



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

H.1.

8/5/2021

### Subject:

CBH Properties Melbourne, LLC (Bruce Moia) requests a change of zoning classification from BU-1, with an existing BDP, to BU-2 and an amendment to the existing BDP. (21Z00012) (Tax Account 3022324) (District 4)

### Fiscal Impact:

None

### Dept/Office:

Planning & Development

### Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a change of zoning classification from BU-1 (General Retail Commercial), with an existing BDP (Binding Development Plan), to BU-2 (Retail, Warehousing, and Wholesale Commercial) and an amendment to the existing BDP.

### Summary Explanation and Background:

The applicant is requesting a change of zoning classification from BU-1 with a BDP to BU-2 with an amended BDP for the purpose of expanding the use of minor automotive repairs to include major automotive repairs.

The existing BDP includes the following stipulations:

- A cross-access easement and construct a driveway to connect to the existing cross-access easement to the north in the event that the property be subdivided in the future. The cross-access easement and driveway shall connect to all of the created development lots within the boundaries of the parent tract (Original area has been divided into 3-lots);
- Limits uses to no gas stations and/or convenience stores; fast food restaurants shall be limited to no more than 10,000 square feet of total cumulative floor area over the entire original area; the overall Floor Area Ratio shall be limited to 0.3;
- Traffic access improvements shall be provided relative to the existing median openings in Wickham Road that is within the property frontage to a directional median opening, other median modification improvements, and/or driveway limitations per acceptable engineering access standards, as approved by county staff, as warranted, based upon current and projected traffic patterns;
- A pedestrian easement and connection to the remaining multi-family residential parent property shall be provided.

The proposed BDP includes the following stipulations:

- The property shall remain in conformance with the terms and provisions of the approved BDP, as recorded in ORB 8345, Page 662.

- The approved uses shall be limited to those permitted uses in BU-1 and major automotive repairs only.
- Parts and materials shall be stored in the rear of the shop, out of view from Wickham Road.

The subject property is currently designated as CC (Community Commercial). Both the BU-1 and BU-2 zoning classifications are consistent with the CC Future Land Use designation.

The abutting parcels to the north, and west are zoned BU-1. The properties to the North are being developed as retail and restaurant. The property lying West of Wickham Road is the long-standing commercial center identified as Suntree's Healthplex Center. Property to the east and south is zoned RU-2-15 and is being developed as an apartment complex.

The parcel is provided public water by Cocoa Utilities. A sewer connection can be provided by Brevard County.

The Board may wish to consider whether the request is consistent and compatible with the surrounding area, and whether the proposed BDP limitations mitigate the potential impacts of the requested BU-2 zoning classification.

On July 26, 2021, the Planning and Zoning Board heard the request and unanimously recommended approval.

### **Clerk to the Board Instructions:**

Upon receipt of resolution, please execute and return to Planning and 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**

2725 Judge Fran Jamieson Way

Building A, Room 114

Viera, Florida 32940

(321)633-2070 Phone / (321)633-2074 Fax

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

**STAFF COMMENTS**

**21Z00012**

**CBH Properties Melbourne, LLC**

**BU-1 (General Retail Commercial) with BDP to BU-2 (Retail, warehousing and wholesale commercial) with amendment to BDP**

Tax Account Number: 3022324

Parcel I.D.: 26-37-19-XN-A-1

Location: 700 feet south of Jordan Blass Drive on east side of Wickham Road  
(District 4)

Acreage: 1.15 acres

Planning and Zoning Board: 7/12/2021

Board of County Commissioners: 8/05/2021

**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>	BU-1	BU-2
<b>Potential*</b>	50,094 square feet of commercial use	50,094 square feet of commercial use
<b>Can be Considered under the Future Land Use Map</b>	YES CC	YES CC

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

**Background and Purpose of Request**

The applicant is requesting a change of zoning classification from BU-1 (General Retail Commercial) with a Binding Development Plan (BDP) to BU-2 (Retail, warehousing and wholesale commercial) zoning with an amended BDP for the purpose of expanding the use of minor automotive repairs to include major automotive repairs.

The BU-1 zoning classification limits automobile repair to minor repairs only unless performed in conjunction with an automobile sales dealership. The applicant is in the automotive repair business and does not hold a dealer's license.

The current zoning BU-1 with BDP zoning action was adopted under zoning action # **18PZ00059** on January 9, 2019 and the BDP was recorded in Official Record Book (ORB 8345, Pages 662-666).

This zoning action was discussed at 5 public meetings. It was originally heard at the August 2, 2018, BCC meeting and tabled to the September 6, 2018, BCC meeting and again tabled to the October 4, 2018, BCC meeting where a new traffic study was submitted by the applicant and again was tabled to the November 1, 2018, BCC meeting. The item was approved pending a BDP which was heard on December 18, 2018 and finally approved at the January 9, 2019, BCC hearing as a Consent item. The existing BDP stipulates that the developer/owner shall provide:

- A cross-access easement and construct a driveway to connect to the existing cross-access easement to the north in the event that the property be subdivided in the future. The cross-access easement and driveway shall connect to all of the created development lots within the boundaries of the parent tract (Original area has been divided into 3-lots);
- Limits uses to no gas stations and/or convenience stores; fast food restaurants shall be limited to no more than 10,000 square feet of total cumulative floor area over the entire original area; the overall Floor Area Ratio shall be limited to 0.3;
- Traffic access improvements shall be provided relative to the existing median openings in Wickham Road that is within the property frontage to a directional median opening, other median modification improvements, and/or driveway limitations per acceptable engineering access standards, as approved by county staff, as warranted, based upon current and projected traffic patterns;
- A pedestrian easement and connection to the remaining multi-family residential parent property shall be provided.

The applicant confirms by inclusion of Condition #2 in the proposed BDP that the property shall remain in conformance with the terms and provisions of the existing Binding Development Plan as recorded in ORB 8345, Page 662. The proposed BDP also states in Condition #3, that the approved uses shall be limited to those permitted uses of BU-1 and major automotive repairs only. The BDP also stipulates in Condition #4, that parts and materials shall be stored in the rear of the shop, out of view from Wickham Road. The Applicant has not provided staff with a concept plan or a BDP with provisions that could mitigate any potential off-site impacts to the adjacent residential property to the South.

Prior zoning requests on this property include **17PZ00109**, an approved rezoning from PIP to RU-2-15 with a BDP recorded in ORB 8148, Pages 974 – 982 dated April 24, 2018. This site's history also includes the denial of a request under **15PZ00056** which was a prior request from PIP to RU-2-15 which was resolved by the Findings of Fact determined in regular session of the Board of County Commissioners on April 19, 2016, adopted by Resolution No. 16-050.

## Land Use

The subject property is currently designated as Community Commercial (CC). Both BU-1 and the proposed BU-2 zoning classifications are consistent with the CC FLU designation.

Future Land Use Policy 2.14 A, states that non-retail commercial land uses shall be limited to those areas where non-retail commercial or industrial characteristic are established or planned so as to protect residential areas from their influence. Additionally, under the roadway access requirements subsection, the policy states: Convenient access to a major transportation corridor or along a railroad corridor with visual buffering from such corridors. The applicant proposes to keep all materials inside

the shop building thereby reducing the visual impact of the proposed business; however, nothing has been proposed to mitigate the potential noise issues from the proposed heavy automobile usage.

### **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.

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

This parcel is located with frontage along the east side of Wickham Road, 700 feet south of Jordan Blass Drive. This site and the area lying north and west of Wickham Road are all within the Community Commercial (CC) Future Land Use (FLU) designation. To the east and south is Residential 15 (RES 15) FLU designation. This FLU designation allows for some commercial and multi-family. The applicant has not identified protective measures from the adjacent multi-family site and only provided some visual buffering as seen from the Wickham Road right-of-way.

**Analysis of Administrative Policy #4 - Character of a neighborhood or area.** The developed character of the surrounding area is a mixture of BU-1, BU-2, and Medium-density Multi-family Residential (RU-2-15) zoning. The recent trend in this area is the development of an adjacent shopping center to the north with two future commercial outparcels and an abutting multi-family residential site, under construction, which abuts the eastern and southern boundary of this site. Currently, there are no other properties zoned BU-2 fronting North Wickham Rd.

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 and prohibits outdoor storage.

BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots.

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.

There has been six zoning actions within a half-mile radius of the subject property within the last three years. The most recent action, **20Z00014**, was for a change of zoning from PUD and PIP to all PUD with retention of a CUP for alcoholic beverages at an Assisted Living Facility adopted on September 30, 2020. This location lies 1,720 feet in a northwesterly direction of the proposed commercial site. The second action, **20Z00007**, was for a CUP for alcoholic beverages accessory to an indoor family entertainment center adopted on August 06, 2020. This location lies 2,550 feet in a northerly direction of the proposed commercial site lying upon the western U.S. Highway 1 right-of-way. The third action, **19PZ00064**, was for a conditional use permit for mitigating a nonconforming mobile home park adopted on July 31, 2019. This location lies less than 100 feet in a northwesterly direction. The fourth action, **19P00004**, was for a CUP for on-premise alcoholic beverage consumption in conjunction with an Assisted Living Facility. This action was the precursor to **20Z00014**. **19PZ00004** was adopted on April 4, 2019. This location lies 1,720 feet in a northwesterly direction of the proposed commercial site. The fifth action, **18PZ00059**, was for a change of zoning from RU-2-15 to BU-1 with Binding Development Plan adopted on January 9, 2019 and recorded in ORB 8345, Pages

662 - 666. It is located directly to the north and is the current zoning for this site. The sixth action, **17PZ00109**, was for a change of zoning from PIP to RU-2-15 with Binding Development Plan adopted on April 25, 2019 and recorded in ORB 8148, Pages 974 – 982. This action was the precursor to **18PZ00059** adopted on January 9, 2019. It is located adjacent and to the south from this property located on the east side of Wickham Road.

### **Surrounding Area**

The abutting parcels to the North, and West are zoned BU-1. The properties to the North are being developed as retail and restaurant. The property lying West of Wickham Road is the long-standing commercial center identified as Suntree's Healthplex Center developed in the 1990s. Property to the East and South is zoned RU-2-15 and is being developed as an apartment complex.

### **Environmental Constraints**

No noteworthy land use issues were identified. The site was issued an approved site plan development order on October 14, 2020. The zoning request does affect natural resources previously addressed during the site plan review process. Natural Resources Management (NRM) reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is Wickham Road, between Pineda Causeway and Jordan Blass Drive, which has a Maximum Acceptable Volume (MAV) of 39,800 trips per day, a Level of Service (LOS) of D, and currently operates at 59.27% of capacity daily. The maximum development potential from the proposed rezoning does increase the percentage of MAV utilization by 5.37%. The corridor is anticipated to operate at 64.64% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

Current traffic capacity under review for this request at the Wickham Road (Pineda Causeway to Jordan Blass) segment has 23,589 daily trips. The prior level under review for **17PZ00109** (2018 levels) used the larger road segment # 370F Wickham Road which included the area from Pineda Causeway to Suntree Boulevard and had a daily trip volume of 29,657 trips. The previous level under review for **15PZ00056** (2015 levels) also used the 370F Wickham Road segment and had a daily trip volume of 29,863 trips.

No school concurrency information has been provided as this site is commercial in nature.

The parcel is provided public water by Cocoa Utilities. A sewer connection can be provided by Brevard County.

### **For Board Consideration**

The Board may wish to consider whether the request is consistent and compatible with the surrounding are given that the majority of properties fronting Wickham are zoned BU-1. The Board may wish to request additional measures in the BDP to limit any off-site impacts.

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

**Item # 21Z00012**

**Applicant:** Moia for Carr

**Zoning Request:** BU-1 to BU-2 with amended BDP

**Note:** Applicant wants heavy auto repairs

**P&Z Hearing Date:** 07/12/21; **BCC Hearing Date:** 08/05/21

**Tax ID No:** 3022324

- 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:**

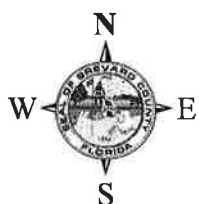
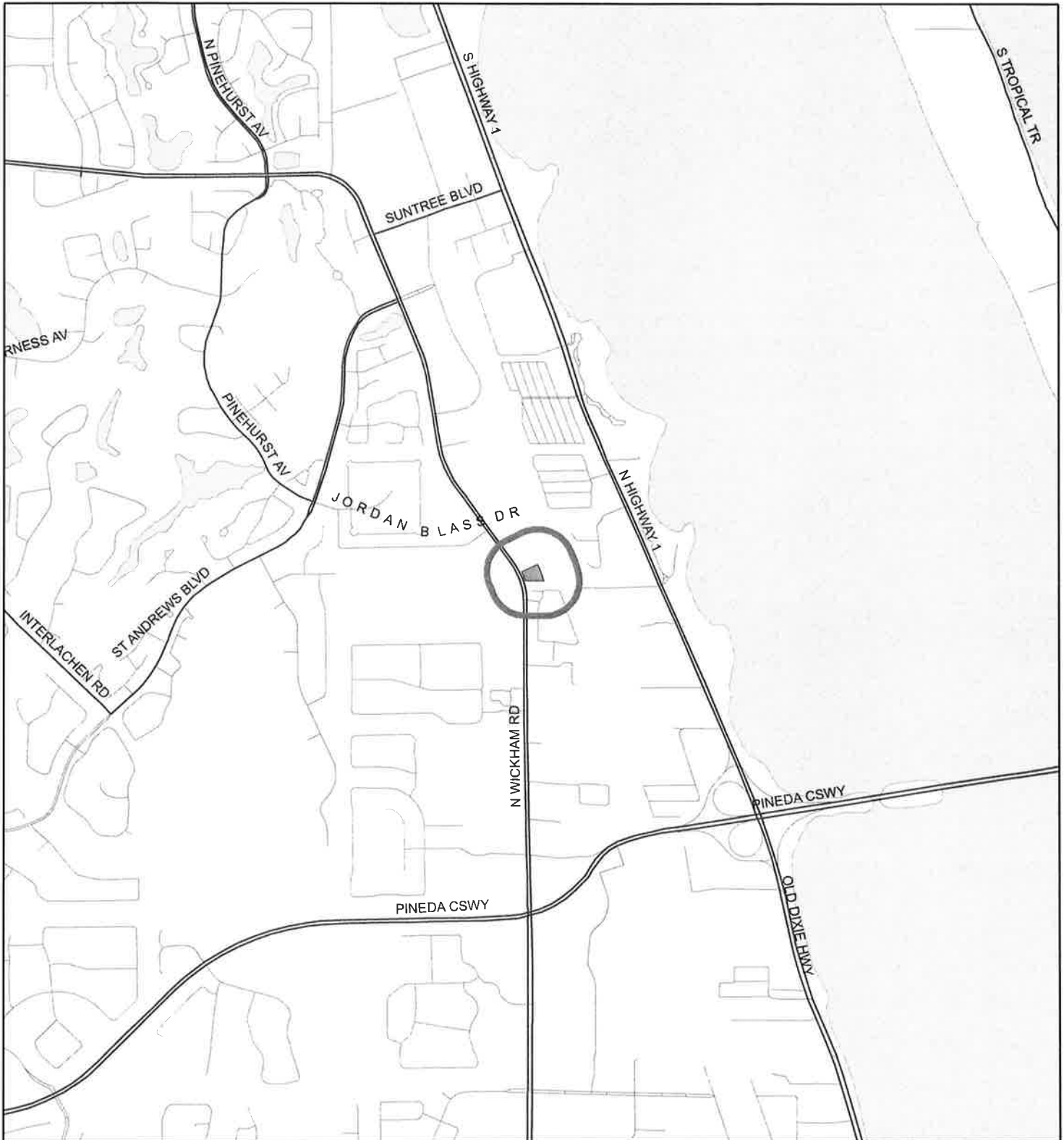
- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species

No noteworthy land use issues were identified. The site was issued an approved site plan development order on October 14, 2020. The zoning request does affect natural resources previously addressed during the site plan review process. Natural Resources Management (NRM) reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

# LOCATION MAP

CBH PROPERTIES MELBOURNE, LLC

21Z00012



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.

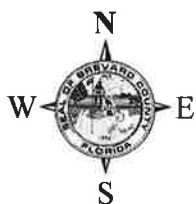
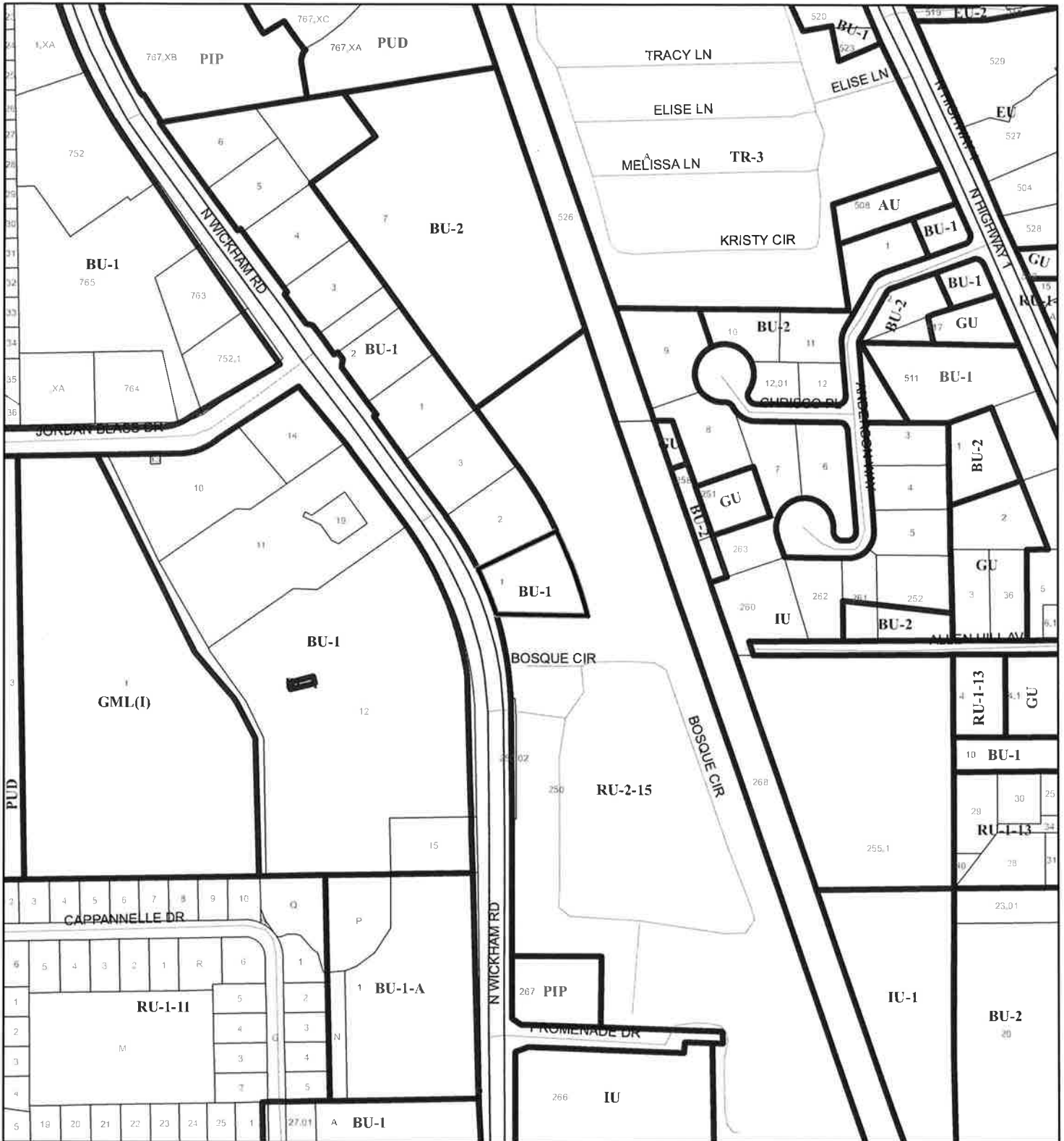
Produced by BoCC - GIS Date: 3/29/2021

— Buffer

■ Subject Property

# ZONING MAP

CBH PROPERTIES MELBOURNE, LLC  
21Z00012



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: 3/29/2021

— Subject Property

□ Parcels

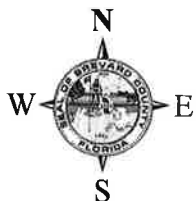
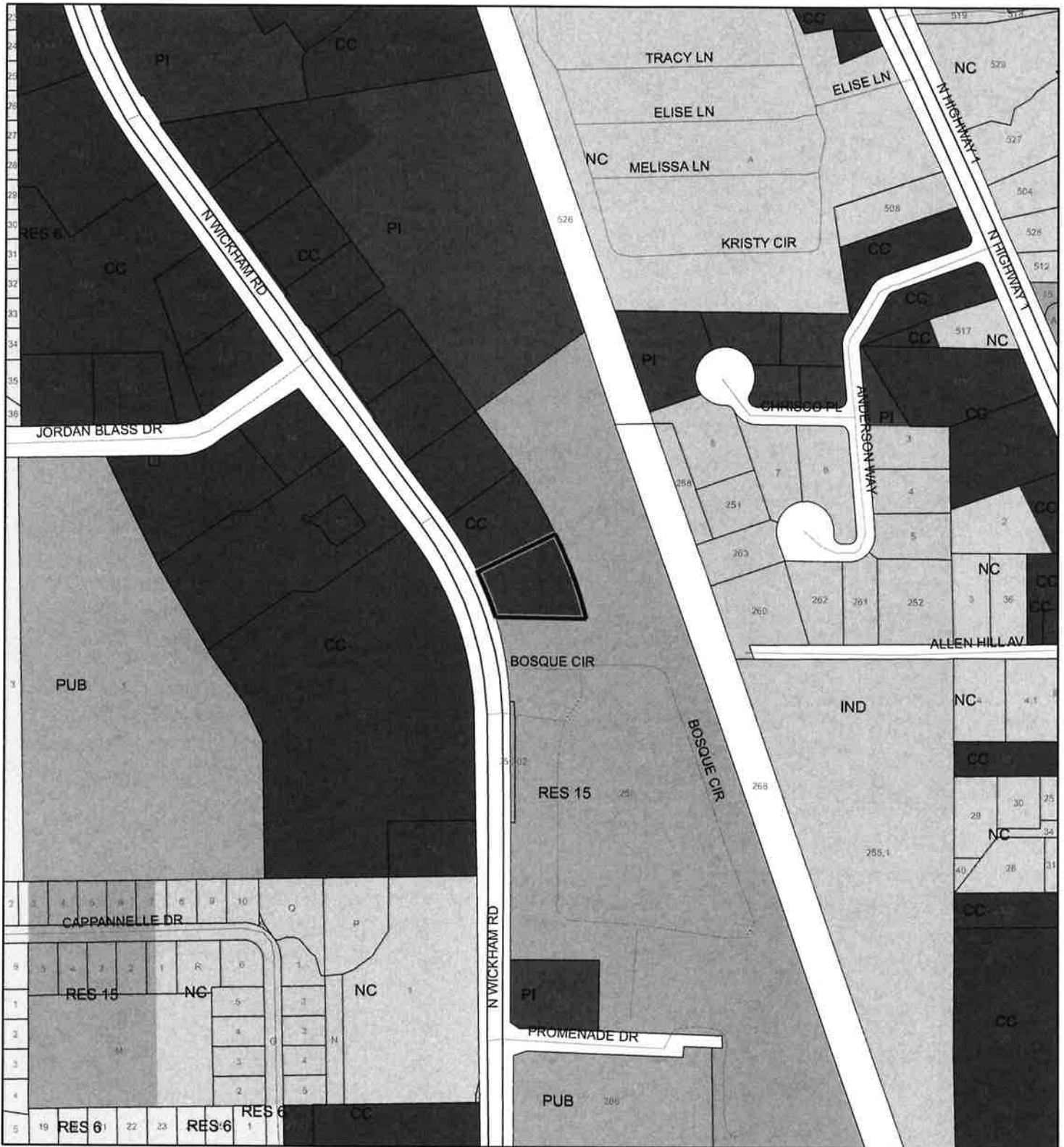
□ Zoning



# FUTURE LAND USE MAP

CBH PROPERTIES MELBOURNE, LLC

21Z00012



1:4,800 or 1 inch = 400 feet

— Subject Property  
 □ Parcels

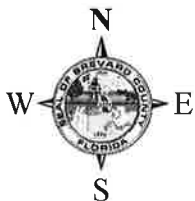
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/29/2021

# AERIAL MAP

CBH PROPERTIES MELBOURNE, LLC

21Z00012



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2020

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: 3/29/2021

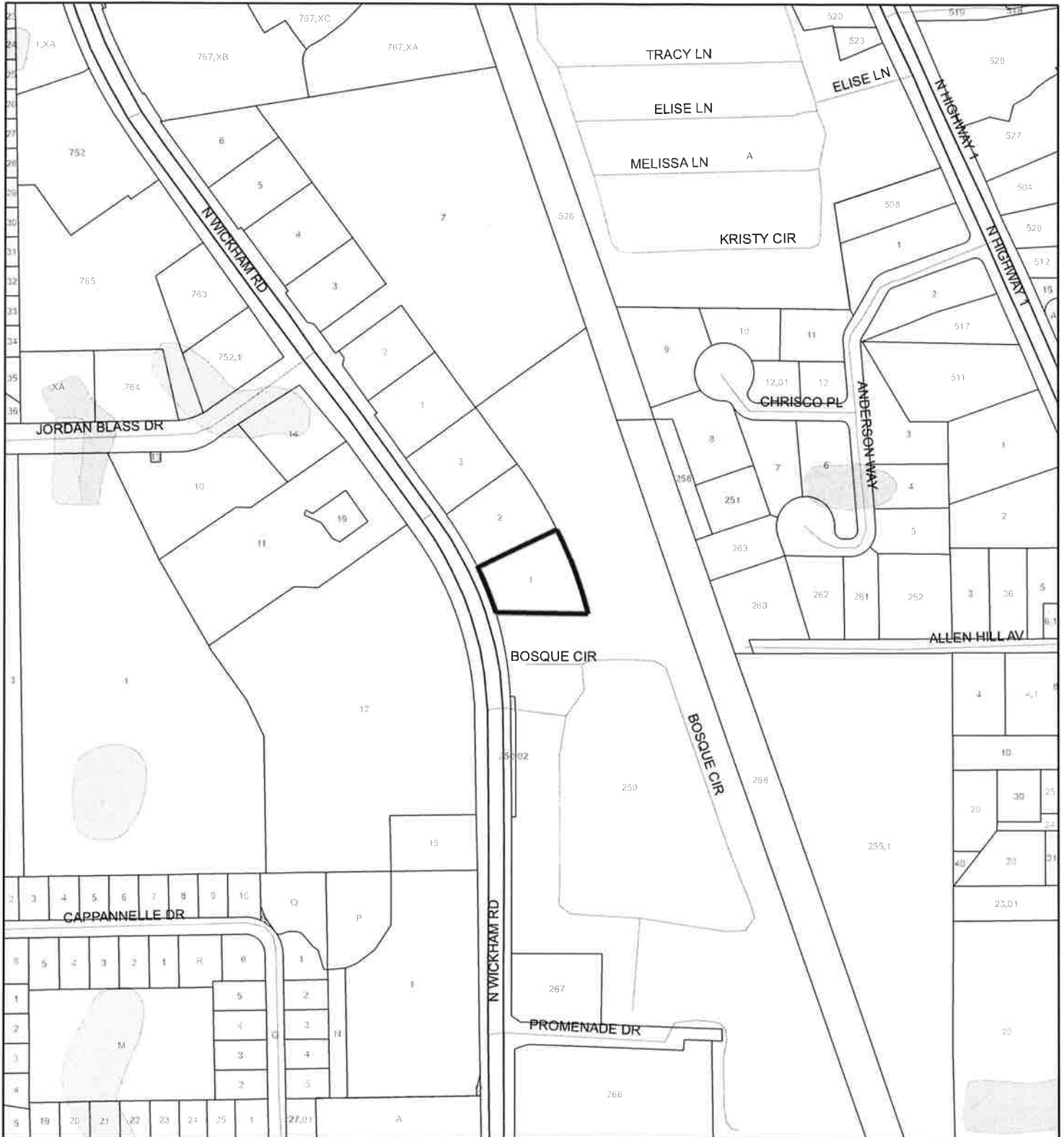
— Subject Property

□ Parcels

# NWI WETLANDS MAP

CBH PROPERTIES MELBOURNE, LLC

21Z00012



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: 3/29/2021

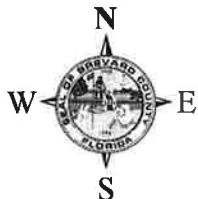
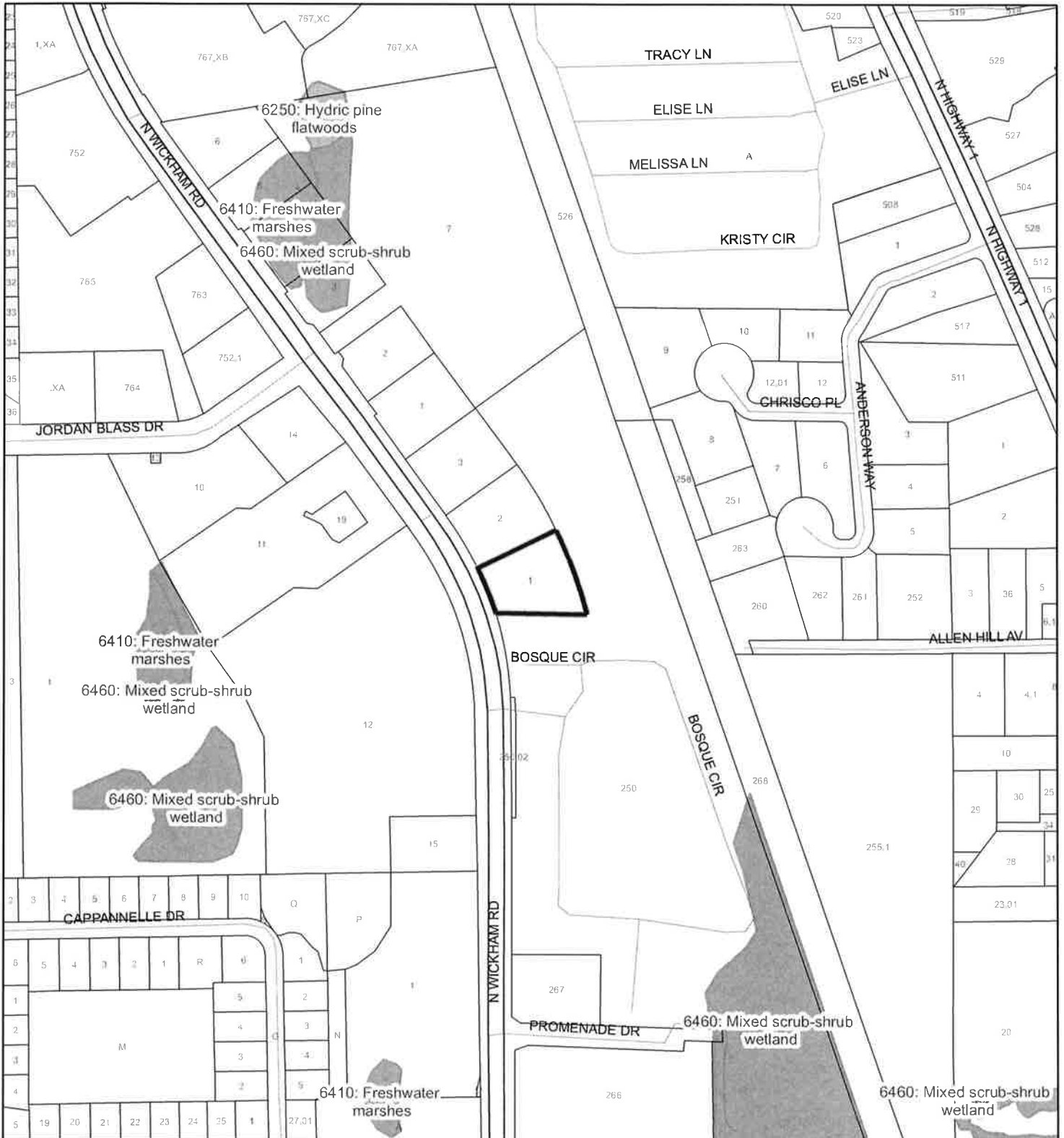
## National Wetlands Inventory (NWI)

	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

CBH PROPERTIES MELBOURNE, LLC

21Z00012



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: 3/29/2021

## 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

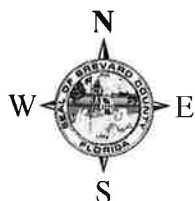
Subject Property Parcels



# USDA SCSSS SOILS MAP

CBH PROPERTIES MELBOURNE, LLC

21Z00012



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: 3/29/2021

## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

# National Flood Hazard Layer FIRMette



80°40'38"W 28°13'5"N



## Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

Without Base Flood Elevation (BFE)  
*Zone A V, AE*

With BFE or Depth  
*Zone AE, AO, AH, VE, AR*

Regulatory Floodway

0.2% Annual Chance Flood Hazard. Area of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile *Zone X*

Future Conditions 1% Annual Chance Flood Hazard *Zone X*

Area with Reduced Flood Risk due to Levee. See Notes, *Zone X*

Area with Flood Risk due to Levee *Zone D*

NO SCREEN

Area of Minimal Flood Hazard *Zone X*

Effective LOMRs

Area of Undetermined Flood Hazard *Zone*

Channel, Culvert, or Storm Sewer

Levee, Dike, or Floodwall

Cross Sections with 1% Annual Chance

Water Surface Elevation

Coastal Transect

Base Flood Elevation Line (BFE)

Limit of Study

Jurisdiction Boundary

Coastal Transect Baseline

Profile Baseline

Hydrographic Feature

Digital Data Available

No Digital Data Available

Unmapped

MAP PANELS

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 3/29/2021 at 11:58 AM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

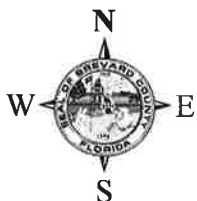
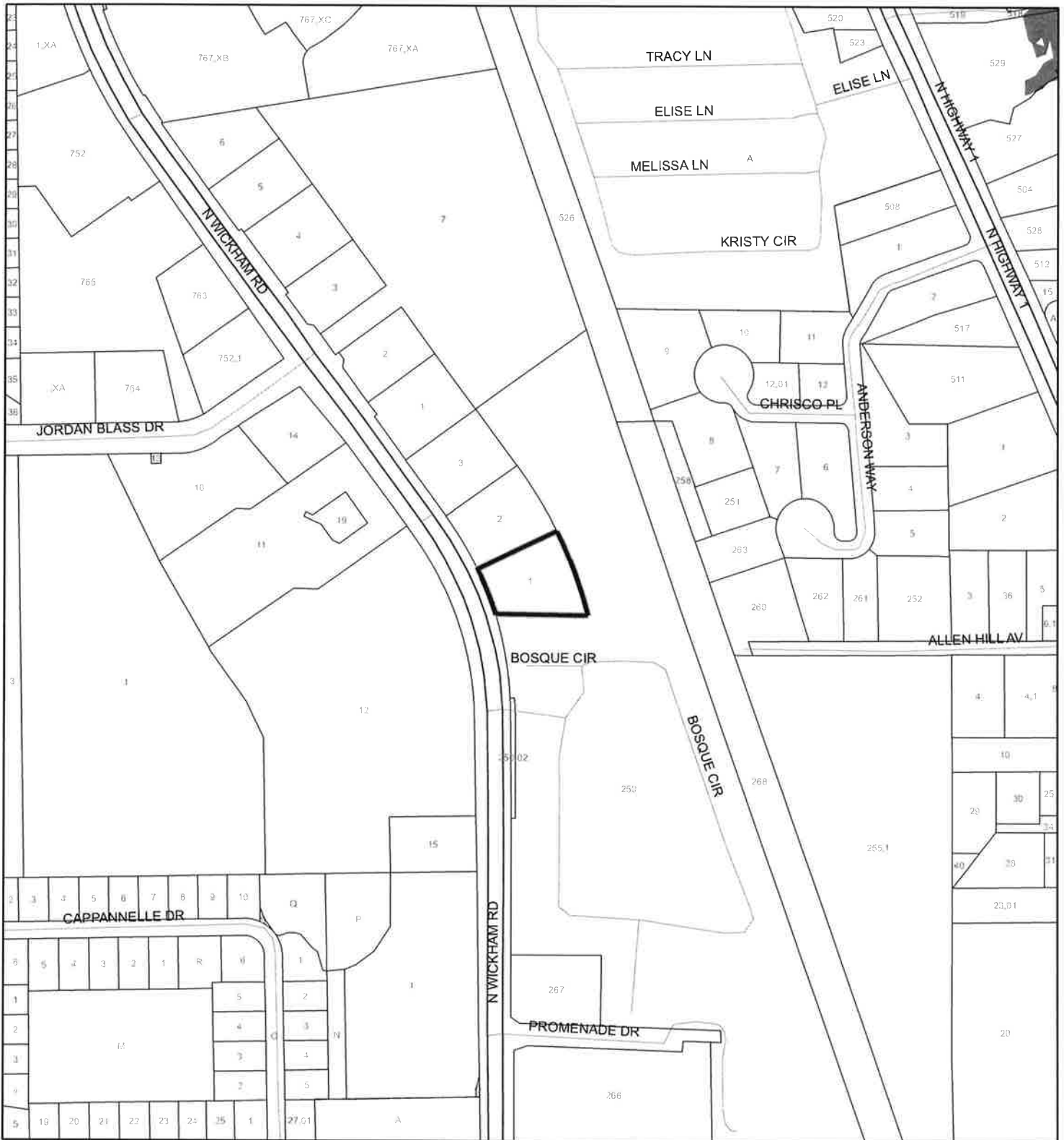
This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

25

# COASTAL HIGH HAZARD AREA MAP

CBH PROPERTIES MELBOURNE, LLC

21Z00012



1:4,800 or 1 inch = 400 feet


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Produced by BoCC - GIS Date: 3/29/2021

 Subject Property

 Parcels

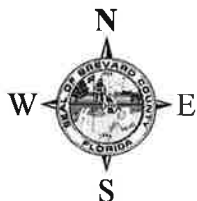
**Coastal High Hazard Area**

 SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

CBH PROPERTIES MELBOURNE, LLC

21Z00012



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/29/2021

**Subject Property**

Parcels

**Septic Overlay**

40 Meters

60 Meters

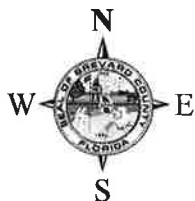
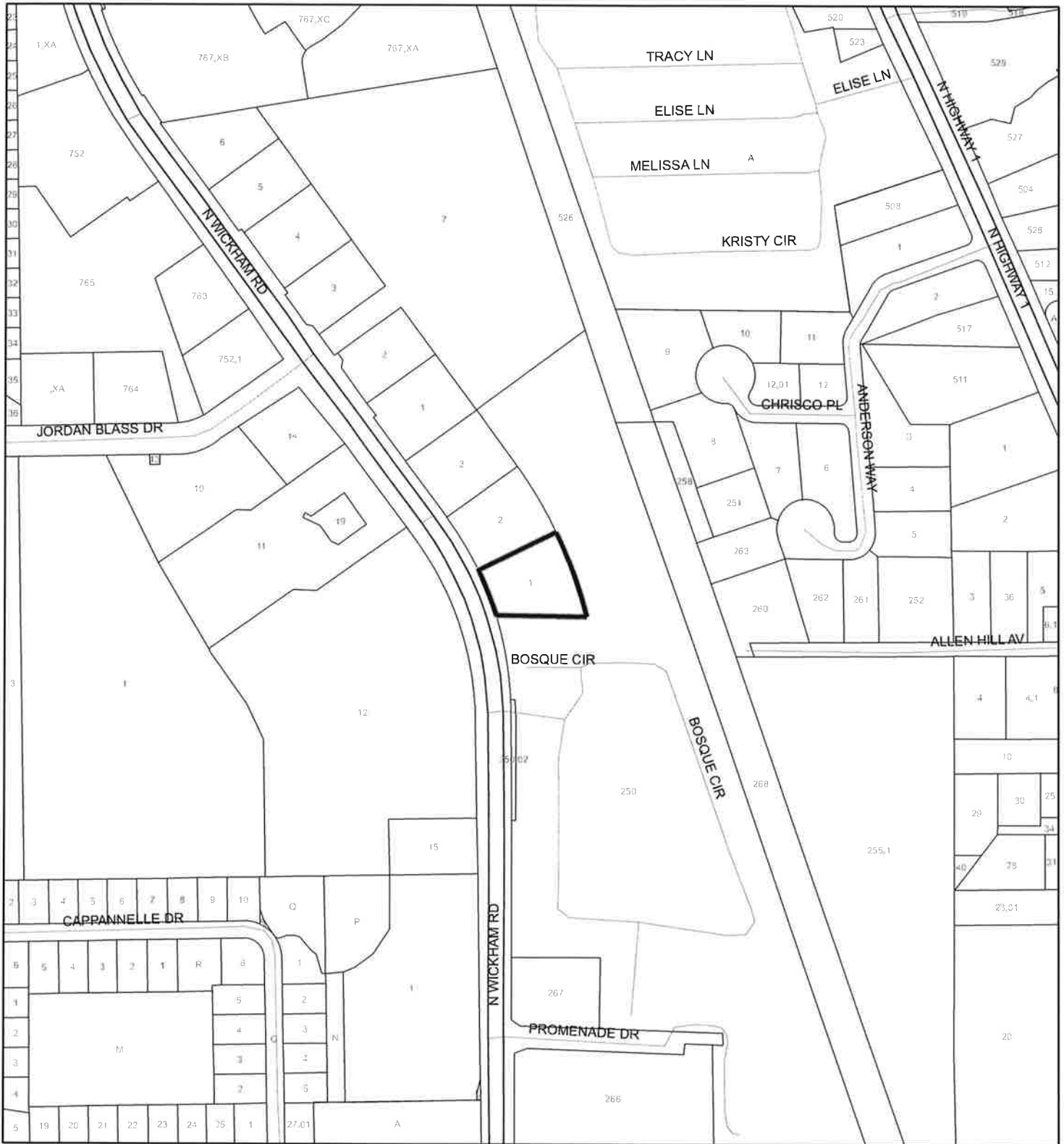
All Distances



# EAGLE NESTS MAP

CBH PROPERTIES MELBOURNE, LLC

21Z00012



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: 3/29/2021

 Subject Property

 Parcels



Eagle Nests  
FWS 2010

# SCRUB JAY OCCUPANCY MAP

CBH PROPERTIES MELBOURNE, LLC




21Z00012



1:4,800 or 1 inch = 400 feet

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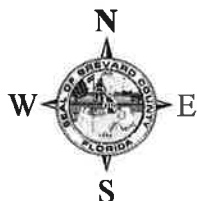
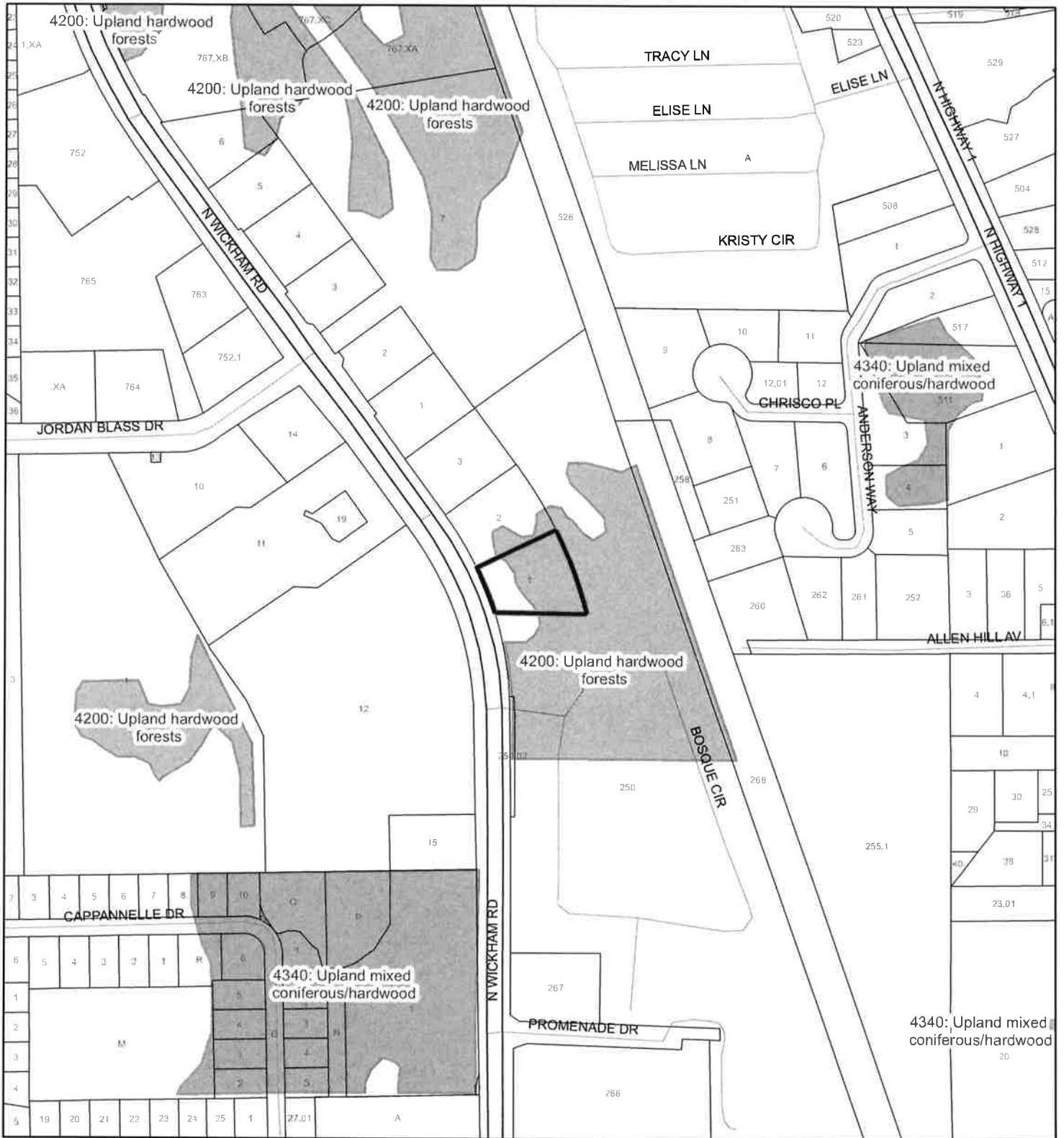
Produced by BoCC - GIS Date: 3/29/2021

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

CBH PROPERTIES MELBOURNE, LLC

21Z00012



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: 3/29/2021

## 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



BOARD OF COUNTY COMMISSIONERS

**Planning and Development**

2725 Judge Fran Jamieson Way  
Building A, Room 114  
Viera, Florida 32940  
321-633-2070

**Application for Zoning Action, Comprehensive Plan Amendment, or  
Variance**

Applications must be submitted in person. Please call 321-633-2070 for an appointment at least 24 hours in advance. Mailed, emailed, or couriered applications will not be accepted.

PZ # 21200012

Existing FLU: CC Existing Zoning: BU-1

Proposed FLU: CC Proposed Zoning: BU-2 & Amendment to existing BDP

**PROPERTY OWNER INFORMATION**

If the owner is an LLC, include a copy of the operating agreement.

Mark A. Carr, President CBH Properties Melbourne, LLC  
Name(s) Company  
17725 Katy Freeway, Suite 200 Houston TX 77094  
Street City State Zip Code  
Legal@cbac.com 281-675-6192  
Email Phone Cell

**APPLICANT INFORMATION IF DIFFERENT FROM OWNER:**

☐ Attorney ☐ Agent ☐ Contract Purchaser ☒ Other EOR

Bruce Moia, P.E. MBV Engineering, Inc.  
Name(s) Company  
1250 W Eau Gallie Blvd, Ste H Melbourne FL 32935  
Street City State Zip Code  
brucem@mbveng.com 321-253-1510  
Email Phone Cell

## APPLICATION NAME

- ☐ Large Scale Comprehensive Plan Amendment (CP) (greater than 10 acres)
- ☐ Small Scale Comprehensive Plan Amendment (CP) (less than 10 acres)
- ☐ Text Amendment (CP): Element \_\_\_\_\_
- ☐ Other Amendment (CP): \_\_\_\_\_
- ☒ Rezoning Without CUP (RWOC)
- ☐ Combination Rezoning and CUP (CORC)
- ☐ Conditional Use Permit (CUP)
- ☒ Binding Development Plan (BDP)
- ☐ Binding Development Plan (BDP) (Amendment)
- ☐ Binding Development Plan (BDP) (Removal)
- ☐ Variance(s) (V) (building permits will not be approved until 30 days after the date the order is signed)
- ☐ Administrative Approval of Setbacks, Lot Size, or Accessory Structures
- ☐ Administrative Approval of Flag Lot or Easement
- ☐ Administrative Approval of On-Premises Consumption of Alcoholic Beverages for Restaurants / Snack Bars
- ☐ Other Action: \_\_\_\_\_

Acreage of Request: 1.15

Reason for Request:

Current zoning of BU-1 does not enable company to complete all services that they have available for the public. Rezoning to BU-2 would accomplish this task.

The undersigned understands this application must be complete and accurate prior to advertising a public hearing:

- ☒ I am the owner of the subject property, or if corporation, I am the officer of the corporation authorized to act on this request.
- ☐ I am the legal representative of the owner of the subject property of this application. (Notarized Authorization to Act must be submitted with application)
- ☒ An approval of this application does not entitle the owner to a development permit.
- ☐ For Variances, I understand that building permits will not be approved until 30 days after the date the order is signed, in order to comply with the appeal procedure.
- ☒ I certify that the information in this application and all sketches and data attached to and made part hereof are true and accurate to the best of my knowledge.

\_\_\_\_\_  
Signature of Property Owner or  
Authorized Representative

3-23-22  
Date

State of Texas

County of Harris

Subscribed and sworn before me, by 2 physical presence or \_\_\_\_\_ online notarization,

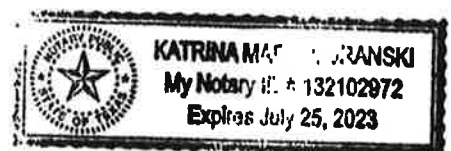
this 23 day of, March, 20 21, personally appeared

Mark Carr, who is personally known to me or produced

Katrina Dzwanski as identification, and who did / did not take an oath.

\_\_\_\_\_  
Notary Public Signature

Seal



Office Use Only:

Accela No. 21200012 Fee: 1508.00 Date Filed: 3/26/2021 District No. 4

Tax Account No. (list all that apply) 3022 324

Parcel I.D. No.

26 37 19 XN A 1  
Twp Rng Sec Sub Block Lot/Parcel

Planner: GER Sign Issued by: \_\_\_\_\_ Notification Radius: 500'

MEETINGS

DATE

TIME

☒ P&Z

July 12, 2021

3pm

☐ PSJ Board

☐ NMI Board

☐ LPA

☐ BOA

☒ BCC

August 5, 2021

5pm

Wetland survey required by Natural Resources ☐ Yes ☐ No Initials \_\_\_\_\_

Is the subject property located in a JPA, MIRA, or 500 feet of the Palm Bay Extension?

☐ Yes

☒ No

If yes, list \_\_\_\_\_

Location of subject property:

located 700' south of Jordan Bless Drive on  
East side of Wickham Rd.

Description of Request:

Rezone BU-1 to BU-2 to perform heavy auto-repairs  
& replacing existing BDP.

## **TITLE COMMITMENT:**

CHICAGO TITLE INSURANCE COMPANY

ORDER NUMBER: 7749871

COMMITMENT DATE: JUNE 26, 2019 @ 5:00 P.M.

## **LEGAL DESCRIPTION:** (BY SURVEYOR)

A PARCEL OF LAND IN SECTION 24, TOWNSHIP 26 SOUTH, RANGE 36 EAST AND SECTION 19, TOWNSHIP 26 SOUTH, RANGE 37 EAST, BROWN COUNTY, FLORIDA MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 19;

THENCE, SOUTH 89°16'49" EAST ALONG THE NORTH LINE OF SAID SECTION 19 A DISTANCE OF 380.42 FEET TO THE WESTERLY RIGHT LINE OF FLORIDA EAST COAST RAILROAD;

THENCE, NORTH 18°50'02" W ALONG SAID WESTERLY RIGHT OF WAY LINE A DISTANCE OF 273.11 FEET TO THE SOUTHERLY LINE OF PLAT LANDINGS, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 61, PAGE 45 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA;

THENCE, SOUTH 53°53'31" WEST ALONG SAID SOUTHERLY LINE A DISTANCE OF 389.95 FEET;

THENCE, SOUTH 36°05'59" EAST A DISTANCE OF 200.27 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 1256.60 FEET, A CENTRAL ANGLE OF 10°00'44" AND A CHORD BEARING AND DISTANCE OF SOUTH 31°01'48" EAST, 219.31 FEET;

THENCE, SOUTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 219.59 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUE ALONG A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 1256.60 FEET, A CENTRAL ANGLE OF 11°51'42" CHORD BEARING AND DISTANCE OF SOUTH 20°05'35" EAST, 259.69 FEET;

THENCE, SOUTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 260.15 FEET;

THENCE, NORTH 89°07'36" WEST A DISTANCE OF 261.23 FEET TO THE EASTERLY RIGHT OF WAY LINE OF WICKHAM ROAD AND THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 1006.60 FEET, A CENTRAL ANGLE OF 8°00'06" AND A CHORD BEARING AND DISTANCE OF NORTH 22°01'23" WEST, 140.46 FEET;

THENCE, NORTHWESTERLY ALONG THE ARC OF SAID CURVE AND SAID EASTERLY RIGHT OF WAY A DISTANCE OF 140.58 FEET;

THENCE, NORTH 63°58'34" EAST A DISTANCE OF 250.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 1.15 ACRES MORE OR LESS.



**FLORIDA EAST COAST RAILROAD**  
(100' RIGHT OF WAY)

FOUND 4"x4" CM  
"SHANNON PRIM 4671"

SITE CONTROL POINT #15  
SET 5/8" IRON ROD WITH CAP  
STAMPED "BOWMAN CG LB8030 TRAV"  
N: 1411493.53  
E: 762013.73  
EL.: 25.83' (NAVD 88)

S 53°53'31" W 389.85'

N 18°50'02" W 273.11'

FOUND 4"x4" CM  
"LB 6609"

WESTERLY R/W LINE OF  
FLORIDA EAST COAST RAILROAD

N LINE OF SECTION 19  
BASIS OF BEARING LINE  
S 89°16'49" E 380.42'

**POINT OF COMMENCEMENT**  
N.W. CORNER OF SECTION 19-26-37/  
S.E. CORNER OF SECTION 13-26-36  
FOUND 4"x4" CM (NO ID)

18  
19  
13  
24

S 36°05'09" E 200.27'

FOUND 5/8" IRON ROD WITH CAP  
STAMPED "SURVEY LB7545"

Prepared by: MBV Engineering, Inc.  
Address: 1250 W. Eau Gallie Blvd., Melbourne, FL 32935

### **BINDING DEVELOPMENT PLAN**

THIS AGREEMENT, entered into this 1 day of November, 2018 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Vinings Palm Bay Investment, LLC., a Florida Limited Liability Company (hereinafter referred to as "Developer/Owner").

### **RECITALS**

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

WHEREAS, Developer/Owner has requested the BU-1 zoning classification(s) and desires to develop the Property as commercial/retail, and pursuant to the Brevard County Code, Section 62-1157; and

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

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

NOW, THEREFORE, the parties agree as follows:

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

2. Developer/Owner shall provide a cross access easement and construct a driveway connection to connect to the existing cross access easement to the north property. Should the

developer/owner subdivide the property in the future, the cross access easement and driveway shall connect to all of the created development lots within the boundaries of the subject parent parcel.

3. No gas stations and/or convenience stores will be allowed.

4. Fast food restaurants will be limited to no more than ten thousand (10,000) sq.ft. of total cumulative floor area over the entire subject property.

5 Overall Floor-Area Ratio (F.A.R.) will be limited to 0.3

6. The Developer/Owner will provide traffic access improvements relative to the existing median opening in Wickham Rd. that is within the property frontage to a directional median opening, other median modification improvements, and/or driveway limitations per acceptable engineering access standards, as approved by county staff, as warranted, based on current and projected traffic patterns. The warrant shall be determined as part of the County site plan review process and the construction of the approved traffic improvements shall be completed prior to the issuance of a CO for the warranting facility.

7. Developer/Owner shall provide a pedestrian easement and connection to the remaining multi-family residential parent property.

8. This BDP shall replace the existing BDP dated March 22, 2018 per 17PZ00109 for this subject property only, as described in Exhibit A. It shall not effect or replace the previous BDP 17PZ00109 for the remaining parent parcel

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

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

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


Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on \_\_\_\_\_.

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


THE REMAINDER OF THIS PAGE IS BLANK INTENTIONALLY

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


ATTEST:

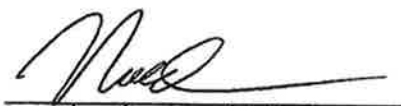
  
 Scott Ellis, Clerk  
 (SEAL)

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

  
 Kristine Isnardi  
 Chair  
 As approved by the Board on Dec. 18, 2018

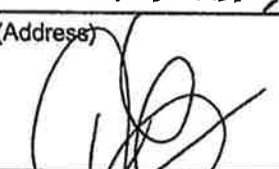
WITNESSES:

  
Alene Edmonds  
 (Witness Name typed or printed)

  
Nathan Vedrans  
 (Witness Name typed or printed)

DEVELOPER/OWNER

Vinings Palm Bay Investment, LLC  
3850 BIRD RD., MIAMI FL 33146  
 (Address)

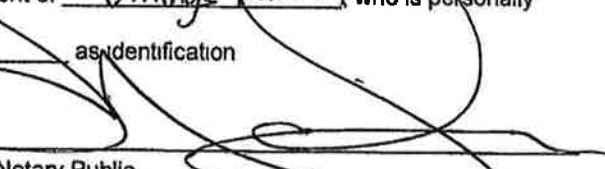
  
 (President) Manager  
TOM Cabrerizo  
 (Name typed, printed or stamped)

STATE OF FL §

COUNTY OF Miami Dade §

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of November, 2018, by Tom Cabrerizo Manager, Vinings Palm Bay Investment, LLC who is personally known to me or who has produced \_\_\_\_\_ as identification

My commission expires  
 SEAL  
 Commission No.:

  
 Notary Public  
Madelin Alfonso  
 (Name typed, printed or stamped)

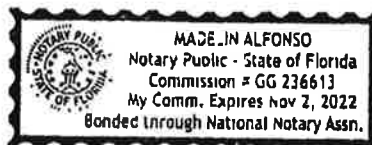


Exhibit "A"LEGAL DESCRIPTION

A parcel of land lying in Sections 13 & 24, Township 26S, Range 36E, and Section 19, Township 26S, Range 37E, of Brevard County, Florida. Being more particularly described as follows:

Beginning at the SW corner of Lot 1, Block A of Pineda Landings, as recorded in Plat Book 61, Pages 45 – 48, inclusive of the Public Records of Brevard County, Florida; thence N53deg53'31"E along the south line of said Lot 1, a distance of 250 ft.; thence S36deg05'10"E, parallel to the east right-of-way line of Wickham Rd., a distance of 199.18 ft. to the point of curvature of a curve concave westerly, having a radius of 1,256.60 ft., a central angle of 21deg55'26", and a chord bearing S25deg07'26"E, 477.90 ft.; thence southerly along said curve an arc distance of 480.83 ft. to the terminus of said curve; thence N89deg07'36"W, a distance of 261.23 ft. to a point on the east right-of-way line of Wickham Rd. (right-of-way width varies), said point being on a curve concave westerly, having a radius of 1,006.60 ft., a central angle of 18deg03'50", and a chord bearing N27deg03'15"W, 316.04 ft.; thence northerly along said right-of-way line and curve, an arc distance of 317.35 ft. to the point of tangency of said curve; thence continue along said right-of-way line N36deg05'10"W, a distance of 199.08 ft. to the point of beginning. Contains 3.43+ acres more or less.



Prepared by: MBV Engineering, Inc.  
Address: 1250 W. Eau Gallie Blvd., Melbourne, FL 32935

### **BINDING DEVELOPMENT PLAN**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and CBH Properties Melbourne, LLC (hereinafter referred to as "Developer/Owner").

### **RECITALS**

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

WHEREAS, Developer/Owner has requested the BU-2 zoning classification(s) and desires to develop the Property as a major automobile repair facility, and pursuant to the Brevard County Code, Section 62-1157; and

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

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

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.
2. The property shall remain in conformance with the terms and provisions of the approved Binding Development Plan, as recorded in ORB 8345, Page 662.

Rev. 3/24/2021

3. The approved uses shall be limited to those permitted uses of BU-1 and major automotive repairs only.
4. Parts and materials shall be stored in the rear of the shop, out of view from Wickham Road.
5. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This agreement provides no vested rights against changes to the Comprehensive Plan or land development regulations as they may apply to this Property prior to issuance of an approved development order.
6. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Court all costs of recording this Agreement in the Public Records of Brevard County, Florida.
7. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and shall be subject to the above referenced conditions as approved by the Board of County Commissioners on \_\_\_\_\_. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.
8. Violation of this Agreement shall constitute a violation of the zoning classification and of this Agreement. This Agreement may be enforced by Sections 1-7 and 62-5 of the Code of Ordinances of Brevard County, Florida, as may be amended.
9. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and shall be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any condition is a violation of this Agreement and constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 8 above.
10. Severability clause. If any provision of this BDP is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provision shall continue in full force and effect without being impaired or invalidated in any way.



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

ATTEST:

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

\_\_\_\_\_  
Rachel Sadoff, Clerk of Court  
(SEAL)

\_\_\_\_\_  
Rita Pritchett, Chair  
As approved by the Board on \_\_\_\_\_

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

WITNESSES:

(INSERT BUSINESS NAME or INDIVIDUAL NAME(s))  
as DEVELOPER/OWNER

\_\_\_\_\_  
\_\_\_\_\_  
(Witness Name typed or printed)

\_\_\_\_\_  
\_\_\_\_\_  
(Address)

\_\_\_\_\_  
\_\_\_\_\_  
(Witness Name typed or printed)

\_\_\_\_\_  
\_\_\_\_\_  
(President)  
(Name typed, printed or stamped)

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

The foregoing instrument was acknowledged before me, by means of \_\_\_\_\_ physical presence or \_\_\_\_\_ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, President of \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification.

My commission expires

\_\_\_\_\_  
Notary Public

SEAL

Commission No.:

(Name typed, printed or stamped)

## **PLANNING AND ZONING BOARD MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, July 12, 2021**, 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: Ron Bartcher (D1); Brian Rodgers (D2); Mark Wadsworth, Chair (D4); Joe Buchanan (D4 Alt); Peter Filiberto (D5); and David Bassford (D5 Alt).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; George Ritchie, Planner III; Paul Body, Planner II; Kyle Harris, Planner I; Abigail Jorandby, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

At the outset of the meeting, David Bassford announced he had a conflict of interest on Items H.1., H.7., and H.8., and would need to abstain from voting.

### **Excerpt of Complete Minutes**

#### **CBH Properties Melbourne, LLC (Bruce Moia)**

A change of zoning classification from BU-1 (General Retail Commercial) with an existing BDP (Binding Development Plan) to BU-2 (Retail, Warehousing, and Wholesale Commercial) and an amendment to the existing BDP. The property is 1.15 acres, located on the east side of N. Wickham Rd., approx. 0.13 mile south of Jordan Blass Dr. (6315 N. Wickham Rd., Melbourne) (21Z00012) (Tax Account 3022324) (District 4)

Motion by Peter Filiberto, seconded by Joe Buchanan, to table the request to the July 26, 2021, LPA meeting, due to lack of quorum. The vote was unanimous.

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

The Brevard County Local Planning Agency/Planning & Zoning Board met in regular session on Monday, July 26, 2021, 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 Vice Chair Peter Filiberto, at 3:07 p.m.

Board members present were: Ron Bartcher (D1); Brian Hodgers (D2); Ben Glover (D3); William Capote (D3); Ron McLellan (D4); Joe Buchanan (D4); Peter Filiberto, Vice Chair (D5); and David Bassford.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; George Ritchie, Planner III; Kyle Harris, Planner I; Abby Jorandby, Assistant County Attorney; Tad Calkins, Planning and Development Director; Virginia Barker, Natural Resources Management Director; and Jennifer Jones, Special Projects Coordinator.

David Bassford announced he will abstain from voting on Items H.1. through H.3. due to a conflict of interest.

### **Excerpt of Complete Minutes**

#### **1. CBH Properties Melbourne, LLC (Bruce Moia)**

A change of zoning classification from BU-1 (General Retail Commercial) with an existing BDP (Binding Development Plan) to BU-2 (Retail, Warehousing, and Wholesale Commercial) and an amendment to the existing BDP. The property is 1.15 acres, located on the east side of N. Wickham Rd., approx. 0.13 mile south of Jordan Blass Dr. (6315 N. Wickham Rd., Melbourne) (21Z00012) (Tax Account 3022324) (District 4) This item was tabled from the 07/12/21 P&Z meeting.

Bruce Moia, MBV Engineering, stated the subject property is on Wickham Road, next to the new apartment complexes beside Fresh Market, and it is an automotive store called, "Christian Brothers Automotive". It has been in business for 40 years in 30 states, with 242 stores nationwide. He said the store is already open and they are conducting business; however, part of the work they do is replace motors and transmissions, and when a client orders a motor or transmission they replace it the same day it arrives. He stated under the BU-1 zoning they cannot do that work. He added the along with the request for BU-2, his clients are presenting a BDP (Binding Development Plan) to allow them to do that work; they will not be re-building transmissions or motors onsite, they just want the ability to replace motors and transmissions.

Ben Glover asked if the applicant held a dealer license they would be able to do these automotive repairs. Mr. Moia replied, no, the zoning is what prevents them from doing the work, regardless of the type of license. Mr. Glover stated they did a good job on the building, and it's something he would be in favor of.

Peter Filiberto asked if any motors or transmissions be stored on the property. Mr. Moia replied, no.

No public comment.

Motion by Ben Glover, seconded by William Capote, to approve the change of zoning classification from BU-1 with an existing BDP (Binding Development Plan) to BU-2 (Retail, Warehousing, and Wholesale Commercial) and an amendment to the existing BDP. The motion passed unanimously.