



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.10.

3/3/2022

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### Subject:

John Louis Freeman (Pamela McCarty) requests removal of a BDP in an RU-2-12 zoning classification. (21PZ00090) (Tax Account 2520101) (District 2)

### Fiscal Impact:

None

### Dept/Office:

Planning and Development

### Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider removal of a BDP (Binding Development Plan), in an RU-2-12 (Medium Density Multi-Family Residential) zoning classification.

### Summary Explanation and Background:

The applicant's request is to develop one single-family residence, and requests removal of the existing BDP limitation of development of a luxury townhouse project of 13-units on 1.41 acres; the subject lot area represents only a fraction of the overall BDP area. The existing BDP restrictions will apply to the remaining lots, however the size of the individual lots would limit the development potential 2 to 3 units. Zoning action 21PZ00059, to remove the adjacent lot to the north from the BDP, was approved at the Board's January 11, 2022, meeting.

The removal of the existing BDP would allow development of up to two residential units and remove the luxury townhome limitation. The applicant is proposing only one unit (single-family residence) to be developed on the property.

The character of the area is mostly multi-family residential use with supportive commercial establishments servicing the area. The adjacent lots within this block all carry the same RU-2-12 with BDP restrictions. RU-2-12 zoning classification is a 12 unit per acre multi-family residential zoning classification, allowing multi-family residential development or single-family residences at a density of up to 12 units per acre on 7,500 square foot lots. Removing the property from the BDP does not increase the development density of the property; however, it does not restrict the use to luxury townhomes. The applicant proposes to limit development to one single-family residence.

The Board may wish to consider whether the requested action to remove the existing BDP is consistent and compatible with the surrounding area.

On February 14, 2022, the Planning & Zoning Board heard the request and unanimously recommended

approval.

**Clerk to the Board Instructions:**

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

## **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.



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

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<https://www.brevardfl.gov/PlanningDev>

**STAFF COMMENTS**

**21PZ00090**

**John Louis Freeman**

**Removal of an Existing Binding Development Plan (BDP) in RU-2-12**

Tax Account Number: 2520101

Parcel I.D.: 25-37-26-25-H-1

Location: 2031 S Orlando Ave Cocoa Beach FL 32931; East side of S. Orlando Avenue, at the NE corner of Summer Street and S. Orlando Avenue, Cocoa Beach (District 2)

Acreage: 0.19 acres

Planning and Zoning Board: 2/14/2022

Board of County Commissioners: 3/03/2022

**Consistency with Land Use Regulations**

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

|  | <b>CURRENT</b>     | <b>PROPOSED</b>                      |
|--|--------------------|--------------------------------------|
| <b>Zoning</b>  | RU-2-12 with BDP   | RU-2-12 with removal of existing BDP |
| <b>Potential*</b>                                      | 2-units (attached) | 2-units                              |
| <b>Can be Considered under the Future Land Use Map</b> | YES<br>CC          | YES<br>CC                            |

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

**Background and Purpose of Request**

The applicant's request is to develop one single-family residence upon the lot and requests that the Board remove the existing BDP limitations recorded in ORB 5422, Pages 5613 – 5619. The property is currently undeveloped/vacant. The existing BDP limits development to a luxury townhouse project of 13-units upon 1.41 acres; this application represents only a fraction of the overall BDP area. The remaining lots within this block, three (3) adjacent lots would remain consistent with the existing BDP restrictions.

Zoning action # **21PZ00059**, to remove the adjacent lot to the north from the BDP, was approved at the Board's January 11<sup>th</sup>, 2022 meeting.

The original BDP was approved as part of Zoning action **Z-11033** on May 25, 2005 and provided a development limitation of thirteen (13) luxury townhome lots upon 1.41 acres. The removal of this BDP would allow the development of up to two residential units upon this lot. As the applicant is proposing only one unit (single-family residence) to be developed, the Board may decide to request that the applicant/owner propose such BDP amendment to further limit the residential development potential of this site or any other restrictions.

### **Land Use**

The subject property is currently designated as Community Commercial FLU. The RU-2-12 zoning classification is consistent with the Community Commercial FLU designation.

### **Applicable Land Use Policies**

The Board should evaluate the compatibility of this application within the context of Administrative Policies 3 - 5 of the Future Land Use Element.

### **Public Facilities and Services Requirements**

#### **Policy 1.2**

Minimum public facilities and services requirements should increase as residential density allowances become higher. The following criteria shall serve as guidelines for approving new residential land use designations:

#### **Criteria:**

- E. In the Residential 30, Residential 15, Residential 10, Residential 6 and Residential 4 land use designations, centralized potable water and wastewater treatment shall be available concurrent with the impact of the development.
- F. Where public water service is available, residential development proposals with densities greater than four units per acre shall be required to connect to a centralized sewer system.
- G. Where public water service is not available, residential development proposals with densities greater than two units per acre shall be required to connect to a centralized sewer system.
- H. The County shall not extend public utilities and services outside of established service areas to accommodate new development in Residential 2, Residential 1 and Residential 1:2.5 land use designations, unless an overriding public benefit can be demonstrated. This criterion is not intended to preclude acceptance of dedicated facilities and services by the County through MSBU's, MSTU's and other means through which the recipients pay for the service or facility.

**As the project's intensity is 12 units per acre, connection to centralized sewer and potable water is required under Criterion E, above. Site is currently unimproved and not connected to utilities. Without connection to sewer, this site should limit development to 4-units per acre, which would limit the site development potential to 1-unit.**

### **Residential Development in Neighborhood Commercial and Community Commercial Land Use Designations**

### **Policy 2.13**

Residential development or the integration of residential development with commercial development shall be permitted in the Neighborhood Commercial and Community Commercial land use designations, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and areas designated for residential use on the Future Land Use Map. Residential development is permissible in these commercial land use designations at density of up to one category higher than the closest residentially designated area on the Future Land Use Map (FLUM) which is on the same side of the street. Increases in density beyond this allowance may be considered through a public hearing. In the CHHA, however, residential development is strictly limited to the density of the closest residentially designated area on the FLUM that is on the same side of the street. Such residential development, as described above, shall be allowed to utilize the following characteristics:

- a) Residential uses within Neighborhood Commercial and Community Commercial designations shall be encouraged to utilize neotraditional neighborhood development techniques, such as narrower road rights-of-way, mid-block pedestrian pass-throughs, alleys, smaller lot sizes, on-street parking, reduced lot line setbacks and public transit facilities.
- b) Residential density bonuses as set forth in Policy 11.2 may be considered in addition to the bonus stated in the above policy within Neighborhood Commercial and Community Commercial designations as an incentive for redevelopment and gentrification if the proposed development will address incompatibility with existing land uses, is adequately buffered from other uses, is located along major transportation corridors, and meets the concurrency requirements of this Comprehensive Plan.

**Although the RU-2-12 zoning classification is consistent with the Community Commercial FLU designation, the proposed development of this lot may be out of character with the abutting lots still constrained by the current BDP condition requiring townhouse style development.**

**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 is proposing the development of one single-family residence.**

- 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.

**A MAI appraisal has not been provided to the County on this site.**

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;

**The historic land use pattern has been a mixture of multi-family and commercial uses. The placement of single-family residences, a density reduction, would be new to the character of the area.**

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

**It appears no changes to the immediate area have occurred within the last three years. This parcel is adjacent to unimproved parcels lying both north and east of this site.**

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

**To the northwest of this site on the west side of S. Orlando Avenue a warehouse was proposed under 18SP00021 which is set to expire on October 9, 2022.**

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

**As this site is undeveloped, any proposed plan will need to comply with the 1988 Brevard County Comprehensive Plan and its amendments.**

**Analysis of Administrative Policy #4 - Character of a neighborhood or area.** The character of the surrounding area is a mixture of commercial and residential uses. Surrounding commercial uses are mixed with a self-storage mini-warehousing and an institutional use to the north. To the west across S. Orlando Avenue is developed as a Condominium. To the east, is an undeveloped residential lot also limited by the current BDP. The character of the area is mostly multi-family residential use with supportive commercial establishments servicing the area.

The adjacent lots within this block all carry the same RU-2-12 with BDP restrictions. RU-2-12 zoning classification is a 12 unit per acre multiple-family residential zoning classification. It permits multi-family residential development or single-family residences at a density of up to 12 units per acre on 7,500 square foot lots. Removing the property from the BDP does not increase the development density of the property; however, it does not restrict the use to luxury townhomes. The applicant proposes to limit development to one single-family residence.

## Surrounding Area

|              | Existing Land Use      | Zoning           | Future Land Use   |
|--------------|------------------------|------------------|-------------------|
| <b>North</b> | Undeveloped Land       | RU-2-12 with BDP | CC                |
| <b>South</b> | 18-unit Parking garage | BU-1             | CC                |
| <b>East</b>  | Undeveloped Land       | RU-2-12 with BDP | CC                |
| <b>West</b>  | 77-unit condominium    | RU-2-15          | CC, NC and RES 15 |

RU-2-15 classification permits multiple-family residential uses or single-family residences at a density of up to 15 units per acre on 7,500 square foot lots.

RU-2-30 classification permits high density multi-family residential development of up to 30 unit per acre. Multiple-family residential structures may be constructed on a minimum lot size of 10,000 square feet, with at least 100' of lot width and 100' of lot depth. Single-family residences are also permitted on minimum lot sizes of 7,500 square feet with at least 75' of lot width and 75' of lot depth.

BU-1 classification allows retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling.

BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities.

GML zoning is to recognize the presence of lands and facilities which are managed by federal, state and local government, special districts, nongovernmental organizations (NGOs) providing economic, environmental and/or quality of life benefits to the county, electric, natural gas, water and wastewater utilities that are either publicly owned or regulated by the Public Service Commission, and related entities. This site is undeveloped at this time but may be utilized for its beach frontage as a passive park.

There have been two zoning actions within a half-mile radius of the subject property within the last three years. The first, **21PZ00059**, is located at this property's NE corner. The second action is the property immediately east of this proposed site under Zoning action # **21PZ00091** which is seeking the same request to remove the existing BDP upon that property.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is south-bound traffic on US Highway A1A, between South end of one-way pairs to Minutemen Causeway, which has a Maximum Acceptable Volume (MAV) of 19,440 trips per day, a Level of Service (LOS) of D, and currently operates at 58.93% of capacity daily. The maximum development potential from the proposed rezoning does increase the percentage of MAV utilization by 0.06%. The corridor is anticipated to operate at 58.99% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

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

The parcel has access to public water by the City of Cocoa and centralized sewer from the City of Cocoa Beach. Without connection to sewer, this site should limit development to 4-units per acre which would limit the site development potential to 1-unit. A septic system would need to meet FDOH requirements. Additionally, the septic system would need to utilize the more stringent system capable of limiting the nitrogen level output into the ground water table.

### **Environmental Constraints**

- Aquifer Recharge Soils
- Coastal High Hazard Area
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Land Clearing and Landscape Requirements
- Protected Species

No noteworthy land use issues were identified. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

### **For Board Consideration**

The Board may wish to consider whether the requested action to remove the existing BDP is consistent and compatible with the surrounding area.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT  
Zoning Review & Summary**

**Item # 21PZ00090**

**Applicant:** McCarty for Freeman

**Zoning Request:** Remove BDP from RU-2-12

**Notes:** Applicant wants to remove BDP which limits lot to attached townhouse use, and build a single-family home.

**P&Z Hearing Date:** 02/14/22; **BCC Hearing Date:** 03/03/22

**Tax ID No:** 2520101

- 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:**

- Aquifer Recharge Soils
- Coastal High Hazard Area
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Land Clearing and Landscape Requirements
- Protected Species

No noteworthy land use issues were identified. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

**Land Use Comments:**

**Aquifer Recharge Soils**

The subject parcel contains mapped aquifer recharge soils (Canaveral-Palm Beach-Urban land complex) as shown on the USDA Soil Conservation Service Soils Survey map. The applicant is



hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

### **Coastal High Hazard Area**

A small portion on the west side of the parcel is mapped within the Coastal High Hazard Area (CHHA) 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.

### **Indian River Lagoon Nitrogen Reduction Overlay**

The entire parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If sewer 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.

### **Land Clearing and Landscape Requirements**

The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for tree preservation and canopy coverage requirements. Information available to NRM indicates that recent, unpermitted land clearing and filling activities may have occurred. Discovery of unpermitted land clearing and filling may result in code enforcement action. Land clearing is not permitted without prior authorization by NRM. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any to any land clearing activities, site plan design or building permit submittal.

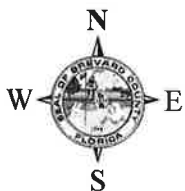
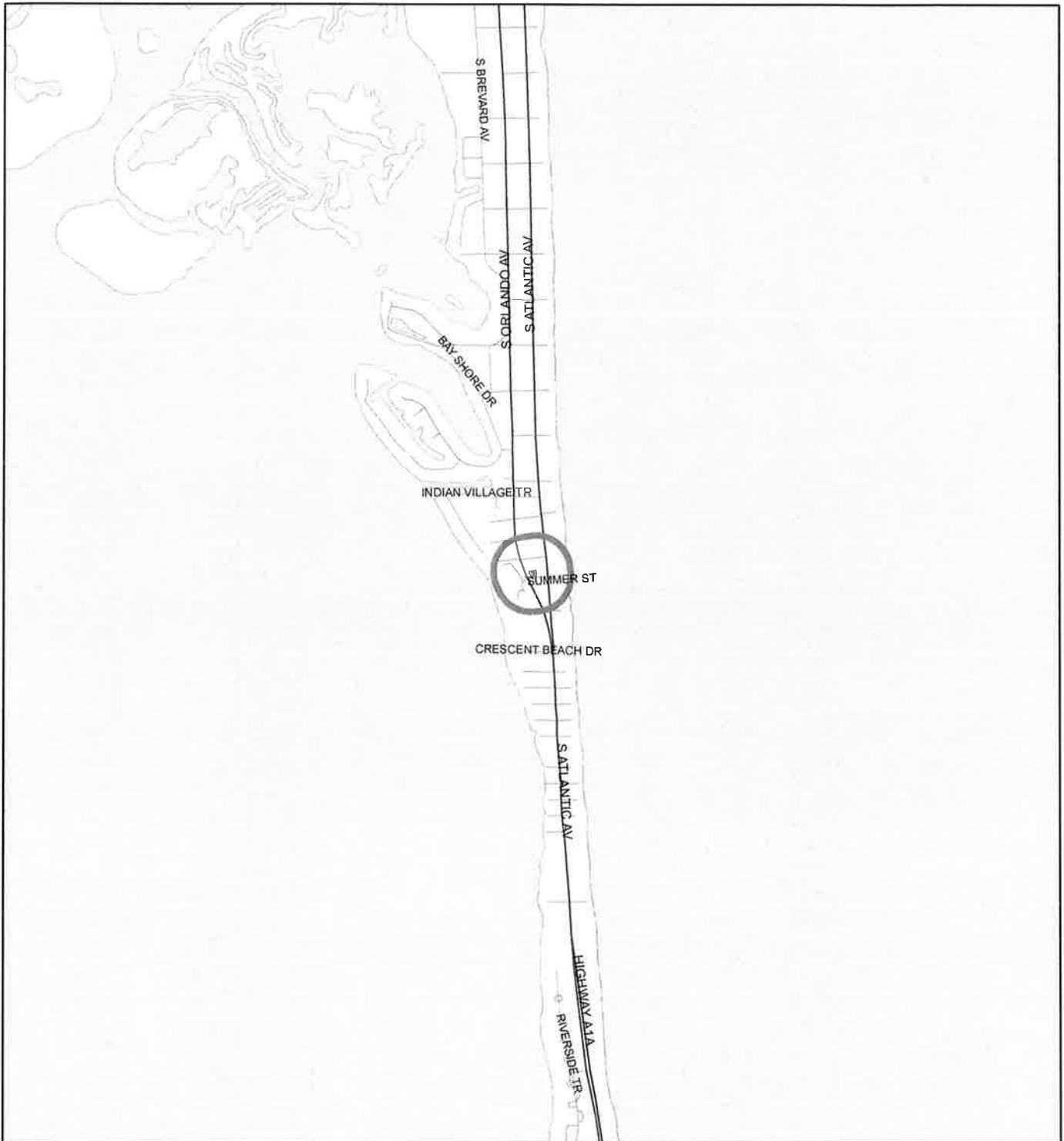
### **Protected Species**

Information available to NRM indicates that federally and/or state protected species may be present on the property. Specifically, gopher tortoises can be found in areas of aquifer recharge soils. Prior to any plan, permit submittal, or development activity, including land clearing, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service, as applicable.

# LOCATION MAP

FREEMAN, JOHN LOUIS

21PZ00090



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.

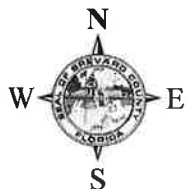
Produced by BoCC - GIS Date: 12/8/2021

Buffer  
Subject Property

# ZONING MAP

FREEMAN, JOHN LOUIS

21PZ00090



1:4,800 or 1 inch = 400 feet

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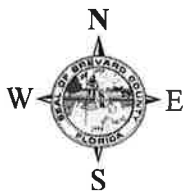
Produced by BoCC - GIS Date: 12/8/2021

- Subject Property
- Parcels
- Zoning

# FUTURE LAND USE MAP

FREEMAN, JOHN LOUIS

21PZ00090



1:4,800 or 1 inch = 400 feet

— Subject Property  
 □ Parcels

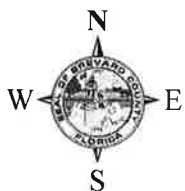
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 12/8/2021

# AERIAL MAP

FREEMAN, JOHN LOUIS

21PZ00090



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2021

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: 12/8/2021

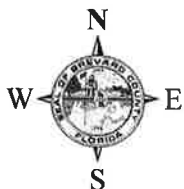
— Subject Property

□ Parcels

# NWI WETLANDS MAP

FREEMAN, JOHN LOUIS

21PZ00090















1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 12/8/2021

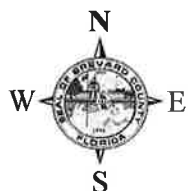
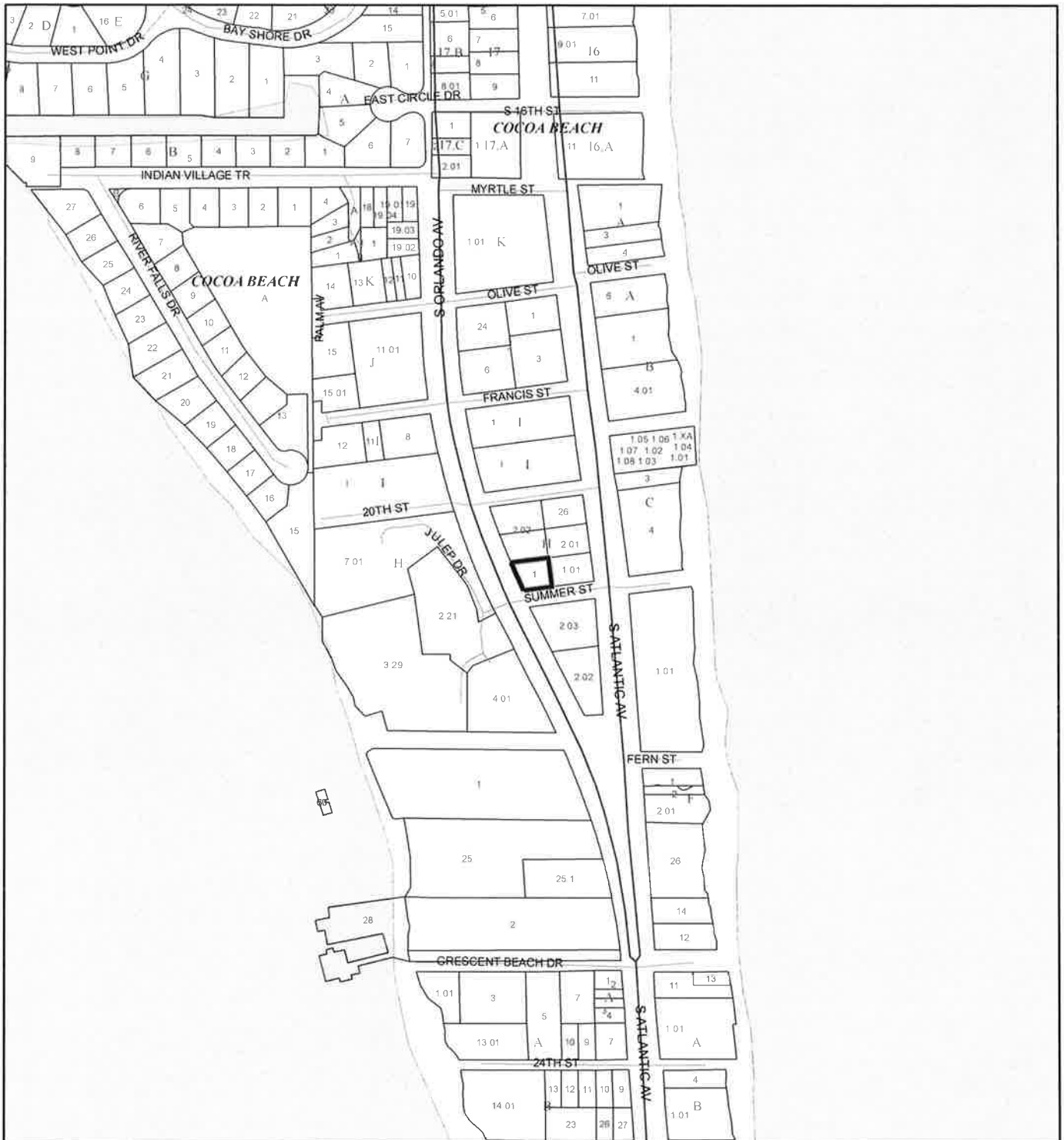
## National Wetlands Inventory (NWI)

|  |  |
|--|--|
|  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

FREEMAN, JOHN LOUIS

21PZ00090



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: 12/8/2021

## 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

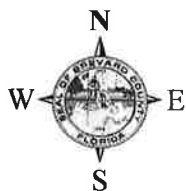
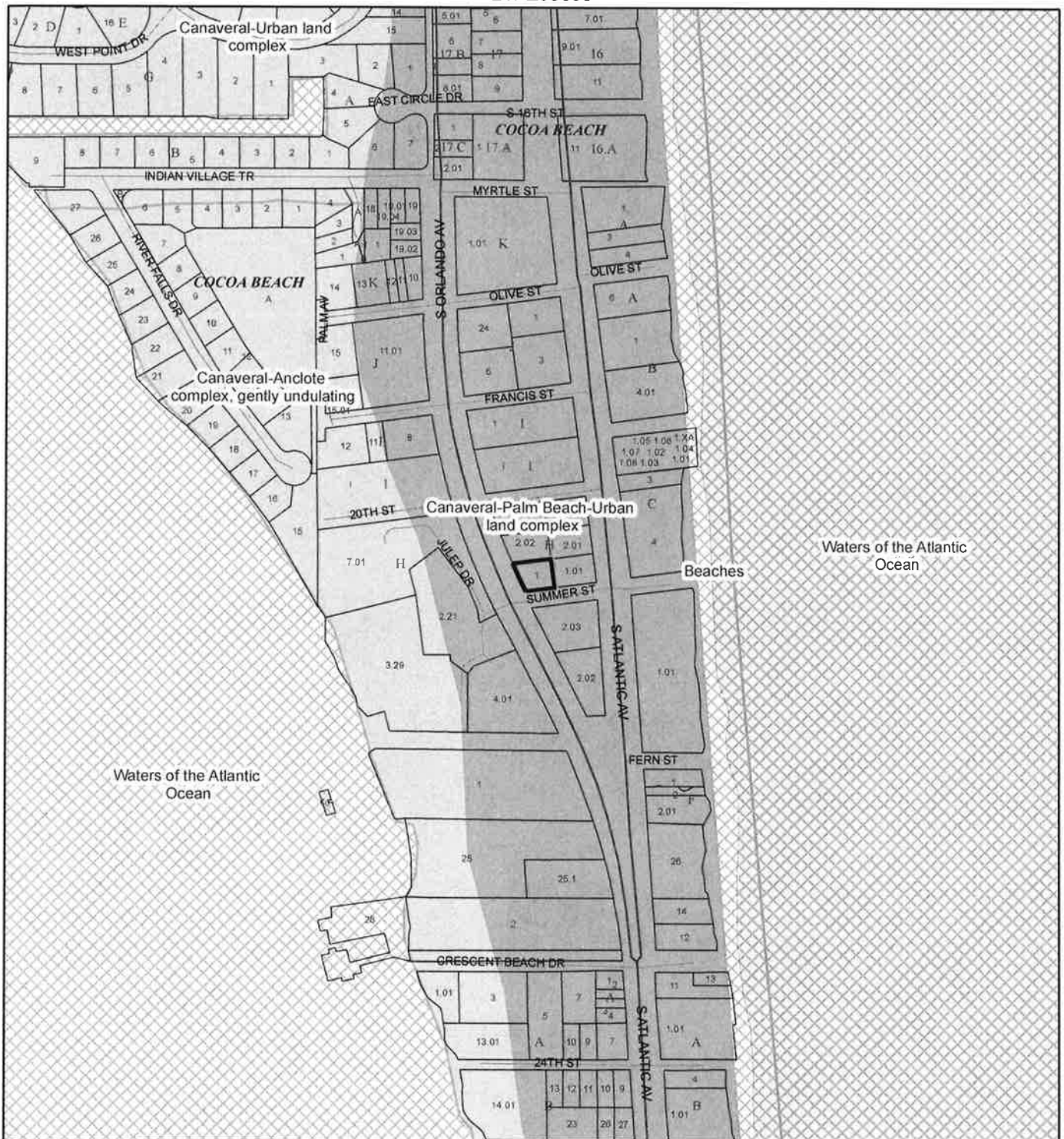
 Parcels



# USDA SCSSS SOILS MAP

FREEMAN, JOHN LOUIS

21PZ00090



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 12/8/2021

## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

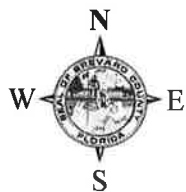
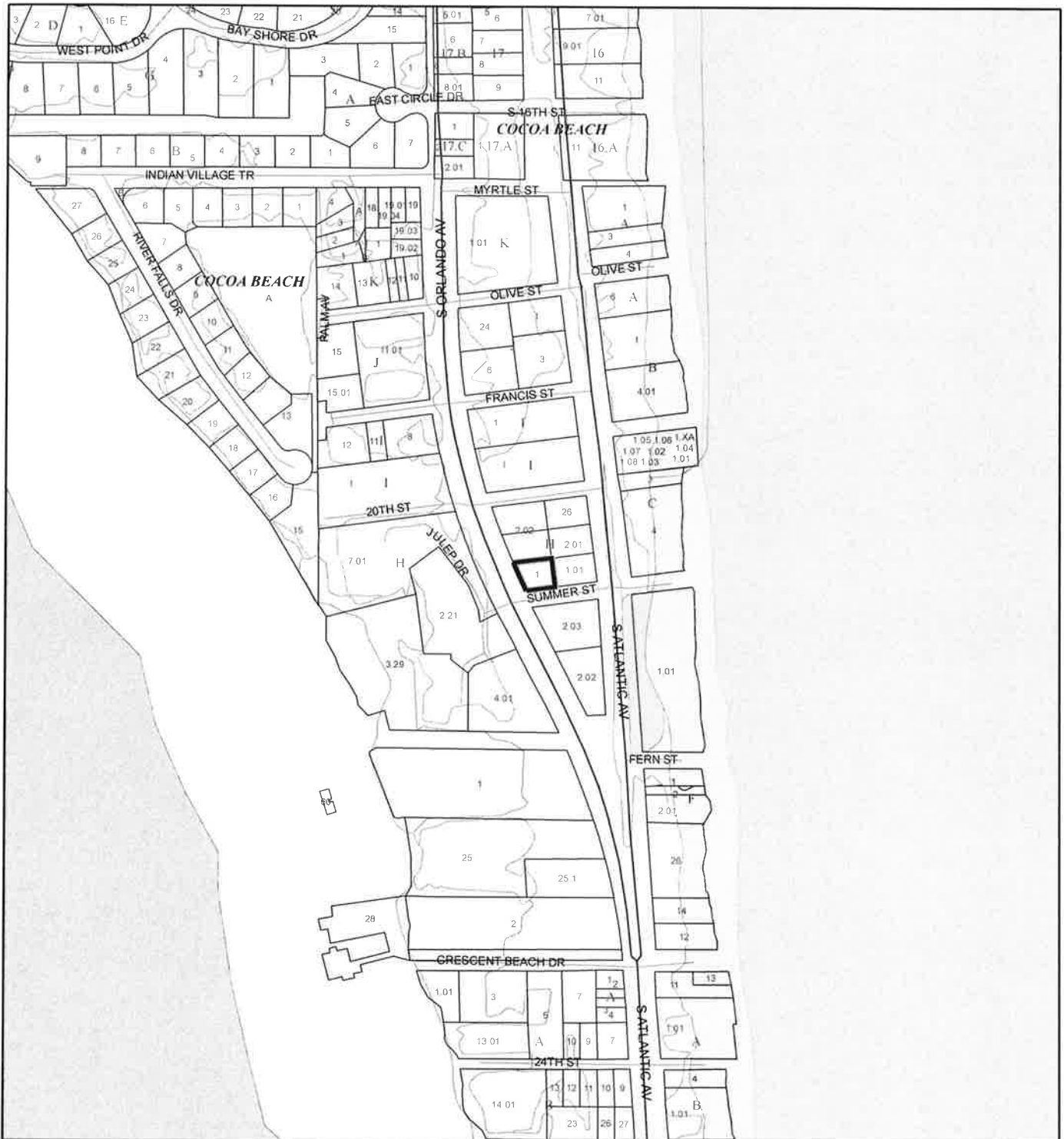
- Subject Property
- Parcels



# FEMA FLOOD ZONES MAP

FREEMAN, JOHN LOUIS

21PZ00090



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 12/8/2021

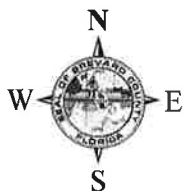
## FEMA Flood Zones

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

# COASTAL HIGH HAZARD AREA MAP

FREEMAN, JOHN LOUIS

21PZ00090



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 12/8/2021

 Subject Property

 Parcels

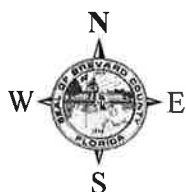
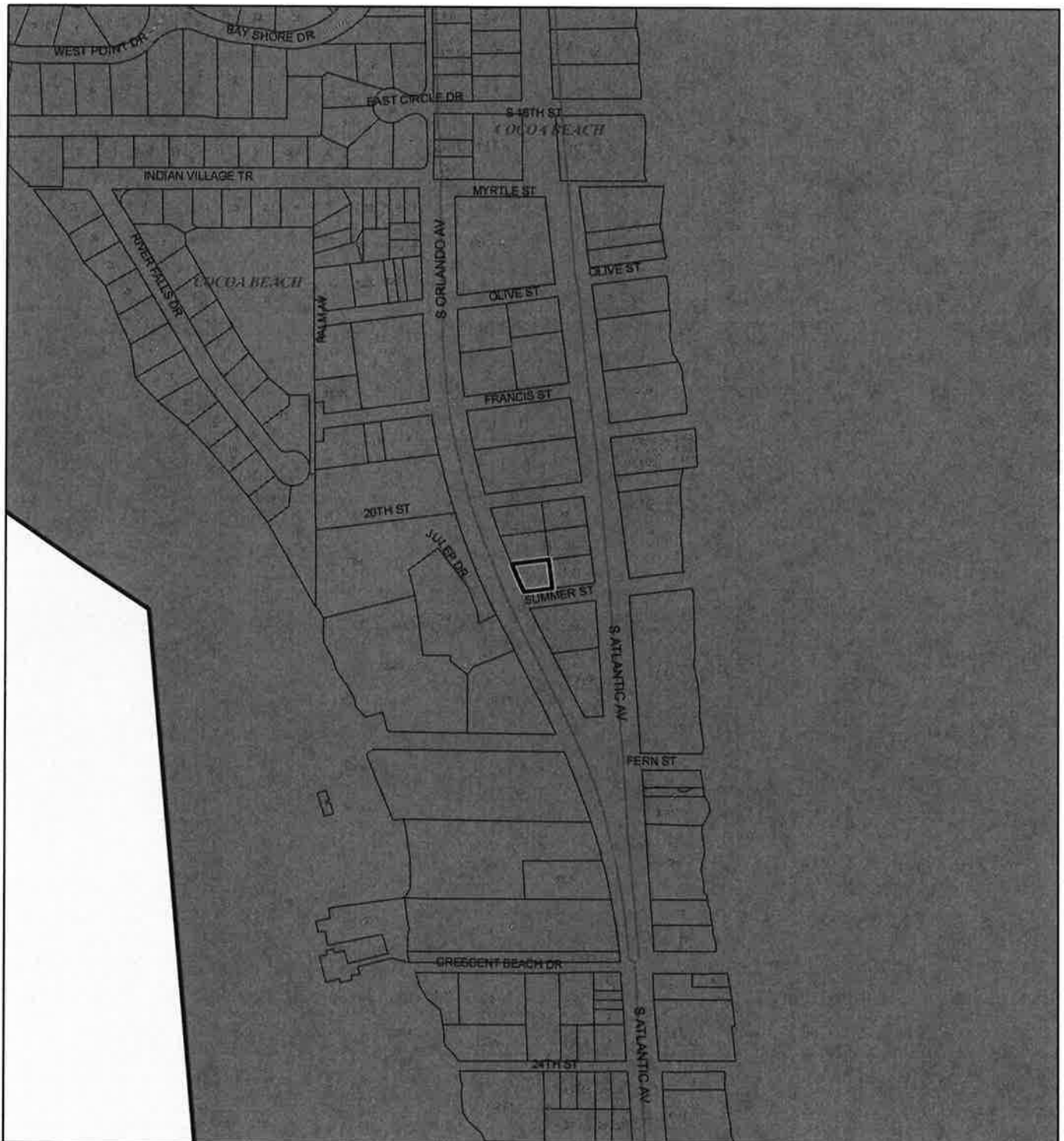
**Coastal High Hazard Area**

 SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

FREEMAN, JOHN LOUIS

21PZ00090



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 12/8/2021

— Subject Property

□ Parcels

**Septic Overlay**

■ 40 Meters

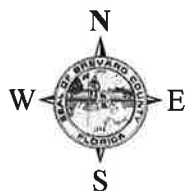
■ 60 Meters

■ All Distances

# EAGLE NESTS MAP

FREEMAN, JOHN LOUIS

21PZ00090



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 12/8/2021

 Subject Property

 Parcels

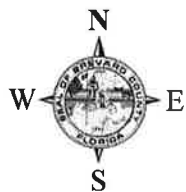
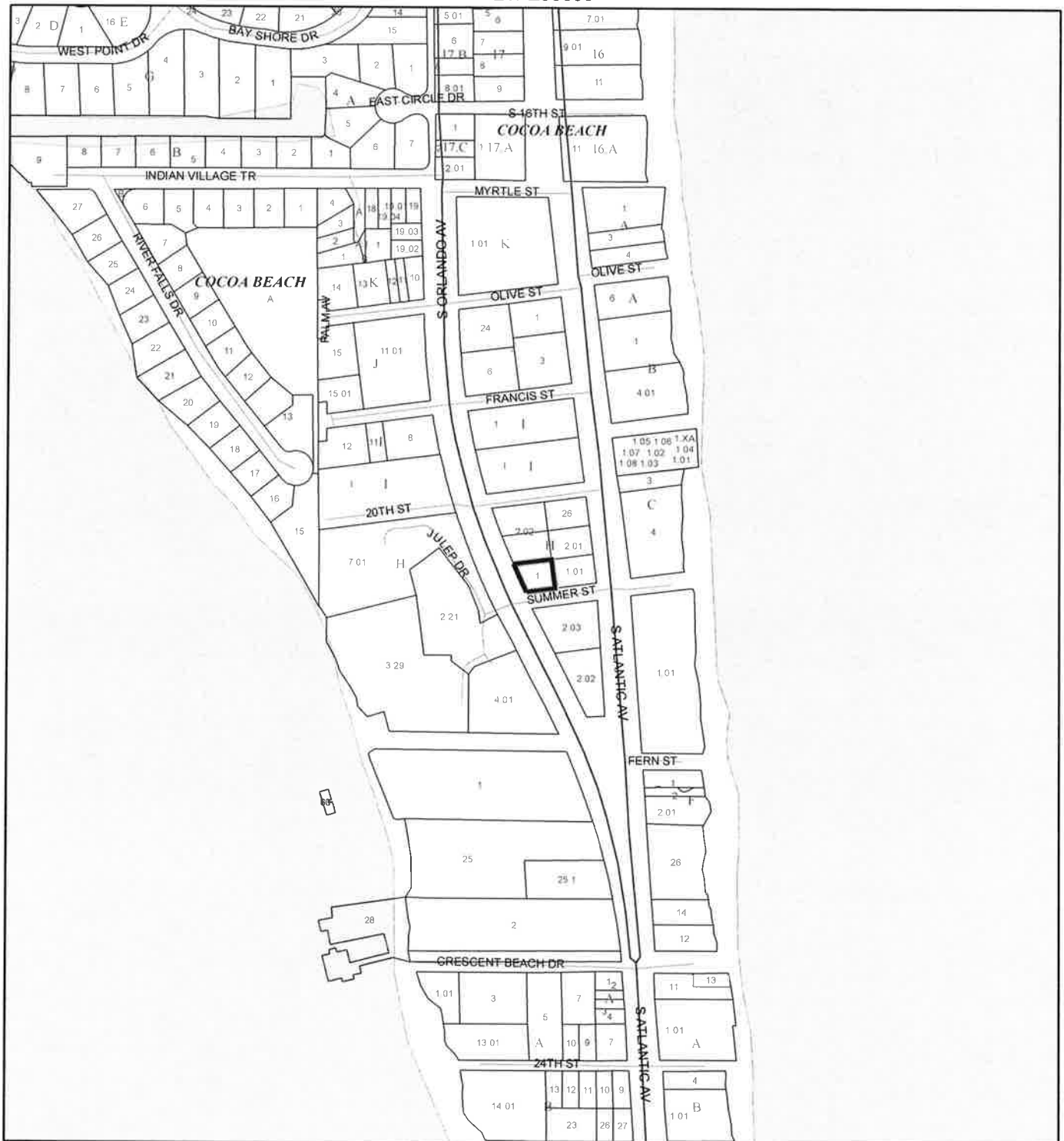


Eagle Nests  
FWS 2010

# SCRUB JAY OCCUPANCY MAP

FREEMAN, JOHN LOUIS




21PZ00090



1:4,800 or 1 inch = 400 feet

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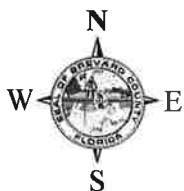
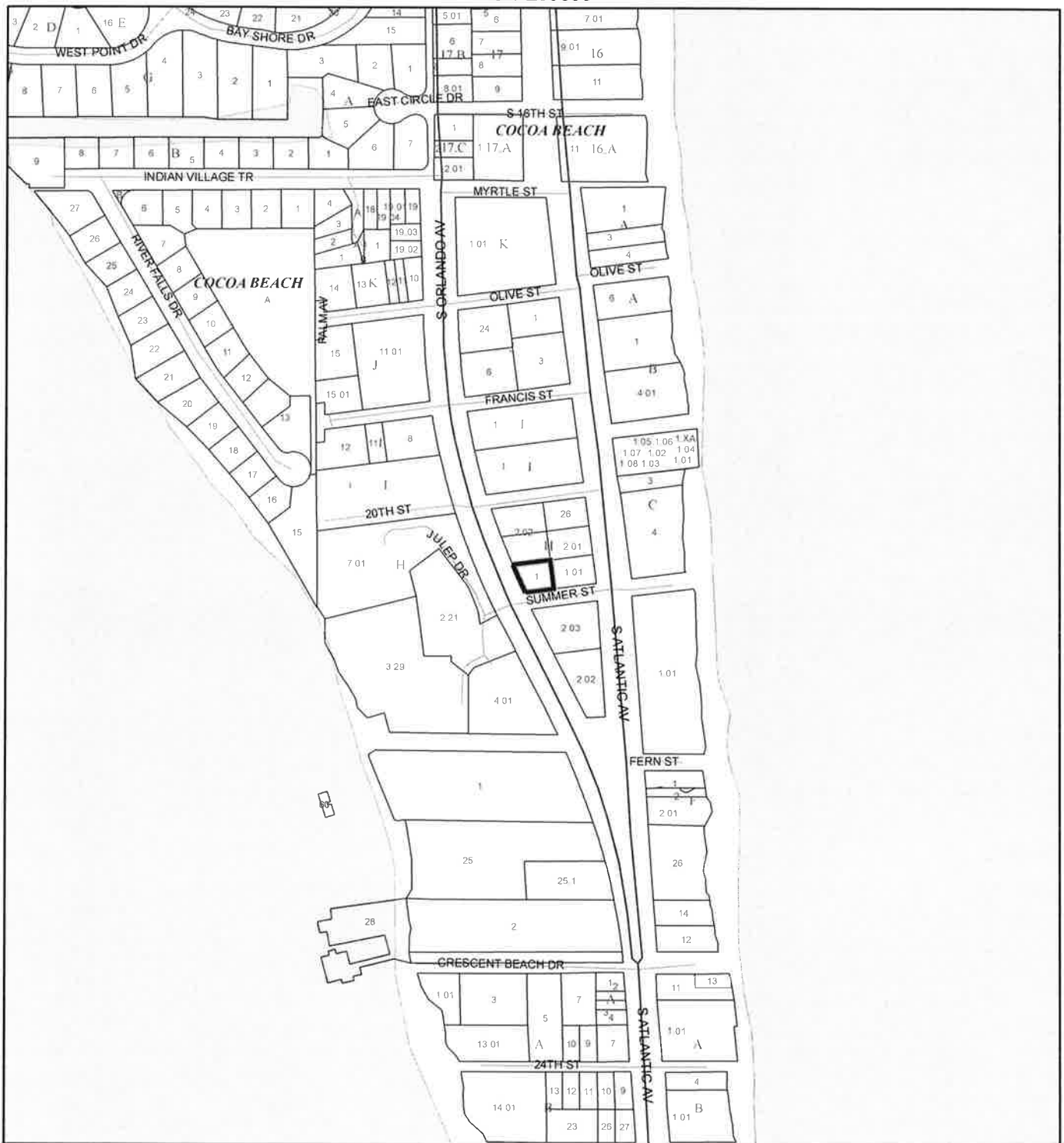
Produced by BoCC - GIS Date: 12/8/2021

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

FREEMAN, JOHN LOUIS

21PZ00090





1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 12/8/2021

## 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

Existing BDP  
21PZ00090  
Freeman

CFN:2005051666 02-15-2005 12:25 pm  
OR Book/Page: 5422 / 5613

Prepared by: J. Mason Williams, Esq.  
GrayRobinson  
1800 W. Hibiscus Blvd, Ste 138  
P.O. Box 1870  
Melbourne, FL 32902-1870

## BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 8th day of February 2005 between  
THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY,  
FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as  
"County") and STEVEN J. & BETH M. HOSKINS, JASON CARMINE UVARO,  
MICHAEL FRANCIS DUFFIELD & CARL UVARO (hereinafter referred to as  
"Developer/Owner"):

### RECITALS

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

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

WHEREAS, the County is authorized to regulate development of the Property;  
and

WHEREAS, Developer/Owner desires to develop the Property as a luxury  
townhome subdivision under RU-2-12 zoning and to submit to this Binding Development  
Plan pursuant to Brevard County Code, Section 62-1157.

**Scott Ellis**

Clerk Of Courts, Brevard County

#Pgs: 7 #Names: 6  
Trust: 4.00 Rec: 59.00 Serv: 0.00  
Deed: 0.00 Excise: 0.00  
Mtg: 0.00 Int Tax: 0.00

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.

2. Developer/Owner shall develop the Property as a luxury townhome subdivision under RU-2-12 zoning with density limited to thirteen (13) units on the Property, and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.

3. Developer/Owner shall pay all impact fees required by the County to be paid in connection with Development of the Property.

4. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer/Owner's agreement to meet additional standards or restrictions in developing the Property. This agreement provides no vested rights against changes to the comprehensive plan or land development regulations as they may apply to this Property.

5. Developer/Owner, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in Brevard County, Florida.

6. This Agreement shall be binding upon and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property.



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

ATTEST:

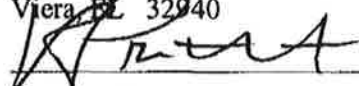


Scott Ellis, Clerk  
(SEAL)

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

2725 Judge Fran Jamieson Way

Viera, FL 32940



Ron Pritchard, DPA Chairman

As approved by Board on February 8, 2005

STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of February 2005 by Ron Pritchard, DPA, Chairman of the Board of County Commissioners of Brevard County, Florida, who is personally known to me or who has produced \_\_\_\_\_ as identification.

My commission



  
Notary Public


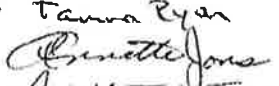
SEAL


Commission No.:


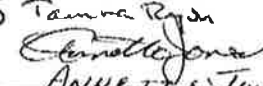
(Name typed, printed or stamped)

WITNESSES:

DEVELOPER/OWNER

  
Tamara Ryan  
  
Annette Jones

  
STEVEN J. HOSKINS

  
Tamara Ryan  
  
Annette Jones

  
BETH M. HOSKINS

(33)

RETURN: Clerk to the Board #27

*Joe Kalagichy*  
*Jaredana Kalagichy*  
Eileen Clark  
*Eileen Clark*

*[Signature]*  
JASON CARMINE UVARO

*[Signature]*  
MICHAEL FRANCIS DUFFIELD

*[Signature]*  
CARL UVARO

*[Signature]* Tamara Ryan  
*[Signature]* Annette Jones  
of ANNETTE JONES

STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 15 day of November, 2004, by STEVEN J. HOSKINS, who is personally known to me or who has produced FDU#H252790621670 as identification.

My commission expires 10/16/07



*[Signature]*  
Notary Public

*MARGARET C. HANCOCK*

(Name typed, printed or stamped)

RETURN: Clerk to the Board #27



STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 15 day of  
November, 2004, by BETH M. HOSKINS, who is personally known to me or who has  
produced FLDL#H232073637110 as identification.

My commission expires



Margaret C. Hancock

Notary Public

MARGARET C Hancock

(Name typed, printed or stamped)

STATE OF FLORIDA  
COUNTY OF BREVARD

December The foregoing instrument was acknowledged before me this 2nd day of  
~~November~~, 2004, by JASON CARMINE UVARD, who is personally known to me or  
who has produced Florida Deed Lien as identification.  
#0160-42374-410-0

My commission expires

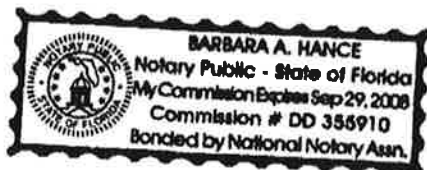
Barbara A. Hance

Notary Public

SEAL

Commission No.:

(Name typed, printed or stamped)



STATE OF FLORIDA  
COUNTY OF BREVARD

~~December~~ The foregoing instrument was acknowledged before me this 2nd day of  
~~Mo~~ November, 2004, by MICHAEL FRANCIS DUFFIELD, who is personally known to me  
or who has produced FLORIDA Driver Lic. #  
D143-546-7a-421-0 as identification.

My commission expires

Barbara A. Hance  
Notary Public

SEAL



(Name typed, printed or stamped)

STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 15 day of  
November, 2004, CARL UVARO, who is personally known to me or who has produced  
FIDLU 160126471900 as identification.

My commission expires

Margaret C. Hancock  
Notary Public  
MARGARET C. Hancock  
(Name typed, printed or stamped)



RETURN: Clerk to the Board #27

A parcel of land being a portion of Block "H" of A & B Bruner's Re-Subdivision of Blocks A, H, J, K and parts of Blocks, C and I of A.L. Bruner's Re-Sub of Burchfield & Bruner's Addition to Crescent Beach, recorded in Plat Book 9, Page 4 of the Public Records of Brevard County, Florida, being more particularly described as follows:

Commence at an iron rod monumenting the intersection of the Westerly Right-of-Way line of Atlantic Avenue, as presently located (a 100 foot wide Right-of-Way) with the South Right-of-Way line, of Springs Street (a 42 foot wide Right-of-Way) and run South 83°22'56" West along said South Right-of-Way line, a distance of 122.00 feet to an iron rod, the Point of Beginning; thence continue South 83°22'56" West, along said South Right-of-Way line, a distance of 149.37 feet to an iron rod on the Easterly Right-of-Way line of Orlando Avenue, as presently located (a 100 foot wide Right-of-Way), said point being on an 1860.08 foot radius curve to the left having a tangent bearing of South 17°34'14" East; thence Southeasterly, along the arc of said curve and along said Easterly Right-of-Way line, thru a central angle of 08°07'18" a distance of 283.67 feet to an iron rod on the North Right-of-Way line of Summer Street (a 50 foot wide Right-of-Way), thence North 82°23'26" East, along said North Right-of-Way line, a distance of 82.02 feet to an iron rod; thence North 06°49'00" West, a distance of 253.02 feet to the Point of Beginning.

#### LEGAL DESCRIPTION: (Parcel A-3) J

A parcel of land being a portion of Block "H" of A & B Bruner's Re-Subdivision of Blocks A, H, J, K and part of Blocks, C & I of A.L. Bruner's Re-Sub and Bruner's Addition of Crescent Beach, Recorded in Plat Book 9, Page 4, of the Public Records of Brevard County, Florida, being more particularly described as follows:

Commence at an iron rod monumenting the intersection of the West right of way line of Atlantic Avenue, as presently located (a 100 foot wide right of way) with the South right of way line of Spring Street (a 42 foot wide right of way), and run South 06°49'00" East along said West right of way line of Atlantic Avenue, a distance of 127.47 feet to the point of curvature of a 5679.65 foot radius curve to the left; thence continue Southeasterly along said West right of way line and along the arc of said curve; thru a central angle of 00°24'04", a distance of 39.77 feet to the Point of Beginning of the herein described parcel; thence continue Southeasterly along said West right of way line and along the arc of said curve thru a central angle of 00°50'40", a distance of 83.70 feet to the North right of way line of Summer Street (a 50 foot wide right of way); thence South 82°23'26" West along said North right of way line, a distance of 120.67 feet; thence North 06°49'00" West, a distance of 84.32 feet; thence North 82°43'14" East a distance of 121.88 feet to the Point of Beginning.

#### LEGAL DESCRIPTION: (Parcel A-1) C

A parcel of land being a portion of Block "H" of A & B Bruner's Re-Subdivision of Blocks A, H, J, K and part of Blocks, C & I of A.L. Bruner's Re-Sub and Bruner's Addition of Crescent Beach, Recorded in Plat Book 9, Page 4, of the Public Records of Brevard County, Florida, being more particularly described as follows:

Begin at an iron rod monumenting the intersection of the West right of way line of Atlantic Avenue, as presently located (a 100 foot wide right of way) with the South right of way line of Spring Street (a 42 foot wide right of way), and run South 06°49'00" East along said West right of way line of Atlantic Avenue, a distance of 83.82 feet; thence leaving said West right of way line run South 83°02'53" West a distance of 122.00 feet; thence North 06°49'00" West parallel to said right of way of Atlantic Avenue, a distance of 84.33 feet to the aforesaid South right of way line of Spring Street; thence North 83°22'56" East a distance of 122.00 feet to the Point of Beginning.

#### LEGAL DESCRIPTION: (Parcel A-2) M

A parcel of land being a portion of Block "H" of A & B Bruner's Re-Subdivision of Blocks A, H, J, K and part of Blocks, C & I of A.L. Bruner's Re-Sub and Bruner's Addition of Crescent Beach, Recorded in Plat Book 9, Page 4, of the Public Records of Brevard County, Florida, being more particularly described as follows:

Commence at an iron rod monumenting the intersection of the West right of way line of Atlantic Avenue, as presently located (a 100 foot wide right of way) with the South right of way line of Spring Street (a 42 foot wide right of way), and run South 06°49'00" East along said West right of way line of Atlantic Avenue, a distance of 83.82 feet to the Point of Beginning of the herein described parcel; thence continue South 06°49'00" East along said West right of way line of Atlantic Avenue, a distance of 43.85 feet to the point of curvature of a 5679.65 foot radius curve to the left; thence continue Southeasterly along said West right of way line and along the arc of said curve; thru a central angle of 00°24'04", a distance of 39.77 feet; thence leaving said West right of way line run South 82°43'14" West a distance of 121.88 feet; thence North 06°49'00" West, a distance of 84.32 feet; thence North 82°43'14" East a distance of 122.00 feet to the Point of Beginning.



RETURN: Clerk to the Board #27

In Favor  
21PZ00090  
Freeman

**From:** [Craig Langley](#)  
**To:** [Jones, Jennifer](#)  
**Subject:** ID# 21PZ00090 and 91  
**Date:** Saturday, February 12, 2022 9:17:41 AM

---

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Craig Langley  
2022 Julep Dr #303  
Cocoa Beach FL 32931

Writing in support of the proposed zoning action for ID# 21PZ00090 and 91. I reside directly across the street in the Magnolia Bay complex and support the proposed development which fits nicely with the nature and character of the surrounding area and is compatible with existing adjacent uses.

Thank you

Craig Langley

## **PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, February 14, 2022, 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: Henry Minneboo (D1); Ron Bartcher (D1); Robert Sullivan (D2); Brian Hodgers (D2); Mark Wadsworth, Chair (D4); Liz Alward (D4); Logan Luse (D4-Alt); Bruce Moia (D5); Peter Filiberto, Vice Chair (D5); and John Hopengarten (BPS).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Cheryl Campbell, Comprehensive Planner; George Ritchie, Planner III; Kyle Harris, Associate Planner; Alex Esseeesse, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

### **Excerpt of Complete Minutes**

#### **John Louis Freeman (Pamela McCarty)**

removal of a BDP (Binding Development Plan), in an RU-2-12 (Medium Density Multi-Family Residential) zoning classification. The property is 0.19 acres, located on the southwest corner of S. Orlando Ave. and Summer Street. (2031 S. Orlando Ave., Cocoa Beach) (21PZ00090) (Tax Account 2520101) (District 2)

Pamela McCarty, Merritt Island, Florida, representing John Louis Freeman and Michael and Malena Stewart. She said Mr. Freeman purchased the lot with the intention of building a home. Initially, the binding development plan called for multi-family density. Mr. Freeman contacted the seller, who tried to assist him in getting the BDP removed so he can build a house on his lot.

Henry Minneboo asked when the BDP was recorded. Ms. McCarty replied 2005.

Bruce Moia stated he was before the board with the property to the east and north; someone had a contract on all six parcels and came up with a plan that had the BDP but it all fell apart and now there are six individual parcels again and each one of them has to come back to this board to get the BDP removed before anything can be built on them.

Peter Filiberto asked if the applicant would agree to a new BDP stipulating that only one unit will be built on the property. Ms. McCarty replied yes, plans are in place to build one home, and there would not be room for a second unit.

John Louis Freeman, 2021 Julep Drive, sated he only wants to build one unit, and he would agree to a BDP.

Motion by Peter Filiberto, seconded by John Hopengarten to recommend removal of the existing BDP, and adding a new BDP restricting development of one unit on the property.

#### **Public Comment**

Denise Stanton, 425 4<sup>th</sup> Street, Merritt Island, asked how a BDP affects the property in the future if he were to sell.

Mark Wadsworth replied it would remain the same, and this board is only making a recommendation to the County Commission.

Mark Wadsworth called for a vote on the motion as stated, and it passed 9:1, with Bruce Moia voting nay.

Bruce Moia stated everyone else is going to get two units and if he decides in the future he wants two units, he'll have to come back to get it because he's limiting himself to one, and the zoning won't allow for more than two units anyway. To have a BDP to limit it to one when everybody else is going to ask for two, he doesn't see why he should be restricted more than them.

Motion by Liz Alward, seconded by Peter Filiberto, to reconsider the previous motion and vote. The motion was unanimous.

Mr. Filiberto stated he wasn't aware of what Mr. Moia said, and two units is lower density than 13, so he has no objection. He asked why the staff comments recommend the board limit the parcel to one structure. Mr. Ball replied it is up to the board to determine whether it wants a BDP or not, but based on land use and zoning, up to two units are allowed on the property.

Motion by Peter Filiberto, seconded by Liz Alward, to recommend approval of removal of an existing BDP in a RU-2-12 zoning classification. The motion passed unanimously.