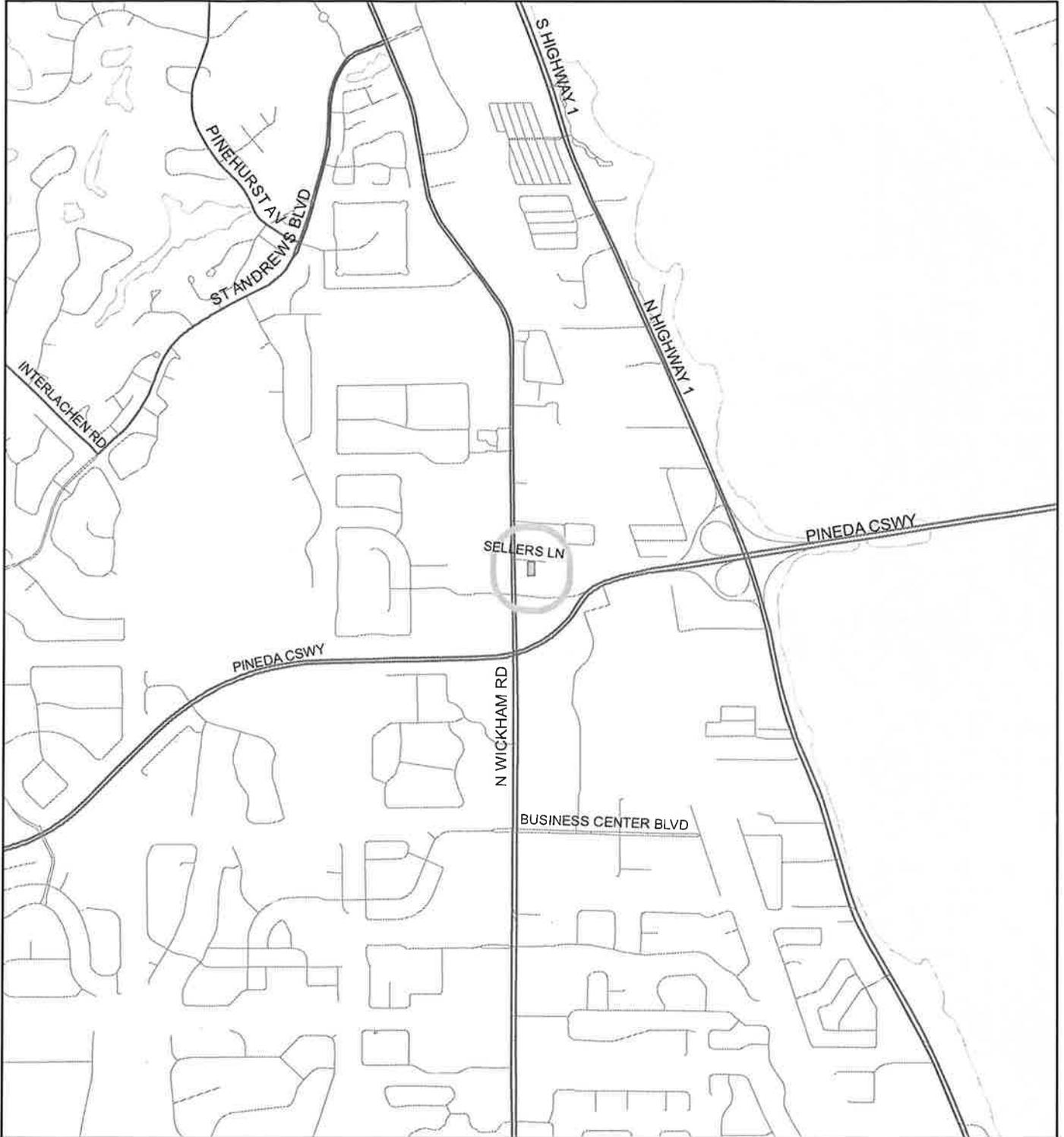
Landscape Requirements

Aerials indicate Heritage Specimen Trees (greater than or equal to 24 inches in diameter) may reside on the parcel. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), a purpose and intent of the ordinance is to encourage the protection of Heritage Specimen Trees. In addition, per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

LOCATION MAP

MERSON, SCOTT E.

19PZ00090



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

Buffer Distance: 500 feet

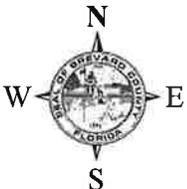
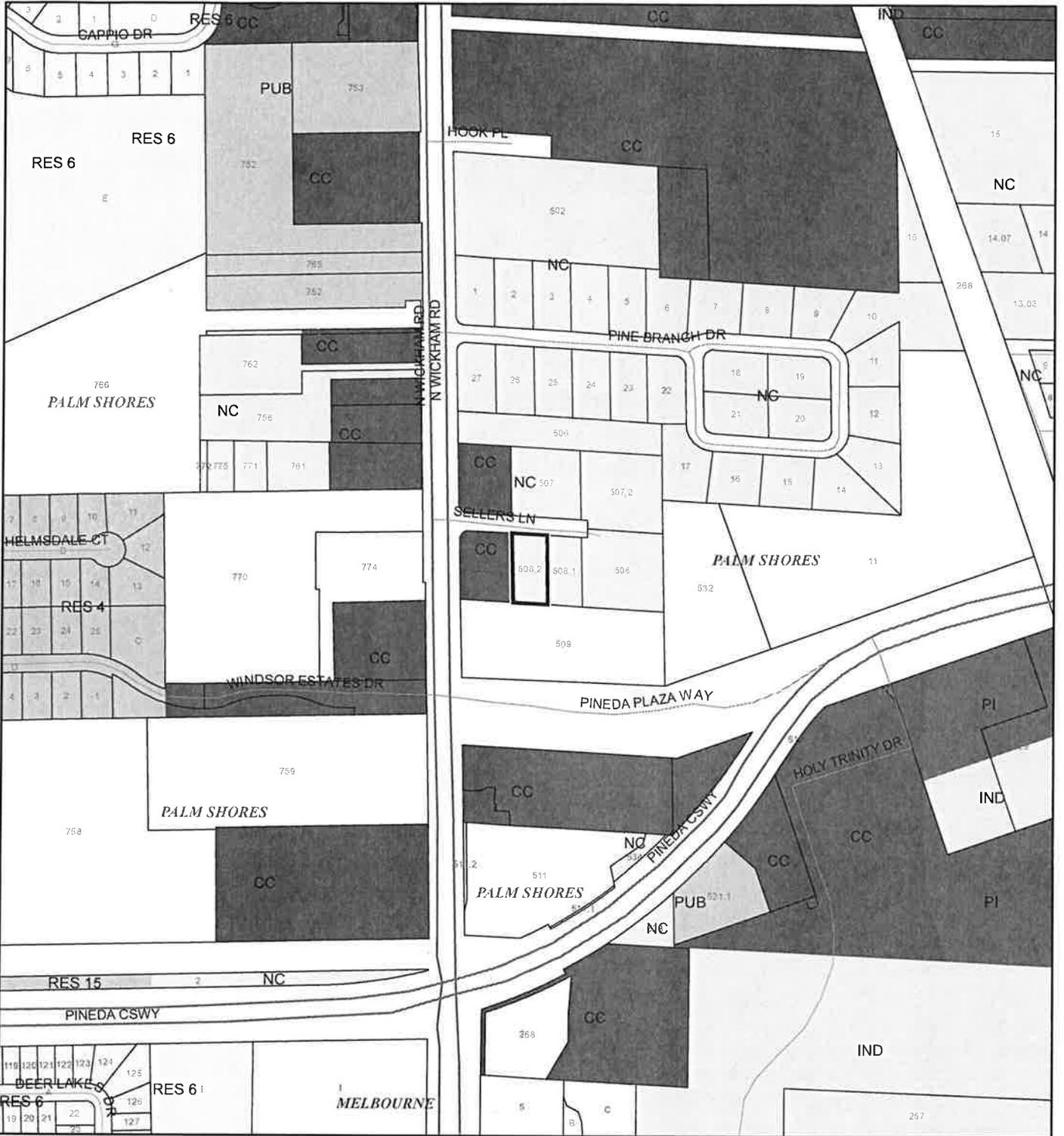
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 7/12/2019

-  Buffer
-  Subject Property

FUTURE LAND USE MAP

MERSON, SCOTT E.
19PZ00090



1:4,800 or 1 inch = 400 feet

— Subject Property
 □ Parcels

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AERIAL MAP

MERSON, SCOTT E.

19PZ00090



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2019

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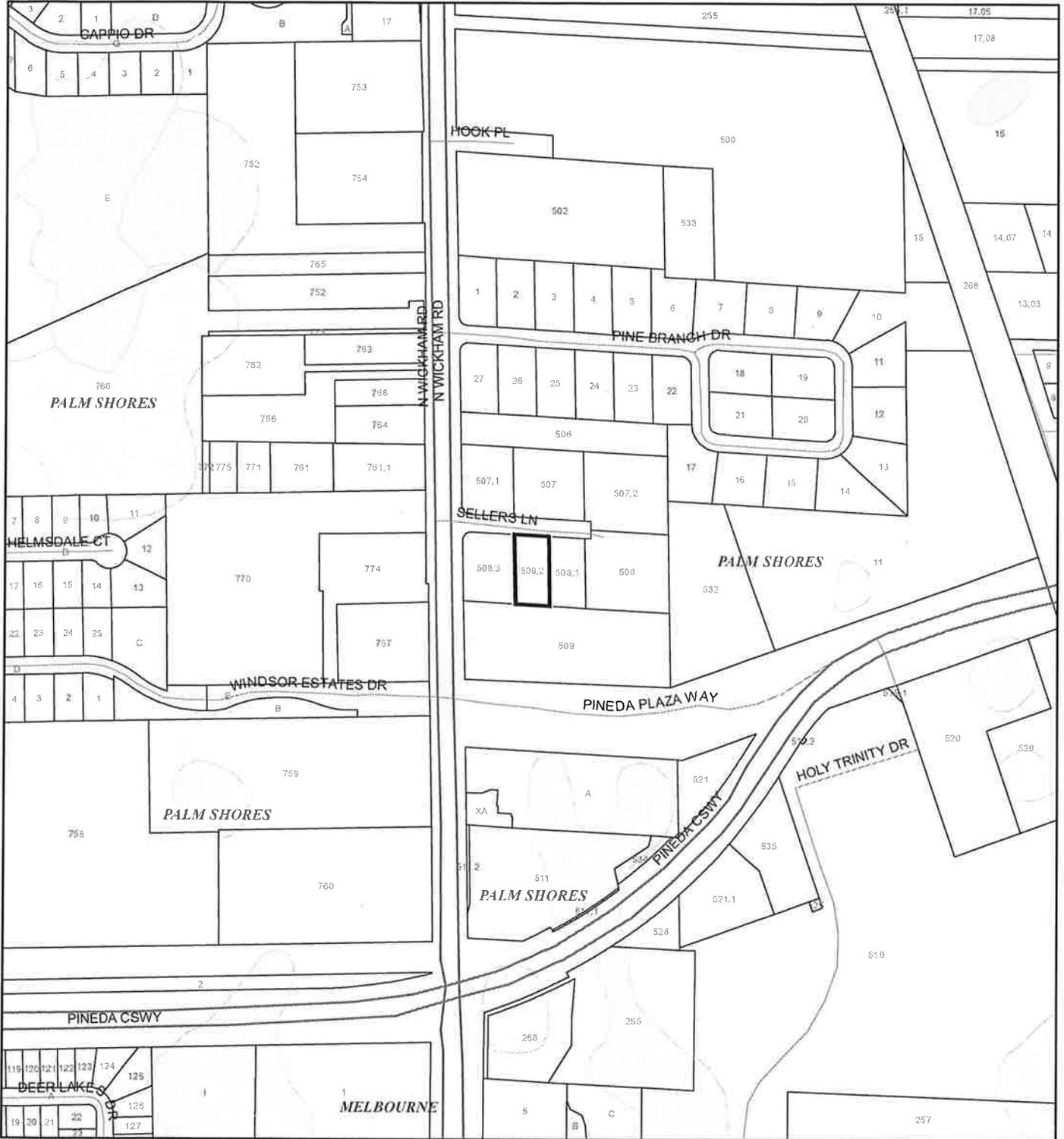
 Subject Property

 Parcels

NWI WETLANDS MAP

MERSON, SCOTT E.

19PZ00090



1:4,800 or 1 inch = 400 feet

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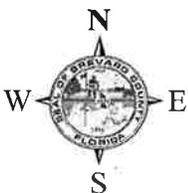
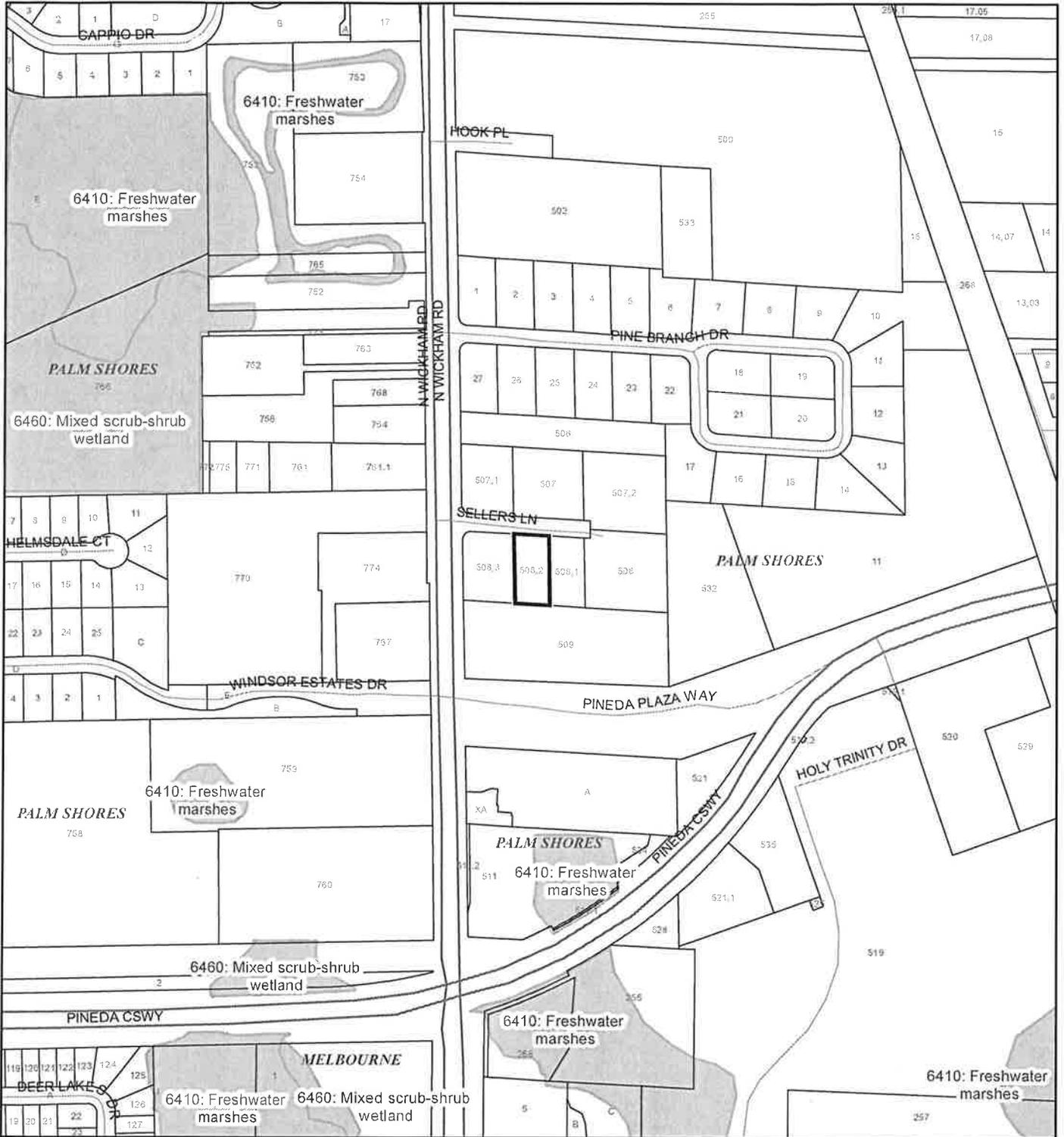
Produced by BoCC - GIS Date: 7/12/2019

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

MERSON, SCOTT E.
19PZ00090



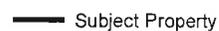
1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 7/12/2019

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

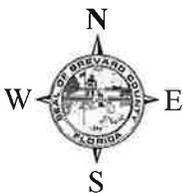
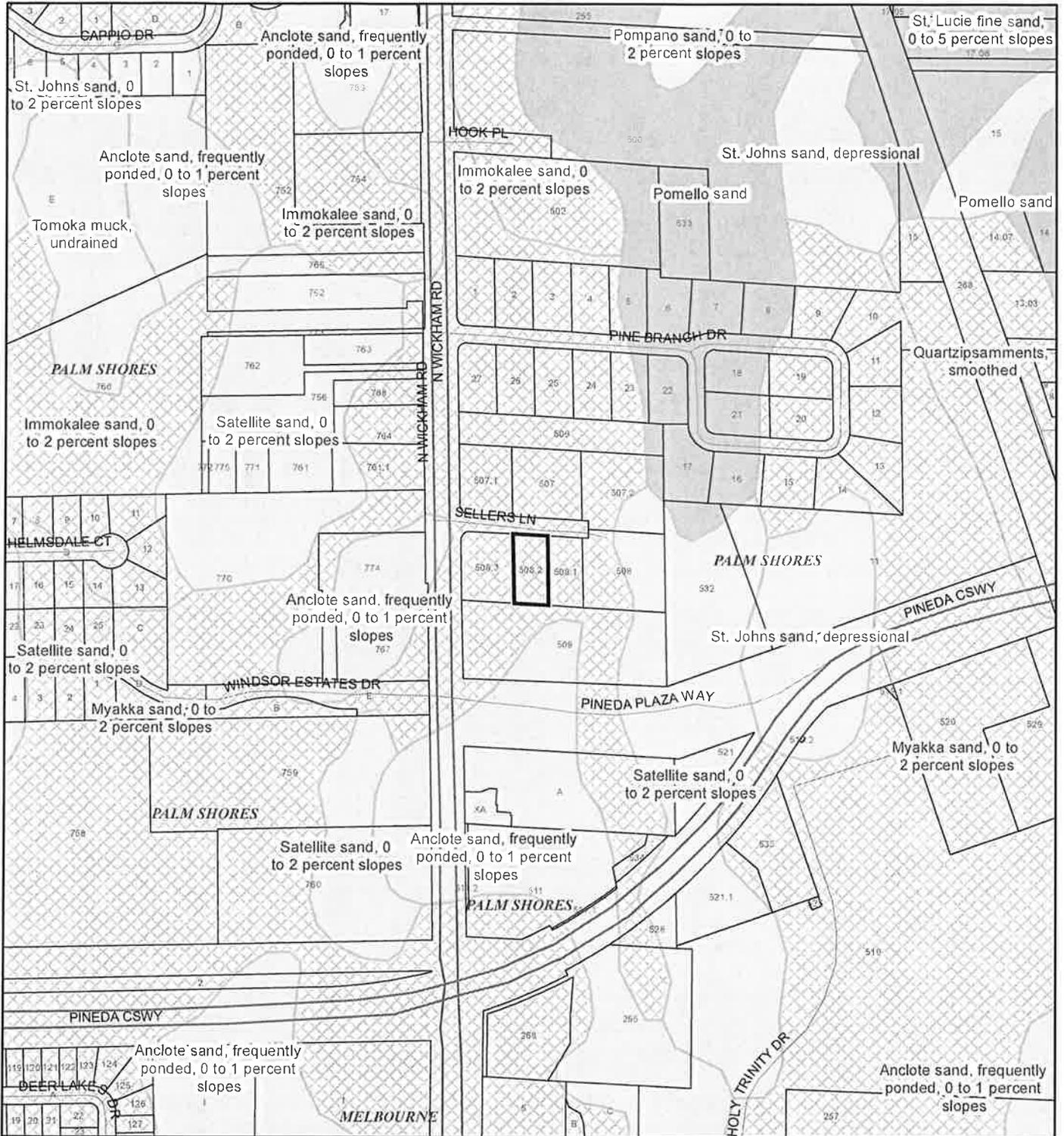
 Subject Property

 Parcels

USDA SCSSS SOILS MAP

MERSON, SCOTT E.

19PZ0090



1:4,800 or 1 inch = 400 feet

USDA SCSSS Soils

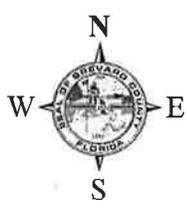
-  Aquifer and Hydric
-  Aquifer
-  Hydric
-  None
-  Subject Property
-  Parcels

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 herein.

Produced by BoCC - GIS Date: 7/12/2019

FEMA FLOOD ZONES MAP

MERSON, SCOTT E.
19PZ00090



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 7/12/2019

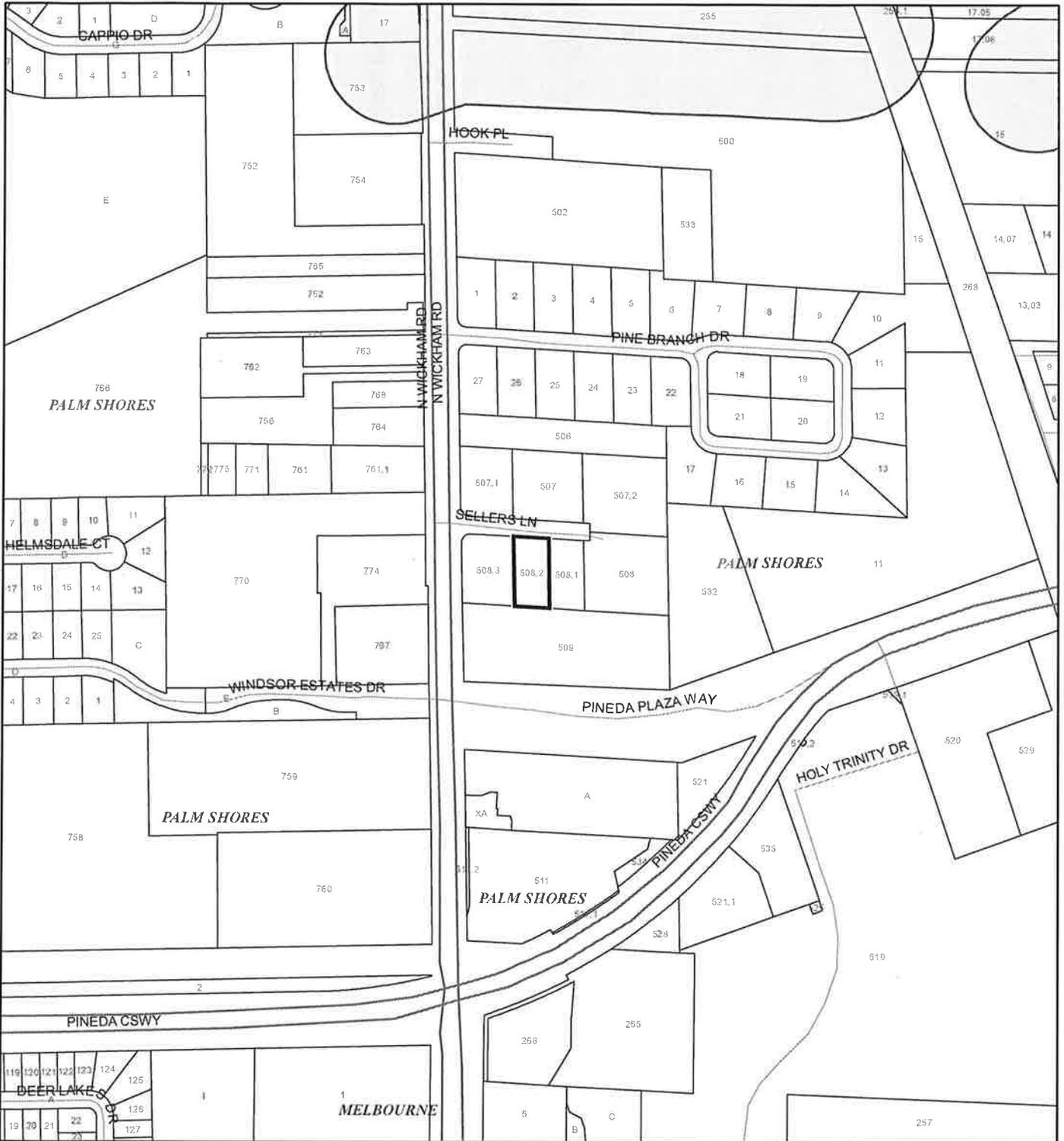
FEMA Flood Zones

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

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

MERSON, SCOTT E.

19PZ00090



1:4,800 or 1 inch = 400 feet

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— Subject Property

□ Parcels

Septic Overlay

■ 40 Meters

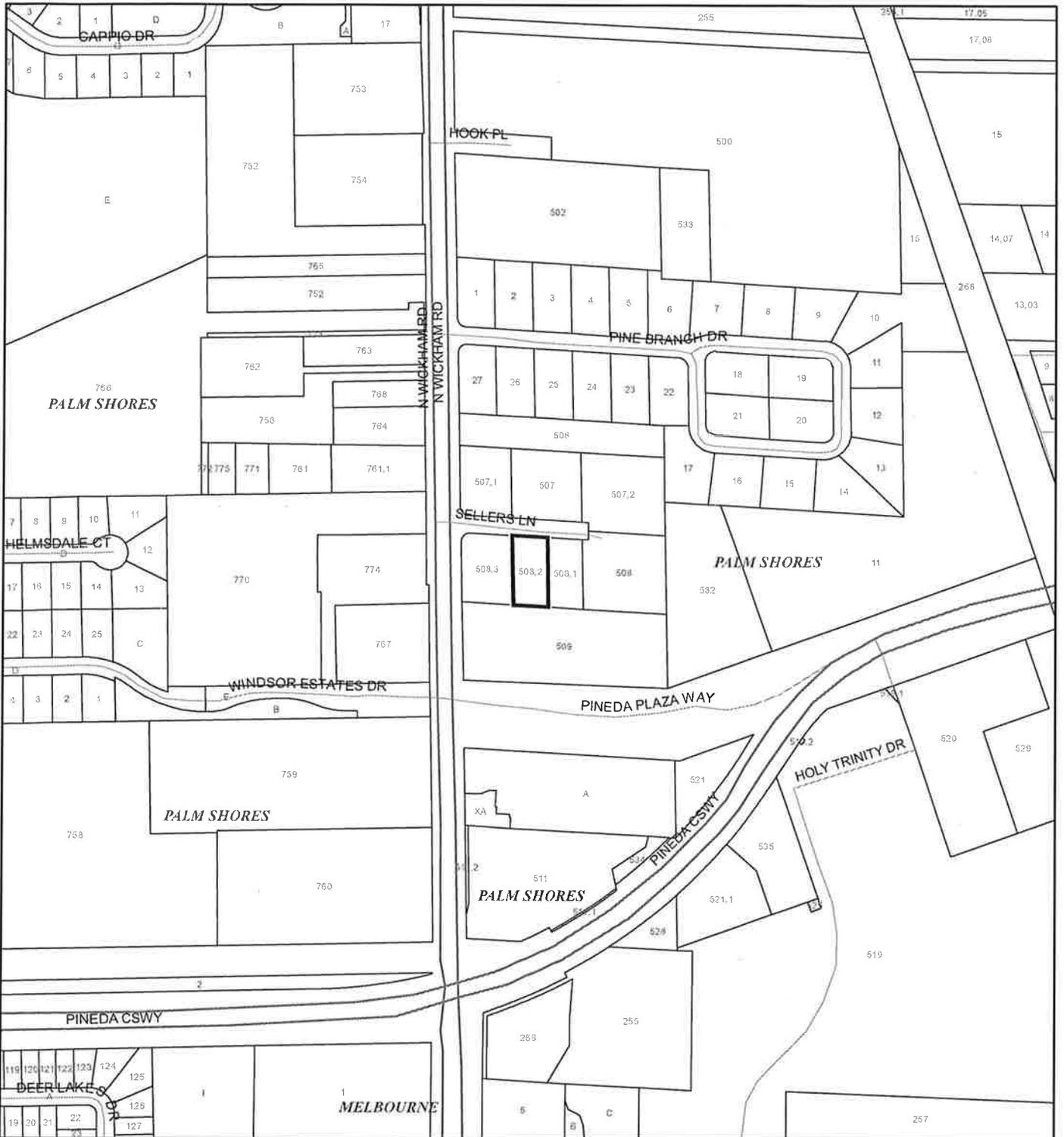
■ 60 Meters

■ All Distances

EAGLE NESTS MAP

MERSON, SCOTT E.

19PZ00090



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 7/12/2019

 Subject Property

 Parcels

 Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

MERSON, SCOTT E.

19PZ00090



1:4,800 or 1 inch = 400 feet

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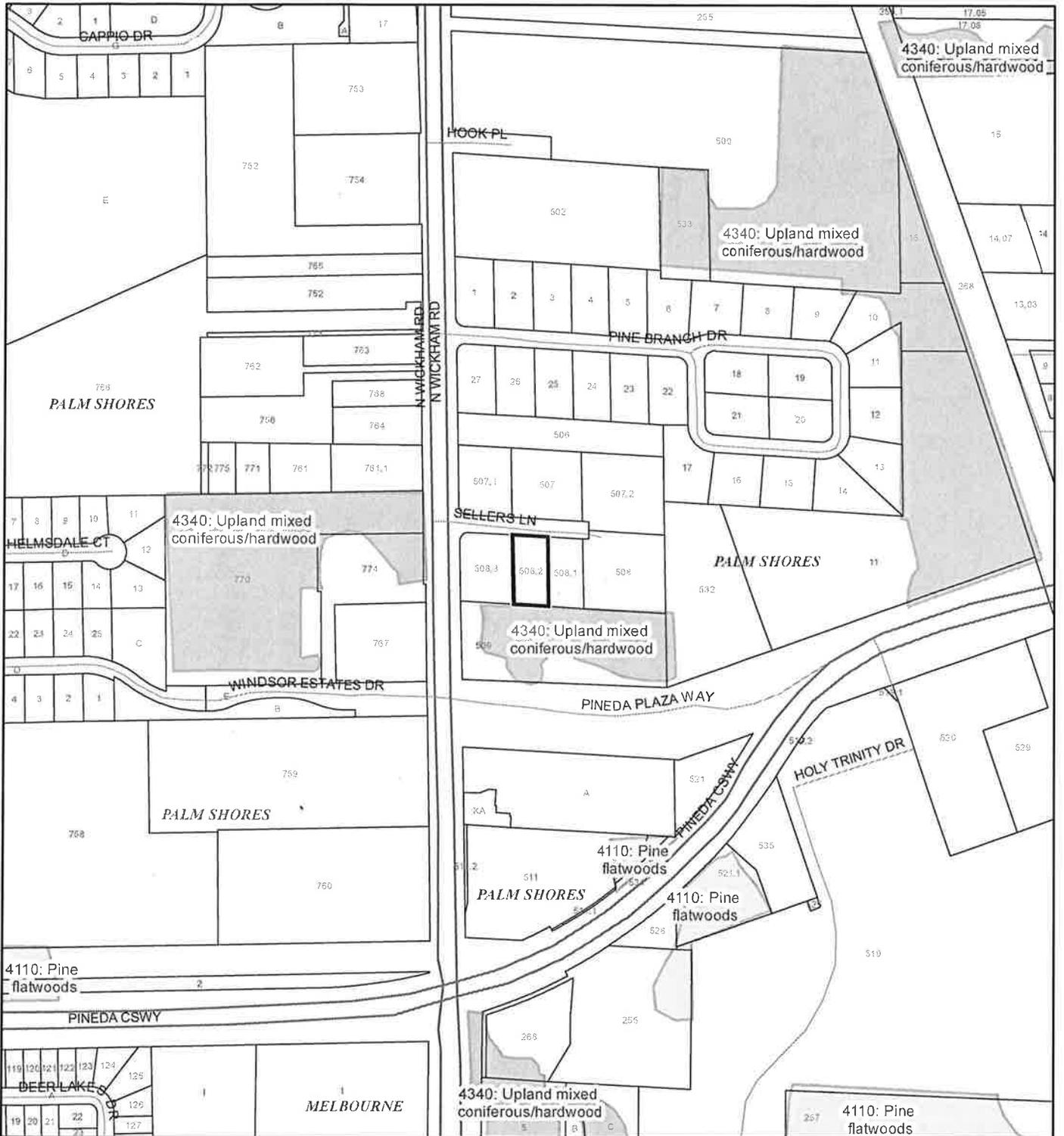
Produced by BoCC - GIS Date: 7/12/2019

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

MERSON, SCOTT E.

19PZ00090



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 7/12/2019

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

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, September 9, 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; Rochelle Lawandales; Brian Hodgers; Ben Glover; Mark Wadsworth, Chair; and Peter Filiberto, Vice Chair.

Staff members present were: Amanda Elmore, Interim Planning and Zoning Manager; Jad Brewer, Assistant County Attorney; George Ritchie, Planner III; Darcie McGee, Natural Resources Management Assistant Director; Virginia Barker, Natural Resources Director; and Jennifer Jones, Special Projects Coordinator II.

Excerpt from Complete Agenda

3. Scott Merson:

A change of zoning classification from RU-2-10 (Medium Density Multi-Family Residential) to BU-1-A (Restricted Neighborhood Commercial). The property is 0.46 acres, located on the south side of Sellers Lane, approximately 150 feet east of North Wickham Road. (2565 Sellers Lane, Melbourne) (19PZ00090) (District 4)

Scott Merson, 3046 Pineda Crossing Drive, Melbourne, stated he owns the house behind his business and he would like to rezone it for professional services. He explained he has a friend who owns a business teaching speech and music to children, and he offered to let her live in the house after she lost her sight, but she would like to work from the home. He said he is requesting to rezone to BU-1-A to allow his friend to continue to conduct her business. He noted when she no longer lives in the house he will use it as an office for his produce business.

Rochelle Lawandales asked staff if there is a provision for a home occupation instead of rezoning.

George Ritchie replied there is a home occupation section of the Code that spells out what kind of uses can be done from home, as well as uses that have to be done away from the home, or that are not permitted to be done from home. He said a home occupation would not allow for a commercial office, and those would require the proper zoning. Ms. Lawandales stated it is a place for her to do tutoring and music lessons. Mr. Ritchie stated she could get a business tax receipt for certain training, such as music lessons, but it will limit the number of people who can come to the home at one time in order not to overload the traffic on the street. Ms. Lawandales asked how many students she has at one time. Mr. Merson replied it is one student at a time.

Ms. Lawandales asked Mr. Merson if he also lives in the home. Mr. Merson replied no, he does not, and he does not intend to live in the home in the future, but he would like to use it as an office for himself in the future.

No public comment.

Mr. Merson noted his friend currently has a business license in Brevard County and the City of Cocoa, so it would just be a transfer of the license.

Ms. Lawandales asked why the applicant cannot get a home occupation as opposed to a rezoning, unless the property was rezoned with a BDP (Binding Development Plan) limited to this particular

use. Mr. Merson stated he would like to eventually have his office there. Ms. Elmore stated if Mr. Merson wants to look forward he would need the rezoning now, but if he just wanted to do the music and teaching lessons, those can be done under a home occupation.

Mr. Ritchie stated if the board does not approve the change of zoning, she can apply for the business license. He said there is also an RP (Residential Professional) zoning classification, but it is for a professional office such as a real estate agent or attorney's office, so it depends on what kind of commercial Mr. Merson wants. Mr. Merson stated he was told the use of tutoring would fall under professional offices.

Mark Wadsworth asked if Mr. Merson would prefer to have the property zoned so that he can conduct his business after his friend is no longer there. Mr. Merson replied he would like to rezone now and still allow his friend to work from the home.

Brian Hodggers stated the board could look at commercial rezoning for Mr. Merson in the future so he does not have to come back before the board, but apply a conditional use on it so it isn't just any type of business. Ms. Lawandales stated she would agree to limit it to teaching services for right now until Mr. Merson is ready to use it as an office. Ms. Lawandales noted BU-1-A (Restricted Neighborhood Commercial) opens up the property for a lot of different things that could be intrusive to the neighborhood.

Ms. Lawandales asked staff what other uses are allowed in BU-1-A (Restricted Neighborhood Commercial). Mr. Ritchie replied there is an extensive list in the Code, but if the board is concerned about what types of commercial zoning can go there, Mr. Merson can look at the list and say what he would want to have, or what uses he will refrain from, but it also allows retail activities, not just office uses. He said the RP (Residential Professional) zoning would be a better choice to make it a professional office, but there is a difference between training and tutoring, if those are considered professional offices, and he does not think they would be. He said if Mr. Merson wanted an attorney's office or a doctor's office, those would be professional offices that RP zoning would encompass. Ms. Lawandales if educators are not considered professional. Mr. Ritchie replied no, there are institutional zonings for schools.

Ms. Lawandales asked if the board could recommend approval of the BU-1-A zoning limited to only office uses and no retail uses. Mr. Ritchie replied yes.

Motion by Rochelle Lawandales, seconded by Brian Hodggers, to approve a change of zoning classification from RU-2-10 (Medium Density Multi-Family Residential) to BU-1-A (Restricted Neighborhood Commercial) limited to office uses only. The motion passed unanimously.