

## John Lynch

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**From:** Jones, Jennifer [jennifer.jones@brevardcounty.us]  
**Sent:** Wednesday, June 25, 2014 8:33 AM  
**To:** Mcgee, Darcie A; Christine Mulligan; Donna Scott; John Lynch; Kelly Fulton; Tammy Etheridge  
**Subject:** 07-07-14 Staff Comments  
**Attachments:** 07-07-14 Staff Comments.doc; 07-10-14 Staff Comments.doc

Attached are the staff comments for the July 7<sup>th</sup> P&Z and July 10<sup>th</sup> NMI meetings.

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**Planning & Development Department**  
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**BOARD OF COUNTY COMMISSIONERS**

**TO:** Planning & Zoning Board Members  
**FROM:** Cindy Fox, Planning & Zoning Manager  
**SUBJ:** Planning and Zoning Staff Comments  
July 7, 2014  
**DATE:** June 18, 2014

The following comments are compiled by the Planning and Zoning staff and are reflections of a combination of technical reviews. These are presented to the Planning and Zoning Board and the Board of County Commissioners as a collection of known facts surrounding each proposal and their relationship to the policies of the Comprehensive Plan. It is hoped that these known facts and policy statements will assist each member in their individual decision-making efforts as additional information is received through the public hearing process. The material contained in these comments will be provided to the Commissioners in staff briefings. Any matter discussed in staff briefings not contained in this review will be disclosed at the Board of County Commissioners meeting.

**STAFF COMMENTS PREPARED BY:**

Planning & Zoning Office  
NATURAL RESOURCES MANAGEMENT DEPARTMENT

**Legend of Terms:**

FLU Map - Future Land Use Map of Comprehensive Plan  
FLUE - Future Land Use Element

## **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 and 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 zoning 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 zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan appeals, vested rights or other 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 per cent 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 an 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 or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), 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 service 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, odor, 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 that the following general standards are satisfied. The Board shall make the 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 MAI 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 thirty-five (35) feet higher than the highest residence within 1000 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 the section into the Zoning file and Public Record for that item.

These staff comments contain references to Policies of the Brevard County 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 MPO 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 (ALOS):** Acceptable Level of Service currently adopted by the County.

**Current 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 LOS that a proposed development may generate on a roadway.

**III.B.1**

**Commission District # 1 (14PZ-00050)**  
**Initial Hearing Dates: P&Z 07/07/14 BCC 08/07/14**

**REZONING REVIEW WORKSHEET**

**Applicant Name: ALEXANDER J. AND PATRICIA B. MONTMINY**

**Request: AU to SR**

**Subject Property:**

**Parcel ID#: 24-35-34-00-22**  
**Tax Acct#: 2408714**  
**Location: East side of Lake Poinsett Rd., approx. .14 mile southwest of S.R. 520**  
**Address: 5145 Lake Poinsett Rd., Cocoa**  
**Acreege: 0.81 acre.**

**Consistency with Land Use Regulations**

YES Current zoning can be considered under the Future Land Use Designation. Sec. 62-1255  
YES Proposal can be considered under the Future Land Use Designation. Sec. 62-1255  
YES Would proposal maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	AU	SR
<b>Potential*</b>	0 Unit	1 Unit
<b>Can be Considered under FLU MAP</b>	YES RESIDENTIAL 15	YES

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

	<b>ADT</b>	<b>PM Peak</b>		
Trips from Existing Zoning	0	0	Segment Number	None Assigned
Trips from Proposed Zoning	1.01	9.57	Segment Name	N/A
Maximum Acceptable Volume (MAV)	None Assigned	None Assigned	Acceptable LOS	None assigned
Current Volume	Unknown	Unknown	Directional Split	
Volume With Proposed Development	1.01	9.57	ITE CODE 210 Zoning action allows for one SFR dwelling unit De Minimus Exempt	
Current Volume / MAV	Unknown	Unknown		
Volume / MAV with Proposal	Unknown	Unknown		
Current LOS	N/A	N/A		
LOS With Proposal	N/A	N/A		

## Land Use Compatibility

FLUE Policy 1.1 requires consideration of land use compatibility and character of the area.

The request is for the SR zoning classification. The SR classification permits single family residences on minimum half acre lots, with a minimum width of 100 feet and a depth of 150 feet. The minimum house size in SR is 1,300 square feet. The surrounding properties are zoned TR-1 to the north and east, RR-1 to the south and SR to the west across Lake Poinsett Road. TR-1 is a single family residential mobile home zoning classification which permits mobile homes or residences of standard construction on lots of 7,500 square feet (minimum) with lot width of 65 feet and lot depth of 100 feet. The RR-1 classification permits single-family residential land uses on minimum one acre lots, with a minimum lot width and depth of 125 feet. The RR-1 classification permits horses, barns and horticulture as accessory uses to a single-family residence. The minimum house size is 1,200 square feet. This area of Cocoa is developed with single-family mobile home development and single-family residences of standard construction. The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 - 8 of the Future Land Use Element, as outlined on pages 2 through 5 of these staff comments.

## Environmental Constraints

\* Does the project appear to meet county use or density restrictions based upon:  
 \* Refer to NRMD's comments following these staff comments.

The following environmental factors may affect development potential (Policies 1.1.A, II.2.E, and 3.1.F, of the Future Land Use Element):

Environmental Factor	Preliminary Assessment of Factor	Environmental Factor	Preliminary Assessment of Factor
Hydric Soils	Hydric soils mapped	Coastal Protection	NA
Aquifer Recharge Soils	Not Mapped	Surface Water Protection	NA
Floodplains	Not Mapped	Habitat for Protected Species	Not Mapped

Note: This is a preliminary review based upon environmental maps available to the Natural Resources Management Department at the time of this review and does not include a site inspection to verify the accuracy of this information. This review does not ensure whether a proposed use or development of the property can be permitted under current federal, state or local regulations. Hydric Soils may be associated with wetlands. If applicable, the full text of NRMD's comments follow these staff comments.

**Other Considerations:** The subject property is undersized for the existing AU zoning classification which requires a minimum of two and a half acres. The request is for the SR zoning classification for the purposes of constructing a single-family residence. The SR zoning classification requires a minimum of one half acre and would be consistent with the existing Residential 15 Future Land Use Designation.

It appears the subject property is a remnant piece of AU property that is substandard to its minimum required size and was once part of a larger parent parcel. The closest SR zoning to the subject property is to the west across Lake Poinsett Road. The subject property abuts TR-1 zoning for single-family mobile home development and RR-1 zoning to the south which require a minimum of one acre single-family home sites.

**Summary:** The request is for the SR zoning classification for the purposes of constructing a single-family residence. The closest SR zoning to the subject property is to the west across Lake Poinsett Road. This area of Cocoa is characterized by single-family homes of standard construction and single-family mobile homes in the Maplewood subdivision and one acre home sites along Lake Poinsett Drive.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT  
Rezoning Review**

**SUMMARY**

**Item #: 14PZ-00050**

**Owner: Alexander & Patricia Montminy**

**Zoning Request: AU to SR**

**P & Z Hearing Date: 07/07/14**

**BCC Hearing Date: 08/07/14**

This is a preliminary review based on environmental maps available to the Natural Resources Management Department (NRM) at the time of this review and does not include a site inspection to verify the accuracy of this information. This review does not ensure whether or not a proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations. In that this process is not the appropriate venue for site plan review, specific site designs that may be submitted with the rezoning will be deemed conceptual and any comments or omissions relative to specific site design do not provide vested rights or waivers from these regulations, unless specifically requested by the owner and approved by the Board of County Commissioners. If the owner has any questions regarding this information, he/she is encouraged to contact NRM prior to submittal of any development or construction plans.

<b>Natural Resource</b>	<b>Preliminary Assessment</b>	<b>Natural Resource</b>	<b>Preliminary Assessment</b>
Wetlands Potential/Hydric Soils	Hydric soils mapped	Coastal Protection	N/A
Aquifer Recharge Soils	Not mapped	Surface Waters	N/A
Floodplains	Not mapped	Wildlife	Not mapped

**Comments:**

**This review relates to the following property: Twp. 24, Rng. 35, Sec. 34; Tax ID No. 2408714**

The subject parcel contains mapped hydric soils, an indicator that wetlands may be present on the property. Per Conservation Element Policy 5.2.E.1.a, residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. The applicant is encouraged to contact NRM prior to any plan or permit submittal.

The owners are 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.

**III.B.2**

**Commission District # 2 (14PZ-00047)**  
**Initial Hearing Dates: P&Z 07/07/14 BCC 08/07/14**

**REZONING REVIEW WORKSHEET**

**Applicant Name: JOHN E. AND LAURAY AITCHESON**

**Request: RU-1-13 to IN(L)**

**Subject Property:**

**Parcel ID#: 25-36-17-01-00-30**  
**Tax Acct#: 2509876**  
**Location: Southwest corner of Green Rd., and Fiske Blvd.**  
**Address: 1003 Green Rd., Rockledge**  
**Acreage: 0.29 acre.**

**Consistency with Land Use Regulations**

- YES Current zoning can be considered under the Future Land Use Designation. Sec. 62-1255
- YES Proposal can be considered under the Future Land Use Designation. Sec. 62-1255
- YES Would proposal maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	RU-1-13 Group Home	IN(L) Assisted Living Facility
<b>Potential*</b>	6 residents	8 residents
<b>Can be Considered under FLU MAP</b>	YES RESIDENTIAL 15	YES

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

	<b>ADT</b>	<b>PM Peak</b>		
Trips from Existing Zoning	14.22	1.8	Segment Number	44
Trips from Proposed Zoning	18.96	2.4	Segment Name	I-95/Barnes to Eyster
Maximum Acceptable Volume (MAV)	35,000	3,185	Acceptable LOS	E
Current Volume	21,880	1,991	Directional Split	
Volume With Proposed Development	N/A	N/A	ITE CODE 620 6 existing beds increasing to 8. Less than 5 ADT increase De Minimus Exempt	
Current Volume / MAV	62.5%	62.5%		
Volume / MAV with Proposal	No change	No change		
Current LOS	E	E		
LOS With Proposal	E	E		

## Land Use Compatibility

FLUE Policy 1.1 requires consideration of land use compatibility and character of the area.

The request is for the IN(L) zoning classification. IN(L) is an institutional (Light) zoning classification, intended to promote low impact private, nonprofit, or religious institutional uses to service the needs of the public for facilities of an educational religious, health or cultural nature. The surrounding properties are zoned RU-1-13 to the north and west with RU-1-11 to the south. To the west, the subject property abuts Fiske Blvd. This area of Rockledge is characterized by single-family residential development. The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 - 8 of the Future Land Use Element, as outlined on pages 2 through 5 of these staff comments.

## Environmental Constraints

\* Does the project appear to meet county use or density restrictions based upon:  
 \* Refer to NRMD's comments following these staff comments.

The following environmental factors may affect development potential (Policies 1.1.A, II.2.E, and 3.1.F, of the Future Land Use Element):

Environmental Factor	Preliminary Assessment of Factor	Environmental Factor	Preliminary Assessment of Factor
Hydric Soils	Not Mapped	Coastal Protection	NA
Aquifer Recharge Soils	Not Mapped	Surface Water Protection	NA
Floodplains	Not Mapped	Habitat for Protected Species	Not Mapped

Note: This is a preliminary review based upon environmental maps available to the Natural Resources Management Department at the time of this review and does not include a site inspection to verify the accuracy of this information. This review does not ensure whether a proposed use or development of the property can be permitted under current federal, state or local regulations. Hydric Soils may be associated with wetlands. If applicable, the full text of NRMD's comments follow these staff comments.

**Other Considerations:** The subject property is currently developed with a 2,205 square foot single-family home. Currently the home is being utilized as a group home, level 1 with a maximum of six residents. The zoning regulations define a group home as "a facility in which the owners or operators are subject to licensing and approval by the state department of children and families, and where the owners or operators provide basic care, personal services and supervision necessary to meet the physical, emotional and social needs of assigned residents..."

A group home level 2 which would allow up to 14 residents is not permitted in single-family residential zoning and would require rezoning the property to multi-family zoning. A change to multi-family would likely be incompatible with the existing development patterns. Therefore the applicants are requesting the institutional light zoning classification, IN(L), which would allow an assisted living facility or a group home with up to 14 residents for their eight desired residents.

A group home, level 1 use with a maximum of six residents is a permitted use with conditions pursuant to **section 62-1835.9** in all single-family zoning classifications.

All group homes shall comply with the following, as applicable:

- (1) *Dispersal of facilities and notification to the county.*
  - a. The minimum distance between level I facilities in single-family or multi-family zoned areas shall be 1,000 feet. Notification to the county shall occur at the time of home occupancy pursuant to F.S. § section 419.001(2).

- b. The minimum distance between level II facilities in multi-family zoned areas and other group homes shall be 1,200 feet. Such facilities shall also maintain a radius of 500 feet from an area of single-family residential zoning.

*The subject property does not meet the condition that the facilities maintains a radius of 500 feet from single-family zoning. However, per section 3 (below) a request for reasonable accommodation can be sought and evaluated pursuant to section 62-305.*

- c. All distance requirements, stated in subsections a and b above, shall be measured from the nearest point of the existing home or area of single family zoning to the nearest point of the proposed home.
  - d. Written notification to the county for a level II facility shall be provided at the time of site selection, pursuant to F.S. § 419(3)(a). Notification shall contain the specific address or legal description of the site, the residential licensing category, the number of residents and community support requirements. Notification shall also contain a statement from the state indicating the need for and licensing status of the facility and the most recently published data identifying all similar facilities in the county.
  - e. The owner or operator of a group home shall notify the county within 15 days of the discontinued use to enable the county to maintain accurate dispersal record keeping.
- (2) *County procedures for level II group homes.* Pursuant to F.S. § 419(3)(b), the county may:
- a. Determine whether the siting of the level II group home is in accordance with county regulations;
  - b. Deny the siting of the level II group home, based upon one or more of the following:
    - 1. The use does not otherwise conform to existing zoning regulations applicable to other multi-family uses;
    - 2. The use does not meet applicable licensing criteria established by the state;
    - 3. The use would result in such a concentration of level II group homes in the area in proximity to the selected site or would result in a combination of such homes with other residences in the community, such that the nature and character of the area would be substantially altered. A home that is located within the minimum standards set forth in subsection (1)(b) shall be considered over concentration that substantially alters the nature and character of the area.
    - 4. Nothing in this section shall permit persons to occupy a group home who would constitute a direct threat to the health and safety of other persons or whose residency would result in substantial physical damage to the property of others.
    - 5. In the event that the county fails to respond to the notification within sixty (60) days of receipt, then the group home may be established at the selected site.
- (3) *Procedures for considering reasonable accommodation.* In circumstances where the standards set forth in this section cannot be met, a request for reasonable accommodation can be sought. Such requests may be evaluated pursuant to section 62-305 or other applicable relief procedures set forth in this chapter.
- (4) *Compliance with state regulations.* Violations of applicable statutes and regulations of the state shall be deemed violations of this division.

This request should be evaluated pursuant to **section 62-305** for reasonable accommodation standards and procedures. It is the policy of the county to provide fair access to housing for persons with disabilities and all other persons protected by the Federal Fair Housing Act, including providing reasonable accommodation in the application of the zoning regulations governing residential uses pursuant to federal and state law.

- (1) The persons requesting relief must demonstrate that the requested accommodation is appropriate and that, without the accommodation, they would be denied the opportunity to enjoy housing of their choice in the community of their choice. Once this standard is met, the burden shifts to the county to determine whether the requested accommodation is unreasonable.
- (2) In making a determination as to whether a requested accommodation is reasonable, the following standards shall be applied:
  - a. Whether the requested accommodation imposes an undue financial or administrative burden on county services, such as but not limited to, law enforcement, utilities, public works, traffic safety, public safety and public transportation; or
  - b. Whether the requested accommodation requires a fundamental alteration of the ordinance, zoning regulations, comprehensive plan and the neighborhood; or
  - c. Whether the requested accommodation undermines legitimate purposes and effects of existing zoning.
- (3) The following factors shall be weighed in considering reasonable accommodation:
  - a. Special needs created by the disability;
  - b. Potential benefit that can be accomplished by the requested modification, which may include:
    1. Opportunity to enjoy support, security, location, services, proximity to work or friends provided in a group home in the community of choice;
    2. Opportunity to plan a residential community with special amenities;
  - c. Potential impact on surrounding uses;
  - d. Physical attributes of the property and structures thereon;
  - e. Choice of alternative accommodations which may provide an equivalent level of benefit; and
  - f. Whether, in the case of a determination involving a single family dwelling, the household would be considered a single housekeeping unit if it were not using special services that are required because of the disabilities of the residents.
  - g. Other considerations when evaluating requests for reasonable accommodation:
    1. Character of the neighborhood and zoning classification (residential or non-residential);
    2. Residential character of the house (consistency of interior and exterior with single-family usage); and
    3. Parking needs of residents.
- (4) Procedures for evaluating reasonable accommodation.
  - a. Requests for reasonable accommodation shall follow the application and public hearing procedure set forth in Article II, Division 6 of this chapter.
  - b. In the event that a request for reasonable accommodation is not decided within 60 days of the date of application, the request shall be automatically granted. This time period may be extended upon agreement of both parties.

The applicants have not yet demonstrated that the facility complies with State requirements. It is anticipated that exterior site work, such as parking for employees and visitors will be required.

**Summary:** The applicants wish to rezone the property to IN(L) for the purposes of having a group home with eight residents. The subject property does not meet the condition that the facilities maintains a radius of 500 feet from single-family zoning. However, per section 62-1835.9, a request for reasonable accommodation can be sought and evaluated pursuant to section 62-305. At this time, a request for reasonable accommodation has not been submitted.

Given the single-family development in the area, the Board may wish to cap the total number of residents and limit the use of the property as a group home given the character of the single-family subdivision.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT**  
**Rezoning Review**  
**SUMMARY**

<b>Item #: 14PZ-00047</b>	<b>Owner: John &amp; Lauray Aitcheson</b>
<b>Zoning Request: RU-1-13</b>	
<b>P &amp; Z Hearing Date: 07/07/14</b>	<b>BCC Hearing Date: 08/07/14</b>

This is a preliminary review based on environmental maps available to the Natural Resources Management Department (NRM) at the time of this review and does not include a site inspection to verify the accuracy of this information. This review does not ensure whether or not a proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations. In that this process is not the appropriate venue for site plan review, specific site designs that may be submitted with the rezoning will be deemed conceptual and any comments or omissions relative to specific site design do not provide vested rights or waivers from these regulations, unless specifically requested by the owner and approved by the Board of County Commissioners. If the owner has any questions regarding this information, he/she is encouraged to contact NRM prior to submittal of any development or construction plans.

Natural Resource	Preliminary Assessment	Natural Resource	Preliminary Assessment
Wetlands Potential/Hydric Soils	Not mapped	Coastal Protection	N/A
Aquifer Recharge Soils	Not mapped	Surface Waters	N/A
Floodplains	Not mapped	Wildlife	Not Mapped

**Comments:**

**This review relates to the following property: Twp. 25, Rng. 36, Sec. 17; Tax ID No. 2509876**

The owners are 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.

**III.B.4.**

**Commission District # 5 (14PZ-00052)**  
**Initial Hearing Dates: P&Z 07/07/14 BCC 08/07/14**

**REZONING REVIEW WORKSHEET**

**Applicant Name: EDWARD STOCKER**

**Request: Amendment to BDP in a PUD zoning classification**

**Subject Property:**

**Parcel ID#: 28-36-10-03-00-B.40**  
**Tax Acct#: 2861829**  
**Location: Northwest corner of Brandywine Ln., and Ranch Rd.**  
**Address: 2500 Ranch Rd., Melbourne.**  
**Acreage: .72 acres.**

**Consistency with Land Use Regulations**

- YES Current zoning can be considered under the Future Land Use Designation. Sec. 62-1255
- YES Proposal can be considered under the Future Land Use Designation. Sec. 62-1255
- YES Would proposal maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	PUD with BDP for 55 and older	PUD
<b>Potential*</b>	3 SFR Dwellings 55+ age restriction	3 SFR Dwellings No 55+ age restriction
<b>Can be Considered under FLU MAP</b>	YES RESIDENTIAL 2	YES

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

		<b>ADT</b>	<b>PM Peak</b>	
Trips from Existing Zoning	3.03	28.71	Segment Number	Unassigned
Trips from Proposed Zoning	No Change	No Change	Segment Name	N/A
Maximum Acceptable Volume (MAV)	None assigned	None assigned	Acceptable LOS	None assigned
Current Volume	Unknown	Unknown	Directional Split	
Volume With Proposed Development	No change	No change	ITE CODE 210 3 existing platted lots 2 vacant, one existing d.u. Removing 55+ age restriction	
Current Volume / MAV	Unknown	Unknown		
Volume / MAV with Proposal	No change	No change		
Current LOS	N/A	N/A		
LOS With Proposal	N/A	N/A		

## Land Use Compatibility

FLUE Policy 1.1 requires consideration of land use compatibility and character of the area.

The request is for an amendment to the Binding Development Plan (BDP) as part of the existing PUD zoning classification. The Planned Unit Development (PUD) is a concept which encourages and permits variation in development by allowing deviation in lot size, bulk or type of dwellings, density, lot coverage and open space from that required in any one residential zoning classification. The purpose of a PUD is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as industrial, commercial and institutional land uses. The surrounding properties are also zoned PUD. This area of Melbourne is characterized by single-family development. The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 - 8 of the Future Land Use Element, as outlined on pages 2 through 5 of these staff comments.

## Environmental Constraints

NA

**Other Considerations:** This request represents the applicant's desire to amend an existing Binding Development Plan (BDP) for parcel 2 of tract B in the Brandywine Estates PUD. It was approved in January 2004 (Z-10900) for a 1.896 acre open space tract (known as Tract B) in the Brandywine Estates PUD.

As background, in 2003, the Brandywine Homeowners Association requested that the open space tract be converted to three single-family home sites. A BDP was proffered limiting the homes to occupants of over 55 years of age pursuant to section 760.29 (4)(b) 3, F.S. In 2003, prior to the enactment of a school concurrency ordinance, the Board did not approve rezoning requests that would yield more than one additional residential unit if schools serving the development were over capacity. In this case, Melbourne High School was overcapacity. Accordingly, the limitation as 55+ housing was offered by the Brandywine HOA.

The applicant who is the owner of parcel 2 of tract B desires to develop a single-family home; however, the existing BDP limits the property to persons of 55 and over with a stipulation of developing two out of the three lots from Tract B of the Brandywine Estates Subdivision as single-family lots.

More specifically, paragraph number two of the existing BDP states "The Developer/Owner shall develop two of the three lots created from the Property, as designated by the Developer/Owner in Exhibit "B" attached hereto, so that same qualify as housing for older persons pursuant to Section 760.29(4) (b) 3, Florida Statutes (2003), which is defined as housing which is intended to be operated for occupancy by persons 55 years of age or older and that also meets certain other additional requirements under such subsection. Developer/Owner wishes to seek a waiver of this restriction as a result of a change in circumstances for which the Developer/Owner originally agreed to execute this agreement and be bound by the restrictions contained herein, same shall be treated and considered as an amendment to this document only."

Only one of the three lots (Parcel 1 of Tract B) included in the existing Binding Development Plan has been developed with a single-family home. The subject property is parcel 2 of Tract B described in "Exhibit B" of the existing BDP. The property owner has stated that persons under 55 years of age will be living in the house. The applicant is advised that Educational Impact Fees will be due upon Certificate of Occupancy of the residence.

**Summary:** This request is for the purposes of developing a single-family home that can accommodate persons who are not 55 and over. The existing BDP limits the property to persons of 55 and over with a stipulation of developing two out of the three lots from Tract B of the Brandywine Estates Subdivision as single-family lots. Only one of the three lots included in the existing Binding Development Plan, parcel 1 of tract B has been developed with a single-family home. The applicant is advised that Educational Impact Fees will be due upon Certificate of Occupancy of the residence.

**III.B.5.**

**Commission District # 5 (14PZ-00055)**  
**Initial Hearing Dates: P&Z 07/07/14 BCC 08/07/14**

**REZONING REVIEW WORKSHEET**

**Applicant Name: MORTGAGE INVESTMENT FUND I, LLC**

**Request: Amendment to an existing CUP for Commercial, Entertainment, and Amusement Enterprises, to include racing, swap meets, and vehicle shows for cars, air boats, tractors, trucks, riding lawn mowers, go carts, and ATV's, with spectator seating, concessions, and a grandstand for awards and live music, with a waiver of 50 ft. from the required 75 ft. setback for a building, mobile home, trailer, vehicle, or maintenance equipment, per Brevard County Code, Section 62-1921(f), in an IU (Industrial Use) zoning classification**

**Subject Property:**

**Parcel ID#: 27-36-22-00-766**  
**Tax Acct#: 2744135**  
**Location: South side of Eau Gallie Blvd., approx. 410 ft. west of Jones Rd.**  
**Address: Tax Parcel 751: No assigned address. In the Melbourne area; Tax Parcel 753: 835 Paw Prints Ave., Melbourne; Tax Parcel 766: No assigned address. In the Melbourne area.**  
**Acreage: 21.84 acres.**

**Consistency with Land Use Regulations**

YES Current zoning can be considered under the Future Land Use Designation. Sec. 62-1255  
YES Proposal can be considered under the Future Land Use Designation. Sec. 62-1255  
YES Would proposal maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	IU with CUP	IU with CUP Amendment
<b>Potential*</b>	394 Parking Spaces 1,184 attendee capacity	394 Parking Spaces 1,184 attendee capacity
<b>Can be Considered under FLU MAP</b>	YES INDUSTRIAL	YES

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

	<b>ADT</b>	<b>PM Peak</b>		
Trips from Existing Zoning	332	30.1	Segment Number	None Assigned
Trips from Proposed Zoning	No Change	No Change	Segment Name	N/A
Maximum Acceptable Volume (MAV)	16,900	1,537.9	Acceptable LOS	D
Current Volume	Unknown	Unknown	Directional Split	
Volume With Proposed Development	No Change	No Change	ITE CODE 453 – 1,184 attendees Existing 394 parking spaces Engineer of Record states no increase in parking capacity. Default MAV utilized	
Current Volume / MAV	Unknown	Unknown		
Volume / MAV with Proposal	No Change	No Change		
Current LOS	D	D		
LOS With Proposal	D	D		

## Land Use Compatibility

FLUE Policy 1.1 requires consideration of land use compatibility and character of the area.

This request is for an amendment to the Amusement and Entertainment Conditional Use Permit (CUP) in the IU zoning classification. The subject property is zoned IU. The IU zoning classification permits light industrial land uses within enclosed structures. The minimum lot size is 20,000 square feet, with a minimum width of 100 feet and a minimum depth of 200 feet. The site is located approximately 500 feet west of I-95 with frontage on Eau Gallie Blvd. To the east of the property is TU-2 zoned property containing an existing flea market. To the south is vacant industrial lands zoned IU. To the west is IU and IU-1 zoning with an existing truss manufacturing plant. The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 - 8 of the Future Land Use Element, as outlined on pages 8-9 of these staff comments.

## Environmental Constraints

NA

**Other Considerations:** This request is for an amendment to the Amusement and Entertainment Conditional Use Permit (CUP) in the IU zoning classification approved in 2010 (Z-11546). The CUP was approved "with the stipulation that no suspended solids contained in storm water runoffs, or airborne particulates, will enter into the Lake Washington watershed, and allowing only trucks, ATV's, lawnmowers, go-carts, and 4-wheelers, with no motorcycles..."

Under the current request, the applicant wishes to expand the uses to include a new oval racetrack at the south end of the property, an event grandstand for awards and live music with spectator seating, concession stand and permanent public restrooms as well as conducting racing swap meets and vehicle shows including airboats, tractors, cars, trucks, ATVs, and riding lawnmowers. Additionally, the applicant is requesting a 50' waiver from the required 75' setback from the perimeter for vehicle use. Section 62-1921(f) requires that vehicle use be setback a minimum of 75 feet from the site boundary. The proposed racetrack on the subject property is proposed to be located 25 feet from the south boundary of the subject tract.

The applicant has submitted an unscaled site plan depicting 394 parking spaces but has not depicted the total s.f. of all spectator areas. Parking will be addressed during site plan review. However, Section 62-1921(g) requires (1) Parking areas shall be stabilized or hard surfaced; (2) Outdoor attractions, with or without grandstands, shall provide one parking space for each three fixed seats, and one parking space for each 20 square feet of seating or spectator area where no fixed seats exist, plus one space for each two employees; (3) Privately operated recreation areas or structures shall provide five spaces for each acre of outdoor attractions, plus one space for each 50 square feet of total floor area, plus one space for every two employees.

The Board should consider the compatibility of the proposed CUP pursuant to Section 62-1151(c) and to Section 62-1901, as outlined on pages 6-9 of these comments. Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP based upon consideration of applicable regulations relating to zoning and land use within the context of public health, safety and welfare. The applicant has submitted documentation in order to demonstrate consistency with the standards set forth in Section 62-1901. The applicant's responses are indicated in **bold** and staff observations are provided in *italics*.

### Section 62-1901(c)(1)(a) Impact upon adjacent and nearby properties from the proposed use:

Number of persons using property;  
Noise, odor, particulates, smoke, fumes and other emissions; and  
Increase in traffic within the vicinity.

The subject site already has an existing CUP which allows truck shows, mud bogging, go cart racing, lawnmower racing, ATV Racing. The additional uses shown in the proposed CUP will not result in a substantial and adverse impact on adjacent properties that is not already permitted (1) the number of spectators anticipated can easily be handled on the event center land and would not be negatively impacting the neighboring properties. (2) odor, noise, particulates, smoke, fumes and other emissions would not be excessive and would not be creating a nuisance or negatively impacting the neighboring properties. (3) the proposed CUP would not have an excessive traffic trip generation and would generally occur only on weekend evenings, which is when the rest of the industrial operations in the area are closed. The traffic generation would not be in conflict with adjacent properties since they have their traffic generation at very different times of day.

Section 62-1901(c)(1)(b) Compatibility with the character of adjacent and nearby properties with regard to use:

Adjacent properties;  
Operating hours;  
Amount of traffic generated;  
Building size and setbacks; and  
Parking availability.

**The proposed use will be for motor vehicle racing, mostly cars, occasional live music and would be compatible with the surrounding area. The surrounding area is all industrial. The event center has an existing CUP for similar activities and has hosted several special events on the site already. The hours of operation will only be on weekend evenings which is when the surrounding industrial operations are mostly all closed. The only proposed new buildings would be small structures such as restroom facilities and concession stands which would be accessory to the main uses. There is adequate parking on site for the proposed events.**

*The site plan depicts 394 parking spaces. The spectator area requires one parking space for every 20 square feet. Previously, the spectator area consisted of 1,900 s.f. and ninety five spaces were required for this size spectator area. The previous site plan showed 97 spaces provided for parking. The site plan also indicates that there is a variety of paving types existing or proposed for the site and should be evaluated during the subsequent site plan review stage.*

Section 62-1901(c)(1)(c) Impact upon property values of abutting residential properties:

**The proposed expansion of the uses allowed for racing on the site would not cause any reduction in property values of the surrounding lands.**

Section 62-1901(c)(2)(a) Adequacy of ingress and egress to serve the use without burdening adjacent and nearby uses:

**Ingress and egress to the site is from the intersection of W. Eau Gallie Blvd. south through Paw Prints Ave. The section of W. Eau Gallie west of I-95 has a very low traffic demand due to the fact that W. Eau Gallie dead ends just west of Paw Prints. The proposed expansion of the uses allowed on the site would not increase the existing traffic by more than 20% nor degrade the level of service.**

*Eau Gallie Blvd. west of the I-95 interchange is classified as a local roadway. From the Interchange to east of I-95, the road is classified as an urban principal arterial. Paw Prints St. is not a public right-of-way and is not constructed to County standards. It appears that 9 parcels have access via Paw Prints St. The subject property has direct frontage on Eau Gallie Blvd. to the north. Although the applicant states the proposed increase in traffic is less than 20%, no traffic data was submitted for review. The Board may wish to evaluate the adequacy of ingress and egress to the subject property in conjunction with the proposed use. It is noted that, during special events, Paw Prints has been converted to ingress only, precluding egress by patrons until the conclusion on the event.*

Section 62-1901(c)(2)(b) Noise, glare, odor, particulates, smoke, fumes, etc.:

**The noise, glare, odor, particulates, smoke, fumes and other emissions from the conditional use will not substantially interfere with the use or enjoyment of adjacent and nearby property. The emissions**

**generated from the proposed CUP uses are generally not greater than emissions from the other surrounding industrial uses and will not cause adverse impacts to the neighboring properties.**

*The property is subject to the performance standards found in sections 62-2251 through 2271 of the Zoning regulations.*

Section 62-1901(c)(2)(c) Actual Noise Levels:

*The property is subject to the performance standards found in sections 62-2251 through 2271 of the Zoning regulations.*

Section 62-1901(c)(2)(d) Impact upon solid waste disposal level of service:

**The proposed expansion of the CUP uses will not cause the adopted level of service for solid waste to be exceeded for this site.**

Section 62-1901(c)(2)(e) Impact upon potable water and waste water levels of service:

**The project is on well water and septic and will have no impact on levels of service for potable water and sewer.**

*The applicant is proposing a new public restroom building.*

Section 62-1901(c)(2)(f) Screening and buffering:

**All the surrounding lands uses are of equal or more intensity and therefore screening or buffering is not required.**

*As part of this request, the applicant is requesting a 50' waiver from the required 75' setback from the perimeter for vehicle use. Section 62-1921(f) requires that vehicle use be setback a minimum of 75 feet from the site boundary. The proposed racetrack on the subject property is proposed to be located 25 feet from the south boundary of the subject tract.*

Section 62-1901(c)(2)(g) Signage and glare from lighting:

**The pole mounted site lighting mainly for illumination of the truck areas is shielded from excessive illumination leaving the site. No large illuminated sign is proposed.**

*Signage and lighting will be addressed during site plan review.*

Section 62-1901(c)(2)(h) Hours of operation:

**None of the surrounding land has a residential use or zoning. The hours of operation will generally be on weekends. Friday, Saturday and sometimes Sunday, opening about 5:00 p.m. and closing about midnight. The hours of operation will not adversely affect the use and enjoyment of any residential area.**

Section 62-1901(c)(2)(i) Height of proposed use:

**All existing buildings on the site and the one new proposed restroom area all one story, less than 30' high.**

Section 62-1901(c)(2)(j) Impact of off-street parking and loading areas upon adjacent properties:

**The off-street parking and loading areas will all be contained on site and will not adversely impact the use and enjoyment of adjacent and nearby properties.**

Section 62-1921 defines a Large Scale commercial enterprise as a commercial recreational facility that may include motorized vehicles, or spectator seating for paid events. Such uses may have amplified music or loudspeakers, or other noise sources. Typical uses include amphitheatres or outdoor music events, theme parks, equestrian facilities, rodeos, circuses, skateboard parks, race tracks, go karts, ATV or motorcycle tracks, and sports stadiums or arenas. Section 62-1921 also sets forth standards for Commercial Entertainment and Amusement Enterprises. The applicant will have to comply with these standards as follows:

(b) *Location.* No outdoor attraction or other commercial amusement as indicated in subsection (a) of this section shall be permitted within 300 feet of an existing residential development or an area designated by the county comprehensive land use plan for residential development.

*The site is located approximately 500 feet west of I-95 with frontage on Eau Gallie Blvd. To the east of the property is TU-2 zoned property containing an existing flea market. To the south is vacant industrial lands zoned IU. To the west is IU and IU-1 zoning with an existing truss manufacturing plant.*

- (c) *Minimum lot area.* Uses permitted under this section shall provide a minimum lot area of one-half acre for small scale enterprises, and five acres for large scale enterprises.

*The subject property is approximately 21.84 acres.*

- (d) *Performance standards.* The operation of these facilities shall conform to all rules and regulations of all governmental agencies having appropriate jurisdiction and the performance standards of this article. Upon request by the board of county commissioners, the applicant may be required to provide appropriate studies of similar or comparable uses relating to specific performance standards to support compliance.
- (e) *Fencing and screening.* Where deemed necessary by the board of county commissioners to protect the general public and abutting property, additional fencing or landscape screening beyond that which is specified by the land development regulations may be required.

*The applicant has submitted a site plan depicting a fenced truck show area and proposed sand pit and a new oval racetrack at the south end of the property.*

- (f) *Perimeter setbacks.* No building, mobile home, trailer, vehicle or mechanical equipment shall be located closer to the property line than 75 feet.

*As part of this request, the applicant is requesting a waiver of 50' from the 75' perimeter setback for vehicle parking.*

- (g) *Parking and loading.* All uses authorized shall be subject to the off-street parking requirements as set forth in article VIII of this chapter, with the following requirements:
  - (1) Parking areas shall be stabilized or hard surfaced.
  - (2) Outdoor attractions, with or without grandstands, shall provide one parking space for each three fixed seats, and one parking space for each 20 square feet of seating or spectator area where no fixed seats exist, plus one space for each two employees.
  - (3) Privately operated recreation areas or structures shall provide five spaces for each acre of outdoor attractions, plus one space for each 50 square feet of total floor area, plus one space for every two employees.

*The applicant has submitted a conceptual site plan that depicts two proposed 24 s.f. portable ticket booths, an event grandstand, a spectator area, an existing mud bog pit track and staging area. Proposed restrooms and concession stand and a proposed oval race track. The site plan depicts 394 parking spaces. The spectator area requires one parking space for every 20 square feet. Previously, the spectator area consisted of 1,900 s.f. and ninety five spaces were required for this size spectator area. The previous site plan showed 97 spaces provided for parking. The site plan also indicates that there is a variety of paving types existing or proposed for the site and should be evaluated during the subsequent site plan review stage.*

- (h) *Site plan.* A detailed site plan shall be submitted in conjunction with the application for a conditional use permit in accordance with the requirements of this section and article VIII of this chapter.

*The applicant has submitted a conceptual site plan as part of this application. A formal site plan will be required to be submitted and approved with all improvements installed in order for this business to operate and must*

*include permanent bathroom facilities for the public.*

**Summary:** The applicant wishes to expand the uses to include a new oval racetrack at the south end of the property, an event grandstand for awards and live music with spectator seating, concession stand and public restrooms as well as conducting racing swap meets and vehicle shows including airboats, tractors, cars, trucks, ATVs, and riding lawnmowers.

Additionally, the applicant is requesting a 50' waiver from the required 75' setback from the perimeter for vehicle use. Section 62-1921(f) requires that vehicle use be setback a minimum of 75 feet from the site boundary. The proposed racetrack on the subject property is proposed to be located 25 feet from the south boundary of the subject tract.

The applicant has submitted a conceptual site plan as part of this application. A formal site plan will be required to be submitted and approved with all improvements installed in order for this business to operate full time and must include permanent bathroom facilities for the public.

Further, the Board may wish to evaluate the adequacy of ingress and egress to the subject property in conjunction with the proposed use. It is noted that, during special events, Paw Prints has been converted to ingress only, precluding egress by patrons and occupants of neighboring properties until the conclusion on the event.

The subject property is located in the City of Melbourne's Joint planning review area. The City of Melbourne offers the following comments for the proposed rezoning.

- The subject site is designated as industrial on the County's Future Land Use Map and is zoned Light Industrial (IU). The requested amendment to an existing CUP for a commercial entertainment and amusement enterprise will allow for auto racing and an oval racing track on the subject property. The applicant should demonstrate that all applicable County regulations can be met as part of the site plan process for any proposed improvements.
- A request for new water and sewer service will require the property owner to sign an annexation agreement or participate in an annexation referendum.



**Planning & Development Department**  
2725 Judge Fran Jamieson Way  
Building A, Room 114  
Viera, Florida 32940  
(321) 633-2069

**BOARD OF COUNTY COMMISSIONERS**

**TO:** North Merritt Island Dependent Special District Board Members

**FROM:** Cindy Fox, Planning & Zoning Manager

**SUBJ:** Planning and Zoning Staff Comments  
July 10, 2014

**DATE:** June 18, 2014

The following comments are compiled by the Planning and Zoning staff and are reflections of a combination of technical reviews. These are presented to the North Merritt Island Dependent Special District Board and the Board of County Commissioners as a collection of known facts surrounding each proposal and their relationship to the policies of the Comprehensive Plan. It is hoped that these known facts and policy statements will assist each member in their individual decision-making efforts as additional information is received through the public hearing process. The material contained in these comments will be provided to the Commissioners in staff briefings. Any matter discussed in staff briefings not contained in this review will be disclosed at the Board of County Commissioners meeting.

**STAFF COMMENTS PREPARED BY:**

Planning & Zoning Office  
NATURAL RESOURCES MANAGEMENT DEPARTMENT

**Legend of Terms:**

FLU Map - Future Land Use Map of Comprehensive Plan  
FLUE - Future Land Use Element

## **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 and 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 zoning 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 zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan appeals, vested rights or other 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 per cent 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 an 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 or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), 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 service 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, odor, 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 that the following general standards are satisfied. The Board shall make the 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 MAI 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 thirty-five (35) feet higher than the highest residence within 1000 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 the section into the Zoning file and Public Record for that item.

These staff comments contain references to Policies of the Brevard County 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 MPO 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 (ALOS):** Acceptable Level of Service currently adopted by the County.

**Current 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 LOS that a proposed development may generate on a roadway.

**III.B.3.**

**Commission District # 2 (14PZ-00054)**  
**Initial Hearing Dates: NMI 07/10/14 BCC 08/07/14**

**REZONING REVIEW WORKSHEET**

**Applicant Name: GERALD E. WOODCOCK, TRUSTEE**

**Request: CUP for Alcoholic Beverages (beer & wine only) for On-Premises Consumption in Conjunction with a Restaurant in a BU-1 zoning classification**

**Subject Property:**

**Parcel ID#: 23-36-22-00-799**  
**Tax Acct#: 231637**  
**Location: East side of N. Courtenay Pkwy., approx. .19 mile north of Crisafulli Rd.**  
**Address: 6100 N. Courtenay Pkwy., Merritt Island**  
**Acreage: 1.29 acres.**

**Consistency with Land Use Regulations**

YES Current zoning can be considered under the Future Land Use Designation. Sec. 62-1255  
YES Proposal can be considered under the Future Land Use Designation. Sec. 62-1255  
YES Would proposal maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	BU-1	BU-1 with CUP
<b>Potential*</b>	62 seat restaurant	62 seat restaurant With beer/wine
<b>Can be Considered under FLU MAP</b>	YES COMMUNITY COMMERCIAL	YES

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

**ADT PM Peak**

	<b>ADT</b>	<b>PM Peak</b>		
Trips from Existing Zoning	287.06	50.84	Segment Number	157
Trips from Proposed Zoning	No Change	No Change	Segment Name	Hall to N. Tropical
Maximum Acceptable Volume (MAV)	34,200	3,112.2	Acceptable LOS	E
Current Volume	13,570	1,234.87	Directional Split	
Volume With Proposed Development	No Change	No Change	ITE CODE 932 Existing 62 seat restaurant Adding beer/wine sales No increase in seating	
Current Volume / MAV	39.67%	39.67%		
Volume / MAV with Proposal	No Change	No Change		
Current LOS	E	E		
LOS With Proposal	E	E		

## Land Use Compatibility

FLUE Policy 1.1 requires consideration of land use compatibility and character of the area.

The request is for a Conditional Use Permit (CUP) to permit on-premises consumption of alcoholic beverages in the BU-1 zoning classification. The BU-1 classification allows retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling. The surrounding properties are zoned BU-1 to the north, south and west, across North Courtenay Parkway. To the east is AU zoning. The AU zoning classification permits single-family residences and agricultural pursuits on 2 ½ acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing of animals, fowl and beekeeping. This area of North Merritt Island is characterized by a mixture of uses along the North Courtenay Parkway. The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 - 8 of the Future Land Use Element, as outlined on pages 2 through 5 of these staff comments.

## Environmental Constraints

NA

**Other Considerations:** The applicant is requesting a Conditional Use Permit (CUP) for the on premises consumption of alcohol (beer and wine) accessory to a 62 seat existing restaurant (Shuttles). This property is developed with a 2,400 s.f. building constructed in 1984 and had a nonconforming alcohol license for the on-premises consumption of alcohol; however, the restaurant closed in 2010 and needs to apply for the CUP, which permits beer and wine consumption on premises.

The Land Development Regulations require one space for every 100 s.f. of building including outdoor seating. The required parking for a 2,400 s.f. establishment is 24 spaces. Consistency with this requirement is attainable since the site is designed for 68 parking spaces.

The Board should consider the compatibility of the proposed CUP pursuant to Section 62-1151(c) and to Section 62-1901, as outlined on pages 6-9 of these comments. Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP based upon consideration of applicable regulations relating to zoning and land use within the context of public health, safety and welfare. The applicant has submitted documentation in order to demonstrate consistency with the standards set forth in Section 62-1901. The applicant's responses are indicated in **bold** and staff observations are provided in *italics*.

### Section 62-1901(c)(1)(a) Impact upon adjacent and nearby properties from the proposed use:

Number of persons using property;  
Noise, odor, particulates, smoke, fumes and other emissions; and  
Increase in traffic within the vicinity.

**Shuttles will employ 10 to 15. There has been a restaurant bar at this location for over 30 years.**

### Section 62-1901(c)(1)(b) Compatibility with the character of adjacent and nearby properties with regard to use:

Adjacent properties;  
Operating hours;  
Amount of traffic generated;  
Building size and setbacks; and  
Parking availability.

**There has been a restaurant bar at this location for over 30 years.**

Section 62-1901(c)(1)(c) Impact upon property values of abutting residential properties:

**The improvements that have been made will increase the value of the abutting properties.**

*The subject property abuts single-family zoning to west. Potential impacts associated with a commercial use that operates at night should be evaluated by the Board.*

Section 62-1901(c)(2)(a) Adequacy of ingress and egress to serve the use without burdening adjacent and nearby uses:

**We are not going to increase the traffic on existing road.**

Section 62-1901(c)(2)(b) Noise, glare, odor, particulates, smoke, fumes, etc.:

**Any noise odor or fumes will be minimal.**

*The property is subject to the performance standards found in sections 62-2251 through 2271 of the Zoning regulations.*

Section 62-1901(c)(2)(c) Actual Noise Levels:

**No outside seating. Noise will be minimal.**

*The property is subject to the performance standards found in sections 62-2251 through 2271 of the Zoning regulations.*

Section 62-1901(c)(2)(d) Impact upon solid waste disposal level of service:

**Will not**

Section 62-1901(c)(2)(e) Impact upon potable water and waste water levels of service:

**Will not**

Section 62-1901(c)(2)(f) Screening and buffering:

**Block wall across the back of the property, privacy fence on the side.**

Section 62-1901(c)(2)(g) Signage and glare from lighting:

**Same signs that have been here for 35 years.**

Section 62-1901(c)(2)(h) Hours of operation:

**Will not**

Section 62-1901(c)(2)(i) Height of proposed use:

**Not changing.**

*Existing building is one story.*

Section 62-1901(c)(2)(j) Impact of off-street parking and loading areas upon adjacent properties:

**The same as it's been for 35 years.**

This request should be evaluated in the context of **Section 62-1906** which governs alcoholic beverages for the on-premise consumption of alcohol which states in, specifically 62-1906 (3) and (5)

- 3) Except for restaurants with more than 50 seats, no alcoholic beverages shall be sold or served for consumption on the premises from any building that is within 300 feet from the lot line of a school or church if the use of the property as a school or church was established prior to the commencement of the sale of such alcoholic beverages. For the purposes of this subsection, a school shall include only grades kindergarten through 12. For the purpose of establishing the distance between the proposed alcoholic beverage use and churches and schools, a certified survey shall be furnished from a registered engineer or surveyor. Such survey shall indicate the distance between the front door of the proposed place of business and all property lines of any church or school within 400 feet. Each survey shall indicate all such distances and routes.

*The applicant is an existing restaurant with more than 50 seats. Nevertheless, there are no churches or schools within 400 feet of the proposed restaurant.*

- 5) Imposition of additional operational requirements. When deemed appropriate, as based upon circumstances revealed through the general and specific standards of review set forth in this division, the Board shall have the option of imposing operational requirements upon an establishment approved for a conditional use for on-premises consumption of alcoholic beverages. Requirements may include, but are not limited to, the following: maximum number of patrons; hours of operation; limitations upon outdoor seating and service of alcoholic beverages; limitations upon outside music and/or public address systems; additional buffering requirements; additional parking requirements; internal floor plan arrangement; or other specific restrictions based upon special neighborhood considerations. Additional requirements shall not exceed the limits of regulatory authority granted to local governments in the State Beverage Law, F.S. § 562.45.

**Summary:** The applicant is requesting a Conditional Use Permit (CUP) for the on premises consumption of alcohol (beer and wine) accessory to a 62 seat existing restaurant (Shuttles). This property is developed with a 2,400 s.f. building constructed in 1984 and had a nonconforming alcohol license for the on-premises consumption of beer and wine; however the restaurant closed in 2010 and the state alcohol license was not maintained.

The Land Development Regulations require one space for every 100 s.f. of building including outdoor seating. The required parking for a 2,400 s.f. establishment is 24 spaces. Consistency with this requirement is attainable since the site is designed for 68 parking spaces. There are no churches or schools within 400 feet of the existing restaurant and they do not propose any outside seating.