



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.3.

4/6/2023

Subject:

IR Tiki 2, LLC (Sandeep Patel), requests a Small Scale Comprehensive Plan Amendment (22S.18) to change the Future Land Use designation from NC to CC. (22SS00015) (Tax Account 2611662) (District 4)

Fiscal Impact:

None

Dept/Office:

Planning & Development

Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a Small Scale Comprehensive Plan Amendment (22S.18) to change the Future Land Use designation from NC (Neighborhood Commercial) to CC (Community Commercial).

Summary Explanation and Background:

The applicant is requesting to amend the Future Land Use designation from NC to CC on 0.96 acres of land in order to establish a consistent Future Land Use with the existing BU-1 zoning classification.

A Future Land Use Map (FLUM) designation of Mixed Use District was adopted in 1988 and applied to the subject property. Comprehensive Plan Amendment 1999B.14 converted Mixed Use Districts into two new designations of NC and CC. Properties with the BU-1 zoning classification were proposed as CC; however, NC was applied to the subject property. According to Sec. 62-1255, the NC FLU is not consistent with BU-1 zoning. The restaurant use on the subject property was permitted to continue, because it meets the criteria of Section 62-1181, Nonconforming Uses. Since the applicant is proposing to expand the use of existing restaurant with an addition of a tiki hut, the property will need to be brought into compliance with the Comprehensive Plan.

This area of Highway 1 can be considered a commercial corridor with either NC or CC FLU designations. However, development in the surrounding area includes a mix of commercial and single-family residential.

The Board may wish to consider if the request is consistent with the Comprehensive Plan.

On March 13, 2023, the Local Planning Agency heard the request and unanimously recommended approval.

Clerk to the Board Instructions:

Once resolution is received, please execute and return a copy to Planning & Development.



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

April 7, 2023

MEMORANDUM

TO: Tad Calkins, Planning and Development Director

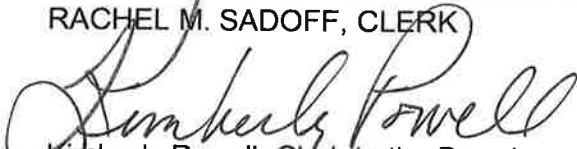
RE: Item H.3., Small Scale Comprehensive Plan Amendment (22S.18)

The Board of County Commissioners, in regular session on April 6, 2023, conducted the public hearing and adopted Ordinance No. 23-05, setting forth the nineteenth Small Scale Comprehensive Plan Amendment (22S.18) to change the Future Land Use designation from NC to CC. (22SS00015). Enclosed is the fully-executed Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

Encl. (1)



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

April 10, 2023

Honorable Rachel M. Sadoff
Board of County Commissioners
Brevard County
Post Office Box 999
Titusville, FL 32781-0999

Attention: Deborah Thomas

Dear Honorable Rachel Sadoff,

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 23-05, which was filed in this office on April 7, 2023.

Sincerely,

Anya Owens
Program Administrator

ACO/wlh

ORDINANCE NO. 23-05

AN ORDINANCE AMENDING ARTICLE III, CHAPTER 62, OF THE CODE OF ORDINANCES OF BREVARD COUNTY, ENTITLED "THE 1988 COMPREHENSIVE PLAN", SETTING FORTH THE NINETEENTH SMALL SCALE PLAN AMENDMENT OF 2022, 22S.18, TO THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN; AMENDING SECTION 62-501 ENTITLED CONTENTS OF THE PLAN; SPECIFICALLY AMENDING SECTION 62-501, PART XVI (E), ENTITLED THE FUTURE LAND USE MAP APPENDIX; AND PROVISIONS WHICH REQUIRE AMENDMENT TO MAINTAIN INTERNAL CONSISTENCY WITH THESE AMENDMENTS; PROVIDING LEGAL STATUS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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

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

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

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

WHEREAS, Brevard County initiated amendments and accepted application for small scale amendments to the Comprehensive Plan for adoption in calendar year 2022 as Plan Amendment 22S.18; and

WHEREAS, Brevard County established Technical Advisory Groups consisting of County technical employees grouped according to their operational relationship to the subject of a plan element or sub-element being prepared or amended, and these Technical Advisory Groups have provided technical expertise for the Amendment 22S.18; and

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

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

OFFICIALLY FILED WITH THE SECRETARY OF STATE ON APRIL 7, 2023.

WHEREAS, on March 13, 2023, the Brevard County Local Planning Agency held a duly noticed public hearing on Plan Amendment 22S.18, and considered the findings and advice of the Technical Advisory Groups, and all interested parties submitting comments; and

WHEREAS, on April 4, 2023, the Brevard County Board of County Commissioners held a duly noticed public hearing, and considered the findings and recommendations of the Technical Advisory Group, and all interested parties submitting written or oral comments, and the recommendations of the Local Planning Agency, and upon thorough and complete consideration and deliberation, approved for adoption Plan Amendment 22S.18; and

WHEREAS, Plan Amendment 22S.18 adopted by this Ordinance comply with the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Plan Amendment 22S.18 adopted by this Ordinance is based upon findings of fact as included in data and analysis.

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

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

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

Section 3. Adoption of Comprehensive Plan Amendments. Pursuant to Plan Amendment 22S.18 to the 1988 Comprehensive Plan, Article III, Chapter 62-504, Brevard County Code, the 1988 Brevard County Comprehensive Plan is hereby amended based on documentation shown in Exhibit A and as specifically shown in Exhibit B. Exhibits A and B are hereby incorporated into and made part of this Ordinance.

Section 4. Legal Status of the Plan Amendments. After and from the effective date of this Ordinance, the plan amendment, Plan Amendment 22S.18, shall amend the 1988 Comprehensive Plan and become part of that plan and the plan amendment shall retain the legal status of the 1988 Brevard County Comprehensive Plan established in Chapter 62-504 of the Code of Laws and Ordinances of Brevard County, Florida, as amended.

Section 5. Severability. If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair,

invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

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

DONE AND ADOPTED in regular session, this 6 day of APRIL, 2023.

ATTEST:



Rachel M. Sadoff, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: 

Rita Pritchett, Chair

As approved by the Board on APRIL 6, 2023.

EXHIBIT A
22S.18 SMALL SCALE
COMPREHENSIVE PLAN AMENDMENT

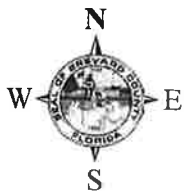
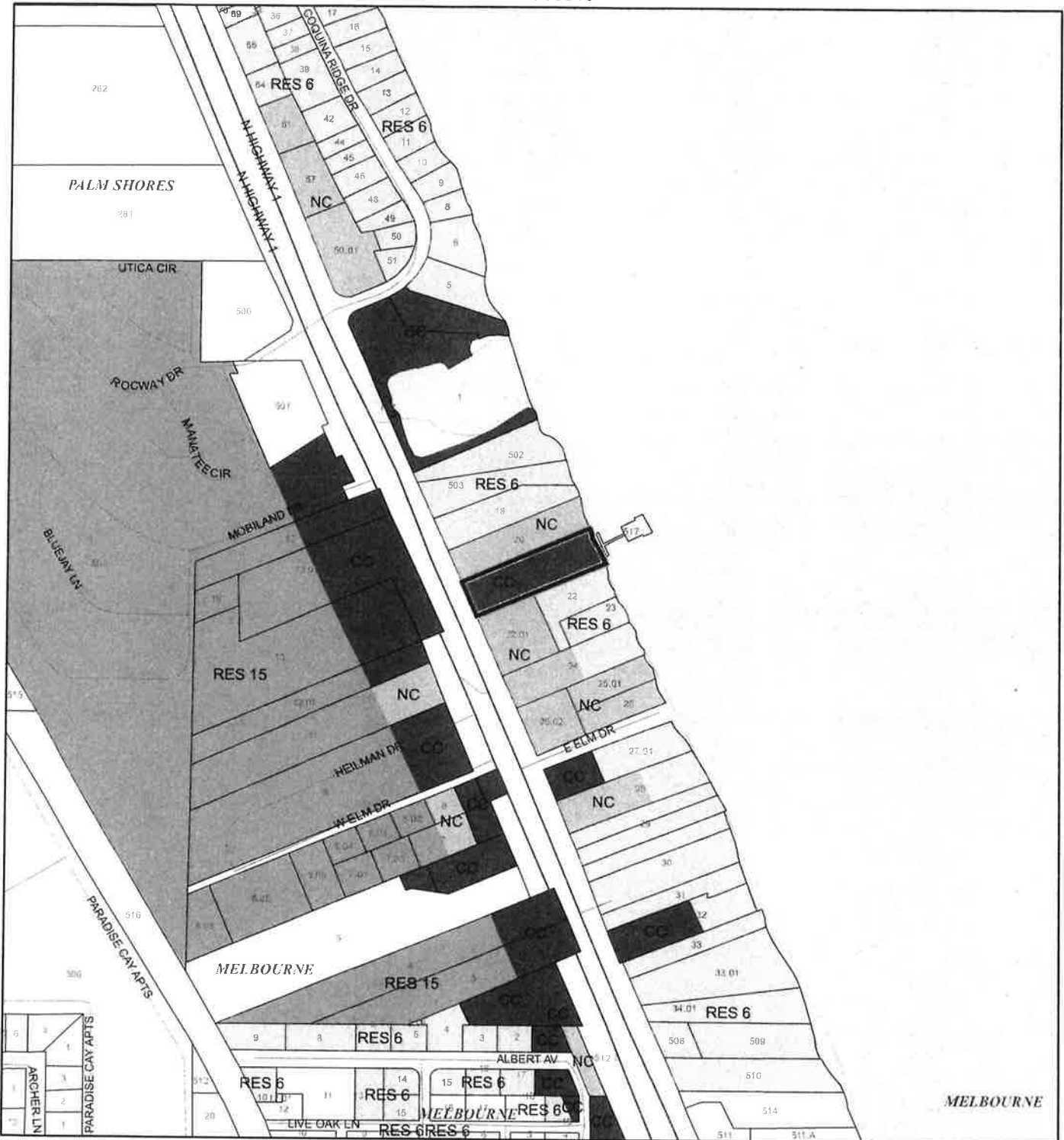
Contents

- 1. Proposed Future Land Use Map**

PROPOSED FUTURE LAND USE MAP

IR TIKI 2, LLC (SANDEEP PATEL, MANAGER)

22SS00015



1:4,800 or 1 inch = 400 feet

 Subject Property

 Parcels

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

Produced by BoCC - GIS Date: 1/5/2023

EXHIBIT B

Contents

1. Legal Description

A PUBLIC HEARING NOTICE

NOTICE is hereby given pursuant to Chapters 125 & 165, FLORIDA STATUTES, and Chapter 62, Article VI of the Broward County Code that the Broward County Planning and Zoning Board (Local Planning Agency) and the Board of County Commissioners will consider the following requests on MONDAY, MARCH 13, 2023, and THURSDAY, APRIL 6, 2023. DISTRICT 1 1. (22200002) Bobby Jo Thomas requests a change of zoning classification from GU (General Use) to RRMH-1 (Rural Residential Mobile Home), on property described as Lot 5.01, Block 2, Indian River Park, as recorded in ORB 9569, Pages 1387 - 1388, of the Public Records of Broward County, Florida, Section 16, Township 20S, Range 34, (2.87 acres) Located on the east side of Blounts Ridge Rd., approx. 0.17 mile south of Patty Lane. (No assigned address. In the Mims area.) DISTRICT 1 2. (22200005) Louise Julia Goloverovic requests a change of zoning classification from GU (General Use) to AU (Agricultural Residential), on property described as Lot 7A-2, Canaveral Grove Subdivision, per 8 2, Pg 64, and ORB 9599, Page 466 - 467, of the Public Records of Broward County, Florida, Section 20, Township 24, Range 35, (3 acres) Located on the north side of Soggy Bottom Ave., approx. 0.34 mile west of Satellite Blvd. (6906 Soggy Bottom Ave., Cocoa) DISTRICT 4 3. (225500015) IR TIKI 2, LLC (Sandep Patel) requests a Small Scale Comprehensive Plan Amendment (225.18) to change the Future Land Use Designation from RR-1 (Neighborhood Commercial) to CC (Community Commercial), on property described as Lot 21, Block 52, Indian River Estates Villas, as recorded in ORB 8743, Pages 799 - 797, of the Public Records of Broward County, Florida, Section 32, Township 26, Range 37, (0.99 acres) Located on the east side of U.S. Highway 1, approx. 0.16 mile south of Coquina Ridge Dr. (4283 N. U.S. Highway 1, Melbourne) The following ordinance will also be considered in conjunction with the Small Scale Plan Amendment, 225.18: An ordinance amending Article III, Chapter 62, of the Code of Ordinances of Broward County, entitled "The Comprehensive Plan", amending Section 62-501, entitled Future Land Use Element and Future Land Use Map Series, and provisions which require amendment to maintain internal consistency with these amendments, providing legal status, providing a severability clause, and providing an effective date. DISTRICT 1 4. (23200004) Chelsey L. Cobb requests a change of zoning classification from RR-1 (Rural Residential) to AU (Agricultural Residential), on property described as Tax Parcel 274, as recorded in ORB 9283, Pages 2274 - 2275, of the Public Records of Broward County, Florida, Section 14, Township 34, Range 33, (3.09 acres) Located on the south side of James Rd., approx. 0.35 mile east of Friday Rd. (4475 James Rd., Cocoa)

DISTRICT 1 5. (22200074) Timothy Shans and Debra Jane Kelly (Dian Harrison) request a change of zoning classification from AU (Agricultural Residential) to RU-1-1 (Single-Family Residential), on property described as Tax Parcel 52, as recorded in ORB 9427, Pages 689 - 690, of the Public Records of Broward County, Florida, Section 29, Township 21, Range 35, (0.45 acres) located on the west side of Old Dixie Hwy., approx. 165 ft. north of Diamond Rd. (1650 Old Dixie Hwy., Titusville) DISTRICT 2 6. (22200068) Matt Halt Stables, LLP (Toni Postermack) requests a change of zoning classification from AU (Agricultural Residential) to RU-1-5 (Single-Family Residential), on property described as a part of the SW 1/4 of the NW 1/4 of the SE 1/4 of Section 25, Township 24S, Range 35E, Broward County, Florida, being more particularly described as follows: begin at the SW corner of the NW 1/4 of the SE 1/4 of said Section 25; thence for a first course run to the west along the west line of the NW 1/4 of the SE 1/4 of said Section 25, a distance of 105 ft.; thence for a second course, run N89deg15'41"E, parallel to the south line of the NW 1/4 of the SE 1/4 a distance of 168 ft.; thence for a third course, run south a distance of 105 ft.; thence for a fourth and final course, run S89deg15'41"W, a distance of 168 ft. to the point of beginning. Less 33 ft. of road right-of-way for Burnett Rd. (0.23 acres) Located on the east side of Burnett Rd., approx. 0.25 mile north of Lake Dr. (525 & 655 N. Burnett Rd., Cocoa) DISTRICT 5 7. (22200067) Wendy Klaffsch requests a change of zoning classification from RU-1-11 (Single-Family Residential) to RU-2-12 (Medium Density Multi-Family Residential), on property described as the east 103.5 ft. of Lot 4, Block F, of Map of Replat of North Indianlake @The Sea, according to the Plat thereof, as recorded in Plat to the Plat Book 9, of the Public Records of Broward County, Florida, Section 31, Township 27, Range 38, (0.36 acres) located between Franklyn Ave. and Grosse Pointe, approx. 0.07 mile west of Highway A1A. (107 Franklyn Ave., Indianlake) DISTRICT 7 8. (23200001) Morris M. Taylor Revocable Living Trust (Chelsea Anderson) requests a change of zoning classification from SEU (Suburban Estate Use Residential), EA (Environmental Area), and BU-1-A (Restricted Neighborhood Commercial), to AU (Agricultural Residential) and BU-1-A, on property described as follows: Parcel No. 1: The south 273.75 ft. of Government Lot 2, Section 7, Township 30S, Range 39E, Broward County, Florida, less the south 125 ft. of said Lot 2. Together with the following described parcel: Commencing at the SW corner of Government Lot 1, Section 7, Township 30S, Range 39E, Broward County, Florida; Thence run N00deg55'52"E along the west line of said Government Lot 1, a distance of 273.75 ft. to the point of beginning; thence run S89deg49'57"E, a distance of 188.01 ft.; thence run S00deg10'03"W, a distance of 123.75 ft. thence run

S89deg49'57"E, a distance of 326.75 ft.; thence run S44deg49'57"E, a distance of 1.77 ft.; thence run S89deg49'57"E, a distance of 25 ft.; thence N44deg10'03"W, a distance of 6.89 ft.; thence S89deg49'57"E, a distance of 376.72 ft. to a point on the westerly right-of-way line of S.R. A1A (100-ft. total right-of-way); thence S29deg42'04"E, along said westerly right-of-way line, a distance of 28.28 ft.; thence S45deg10'03"W, a distance of 6.88 ft.; thence N89deg49'57"W, a distance of 25 ft.; thence N44deg49'57"W, a distance of 1.77 ft.; thence N89deg49'57"W, a distance of 521.04 ft. to a point on the west line of said Government Lot 1; thence N00deg58'52"E, a distance of 148.75 ft. to the point of beginning. Together with riparian and littoral right thereto belonging. Said parcel No. 1, containing 1.90 upland acres more or less, Parcel No. 2: Commencing at the SW corner of Government Lot 1, Section 7, Township 30S, Range 39E, Broward County, Florida; thence run N00deg58'52"E along the west line of said Government Lot 1, a distance of 177 ft.; thence run S89deg49'57"E, a distance of 188.01 ft. to the point of beginning; thence run S89deg49'57"E, a distance of 123.75 ft.; thence run S00deg10'03"W, a distance of 123.75 ft.; thence run N89deg49'57"W, a distance of 25 ft.; thence run N44deg49'57"W, a distance of 1.77 ft.; thence run N89deg49'57"W, a distance of 326.75 ft.; thence run N00deg10'03"E, a distance of 123.75 ft. to the point of beginning. Containing in all, 1.06 acres more or less. Together with an exclusive and irrevocable easement for ingress and egress over the north 22.10 ft. or the north 273.75 ft. of Government Lot 1, lying west of the right-of-way for S.R. A1A (100-ft. total right-of-way) less the west 541.01 ft. thereof. (3 acres +/-) Located on the west side of Highway A1A, approx. 0.26 mile north of River Oaks Rd. (8850 Highway A1A, Melbourne Beach) DISTRICT 5 9. (22200069) Thomas A. Metzger, Alan and Grace Metzger request a change of zoning classification from RR-1 (Rural Residential) to AU (Agricultural Residential), on property described as Lot 1, Block KK, as recorded in ORB 9447, Pages 1675 - 1677, of the Public Records of Broward County, Florida, Section 11, Township 28, Range 36, (5.14 acres) located on the south side of Chicago Ave., approx. 300 ft. east of Canal St. (No assigned address. In the Metro area.) DISTRICT 10 10. (23550001) QW Trust Agreement (Carolyn Haslam) requests a Small Scale Comprehensive Plan Amendment (235.01) to change the Future Land Use Designation from RES 15 (Residential 15), NC (Neighborhood Commercial) and CC (Community Commercial) to all CC, on property described as Tax Parcels 512 & 519, as recorded in ORB 8483, Pages 2310 - 2311, of the Public Records of Broward County, Florida, Section 25, Township 24, Range 35, (13.36 acres) located on the north side of Lake Dr., approx. 171 ft. east of Cox Road (Tax Parcel 512 = 495 Cox Rd., Cocoa; Tax Parcel 519 = 3900 Lake Dr., Cocoa) The following ordinance will also be considered in conjunction with the Small Scale Plan Amendment, 235.01: An ordinance amending Article III, Chapter 62, of the Code of Ordinances of Broward County, entitled "The Comprehensive Plan", amending Section 62-501, entitled Contents of the Plan, specifically amending Section 62-501, Part XI, entitled Future Land Use Element and Future Land Use Map Series, and provisions which require amendment to maintain internal consistency with these amendments, providing legal status, providing a severability clause, and providing an effective date. DISTRICT 2 11. (23200003) QW Trust Agreement (Carolyn Haslam) requests a change of zoning classification from GU (General Use) and RU-1 (Heavy Industrial) to BU-1 (General Retail Commercial), on property described as Tax Parcels 512 & 519, as recorded in ORB 8483, Pages 2310 - 2311, of the Public Records of Broward County, Florida, Section 25, Township 24, Range 35, (13.36 acres) located on the north side of Lake Dr., approx. 171 ft. east of Cox Road (Tax Parcel 512 = 495 Cox Rd., Cocoa; Tax Parcel 519 = 3900 Lake Dr., Cocoa)

DISTRICT 2

12. (225500016) Crane View, LLC (Steve Anderson) requests a Small Scale Comprehensive Plan Amendment (225.19), to change the Future Land Use designation from RES 15 (Residential 15) and NC (Neighborhood Commercial) to RES 30 DR (Residential 30 Directive), on property described as Tax Parcel 589, as recorded in ORB 6763, Page 1549, of the Public Records of Broward County, Florida, Section 14, Township 24, Range 36, (3.95 +/- acres) Located on the west side of N. Courtenay Pkwy., approx. 0.11 mile south of Butler Ave. (2104 Falling Leaf Ln., 242, 252, 262, & 272 Crane View Ln., Merritt Island) The following ordinance will also be considered in conjunction with the Small Scale Plan Amendment, 225.19: An ordinance amending Article III, Chapter 62, of the Code of Ordinances of Broward County, entitled "The Comprehensive Plan", amending Section 62-501, entitled Contents of the Plan, specifically amending Section 62-501, Part XI, entitled Future Land Use Element and Future Land Use Map Series, and provisions which require amendment to maintain internal consistency with these amendments, providing legal status, providing a severability clause, and providing an effective date. DISTRICT 2 13. (22200071) Crane View, LLC (Steve Anderson) requests a change of zoning classification from RU-2-15 (Medium Density Multi-Family Residential) with an existing BDP (Binding Development Plan), to RU-2-30 (High Density Multi-Family Residential), and an amendment to the existing BDP, on property described as Tax Parcel 589, as recorded in ORB 6763, Page 1549, of the Public Records of Broward County, Florida, Section 14, Township 24, Range 36, (3.95 +/- acres) Located on the west side of N. Courtenay Pkwy., approx. 0.11 mile south of Butler Ave. (2104 Falling Leaf Ln., 242, 252, 262, & 272 Crane View Ln., Merritt Island) Public Hearing before the Planning and Zoning Board (Local Planning Agency) will be held at the Broward County Government Center, 2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida on MONDAY, MARCH 13, 2023, at 3:00 p.m. A Public Hearing will be held by the Board of County Commissioners at the Broward County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Bldg. C, Viera, Florida, on THURSDAY, APRIL 6, 2023, at 5:00 p.m. All interested parties can be heard at said time and place. If a person decides to appeal any decision of this Board, agency or commission (as appropriate) with respect to any matter considered at this meeting or hearing, such a person will need a record of this proceeding and that, for such purposes, such person may need to ensure that a verbatim record of the proceedings is made, at his own expense, which record includes testimony and evidence upon which any such appeal is to be based. The Board may grant such other less intense zoning or land use classification as may be deemed appropriate. Final report of the above referenced agenda will be heard at this meeting in accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing special accommodations or an interpreter to participate in this proceeding should contact the Planning & Development Department no later than 48 hours prior to the meeting at 321-633-2069 for assistance. Broward County Planning & Development Department, per: Tad Calkins, Planning and Development Director, by: Jennifer Jones, Special Projects Coordinator.

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

Administrative Policies in the Future Land Use Element establish the expertise of staff with regard to zoning land use issues and set forth criteria when considering a rezoning action or request for Conditional Use Permit, as follows:

Administrative Policy 1

The Brevard County zoning official, planners and the Director of the Planning and Development, 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 amendments, 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 development applications where a specific use has not been proposed, the worst case adverse impacts of potential uses available under the applicable land use classification shall be evaluated by the staff.

Administrative Policy 3

Compatibility with existing or proposed land uses shall be a factor in determining where a rezoning or any application involving a specific proposed use is being considered. Compatibility shall be evaluated by considering the following factors, at a minimum:

Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use.

- B. Whether the proposed use(s) would cause a material reduction (five percent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through analysis of:
 - 1. historical land use patterns;
 - 2. actual development over the immediately preceding three years; and
 - 3. development approved within the past three years but not yet constructed.
- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

Administrative Policy 4

Character of a neighborhood or area shall be a factor for consideration whenever a rezoning or any application involving a specific proposed use is reviewed. The character of the area must not be materially or adversely affected by the proposed rezoning or land use application. In evaluating the character of an area, the following factors shall be considered:

Criteria:

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types of intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, et cetera), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.
- B. In determining whether an established residential neighborhood exists, the following factors must be present:
 - 1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.
 - 2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.
 - 3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

Administrative Policy 5

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the

use(s) shall be considered. In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following:

Criteria:

- A. Whether adopted levels of services will be compromised;
- B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;
- C. Whether the surrounding existing road system is of sufficient width and construction quality to serve the proposed use(s) without the need for substantial public improvements;
- D. Whether the surrounding existing road system is of such width and construction quality that the proposed use(s) would realistically pose a potential for material danger to public safety in the surrounding area;
- E. Whether the proposed use(s) would be likely to result in such a material and adverse change in traffic capacity of a road or roads in the surrounding area such that either design capacities would be significantly exceeded or a de facto change in functional classification would result;
- F. Whether the proposed use(s) would cause such material and adverse changes in the types of traffic that would be generated on the surrounding road system, that physical deterioration of the surrounding road system would be likely;
- G. Whether projected traffic impacts of the proposed use(s) would materially and adversely impact the safety or welfare of residents in existing residential neighborhoods.

Administrative Policy 6

The use(s) proposed under the rezoning, conditional use or other application for development approval must be consistent with, (a), all written land development policies set forth in these administrative policies; and (b), the future land use element, coastal management element, conservation element, potable water element, sanitary sewer element, solid waste management element, capital improvements element, recreation and open space element, surface water element, and transportation elements of the comprehensive plan.

Administrative Policy 7

Proposed use(s) shall not cause or substantially aggravate any, (a), substantial drainage problem on surrounding properties; or (b), significant, adverse and unmitigatable impact on significant natural wetlands, water bodies or habitat for listed species.

Administrative Policy 8

These policies, the staff analysis based upon these policies, and the applicant's written analysis, if any, shall be incorporated into the record of every quasi-judicial review application for development approval presented to the Board including rezoning, conditional use permits, and vested rights determinations.

Section 62-1151(c) of the Code of Ordinances of Brevard County directs, "The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.
- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.

The minutes of the planning and zoning board shall specify the reasons for the recommendation of approval or denial of each application."

CONDITIONAL USE PERMITS (CUPs)

In addition to the specific requirements for each Conditional Use Permit (CUP), Section 62-1901 provides that the following approval procedure and general standards of review are to be applied to all CUP requests, as applicable.

- (b) Approval procedure. An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in Section 62-1151. The approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved. If the applicant meets its initial burden, then the Board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the Board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use. In stating grounds in

support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odors, glare and noise, particulates, smoke, fumes, and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.

(c) General Standards of Review.

- (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon a consideration of the factors specified in Section 62-1151(c) plus a determination whether an application meets the intent of this section.
 - a. The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1), the number of persons anticipated to be using, residing or working under the conditional use; (2), noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3), the increase of traffic within the vicinity caused by the proposed conditional use.
 - b. The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.
 - c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an M A I certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.
- (2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:

- a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1), adequate to serve the proposed use without burdening adjacent and nearby uses, and (2), built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at Level of Service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable Brevard County standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.
- b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.
- c. Noise levels for a conditional use are governed by Section 62-2271.
- d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
- e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
- f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.
- g. Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.
- h. Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.
- i. The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.

- j. Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

FACTORS TO CONSIDER FOR A REZONING REQUEST

Section 62-1151(c) sets forth factors to consider in connection with a rezoning request, as follows:

"The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.
- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare."

These staff comments contain references to zoning classifications found in the Brevard County Zoning Regulations, Chapter 62, Article VI, Code of Ordinances of Brevard County. These references include brief summaries of some of the characteristics of that zoning classification. Reference to each zoning classification shall be deemed to incorporate the full text of the section or sections defining and regulating that classification into the Zoning file and Public Record for that item.

These staff comments contain references to sections of the Code of Ordinances of Brevard County. Reference to each code section shall be deemed to incorporate this section into the Zoning file and Public Record for that item.

These staff comments contain references to Policies of the Brevard County Comprehensive Plan. Reference to each Policy shall be deemed to incorporate the entire Policy into the Zoning file and Public Record for that item.

These staff comments refer to previous zoning actions which are part of the Public Records of Brevard County, Florida. These records will be referred to by reference to the file number. Reference to zoning files are intended to make the entire contents of the cited file a part of the Zoning file and Public Record for that item.

DEFINITIONS OF CONCURRENCY TERMS

Maximum Acceptable Volume (MAV): Maximum acceptable daily volume that a roadway can carry at the adopted Level of Service (LOS).

Current Volume: Building permit related trips added to the latest TPO (Transportation Planning Organization) traffic counts.

Volume with Development (VOL W/DEV): Equals Current Volume plus trip generation projected for the proposed development.

Volume/Maximum Acceptable Volume (VOL/MAV): Equals the ratio of current traffic volume to the maximum acceptable roadway volume.

Volume/Maximum Acceptable Volume with Development (VOL/MAV W/DEV): Ratio of volume with development to the Maximum Acceptable Volume.

Acceptable Level of Service (CURRENT LOS): The Level of Service at which a roadway is currently operating.

Level of Service with Development (LOS W/DEV): The Level of Service that a proposed development may generate on a roadway.

**FUTURE LAND USE MAP SERIES
PLAN AMENDMENT**

STAFF COMMENTS

*Small Scale Plan Amendment 22S.18 (22SS00015)
Township 26, Range 37, Section 32*

Property Information

Owner / Applicant: IR Tiki 2, LLC

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

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

Acreage: 0.96 acres

Tax Account #: 2611662

Site Location: East of N Highway 1 and approx. 1,684 feet North of Post Rd,

Commission District: 4

Current Zoning: General Retail Commercial (BU-1)

Requested Zoning: N/A

Background & Purpose

The applicant is requesting to amend the Future Land Use designation from Neighborhood Commercial (NC) to Community Commercial (CC) on 0.96 acres of land in order to establish a consistent Future Land Use with the existing BU-1 zoning classification. In 1961, the subject property was approved for a zoning change from RU-1, a single-family residential classification, to BU-1 with Beer and Wine permit. A Future Land Use Map (FLUM) designation of Mixed Use District was adopted in 1988 and applied to the subject property. Comprehensive Plan Amendment 1999B.14 converted Mixed Use Districts into two new designations; NC and CC. The new commercial designation assigned to a particular piece of property depended on the current zoning placed on that land. CC was proposed for properties with the BU-1 zoning classification, however, NC was applied to the subject property.

The restaurant use on the subject property was permitted to continue because it meets the criteria of Sec. 62-1181, Nonconforming uses. "A "nonconforming use" is as the use of land or structures that was lawful prior to the effective date of the ordinance from which this article is derived or the county comprehensive plan, or the effective date of any amendments thereto, but is not now permitted within the applicable zoning

classification or is not permitted under any provisions of this article or the county comprehensive plan or any amendment thereto. In order for a use of land or structures to be included within such definition, such use must have been permanent and continuous prior to the effective date of the ordinance from which this article is derived or the effective date of any amendment to this article.”

The applicant is seeking to construct a Tiki Hut as an expansion to a non-conforming use. Active code enforcement cases related to the subject property include; **22CE-01360**, construction and renovations without permits done by unlicensed building contractor. The applicant is working with an engineer and Code Enforcement to address the code enforcement case. A Future Land Use Map amendment from (NC) to (CC) is required to establish consistency of the BU-1 zoning classifications with comprehensive plan, as set forth in Sec. 62-1255.

This segment of N. Highway 1 from the Town of Palm Shores city line to Post Road is a primarily commercial corridor where the majority of Future Land Use designations are CC & NC. Also, along this corridor to the north and south, are properties with Future Land use designation of RES 6 .

Comprehensive Plan Policies/Comprehensive Plan Analysis

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

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

Role of the Comprehensive Plan in the Designation of Commercial Lands FLUE Policy 2.1

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

Criteria:

A. Overall accessibility to the site;

The subject property has frontage on N Highway 1, an urban principal arterial operating at 57.50% of Maximum Acceptable Volume. With the proposed commercial use being an addition of a 180 square foot tiki hut, traffic volume is not anticipated to increase higher than 0.02%. Please refer to the preliminary concurrency section for more details.

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

There is a Future Land Use designation of RES 6 to the south and NC to the north and south adjacent to the subject property.

- C. Existing commercial development trend in the area;

This area of Highway 1 can be considered a commercial corridor with either NC or CC FLU designations. However, development in this area include a mix of commercial and single-family residential. There has not been any new commercial development within the last three (3) years.

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

No fundamental changes in the character of the area prompted by infrastructure improvements undertaken by the County have been identified.

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

The preliminary concurrency analysis did not indicate that the maximum development potential from the proposed Future Land Use designation would cause a deficiency in the transportation adopted level of service. The subject property is within the City of Melbourne's service area for potable water. Additionally, the subject property is connected to Brevard sanitary sewer services. The closest connection for sanitary sewer is located north of US Highway 1, approximately 1,390-feet away.

- F. Spacing from other commercial activities;

Commercial activities are located approximately 141-feet north of the subject property along the east of Highway 1 and immediately south of the subject property. Additional commercial activities are located southwest of the subject property along west of Highway 1 approximately 468-feet. Additional commercial activities can be found along this section of US Highway 1.

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

The 0.96-acre subject property is developed as a restaurant and designated as NC is requesting a change from NC to CC.

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

The applicants will work with Natural Resources to ensure minimization of impacts upon natural resources and systems.

- I. Integration of open space; and

The provisions of this criterion will be addressed at the site plan stage.

- J. Impacts upon strip commercial development.

The applicant is proposing an expansion of his existing restaurant with an addition of a tiki hut. This site is not considered strip commercial

development, which is discouraged within the Future Land Use element of the Comprehensive Plan.

Activities Permitted in the Community Commercial (CC) Future Land Use Designations

FLUE Policy 2.7

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

- a) Existing strip commercial;
- b) Transient commercial uses;
- c) Tourist commercial uses;
- d) Professional offices;
- e) Personal service establishments;
- f) Retail establishments;
- g) Non-retail commercial uses;
- h) Residential uses;
- i) Institutional uses;
- j) Recreational uses;
- k) Public facilities;
- l) Transitional uses pursuant to Policy 2.1; and
- m) Planned Industrial Park development (as permitted by PIP zoning).

The applicant's proposed use can be considered consistent with Policy 2.7.

Locational and Development Criteria for Community Commercial Uses

FLUE Policy 2.8

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

Criteria:

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

The subject property is not located within a commercial cluster but rather along an existing commercial corridor (Highway 1).

- B. Community commercial complexes should not exceed 40 acres at an intersection.
The subject property is not located at an intersection and will not exceed 40 acres.

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

Highway 1, a major arterial roadway, which is an existing commercial corridor serving the community and the surrounding region. As such, the development pattern in this area does not allow itself to cluster commercial analysis.

- D. The gross floor area of community commercial complexes should not exceed 150,000 square feet for commercial clusters up to 10 acres in size and shall not exceed 400,000 square feet for commercial clusters greater than 10 acres but less than 40 acres in size unless within a Planned Unit Development (PUD) zoning classification. The square footage may be increased if it is located within a PUD zoning classification.

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

- E. Floor Area Ratio (FAR) of up to 1.00 will be permitted for Community Commercial sites unless accompanied with a PUD zoning classification wherein the FAR may be increased up to 1.75.

The overall subject property has the potential for a 41,817.6 sq. ft. building. The Floor Area Ratio (FAR) of up to 1.00 is permitted for CC designated sites. The Floor Area Ratio (FAR) is evaluated at the time of site plan review and regulated through the land development regulations. The applicant has not requested PUD zoning.

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

The applicant is not requesting a change in zoning classification and the current BU-1 zoning does not permit recreational vehicle parks.

Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area.

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;

The applicant proposes to utilize the eastern 0.96-acre parcel for tiki hut to complement their business. The hours of operation, lighting and traffic is not anticipated to affect the quality of life in the existing neighborhood. There is no anticipation of odor, noise level or site activity more so than already exists.

Per Brevard County Code of Ordinances, Section 62-2256 Odor, Section 62-2257 Lighting and Section 62-2271 establishes performance standards for all residential, commercial, and industrial uses.

- 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.

Only a certified MAI (Member Appraisal Institute) appraisal can determine if material reduction has or will occur due to the proposed request.

- 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;

Land use patterns for this property has not changed since the adoption of the NC FLU designation.

No FLU amendments have occurred within 500-feet of the subject property since 2005.

2. actual development over the immediately preceding three years; and

There have been one residential development within this area over the past three (3) years:

East of N Highway 1, approximately 695 feet to the south, a new home construction was approved on 09/16/2020.

3. development approved within the past three years but not yet constructed.

There has not been any approved development within this area in the preceding three (3) years that has not been constructed.

- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

No material violation of relevant policies has been identified.

Analysis of Administrative Policy #4 - Character of a neighborhood or area.

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.

Parcels in the surrounding area range from 0.13-acres to 3.59-acres. The parcel to the north is zoned BU-1 (General retail Commercial) on 0.91-acres of vacant land. The parcels to the west across Highway 1 are zoned BU-1 (General retail commercial) and RU-1-7 (Single-family Residential). Both properties are zoned BU-1 on the eastern portion of the property fronting Highway 1. Parcel one (1) is owned by FDOT for ROW and stormwater pond on 2.4-acres. The other parcel is 2.16-acres of undeveloped land. The parcel to the south is vacant commercial land zoned BU-1 (General Retail Commercial) on 0.76-acres fronting Highway 1. The property was previously used as a daycare, which is owned by the applicant and provides ingress/egress to the two (2) properties to the rear. The 2 properties to the rear, 0.44-acres and 0.57-acres are zoned RU-1-9 with single-family residences. East of the subject property is the Indian River Lagoon.

There were three zoning actions within a half-mile radius of the subject properties within the last three years. 20Z00025, approved by the Board on December 3, 2020, was a request to change zoning classification RU-1-9 (Single-family Residential) to RU-1-7 (Single-family Residential) on 0.99 acres located south of E Elm Dr and east of US Highway 1. 21PZ00022, approved May 26, 2021, a variance request to Section 62-1341(5)(b), to permit a variance of 15.1 feet from the required 20 foot front setback for an accessory structure, Section 62-1341(5)(b) to permit a variance of 6.6 feet from the required 7.5 foot (north) side setback for an accessory structure and 62-1341(5)(b), to permit a variance of 5.0 feet from the required 5.0 foot structure spacing in an RU-1-9 (Single-family Residential) zoning classification on 0.21-acres located in Coquina Ridge Subdivision east of Highway 1. 20PZ00032, approved by the Board on July 9, 2020, was request to change zoning classification from RU-1-

7 (Single-family Residential), RU-2-10 (Medium Density Multi-family Residential), and BU-1 (General Retail Commercial) to all BU-1 (General Retail Commercial) on 0.92-acres located west of Highway 1, north of Post Rd and Highway 1.

Surrounding Land Use Analysis

	Existing Land Use	Zoning	Future Land Use
North	Vacant	BU-1	NC
South	Vacant Child Care Center/Single-family	BU-1/RU-1-9	NC/RES 6
East	Indian River Lagoon	N/A	N/A
West	Undeveloped	BU-1/RU-1-7	CC

To the north of the subject property is vacant parcel of land with a Future Land Use designation of NC with a BU-1 zoning classification.

The parcel fronting US Highway 1 is a vacant structure (former daycare center) with BU-1 zoning classification; eastern portion is a single-family residence with a Future Land Use RES 6 and zoning classification of RU-1-9.

To the east is the Indian River Lagoon.

West of the subject property is undeveloped land with CC FLU designation. This parcel has two (2) zoning classifications. BU-1 zoning is on the portion of the property fronting US Highway 1 and the remainder of the parcel is RU-1-7 Single-family Residential.

Concurrency

The closest concurrency management segment to the subject property is US Hwy 1, from Pineda Causeway to Post Rd, which has a Maximum Acceptable Volume (MAV) of 59,900 trips per day, a Level of Service (LOS) of D, and currently operates at 57.50% of capacity daily. The maximum development potential from the proposed Future Land Use change increases the percentage of MAV utilization by 0.02%. The corridor is anticipated to operate at 57.52% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

The parcel is not serviced by public sewer or within the Brevard County service area for potable water. The closest available Brevard County sewer connection to the subject property is approximately 1,385 feet to the north. Water service is provided by the City of Melbourne.

No school concurrency information has been provided as the development potential is considered below the minimum number of new residential lots that would require a formal review.

Environmental Resources

- Wetlands/Hydric Soils
- Floodplain Protection
- Surface Waters of the State
- Coastal High Hazard Area
- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Overlay
- Protected and Specimen Trees

Surface Waters of the State

The subject property is located on the Indian River Lagoon, designated as a Class III Water in this location. A 25-foot Surface Water Protection Buffer (Buffer) is required. Primary structures shall be located outside the Buffer. A maximum of 30% impervious area is permissible within the Buffer. Stormwater management in accordance with Section 62-3666(3) is required. The removal of native vegetation located within the Buffer shall be avoided, and any impacts require in-kind restoration. The Florida Department of Environmental Protection (FDEP) regulates mangrove trimming, and can be reached at 407-897-4101. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

Aquifer Recharge Soils

The subject parcel contains mapped aquifer recharge soils (Candler fine sand) as shown on the USDA Soil Conservation Service Soils Survey map. The applicant is hereby notified of the development and the impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance. The recent unpermitted land alteration of the parking lot may require stormwater management.

Protected and Specimen Trees

Protected (≥ 10 inches in diameter) and Specimen (≥ 24 inches in diameter) trees may exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree

Protection, for specific requirements for preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

Please refer to all comments provided by the Natural Resource Management Department at the end of this report.

Historic Resources

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

For Board Consideration

The Board may wish to consider if the request is consistent with the Comprehensive Plan.

NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT
Zoning Review & Summary
Item #22SS00015

Applicant: Sandeep Patel

FLU Request: NC to CC

Note: To resolve unpermitted expansion of a non-conforming use.

P&Z Hearing Date: 03/13/23; **BCC Hearing Date:** 04/06/2023

Tax ID No: 2611662

- This is a preliminary review based on best available data maps reviewed by the Natural Resources Management Department (NRM) and does not include a site inspection to verify the accuracy of the mapped information.
- In that the rezoning process is not the appropriate venue for site plan review, specific site designs submitted with the rezoning request will be deemed conceptual. Board comments relative to specific site design do not provide vested rights or waivers from Federal, State or County regulations.
- **This review does not guarantee whether or not the proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations.**

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands/Hydric Soils
- Floodplain Protection
- Surface Waters of the State
- Coastal High Hazard Area
- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Overlay
- Protected and Specimen Trees

Surface Waters of the State

The subject property is located on the Indian River Lagoon, designated as a Class III Water in this location. A 25-foot Surface Water Protection Buffer (Buffer) is required. Primary structures shall be located outside the Buffer. A maximum of 30% impervious area is permissible within the Buffer. Stormwater management in accordance with Section 62-3666(3) is required. The removal of native vegetation located within the Buffer shall be avoided, and any impacts require in-kind restoration. The Florida Department of Environmental Protection (FDEP) regulates mangrove trimming, and can be reached at 407-897-4101. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

Aquifer Recharge Soils

The subject parcel contains mapped aquifer recharge soils (Candler fine sand) as shown on the USDA Soil Conservation Service Soils Survey map. The applicant is hereby notified of the development and the impervious restrictions within Conservation

Element Policy 10.2 and the Aquifer Protection Ordinance. The recent unpermitted land alteration of the parking lot may require stormwater management.

Protected and Specimen Trees

Protected (≥ 10 inches in diameter) and Specimen (≥ 24 inches in diameter) trees may exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

Land Use Comments:

Wetlands/Hydric Soils

The subject parcel contains mapped National Wetlands Inventory (NWI) wetlands along the property shoreline. This is an indicator that wetlands may be present on the property. A wetland determination may be required prior to any land clearing activities, site plan design, or building permit submittal.

Section 62-3694(c)(3)b has allowances for wetland impacts for commercial land development activities along Mitigation Qualified Roadways (MQRs). U.S. Highway 1 is an MQR in this location. Prior to the allowance of any wetland impacts, the applicant shall complete High Function and Landscape Level wetlands assessments. Approval by the Brevard County Board of County Commissioners may be required for impacts. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design or permit submittal.

Floodplain Protection

The eastern edge of the parcel is mapped within the estuarine floodplain as identified by the Federal Emergency Management Agency (FEMA) and as shown on the FEMA Flood Zones Map. FEMA Special Flood Hazard Area (SFHA) VE is mapped along the shoreline, and SFHA AE on the uplands. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

Surface Waters of the State

The subject property is located on the Indian River Lagoon, designated as a Class III Water in this location. A 25-foot Buffer is required. Primary structures shall be located outside the Buffer. A maximum of 30% impervious area is permissible within the Buffer. Stormwater management in accordance with Section 62-3666(3) is required. The removal of native vegetation located within the Buffer shall be avoided, and any impacts require in-kind restoration. FDEP regulates mangrove trimming, and can be reached at 407-897-4101. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

Coastal High Hazard Area

The eastern edge of the property is located within the Coastal High Hazard Area (CHHA) as defined by Florida Statute 163.3178(2)(h), and as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates Coastal High Hazard Areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute.

Aquifer Recharge Soils

The subject parcel contains mapped aquifer recharge soils (Candler fine sand) as shown on the USDA Soil Conservation Service Soils Survey map. The applicant is hereby notified of the development and the impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance. The recent unpermitted land alteration of the parking lot may require stormwater management.

Indian River Lagoon Nitrogen Reduction Overlay

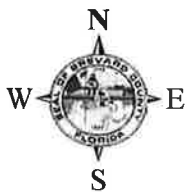
The eastern half of the parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

Protected and Specimen Trees

Protected (≥ 10 inches in diameter) and Specimen (≥ 24 inches in diameter) trees may exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

LOCATION MAP

IR TIKI 2, LLC (SANDEEP PATEL, MANAGER)
22SS00015





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

Buffer Distance: 500 feet

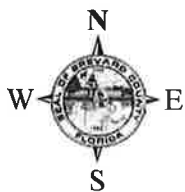
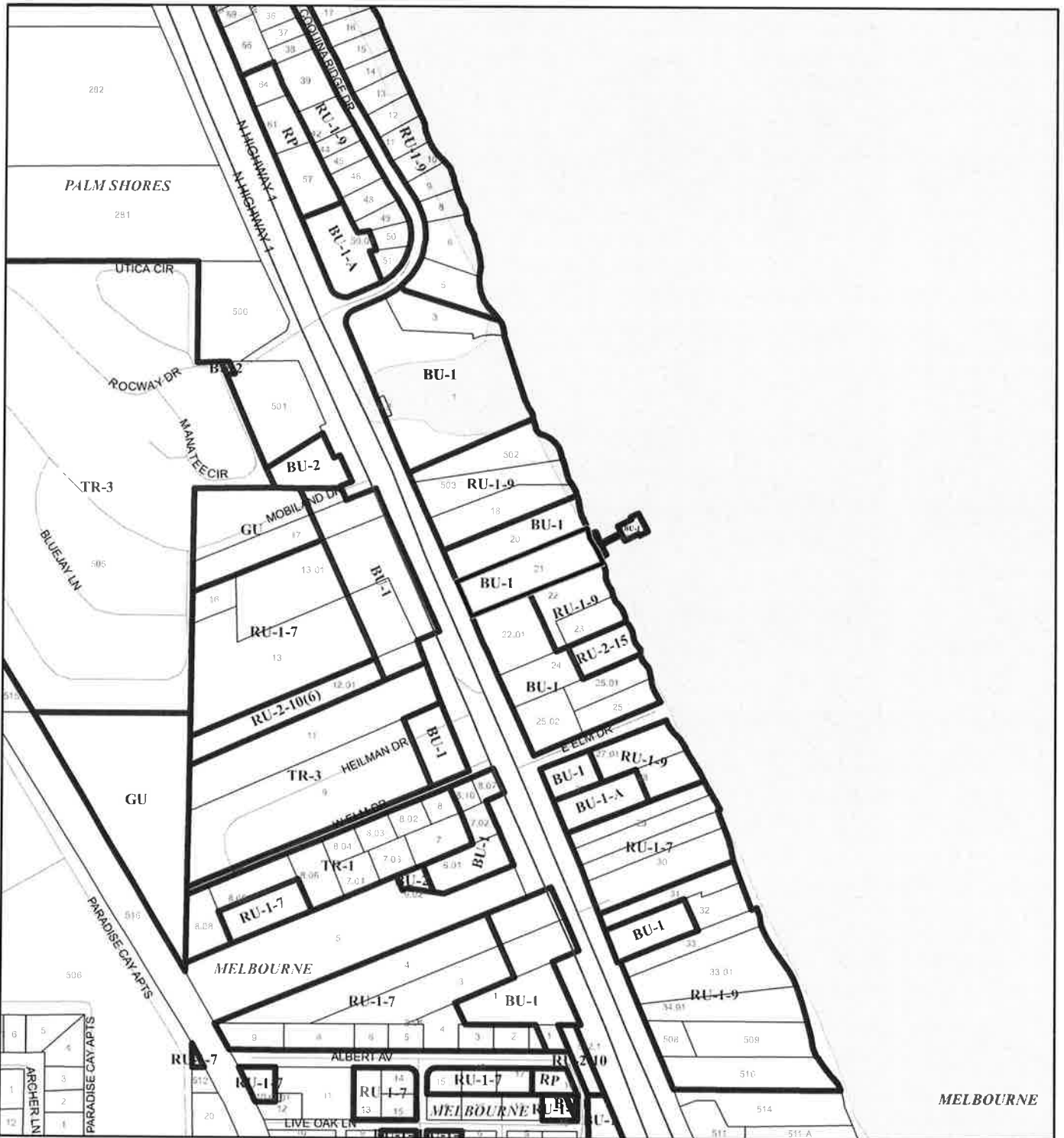
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 1/5/2023

-  Buffer
-  Subject Property

ZONING MAP




IR TIKI 2, LLC (SANDEEP PATEL, MANAGER)
22SS00015



1:4,800 or 1 inch = 400 feet

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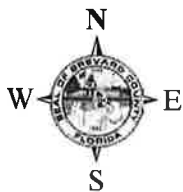
Produced by BoCC - GIS Date: 1/5/2023

-  Subject Property
-  Parcels
-  Zoning

FUTURE LAND USE MAP

IR TIKI 2, LLC (SANDEEP PATEL, MANAGER)

22SS00015



1:4,800 or 1 inch = 400 feet

— Subject Property
 □ Parcels

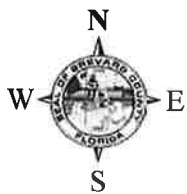
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 1/4/2023

PROPOSED FUTURE LAND USE MAP

IR TIKI 2, LLC (SANDEEP PATEL, MANAGER)

22SS00015



1:4,800 or 1 inch = 400 feet

- Subject Property
- Parcels

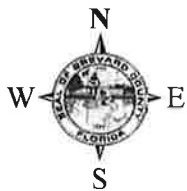
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AERIAL MAP

IR TIKI 2, LLC (SANDEEP PATEL, MANAGER)

22SS00015




1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2022

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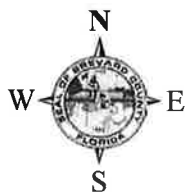
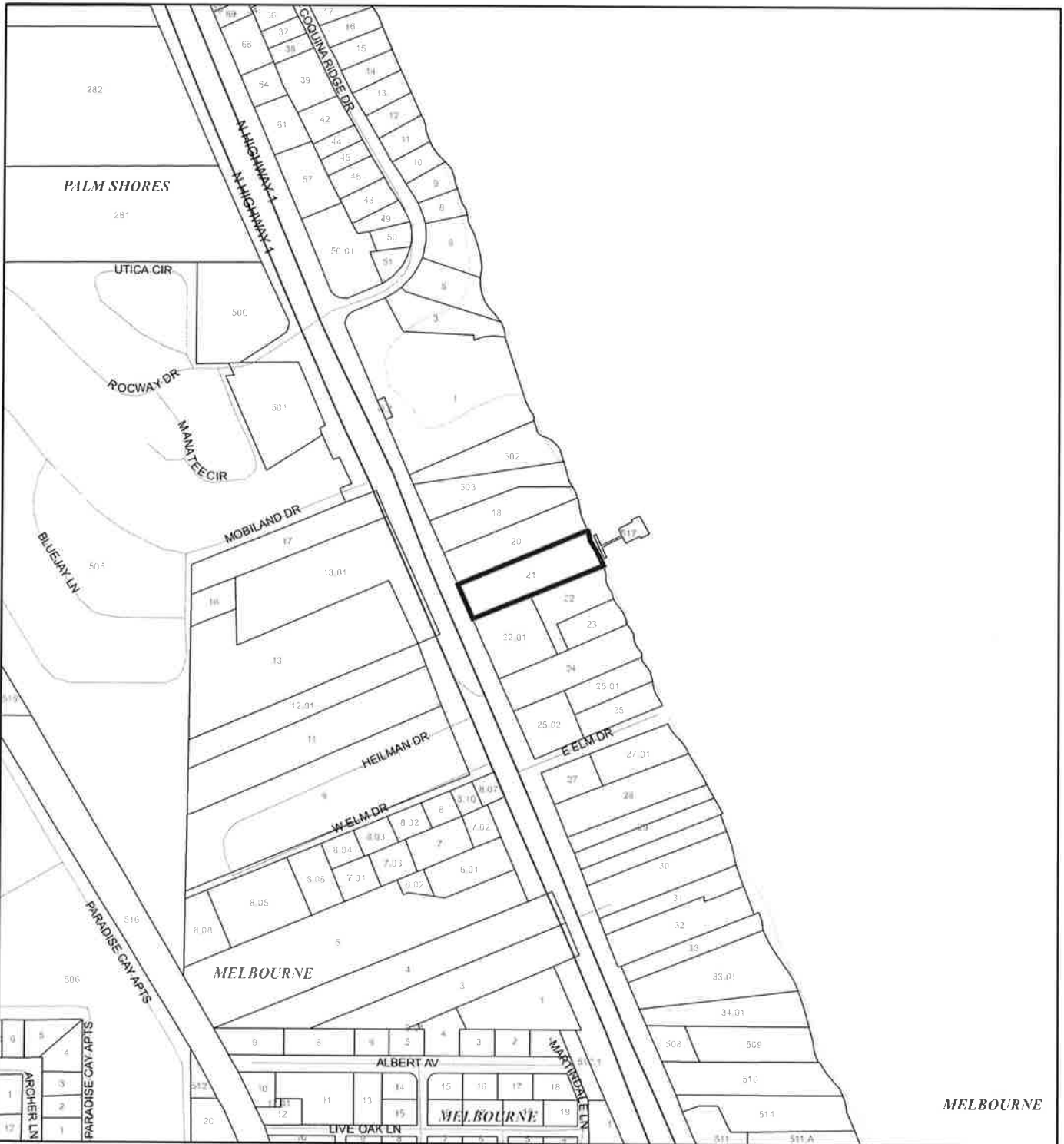
Produced by BoCC - GIS Date: 1/4/2023

 Subject Property

 Parcels

NWI WETLANDS MAP

IR TIKI 2, LLC (SANDEEP PATEL, MANAGER)
22SS00015













1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 1/4/2023

National Wetlands Inventory (NWI)

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

SJRWMD FLUCCS WETLANDS - 6000 Series MAP

IR TIKI 2, LLC (SANDEEP PATEL, MANAGER)

22SS00015



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 1/4/2023

SJRWMD FLUCCS WETLANDS

-  Wetland Hardwood Forests - Series 6100
-  Wetland Coniferous Forest - Series 6200
-  Wetland Forested Mixed - Series 6300
-  Vegetated Non-Forested Wetlands - Series 6400
-  Non-Vegetated Wetland - Series 6500

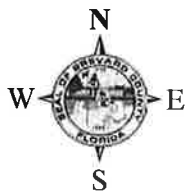
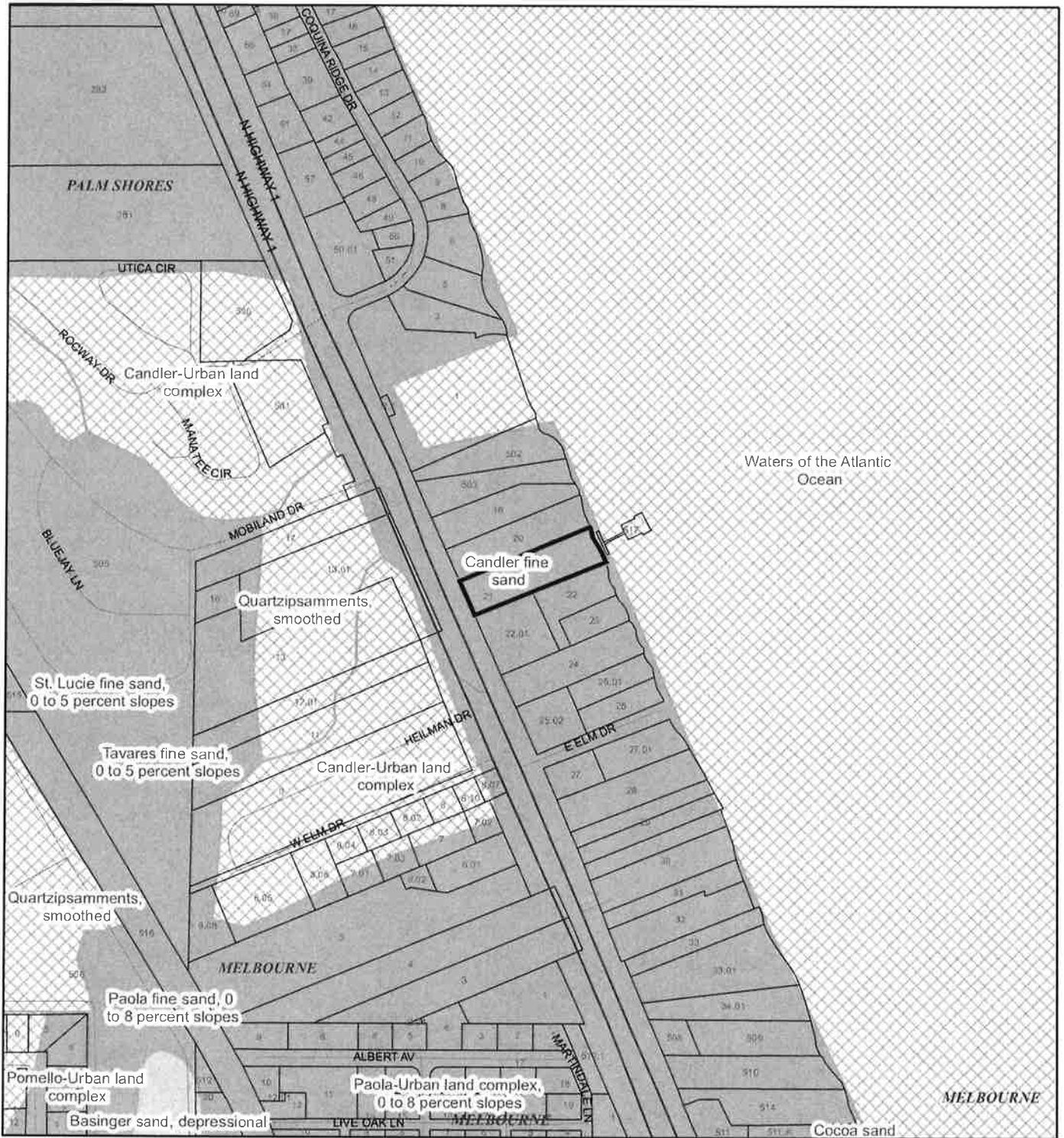
 Subject Property

 Parcels

USDA SCSSS SOILS MAP

IR TIKI 2, LLC (SANDEEP PATEL, MANAGER)

22SS00015









1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 1/4/2023

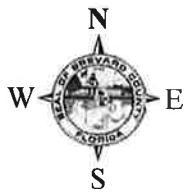
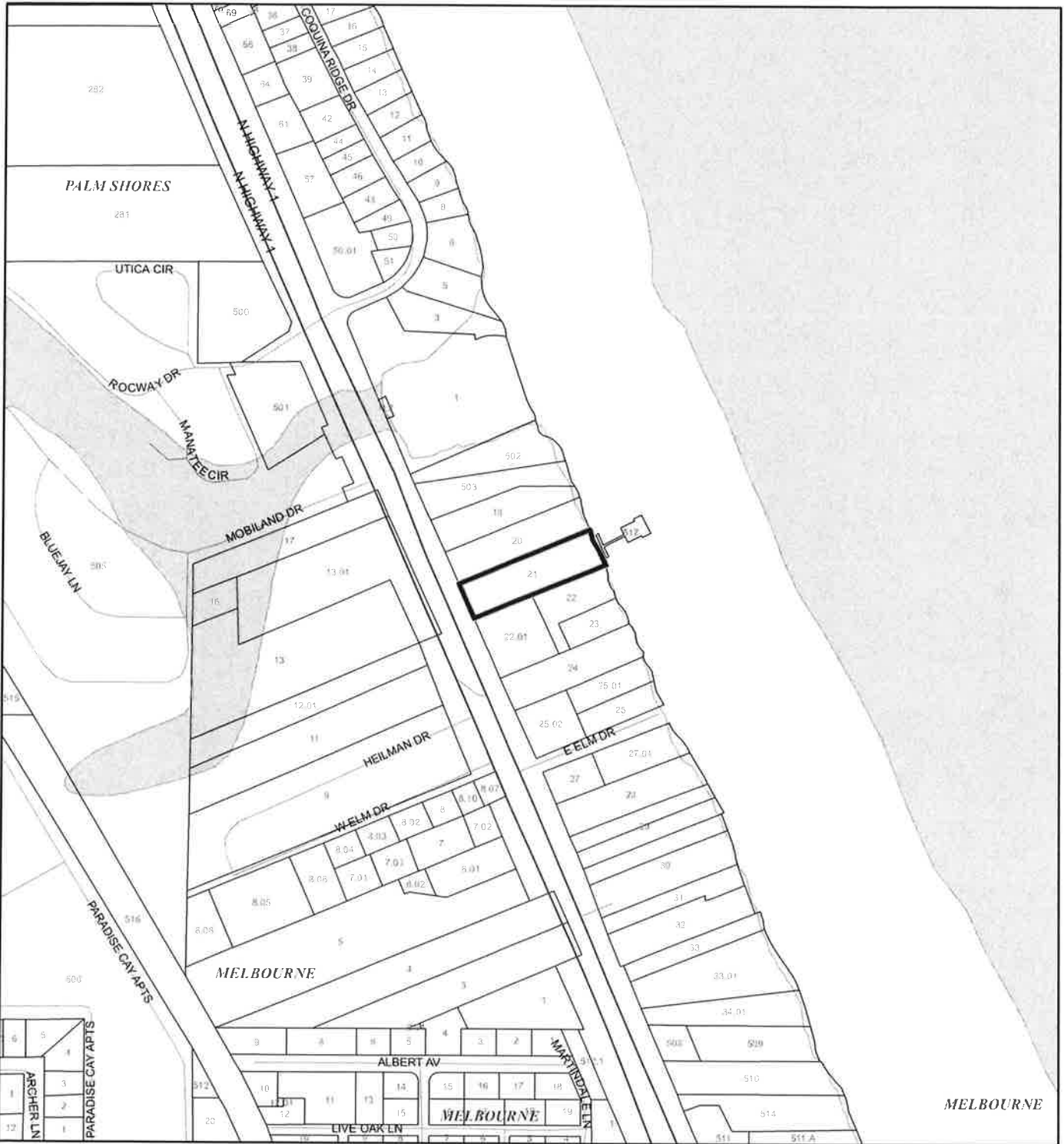
USDA SCSSS Soils

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

FEMA FLOOD ZONES MAP

IR TIKI 2, LLC (SANDEEP PATEL, MANAGER)

22SS00015












1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 1/4/2023

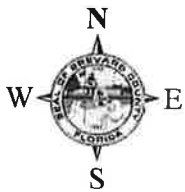
FEMA Flood Zones

- | | | |
|--|--|---|
|  A |  AO |  X |
|  AE |  Open Water | |
|  AH |  VE | |
|  Subject Property |  Parcels | |

COASTAL HIGH HAZARD AREA MAP

IR TIKI 2, LLC (SANDEEP PATEL, MANAGER)




22SS00015



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 1/4/2023

-  Subject Property
-  Parcels
- Coastal High Hazard Area**
-  SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

IR TIKI 2, LLC (SANDEEP PATEL, MANAGER)

22SS00015



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

Septic Overlay

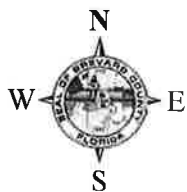
 40 Meters

 60 Meters

 All Distances

EAGLE NESTS MAP

IR TIKI 2, LLC (SANDEEP PATEL, MANAGER)
22SS00015



1:4,800 or 1 inch = 400 feet

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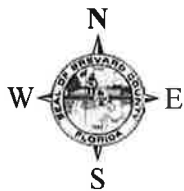
Produced by BoCC - GIS Date: 1/4/2023

- Subject Property
- Parcels
- Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

IR TIKI 2, LLC (SANDEEP PATEL, MANAGER)




22SS00015



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 1/4/2023

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

IR TIKI 2, LLC (SANDEEP PATEL, MANAGER)

22SS00015



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 1/4/2023

SJRWMD FLUCCS Upland Forests

- Upland Coniferous Forest - 4100 Series
- Upland Hardwood Forest - 4200 Series
- Upland Mixed Forest - 4300 Series
- Tree Plantations - 4400 Series
- Subject Property
- Parcels

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, March 13, 2023**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order at 3:00 p.m.

Board members present were: Board members present were: Henry Minneboo (D1); Ron Bartcher (D1); Robert Sullivan (D2); Lorraine Koss (D2-Alt.); Ben Glover, Vice Chair (D3); Debbie Thomas (D4); Mark Wadsworth, Chair (D4); Logan Luse (D4-Alt.); Bruce Moia; and John Hopengarten (BPS).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Alex Esseesse, Deputy County Attorney; Jane Hart, Planner III; Paul Body, Planner III; Trina Gilliam, Planner II; Melissa Wilbrandt, Associate Planner; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Agenda

IR Tiki 2, LLC (Sandeep Patel)

A Small Scale Comprehensive Plan Amendment (22S.18) to change the Future Land Use designation from NC (Neighborhood Commercial) to CC (Community Commercial), on 0.96 acres, located on the east side of U.S. Highway 1, approx. 0.16 mile south of Coquina Ridge Dr. (4263 N. U.S. Highway 1, Melbourne) (22SS00015) (Tax Account 2611662) (District 4)

Steve Monroe, 3080 Brandywine Lane, Melbourne, stated he is the engineer representing the applicant. The property is the Marker 99 restaurant, originally built in 1978. When the present owners bought the property, the first thing they did was install a new lift station and force, main and connected to the City of Melbourne Utilities. The second thing they are in the process of doing is changing the existing parking, which is dirt and asphalt that directs drainage to the Indian River. A site plan has been prepared that will provide pervious concrete to replace the current parking lot, and it will retain 100% of the stormwater, eliminating any further discharge to the river. During the site plan stage, it was recognized by staff that the tiki hut expansion is a non-conforming use, and that is the reason for the request from Neighborhood Commercial to Community Commercial.

Public comment.

John Dinome, 4233 N. Harbor City Boulevard, Melbourne, asked if just the parking lot is changing, or if a new structure will be built on the empty lot next door.

Mr. Monroe replied there are no proposed improvements on the neighboring lot; they don't own that property. The proposed improvements are to the paving of the parking lot; the tiki hut currently exists.

Mr. Dinome stated he is in favor of the request if there is not going to be additional construction.

Motion by Bruce Moia, seconded by Robert Sullivan, to recommend approval of the Small Scale Comprehensive Plan Amendment from NC to CC. The motion passed unanimously.