



AGENDA REPORT
May 30, 2019

195.09

Xiaolu Yin and Robert McBride (Oscar Busso) request a Small Scale Plan Comprehensive Plan Amendment to change the Future Land Use designation from NC to CC. (19PZ00034) (District 4)

SUBJECT:

Xiaolu Yin and Robert McBride (Oscar Busso) request a Small Scale Plan 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).

DEPT/OFFICE:

Planning and Development

REQUESTED ACTION:

It is requested that the Board of County Commissioners conduct a public hearing to consider a Small Scale Comprehensive Plan Amendment from NC (Neighborhood Commercial) to CC (Community Commercial).

SUMMARY EXPLANATION and BACKGROUND:

This request is seeking a change in Future Land Use (FLU) designation from Neighborhood Commercial (NC) to Community Commercial (CC) on a 3.57 acre parcel of land. This area of Unincorporated Brevard County is comprised of commercial and residential development along the east side of Waelti Drive and single-family residential residences along the west side.

Waelti Drive is the only access to the commercial and industrial uses along the east side, due to the F.E.C. Railway running north and south, east of the subject property. The majority of the land uses east of Waelti Drive are CC. If the subject property were changed to CC, only the 2.06 acre parcel abutting the subject property to the east, which is currently developed with a single-family residence, would retain the NC Future Land Use designation. Nearby stormwater ponds to the east retain the Public Facilities (PUB) Future Land Use designation. To the west across Waelti Drive is Suntree PUD with single-family residences with a Future Land Use designation of Residential 4 (RES 4).

This 3.57 acre parcel has direct access to Waelti Drive to the west and Freeman Lane to

the south. Waelti Drive has direct access to N. Wickham Road to the south, an urban principal arterial roadway at a signalized intersection. Freeman is an urban local road which dead ends before the F.E.C. Railway to the east. A preliminary concurrency analysis indicates that the proposed change in Future Land Use designation would generate traffic that would not cause deficiency of adopted roadway levels of service and would fall within the Level of Service (LOS) standards of D for this urban principle arterial road.

The Board may wish to consider whether the proposed CC is consistent and compatible with the surrounding development. In addition, the Board should determine whether the approval of CC satisfies the criteria of Comprehensive Plan Policies 2.1 and 2.8.

This request is accompanied by a companion proposal for a change of Zoning classification from General Use (GU) to Retail, Warehousing and Wholesale Commercial (BU-2) (19PZ00035).

On May 6, 2019, the Local Planning Agency heard the request and unanimously recommended approval.

ATTACHMENTS:

Description

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



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

May 31, 2019

Honorable Scott Ellis
Clerk
Board of County Commissioners
Brevard County
Post Office Box 999
Titusville, Florida 32781-0999

Attention: Deborah Thomas

Dear Mr. Ellis:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 19-12, which was filed in this office on May 31, 2019.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

May 31, 2019

MEMORANDUM

TO: Tad Calkins, Planning and Development Director

RE: Item H.4., Ordinance for Small Scale Plan Amendment 19S.09

The Board of County Commissioners, in regular session on May 30, 2019, adopted Ordinance No. 19-12, setting forth Small Scale Plan Amendment 19S.09. Enclosed is a fully-executed Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

Encl. (1)

ORDINANCE NO. 19- 12

AN ORDINANCE AMENDING ARTICLE III, CHAPTER 62, OF THE CODE OF ORDINANCES OF BREVARD COUNTY, ENTITLED "THE 1988 COMPREHENSIVE PLAN", SETTING FORTH THE FIRST SMALL SCALE PLAN AMENDMENT OF 2019, 19S.09, TO THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN; AMENDING SECTION 62-501 ENTITLED CONTENTS OF THE PLAN; SPECIFICALLY AMENDING SECTION 62-501, PART XVI (E), ENTITLED THE FUTURE LAND USE MAP APPENDIX; AND PROVISIONS WHICH REQUIRE AMENDMENT TO MAINTAIN INTERNAL CONSISTENCY WITH THESE AMENDMENTS; PROVIDING LEGAL STATUS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 163.3161 et. seq., Florida Statutes (1987) established the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Section 163.3167, Florida Statutes, requires each County in the State of Florida to prepare and adopt a Comprehensive Plan as scheduled by the Department of Economic Opportunity; and

WHEREAS, on September 8, 1988, the Board of County Commissioners of Brevard County, Florida, approved Ordinance No. 88-27, adopting the 1988 Brevard County Comprehensive Plan, hereafter referred to as the 1988 Plan; and

WHEREAS, Sections 163.34 and 163.3187, and 163.3189, Florida Statutes, established the process for the amendment of comprehensive plans pursuant to which Brevard County has established procedures for amending the 1988 Plan; and

WHEREAS, Brevard County initiated amendments and accepted application for small scale amendments to the Comprehensive Plan for adoption in calendar year 2019 as Plan Amendment 19S.09; and

WHEREAS, Brevard County established Technical Advisory Groups consisting of County technical employees grouped according to their operational relationship to the subject of a plan element or sub-element being prepared or amended, and these Technical Advisory Groups have provided technical expertise for the Amendment 19S.09; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida, have provided for the broad dissemination of proposals and alternatives, opportunity for written comments, public hearings after due public notice, provisions for open discussion, communication programs and consideration of and response to public comments concerning the provisions contained in the 1988 Plan and amendments thereto; and

WHEREAS, Section 62-181, Brevard County Code designated the Brevard County Planning and Zoning Board as the Local Planning Agency for the unincorporated areas of Brevard County, Florida, and set forth the duties and responsibilities of said local planning agency; and

Officially filed with Secretary of State May 31, 2019.

WHEREAS, on May 6, 2019, the Brevard County Local Planning Agency held a duly noticed public hearing on Plan Amendment 19S.09, and considered the findings and advice of the Technical Advisory Groups, and all interested parties submitting comments; and

WHEREAS, on May 30, 2019, the Brevard County Board of County Commissioners held a duly noticed public hearing, and considered the findings and recommendations of the Technical Advisory Group, and all interested parties submitting written or oral comments, and the recommendations of the Local Planning Agency, and upon thorough and complete consideration and deliberation, approved for adoption Plan Amendment 19S.09; and

WHEREAS, Plan Amendment 19S.09 adopted by this Ordinance comply with the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Plan Amendment 19S.09 adopted by this Ordinance is based upon findings of fact as included in data and analysis.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Section 1. Authority. This ordinance is adopted in compliance with, and pursuant to the Local Government Comprehensive Planning and Land Development Regulations Act, Sections 163.3184 and 163.3187, Florida Statutes.

Section 2. Purpose and Intent. It is hereby declared to be the purpose and intent of this Ordinance to clarify, expand, correct, update, modify and otherwise further the provisions of the 1988 Brevard County Comprehensive Plan.

Section 3. Adoption of Comprehensive Plan Amendments. Pursuant to Plan Amendment 19S.09 to the 1988 Comprehensive Plan, Article III, Chapter 62-504, Brevard County Code, the 1988 Brevard County Comprehensive Plan is hereby amended based on documentation shown in Exhibit A and as specifically shown in Exhibit B. Exhibits A and B are hereby incorporated into and made part of this Ordinance.

Section 4. Legal Status of the Plan Amendments. After and from the effective date of this Ordinance, the plan amendment, Plan Amendment 19S.09, shall amend the 1988 Comprehensive Plan and become part of that plan and the plan amendment shall retain the legal status of the 1988 Brevard County Comprehensive Plan established in Chapter 62-504 of the Code of Laws and Ordinances of Brevard County, Florida, as amended.

Section 5. Severability. If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 6. Effective Date. The effective date of this small scale plan amendment shall be 31 days after adoption, unless the amendment is challenged pursuant to Section 163.3187(3), Florida Statutes. If challenged, the effective date of this amendment shall be the date a final order is issued by the Department of Community Affairs, or the Administration Commission, finding the amendment in compliance with Section 163.3184, Florida Statutes. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten days of enactment.

DONE AND ADOPTED in regular session, this 30 day of May, 2019.

ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: 

Kristine Isnardi, Chair

As approved by the Board on May 30, 2019.

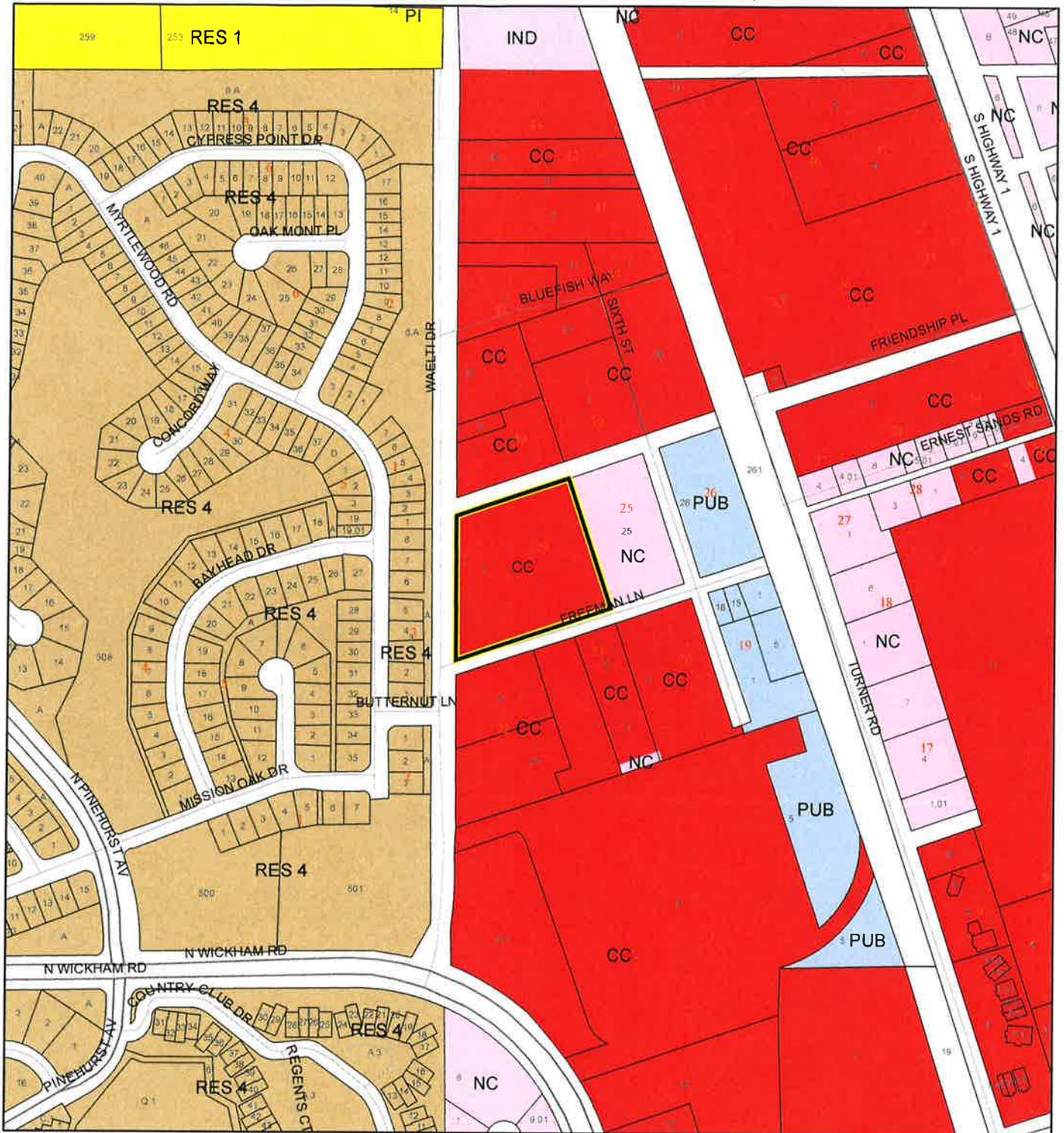
EXHIBIT A
19S.09 SMALL SCALE
COMPREHENSIVE PLAN AMENDMENT

Contents

1. Proposed Future Land Use Map

PROPOSED FUTURE LAND USE MAP

YIN, XIAOLU AND McBRIDE, ROBERT
 19PZ00034 SMALL SCALE AMENDMENT 19S.09



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: 3/7/2019

EXHIBIT B

Contents

1. Legal Description

AD#3515834, 4/22/2019

NOTICE is hereby given pursuant to Chapters 125 & 163, FLORIDA STATUTES, and Chapter 62, Article VI of the Brevard County Code, that the Brevard County Planning and Zoning Board (Local Planning Agency) and the Board of County Commissioners will consider the following requests on MONDAY, MAY 6, 2019, and THURSDAY, MAY 30, 2019. DISTRICT 2 1. (18P200130) CLARK A. AND PATRICIA A. SIMMS request a change of zoning classification from RU-1-9 (Single-

Family Residential) and EU (Estate Use Residential) to all RU-1-9, on property described as the east 400 feet of Tax Parcel 811, as recorded in ORB 6640, Pages 2872 - 2875, of the Public Records of Brevard County, Florida, Section 22, Township 24, Range 36, (0.93 acres) Located on the west side of N. Tropical Trail, approx. 685 feet north of Lucas Road (700 Saint Lawrence Lane, Merritt Island.) DISTRICT 1 2. (19P200028) - ROBERT BAILEY - requests a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from Residential 1 to Residential 4, on property described as Tax Parcel 31, as recorded in ORB 5506, Pages 1427 - 1429, of the Public Records of Brevard County, Florida, Section 22, Township 24, Range 35, (0.35 acres) Located on the south side of Craig Road, approx. 495 feet west of Friday Road. (5055 Craig Road, Cocoa) The following ordinance will also be considered in conjunction with the Small Scale Plan Amendment, 19S.07: an ordinance amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, entitled "The Comprehensive Plan", amending Section 62-501, entitled Contents of the Plan; specifically amending Section 62-501, Part XI, entitled Future Land Use Element and Future Land Use Map Series; and provisions which require amendment to maintain internal consistency with these amendments, providing legal status; providing a severability clause; and providing an effective date. 3. (19P200029) - ROBERT BAILEY - requests a change of zoning classification from GU (General Use) to RU-1-13 (Single-Family Residential), on property described as Tax Parcel 31, as recorded in ORB 5506, Pages 1427 - 1429, of the Public Records of Brevard County, Florida, Section 22, Township 24, Range 35, (0.35 acres) Located on the south side of Craig Road, approx. 495 feet west of Friday Road. (5055 Craig Road, Cocoa) DISTRICT 4 4. (19P200035) - XIAOLU YIN AND ROBERT MCBRIDE - (Oscar Busco) - request a Small Scale Comprehensive Plan Amendment, 19S.09, to change the Future Land Use designation from NC (Neighborhood Commercial) to CC (Community Commercial), on property described as Blocks 23 & 24, Plan of Town of Pineda, according to the map or plat thereof, as recorded in Plat Book 1, Page(s) 41, together with vacated right-of-way as described in ORB 4818, Page 400, of the Public Records of Brevard County, Florida, Section 12, Township 26, Range 36, (3.57 acres) Located on the northeast corner of Waeltl Dr., and Freeman Ln. (3350 Freeman Ln., Melbourne) The following ordinance will also be considered in conjunction with the Small Scale Plan Amendment, 19S.09: an ordinance amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, entitled "The Comprehensive Plan", amending Section 62-501, entitled Contents of the Plan; specifically amending Section 62-501, Part XI, entitled Future Land Use Element and Future Land Use Map Series; and provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date.

5. (19P200035) - XIAOLU YIN AND ROBERT MCBRIDE - (Oscar Busco) - request a change of zoning classification from GU (General Use) to BU-2 (Retail, Warehousing, and Wholesale Commercial), on property described as Blocks 23 & 24, Plan of Town of Pineda, according to the map or plat thereof, as recorded in Plat Book 1, Page(s) 41, together with vacated right-of-way as described in ORB 4818, Page 400, of the Public Records of Brevard County, Florida, Section 12, Township 26, Range 36, (3.57 acres) Located on the northeast corner of Waeltl Dr., and Freeman Ln. (3350 Freeman Ln., Melbourne) 6. (19P200051) - PALM BAY REH, LLC - (Hitest Patel) - requests a CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a restaurant, in a TU-1 (General Tourist Commercial), on property described as Tax Parcel 508, as recorded in ORB 8240, Pages 2310 - 2311, of the Public Records of Brevard County, Florida, Section 30, Township 23, Range 36, (1.23 acres) Located on the west side of U.S. Hwy 1; approx. 290 ft. north of Camp Rd. (4885 N. Hwy 1, Cocoa) Public Hearing before the Planning and Zoning Board (Local Planning Agency) will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida on MONDAY, MAY 6, 2019, at 3:00 p.m. A Public Hearing will be held by the Board of County Commissioners at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Bldg. C, Viera, Florida, on THURSDAY, MAY 30, 2019, at 5:00 p.m. All interested parties can be heard at said time and place. If a person decides to appeal any decision of this Board with respect to any matter considered at this meeting or hearing, such a person will need a record of the proceedings and that, for such purposes, such person may need to ensure that a verbatim record of the proceedings is made, at his own expense, which record includes testimony and evidence upon which any such appeal is to be based. Final report of the above referenced agenda will be heard at this meeting. In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodations to participate in this proceeding should contact the Planning & Development Department no later than 48 hours prior to the meeting at 633-2069 for assistance. Brevard County Planning & Development Department, Por: Tad Colkins, Planning and Development Director. By: Jennifer Jones, Special Projects Coordinator.]]

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.

**FUTURE LAND USE MAP SERIES
PLAN AMENDMENT**

STAFF COMMENTS

*Small Scale Plan Amendment 19S.09 (19PZ00034)
Township 26, Range 36, Section 12*

Property Information

Owner / Applicant: **Xiaolu Yin and Robert McBride**

Adopted Future Land Use Map Designation: Neighborhood Commercial (NC)

Requested Future Land Use Map Designation: Community Commercial (CC)

Acreage: 3.57 acres Tax Account #: 2601567

Site Location: Northeast corner of Waelti Drive and Freeman Lane

Current Zoning: General Use (GU)

Requested Zoning: Retail, Warehousing and Wholesale Commercial (BU-2)

Surrounding Land Use Analysis

	Existing Land Use	Zoning	Future Land Use
North	Single-Family Residence	RU-2-10(6)	CC
South	Day Care Center, Warehouse, Vacant Commercial	BU-1, BU-2	CC
East	Single-Family Residence	GU	NC
West	Suntree PUD (Single-Family Residential)	RES 4	RES 4

Background & Purpose

The applicant is seeking to amend the Future Land Use (FLU) designation from Neighborhood Commercial (NC) to Community Commercial (CC) on a 3.57 acre parcel of land. The subject property currently has a Future Land Use designation of NC but originally retained the Mixed Use Future Land Use designation when Brevard County

adopted the Comprehensive Plan in September of 1988. The Future Land Use designation was changed to NC in 2001 when Brevard County combined the Future Land Use Map with the Residential Density Map during an Evaluation and Appraisal Review (EAR) and converted parcels with the Mixed Use designation to either of the new Neighborhood Commercial or Community Commercial designations.

To the north of the subject property is an existing single-family residence with a Future Land Use designation of CC, to the east is a single-family residence with a NC Future Land Use designation, to the south is a Day Care Center, a Warehouse and a vacant single-family parcel with a Future Land Use designation of CC. To the west across Waelti Drive is Suntime PUD with single-family residences with a Future Land Use designation of Residential 4 (RES 4).

The only parcel within the major area bordered by the FEC Railroad to its east, Suntime Boulevard to its south, Waelti Drive to the west that does not retain CC is the abutting parcel directly east of the subject property, which retains NC, other than parcels being used as stormwater ponds which retain the Public Facilities (PUB) Future Land Use designation.

A companion rezoning application (**19PZ00035**) was submitted accompanying this request for a Future Land Use designation change, to change the Zoning classification from General Use (GU) to Retail, Warehousing and Wholesale Commercial (BU-2).

Environmental Resources

Please refer to comments provided by the Natural Resource Management Department.

Historic Resources

There are no recorded historic or archaeological sites on the project site according to the Master Site File from the Florida Division of Historic Resources.

Comprehensive Plan Policies/Comprehensive Plan Analysis

Comprehensive Plan Policies are shown in plain text; Staff Findings of Fact are shown in *italics*

Notice: The Comprehensive Plan establishes the broadest framework for reviewing development applications and provides the initial level of review in a three layer screening process. The second level of review entails assessment of the development application's consistency with Brevard County's zoning regulations. The third layer of review assesses whether the development application conforms to site planning/land development standards of the Brevard County Land Development Code. While each of these layers individually affords its own evaluative value, all three layers must be cumulatively considered when assessing the appropriateness of a specific development proposal.

Role of the Comprehensive Plan in the Designation of Commercial Lands

Policy 2.1

The Comprehensive Plan takes into consideration broad criteria for evaluating requests for commercial land use designations within Brevard County. At a minimum, these criteria address the following:

Criteria:

- A. Overall accessibility to the site;

The subject parcel does have frontage on a roadway. This parcel has frontage on Waelti Drive, an urban local roadway connecting to N. Wickham Road, an urban principal arterial roadway. In addition, the subject site has access to Freeman Lane on the south side of the property and an undeveloped right-of-way approximately fifty feet (50') in width on the north side.

- B. Compatibility and inter-connectivity with adjacent adopted Future Land Use designations and land uses;

The subject parcel is adjacent to a parcel retaining NC FLU, but developed as a single-family residence. Connectivity between surrounding parcels is, or can be in the future, facilitated by existing right-of-way.

If this parcel is ever subdivided, inter-connectivity between adjacent parcels via cross-access easement should be provided, per Section 62-2957 of Brevard County code.

- C. Existing commercial development trend in the area;

There is an approximately 22.64 acre node of commercially designated lands surrounding the subject parcel between Waelti Drive to the west and the Florida East Coast (F.E.C.) Railway to the east. Some of these parcels predeveloped with existing residential uses on them.

Where Waelti Drive connects with N. Wickham Road approximately 1.7 miles south of the subject parcel, there continues to be a 29.19 acre commercial node between N. Wickham Road to the west and the F.E.C Railway to the east.

- D. Fundamental changes in the character of an area prompted by infrastructure improvements undertaken by the County;

There are no fundamental changes in character within this area prompted by County infrastructure improvements.

- E. Availability of required infrastructure at/above adopted levels of service;

The subject parcel is served by Brevard County Utilities' Sewer Services. There are existing Brevard County Utilities that run along the west side of Waelti Drive. The City of Cocoa provides water to this subject parcel.

This 3.57 acre parcel has direct access to Waelti Drive to the west that connects with N. Wickham Road, an urban principal arterial roadway. The additional impact to the roadway resulting from the development of this site is anticipated to fall within the Level of Service (LOS) standards of D for this urban principle arterial road.

Today, the traffic counts indicate that N. Wickham Road from Suntree Boulevard to Pinehurst Avenue is at 81.89% Maximum Acceptable Volume (MAV). This 3.57 acre parcel if developed as CC will have a MAV of 90.19% and will not create a deficiency in the Level of Service (LOS) requirements for N. Wickham Road.

- F. Spacing from other commercial activities;

The subject parcel is located near other commercial activities to the south of the property with a Future Land Use (FLU) designation of CC to the north and south, and NC to the east. The adjacent parcel to the north currently is developed as a single-family resident. To the south of the Day Care and Warehouse is additional warehousing.

- G. Size of proposed commercial designation compared with current need for commercial lands;

The FLU designation change from NC to CC is proposed on a 3.57 acre parcel of land is Consistent with Policy 2.7 of the Future Land Use Element of the Comprehensive Plan. Community Commercial development is intended to serve several neighborhoods and provide an array of retail, personal and professional uses.

- H. Adherence to the objectives/policies of the Conservation Element and minimization of impacts upon natural resources and systems;

The Natural Resource Management (NRM) Department has provided a preliminary summary of adherence to the objectives/policies of the Conservation Element and the minimization of impacts upon natural resources and systems. (See attached NRM Department Summary).

- I. Integration of open space; and

Open space will be evaluated during the site plan review process.

- J. Impacts upon strip commercial development.

The promotion of strip pattern commercial development is discouraged within the Future Land Use Element for property with a FLU designation of CC. Infill within established strip commercial areas is preferred over the extension of a strip commercial pattern. The subject site lies between parcels with a CC FLU designation to the north and south along Waelti Drive therefore providing for infill.

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

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

- a) Existing strip commercial;
- b) Transient commercial uses;
- c) Tourist commercial uses;
- d) Professional offices;
- e) Personal service establishments;
- f) Retail establishments;
- g) Non-retail commercial uses;
- h) Residential uses;
- i) Institutional uses;
- j) Recreational uses;
- k) Public facilities;
- l) Transitional uses pursuant to Policy 2.12; and
- m) Planned Industrial Park development (as permitted by PIP zoning).

Locational and Development Criteria for Community Commercial Uses
Policy 2.8

Locational and development criteria for community commercial land uses are as follows:

Criteria:

- A. Community Commercial clusters of up to ten (10) acres in size should be located at arterial/arterial intersections. Collector/arterial intersections are acceptable for clusters of up to ten (10) acres in size; however, the collector roadways must serve multiple residential areas. Intrusion of these land uses into the surrounding residential areas shall be limited. For Community Commercial clusters greater than ten (10) acres in size, they must be located at principal arterial/principal arterial intersections.

The subject parcel is not located at an intersection. The closest principal arterial/principal arterial intersection is approximately 2.4 miles to the west at Interstate 95 (I-95) and N. Wickham Road. There is a signalized intersection at Waelti Drive and N. Wickham Road, a local collector/arterial approximately .02 miles south of the subject parcel.

- B. Community commercial complexes should not exceed 40 acres at an intersection.

The subject parcel is not located at an intersection. The total acreage of commercially designated lands bordered by Suntree Boulevard and N. Wickham Road to the south, Waelti Drive to the west and the FEC Railway corridor to the east less than sixty (60) acres in size.

- C. Community commercial clusters up to 10 acres in size should be spaced at least 2 miles apart and community commercial clusters up to 40 acres in size should be spaced at least five (5) miles apart.

The subject property will become part of a community cluster node. Strip commercial development along N. Wickham Road and U.S. Highway 1 (US 1) also extends south of the area along those two north-south corridors.

- D. The gross floor area of community commercial complexes should not exceed 150,000 square feet for commercial clusters up to 10 acres in size and shall not exceed 400,000 square feet for commercial clusters greater than 10 acres but less than 40 acres in size.

The gross floor area is regulated through the land development regulations at the time of site plan review.

- E. Floor Area Ratio (FAR) of up to 1.00 will be permitted for Community Commercial sites.

The subject property has the potential for 155,509 square foot of development. The Floor Area Ratio (FAR) is regulated through the land development regulations at the time of site plan review.

- F. Recreational vehicle parks shall be located in areas which serve the needs of tourists and seasonal visitors to Brevard County. The location of recreational vehicle parks shall have access to interstate interchanges via arterial and principal collector transportation corridors or the property shall be located on a major multi-county transportation corridor.

This parcel does meet the criteria to be developed as a recreational vehicle park because it does have access to an interstate interchange from N. Wickham Road.

Policy 2.15

Judging the suitability of a location for an extension of strip commercial development activities shall be based upon the following minimum criteria:

Criteria:

- A. Impacts upon traffic circulation should be anticipated and mitigated through the reservation of right-of-way for road widening and marginal access streets. Access points for strip commercial complexes shall seek to minimize points of conflict by utilizing frontage roads, providing cross-access between parcels or installing shared use curb cuts for access driveways to the maximum extent feasible, as determined by Brevard County.

This parcel has frontage on Waelti Drive, an urban local roadway connecting to N. Wickham Road, an urban principal arterial roadway. There are parcels to the north and south with a CC FLU designation of the subject site both of which have opportunities for connectivity. To the north is an undeveloped 50' right-of-way and to the south is Freeman Lane.

- B. Setbacks and landscaped or other appropriate buffers shall be established to mitigate the visual impacts of strip commercial development.

When developed with a community commercial use, the site plan associated with it will be reviewed for setbacks, landscape and buffering as part of that review to meet the current Land Development Regulations at the time of development.

- C. A sidewalk or bicycle path shall be required where appropriate, as encouraged by Tables 2.1 and 2.2 to provide convenient access to surrounding residents and to reduce traffic volumes on the roadways.

At the time of Site Plan review, the proposed commercial development will be reviewed taking into consideration the integration of both vehicular and non-vehicular access into the site. Currently, there is no sidewalk along Waelti Drive in place today.

For Board Consideration

This request is seeking a change in Future Land Use (FLU) designation from Neighborhood Commercial (NC) to Community Commercial (CC) on a 3.57 acre parcel of land. This area of Unincorporated Brevard County is comprised of commercial and residential development along the east side of Waelti Drive and single-family residential residences along the west side.

Waelti Drive is the only access to the commercial and industrial uses along the east side, due to the F.E.C. Railway running north and south, east of the subject property. The majority of the land uses east of Waelti Drive are CC. If the subject property were changed to CC, only the 2.06 acre parcel abutting the subject property to the east, which is currently developed with a single-family residence, would retain the NC Future Land Use designation. Nearby stormwater ponds to the east retain the Public Facilities (PUB) Future Land Use designation. To the west across Waelti Drive is Suntree PUD with single-family residences with a Future Land Use designation of Residential 4 (RES 4).

This 3.57 acre parcel has direct access to Waelti Drive to the west and Freeman Lane to the south. Waelti Drive has direct access to N. Wickham Road to the south, an urban principal arterial roadway at a signalized intersection. Freeman is an urban local road which dead ends before the F.E.C. Railway to the east. A preliminary concurrency analysis indicates that the proposed change in Future Land Use designation would generate traffic that would not cause deficiency of adopted roadway levels of service and would fall within the Level of Service (LOS) standards of D for this urban principle arterial road.

The Board may wish to consider whether the proposed CC is consistent and compatible with the surrounding development. In addition, the Board should determine whether the approval of CC satisfies the criteria of Comprehensive Plan Policies 2.1 and 2.8.

This request is accompanied by a companion proposal for a change of Zoning classification from General Use (GU) to Retail, Warehousing and Wholesale Commercial (BU-2) (**19PZ00035**).

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Future Land Use Review & Summary
Item # 19PZ00034

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.

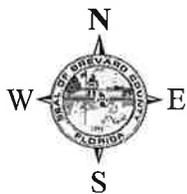
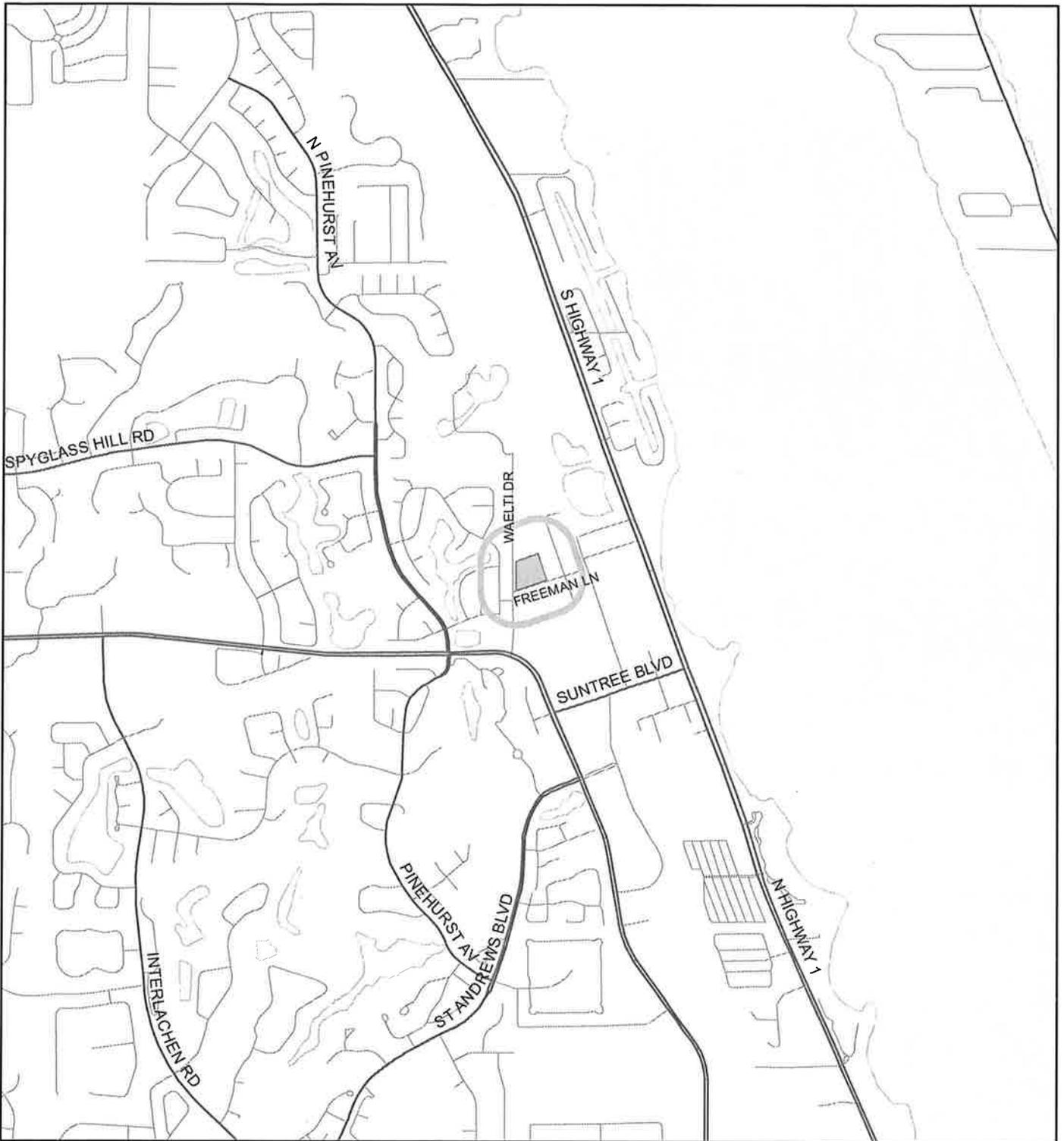
The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.

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
19PZ00034 SMALL SCALE AMENDMENT 19S.09



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

Buffer Distance: 500 feet

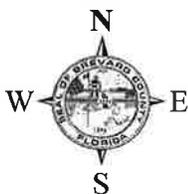
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/7/2019

-  Buffer
-  Subject Property

ZONING MAP

YIN, XIAOLU AND McBRIDE, ROBERT
19PZ00034 SMALL SCALE AMENDMENT 19S.09



1:4,800 or 1 inch = 400 feet

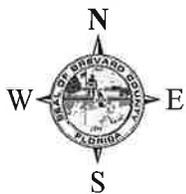
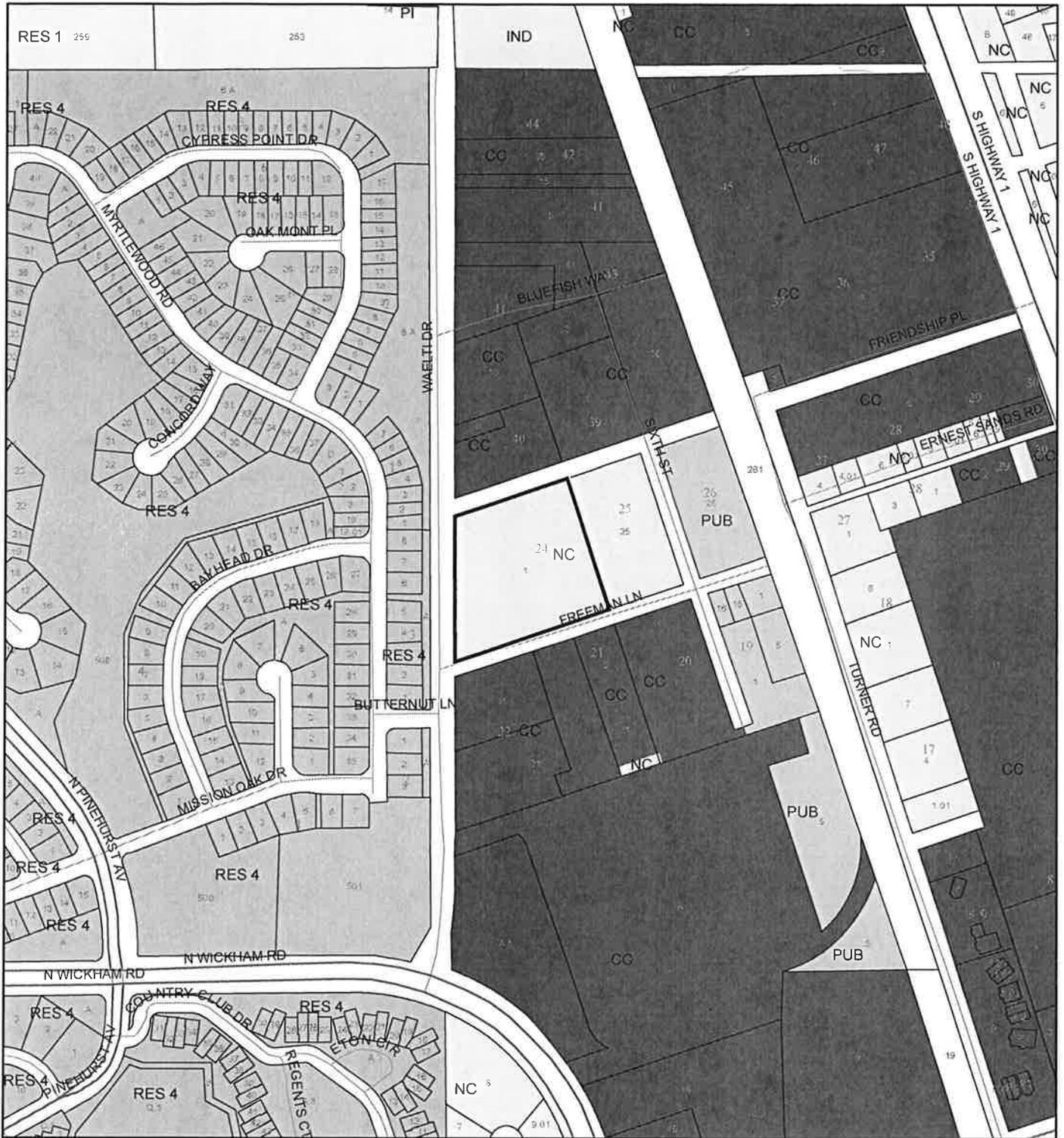
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-  Subject Property
-  Parcels
-  Zoning

FUTURE LAND USE MAP

YIN, XIAOLU AND McBRIDE, ROBERT
 19PZ00034 SMALL SCALE AMENDMENT 19S.09



1:4,800 or 1 inch = 400 feet

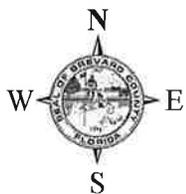
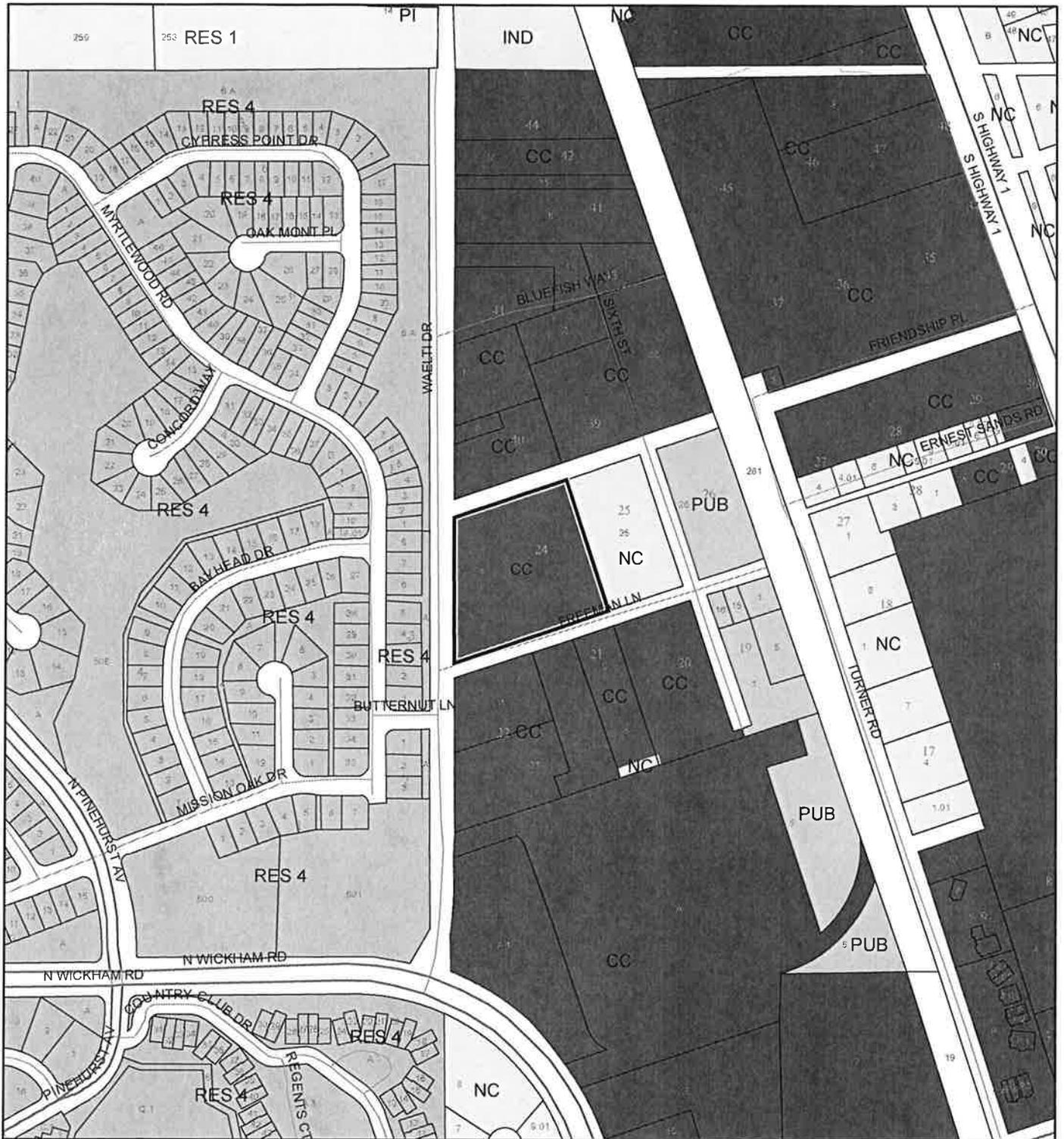
-  Subject Property
-  Parcels

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

PROPOSED FUTURE LAND USE MAP

YIN, XIAOLU AND McBRIDE, ROBERT
 19PZ00034 SMALL SCALE AMENDMENT 19S.09



1:4,800 or 1 inch = 400 feet

 Subject Property

 Parcels

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AERIAL MAP

YIN, XIAOLU AND McBRIDE, ROBERT
19PZ00034 SMALL SCALE AMENDMENT 19S.09



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2018

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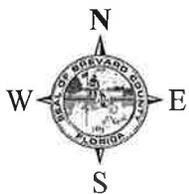
 Subject Property

 Parcels

NWI WETLANDS MAP

YIN, XIAOLU AND McBRIDE, ROBERT

19PZ00034 SMALL SCALE AMENDMENT 19S.09

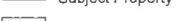


1:4,800 or 1 inch = 400 feet

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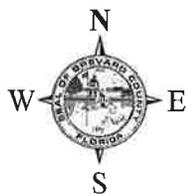
Produced by BoCC - GIS Date: 3/6/2019

National Wetlands Inventory (NWI)

- | | | | |
|--|-----------------------------------|---|------------------|
|  | Estuarine and Marine Deepwater |  | Freshwater Pond |
|  | Estuarine and Marine Wetland |  | Lake |
|  | Freshwater Emergent Wetland |  | Other |
|  | Freshwater Forested/Shrub Wetland |  | Riverine |
| | |  | Subject Property |
| | |  | Parcels |

SJRWMD FLUCCS WETLANDS - 6000 Series MAP

YIN, XIAOLU AND McBRIDE, ROBERT
 19PZ00034 SMALL SCALE AMENDMENT 19S.09



1:4,800 or 1 inch = 400 feet

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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

19PZ00034 SMALL SCALE AMENDMENT 19S.09



1:4,800 or 1 inch = 400 feet

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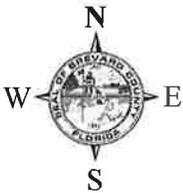
Produced by BoCC - GIS Date: 3/6/2019

USDA SCSSS Soils

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

FEMA FLOOD ZONES MAP

YIN, XIAOLU AND McBRIDE, ROBERT
19PZ00034 SMALL SCALE AMENDMENT 19S.09



1:4,800 or 1 inch = 400 feet

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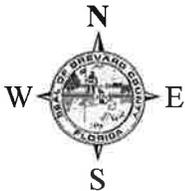
Produced by BoCC - GIS Date: 3/6/2019

FEMA Flood Zones

- | | | |
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EAGLE NESTS MAP

YIN, XIAOLU AND McBRIDE, ROBERT
19PZ00034 SMALL SCALE AMENDMENT 19S.09



1:4,800 or 1 inch = 400 feet

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

-  Subject Property
-  Parcels
-  Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

YIN, XIAOLU AND McBRIDE, ROBERT

19PZ00034 SMALL SCALE AMENDMENT 19S.09



1:4,800 or 1 inch = 400 feet

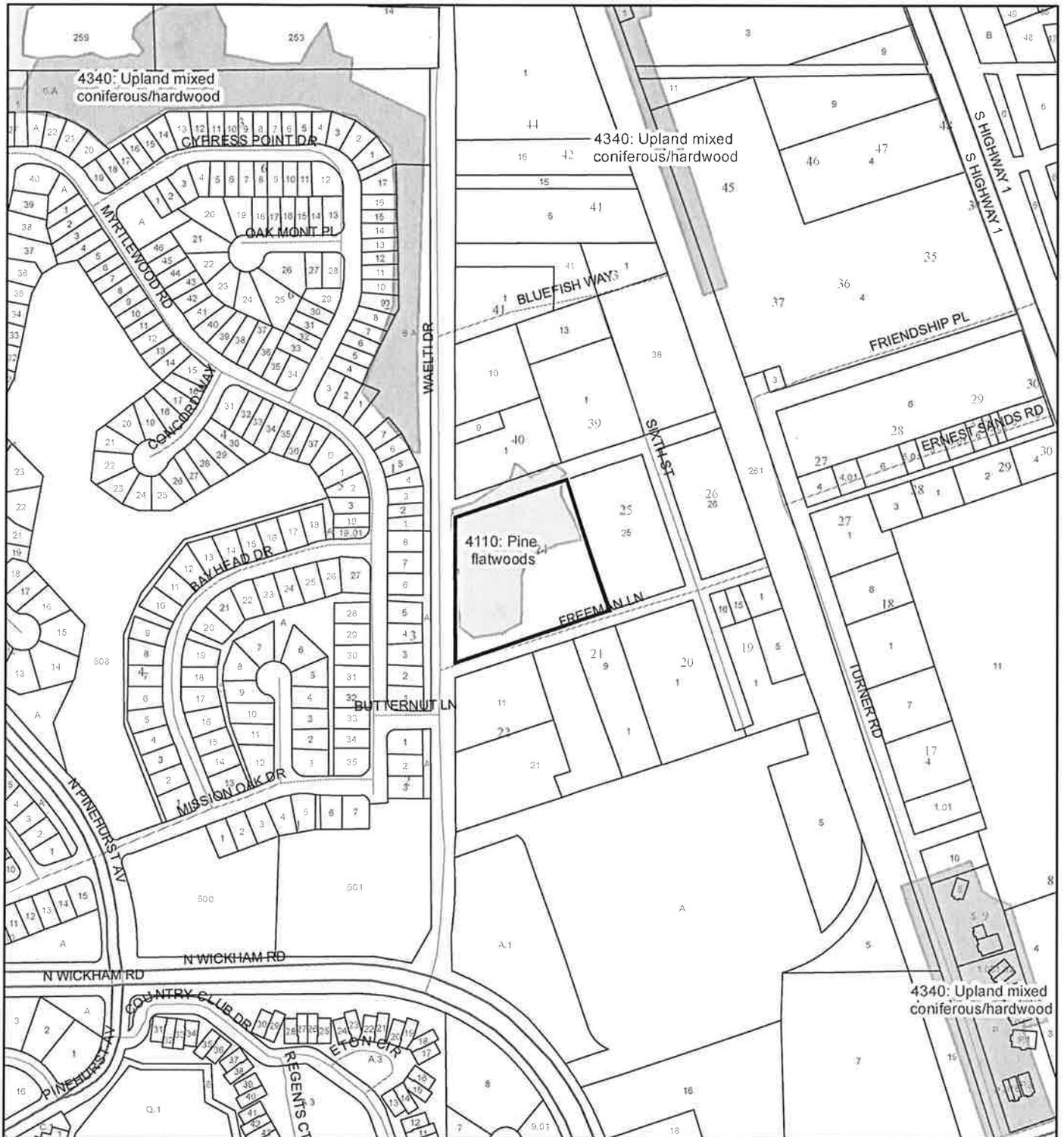
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

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
 19PZ00034 SMALL SCALE AMENDMENT 19S.09



1:4,800 or 1 inch = 400 feet

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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

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 Hodggers, 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 Suntree 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 Suntree 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

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

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) Per haps 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

From: Jones, Jennifer <jennifer.jones@brevardfl.gov>

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

To: 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

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