

Meeting Date
March 6, 2018



AGENDA	
Section	CONSENT
Item No.	II.A.1

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Binding Development Plan Acceptance, Re: Re: Donald E. and Stacy L. Clark (D1) FISCAL IMPACT: NONE
DEPT/OFFICE:	Planning & Development Department

Requested Action:

In accordance with Section 62-1157, it is requested that the Board of County Commissioners accept and authorize the Chairman to sign the Binding Development Plan.

Summary Explanation & Background:

On December 7, 2017, the Board of County Commissioners approved a change of Zoning Classification from BU-1 to BU-2, contingent upon a Binding Development Plan (BDP). The BDP is a voluntary agreement presented by a property owner to self-impose limits upon development of a property in support of a change of zoning or conditional use permit. Pursuant to Section 62-1157, a BDP shall be recorded in the public records within 120 days of approval of the zoning application by the Board. Following staff and legal review, a BDP is routinely presented to the Board in recordable form as a Consent agenda item in order to finalize the zoning action. The attached BDP contains the following stipulations:

- Developer/Owner shall be limited to the BU-2 use of manufacturing and outdoor storage of concrete yard ornamental figurines and statues, while retaining, without limitation, all rights, provisions, and activities allowed under the BU- 1 zoning classification.

The property is 2.98 acres and is located at 3810 U.S. Hwy 1, Mims.

Reference: 17PZ00118

Staff Contact: Jennifer Jones, Ext 5-2653

Clerk to the Board instruction: After recordation, please forward two certified copies to the Planning and Development Department

Exhibits Attached: Binding Development Plan, with exhibits, and check for recording

Contract /Agreement (If attached): Reviewed by County Attorney		Yes	X	No	<input type="checkbox"/>	PR <input type="checkbox"/>
County Manager	Assistant County Manager John Denninghoff			Department Director / Extension Tad Calkins Planning & Development Dept. Ext. 56363		
Frank Abbate	Interim Assistant County Manager Jim Liesenfelt					

RESOLUTION NO. 17PZ00118

On motion by Commissioner Isnardi, seconded by Commissioner Barfield, the following resolution was adopted by a unanimous vote:

WHEREAS, DONALD E. & STACY L. CLARK have requested a change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial) on property described as Tax Parcel 503.1, as recorded in ORB 7400, Pages 1595 – 1597, of the Public Records of Brevard County, Florida. (2.98 acres) Located on the west side of U.S. Hwy 1, approx. 200 ft. north of E.R. Smyth Dr. (3810 U.S. Hwy 1, Mims)

Section 31, Township 20 S, Range 35 E, and,

WHEREAS, a public hearing of the Brevard County Planning & Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning & Zoning Board recommended that the application be approved with a BDP (Binding Development Plan) limited to the manufacturing and outdoor storage of concrete yard ornamental figurines and statues, while retaining, without limitation, all rights, provisions, and activities allowed under the BU-1 zoning classification; and

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

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from from BU-1 to BU-2, be APPROVED with a BDP, recorded in ORB 8110, Pages 1694 - 1700, dated March 9, 2018, limited to the manufacturing and outdoor storage of concrete yard ornamental figurines and statues, while retaining, without limitation, all rights, provisions, and activities allowed under the BU-1 zoning classification. The zoning classification relating to the above described property shall be changed to BU-2, and the Planning & Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of March 9, 2018.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida



by Rita Pritchett, Chair
Brevard County Commission
As approved by Brevard County Commission on March 6, 2018.

ATTEST:



SCOTT ELLIS, CLERK
(SEAL)

(P&Z Hearing – November 6, 2017)
(BCC Zoning Hearing – December 7, 2017)

Please note: A Conditional Use Permit will generally expire on the three year anniversary of its approval if the use is not established prior to that date. Conditional Use Permits for Towers and Antennas shall expire if a site plan for the tower is not submitted within one (1) year of approval or if construction does not commence within two years of approval. A PUD Preliminary Development Plan expires if a final development plan is not filed within three years.

THE GRANTING OF THIS ZONING DOES NOT GUARANTEE PHYSICAL DEVELOPMENT OF THE PROPERTY. AT THE TIME OF DEVELOPMENT, SAID DEVELOPMENT MUST BE IN ACCORDANCE WITH THE CRITERIA OF THE BREVARD COUNTY COMPREHENSIVE PLAN AND OTHER APPLICABLE LAWS AND ORDINANCES.

Deborah Thomas

From: Jones, Jennifer <jennifer.jones@brevardfl.gov>
Sent: Tuesday, March 13, 2018 11:02 AM
To: Christine Mulligan-Willey; Deborah Thomas; Donna Scott; Kimberly Powell; Tammy Rowe
Subject: Zoning Resolution
Attachments: 17PZ00118 Resolution.docx

Good morning,

Attached is a zoning resolution that was approved by the Board on March 6th.

Thank you,
Jen

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



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

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

March 7, 2018

MEMORANDUM

TO: Jennifer Jones, Zoning

RE: Item II.A.1, Binding Development Plan with Donald E. and Stacy L. Clark

The Board of County Commissioners, in regular session on March 6, 2018, executed Binding Development Plan with Donald E. and Stacy L. Clark for property located on 2.98 acres located at 3810 U.S. Highway 1, Mims. Said Binding Development Plan was recorded in OR BK/PG 8110/1694. Enclosed for your necessary action are two certified copies of the recorded document.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/dt

Encls. (2)

cc: Contracts Administration

Prepared by: Stacy Clark
3810 U.S. Hwy 1
Mims, FL 32754

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 6 day of March, 2018, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County" and Donald E. and Stacy L. Clark (hereinafter referred to as "Developer/Owner").

RECITALS

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

WHEREAS, Developer/Owner has requested the BU-2 zoning classification, and desires to develop the Property as General Retail Commercial with limited BU-2 uses, and pursuant to the Brevard County Code, Section 62-1157; and

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

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

NOW THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.
2. The Developer/Owner shall be limited to the BU-2 use of manufacturing and outdoor storage of concrete yard ornamental figurines and statues, while retaining, without limitation, all rights, provisions, and activities allowed under the BU-1 zoning classification, and pursuant to the Brevard County Code, Section 62-1157.
3. Developer/Owner shall comply with all other regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This Agreement provides no vested rights against changes to the Comprehensive Plan or land development regulations as may apply to this Property.

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

5. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on December 7, 2017. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

6. Violation of this Agreement will also constitute a violation of the zoning classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as may be amended.

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

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

ATTEST:

Scott Ellis, Clerk
(SEAL)

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

Rita Pritchett, Chair

As approved by the Board on 3/6/18

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

WITNESSES:

Mary E. Taylor
MARY E. TAYLOR
(Witness Name typed or printed)

DEVELOPER/OWNER

Stacy Clark Donald E. Clark
3810 U.S. Hwy 1 Mims, FL
(Address) 3254

Jennifer Jones
Jennifer Jones
(Witness Name typed or printed)

Stacy Clark
DONALD E. CLARK
(Name typed, printed or stamped)

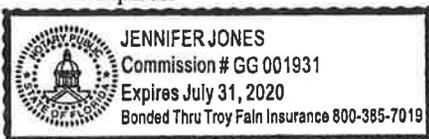
STATE OF Florida

COUNTY OF Brevard

The foregoing instrument was acknowledged before me this 30 day of Jan, 2018,
by Stacy & Donald Clark owner, who is personally known to me or who has Produced FL TA
as identification.

My commission expires:

SEAL



Commission No.

Jennifer Jones
Notary Public

Jennifer Jones
Name typed, printed, or stamped

EXHIBIT A

A parcel of land lying in Brevard County, Florida, being more particularly described as follows:

The southwest $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of the southwest $\frac{1}{4}$ of Section 31, Township 20 South, Range 35 East, lying west of U.S. Highway 1 right-of-way, Brevard County, Florida, less and except: The north 261.31 feet (as measured along the westerly right-of-way line of U.S. Highway 1) and the north 254.81 feet (as measured along the westerly line of said property). The south line of said excepted property measures 282.09 feet and is parallel to the north line of said excepted property which measures 223.62 feet.

JOINDER IN BINDING DEVELOPMENT PLAN

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being the authorized agent and signatory for the owner and holder of that certain Mortgage dated July 1 2015, given by Donald E + Stacy L. as mortgagor, in favor of the undersigned, Priscilla M. Hussey as mortgagee, recorded in Official Records Book 7400, page 1595, Public Records of Brevard County, Florida, and encumbering lands described in said Mortgage, does hereby join in the foregoing Binding Development Plan for the purpose of consenting to the change of property use and development requirements as set forth therein.

WITNESSES:

MORTGAGEE NAME/ADDRESS

PRISCILLA M. HUSSEY
3747 SAWGAASS DR.
TITUSVILLE, FL 32780

(Address)

PRISCILLA M. HUSSEY

Priscilla M. Hussey
Authorized Agent Signature

Samuel Hussey

(Witness name typed or printed)

Samuel Hussey

(Name/title typed, printed or stamped)

Alexander Bagby 

(Witness name typed or printed)

STATE OF Florida §

COUNTY OF Brevard §

The foregoing instrument was acknowledged before me this 29th day of January, 2018, by Prilliam M. Hussey, who is personally known to me or who has produced FLDL as identification.

My commission expires Feb 5th, 2021

SEAL



Commission No.: GG69686



Notary Public

Alexander Bagby

(Name typed, printed or stamped)

IV. PUBLIC HEARINGS

Planning and Zoning Board/Local Planning Agency Agenda
Monday, November 6, 2017 at 3:00 p.m.

&

Board of County Commissioners
Thursday, December 7, 2017 at 5:00 p.m.

Both at the
Brevard County Government Center
2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida

The Board of County Commissioners may approve or deny the requested classification, or may approve a classification of lesser intensity than that requested.

- IV.A. Small Scale Comprehensive Plan Amendment, (**LPA**), Re: Residential 15 to Community Commercial - LTM of Florida Holding, LLC (Kim Rezanka). The property is 2.42 acres, located at the north end of Dixie Hwy., approx. 0.22 mile west of U.S. Hwy 1. (17PZ00041) (District 4) (This item was tabled from the 05/08/17 and 07/10/17 P&Z meetings at the request of the applicant)

P&Z Recommendation: Barber/Lawandales – Tabled to the 01/08/18 P&Z meeting. The vote was unanimous.

BCC ACTION: Smith/Barfield – Tabled to the 02/01/18 BCC meeting. The vote was unanimous.

- IV.B. Change of Zoning Classification, Re: GU to BU-2 - LTM of Florida Holding, LLC – (Kim Rezanka). The property is 2.42 acres, located at the north end of Dixie Hwy., approx. 0.22 mile west of U.S. Hwy 1. (17PZ00041) (District 4) (This item was tabled from the 05/08/17 and 07/10/17 P&Z meetings at the request of the applicant)

P&Z Recommendation: Lawandales/Moia – Tabled to the 01/08/18 P&Z meeting. The vote was unanimous.

BCC ACTION: Smith/Barfield – Tabled to the 02/01/18 BCC meeting. The vote was unanimous.

- IV.C. Change of Zoning Classification, Re: RRMH-1 and GU to AGR – Larry R. Harrell. The property is 5.91 acres, located on the west side of FPL Power Lines, approx. 0.18 mile south of Canaveral Groves Blvd. (17PZ00110) (District 1)

P&Z Recommendation: Barber/Moia – Approved. The vote was unanimous.

BCC ACTION: Smith/Barfield – Approved. The vote was unanimous.

- IV.D. Change of Zoning Classification, Re: BU-1 to BU-2 – Donald E. and Stacy L. Clark. The property is located at 3810 U.S. Hwy 1, Mims. (17PZ00118) (District 1)

P&Z Recommendation: Lawandales/Barber – Approved with a Binding Development Plan limited to the manufacturing and outdoor storage of concrete yard ornamental figurines and statues. The vote was unanimous.

BCC ACTION: Smith/Isnardi – Approved with a Binding Development Plan limited to the manufacturing and outdoor storage of concrete yard ornamental figurines and statues. The vote was unanimous.

BDP TO BE SCHEDULED AS A CONSENT ITEM ON A SUBSEQUENT BCC AGENDA, PER POLICY BCC-52.

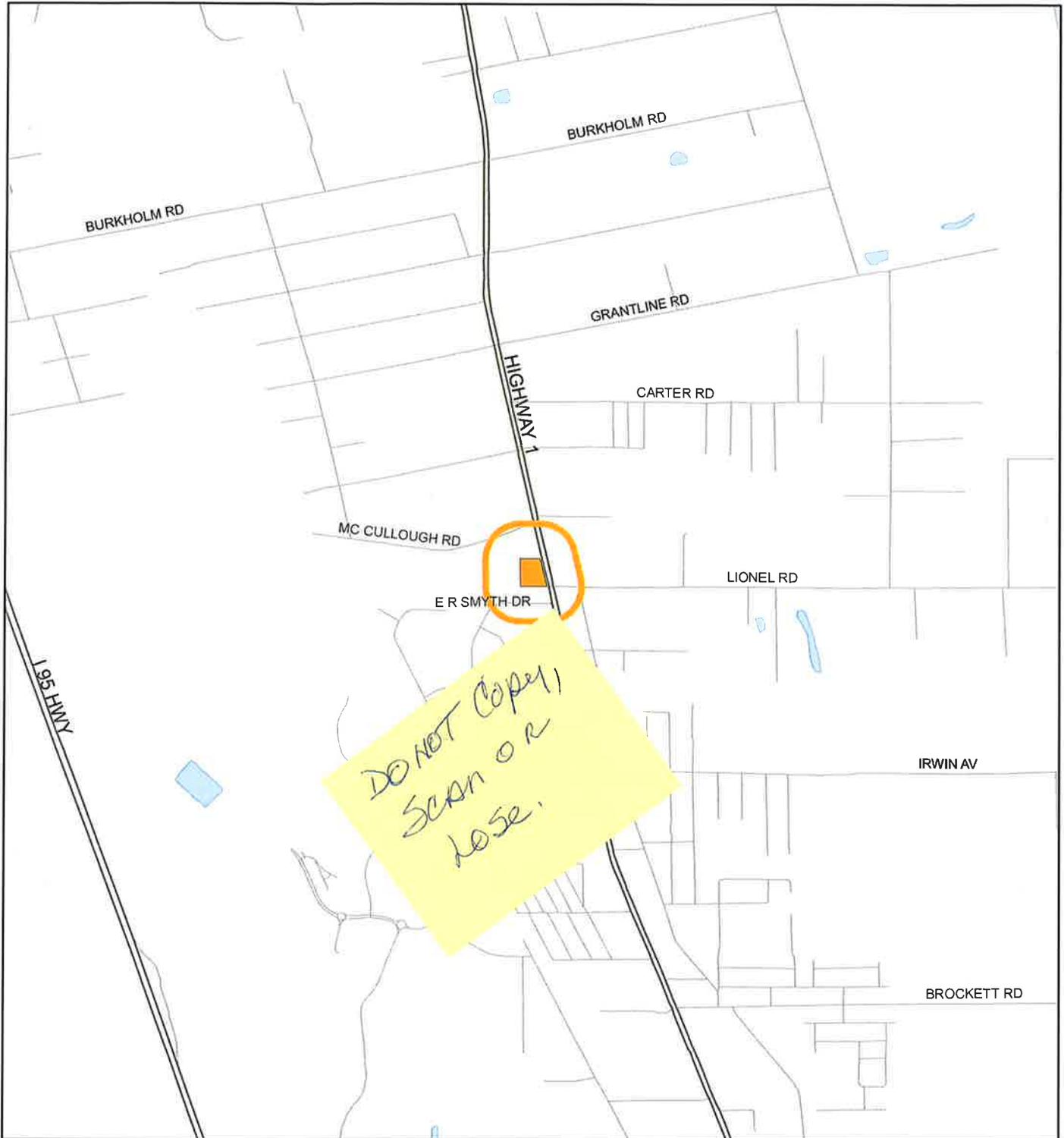
- IV.E. Change of Zoning Classification, Re: BU-1 to BU-2 – Island Corner Group. The property is 0.95 acres, located at 2625 N. Courtenay Pkwy., Merritt Island. (17PZ00128) (District 2)
WITHDRAWN BY APPLICANT (Letter received 11/15/17)

PUBLIC COMMENT

PLANNING AND ZONING BOARD RECOMMENDATIONS

- Item IV.A. LTM of Florida Holding, LLC. Smith/Barfield. Tabled to January 8, 2018 P&Z/LPA meeting.
- Item IV.B. LTM of Florida Holding, LLC. Smith/Barfield. Tabled to January 8, 2018 P&Z/LPA meeting.
- Item IV.C. Larry R. Harrell. Smith/Barfield. Approved as recommended.
- Item IV.D. Donald E. and Stacy L. Clark. Smith/Isnardi. Approved as recommended.
- Item IV.E. Island Corner Group. Withdrawn by applicant.
- Item IV.F. Robert (III) and Katy Van Arsdalen. Barfield/Tobia. Approved as recommended.
- Item IV.G. Stephen Proctor Mangum; Julian Sidney Mangum, Jr.; and Sandra E. Baker. Smith/Barfield. Tabled to February 1, 2018, Board meeting.
- Item IV.H. Mark J. Flickinger and Skidmore Trailer Park and Sales, Inc. Isnardi/Smith. Approved as recommended.
- Item IV.I. Mark J. Flickinger and Skidmore Trailer Park and Sales, Inc. Isnardi/Smith. Approved with removing the fence from the BDP, including Sunday operating hours from 8:00 a.m. to 5:00 p.m., and loading and unloading peak hours defined as 6:00 a.m. to 10:00 a.m. and 3:00 p.m. to 6:00 p.m.

LOCATION MAP
CLARK, DONALD E. AND STACY L.
17PZ00118



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

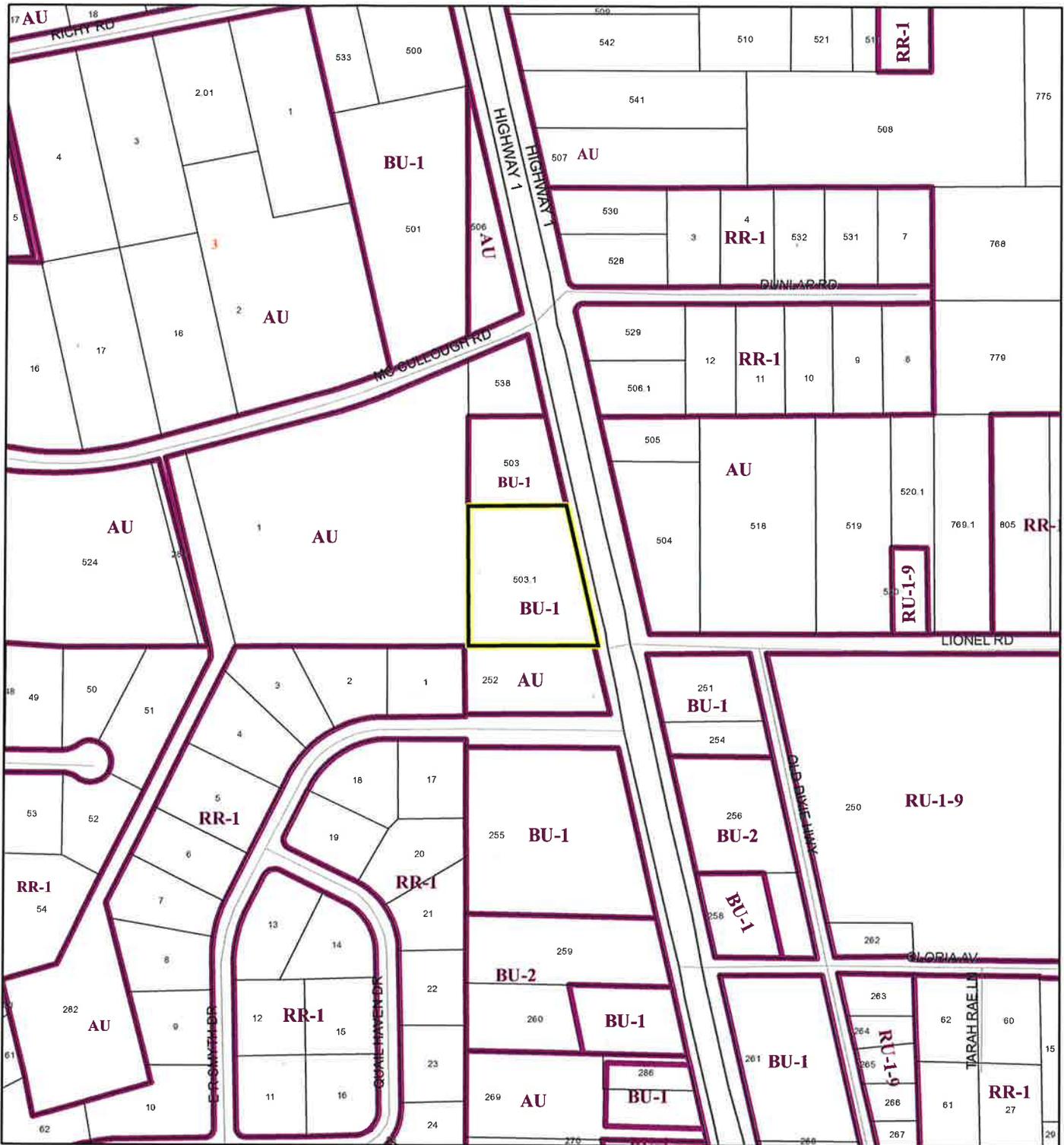
Buffer Distance: 500 feet

-  Buffer
-  Subject Property

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

ZONING MAP

CLARK, DONALD E. AND STACY L.
17PZ00118



1:4,800 or 1 inch = 400 feet

- Subject Property
- Parcels
- Zoning

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