



AGENDA REPORT
August 2, 2018

Public Hearing, Re: Vinings Palm Bay Investment, LLC (Tom Cabrerizo/Bruce Moia) requests a change of Zoning classification from RU-2-15 to BU-1, and replacement of an existing BDP. (18PZ00059) (District 4)

SUBJECT:

Public Hearing, Re: Vinings Palm Bay Investment, LLC (Tom Cabrerizo/Bruce Moia) requests a change of Zoning classification from Medium Density Multi-Family Residential (RU-2-15) to General Retail Commercial (BU-1), and replacement of an existing Binding Development Plan (BDP). The Property is 3.43 +/- acres, located on the east side of N. Wickham Rd., approx. 340 ft. south of Jordan Blass Dr. (No assigned address. In the Melbourne area.) (18PZ00059) (District 4)

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 the request for a change of Zoning classification from RU-2-15 to BU-1, and replacement of an existing BDP.

SUMMARY EXPLANATION and BACKGROUND:

The applicant is seeking a change of Zoning classification from RU-2-15 with a BDP to BU-1 on a 3.43 acre portion of the greater 7.27 acre parcel for the purpose of expanding the commercial development near the intersection of Jordan Blass Drive and North Wickham Road. The applicant is also seeking to remove the existing BDP and replace it with another one, better suited to the commercial proposal, which proposes to include a condition necessitating a cross-access easement agreement to connect to the commercial property (Pineda Landings) lying to the north of this site. This cross-access easement will provide internal access for the commercial lots proposed within this rezoning request.

The proposed BU-1 Zoning classification with BDP appears to be both consistent and compatible with the surrounding land uses. Although the subject property is abutting multi-family residential zoning to the east, stormwater ponds are proposed to be constructed in the area adjacent to the proposed commercial development, so

incompatibilities between the commercial and residential uses are planned to be minimized.

The Board may wish to consider ways to limit the uses to those that produce fewer trips or limiting the number of driveways gaining access to Wickham Road. Staff analysis of the level of service impact of this proposed commercial development indicates that the most intense uses permissible within the BU-1 zoning classification have the potential to put North Wickham Road significantly over capacity. Access control by using the internal cross-access should direct traffic to the signalized intersection rather than direct connection to North Wickham Road which is currently operating at a Level of Service (LOS) of C with a maximum allowable LOS of D. Unless traffic patterns are mitigated, a deficiency in LOS on this section of North Wickham Road may be created, with the LOS of dropping from a C to a potentially failing section of roadway.

The applicant should be aware that if this rezoning request were to be approved, that median openings on Wickham Road have the potential to be modified to be more restrictive when the proposal for commercial development proceeds through the site plan review process.

The current request for a change of Zoning classification accompanies a separate request for a Small Scale Comprehensive Plan Amendment (SSCPA), proposing a change of Future Land Use designation from Residential 15 (RES 15) to Community Commercial (CC). If the SSCPAs is not supported by the Board, this request for rezoning cannot be heard. On July 9, 2018, the Planning and Zoning Board heard the request and unanimously recommended approval with a BDP stipulating that the Developer/Owner provide a cross-access easement to connect to the existing cross access easement to the north property.

ATTACHMENTS:

Description

- **Administrative Policies**
- **Staff Comments**
- **Maps**
- **FYI Trip Generation Memo**
- **FYI Existing BDP**
- **FYI Draft BDP**

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 and 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 zoning, conditional uses, comprehensive plan appeals, vested rights or other applications for development approval that come before the Board of County Commissioners for quasi-judicial review and action. The Board may table an item if additional time is required to obtain the analysis requested or to hire an expert witness if the Board deems such action appropriate. Staff input may include the following:

Criteria:

- A. Staff shall analyze an application for consistency or compliance with comprehensive plan policies, zoning approval criteria and other applicable written standards.
- B. Staff shall conduct site visits of property which are the subject of analysis and recommendation. As part of the site visit, the staff shall take a videotape or photographs where helpful to the analysis and conduct an inventory of surrounding existing uses. Aerial photographs shall also be used where they would aid in an understanding of the issues of the case.
- C. In cases where staff analysis is required, both the applicant and the staff shall present proposed findings of fact for consideration by the Board.
- D. For 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 per cent 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 an 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 or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.
- 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 service 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, odor, 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 that the following general standards are satisfied. The Board shall make the 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 MAI 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 thirty-five (35) feet higher than the highest residence within 1000 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 the 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 MPO 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 (ALOS): Acceptable Level of Service currently adopted by the County.

Current 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 LOS that a proposed development may generate on a roadway.

REZONING REVIEW WORKSHEET

18PZ00059

Commission District # 4

Hearing Dates: P&Z 07/09/18

BCC 08/02/18

Owner Name: VININGS PALM BAY INVESTMENT, LLC

Request: RU-2-15 to BU-1 and Replacement of Existing BDP

Subject Property:

Parcel ID# 26-37-19-00-250; and 26-36-13-00-756 (portions of)

Tax Acct.# 2606089; 2602755

Location: East side of N. Wickham Rd., approx. 340 ft. south of Jordan Blass Dr.

Address: No assigned address. In the Melbourne area.

Acreage: 3.43 +/-

Consistency with Land Use Regulations

<u>YES</u>	Current zoning can be considered under the Future Land Use Designation. Sec. 62-1255
<u>NO**</u>	Proposal can be considered under the Future Land Use Designation. Sec. 62-1255
<u>YES</u>	Would proposal maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	RU-2-15	BU-1
Potential*	51 Multi-family units	29,882 square feet
Can be Considered under FLU MAP	YES RES15	NO** RES15

*Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. **Requires Small Scale Amendment from RES 15 to CC.

	ADT	PM PEAK		
Trips from Existing Zoning	339	32	Segment Number	370F
Trips from Proposed Zoning	25,268	1,522	Segment Name	Wickham PINEDA CAUSEWAY - JORDAN BLASS
Maximum Acceptable Volume (MAV)	39,800	3,582	Acceptable LOS	D
Current Volume	29,657	2,669	Directional Split	0.51
Volume With Proposed Development	54,925	4,943	ITE CODE 853	
Current Volume / MAV	74.52%	74.52%		
Volume / MAV with Proposal	138.00%	138.00%		
Current LOS	C	C		
OS With Propos	F	F		
Findings	<input type="checkbox"/> Non-Deficiency		<input checked="" type="checkbox"/> Deficiency	

Background & Purpose of Request

The applicant is seeking a change of Zoning classification from Medium-Density Multiple-Family Residential (RU-2-15) with a Binding Development Plan (BDP) to General Retail Commercial (BU-1) on a 3.43 acre portion of the greater 7.27 acre parcel for the purpose of expanding the commercial development near the intersection of Jordan Blass Drive on North Wickham Road. The applicant is also seeking to remove the existing BDP and replace it with another one, better suited to the commercial proposal, which proposes to include a condition necessitating a cross-access easement agreement to connect to the commercial property (Pineda Landings) lying to the north of this site. This cross access easement will provide internal access for the commercial lots proposed within this rezoning request.

In April 2018, this parcel's zoning was changed from Planned Industrial Park (PIP) to Medium-Density Multi-Family Residential (RU-2-15) under Zoning Resolution number **17PZ00109**. The parcel's Zoning was approved with a Binding Development Plan recorded in **ORB 8148 Pg 974**. The rezoning of this portion of property does not appear to affect that remaining residential portion of the site, which would retain the existing BDP.

Current BDP conditions include:

- Developer/Owner shall provide an 8 foot high concrete masonry unit, or similar material, wall to separate the improvements to be built on the Property from the Plant Site {hereinafter defined}. The final location of such wall shall be determined during site plan review, but it shall be required that the wall shall run parallel along a portion of the eastern boundary {but not necessarily on such boundary} of the Property. Such wall shall run from the northern boundary of the wetlands located on the southeastern end of the Property to the south boundary line of that certain parcel of land currently listed as Tax Parcel Account #2606105 (approximately 1,000 feet in length) . In addition to any other landscaping and vegetative buffering which may be required during site plan review elsewhere on the Property, an additional 50 foot natural vegetated buffer shall be preserved in the same approximate length as the wall - running adjacent to the wall. Such natural vegetation shall consist of the vegetation then existing around the area in which the wall shall be located. Any areas along the proposed wall site within the 50 foot buffer area which are void of vegetation (such that a significant portion of the wall may be seen by an average person with the naked eye standing at the edge of such vegetative buffer during times of full foliage) will be planted with additional non-invasive, natural vegetation appropriate for the area in keeping with normal Florida Friendly landscaping practices, which additional plants (though perhaps immature when planted) when grown to maturity will close such void.
- The Developer/Owner shall limit density to 15 units per acre and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.
- No buildings (including, without limitation, residential or office buildings) or recreational facilities (including, without limitation, pools), or any portion thereof, shall be constructed or located on any area of the Property that is either (i) within three hundred feet (300') of the boundary line of that certain parcel of land described and/or depicted in Exhibit "B", attached hereto and made a part hereof by this reference (hereinafter referred to as the "Plant Site"), or (ii) south of the north property line of the Plant Site as projected westerly to the west boundary of the Property along the same bearing (N 64 degrees 48' 23" E as shown on Exhibit "B").
- The Developer/Owner shall provide formal notification to proposed tenants acknowledging existence of the existing and proposed asphalt/concrete plants on the eastside of the Florida East Coast Railroad right-of-way and the potential noise factors.
- The Developer/Owner shall not petition the County regarding operations of the asphalt/concrete plant, unless it is in regards to non-compliance with County ordinances.

The prior request accompanied a Large Scale Comprehensive Plan Amendment (LSCPA) changing the Future Land Use from Planned Industrial (PI) to Residential 15 (RES15) under application **17PZ00108**. A previous request was heard under **15PZ00056** in November 2016, which denied a proposed change to the Future Land Use designation and zoning change from PIP to RU-2-15.

The current request for a change of Zoning classification accompanies a separate request for a Small Scale Comprehensive Plan Amendment (SSCPA), proposing a change of Future Land Use designation from Residential 15 (RES15) to Community Commercial (CC). If the SSCPA is not supported by the Board, this request for Rezoning cannot be heard.

Land Use Compatibility

This site is seeking to change the existing Future Land Use designation from Residential 15 to Community Commercial (CC). The request for BU-1 zoning should be evaluated within the context of **Policy 2.7** of the Future Land Use Element, which identifies "development activities that may be considered within the Community Commercial Future Land Use Designation..."

Existing strip commercial;
Transient commercial uses;
Tourist commercial uses;
Professional offices;
Personal service establishments;
Retail establishments;
Non-retail commercial uses;
Residential uses;
Institutional uses;
Recreational uses;
Public facilities;
Transitional uses pursuant to Policy 2.14; and
Planned Industrial Park development (as permitted by PIP zoning).

The request for BU-1 zoning should be evaluated within the context of **Policy 2.8** of the Future Land Use Element, which sets forth locational criteria for community commercial land use activities, as follows:

- A. Community Commercial clusters of up to ten (10) acres in size should be located at arterial intersections. Collector/arterial intersections area acceptable for clusters of up to ten (10) acres in size, however, the collector roadways must serve multiple residential areas. Intrusion of these land uses into the surrounding residential areas shall be limited. For Community Commercial clusters greater than ten (10) acres in size, they must be located at principal/ arterial intersections.
- B. Community Commercial complexes should not exceed 40 acres at an intersection.
- C. Community Commercial clusters up to 10 acres in size should be spaced at least 2 miles apart and community commercial clusters up to 40 acres in size should be spaced at least five (5) miles apart.
- D. The gross floor area of community commercial complexes should not exceed 150,000 square feet for commercial clusters up to 10 acres in size and shall not exceed 400,000 square feet for commercial clusters greater than 10 acres but less than 40 acres in size.
- E. Floor Area Ratio (FAR) of up to 1.00 will be permitted for Community Commercial sites.

Floor Area Ratios are evaluated during site plan review.

Transitional Commercial Activities **Policy 2.14** - As a result of their intrinsic nature and scale of intensity, offices, non-retail and neighborhood commercial activities may be utilized as transitional activities to afford buffering between higher and lower intensity uses, including transportation corridors. The criteria listed below, as summarized by Table 2.3, should serve as locational guidelines for employing such development as transitional uses. Projects which are approved as transitional uses may be subject to special requirements by the County,

such as buffers, lighting, hours of operation, access/egress points, etc. in order to minimize impact upon adjacent lower intensity uses. In residential land use designations, strict adherence to development parameters outlined in Policies 2.6 and 2.8 must be maintained to qualify for consideration as a transitional activity under this policy. Once a transition is achieved between a higher and lower intensity land use, this policy should not be construed to justify the extension or enlargement of such uses onto adjacent lower intensity lands.

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

Environmental Constraints

Please refer to comments provided by the Natural Resource Management Department.

Applicable Land Use Policies

The 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. The character of the area surrounding the subject property is developed as commercial, office professional and residential. The portion of the parcel proposed for rezoning is on the north western half of the overall parcel. Land to the north of the proposed rezoning has BU-1 and Retail warehousing and wholesale commercial (BU-2) zoning. Development includes a Zaxby's Restaurant and a shopping complex anchored by The Fresh Market. BU-1 zoning is also prevalent on the western side of N. Wickham Rd. The 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.

The recent zoning changes within a half mile of this location include the following zoning actions: **17PZ00152**, **17PZ00109** and **15PZ00003**. **17PZ00152** was a request to change Estate Use residential (EU) zoning to Rural Residential (RR-1) and removal of two BDPs on 2.58 acres, denied on March 1, 2018. **17PZ00109** described above was a proposed Zoning change from PIP to RU-2-15 approved with a Binding Development Plan on April 25, 2018. **15PZ00003** was the change from PIP to BU-2 on 7.4 acres; and a change of classification from PIP to Retail, Warehousing, and Wholesale Commercial (BU-2) on 9.957 acres, approved on May 7, 2015.

Preliminary Transportation Concurrency Consideration

The preliminary transportation concurrency analysis indicates that the North Wickham Road corridor from Jordan Blass Drive to Pineda Causeway has a maximum acceptable volume (MAV) of 39,800. Brevard County defers to the Space Coast Transportation Planning Organization's (TPO's) traffic count program, which indicates that in 2016 the roadway's trips were at 74.52% of the MAV. Staff analysis of the impact of this proposed commercial develop indicates that the most intense uses permissible within the BU-1 Zoning classification have the potential to put North Wickham Road significantly over capacity.

There is an Agreement in place today providing for cross-access between this parcel and the vacant commercial parcel to the north. Access control by using the internal cross-access, as memorialized in the proposed Binding Development Plan, should direct traffic to the signalized intersection rather than direct connection to North Wickham Road which is currently operating at a Level of Service (LOS) of C with a maximum allowable LOS of D. Unless traffic patterns are mitigated, this section of North Wickham Road may increase in deficiency to a LOS of F.

The applicant has also submitted a Transportation Technical Memorandum that demonstrates that, even when pass-by trips are taken into consideration, a gas station with a convenience store, a high trip generator within the BU-1 Zoning classification, has the potential to generate as many as 203,836 daily trips and 12,383 PM Peak Hour trips. For this reason, the Board may also wish to consider restricting the uses to those that produce fewer

trips or limiting the number of driveways gaining access to Wickham Road as a part of the associated rezoning request.

For Board Consideration

The proposed BU-1 Zoning classification with BDP appears to be both consistent and compatible with the surrounding land uses. The submitted BDP is proposed to replace the existing BDP and requires a connection to the existing cross access easement upon the property situated along this parcel's northern property line. The new BDP also stipulates should the developer/owner subdivide the property in the future, the cross access easement shall connect to all of the created development lots within the boundaries of the subject parent parcel. Although the subject property is abutting multi-family residential Zoning to the east, stormwater ponds are proposed to be constructed in the area adjacent to the proposed commercial development, so incompatibilities between the commercial and residential uses are planned to be minimized.

Staff analysis of the level of service impact of this proposed commercial development indicates that the most intense uses permissible within the BU-1 Zoning classification have the potential to put North Wickham Road significantly over capacity. Access control by using the internal cross-access should direct traffic to the signalized intersection rather than direct connection to North Wickham Road which is currently operating at a Level of Service (LOS) of C with a maximum allowable LOS of D. Unless traffic patterns are mitigated, a deficiency in LOS on this section of North Wickham Road may be created, with the LOS of dropping from a C to a potentially failing section of roadway.

The Board may also wish to consider restricting the uses to those that produce fewer trips or limiting the number of driveways gaining access to Wickham Road as a part of the associated rezoning request.

NATURAL RESOURCES MANAGEMENT DEPARTMENT

Rezoning Review

SUMMARY

Item #: 18PZ00059

Applicant: Vinings Palm Bay Investment, LLC

Zoning Request: RU-2-15 to BU-1

P&Z Hearing Date: 07/09/18

BCC Hearing Date: 08/02/18

This is a preliminary review based on environmental maps available to the Natural Resources Management (NRM) Department at the time of this review and does not include a site inspection to verify the accuracy of this information. This review does not ensure whether or not a proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations. In that this process is not the appropriate venue for site plan review, specific site designs that may be submitted with the rezoning will be deemed conceptual and any comments or omissions relative to specific site design do not provide vested rights or waivers from these regulations, unless specifically requested by the owner and approved by the Board of County Commissioners. If the owner has any questions regarding this information, he/she is encouraged to contact NRM prior to submittal of any development or construction plans.

Natural Resource	Preliminary Assessment	Natural Resource	Preliminary Assessment
Hydric Soils/Wetlands	Not mapped	Coastal Protection	N/A
Aquifer Recharge Soils	Mapped	Surface Waters	N/A
Floodplains	Not mapped	Wildlife	Potential

Comments:

This review relates to the following property: Twp. 26S, Rng. 36, 37E, Sec. 13, 19 & 24; Tax ID Nos. 2606089 & 2602755

The subject parcel contains mapped aquifer recharge soils (Tavares fine sand) as shown on the United States Department of Agriculture (USDA) Soils Conservation Service Soils Survey (SCSSS) Map. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

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. In addition, a large Florida Scrub Jay polygon is mapped to the west of the parcel. 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.

The subject parcel contains a mapped polygon of SJRWMD Florida Land Use and Cover Classification System (FLUCCS) code 4200 – Upland Hardwood Forest. Heritage Specimen Trees (greater than 24 inches in diameter) are included in this FLUCCS code and may exist on the parcel. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), the purpose and intent of the ordinance is to encourage the protection of heritage Specimen Trees. In addition, per Section 62-4341(18), Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions,

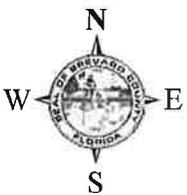
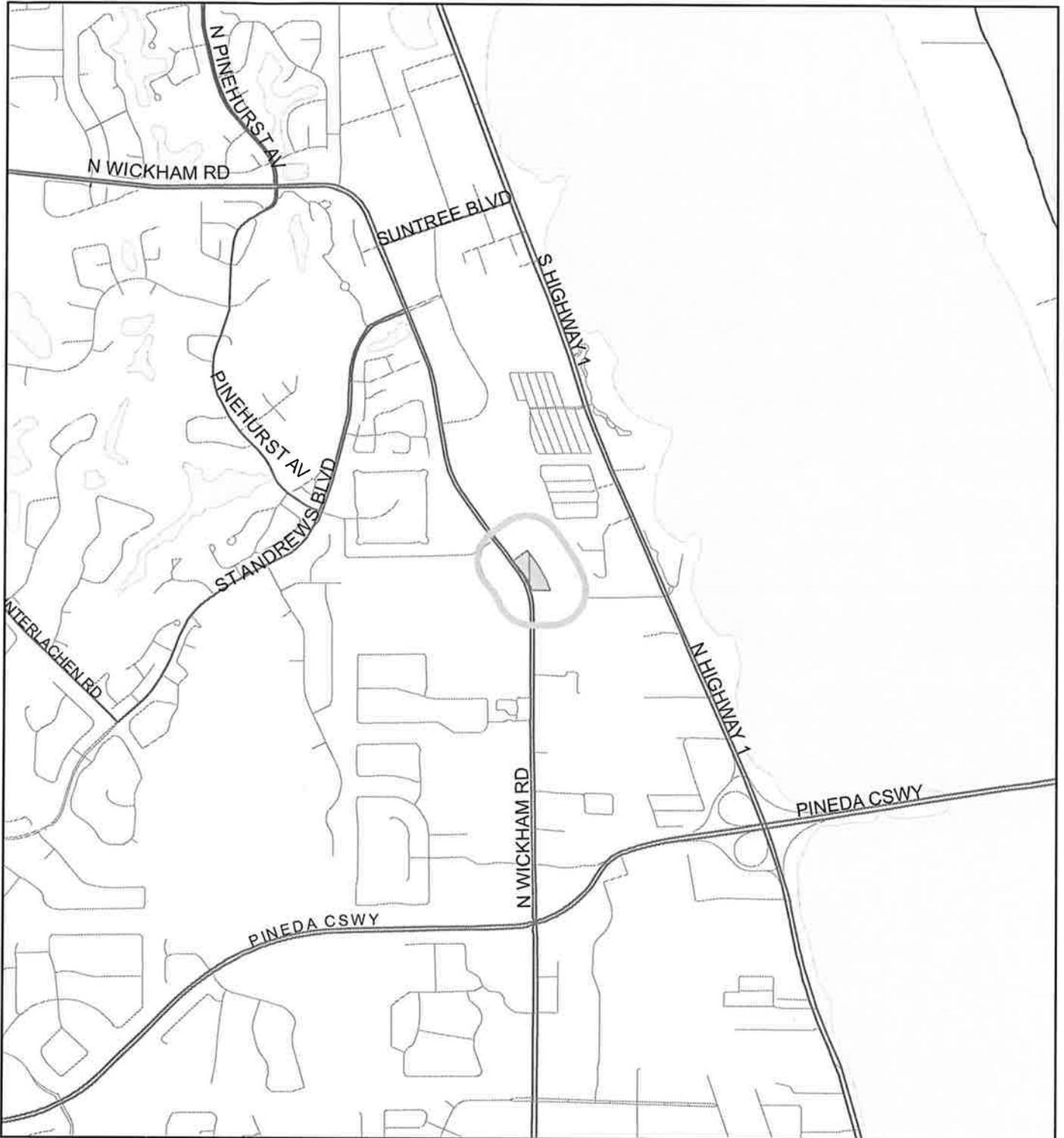
Staff Comments: Page 7
(18PZ00059)
07/09/18 PZ // 08/02/18 BCC

Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for additional preservation and canopy coverage standards required for plat approval. Land clearing is not permitted without prior authorization by NRM.

LOCATION MAP

VININGS PALM BAY INVESTMENT, LLC

18PZ00059



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.

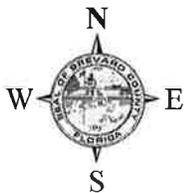
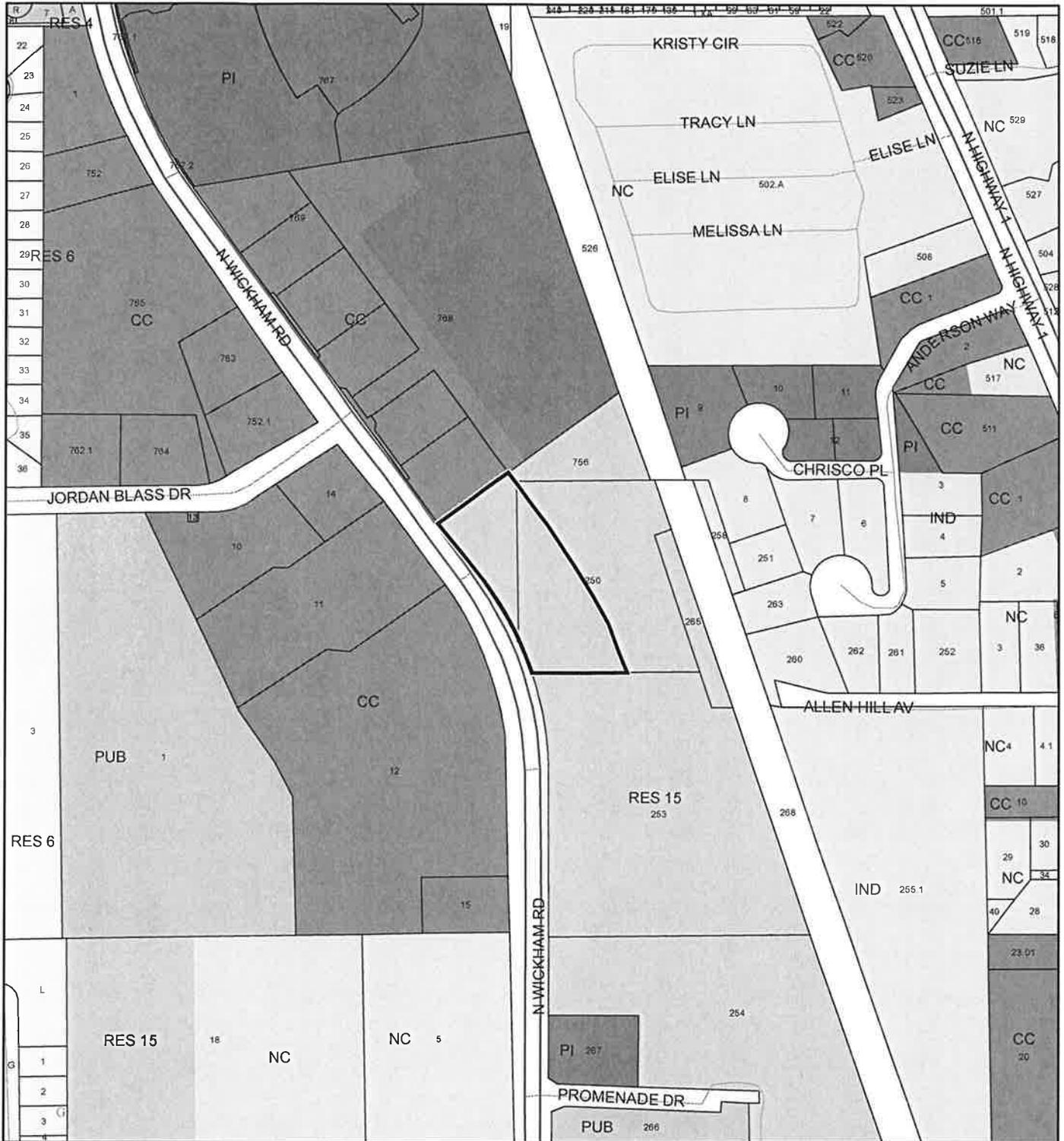
Produced by BoCC - GIS Date: 5/18/2018

-  Buffer
-  Subject Property

FUTURE LAND USE MAP

VININGS PALM BAY INVESTMENT, LLC

18PZ00059



1:4,800 or 1 inch = 400 feet

— Subject Property
 □ Parcels

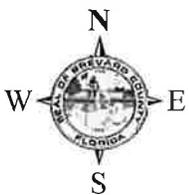
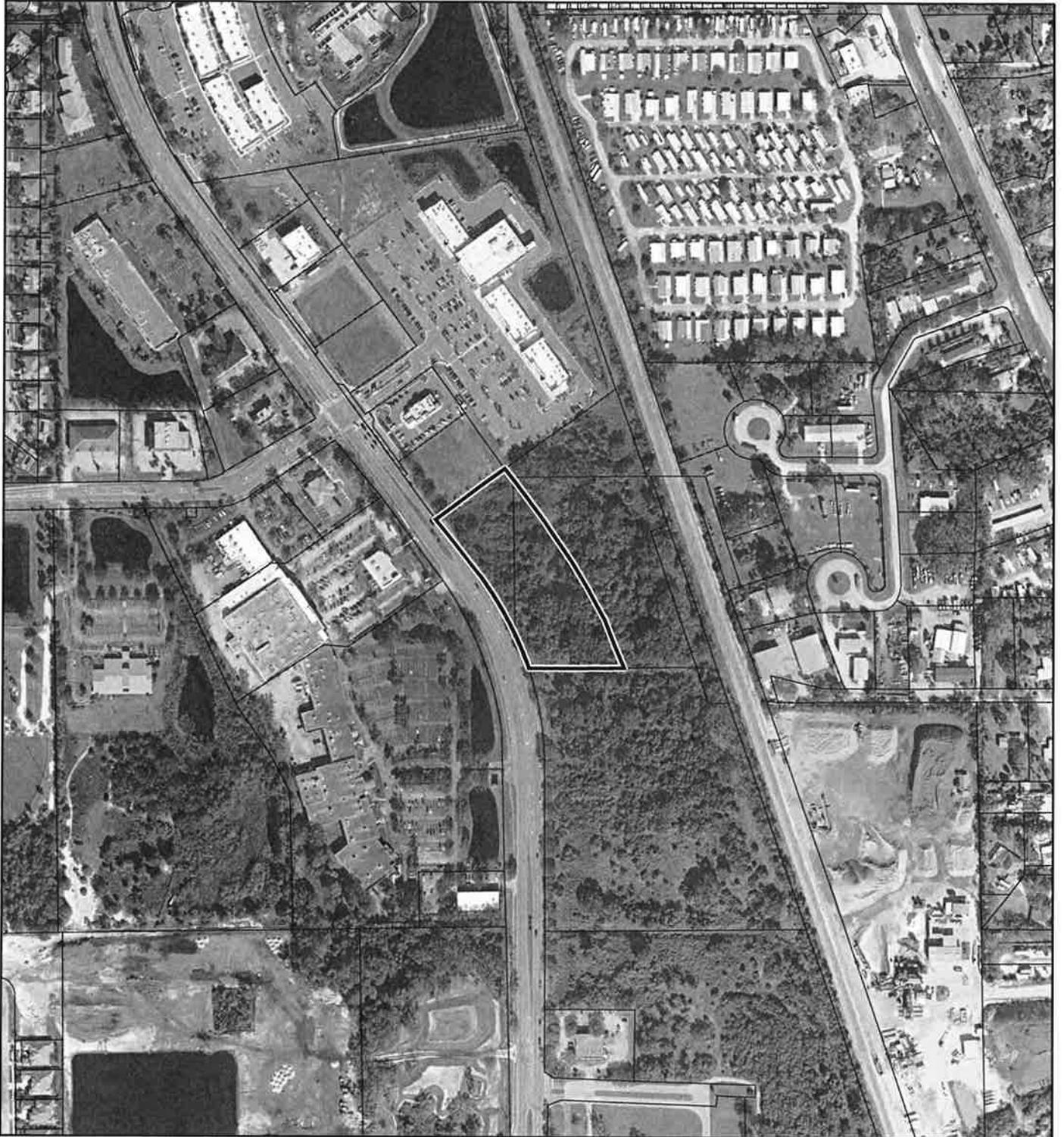
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 5/23/2018

AERIAL MAP

VININGS PALM BAY INVESTMENT, LLC

18PZ00059



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2018

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

Produced by BoCC - GIS Date: 5/18/2018

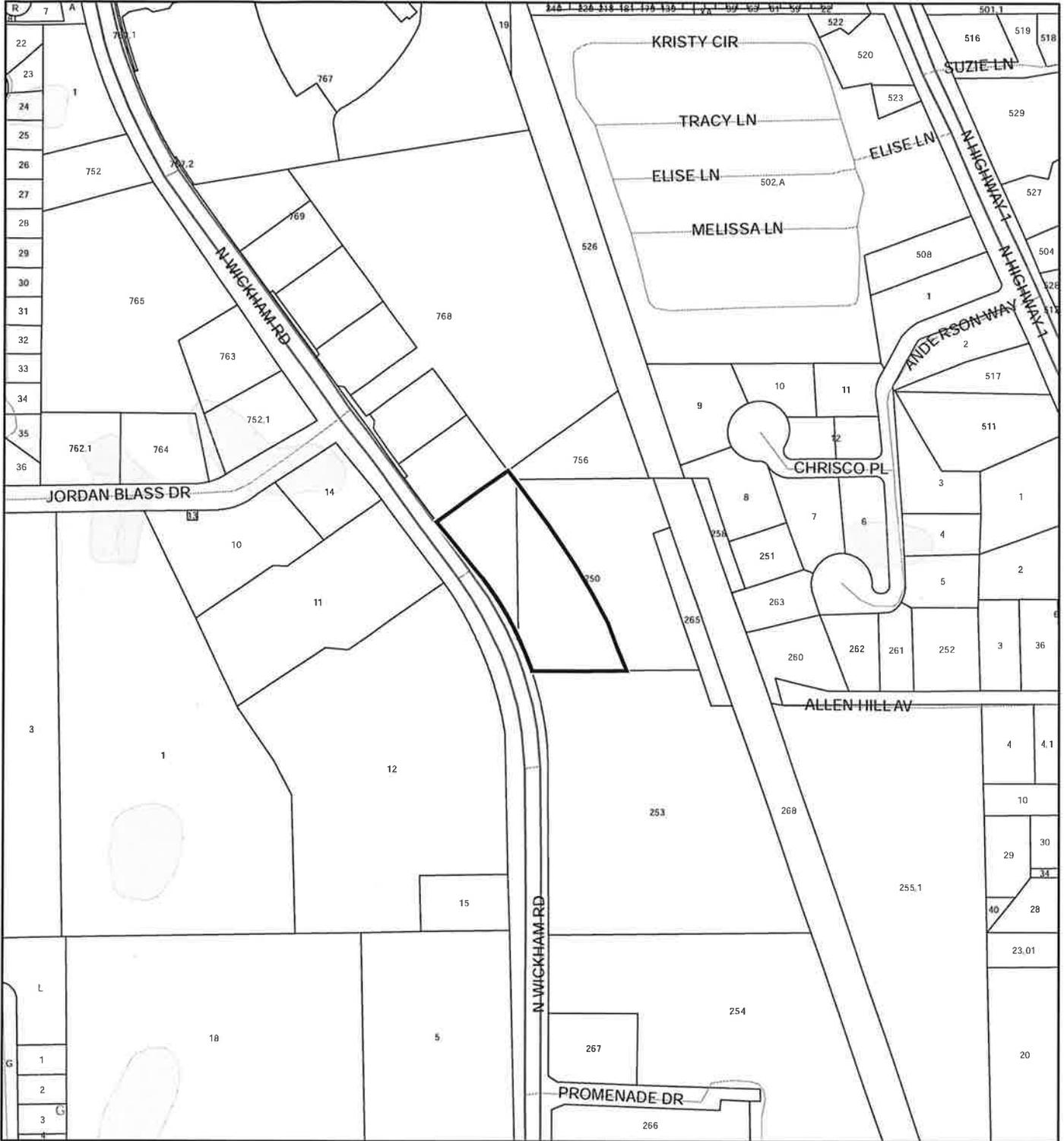
 Subject Property

 Parcels

NWI WETLANDS MAP

VININGS PALM BAY INVESTMENT, LLC

18PZ00059



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.

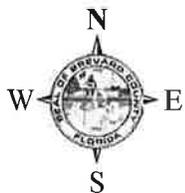
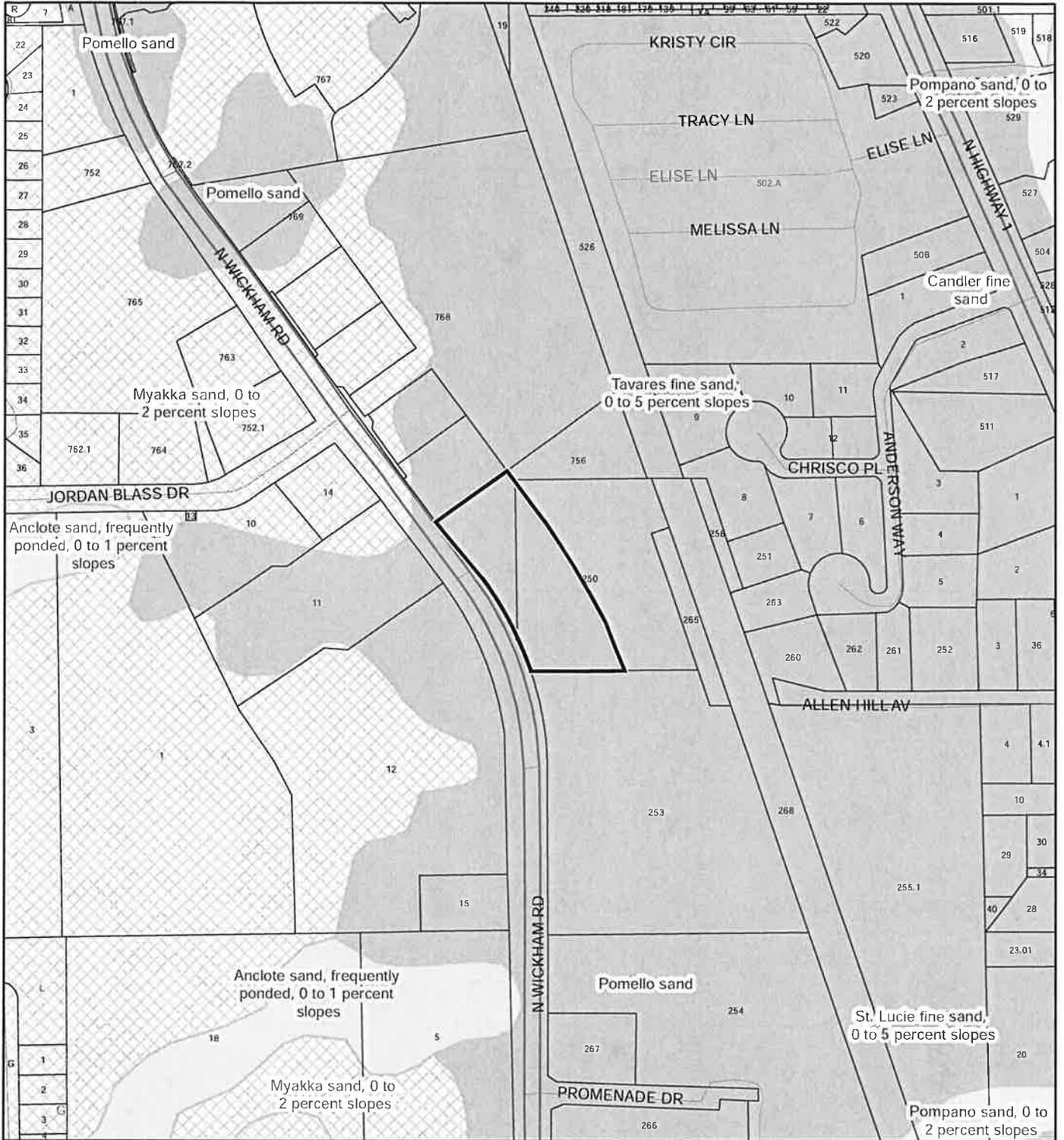
Produced by BoCC - GIS Date: 5/18/2018

National Wetlands Inventory (NWI)	
	Estuarine and Marine Deepwater
	Estuarine and Marine Wetland
	Freshwater Emergent Wetland
	Freshwater Forested/Shrub Wetland
	Freshwater Pond
	Lake
	Other
	Riverine
	Subject Property
	Parcels

USDA SCSSS SOILS MAP

VININGS PALM BAY INVESTMENT, LLC

18PZ00059



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: 5/18/2018

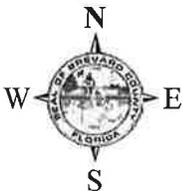
USDA SCSSS Soils

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

FEMA FLOOD ZONES MAP

VININGS PALM BAY INVESTMENT, LLC

18PZ00059



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.

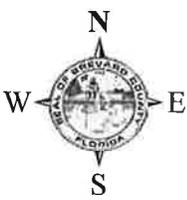
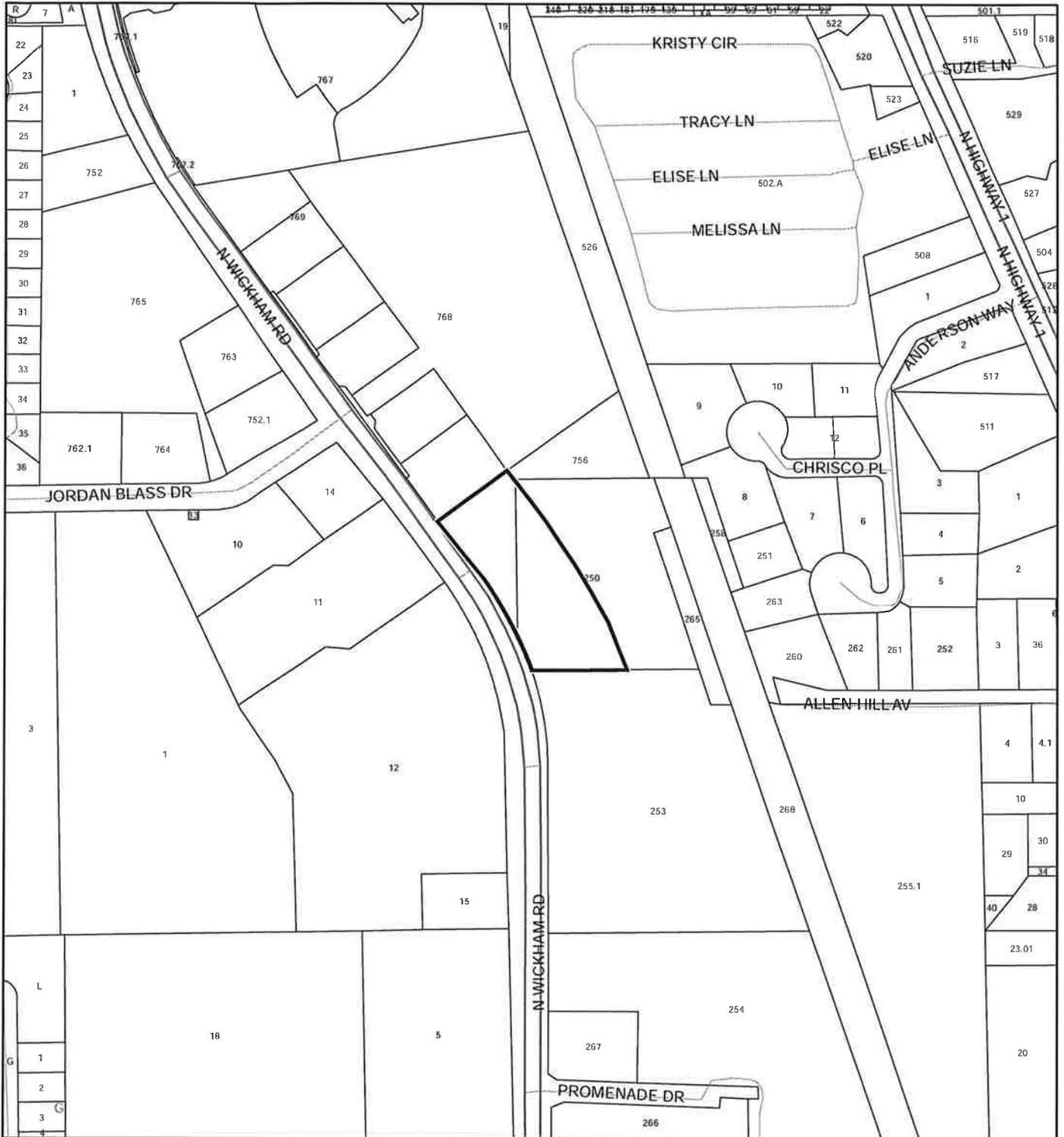
Produced by BoCC - GIS Date: 5/18/2018

FEMA Flood Zones

- | | | |
|---|------------|----------------------|
| A | AO | X |
| AE | Open Water | X Protected By Levee |
| AH | VE | |
| 0.2 Percent Annual Chance Flood Hazard | | |
| 0.2 Percent Annual Chance Flood Hazard Contained in Channel | | |
| Subject Property | Parcels | |

EAGLE NESTS MAP

VININGS PALM BAY INVESTMENT, LLC
18PZ00059



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.

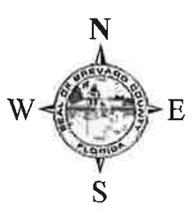
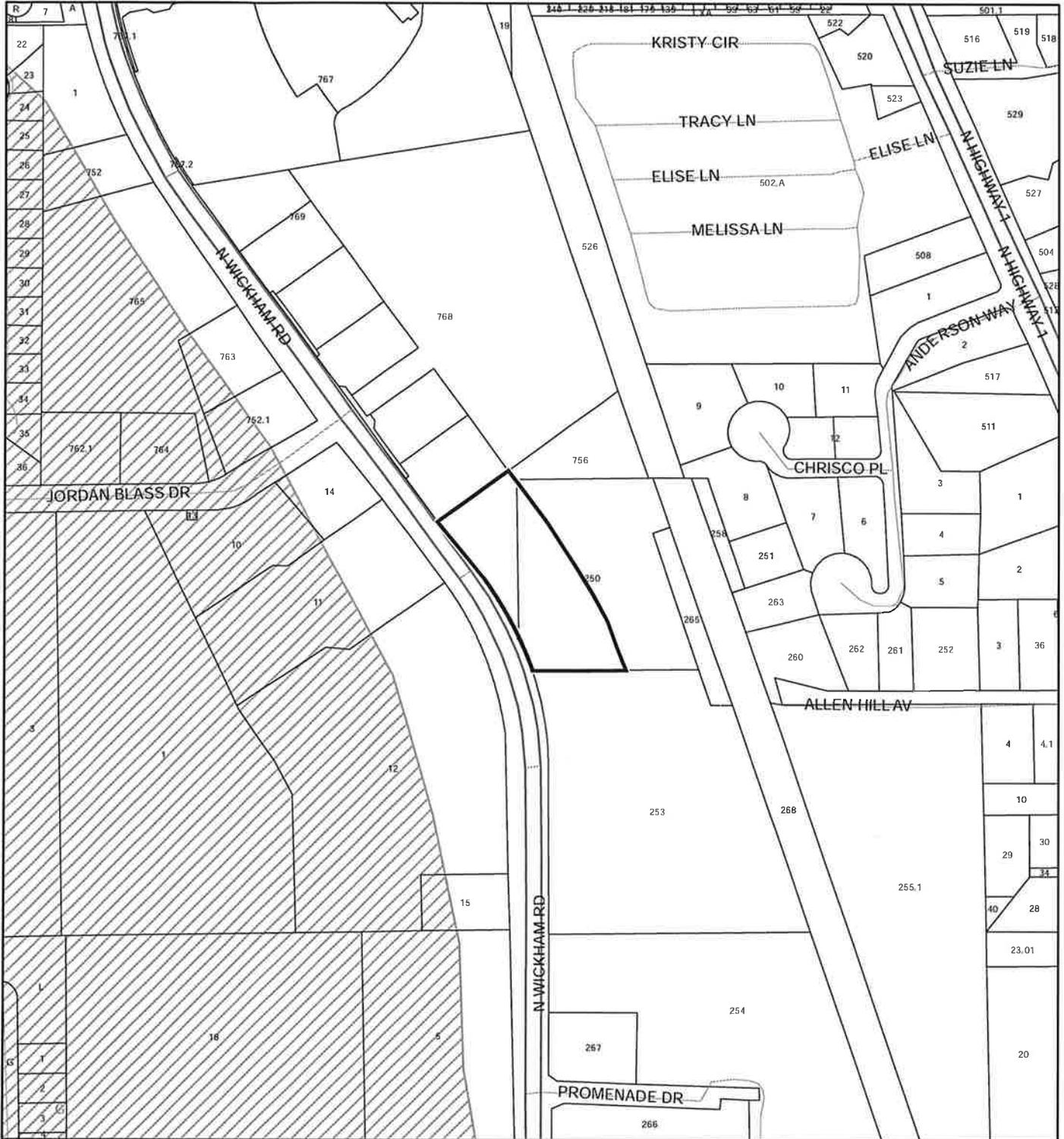
Produced by BoCC - GIS Date: 5/18/2018

-  Subject Property
-  Parcels
-  Eagle Nests FWS 2010

SCRUB JAY OCCUPANCY MAP

VININGS PALM BAY INVESTMENT, LLC

18PZ00059



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: 5/18/2018

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS MAP
Code 4200 - Upland Hardwood Forest
18PZ00059



0 0.0175 0.035 0.07 Miles

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.

Legend	
LCCODE	
4200	



Ref: 4580.01

TECHNICAL MEMORANDUM

To: Mr. Nathan Vedrani, CFH Group, LLC

From: Matthew West, AICP

Subject: Grand Oaks Outparcel Comprehensive Plan Amendment (CPA) and Rezoning – Brevard County, FL

Date: May 10, 2018

INTRODUCTION

LTG, Inc. (LTG) has been retained by CFH Group LLC to conduct traffic engineering and transportation planning on behalf of the proposed 3.32-acre commercial development associated with Grand Oaks Apartments. The proposed future land use comprehensive plan amendment (CPA) will change the future land use designation of the property from Residential 15 (RES-15) to Community Commercial. The proposed CPA is accompanied by a related rezoning application to change the zoning from Medium Density Multiple Family Residential (RU-2-15) to (General Retail Commercial) BU-1. RU-2-15 zoning mirrors the RES-15 future land use density standard, and BU-1 zoning provides for the same intensity of development as Community Commercial. Therefore, this technical memorandum will examine the future land use potential impacts which will also suffice for the rezoning analysis. The subject property is located on the east side of Wickham Road just south of Jordan Blass Drive in unincorporated Brevard County, Florida.

The methodology and procedures used in this analysis are consistent with the guidelines for Brevard County, the Florida Department of Transportation (FDOT) and the Department of Economic Opportunity (DEO).

TRIP GENERATION FOR THE EXISTING VS PROPOSED FLUM DESIGNATION

The trip generation for the maximum development scenarios for both the existing Future Land Use (FLU) designations and the proposed FLU designation were calculated using the nationally accepted trip generation software, *TripGen* (10th Edition), prepared by the Institute of Transportation Engineers (ITE).

The analysis is based on the existing FLU designation of RES-15, and the requested FLU designation of Community Commercial as outlined in the Future Land Use element of the Brevard County's Comprehensive Plan. According to the Future Land Use element, RES-15 has a maximum density of fifteen (15) dwelling units per acre. Therefore, the maximum development scenario under the existing RES-15 FLU for the 3.32-acre property is forty-nine (49) dwelling units. The maximum development scenario for the FLU designation of Community Commercial in the County's Comprehensive Plan is a Floor Area Ratio (FAR) of 1.0. This intensity level permits 144,619 square feet of commercial/retail uses.

As indicated in Table 1, the existing FLU's maximum development scenario for the property could produce 265 gross daily trips and 22 gross p.m. peak-hour trips based on the ITE Land Use Code of Multi-Family Mid-Rise (ITE Land Use Code 221).

Next, the maximum development potential of the requested Community Commercial was calculated. As proposed, the maximum intensity permitted for Community Commercial generates 144,619 square feet of commercial uses. For purposes of this analysis, Shopping Center (ITE Land Use Code 820), Fast Food

Restaurant with Drive Through Window (ITE Land Use Code 934), and Convenience Store with Gas Pumps (ITE Land Use Code 945) were used after consulting the ITE TripGen software (10th edition). These uses are some of the most intense uses permitted in Community Commercial. As indicated in Table 1, the requested FLU (Community Commercial) potentially produces on a daily trip basis 7,726 for shopping center, 68,107 for fast food, or 208,254 for convenience store with gas pumps. Gross p.m. peak-hour trip projections are 714 for shopping center, 4,725 for fast food with drive through window, and 12,777 for convenience store with gas pumps.

**Table 1
 Gross Trip Generation Comparison
 Grand Oaks – Comprehensive Plan Amendment**

Time Period	Future Land Use	Land Use	Land Use Code	Trip Rate Equation	Size	Units	Percent Entering	Percent Exiting	Trips Entering	Trips Exiting	Total Trips
Daily	Requested: Community Commercial	Shopping Center	820	$\ln(T) = 0.68\ln(X) + 5.57$	144,619	KSF	50%	50%	3,863	3,863	7,726
		Fast-Food Restaurant w/ Drive-Thru	934	$T = 470.95(X)$	144,619	KSF	50%	50%	34,054	34,054	68,107
		Gas with Convenience Store	945	$T = 1440.02(X)$	144,619	KSF	50%	50%	104,127	104,127	208,254
	Existing: RES-15	Mid-Rise Multifamily	221	$T = 5.45(X) - 1.75$	49	Units	50%	50%	133	133	265
PM Peak-Hour	Requested: Community Commercial	Shopping Center	820	$\ln(T) = 0.74\ln(X) + 2.89$	144,619	KSF	48%	52%	343	371	714
		Fast-Food Restaurant w/ Drive-Thru	934	$T = 32.67(X)$	144,619	KSF	52%	48%	2,457	2,268	4,725
		Gas with Convenience Store	945	$T = 88.35$	144,619	KSF	50%	50%	6,389	6,389	12,777
	Existing: RES-15	Mid-Rise Multifamily	221	$T = 0.44(X)$	49	Units	61%	39%	13	9	22

Due to the nature of the commercial uses, a portion of the trips, known as pass-by trips, will be attracted to each land use from traffic on adjacent roadways. The pass-by percentages per the ITE Trip Generation Handbook, 3rd Edition were applied as follows for each use: thirty-four (34) percent for shopping center land use, forty-nine (49) percent for fast food with drive through window, and fifty-six (56) percent for convenience store with gas pumps. The pass-by capture is limited to fourteen (14) percent of the adjacent roadway volume which in this case is Wickham Road. Therefore, the maximum pass-by capture utilized for the p.m. peak-hour is 373 trips and for daily trips it is 4,152 based on the Space Coast Transportation Planning Organization Traffic Counts: 2007 – 2016 (see Table 2).

Table 2
Net External Trip Generation Comparison
Grand Oaks - Comprehensive Plan Amendment (CPA)

Time Period	Future Land Use	Land Use	Total Trips			Pass-by Trips			New External Trips		
			Enter	Exit	Total	Enter	Exit	Total	Enter	Exit	Total
Daily	Requested: Community Commercial	Shopping Center	3,863	3,863	7,726	1,313	1,313	2,626	2,550	2,550	5,100
		Fast-Food Restaurant w/ Drive-Thru	34,054	34,054	68,107	2,076	2,076	4,152	31,978	31,978	63,956
		Gas with Convenience Store	104,127	104,127	208,254	2,076	2,076	4,152	102,051	102,051	204,102
	Existing: RES-15	Mid-Rise Multifamily	133	133	265	0	0	0	133	133	266
Time Period	Future Land Use	Land Use	Total Trips			Pass-by Trips			New External Trips		
			Enter	Exit	Total	Enter	Exit	Total	Enter	Exit	Total
PM Peak-Hour	Requested: Community Commercial	Shopping Center	343	371	714	117	126	243	226	245	471
		Fast-Food Restaurant w/ Drive-Thru	2,457	2,268	4,725	193	180	373	2,264	2,088	4,352
		Gas with Convenience Store	6,389	6,389	12,777	187	186	373	6,202	6,203	12,405
	Existing: RES-15	Mid-Rise Multifamily	13	9	22	0	0	0	13	9	22

*Limited to 14 percent of adjacent street traffic for Wickham Road.

Note: RES-15 uses are yellow highlighted rows. All other rows not highlighted are uses permitted in Community Commercial.

The net change between the proposed future land use and the existing future land use designation is determined by subtracting trips generated by the existing RES-15 from the trips generated by one of the proposed Community Commercial uses. The proposed development program potentially will increase daily trips as much as 203,836 and p.m. peak-hour trips as much as 12,383.

CONCLUSION

The study was conducted to evaluate the impact the proposed Comprehensive Plan Amendment would have on area roadways. Based on this analysis, there could be a net increase in potential traffic over what is currently allowed by the City's Comprehensive Plan. The Community Commercial FAR of 1.0 is not consistent with the development patterns in the vicinity, which exhibit a much lower intensity. More likely the property will be developed with a suburban Concurrency and any required mitigation to support a proposed development plan will be assessed in greater detail during the final development permitting process. Therefore, this Comprehensive Plan Amendment is recommended for adoption.

I affirm, by affixing my signature below, that the findings contained herein are, to my knowledge, accurate and truthful and were developed using current procedures standard to the practice of professional planning.

Name: Matthew West, AICP



Signature: _____

Date: May 10, 2018

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

FYI Existing BDP
18PZ00059
Vinings Palm Bay

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 Imperial South, Inc., a Florida corporation (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 RU-2-15 zoning classification(s) and desires to develop the Property as multi-family apartments, 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 an 8 foot high concrete masonry unit, or similar material, wall to separate the improvements to be built on the Property from the Plant Site (hereinafter defined). The final location of such wall shall be determined during site plan review, but it shall be required that the wall shall run parallel along a portion of the eastern boundary (but not necessarily on such boundary) of the Property. Such wall shall run from the northern boundary of the wetlands located on the southeastern

end of the Property to the south boundary line of that certain parcel of land currently listed as Tax Parcel Account #2606105 (approximately 1,000 feet in length) . In addition to any other landscaping and vegetative buffering which may be required during site plan review elsewhere on the Property, an additional 50 foot natural vegetated buffer shall be preserved in the same approximate length as the wall - running adjacent to the wall. Such natural vegetation shall consist of the vegetation then existing around the area in which the wall shall be located. Any areas along the proposed wall site within the 50 foot buffer area which are void of vegetation (such that a significant portion of the wall may be seen by an average person with the naked eye standing at the edge of such vegetative buffer during times of full foliage) will be planted with additional non-invasive, natural vegetation appropriate for the area in keeping with normal Florida Friendly landscaping practices, which additional plants (though perhaps immature when planted) when grown to maturity will close such void.

3. The Developer/Owner shall limit density to 15 units per acre and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.

4. No buildings (including, without limitation, residential or office buildings) or recreational facilities (including, without limitation, pools), or any portion thereof, shall be constructed or located on any area of the Property that is either (i) within three hundred feet (300') of the boundary line of that certain parcel of land described and/or depicted in Exhibit "B", attached hereto and made a part hereof by this reference (hereinafter referred to as the "Plant Site"), or (ii) south of the north property line of the Plant Site as projected westerly to the west boundary of the Property along the same bearing (N 64 degrees 48' 23" E as shown on Exhibit "B").

5. The Developer/Owner shall provide formal notification to proposed tenants acknowledging existence of the existing and proposed asphalt/concrete plants on the eastside of the Florida East Coast Railroad right-of-way and the potential noise factors.

6. The Developer/Owner shall not petition the County regarding operations of the asphalt/concrete plant, unless it is in regards to non-compliance with County ordinances.

7. Developer/Owner shall comply with all regulations and ordinances of County. 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.

JH
3-22-11

8. 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.

9. 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, which successor or assign shall be subject to the above referenced conditions as approved by the Board of County Commissioners on February 1, 2018. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

10. 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.

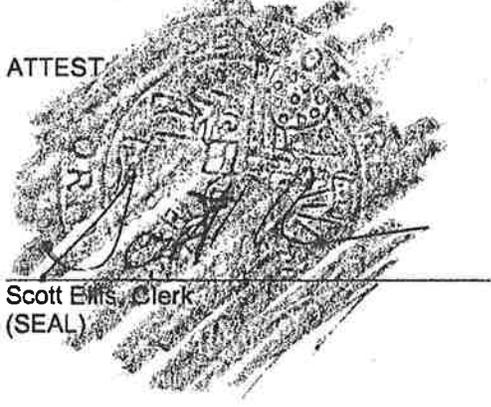
11. Conditions Precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 10 above.

[SIGNATURES TO FOLLOW]

JA
3-22-18

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)

"COUNTY"

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

Rita Pritchett
Rita Pritchett, Chair

As approved by the Board on April 24, 2018

WITNESSES:

"DEVELOPER/OWNER"

IMPERIAL SOUTH, INC., a Florida corporation
6767 N. Wickham Road, Ste. 400
Melbourne, Florida 32940

Jeffrey P. Jardine
Jeffrey P. Jardine
(Witness Name typed or printed)

Scott Levy, as President

Kathleen Gaspari
Kathleen Gaspari
(Witness Name typed or printed)

STATE OF New York §
COUNTY OF Westchester §

The foregoing instrument was acknowledged before me this 22nd day of March, 2018, by Scott Levy as PRESIDENT of IMPERIAL SOUTH, INC., a Florida corporation, who is personally known to me or who has produced _____ as identification.

My commission expires
SEAL
Commission No.:

Jeffrey P. Jardine
Notary Public Jeffrey P. Jardine
(Name typed, printed or stamped)

JEFFREY P. JARDINE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01JA6035216
Qualified in Westchester County
My Commission Expires January 31, 2022

TU
7-22-18

STATEMENT OF NO MORTGAGE

KNOW ALL MEN BY THESE PRESENTS, that the above referenced Developer/Owner (Imperial South, Inc., a Florida corporation) does hereby confirm that no mortgage encumbers the Property.

WITNESSES:

"DEVELOPER/OWNER"

IMPERIAL SOUTH, INC., a Florida corporation
6767 N. Wickham Road, Ste. 400
Melbourne, Florida 32940

Jeffrey P. Jardine
(Witness Name typed or printed)

Jeffrey P. Jardine, as President

Kathleen Gaspari
Kathleen Gaspari
(Witness Name typed or printed)

STATE OF New York §
COUNTY OF Westchester §

The foregoing instrument was acknowledged before me this 22nd day of March, 2018, by, Jeffrey P. Jardine as PRESIDENT of IMPERIAL SOUTH, INC., a Florida corporation, who is personally known to me or who has produced _____ as identification.

My commission expires
SEAL
Commission No.:

Jeffrey P. Jardine
Notary Public
(Name typed, printed or stamped)

JEFFREY P. JARDINE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01JA6035216
Qualified in Westchester County
My Commission Expires January 31, 2022

JH
3-22-18

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY
(SEE ATTACHED)

Ja
3-22-18

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 CFH Group, 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 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 shall connect to all of the created development lots within the boundaries of the subject parent parcel.

3. 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.

4. 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.

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

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

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

Scott Ellis, Clerk
(SEAL)

Rita Prichett
Chair
As approved by the Board on _____

WITNESSES:

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 this ____ day of
, 20__, by _____, President of _____, who is personally
known to me or who has produced _____ as identification.

My commission expires
SEAL
Commission No.:

Notary Public

(Name typed, printed or stamped)

JOINDER IN BINDING DEVELOPMENT PLAN

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

WITNESSES:

MORTGAGEE NAME/ADDRESS

(Address)

Authorized Agent Signature

(Witness name typed or printed)

(Name/title typed, printed or stamped)

(Witness name typed or printed)

STATE OF _____ §

COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, 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)