



AGENDA REPORT
May 30, 2019

Palm Bay REH, LLC (Hitesh Patel) requests a CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a restaurant, in TU-1. (19PZ00051) (District 1)

SUBJECT:

Palm Bay REH, LLC (Hitesh Patel) requests a CUP (Conditional Use Permit) for Alcoholic Beverages for On-Premises Consumption in conjunction with a restaurant, in TU-1 (General Tourist Commercial). (19PZ00051) (District 1)

DEPT/OFFICE:

Planning and Development

REQUESTED ACTION:

It is requested that the Board of County Commissioners conduct a public hearing to consider a CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a restaurant, in a TU-1 (General Tourist Commercial) zoning classification.

SUMMARY EXPLANATION and BACKGROUND:

The applicant is seeking a CUP (Conditional Use Permit) for on premises consumption of alcoholic beverages (full liquor) in conjunction with a 4,980 square foot high turnover sit-down restaurant. This parcel long retained the rights to a nonconforming alcohol license from the State of Florida for the sale of alcohol beverages in conjunction with the restaurant, rather than having a CUP for Alcoholic Beverages for on-premises consumption having been operating as a restaurant before the Brevard County Zoning code. Because the nonconforming alcohol license was not renewed and the business has been closed for more than 180 consecutive days, the nonconforming use of the alcohol license has expired and the new owner has to apply for a CUP for Alcoholic Beverages for on-premises consumption.

There are numerous restaurants along the Highway U.S. 1 commercial corridor between S.R. 528 and Fay Boulevard that have a CUP approved to serve alcoholic beverages in conjunction with a restaurant. The Board should consider the compatibility of the proposed CUP with surrounding development.

The abutting parcel to the north and west is zoned PUD (Planned Unit Development)

which is vacant land which was rezoned under **18PZ00014** on May 7, 2018 to build a proposed 40' lot width single-family subdivision. The abutting parcel to the south is zoned TR-1 (Single-Family Mobile Home) with an existing nonconforming mobile home park on the parcel. The parcel to the east is across U.S. Highway 1 is zoned BU-1 (General Retail Commercial).

Such CUP may be: 1) approved subject to the conditions of Section 62-1906; 2) approved subject to the conditions of 62-1906 and conditions imposed by the Board above and beyond the requirements of Section 62-1906; or 3) denied.

On May 6, 2019, the Planning and Zoning Board tabled the request to the May 20, 2019, Local Planning Agency meeting, as the applicant failed to appear.

On May 20, 2019, the Planning and Zoning Board heard the request and unanimously recommended approval.

ATTACHMENTS:

Description

- ▣ **Administrative Policies**
- ▣ **Staff Comments**
- ▣ **GIS Maps**
- ▣ **PZ Minutes 05/06/19**
- ▣ **PZ Minutes 05/20/19**

Resolution 19PZ00051

On motion by Commissioner Pritchett, seconded by Commissioner Lober, the following resolution was adopted by a unanimous vote:

WHEREAS, Palm Bay REH, LLC has requested a CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a restaurant, in a TU-1 (General Tourist Commercial), on property described as Tax Parcel 508, as recorded in ORB 8240, Pages 2310 – 2311, of the Public Records of Brevard County, Florida. **Section 30, Township 23, Range 36.** (1.23 acres) Located on the west side of U.S. Hwy 1., approx. 290 ft. north of Camp Rd. (4885 N. Hwy 1, Cocoa); and

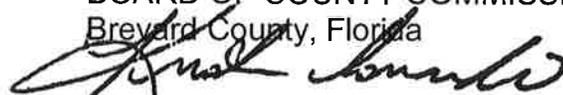
WHEREAS, a public hearing of the Brevard County Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning and Zoning Board recommended that the application be approved; and

WHEREAS, the Board, after considering said application and Brevard County Planning and 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; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a restaurant, in a TU-1 (General Tourist Commercial), be approved. The Planning and 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 May 30, 2019.

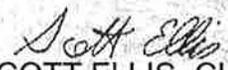
BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida



Kristine Isnardi, Chair
Brevard County Commission

As approved by the Board on May 30, 2019.

ATTEST:



SCOTT ELLIS, CLERK

(SEAL)

Planning and Zoning Board Hearing – May 20, 2019

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 year of approval or if construction does not commence within two years of approval. A Planned Unit Development 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.**

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

The Brevard County zoning official, planners and the director of the Planning and Development staff, however designated, are recognized as expert witnesses for the purposes of Comprehensive Plan amendments as well as zoning, conditional use, special exception, and variance applications.

Administrative Policy 2

Upon Board request, members of the Brevard County Planning and Development staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for development approval that come before the Board of County Commissioners for quasi-judicial review and action. The Board may table an item if additional time is required to obtain the analysis requested or to hire an expert witness if the Board deems such action appropriate. Staff input may include the following:

Criteria:

- A. Staff shall analyze an application for consistency or compliance with comprehensive plan policies, zoning approval criteria and other applicable written standards.
- B. Staff shall conduct site visits of property which are the subject of analysis and recommendation. As part of the site visit, the staff shall take a videotape or photographs where helpful to the analysis and conduct an inventory of surrounding existing uses. Aerial photographs shall also be used where they would aid in an understanding of the issues of the case.
- C. In cases where staff analysis is required, both the applicant and the staff shall present proposed findings of fact for consideration by the Board.
- D. For re-zoning applications where a specific use has not been proposed, the worst case adverse impacts of potential uses available under the applicable land use classification shall be evaluated by the staff.

Administrative Policy 3

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

Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use.
- B. Whether the proposed use(s) would cause a material reduction (five percent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through analysis of:

1. historical land use patterns;
2. actual development over the immediately preceding three years; and
3. development approved within the past three years but not yet constructed.

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

Administrative Policy 4

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

Criteria:

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

Administrative Policy 5

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the use(s) shall be considered. In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following criteria:

Criteria:

- A. Whether adopted levels of services will be compromised;
- B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;

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

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.

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

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

CONDITIONAL USE PERMITS (CUPs)

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

(b) Approval procedure. An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in Section 62-1151. The approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved. If the applicant meets its initial burden, then the Board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the Board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use. In stating grounds in support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odors, glare and noise, particulates, smoke, fumes, and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.

(c) General Standards of Review.

- (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon

a consideration of the factors specified in Section 62-1151(c) plus a determination whether an application meets the intent of this section.

- a. The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1), the number of persons anticipated to be using, residing or working under the conditional use; (2), noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3), the increase of traffic within the vicinity caused by the proposed conditional use.
 - b. The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.
 - c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an M A I certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.
- (2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:
- a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1), adequate to serve the proposed use without burdening adjacent and nearby uses, and (2), built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at Level of Service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable Brevard County standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.
 - b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.
 - c. Noise levels for a conditional use are governed by Section 62-2271.

- d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
- e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
- f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.
- g. Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.
- h. Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.
- i. The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.
- j. Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.

- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.”

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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

REZONING REVIEW WORKSHEET

19PZ00051

Commission District # 1

Hearing Dates: P&Z 05/06/19 05/20/19 BCC 05/30/19

Owner Name: Palm Bay REH, LLC

Request: CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in Conjunction with a Restaurant in TU-1

Subject Property:

Parcel ID# 23-36-30-00-508

Tax Acct.# 2317205

Location: West side of U.S. Highway 1, approx. 290 ft. north of Camp Road

Address: 4885 N. Highway 1, Cocoa

Acreage: 1.23

Consistency with Land Use Regulations

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

YES Proposal can be considered under the Future Land Use Designation. Sec. 62-1255

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

	CURRENT	PROPOSED
Zoning	TU-1	TU-1 with CUP for alcoholic beverage (full liquor for a restaurant)
Potential*	10,716 sq. ft.	10,716 sq. ft.
Can be Considered under FLU MAP	YES Community Commercial	YES Community Commercial

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

	ADT	PM PEAK		
Trips from Existing Zoning	633	49	Segment Number	3600
Trips from Proposed Zoning	633	49	Segment Name	Highway US-1 Camp Road to Broadway Blvd
Maximum Acceptable Volume (MAV)	41,790	3,761	Acceptable LOS	D
Current Volume	28,128	2,532	Directional Split	0.5
Volume With Proposed Development	28,761	2,581	ITE CODE	
Current Volume / MAV	67.31%	67.31%	932	
Volume / MAV with Proposal	68.82%	68.63%		
Current LOS	C	C		
OS With Proposal	C	C		
Findings	<input checked="" type="checkbox"/> Non-Deficiency		<input type="checkbox"/> Deficiency	

Background & Purpose of Request

The applicant is requesting a Conditional Use Permit (CUP) for Alcoholic Beverages (full alcohol) for on-premises consumption in conjunction with a high turnover sit-down restaurant in a TU-1 Zoning classification. This request is for a full service 4,980 sq. ft. restaurant with 153 seats on a parcel 1.23 acres in size, located on the west side U.S. Highway 1, 1,292 feet north of Camp Rd.

The parcel was rezoned from General Retail Commercial (BU-1) to General Tourist Commercial (TU-1) on June 10, 1982 via **Z-6056**. This parcel long retained the rights to a nonconforming alcohol license from the State of Florida for the sale of alcohol beverages in conjunction with the restaurant, rather than having a CUP for Alcoholic Beverages for on-premises consumption having been operating as a restaurant before the Brevard County Zoning code.

A longstanding restaurant on this parcel, Corky Bells Seafood Restaurant, burned down during a 2004 hurricane. The owner had kept the alcohol license renewed while the restaurant was rebuilt to a new 4,800 sq. ft. restaurant with site plan **SP0504006**, which included improved parking in 2005. The new Corky Bells reopened still using this license.

In August 2014, the restaurant and the parcel were sold and the name of the restaurant was change to Woody's Bar B Q. The new owner of the restaurant retained the nonconforming alcohol license. The restaurant was improved again via minor site plan **14AD-00695** in 2014, adding a drive-thru and increasing the square footage from 4,800 sq. ft. to 4,980 sq. ft. Woody's Bar B Q closed down after the Hurricane in 2017 and the restaurant was sold in August 2018, but the alcohol license was not renewed.

*Per **Nonconforming Uses section 62-1183 Abandonment**: If any nonconforming use of land or structures is abandoned or discontinued for a period of 180 consecutive days or for 18 cumulative months during any three-year period, the land or structure shall thereafter only be put to a use specifically in conformity with the provisions of the applicable zoning classification.*

Because the nonconforming alcohol license was not renewed and the business has been closed for more than 180 consecutive days, the nonconforming use of the alcohol license has expired and the new owner has to apply for a CUP for Alcoholic Beverages for on-premises consumption.

Land Use Compatibility

This site retains the Community Commercial (CC) Future Land Use designation. The TU-1 zoning is consistent with Community Commercial Future Land Use designation.

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

FLUE 2.7 outlines activities permitted in the CC FLU designation.

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

Applicable Land Use Policies

The request is for a Conditional Use Permit (CUP) for the on-premises consumption of alcohol for full liquor in conjunction with a restaurant use in a TU-1 zoning classification. TU-1 is a general tourist commercial Zoning classification which permits hotels and motels among its listed uses. It also permits BU-1-A type retail uses in conjunction with and accessory to a hotel or motel with a minimum of 25 rooms. The minimum lot size is 15,000 with a minimum width of 100' and minimum depth of 150'. No maximum density restrictions shall apply in the community commercial future land use designation.

Per section 62-1906(3) Except for restaurants with more than 50 seats, no alcoholic beverages shall be sold or served for consumption on the premises from any building that is within 300 feet from the lot line of a school or church if the use of the property as a school or church was established prior to the commencement of the sale of such alcoholic beverages. The restaurant will have 153 indoor seats which exempts it from the distance requirement between a school or church.

The abutting parcel to the north and west is zoned Planned Unit Development (PUD) which is vacant land which was rezoned under **18PZ00014** on May 7, 2018 to build a proposed 40' lot width single-family subdivision. The abutting parcel to the south is zoned TR-1 with an existing nonconforming mobile home park on the parcel. The parcel to the east is across U.S. Highway 1 right-of-way which zoned General Retail (BU-1).

The half-mile radius around this site has seen only three zoning changes within the last 3 years.

October 13, 2016; **16PZ00067**, changed the zoning classification on a 28.17 acre parcel from General Use (GU) to Government Managed Lands (Institutional) GML(I). Located on the south side of Camp Rd. approximately 2,640 feet southeasterly of the subject parcel.

December 01, 2016; **16PZ00102**, changed the zoning classification on a 56.17 acre parcel from Agricultural Residential (AU) and Multi-Family Residential (Medium Density) (RU-2-15) to Single-Family Residential (RU-1-7) with a Binding Development Plan limiting the density to four unit per acre. Located on the west side of U.S. Highway 1 approximately 1,648 feet south of the subject parcel.

May 24, 2018; **18PZ00014**, changed the zoning classifications on 129.62 acre parcel from General Use (GU); General Retail Commercial (BU-1); Retail, Warehousing and Wholesale Commercial (BU-2); Light industrial (IU) and Heavy Industrial (IU-1) to PUD. This rezoning is located on the west side of U.S. Highway 1 and is abutting the subject parcel to the north and west.

Special Considerations for Conditional Use Permit

The Board should consider the compatibility of the proposed CUP pursuant to Section 62-1151(c) and to Section 62-1901, as outlined on pages 6-9 of these comments. Section 62-1901 provides that 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.** The applicant's responses are indicated in **bold** and staff observations, if any, are provided in *italics*.

Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP based upon consideration of applicable regulations relating to zoning and land use within the context of public health, safety and welfare. The applicant has submitted documentation in order to demonstrate consistency with the standards set forth in Section 62-1901 and Section 62-1906, on-premises consumption of alcohol.

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

- 3) Except for restaurants with more than 50 seats, no alcoholic beverages shall be sold or served for consumption on the premises from any building that is within 300 feet from the lot line of a school or church if the use of the property as a school or church was

established prior to the commencement of the sale of such alcoholic beverages. For the purposes of this subsection, a school shall include only grades kindergarten through 12. For the purpose of establishing the distance between the proposed alcoholic beverage use and churches and schools, a certified survey shall be furnished from a registered engineer or surveyor. Such survey shall indicate the distance between the front door of the proposed place of business and all property lines of any church or school within 400 feet. Each survey shall indicate all such distances and routes.

The restaurant will have 153 indoor seats which exempts it from the distance requirement between a school or church.

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

Serving and consumption of food and beverages, alcohol or otherwise, shall be strictly prohibited outside of the existing building. All operations are to be contained within a completely enclosed building. The Board may wish to consider whether any additional operational requirements should be imposed as a part of this request.

General Standards of Review

Section 62-1901(c)(1)(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.

The proposed use is a restaurant with On-Premises sale of alcoholic beverages. The site is located along in a platted commercial subdivision. There are a mix of existing storage, convenience store, fire dept., office, and gas station businesses within the subdivision.

Any noise generated in conjunction with the operation of the business would need to comply with the performance standards of Section 62-2251 through 62-2272, including the noise regulations of Section 62-2271. The parcel is not in a commercial subdivision, but is in a commercial area abutting Highway US-1.

Section 62-1901(c)(1)(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.

The proposed site is strongly compatible with the surrounding properties with regard to use, function, operation hours of operation, type and amount of traffic generated, building size and setback and parking availability.

Section 62-1901(c)(1)(c) The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebutably presumed to have occurred if abutting property suffers a 15 percent reduction in value as a result of the proposed conditional use. A reduction of ten percent of the value of abutting property shall create a reputable presumption that a substantial diminution has occurred. The board of county commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an MAI certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.

The commercial subdivision as approved is the preferred location for commercial businesses as opposed to instead renovation or new construction adjacent to residences.

The parcel is not in a commercial subdivision, but is in a commercial area abutting Highway US-1.

Section 62-1901(c)(2)(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 percent, or ten percent 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 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.

The site plan and project has been there for many years and has been approved by Brevard County to meet all listed items.

Section 62-1901(c)(2)(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.

The property will be compatible with adjacent uses. The site is separated from any residential use. Woods in the back and commercial businesses to the north and south.

The abutting parcel to the south is zoned TR-1 with an existing nonconforming mobile home park on the parcel. The abutting parcel to the west and a small strip to the north is zoned PUD, with residential uses planned for development.

Section 62-1901(c)(2)(c) Noise levels for a conditional use are governed by section 62-2271.

Note: The proposed use will be within the permitted noise level.

Section 62-1901(c)(2)(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.

The sale of alcoholic beverages for on premise use will not cause the adopted level of service for solid waste disposal for the property or area covered by such level of services to be exceeded.

Section 62-1901(c)(2)(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.

The sale of alcoholic beverages for on premise use will not cause the adopted level of service for potable water or wastewater for the property or area covered by such level of services to be exceeded.

Section 62-1901(c)(2)(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.

The site plan meets all County screening/buffering code requirements.

Section 62-1901(c)(2)(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.

The project signage will be new and meet all current County codes and ordinances.

Section 62-1901(c)(2)(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.

The hours of use will be in accordance with all current County codes and ordinances.

Section 62-1901(c)(2)(l) 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.

The building height is 25 feet and is compatible with surrounding structures.

Section 62-1901(c)(2)(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.

Note: 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.

All parking and loading areas will be met on site per County codes and ordinances.

Parking – Brevard County land development regulations require that, for the use proposed, one space for every 100 square feet of gross floor area of the building be provided to meet the minimum spaces required by Section 62-3206(d)(29). The approved site plan provides parking in excess of these minimum standards.

For Board Consideration

The applicant is seeking a CUP for on premises consumption of alcoholic beverages (full liquor) in conjunction with a 4,980 square foot high turnover sit-down restaurant. This parcel long retained the rights to a nonconforming alcohol license from the State of Florida for the sale of alcohol beverages in conjunction with the restaurant, rather than having a CUP for Alcoholic Beverages for on-premises consumption having been operating as a restaurant before the Brevard County Zoning code. Because the nonconforming alcohol license was not renewed and the business has been closed for more than 180 consecutive days, the nonconforming use of the alcohol license has expired and the new owner has to apply for a CUP for Alcoholic Beverages for on-premises consumption.

There are numerous restaurants along the Highway US 1 commercial corridor between Highway 528 and Fay Boulevard that have a CUP approved to serve alcoholic beverages in conjunction with a restaurant. The Board should consider the compatibility of the proposed CUP with surrounding development.

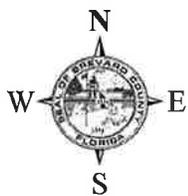
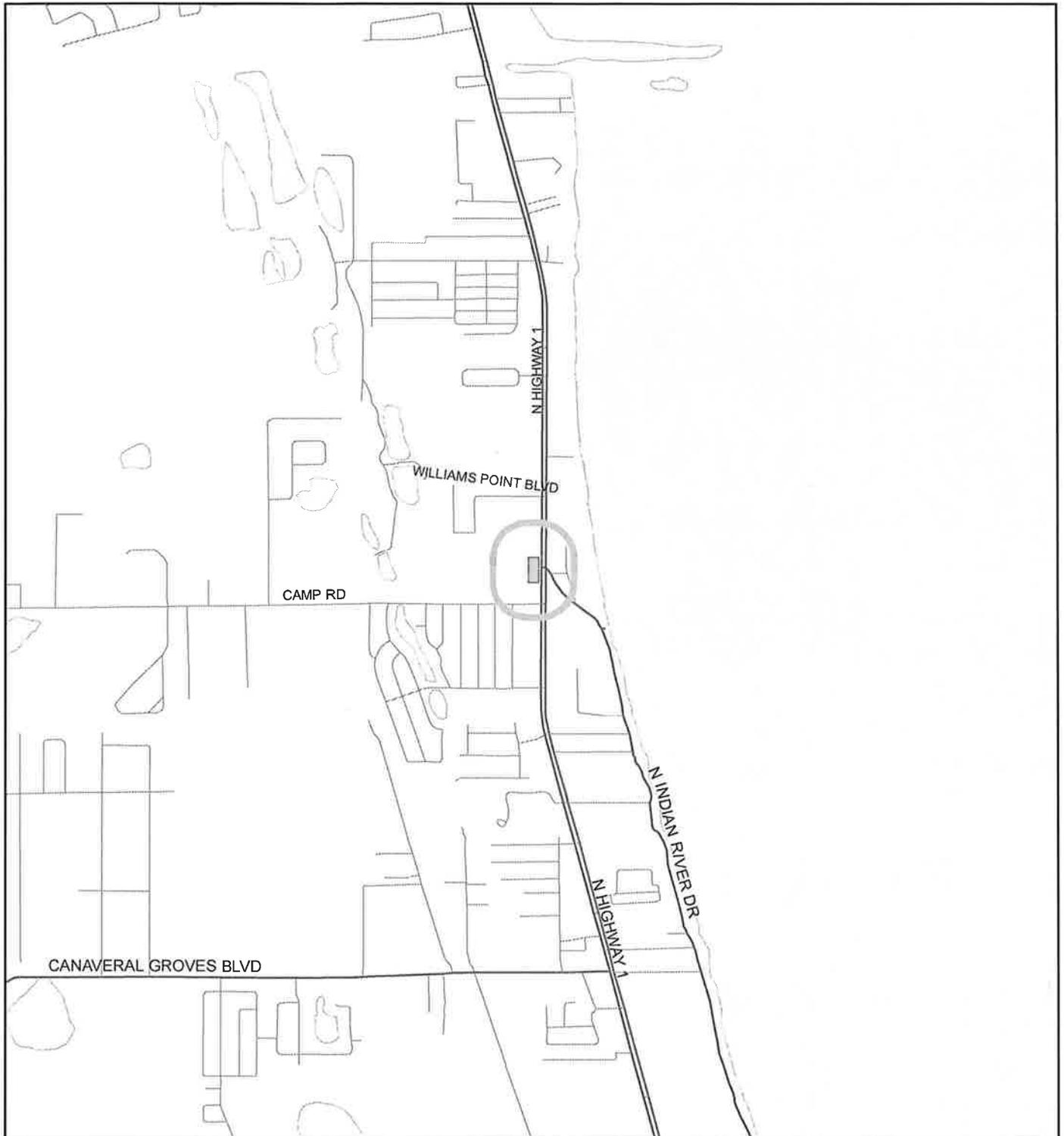
The abutting parcel to the north and west is zoned Planned Unit Development (PUD) which is vacant land which was rezoned under **18PZ00014** on May 7, 2018 to build a proposed 40' lot width single-family subdivision. The abutting parcel to the south is zoned TR-1 with an existing nonconforming mobile home park on the parcel. The parcel to the east is across U.S. Highway 1 right-of-way which zoned General Retail (BU-1).

Such CUP may be: 1) approved subject to the conditions of Section 62-1906; 2) denied, or; 3) approved subject to the conditions of 62-1906 and conditions imposed by the Board above and beyond the requirements of Section 62-1906.

LOCATION MAP

PALM BAY REH, LLC

19PZ00051



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

Buffer Distance: 500 feet

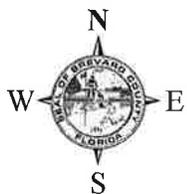
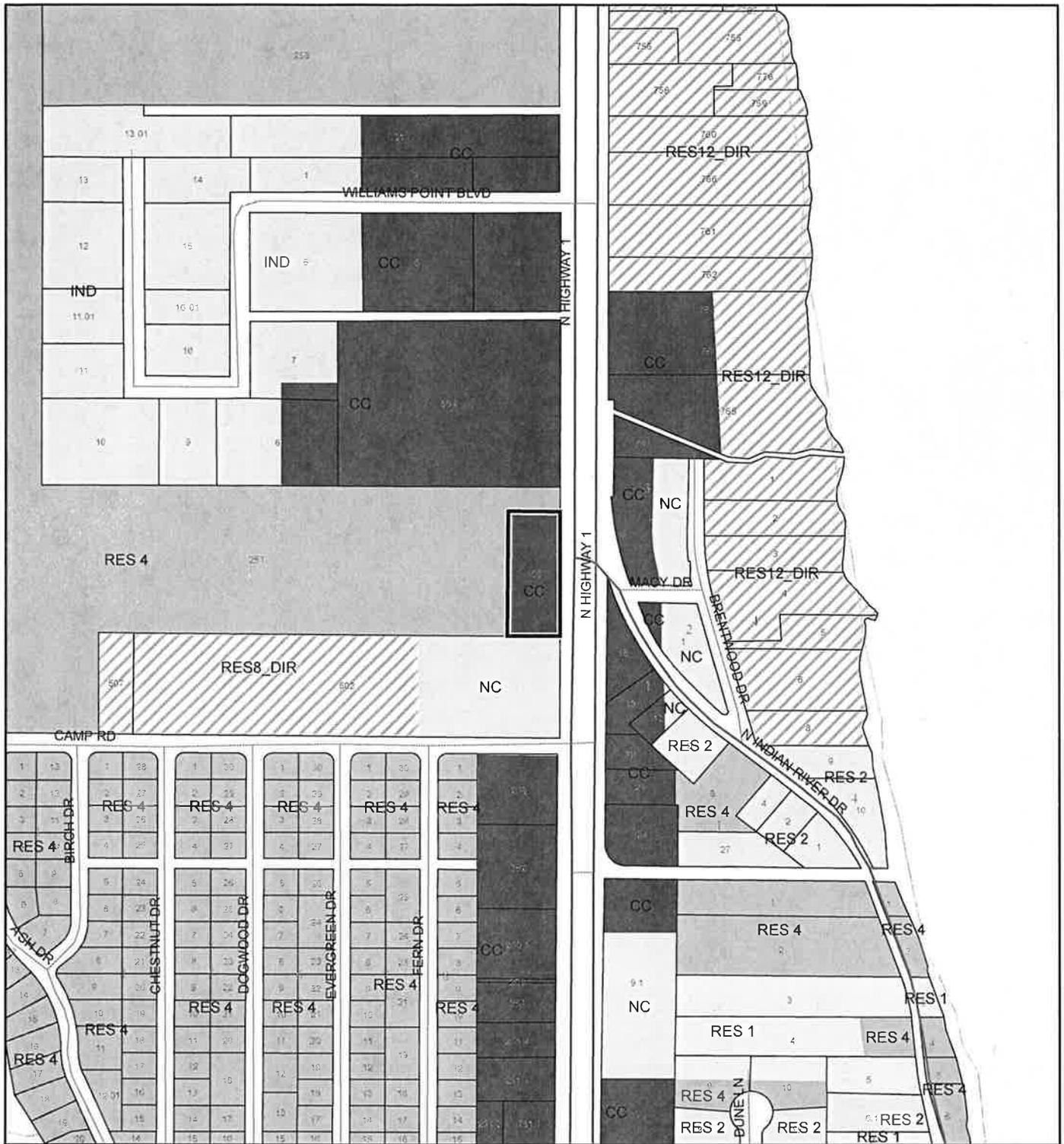
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 4/3/2019

-  Buffer
-  Subject Property

FUTURE LAND USE MAP

PALM BAY REH, LLC
19PZ00051



1:4,800 or 1 inch = 400 feet

-  Subject Property
-  Parcels

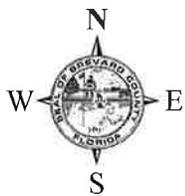
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 4/3/2019

AERIAL MAP

PALM BAY REH, LLC

19PZ00051



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2018

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

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 Subject Property

 Parcels

NWI WETLANDS MAP

PALM BAY REH, LLC

19PZ00051



1:4,800 or 1 inch = 400 feet

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

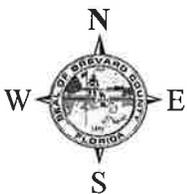
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National Wetlands Inventory (NWI)

- | | | | |
|---|-----------------------------------|---|-----------------|
|  | 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

PALM BAY REH, LLC
19PZ00051



1:4,800 or 1 inch = 400 feet

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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

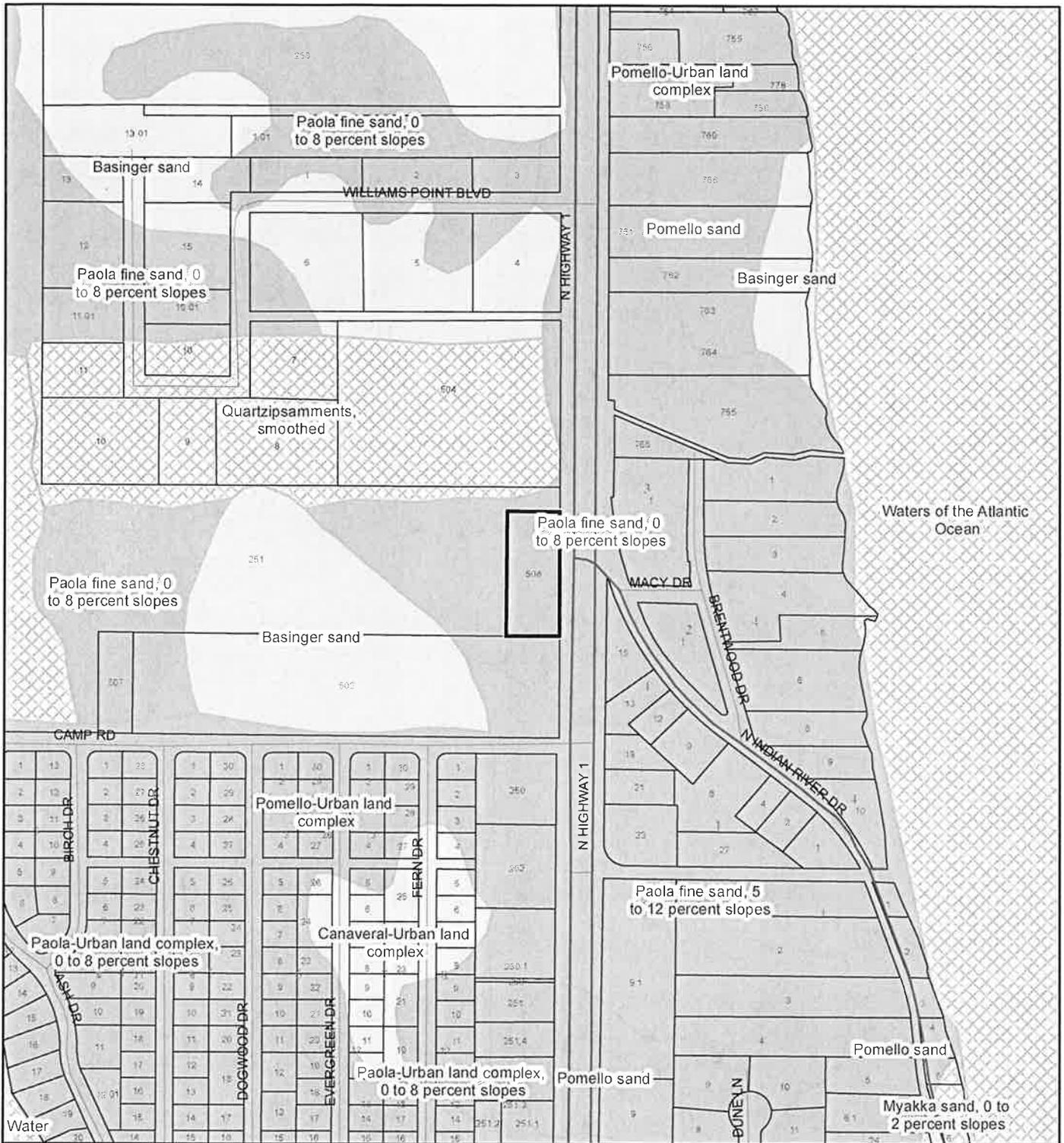
 Subject Property

 Parcels

USDA SCSSS SOILS MAP

PALM BAY REH, LLC

19PZ00051



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/3/2019

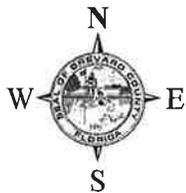
USDA SCSSS Soils

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

FEMA FLOOD ZONES MAP

PALM BAY REH, LLC

19PZ00051



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/3/2019

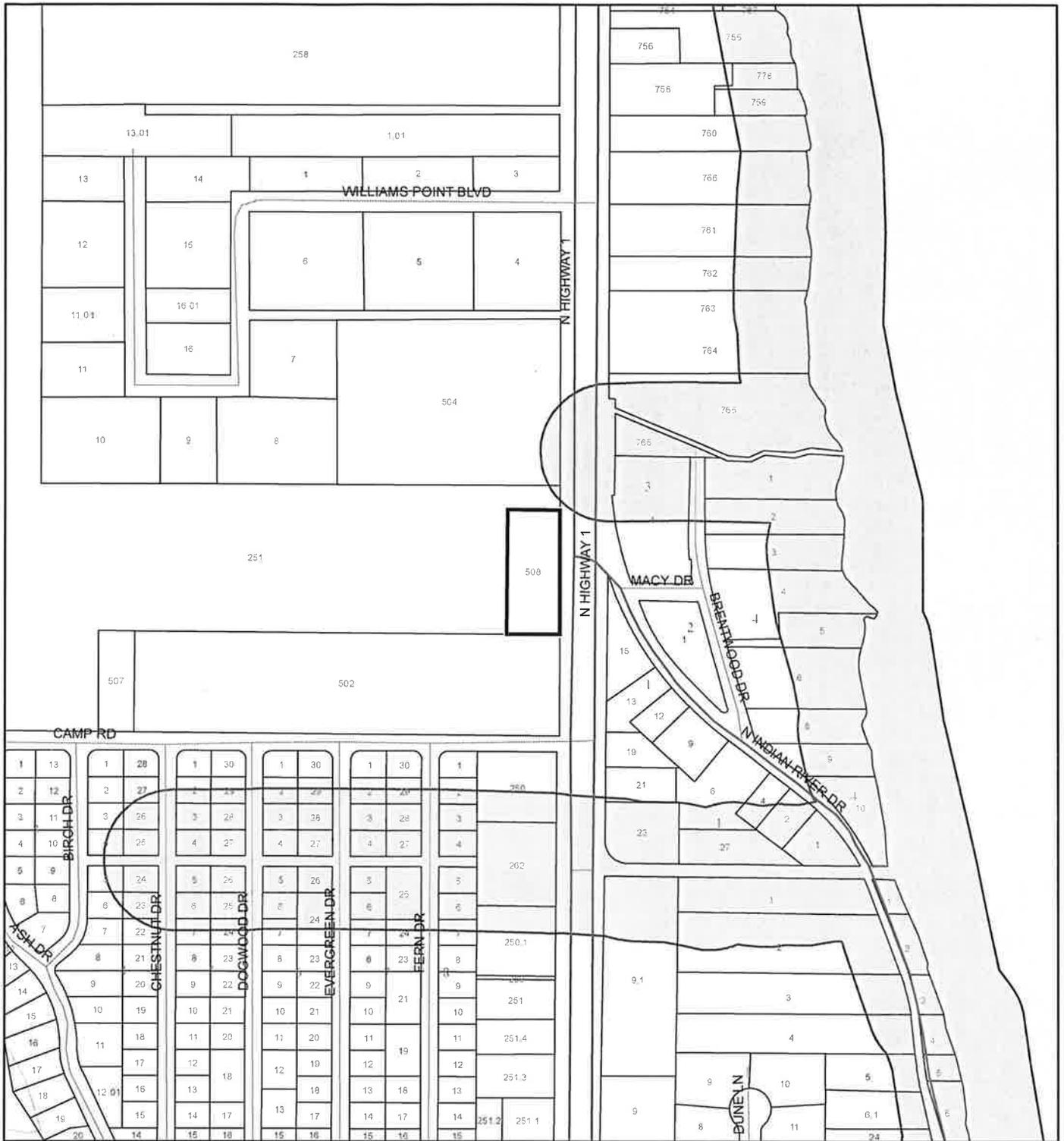
FEMA Flood Zones

- | | | |
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INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

PALM BAY REH, LLC

19PZ00051



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

Septic Overlay

 40 Meters

 60 Meters

 All Distances

SCRUB JAY OCCUPANCY MAP

PALM BAY REH, LLC

19PZ00051



1:4,800 or 1 inch = 400 feet

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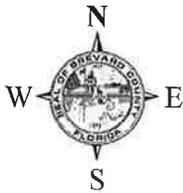
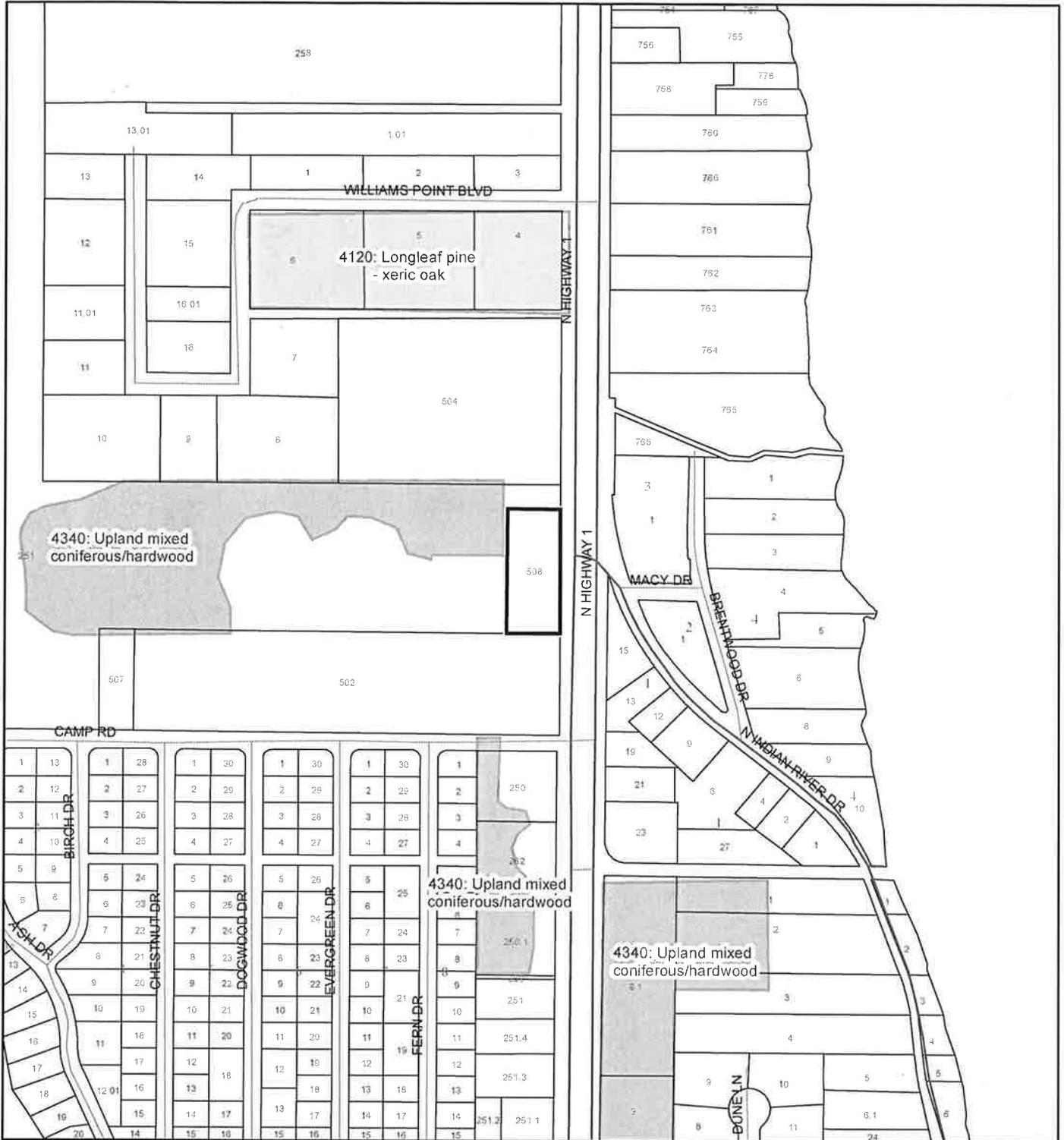
Produced by BoCC - GIS Date: 4/3/2019

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

PALM BAY REH, LLC

19PZ00051



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 4/3/2019

SJRWMD FLUCCS Upland Forests

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

 Subject Property  Parcels

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, May 6, 2019**, at **3:00 p.m.**, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order by the Chair, Henry Minneboo, at 3:00 p.m.

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

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

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

Excerpt from complete agenda.

Palm Bay REH, LLC (Hitesh Patel)

A CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a restaurant, in a TU-1 (General Tourist Commercial) zoning classification. The property is 1.23 acres, located on the west side of U.S. Highway 1, approximately 290 feet north of Camp Road. (4885 North Highway 1, Cocoa) (19PZ00051) (District 1)

Henry Minneboo – Is the applicant here?

Erin Sterk – No, the applicant is not here.

Henry Minneboo – We need to table it.

Erin Sterk – If you want to table it to the May 20th meeting Local Planning Agency meeting it can still go to the May 30th Commission meeting.

Rochelle Lawandales – I'll make a motion that we table it to May 20th.

Bruce Moia – Second.

Henry Minneboo called for a vote on the motion as stated, and it passed unanimously.

LOCAL PLANNING AGENCY (PLANNING AND ZONING BOARD) MINUTES

The Brevard County Local Planning Agency (Planning & Zoning Board) met in regular session on Monday, May 20, 2019, at 3:00 p.m., in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order by the Chair, Henry Minneboo, at 3:00 p.m.

Board members present were: Henry Minneboo, Chair; Ron Bartcher, Rochelle Lawandales; Brian Hodgers; Ben Glover; Ron McLellan; Scott Langston, Vice Chair; Mark Wadsworth; Peter Filiberto; and Dane Theodore.

Staff members present were: Erin Sterk, Planning and Zoning Manager; Jad Brewer, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator II.

Excerpt from complete agenda.

Palm Bay REH, LLC (Hitesh Patel)

A CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a restaurant, in a TU-1 (General Tourist Commercial) zoning classification. The property is 1.23 acres, located on the west side of U.S. Highway 1, approximately 290 feet north of Camp Road. (4885 North Highway 1, Cocoa) (19PZ00051) (District 1)

Hitesh Patel – Hitesh Patel, 4885 North Highway 1, Cocoa. I'm opening the old Woody's Bar-B-Que restaurant, which was damaged by fire and the owner did not want to re-open the business, so I bought it and am reapplying for the alcoholic beverage license.

No public comment.

Rochelle Lawandales – I'll move approval.

Ron McLellan – Second.

Henry Minneboo called for a vote on the motion as stated and it passed unanimously.