

RESOLUTION NO. 26-_____

A RESOLUTION SETTING FORTH THE FINDINGS OF FACT AND CONCLUSIONS OF THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS PERTAINING TO THE DENIAL OF THE REQUEST FOR REZONING FROM SINGLE-FAMILY RESIDENTIAL, RU-1-13, TO AGRICULTURAL LOW INTENSITY, AU(L), ZONING ON PROPERTY OWNED BY LAZY RIVER INVESTMENTS, LLC.

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, as follows:

STATEMENT OF THE CASE AND FACTS

This item came before the Planning & Zoning Board on January 12, 2026. The Planning & Zoning Board recommended approval in a unanimous vote. The item came before the Board of County Commissioners of Brevard County, Florida, on February 5, 2026. On February 5, 2026, after a public hearing, the Board of County Commissioners denied the request in a unanimous vote.

The record is attached as Exhibit "A." It consists of documents maintained by the Brevard County Planning and Development Department as part of the official application file and provided to the Planning & Zoning Board and the Board of County Commissioners, relevant sections of the Brevard County Code of Ordinances, relevant provisions of the Brevard County Comprehensive Plan, and minutes from the public hearings. The pages will be referred to as R- _____.

Description	Page Numbers
Records Certification	R-1
Agenda Report, Board of County Commissioners February 5, 2026	R-2
Administrative Policies of the Future Land Use Element	R-5
Staff Comments 25Z00049	R-13
GIS Maps	R-26
Application for Zoning Action	R-38
Special Warranty Deed	R-51
Authorization to Act on Behalf of Owner	R-53
Brevard County Public School Concurrency Analysis	R-79
Brevard County Property Appraiser's Office Real Property Details	R-88
Map of Subject Property	R-89
Survey and Proposed Lots	R-90

Public Comment Letter (for and against)	R-91
Public Hearing Notice	R-94
Notice to Applicant on Hearing Schedule	R-97
Courtesy Notice for Rezoning	R-98
Confirmation of Posted Notice	R-99
Aerial Maps	R-102
Public Comment Letters (against)	R-107
Planning and Zoning Board/Local Planning Agency Minutes (January 12, 2026)	R-109
Previous Findings of Fact for Same Rezoning Request Issued by Board of County Commissioners (March 23, 2021)	R-111
Section 62-1188, Brevard County Code, Nonconforming lots of record	R-131
Section 62-1255, Brevard County Code, Establishment of zoning classifications and consistency with comprehensive plan	R-133
Section 62-1335, Brevard County Code, Rural Estate Use, REU	R-138
Section 62-1334, Brevard County Code, Agricultural residential, AU and AU(L)	R-140
Section 62-1340, Brevard County Code, Single-family residential, RU-1-13 and RU-1-11	R-143
Chapter I – Conservation Element, Brevard County Comprehensive Plan	R-145
Chapter II – Surfacewater Management Element, Brevard County Comprehensive Plan	R-190
Chapter X – Coastal Management Element, Brevard County Comprehensive Plan	R-203
Transcript of Hearing, Board of County Commissioners February 5, 2026	R-258

The applicant, Lazy River Investments, LLC (“Lazy River” or the “applicant”), has owned the subject property (Tax Account 3008729) since May 9, 2019. In 2019, the Brevard County Comprehensive Plan Future Land Use Map designation for the property was Residential 1 unit per 2.5 acres (RES 1:2.5) and has not been changed (R-2, R-13). Under the density restriction of the Future Land Use Map the maximum allowable density on the subject property is eight (8) dwelling units. The subject property’s existing zoning of RU-1-13 allows a density of greater than 1 unit per 2.5 acres and, therefore, it is inconsistent with the Future Land Use Map. The applicant requested rezoning to Agricultural

Residential Low Intensity Zoning AU(L), which allows 1 unit per 2.5 acres, to be consistent with the Future Land Use Map (R-13).

The property consists of two (2) vacant platted lots, one of 10.25 acres and one of 9.88 acres, based on a plat recorded in 1894 (R-14). The two lots have water frontage along the Sebastian River and road frontage on Fleming Grant Road (R-14). At the time of the application for rezoning, the property development potential was two (2) lots or two (2) dwelling units. The proposed rezoning request for AU(L) would allow eight (8) units, an effective increase in density of six (6) units (R-13). AU(L) zoning has a minimum lot size of 150 feet (R-16, R-17, R-141). Although RU-1-13 would allow a density greater than two (2) units and in excess of eight (8) units, the Comprehensive Plan's Future Land Use Map limits density to eight (8) units based on the density cap of 1 unit per 2.5 acres on the total 20.13 acres. Accordingly, the property's zoning classification is inconsistent with the Future Land Use Map of the Comprehensive Plan (R-2, R-13, R-17, R-136). However, Objective 15 of the Future Land Use Element of the Comprehensive Plan specifically allows nonconforming lots of record to be developed without the need to rezone to be consistent with the Comprehensive Plan if done in a certain manner. Specifically, Policy 15.5 of the Future Land Use Element provides as follows:

Criteria:

A. Non-conforming lots of record are those properties which meet the non-conforming provisions of the Brevard County Zoning Code but which are non-conforming to this Comprehensive Plan and/or Zoning regulations.

B. Non-conforming lots of record may be developed to a use permitted by Chapter 62, Article VI, Division 2, Subdivision II, "Non Conforming Uses" of the Brevard County Land Development Regulations, provided that it is also a use permitted by the Future Land Use Map of this Comprehensive Plan.

C. The Land Development Regulations should continue to include provisions for minimum lot dimensions and setbacks for non-conforming lots of record to ensure that these uses will be compatible with surrounding land uses.

D. If an existing non-conforming lot does not meet the minimum lot size established by this element, relief may be obtained in accordance with the Zoning Code of Brevard County.

(R-10).

In this case, the two (2) lots are nonconforming lots of record because they were in the current two-lot configuration when the County's Comprehensive Plan was adopted in 1988 (R-2, R-14). Accordingly, the two (2) lots have had the potential for development as two (2) lots since 1988. (R-2, R-131-32)

According to the staff comments, the southern portion of the property is in the Coastal High Hazard Area (CHHA) (R-3, R-15, R-20, R-22, R-23, Map R-33). The Comprehensive Plan's Coastal Management Element indicates the CHHA is an area which is subject to storm surge and flooding in a Category 1 hurricane (R-15, R-228). Objective 7 of the Coastal Management Element of the Comprehensive Plan seeks to "limit densities within the coastal high hazard zone and direct development outside of this area." (R-3, R-15, R-20, R-22, R-24, R-230). The southern portion of the property is also in the Special Flood Hazard Area (SFHA) (R-3, R-15, R-22, R-24, Map R-32). Development in the SFHA must be elevated to or above the 100-year base flood elevation (BFE) (R-22). In other words, the property would have to be filled to 6.3 feet to be above the 100-year floodplain in order to accommodate development (R-3, R-15). The SFHA and the CHHA overlap significantly (R-15, Maps R-32 and R-33).

In the staff comments, concurrency for transportation (R-12 and R-20) and school capacity (R-20, R-79, R-84) were addressed and found to be adequate as no deficiency levels were reported (R-20). With respect to water and sewer service, the staff comments stated:

The subject property is not served by potable water. The subject property would be served by well and septic. Brevard County Division 46, Article II, Division 4 establishes a nitrogen reduction overlay area (Overlay) that requires advanced [onsite sewage treatment and disposal systems] that reduces total nitrogen by at least 65%. A portion of the property lies within this Overlay and septic systems within this Overlay are subject to said regulations.

(R-20, R-23, R-24, Map R-34).

Other significant environmental issues were addressed in the staff comments by the County's Natural Resources Management Department which provided a summary of issues followed by extended discussion. The summary is provided below along with portions of the extended discussion (beginning at R-22).

Summary of Mapped Resources and Noteworthy Land Use Issues:

- *National Wetland Inventory (NWI) Wetlands*
- *Aquifer Recharge Soils*
- *Coastal High Hazard Area*
- *Floodplain Protection*

- *Surface Water Classification*
- *Indian River Lagoon Nitrogen Reduction Septic Overlay*
- *Surface Waters of the State*
- *Protected and Specimen Trees*
- *Protected Species*

The subject parcel contains mapped NWI wetlands on the shoreline of the site. A wetland delineation will be required prior to any site plan design, land clearing activities, or building permit submittal.

The southern portion of the property is in the Coastal High Hazard Area (CHHA). The Coastal Management Element of the Comprehensive Plan, Objective 7.0, seeks to limit densities within the coastal high hazard zone and direct development outside of this area.

The southern portion of the subject parcel is located within the Special Flood Hazard Area (SFHA) as identified by Federal Emergency Management Agency (FEMA) in yellow on the FEMA Flood Zone Map. A comparison of the SFHA and the CHHA on the corresponding maps, reveals a similar overlay. Per Section 62-3723(2)(a) and (b), development within an estuarine floodplain shall not negatively impact adjacent properties or receiving water body quality. Development shall provide a contiguous area that includes the primary structure and perimeter buffer, accessory structures, onsite sewage disposal system and buffer, and access to the primary and accessory structure. This contiguous, developed area shall be elevated to or above the 100-year base flood elevation (BFE) as described below.

Portions of the site are mapped within the Indian River Lagoon Nitrogen Reduction Septic Overlay. The project is not located within the Brevard County's sanitary sewer service area. Therefore, use of an alternative septic system designed to provide at least 65% total nitrogen reduction through multistage treatment processes shall be required. Septic tanks and drain fields in the SFHA are subject to flooding, and per Section 62-3723(b) will require fill to be elevated to or above the BFE.

The entire subject property is mapped within Upland Mixed Coniferous/Hardwood trees FLUCCS code. Protected Trees (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) are found in the project area. While developing in the SFHA and CHHA to a higher elevation would provide

more protection from flooding, the additional fill is detrimental to the preservation of Specimen Trees, natural function and biodiversity.

If the owner/applicant has questions regarding any potential limitations, s/he is encouraged to contact NRM at 321-633-2016 prior to design of any plans.

Land Use Comments:

Wetlands

The subject parcel contains mapped NWI wetlands on the shoreline of the site; an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any site plan design, land clearing activities, or building permit submittal. Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For subdivisions greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) including avoidance of impacts, and 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal.

Aquifer Recharge Soils

The subject parcel contains mapped aquifer recharge soils (Pomello sand and Orsino fine sand) as shown on the USDA Soil Conservation Service Soils Survey map. Additionally, the mapped topographic elevations show that the property falls within a Type 3 Aquifer Recharge area, which is subject to impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Coastal High Hazard Area

The southern property is located within the Coastal High Hazard Area (CHHA) as defined by Florida Statute 163.3178(2)(h), and as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates Coastal High Hazard Areas to be those areas

below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statutes.

Objective 7 of the Coastal Management Element aims to limit densities within the coastal high hazard area and direct development outside of this area.

Floodplain Protection

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

Indian River Lagoon Nitrogen Reduction Septic Overlay

The southern portion of this property is mapped within the Indian River Lagoon Nitrogen Reduction Overlay. Per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay, if adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required. Septic tanks and drain fields in the SFHA are subject to flooding, and per Section 62-3723(b) will require fill to be elevated to or above the BFE. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

Surface Waters of the State

The subject property is located on the Indian River Lagoon, designated as an Aquatic Preserve in this location. A 50-foot Surface Water Protection Buffer is required. Except as allowable under Section 62-3668 (7), primary structures shall be located outside the Buffer. Accessory structures are permissible within the Buffer with conditions (e.g., storm water management is provided, avoidance/minimization of impacts, and maximum 30% impervious). The removal of native vegetation located within the Buffer is prohibited unless approved through an active development order. Temporary impacts to native vegetation require in-kind restoration. Per Section 62-3666(4), all alterations shall demonstrate avoidance and

minimization of surface water protection buffer impacts, including the location of the alteration within the most landward portion of the Buffer, as practicable. The remainder of the surface water protection Buffer shall be maintained in unaltered native vegetation. The Florida Department of Environmental Protection (FDEP) regulates mangrove trimming and can be reached at 407-897-4101. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

Protected and Specimen Trees

The entire subject property is overlaid in a mapped polygon of SJRWMD FLUCCS code 4340-Upland Mixed Coniferous/Hardwood trees. Protected Trees (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) are included in this FLUCCS code and are likely found on the project area. The applicant shall perform a tree survey prior to any site plan design to incorporate valuable vegetative communities or robust trees into the design. 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, 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.

While developing to a higher elevation provides more protection from flooding, the additional fill is detrimental to the preservation of Protected and Specimen Trees, especially those located at the lower elevations within the SFHA floodplain and the CHHA. If units are developed in the lower elevations of the property, closer to the shoreline, more fill will be required to satisfy Land Development Regulations relating to the FFE. The Applicant shall contact NRM at 321-633-2016 prior to performing any land clearing activities.

Protected Species

Federally and/or state protected species may be present on the property. 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 (FWC), and/or U.S. Fish and Wildlife Service, as applicable. The applicant is advised to call Valeria Guerrero at 561-882-5714 (O) or 561-365-5696 (C)

with the FWC to obtain any necessary permits or clearance letters for Gopher Tortoises.

(R-22 – R-25).

The staff comments provided a general description of surrounding properties as follows:

The surrounding area is characterized as low density with some residential lots developed at less than 1 acre prior to the adoption of the Comprehensive Plan in 1988.

The surrounding properties are zoned RR-1 to the east, RU-1-13 to the west, RR-1 across Fleming Grant Road to the north and General Use (GU) on the islands in the San Sebastian River to the south.

There have been no approved zoning actions approved in the last three (3) years within half-mile of the subject property.

Directly to the east of the subject property lies a thirty foot (30') unimproved right of way and to the east of that lies the private drive Seabird Lane, which per AA-1581 and AA-1583, provides access to two three-acre riverfront parcels.

(R-16).

The staff comments also addressed Administrative Land Use Policies of the Brevard County Comprehensive Plan.

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

Compatibility shall be evaluated by considering the following factors, at a minimum:

Criteria:

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

The parcel is vacant undeveloped land. The proposed rezoning will need to comply with

Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272.

B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

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

C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

1. *historical land use patterns;*

The historical land use patterns of the surrounding development can be characterized as single-family residences on properties 0.3 acre to 21 acres in size.

There are two (2) FLU designations (RES 1:2.5 and RES 1) within a 0.5-mile radius of the subject property. RES 1:2.5 is the prominent FLU in this area.

There are six (6) zoning classifications (GU, AU, RR-1, RU-1-13, RU-1-7 and GML(P) within a 0.5-mile radius of the subject property. AU and RR-1 are the prominent zoning classifications in this area.

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

There has been no development within 0.5 miles approved within the past three years.

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

There has not been any approved development within this area in the

preceding three (3) years that has yet to be constructed.

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

No material violation of relevant policies has been identified.

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

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

Criteria:

A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

The area is characterized primarily by low-density single-family zoning and rural development. As mentioned above, the area contains a mixture of lot sizes and zoning classifications (i.e., GU, AU, RR-1, RU-1-13 and RU-1-7). The majority of the AU zoned land is approximately 360 feet west of the subject property and has a mixture of the residential and residential/agricultural. The more intense uses allowed within the AU zoning classification do not appear to be occurring in the area. The parcels to the east and north of the subject property are primarily developed as single family residential within RR-1 zoning classification. The RR-1 zoning classification allows horses as accessory to a residential use.

The proposed AU(L) is considered to be a lower intensity sub-classification of AU and to be suited for smaller lots where the neighborhood has a more residential than agricultural character. The AU(L) classification allows the raising/grazing of animals, fowl and beekeeping for personal use, while prohibiting the more intense “commercial” agricultural activities.

Based on staff analysis, the proposed rezoning from RU-1-13 to AU(L) zoning classification request is not anticipated to have a measurable impact on the area in terms of trip generation, or parking. No commercial or industrial activity is proposed.

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.*

Staff analysis has determined the property is located in an existing residential area.

The area, known as Fleming Grant, can be characterized as a single-family residential area with spacious lot sizes and roadways.

- 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.*

The request is not for commercial use. It is located in an existing single-family residential neighborhood. There are no neighborhood commercial land uses established in this area.

- 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.*

The area is single-family residential use. There has not been commercial, industrial, or other non-residential uses approved in this area during the previous five (5) years. This area in [sic] not transitional.

Analysis of 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 unmitigable impact on significant natural wetlands, water bodies or habitat for listed species.

Natural Resources has noted The Environmental Constraints section of the reports identify several environment limitations effecting the development potential of the property. The southern portion of the property is in the Coastal High Hazard Area (CHHA). The Coastal Management Element of the Comprehensive Plan, Objective 7.0, seeks to limit densities within the coastal high hazard zone and direct development outside of this area.

Please review all comments from the Natural Resources Management Department found at the end of this report.

(R-17 – R-20).

At the Planning & Zoning Board hearing on January 12, 2026, Mr. David Bistarkey presented the item. He stated the request was to change the zoning of the subject property from RU-1-13 to AU(L) to achieve compatibility between the zoning classification and future land use designation. There were three (3) individuals – Ms. Linda Brannan, Ms. Lorraine Demontigny, and Mr. David Conner – who all spoke in favor of the item. After public hearing, the Planning & Zoning Board voted to recommend approval of the item. (R-4, R-110).

At the Board of County Commissioners' Zoning meeting on February 5, 2026, the Board heard comments from the applicant's representative, members of the public, and Brevard County staff. In addition, the County received public comment letters both in favor of and against the rezoning request (R-91 – R-93; R-107 – R-108).

Mr. David Bistarkey, on behalf of the applicant, stated that the request was to rezone the subject property from RU-1-13 to AU(L) to ultimately develop the subject property into seven (7) units based on a plat that had yet to be recorded or reviewed by the County for

compliance with applicable provisions of the Brevard County Code of Ordinances. With respect to public speakers, Mr. David Conner and Ms. Lorraine Demontigny both spoke in favor of the request. The public comment portion of the meeting was closed and members of the Board of County Commissioners began their discussion and deliberation process. R-258 – R-259.

Commissioner Adkinson asked County staff to identify the number of units the subject property was able to develop if the rezoning request was not granted, to which Ms. Trina Gilliam, Brevard County's Planning and Zoning Manager, stated: two (2) units. R-259. Commissioner Adkinson then asked how many units could be developed if the rezoning request was granted, with Ms. Gilliam stating: eight (8) units. R-260. The tentative, non-binding plan submitted by the applicant was brought up, and the location of at least three units was discussed as they would fall within the Coastal High Hazard Area. Commissioner Adkinson then brought up the availability of sewer or septic in the area, to which Ms. Gilliam stated sewer service was not available in the area and septic systems would be needed. R-260.

The elevation of the subject property was also discussed by Commissioner Adkinson and County staff, and it was explained that because of the low elevation of the subject property, as identified in the applicant's survey, it was estimated that three (3) to four (4) feet of fill would be needed to attain the base flood elevation of at least 6.3 feet. R-260. The discussion then led to potential storm surge impacts on neighboring properties due to the need for the additional fill being brought into the subject property and distributing water outwards on the surrounding area. R-260. Mr. Billy Prasad, Planning and Development Director and the County Zoning Official, stated that the same issues (including Objective 7 of the Coastal Management Element of the Comprehensive Plan and effectively increasing the density in the CHHA) identified in 2021 when this very same rezoning request was submitted to the Board of County Commissioners in 2021 are still present; that request was denied and a findings of fact was issued in response. R-261.

Following discussion by the Board of County Commissioners, Commissioner Adkinson made a motion to deny the request, which was seconded by Commissioner Delaney. R-261 – R-262. Prior to the vote, Mr. Bistarkey was given additional time to speak and comment on the application. Mr. Bistarkey stated the septic systems required by Brevard County would address concerns about increased pollution into the Indian River Lagoon from the proposed development. R-262. Furthermore, he stated that the subject property has roughly 5.1 acres of CHHA, which would be minimally impacted by the proposed development, and that Objective 7 of the Coastal Management Element simply states to limit densities in the CHHA. R-262 – R-263. In response, the Board confirmed that the request would effectively increase densities in the CHHA by allowing a third home within the CHHA, when the subject property would otherwise only be allowed to develop two (2)

units. R-263. The Board closed the discussion and voted unanimously to deny the request. R-263

FINDINGS OF FACT

The Board of County Commissioners finds:

1. The subject property was purchased by the applicant (the current owner) on May, 2019, per the Special Warranty Deed recorded in Brevard County Official Records at Book 8435, Page 416. (R-51 – R-52).
2. The subject property is currently vacant and consists of two (2) platted lots totaling 20.39 acres running from Fleming Grant Road to the Sebastian River. (R-13 – R-14).
3. The subject property has a development potential of two (2) units based on the two (2) existing lots. The two (2) lots are currently zoned RU-1-13. The lots were platted in 1894, per Plat Book 1, Page 77. The subject property is considered to contain two (2) nonconforming lots of record, pursuant to Section 62-1188, Brevard County Code of Ordinances. However, Objective 15 of the Future Land Use Element of the Comprehensive Plan provides that the lots are not required to be rezoned to be considered consistent with the Brevard County Comprehensive Plan (R-13-14).
4. In this case, each lot is eligible for a building permit. As there are two (2) lots, a total of two (2) single-family residential units are allowed, provided that all other applicable County, State, and Federal regulations are met. (R-14).
5. The surrounding area is characterized as low density residential. (R-16).
6. Administrative Policy 6 of the Future Land Use Element of the Brevard County Comprehensive Plan requires that “[t]he 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.” (R-7).
7. Administrative Policy 7 of the Future Land Use Element of the Brevard County Comprehensive Plan provides that “[p]roposed uses shall not cause or

substantially aggravate any, (a), substantial drainage problem on surrounding properties; or (b), significant, adverse and unmitigable impact on significant natural wetlands, water bodies or habitat for listed species.” (R-7).

8. The Brevard County Comprehensive Plan has elements required by Chapter 163, Florida Statutes, that address issues relating to development, including, but not limited to, conservation, floodplains, wetlands, and coastal high hazard areas.
9. The staff comments indicate the lots proposed for rezoning are in the coastal high hazard area, the estuarine floodplain, and contain wetlands and protected species of trees. (R-22 – R-25).
10. Pursuant to Section 62-3723(2)(a)–(b), Brevard County Code, development within an estuarine floodplain must avoid adverse impacts to adjacent properties and receiving waters and must provide a contiguous, elevated area for all principal and accessory structures, onsite sewage disposal systems, and buffers, meeting or exceeding the 100-year base flood elevation. In other words, the property would have to be filled to 6.3 feet to be above the 100-year floodplain in order to accommodate development. (R-15). The level of fill needed to be brought into the subject property to meet that elevation would have an adverse impact on neighboring properties.
11. The southern portion of the subject property falls within the Coastal High Hazard Area (CHHA). The map (R-33) shows and the testimony confirmed that more than five (5) acres of the subject property fall within the CHHA, which constitutes roughly twenty-five percent (25%) of the property. This area will be flooded by storm surge in a Category 1 hurricane, according to the SLOSH map model. (R-15; R-23 – R-24; R-228).
12. Objective 7 of the Coastal Management Element of the Brevard County Comprehensive Plan directs development away from the Coastal High Hazard Area and seeks to limit densities within the CHHA. (R-15; R-20; R-22) Approving the requested rezoning would potentially increase density in the CHHA as the number of units in that area would be increasing from two (2) to at least three (3) units, as identified in the applicant’s non-binding proposal (R-90). Furthermore, because the subject property is not located within Brevard County’s sanitary sewer service area, approval of the requested rezoning would increase the potential number of septic tanks in the CHHA, which is, as stated previously, the location of the anticipated surge of water from a Category 1 hurricane. (R-23).
13. The southern portion of the subject property is also located within the Special Flood Hazard Area (SFHA) as identified by the Federal Management Agency (FEMA) in

yellow on the FEMA Flood Zone Map (R-32). The SFHA overlaps the CHHA to a significant degree.

14. The subject property abuts the Sebastian River, which feeds into the Indian River Lagoon. (R-14).
15. The subject property is not located within the Brevard County's sanitary sewer service area. Accordingly, septic tanks will be used if the subject property is developed. (R-15; Maps on R-32, R-33)
16. Septic tanks and drain fields in the SFHA are subject to flooding and, pursuant to Section 62-3723(b), Brevard County Code, require fill to be elevated to or above the base flood elevation, which was stated to be 6.3 feet (R-23).
17. Objective 3 of the Conservation Element of the Brevard County Comprehensive Plan is entitled "Surface Water", and provides the objective to "[i]mprove the quality of surface waters within Brevard County and protect and enhance the natural functions of these waters." (R-149). The rezoning request would result in a potential decrease in water quality based on the need for septic systems to be installed along the Sebastian River.
18. Objective 4 of the Conservation Element of the Brevard County Comprehensive Plan is entitled "Flood Plain Areas", and provides the objective to "[r]educe loss of flood storage capacity and reduce risk to life and property by continuing to apply regulations which minimize the impact of development within flood hazard areas." (R-154). The rezoning request would result in more fill needing to be brought into the flood hazard areas as the effective density increases from two units to at least three units.
19. Policy 4.5 of the Conservation Element of the Brevard County Comprehensive Plan states, in pertinent part, as follows:

Brevard County shall continue to protect the estuarine floodplains by implementing the following minimum criteria:

Criteria:

- A. Development within the one-hundred year estuarine floodplain shall not adversely impact the drainage of adjacent properties or the quality of the receiving surface water body.

(R-157). A portion of the subject property falls within the estuarine floodplains. (R-29).

20. The proposed change in zoning ultimately increases density on the subject property by six (6) total potential units. A portion of the increased density could increase the density in the Coastal High Hazard Area, which is protected under Objective 7 of the Coastal Element of the Brevard County Comprehensive Plan. The additional potential dwelling units could also be placed in the Special Flood Hazard Area if the rezoning is granted.
21. The proposed rezoning to AU(L) could allow additional units and additional fill in the CHHA and the SFHA, which could, both individually and collectively, aggravate drainage issues and cause significant unmitigable impacts on water bodies and on neighboring properties.
22. The proposed rezoning to AU(L) is inconsistent with the Conservation Element of the Brevard County Comprehensive Plan.
23. The proposed rezoning to AU(L) is inconsistent with the Coastal Management Element of the Brevard County Comprehensive Plan.

CONCLUSION

Based on the foregoing, the Board of County Commissioners hereby finds the proposed rezoning from RU-1-13 to AU(L) fails to meet the requirements of the Future Land Use Element, the Conservation Element and the Coastal Element of the Brevard County Comprehensive Plan. Accordingly, the requested rezoning to AU(L) is denied.

DONE AND RESOLVED this 5th day of March, 2026.

ATTEST:

BOARD OF COUNTY
COMMISSIONERS OF BREVARD
COUNTY, FLORIDA

Rachel Sadoff, Clerk

Thad Altman, Chair
As approved by the Board on: **3/5/26**