



AGENDA REPORT  
May 30, 2019

**Xiaolu Yin and Robert McBride (Oscar Busso) request a change of zoning classification from GU to BU-2. (19PZ00035) (District 4)**

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**SUBJECT:**

Xiaolu Yin and Robert McBride (Oscar Busso) request a change of zoning classification from GU (General Use) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The property is 3.57 acres, located on the northeast corner of Waelti Drive and Freeman Lane (3550 Freeman Lane, Melbourne) (19PZ00035) (District 4)

**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 GU (General Use) to BU-2 (Retail, Warehousing, and Wholesale Commercial).

**SUMMARY EXPLANATION and BACKGROUND:**

The applicant is seeking a change of Zoning classification on a 3.57 acre parcel from General Use (GU) to Retail, Warehousing and Wholesale Commercial (BU-2) for the purpose of selling off the north half of the parcel for the development a boat and RV storage yard and to have the potential for future commercial development on the south half of the parcel. The parcel has one single-family home that was built in 1984 within the SE quarter of the property, which the owner intends to maintain as a single-family residence and run a home business from.

The character of the area is mostly commercial with a mix of single-family residential units within predominately BU-2 and IU zoning and a small portion of BU-1, GU and GML on parcels with commercial Future Land Use designations on the east side of Waelti drive and with a residential subdivision lying to the west.

The parcel abutting the eastern lot line of the subject property remains under the original GU zoning was developed with a single-family residence in 2006. In order to protect the abutting residential lot to the east, a landscape buffer and 6 foot tall masonry wall may be required during site plan review for commercial development. The side yard setback would remain unchanged at 15 feet if rezoned from GU to BU-2.

The Board may wish to consider whether the proposed BU-2 Zoning classification and proposed commercial development of the parcel is consistent and compatible with the surrounding commercial and residential development and single family residential use on the parcel to the east.

A companion application (**19PZ00034**) was submitted accompanying this zoning request for a Future Land Use designation change on the parcel from Neighborhood Commercial (NC) to Community Commercial (CC) to be consistent with the proposed BU-2 zoning request.

On May 6, 2019, the Planning and Zoning Board heard the request and unanimously recommended approval.

**ATTACHMENTS:**

**Description**

- Administrative Policies**
- Staff Comments**
- GIS Maps**
- Public Comment**
- PZ Minutes**

## **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.

**REZONING REVIEW WORKSHEET**

**19PZ00035**

**Commission District # 4**

**Hearing Dates: P&Z 05/06/19**

**BCC 05/30/19**

**Owner Name: Xiaolu Yin and Robert McBride**

**Request: GU to BU-2**

**Subject Property:**

**Parcel ID# 26-36-12-DE-24-1**

**Tax Acct.# 2601567**

**Location: Northeast corner of Waelti Drive and Freeman Lane**

**Address: 3350 Freeman Lane, Melbourne**

**Acreage: 3.57**

**Consistency with Land Use Regulations**

YES      **Current zoning can be considered under the Future Land Use Designation. Sec. 62-1255**

NO\*\*      **Proposal can be considered under the Future Land Use Designation. Sec. 62-1255**

YES      **Would proposal maintain acceptable Levels of Service (LOS) (XIII 1.6.C)**

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	GU	BU-2
<b>Potential*</b>	24 Single Family Homes	43,543 sq. ft.
<b>Can be Considered under FLU MAP**</b>	YES Neighborhood Commercial	YES Community Commercial

\*Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations.\*\*Requires Small Scale Amendment from NC to CC.

	ADT	PM PEAK		
Trips from Existing Zoning	240	24	Segment Number	370G
Trips from Proposed Zoning	3,212*	265	Segment Name	N. Wickham Rd. Suntree Blvd. to Pinehurst Ave.
Maximum Acceptable Volume (MAV)	39,800	3,582	Acceptable LOS	D
Current Volume	32,593	2,933	Directional Split	0.51
Volume With Proposed Development	35,895	3,198	ITE CODE	
Current Volume / MAV	81.89%	81.89%	853	
Volume / MAV with Proposal	90.19%	89.28%		
Current LOS	C	C		
OS With Proposa	C	C		
<b>Findings</b>	<input checked="" type="checkbox"/> Non-Deficiency		<input type="checkbox"/> Deficiency	

\*Trips based on a Convenience Market with 16 vehicle fueling position.

### Background & Purpose of Request

The applicant is seeking a change of Zoning classification on a 3.57 acre parcel from General Use (GU) to Retail, Warehousing and Wholesale Commercial (BU-2) for the purpose of selling off the north half of the parcel for the development a boat and RV storage yard and to have the potential for future commercial development on the south half of the parcel. The parcel has one single-family home that was built in 1984 within the SE quarter of the property, which the owner intends to maintain as a single-family residence and run a home business from.

The current GU zoning is original to the parcel adopted on May 22, 1958. The parcel includes all of Block 23 and Block 24, along with the vacated 50 feet Right-of-Way of 8th Street and 1/2 of the vacated 50 feet Right-of-Way of 7th Street as recorded in Plan of Town of Pineda in Plat Book 1, Page 41 on November 6, 1894. The current GU zoning retains the potential for development of 24 nonconforming single-family lots per Section 62-1188 (1), if the existing residence is removed, as the survey confirms that the underlying lots have a width of not less than 50 feet, a depth of not less than 75 feet, and an area of not less than 5,000 square feet.

The proposed BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. Intense commercial activities are permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors are potentially associated with BU-2 activities.

The character of the area is a mostly commercial with residential to the west and a mix of single-family residential units on parcels with commercial Future Land Use designations.

## Land Use Compatibility

A companion application (**19PZ00034**) was submitted accompanying this zoning request for a Future Land Use designation change on the parcel from Neighborhood Commercial (NC) to Community Commercial (CC) to be consistent with the proposed BU-2 zoning request.

**FLUE 2.1** outlines the role of the Comprehensive Plan in the designation of commercial land.

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

Criteria:

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

The request for BU-2 zoning should be evaluated within the context of Policy 2.7 of the Future Land Use Element, which identifies “development activities that may be considered within the Community Commercial Future Land Use Designation...”

Existing strip commercial;  
Transient commercial uses;  
Tourist commercial uses;  
Professional offices;  
Personal service establishments;  
Retail establishments;  
Non-retail commercial uses;  
Residential uses;  
Institutional uses;  
Recreational uses;  
Public facilities;  
Transitional uses pursuant to Policy 2.14; and  
Planned Industrial Park development (as permitted by PIP zoning).

This request should be evaluated within the context of Policy 2.14A of the Future Land Use Element, which establishes locational criteria for non-retail commercial uses, as follows:

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

Higher Intensity Uses: Heavy Industrial or Light Industrial activities.

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

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

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

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 - 8 of the Future Land Use Element, as outlined on pages 2 through 5 of the Administrative Policies.

### **Environmental Constraints**

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

Please refer to comments provided by the Natural Resources Management Department for additional information.

### **Applicable Land Use Policies**

The character of the area is mostly commercial with a mix of single-family residential units on parcels with commercial Future Land Use designations on the east side of Waelti drive and with a residential subdivision lying to the west.

To the east of Waelti Drive, the zonings are predominately BU-2, IU and a small portion of BU-1, GU and GML. The parcel abutting the eastern lot line of the subject property remains under the original GU zoning was developed with a single-family residence in 2006. In order to protect the abutting residential lot to the east, a landscape buffer and 6 foot tall masonry wall may be required by during site plan review for commercial development. The side yard setback would remain unchanged at 15 feet if rezoned from GU to BU-2.

An existing lot to the north of this site across 50 feet of undeveloped right-of-way was rezoned from GU to the RU-2-10 with a CAP of 6 units per acre under **Z-5152**, which was approved on June 12, 1979. Shortly after that zoning action, a request for rezoning to BU-2 was denied under **Z-5152** dated December 6, 1979. The property was developed with a single-family residence in 1992 and appears to be being used to store commercial equipment on it.

The parcels to the south across Freeman Lane are General Retail Commercial (BU-1) and BU-2 zoning. The BU-1 zoned parcel, on the southeast corner of Waelti Dr. and Freeman Lane has a day care center on the parcel. The BU-2 zoned parcel, south across Freeman Lane, has a commercial warehouse developed on the parcel.

Lying west of Waelti Drive is a residential subdivision, developed at a density of up to 6 units per acre, which is part of the Suntree PUD, Tracts # 4 and 6.

The BU-1 classification allows retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling.

The RU-2-10 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.

Within the last four years, there have only been four (r) zoning actions within the ½ mile radius of this property.

March 23, 2015; **14PZ-00095**, changed the zoning from General Use (GU) and RU-2-10 to BU-2 and change the Future Land Use from NC to CC. This zoning change was on a 1.38 acre parcels located on the East side of Waelti Dr., approximately 250 feet north of the subject parcel.

May 28, 2015; **15PZ00020**, an administrative rezoning changed the zoning from IU to BU-2. This zoning change was on a 0.6 acre parcel located on the East side of Waelti Dr., approximately 537 northeast of the subject parcel and 440 feet east of Waelti Dr.

August 02, 2018; **18PZ00055**, changed the zoning from General Use (GU) to Single-Family Residential (RU-1-7). This zoning change was on a 0.33 acre parcel located 355 feet East of the Florida East Coast (FEC) Railway, approximately 935 feet east of the subject parcel.

December 06, 2018; **18PZ00104**, changed the zoning from BU-1 and IU to BU-2. This zoning change was on a 3.33 acre parcel located on the East side of Waelti Dr. and the northeast side of N. Wickham Road, approximately 530 feet to the south of the subject parcel.

### **For Board Consideration**

The applicant is seeking a change of Zoning classification on a 3.57 acre parcel from General Use (GU) to Retail, Warehousing and Wholesale Commercial (BU-2) for the purpose of selling off the north half of the parcel for the development a boat and RV storage yard and to have the potential for future commercial development on the south half of the parcel. The parcel has one single-family home that was built in 1984 within the SE quarter of the property, which the owner intends to maintain as a single-family residence and run a home business from.

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The Board may wish to consider whether the proposed BU-2 Zoning classification and proposed commercial development of the parcel is consistent and compatible with the surrounding commercial and residential development and single family residential use on the parcel to the east.

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**NATURAL RESOURCES MANAGEMENT DEPARTMENT**  
**Zoning Review & Summary**  
**Item # 19PZ00035**

**Applicant:** Robert McBride & Xiaolu Yin

**Future Land Use Request:** NC to CC

**Note:** Applicant wants to have RV & boat storage, other BU-2 use, and subdivide

**P&Z Hearing Date:** 05/06/19; **BCC Hearing Date:** 05/30/19

**Tax ID No:** 2601567

- 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.**
- If the owner/applicant has any questions regarding any potential limitations, s/he is encouraged to contact NRM at 321-633-2016 prior to design of any plans.

**Substantial Natural Resources Land Use Issues:**

No substantial natural resource land use issues were identified. 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:**

- Aquifer Recharge Soils
- Upland Coniferous Forest

**Land Use Comments:**

**Aquifer Recharge Soils**

The subject parcel contains mapped aquifer recharge soils (Pomello sand and St. Lucie fine sand 0 to 5% slopes) 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.

**Upland Coniferous Forest**

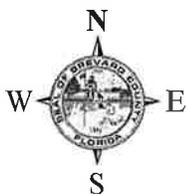
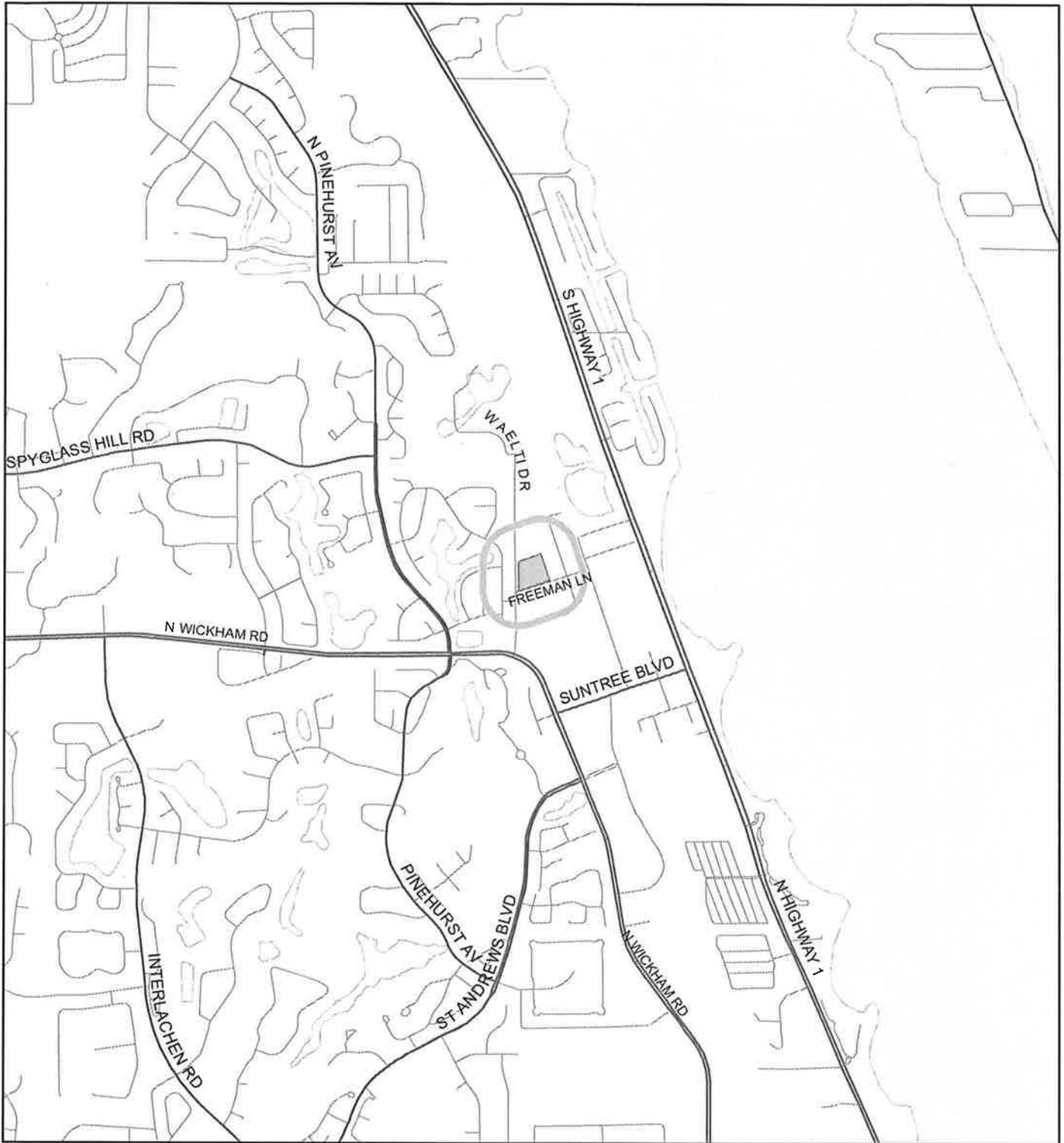
The parcel contains mapped polygons of SJRWMD Florida Land Use and Cover Classification System (FLUCCS) code 4100 – Upland Coniferous Forest. Heritage

Specimen Trees (greater than or equal to 24 inches in diameter) may reside in the project area. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4341(18), Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.

**Protected Species**

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

LOCATION MAP  
YIN, XIAOLU AND McBRIDE, ROBERT  
19PZ00035



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.

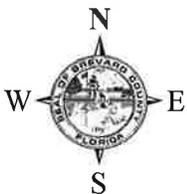
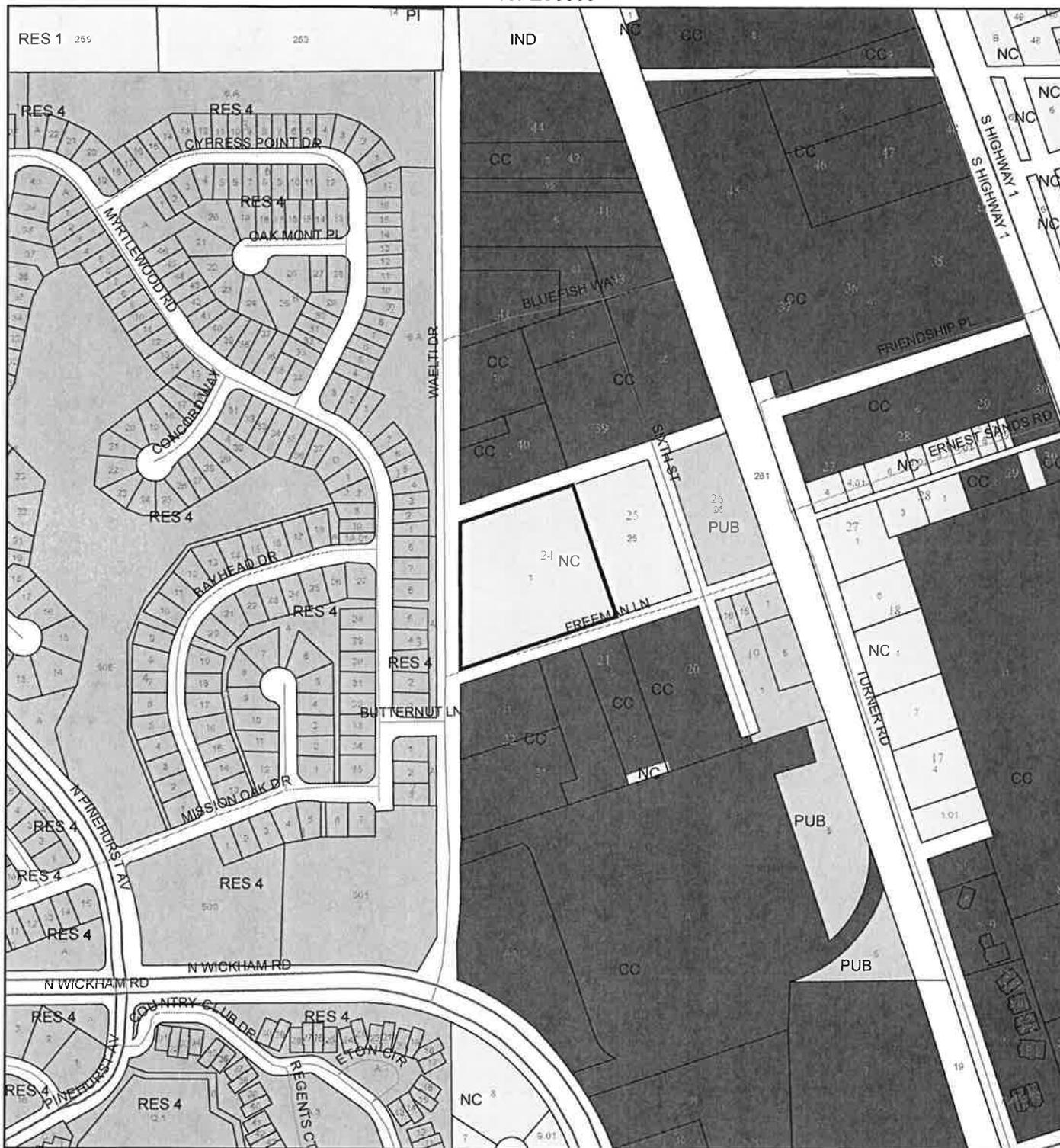
Produced by BoCC - GIS Date: 3/6/2019

-  Buffer
-  Subject Property



# FUTURE LAND USE MAP

YIN, XIAOLU AND McBRIDE, ROBERT  
19PZ00035



1:4,800 or 1 inch = 400 feet

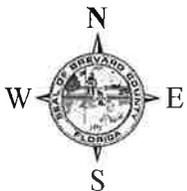
-  Subject Property
-  Parcels

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

Produced by BoCC - GIS Date: 3/6/2019

# AERIAL MAP

YIN, XIAOLU AND McBRIDE, ROBERT  
19PZ00035



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2018

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: 3/6/2019

 Subject Property

 Parcels

# NWI WETLANDS MAP

YIN, XIAOLU AND McBRIDE, ROBERT

19PZ00035



1:4,800 or 1 inch = 400 feet

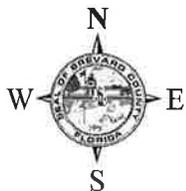
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/6/2019

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

# SJRWMD FLUCCS WETLANDS - 6000 Series MAP

YIN, XIAOLU AND McBRIDE, ROBERT  
19PZ00035



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 3/6/2019

## 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

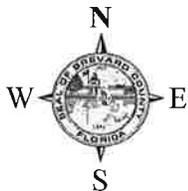
 Subject Property

 Parcels

# USDA SCSSS SOILS MAP

YIN, XIAOLU AND McBRIDE, ROBERT

19PZ00035



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 3/6/2019

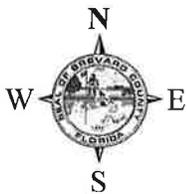
## USDA SCSSS Soils

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

# FEMA FLOOD ZONES MAP

YIN, XIAOLU AND McBRIDE, ROBERT

19PZ00035



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 3/6/2019

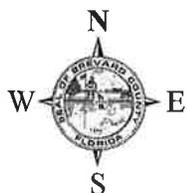
### FEMA Flood Zones

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# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

YIN, XIAOLU AND McBRIDE, ROBERT

19PZ00035



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 3/6/2019

**—** Subject Property

 Parcels

**Septic Overlay**

 40 Meters

 60 Meters

 All Distances

# EAGLE NESTS MAP

YIN, XIAOLU AND McBRIDE, ROBERT  
19PZ00035



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 3/6/2019

 Subject Property

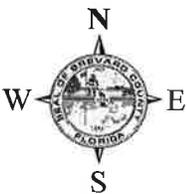
 Parcels

 Eagle Nests  
FWS 2010

# SCRUB JAY OCCUPANCY MAP

YIN, XIAOLU AND McBRIDE, ROBERT

19PZ00035



1:4,800 or 1 inch = 400 feet

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

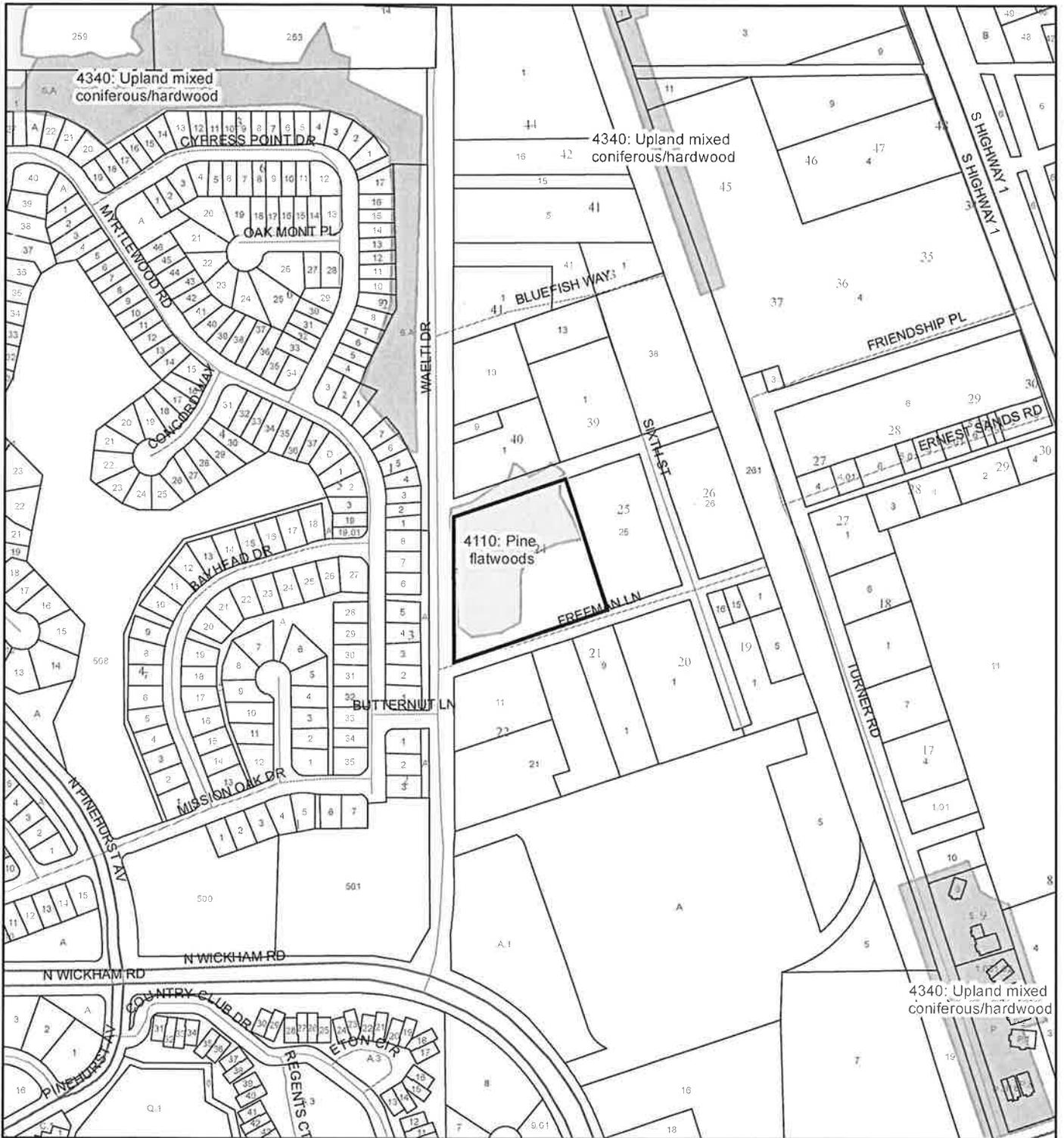
Produced by BoCC - GIS Date: 3/6/2019

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

YIN, XIAOLU AND McBRIDE, ROBERT

19PZ00035



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 3/6/2019

## 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

**From:** [tom bucaccio](#)  
**To:** [Jones, Jennifer](#)  
**Subject:** zoning board meeting today / McBride property  
**Date:** Monday, May 6, 2019 10:28:27 AM

---

Jennifer,

Thank you for your advise and courtesy earlier this morning regarding the McBride re zoning request. id#19PZ00034 & 19PZ00035,

I am uncertain how but would like for my thoughts to be introduced as part of the hearing today.

I truly understand the the desire of individuals who own property to try and maximize its value. My thoughts are not an attempt to deny people their rights to revenue that could be generated by property development.

There is however another issue which should be taken into account which is the impact on the quality of life for the residents who own homes close (directly across the street) to the proposed RV/boat storage facility.

In recent history Waelti Dr had seen considerable development and with my home only about 50 ft from the road the noise and dust (from the gravel cement yard) are becoming unpleasant. I worry that yet another commercial site with heavy vehicle traffic will only add to that the noise and dust.

It is my desire that should the zoning board approve the McBride request that the following be taken into consideration.

1. leave a tree line along Waelti Dr. where storage facility proposed.
2. Install a suitable (aesthetic & functional) privacy fence behind tree line and along Waelti where storage facility proposed.
3. Landscape area along Waelti where storage facility proposed.
4. Enforce 20 mph speed limit on Waelti

I implore the zoning board to consider the adjacent neighbors and their quality of life by taking a balanced approach towards this proposed rezone. Please don't replace my view of tress and red tail hawks with industrial fences, trucks, RV's and boats. I would appreciate if the 4 points above were part of the rezoning approval..

Thank you for your attention to this matter.

Thank you  
Thomas Bucaccio  
34 River Oak Dr.  
(772) 7213 5808  
[tbucaccio6@gmail.com](mailto:tbucaccio6@gmail.com)

**From:** [Robert Usherson](#)  
**To:** [Sterk, Erin](#)  
**Cc:** [Jones, Jennifer](#)  
**Subject:** Follow-up2 Re: William James BDP  
**Date:** Monday, May 13, 2019 8:29:37 AM

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Hello again, Erin. Ruminating further re my initial reply to you, I suggest a more appropriate, effective and preferable solution to the James property-type Comp Plan problem my community is concerned about, which are situations where 1) a development proposal is not allowed by the current zoning, 2) the requested re-zoning is inconsistent with the Land Use Plan map (and/or other Plan policies), and 3) the Commission finds that a supplemental development restriction is necessary to render the proposal(s) acceptable to The County (and I would argue, consistent with various Comp Plan). In these situations, I suggest that the Department should simply recommend to the Commission that it not take action approving such a Land Use Plan map amendment unless or until the applicant has submitted to staff and the Attorney the 'proffered' development restriction with content and form sufficient for recording, and such instrument is submitted as an exhibit during course of the comp plan amendment hearing.

Two scenarios could accomplish this: A) if the State allows the County to submit any number of Plan Amendment bundles per year, the Commission could simply defer action and continue the hearing to a later date giving the applicant time to submit the instrument prior to Commission adoption; or, B) if, perhaps, The State only allows the County to submit two amendment bundles per year (which may have been the case once upon a time, I don't remember), if during the course of the Planning Board hearing it becomes evident that Commission approval may have greater likelihood with proffer of a restriction (to render the development consistent with pertinent comp plan policies), the applicant should be advised by staff to prepare and submit such instrument in good order before the date scheduled for Commission action on the Land Use Plan map amendment.

The County Comprehensive Plan should not be so readily wagged by the tail of a desired development-order,

Thank you again for bearing with me...

*R. Usherson*

---

**From:** Sterk, Erin <Erin.Sterk@brevardfl.gov>  
**Sent:** Friday, May 10, 2019 4:59 PM  
**To:** Robert Usherson  
**Cc:** Calkins, Tad; Campbell, Cheryl; Jones, Jennifer  
**Subject:** RE: William James BDP

Mr. Usherson,

I've provided responses to your inquiries below **in red**. Once you have a chance to read the response, please let me know if you have any additional questions.

Have a great weekend,

*Erin Sterk*

**Planning & Zoning Manager**

Brevard County

(321) 633-2070 ext. 52640

---

**From:** Jones, Jennifer  
**Sent:** Friday, May 10, 2019 8:42 AM  
**To:** Robert Usherson  
**Cc:** Calkins, Tad; Sterk, Erin; Campbell, Cheryl  
**Subject:** RE: William James BDP

Thank you, Mr. Usherson,

I am forwarding to our Department Director, Planning and Zoning Manager, and our Comprehensive Planner.

Jenifer

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**From:** Robert Usherson [<mailto:usherson@msn.com>]  
**Sent:** Thursday, May 9, 2019 3:59 PM  
**To:** Jones, Jennifer  
**Subject:** Re: William James BDP

Thank you very much for your considerate follow-up, Jennifer.

Also, Jennifer, could you please suggest to your Director or whomever you think may be helpful, to please consider the following minor modification to the boilerplate Commission Ordinances amending the Comp Plan in instances where a proffer by an applicant of any sort of development limitation may have been a factor in the Commission's decision to amend the Comp Plan.

Alt 1) Perhaps the Effective date of the Ordinance could be established at some number of days after the applicant submits the proffered instrument to the County with promised content and in form legally sufficient for recording, whether your standard BDP or some other deed restriction that does the job. *The Zoning classification and any associated Binding Development Plan must be approved in consistency with the Future Land Use designation; therefore, the zoning and BDP cannot be finalized before the FLU amendment is final. Additionally, Florida Statute 163.3184 (7) (a) necessitates that "The local government shall transmit the complete adopted comprehensive plan or plan amendment, including the names and addresses of persons compiled pursuant to paragraph (15)(c), to the state land planning agency as specified in the agency's procedural rules within 10 working days after adoption."* For the zoning action, Brevard County code dictates that an applicant has 120 days to bring a

recorded BDP back to the BCC for finalization, which is well beyond this 10 day allowance for transmittal of the adopted FLU change. For both of the reasons, we cannot wait until the Zoning is completed to adopt the FLU.

Alternatively, 2) If neither the foregoing can be done nor could the operative section of the Ordinance condition the Plan Amendment in some manner, The appropriate way to condition the Future Land Use proposal is to create a Future Land Use designation specific to the terms appropriate for the property. This would require a Large Scale Comprehensive Plan Text Amendment to create the FLU designation itself and policies associated with that designation and a Large Scale Comprehensive Plan Future Land Use Map amendment to apply the designation on the designated parcel. The Platt Ranch Mixed Use District (PRMXD) is an example of this level of specificity being created, but the areas which a new designation has historically been applied have been larger than the 5.57 acre area proposed for CC in this proposal.

3) at a minimum, perhaps the Preamble/Whereas clauses could document the fact that development limitations/parameters proffered by the Applicant (and/or recommended by the Planning Board or some other researchable reference) will serve to ensure that development which may occur as a result of the requested Comp Plan amendment will be consistent, not only with the future land use plan map but also with the preponderance of Plan policies adopted to protect the health, safety, welfare and general well-being of adjacent and affected communities. The proposal for a Future Land Use Map amendment is evaluated against all policies of the Comprehensive Plan. Development is reviewed for compliance with County Codes, which implement the goals, policies, and objectives of the Comprehensive Plan – well beyond just checking that the use is permissible within the Future Land Use designation on the map...or something of that sort to memorialize the influence on the Commission action of a proffer made at the time of amendment consideration, notwithstanding whatever may or may not initially happen with regard to any companion re-zoning request. The conditions agreed upon by the applicant at the time of their proposal are memorialized as conditions within a Binding Development Plan (BDP), which is associated with the zoning action and not the Comprehensive Plan Amendment. Because of this, the Board should be evaluating the proposal for the Future Land Use designation at face-value. It is understood that if those conditions were proposed to go away ever, that removal of such would go through a public hearing process as a zoning action for consideration. All zoning actions are evaluated for consistency with the entire Comprehensive Plan – and not just the specifics of the Future Land Use designation itself. Without this, as in our situation, the CC Plan designation could invite purchase of such property with expectations of max liberal development as allowed in that Plan category which, in our backyards, could be immensely disruptive. The conditions voluntarily agreed upon by the applicant are memorialized in the BDP associated with the zoning, which run with the land and appear in a title search. Future buyers of the property would certainly have the resources to evaluate these conditions. The Plan Amendment Ordinance, if read, might reveal to prospective purchasers some need for development/use limitations, particularly if the companion zoning resolution has evaporated and Planning Board minutes are unlikely to be seen in property research. The zoning resolution does not just “evaporate” – the BDP is an encumbrance on the property that is revealed through all County staff evaluation of the property and all future development on the property. The only way to “undo” the conditions is to propose a BDP amendment through a new zoning action and associated public hearings, at which time consideration of all appropriate Comprehensive Plan goals, objectives, and policies will be evaluated. Alternatives safeguards fully welcome! Thank you very much for your consideration, Jennifer.

*Robert Usherson*

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**From:** Jones, Jennifer <[jennifer.jones@brevardfl.gov](mailto:jennifer.jones@brevardfl.gov)>

**Sent:** Tuesday, May 7, 2019 7:40 AM

**To:** [usherson@msn.com](mailto:usherson@msn.com)

**Subject:** William James BDP

Mr. Usherson,

After looking into it further, I realized that because the zoning was contingent on the recording of the BDP, and the BDP was not recorded, the zoning request was withdrawn and therefore does not have a resolution.

**Jennifer**

"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."

19PZ00035  
Yin/McBride  
KMM-FL BDP  
(Submitted 05/06/19  
by Bob Usherson)

Prepared by Thomas O Lang  
Address 5303 Picardy Ct  
Viera, FL 32955

#### BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 17th day of March, 2015 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and KMM-FL, LLC, a Florida Limited Liability Company (hereinafter referred to as "Developer/Owner")

#### RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, and

WHEREAS, Developer/Owner has requested the community commercial zoning classification(s) and desires to develop the Property as a One Story Office Building and Mini Warehouse and Storage Facility, and pursuant to the Brevard County Code, Section 82-1157, and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact on abutting land owners and affected facilities or services, and

WHEREAS, the County is authorized to regulate development of the Property

NOW, THEREFORE the parties agree as follows

1 The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements

2. The Developer/Owner shall limit land use as follows

(1) a) The following uses shall be prohibited:

Auditoriums Automobile hire Automobile paint and body repair, Automobile repairs, Automobile sales, Automobile tires and mufflers sales and service, Automobile washing—mechanized, Boat service, Building materials and supplies, Cabinetmaking and carpentry Commercial entertainment and amusement enterprises, Contractors outdoor storage yards, Engine service, Farm machinery sales and service, Feed and hay for animals and stock, Fertilizer stores Flea markets, Gasoline service stations, Hotels, Lumber sales, Motels, Motorcycle sales and service, Outside sale of mobile homes Pet kennels, Plant nurseries, Recovered materials processing facility, Restaurant outdoor seating Seafood processing plants, Service station for automotive vehicles and U-haul service, Sharpening and grinding shops, Theatres, Towers and antennas, Trailer and truck service, Treatment and recovery facility, Welding repairs and metal fabrication 2 Outdoor storage or display of large items or material which may require forklift, front-loader, tractor, or similar machinery to move shall be prohibited 3 Outdoor intercoms and public address systems shall be prohibited 4 Digital or electronic signs and billboards whether static, animated, or intermittent, shall be prohibited

- 5 b) Freestanding signs shall be limited to not exceed ten feet in height
- 6 c) The gross floor area ratio (FAR) shall not exceed 0.75, consistent with the Neighborhood Commercial Comprehensive Plan category (December 2014)

3 Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property This agreement provides no vested rights against changes to the Comprehensive Plan or land development regulations as they may apply to this Property

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

5 This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property and be subject to the above referenced conditions as approved by the Board of County Commissioners on 3-17-15 In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void

6 Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 17 and 62-5, Code of Ordinances of Brevard County, Florida, as may be amended

7 Conditions precedent All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise The failure to timely comply with any mandatory condition is a violation of this Agreement constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 6 above

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

ATTEST

*Scott Ellis*

Scott Ellis, Clerk  
(SEAL)

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

*Robin Fisher*  
Robin Fisher, Chairman

As approved by the Board on 3-17-15

(Please note You must have two witnesses and a notary for each signature required The notary may serve as one witness )

WITNESSES

*Charles Shaw* CHARLES SHAW

(Witness Name typed or printed)

*Concepcion Amador*

*Lisa Armstrong*

(Witness Name typed or printed)

DEVELOPER/OWNER

*Bryan Moff*

440 BRIDGE TOWN CT  
(Address) SATIN BEACH

(Member)

(Name typed, printed or stamped)

STATE OF Florida §

COUNTY OF Brevard §

The foregoing instrument was acknowledged before me this 16 day of May, 2015 by Bryan Moff, President of Kmm LLC, who is personally known to me or who has produced FL DL as identification

My commission expires 2/22/2018  
SEAL  
Commission No FF 74219

*Concepcion Amador*  
Notary Public  
*Lisa Armstrong*  
(Name typed, printed or stamped)



Gunvor Lisa Armstrong  
State of Florida  
MY COMMISSION # FF 74219  
Expires February 22, 2018

EXHIBIT A

SKETCH OF BOUNDARY SURVEY

DESCRIPTION

Block 40 Tract to be subject to Use Restrictions

Lots 1D through 1E, Block 40, together with a portion of the South one-half of that un-named 50 foot wide Street right of way (now posted Bluefish Way) and a portion of the West one-half of 7th Street a 50 foot wide right of way all being shown on the PLAN OF TOWN OF PALMDA according to the plat thereof as recorded in Plat Book 1 Page 41 of the Public Records of Brevard County, Florida and being more particularly described as follows:

Begin at the Northwest corner of said Lot 1E, thence N00°52'48"W along the West line of said Plot, a distance of 30.29 feet, to the centerline of said Bluefish Way, thence N71°05'51"E along said centerline of Bluefish Way a distance of 183.76 feet, to the centerline of said 7th Street, thence S71°05'51"E along the centerline of said 7th Street, a distance of 225.02 feet, to the westerly extension of the South line of said Lot 1E, thence S71°05'51"W along said westerly extension and the South line of said Lots 1D and 1E a distance of 256.93 feet, to the West line of said Block 40, thence N00°52'48"W, along said West line, a distance of 210.34 feet, to the POINT OF BEGINNING. Containing 1.14 acres, more or less.

SURVEYOR'S NOTES

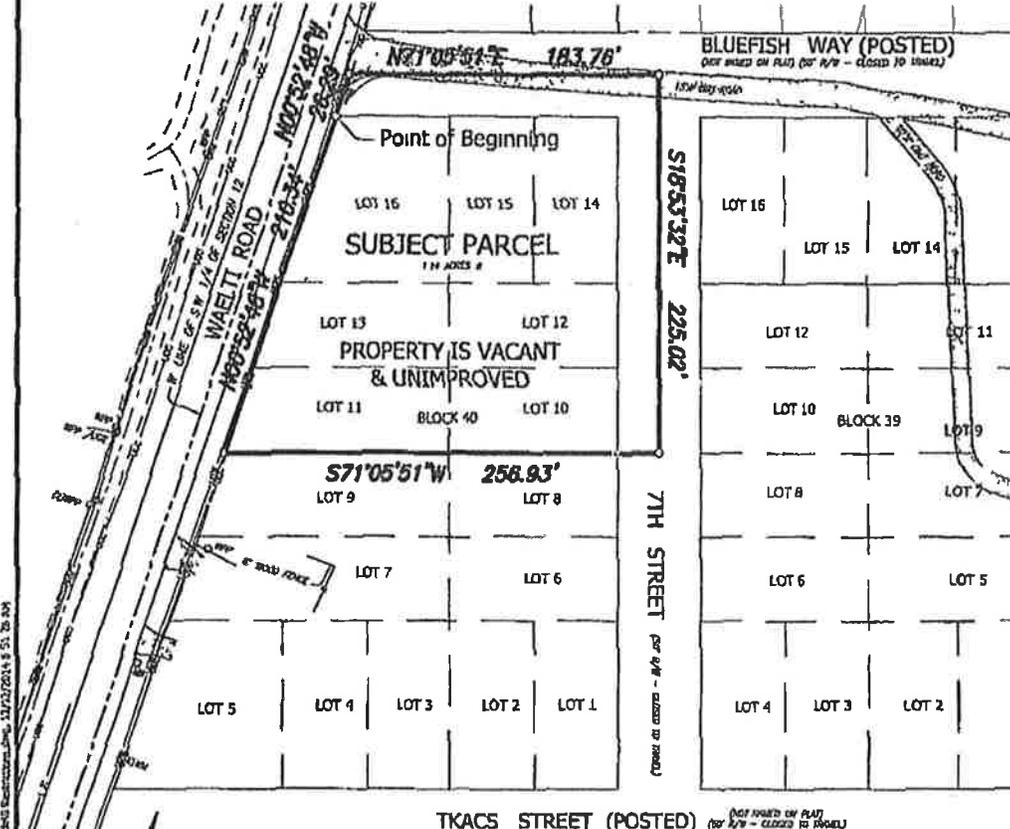
1 Only plotted easements, unless noted otherwise, are shown.

2 Unless otherwise noted, underground improvements (foundations, septic tanks, utilities, etc.) were not located.

3 The bearings shown are based on the West line of Section 12 Township 26 S. Range 36 E. having a bearing of S00°52'48"W.

4 According to FIRM (Flood Insurance Rate Map) Map Number 12000003100, Panel Number 120022 0510 G, Map Index date, March 17, 2014, the property lies within FIRM Zone X.

5 There are no plottable items listed in Schedule B - Section 2 of Fidelity National Title Insurance Company's Title Report File #1932003, Customer Reference #312864-3, dated August 29, 2014.



ABBREVIATIONS.

- LB LAND SURVEYING BUSINESS
- MB MAIL BOX
- OHW OVERHEAD WIRE
- R/W RIGHT OF WAY
- TRB TELEPHONE RISER BOX
- UGC UNDERGROUND COMMUNICATIONS
- UGE UNDERGROUND ELECTRIC
- UWV UNDERGROUND WATER
- WM WATER METER
- WPP WOOD POWER POLE

SURVEYOR'S CERTIFICATION

I hereby certify to KUM-FL LLC, Fidelity National Title Insurance Company and Gray Robinson that the attached Sketch of Survey and the Survey on which it is based were prepared under my direction, in accordance with all applicable requirements of the "Minimum Technical Standards" for land surveying in the State of Florida, described in Chapter 6J-17 Florida Administrative Code, pursuant to Chapter 472.027 Florida Statutes.

ALLEN ENGINEERING, INC.

LEGEND

○ = SET 5/8" IRON ROD WITH PLASTIC CAP STAMPED "ALLEN ENG LB 265"

CERTIFICATE OF AUTHORIZATION #LB266

**ALLEN Engineering, Inc**  
 CERTIFIED - ENGINEER  
 675 COLE LANE  
 LYNN HILLS, FLORIDA 32011  
 TELEPHONE (904) 793-1443 FAX (904) 793-6828  
 INTERNET www.alleneng.com E-MAIL lb@alleneng.com

3	
2	
1	
DATE: 12-12-14	DRAWN BY: DJG
JOB NO: 040071-2	SCALE: 1" = 50'

Not valid without the signature and the original rubber seal of a Florida licensed surveyor and mapper

BY: **ROBERT M. SALMON**  
 Professional Surveyor & Mapper  
 Florida Registration No. 4262

PREPARED FOR:

ADVANTAGE CONCRETE

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## PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, May 6, 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 by the Chair, Henry Minneboo, at 3:00 p.m.

Board members present were: Henry Minneboo, Chair; Ron Bartcher, Rochelle Lawandales; Brian Hodgers, Mark Wadsworth; Bruce Moia; Peter Filiberto; and Dane Theodore.

Staff members present were: Erin Sterk, Planning and Zoning Manager; Jad Brewer, Assistant County Attorney; Paul Body, Planner II; Lee Ann McCullough-Wham, Program Manager, Natural Resources; and Jennifer Jones, Special Projects Coordinator II.

Henry Minneboo, Chair, announced that the Board of County Commissioners will have the final vote on the recommendations made by the Planning and Zoning Board on Thursday, May 30, 2019, at 5:00 p.m.

Excerpt from complete agenda.

### **Xiaolu Yin and Robert McBride (Oscar Busso)**

A Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from NC (Neighborhood Commercial) to CC (Community Commercial). The property is 3.57 acres, located on the northeast corner of Waelti Drive and Freeman Lane. (3550 Freeman Lane, Melbourne) (19PZ00034) (District 4)

### **Xiaolu Yin and Robert McBride (Oscar Busso)**

A change of zoning classification from GU (General Use) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The property is 3.57 acres, located on the northeast corner of Waelti Drive and Freeman Lane. (3550 Freeman Lane, Melbourne) (19PZ00035) (District 4)

Bruce Moia – I'm going to refrain from voting on this. I've been contacted by the applicant, soliciting my services. They haven't hired me, but potentially they could, so I will not be voting on these next two items.

Oscar Busso – We are Anne and Oscar Busso, 233 Waterside Drive, Satellite Beach, and we are pursuing this property in order to develop a place to store boats and recreational vehicles. It is our understanding there is a need for that in the community. We have a recreational vehicle and when we moved here from South Dakota two and a half years ago it was hard to find a place to park our vehicle. We contacted Mr. Moia to see if it is viable.

Anne Busso – Even though we're requesting it for the whole 3.57 acres, we're actually just purchasing 1.7 acres.

Henry Minneboo – Erin, can you help us?

Erin Sterk – They represent the owners and the owners asked to rezone the whole property?

Anne Busso – Yes.

Erin Sterk – So, that's where we're at.

Bruce Moia – The need must be there because I got three phone calls for the same type of use in the same week, so I can back them up when they said there is a need.

Henry Minneboo – Is there anybody in the audience who would like to speak for or against this?

Bob Usherson – Bob Usherson, I live at 338 Myrtlewood Road, which is immediately to the west. Thank you for your service to our community, and I appreciate the time you give to our community.

Bob Usherson – This area along Waelti Drive, as you know, has been a difficult area for a number of years. When I moved to my home in Suntime I made a point to look at the land and the Comprehensive Plan, and not just the land use element, but the whole Comprehensive Plan. I also looked at the zoning code to get a good idea of what the Comprehensive Plan provided would be occurring in this area, which was substantially undeveloped, but it was a mixed bag of uses in there. There have been a number of Comprehensive Plan changes over the last few years, and some zoning changes. I glanced through your package and it does acknowledge that, but the very important point is this board also acted to accept proffers from the applicants to allow a broader range of Community Commercial uses, not just the neighborhood serving commercial uses as the Plan originally and properly provided as a transition. The proffers did significantly limit not just the range of uses that the applicants would ask for, but it also limited some physical parameters as well. I have an example of a development agreement of one of the properties nearby and we think it's a fair example of the kind of conditions that our community would find that render the Comprehensive Plan change and the zoning change respectful of our residential living conditions. Storage of recreational vehicles could be a compatible use, but maybe not. Community Commercial uses might be compatible, but maybe not. The land use plan change would open the gate to a whole range of uses that we would find entirely unacceptable and would be inconsistent with so many Comprehensive Plan policies where the Plan is supposed to assure compatibility and protection of health and living conditions for our residents. The points that were proffered by this applicant are that he would limit the range of uses and agree not to ask for a lot of uses that would otherwise be allowed in Community Commercial; he would limit any outdoor storage of equipment, supplies, vehicles, to those that would not require tractors to move them around and would not require forklifts to move them around, because one of the issues we have encountered and we have solved with the cooperation of our neighboring property owners is tractors, forklifts, outdoor equipment, back-up beepers in the middle of the night and before dawn or after dusk. One of the things we want to be sure of is if there is going to be outdoor storage, such as dry storage for boats that have lifts with back-up beepers going on all hours of the night, that would be unacceptable, so we would say storage is okay, but forklifts and tractors are not okay. Also, outdoor intercom systems are something we could not tolerate in our backyards and bedrooms. With digital electronic signs, in my reading of the billboard code, you require those things be ambient lighting conditions at night, and I don't see that in the commercial sign code, but those things are very bright and obnoxious, so we cannot accept those in our bedroom windows. Finally, to make the development intensity consistent with the neighborhood planning category that would keep the intensity down, keep the floor area ratio consistent with what would otherwise be allowed in the neighborhood category. That would largely take care of height, setbacks, and a lot of other things. The applicants mentioned they would build a storage structure. If that is a ground level structure, that's probably fine, but if it's going to be a multi-level storage structure of some sort, that would be very problematic for us and probably the homeowner that lives immediately to the east. Lastly, if it were proffered that outdoor lighting would be downward or directed and shielded so that lighting would not be spilling out into our homes, that would be another issue that would make the development more compatible. The only access out of this whole commercial land-

shed here is the traffic signal at Waelti Drive and Wickham Road. Right now, the clearance time on that light allows for about five cars to make a left turn, and it cycles once every eight minutes. Something that is not mentioned in this proffer, but I think it calls for, is a Planning Study 101 for this area, to look at the development capacity of this whole non-residential land-shed there if there was some kind of overlay district that would allow a more liberal range of uses, but uses that would not invite the possibility of any kind of major employer to come in there, which would disgorge a slug of employees at rush hour. The only other way to get out of that place is to come through our little substandard street that comes through our subdivision, and through-traffic would be a serious hazard if so much development occurred in this area that people can't get out at the Waelti Drive signal. The signal time at Waelti Drive cannot be tweaked too much because Pinehurst Drive and Suntime Boulevard are very close and it's a jam session right now, so I don't know that the traffic department would provide a lot of clearance on that. I would suggest that the Planning staff look at this area, calculate what the capacity could be, and come up with a zoning overlay, and that would take care of all of these other applications that are going to come before you, because it suggests that the planning category and the zoning code are not too artfully crafted to deal with this kind of an oddball situation. My final request is that you recommend they do not amend the Comprehensive Plan to allow Community Commercial unless there is a proffer that is a legally sufficient form from the applicant that they could accept right then and there that would limit the development in this fashion, and if they cannot condition a Comprehensive Plan amendment in the ordinance, at a minimum, to include in the findings of fact in the preamble to that ordinance that the applicant has proffered these kinds of conditions; otherwise, we could find ourselves with a plan amendment and then the subsequent development agreement, and then they could change the Comprehensive Plan at risk to our neighborhood. I would ask that on the zoning recommendation that you recommend denial unless you get a clear, legally sufficient, proffer from the applicant limiting the range of uses and limiting the design aspects as we've mentioned, and also address the lighting.

Henry Minneboo – Erin, set the tone for us on Waelti Drive. Many years ago, L.K.Q. was at the end, and they have got to dominate that north end significantly, because they had tons of acreage. What are they required?

Erin Sterk – The industrial requirements they have?

Henry Minneboo – Yes, the things he's talking about, I'm wondering if Waelti Drive has to comply with those specific standards.

Erin Sterk – The criteria they have to meet is specific to the zoning classification, the limitations on that property are not necessarily governed by the Comprehensive Plan outside of just the Community Commercial Future Land Use, so they do have specific code that is different than this parcel's industrial code, but that's where those limitations are. I don't see that that property has a binding development plan. The example he provided must be another property on the street.

Henry Minneboo – South of there was a trucking operation for years. If you look at the zoning there is a massive amount of industrial through there, and now we've got this smaller modification here.

Maggie Shultz – I'm Maggie Shultz and I live at 331 Myrtlewood Road, and I've lived there since 1994. You are correct, there is what we classify as the junkyard at the end of the street. We also have the church at the end of the street, but that's far down, and then there are the individual storage facilities. We also have the remnants of what used to be the concrete plant, and then there is a man

who owns a house with a piece of property that he had fenced in and he stores his equipment there. Today, I just wanted to hear what they had to say, because I don't have a problem with a storage yard other than the fact that I'd like to keep the lighting and noise down. The question I have on this is where this property is located is directly across the street from homes, and if you're talking about a multi-level building to keep boats stored, that is not going to be something that the people who live in these single-story homes that back up to this street, are going to be thrilled about. I don't happen to back up to that street, but I know people who do, and for them to be having to walk out their back door and see a structure that's overpowering their houses will not work.

Oscar Busso – The structure we're planning will be one story.

Henry Minneboo – You're not going to have a two-story operation?

Oscar Busso – Absolutely not. Some areas might be covered, but nothing will go above one story.

Anne Busso – I believe we have to have a 300 square-foot building, and that will be one story. We want it to aesthetically look nice as well.

Henry Minneboo – You guys are going to have to make more improvements than all the people who have been there for a long time, so you're going to be required to do a lot more aesthetically pleasing things.

Mark Wadsworth – Just to the north of you, that's the concrete remnants, and then he also has a storage facility farther north, before the junk yard.

Anne Busso – It's not going to be storage for goods, its just for recreational vehicles and boats.

Mark Wadsworth – Will it be covered?

Oscar Busso – It will be partially covered.

Brian Hodgers – Are you proposing to put any kind of a fence or shrub line along there? Are you going to be limiting the hours in which people can come and go?

Oscar Busso – Yes, we will have a tree line between the fence and the road, and I'm going to put a very nice fence in there, with cameras. We will have limited hours because we don't want to disturb people past 9:00 p.m.

Henry Minneboo – What are your hours of operation?

Oscar Busso – I'm assuming it's going to be 8:00 a.m. to 8:00 p.m., or 8:00 a.m. to 9:00 p.m.

Henry Minneboo – The nice thing about recreational vehicles is that most of them do not have back-up bells, so that's a positive thing, and neither do boats.

Bruce Moia – When they go through the site plan process they will be required to do a 15-foot Type A buffer along Waelti Drive. I don't think any of the properties over there have that, so they will have something the other properties do not have.

Rochelle Lawandales – You heard some of the issues that the neighbors mentioned, was there anything that you heard that you might agree to? Such as limiting the use under the BU-2 (Retail, Warehousing, and Wholesale Commercial) to the storage facility only, to minimizing outdoor lighting, to minimizing the noise?

Anne Busso – There was nothing he said that we would not agree with. We took that into account when we looked at the property, that there were houses back there.

Rochelle Lawandales – Before you go to the County Commission meeting, would you be willing to offer a binding development plan for this request?

Anne Busso – Yes.

Erin Sterk – I just want to interject very quickly so we can be very clear about what part of the part we're encumbering. The entire property is in for rezoning, so the BDP (Binding Development Plan) will apply to the entire property. If you didn't want to approve the zoning without the BDP conditions, you can limit the portion of the property – I don't have a survey that shows me the area – but if they were going to encumber the use on the property, and there's a single-family home sitting on the other part you're rezoning and encumbering, that would become a non-conforming use, and that could be challenging.

Paul Body – There was a survey included of the portion that the applicants are going to purchase. The rest of it was going to be changed, too, because the owner of the whole parcel thought it would be something for himself in the future to be able to sell.

Erin Sterk – The encumbrance would apply to the whole thing.

Bruce Moia – There wouldn't be a non-conformance if we did the whole piece.

Erin Sterk – There would not be if you rezoned it, but if you were to encumber it to just a storage use....

Bruce Moia – But not if you just prohibit certain uses.

Erin Sterk – That's true. I just want to be sure the owners understand that the entire piece would be encumbered unless you say otherwise, and that would be the portion outside what they're planning to buy.

Rochelle Lawandales – We could say the allowable uses would be any current existing uses on the property, and a storage facility under BU-2.

Bruce Moia – If you look at that BDP (Binding Development Plan), they just listed the uses they wanted prohibited.

Erin Sterk – I would like to hear from the property owner of the other piece that would be encumbered by what a buyer who is not buying that part is talking about.

Bruce Moia – Who are the authorized applicants? These people here?

Erin Sterk – They represent the request, but as far as encumbering the part they're not buying...

Dane Theodore – Do we have a representative for the entire parcel?

Erin Sterk – I just want to be sure that's what they know they are representing. They are the representatives for the request.

Dane Theodore – Are you representing the entire parcel?

Anne Busso – We are, yes.

Erin Sterk – The idea that came to use was that the portion they are not buying, that they're rezoning, was for future development potential, and we're talking about limiting the development potential, so I want to be sure we're all on the same page about it.

Rochelle Lawandales – Can we let them speak and tell us whether or not they would agree to this?

Wendy Stephenson – I'm Wendy Stephenson, and I'm with International Realty, 2643 Bradford Drive, West Melbourne. It was written into the contract that they had to have the 6-foot privacy fence, they have to leave a tree line barrier on the outside of the fence, they have to limit the hours, and they have to limit the lighting. The reason the owners wanted to go ahead and rezone the whole property is because they have a home business and in the future they might want to build a separate business for themselves on the property. There is a corner parcel that will be subdivided from this property, and whoever develops that will have the same limitations because there are two residential properties, and the rest are all commercial on Freeman Lane.

Rochelle Lawandales – The question is, will the owner agree to limiting the uses under the BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification to the storage and residential, and eliminating some of the more cumbersome uses that may be allowed in BU-2.

Wendy Stephenson – I don't think they would object to limiting them; I don't think you can put storage facility next to a storage facility. I don't think they're going to object to the limitations on what can be there, but if they were to subdivide it later, then they could only sell it to someone who wanted a storage unit. They won't want to do that, but they can limit the hours of operation or another structure. The tree line, fence, and hours, I don't know if you can limit as to the other categories in BU-2, but that would be my recommendation.

Rochelle Lawandales – Will you look at those uses with your owner and see what he might be willing to eliminate from that classification that might be a little objectionable.

Wendy Stephenson – Sure.

Bruce Moia – I'm not sure what we're doing. This was done four years ago and it seems reasonable. I thought the gentleman made an excellent presentation and was reasonable in his request. I don't see where it harms what the applicant is trying to do, or the future developability of the property. The owners will be the ones signing the binding development plan, so they're going to read it before they sign it when they enter into the agreement with the County. The residents accepted the limitations before, so why re-invent the wheel when it's already been done.

Dane Theodore – Bruce, does that limit anything?

Bruce Moia – It limits a lot; it takes out almost every offensive use in the zoning classification, and the rest of the items, such as landscaping and lighting, is all Code requirements, so that doesn't need to be reiterated in a binding development plan.

Rochelle Lawandales – That's what I was referring to, but the owner has to do that.

Henry Minneboo – Does that help, Erin?

Erin Sterk – I just need the applicants to enumerate what those conditions are that they are willing to agree to. There is a lot in there that applies to a different property.

Dane Theodore – I want to know, when we make a motion, are we to incorporate this as a required limitation as part of our motion, putting it in the record to limit those uses?

Rochelle Lawandales – Correct.

Erin Sterk – I hate to interject here, but the people representing the property owner haven't even read this, so I'm a little concerned that we're sure they know what they're agreeing to.

Bruce Moia – He has a copy. They have to come up here and say they agree with it.

Henry Minneboo – Have you all looked at this?

Oscar Busso – Yes, we've had that for a few months already.

Bruce Moia – You're okay with all of that?

Anne Busso – Yes.

Erin Sterk – It does not have things in it such as hours or beeping trucks.

Henry Minneboo – It would be better if you identify it than myself, to make sure you have a clear understanding of it.

Anne Busso – Paragraph 2 says 'outdoor storage or display of large items or material which may require a forklift', which we agree would be prohibited. We're not going to have billboards. We actually agree.

Oscar Busso – We agree.

Rochelle Lawandales – Are you good with that, Erin?

Erin Sterk – I'm good now, thank you.

Rochelle Lawandales – I'll move approval of the land use request to change the property to Community Commercial.

Peter Filiberto – I'll second.

Henry Minneboo called for a vote on the motion as stated, and it passed unanimously. (Bruce Moia abstained from voting.)

Rochelle Lawandales – I'll make a motion that we approve the zoning subject to the components found in the binding development Plan for K.M.M.-FL, recorded in Official Records Book 7327, Pages 1899 through 1903, dated March 23, 2015, with the provisions found on pages 1 and 2.

Peter Filiberto – I'll second.

Jad Brewer – It might be better if you enumerate them, because this is a big document and I know they circled specific uses.

Rochelle Lawandales – The developer/owner shall limit the land use as follows, and the following uses shall be prohibited: auditoriums; automobile hire; automobile paint and body repair; automobile repairs; automobile sales; automobile tires and mufflers sales and service; automobile washing – mechanized; boat service; building materials and supplies; cabinetmaking and carpentry; commercial entertainment and amusement enterprises; contractors outdoor storage yards; engine service; farm machinery sales and service; feed and hay for animals and stock; fertilizer stores; flea markets; gasoline service stations; hotels, lumber sales; motels; motorcycle sales and service; outside sale of mobile homes; pet kennels; plan nurseries; recovered materials processing facility; restaurant outdoor seating; seafood processing plants; service station for automotive vehicles and U-Haul service; sharpening and grinding shops; theatres; towers and antennas; trailer and truck service; treatment and recovery facility; welding repairs and metal fabrication; outdoor storage or display of large items or material which may require a forklift, front loader, tractor, or similar machinery to move shall be prohibited. Outdoor intercoms and public address systems shall be prohibited. Digital or electronic signs and billboards, whether static, animated, or intermittent, shall be prohibited. Freestanding signs shall be limited to the Sign Code. I don't think you need the gross floor area.

Peter Filiberto – I'll second.

Henry Minneboo called for a vote on the motion as stated, and it passed unanimously. (Bruce Moia abstained from voting.)

**From:** [Robert Usherson](#)  
**To:** [Sterk, Erin](#)  
**Cc:** [Jones, Jennifer](#)  
**Subject:** Follow-up2 Re: William James BDP  
**Date:** Monday, May 13, 2019 8:29:37 AM

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Hello again, Erin. Ruminating further re my initial reply to you, I suggest a more appropriate, effective and preferable solution to the James property-type Comp Plan problem my community is concerned about, which are situations where 1) a development proposal is not allowed by the current zoning, 2) the requested re-zoning is inconsistent with the Land Use Plan map (and/or other Plan policies), and 3) the Commission finds that a supplemental development restriction is necessary to render the proposal(s) acceptable to The County (and I would argue, consistent with various Comp Plan). In these situations, I suggest that the Department should simply recommend to the Commission that it not take action approving such a Land Use Plan map amendment unless or until the applicant has submitted to staff and the Attorney the 'proffered' development restriction with content and form sufficient for recording, and such instrument is submitted as an exhibit during course of the comp plan amendment hearing.

Two scenarios could accomplish this: A) if the State allows the County to submit any number of Plan Amendment bundles per year, the Commission could simply defer action and continue the hearing to a later date giving the applicant time to submit the instrument prior to Commission adoption; or, B) if, perhaps, The State only allows the County to submit two amendment bundles per year (which may have been the case once upon a time, I don't remember), if during the course of the Planning Board hearing it becomes evident that Commission approval may have greater likelihood with proffer of a restriction (to render the development consistent with pertinent comp plan policies), the applicant should be advised by staff to prepare and submit such instrument in good order before the date scheduled for Commission action on the Land Use Plan map amendment.

The County Comprehensive Plan should not be so readily wagged by the tail of a desired development-order,

Thank you again for bearing with me...

*R. Usherson*

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**From:** Sterk, Erin <Erin.Sterk@brevardfl.gov>  
**Sent:** Friday, May 10, 2019 4:59 PM  
**To:** Robert Usherson  
**Cc:** Calkins, Tad; Campbell, Cheryl; Jones, Jennifer  
**Subject:** RE: William James BDP

Mr. Usherson,

I've provided responses to your inquiries below **in red**. Once you have a chance to read the response, please let me know if you have any additional questions.

Have a great weekend,

*Erin Sterk*

**Planning & Zoning Manager**

Brevard County

(321) 633-2070 ext. 52640

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**From:** Jones, Jennifer  
**Sent:** Friday, May 10, 2019 8:42 AM  
**To:** Robert Usherson  
**Cc:** Calkins, Tad; Sterk, Erin; Campbell, Cheryl  
**Subject:** RE: William James BDP

Thank you, Mr. Usherson,

I am forwarding to our Department Director, Planning and Zoning Manager, and our Comprehensive Planner.

Jenifer

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**From:** Robert Usherson [<mailto:usherson@msn.com>]  
**Sent:** Thursday, May 9, 2019 3:59 PM  
**To:** Jones, Jennifer  
**Subject:** Re: William James BDP

Thank you very much for your considerate follow-up, Jennifer.

Also, Jennifer, could you please suggest to your Director or whomever you think may be helpful, to please consider the following minor modification to the boilerplate Commission Ordinances amending the Comp Plan in instances where a proffer by an applicant of any sort of development limitation may have been a factor in the Commission's decision to amend the Comp Plan.

Alt 1) Perhaps the Effective date of the Ordinance could be established at some number of days after the applicant submits the proffered instrument to the County with promised content and in form legally sufficient for recording, whether your standard BDP or some other deed restriction that does the job. **The Zoning classification and any associated Binding Development Plan must be approved in consistency with the Future Land Use designation; therefore, the zoning and BDP cannot be finalized before the FLU amendment is final. Additionally, Florida Statute 163.3184 (7) (a) necessitates that "The local government shall transmit the complete adopted comprehensive plan or plan amendment, including the names and addresses of persons compiled pursuant to paragraph (15)(c), to the state land planning agency as specified in the agency's procedural rules within 10 working days after adoption."** For the zoning action, Brevard County code dictates that an applicant has 120 days to bring a

recorded BDP back to the BCC for finalization, which is well beyond this 10 day allowance for transmittal of the adopted FLU change. For both of the reasons, we cannot wait until the Zoning is completed to adopt the FLU.

Alternatively, 2) If neither the foregoing can be done nor could the operative section of the Ordinance condition the Plan Amendment in some manner, The appropriate way to condition the Future Land Use proposal is to create a Future Land Use designation specific to the terms appropriate for the property. This would require a Large Scale Comprehensive Plan Text Amendment to create the FLU designation itself and policies associated with that designation and a Large Scale Comprehensive Plan Future Land Use Map amendment to apply the designation on the designated parcel. The Platt Ranch Mixed Use District (PRMXD) is an example of this level of specificity being created, but the areas which a new designation has historically been applied have been larger than the 5.57 acre area proposed for CC in this proposal.

3) at a minimum, perhaps the Preamble/Whereas clauses could document the fact that development limitations/parameters proffered by the Applicant (and/or recommended by the Planning Board or some other researchable reference) will serve to ensure that development which may occur as a result of the requested Comp Plan amendment will be consistent, not only with the future land use plan map but also with the preponderance of Plan policies adopted to protect the health, safety, welfare and general well-being of adjacent and affected communities. The proposal for a Future Land Use Map amendment is evaluated against all policies of the Comprehensive Plan. Development is reviewed for compliance with County Codes, which implement the goals, policies, and objectives of the Comprehensive Plan – well beyond just checking that the use is permissible within the Future Land Use designation on the map...or something of that sort to memorialize the influence on the Commission action of a proffer made at the time of amendment consideration, notwithstanding whatever may or may not initially happen with regard to any companion re-zoning request. The conditions agreed upon by the applicant at the time of their proposal are memorialized as conditions within a Binding Development Plan (BDP), which is associated with the zoning action and not the Comprehensive Plan Amendment. Because of this, the Board should be evaluating the proposal for the Future Land Use designation at face-value. It is understood that if those conditions were proposed to go away ever, that removal of such would go through a public hearing process as a zoning action for consideration. All zoning actions are evaluated for consistency with the entire Comprehensive Plan – and not just the specifics of the Future Land Use designation itself. Without this, as in our situation, the CC Plan designation could invite purchase of such property with expectations of max liberal development as allowed in that Plan category which, in our backyards, could be immensely disruptive. The conditions voluntarily agreed upon by the applicant are memorialized in the BDP associated with the zoning, which run with the land and appear in a title search. Future buyers of the property would certainly have the resources to evaluate these conditions. The Plan Amendment Ordinance, if read, might reveal to prospective purchasers some need for development/use limitations, particularly if the companion zoning resolution has evaporated and Planning Board minutes are unlikely to be seen in property research. The zoning resolution does not just “evaporate” – the BDP is an encumbrance on the property that is revealed through all County staff evaluation of the property and all future development on the property. The only way to “undo” the conditions is to propose a BDP amendment through a new zoning action and associated public hearings, at which time consideration of all appropriate Comprehensive Plan goals, objectives, and policies will be evaluated. Alternatives safeguards fully welcome!

Thank you very much for your consideration, Jennifer.

*Robert Usherson*

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**From:** Jones, Jennifer <[jennifer.jones@brevardfl.gov](mailto:jennifer.jones@brevardfl.gov)>

**Sent:** Tuesday, May 7, 2019 7:40 AM

**To:** [usherson@msn.com](mailto:usherson@msn.com)

**Subject:** William James BDP

Mr. Usherson,

After looking into it further, I realized that because the zoning was contingent on the recording of the BDP, and the BDP was not recorded, the zoning request was withdrawn and therefore does not have a resolution.

**Jennifer**

"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."