



Zoning

Brevard County Board Of County Commissioners Governing Board Of The Brevard Mosquito Control District Governing Board Of The Barefoot Bay Water And Sewer District

2725 Judge Fran Jamieson Way

Viera, FL 32940

Agenda

Thursday, September 3, 2020

If you wish to speak to any item on the agenda, please fill out a speaker card. Persons addressing the Board shall have three minutes to complete his/her comments on each public hearing agenda item for which he/she has filled out a card.

The Board of County Commissioners requests that speakers appearing under the Public Comment section of the agenda limit their comments and/or presentations to matters under the Board's jurisdiction. It is the responsibility of the Chair to determine the time limit on comments under Public Comment and other agenda items that are not Quasi-Judicial Public Hearings. In Quasi-Judicial proceedings, fifteen (15) minutes shall be allowed for applicants and five (5) minutes for other speakers.

A. CALL TO ORDER 5:00 PM

B. MOMENT OF SILENCE

C. PLEDGE OF ALLEGIANCE - Commissioner Bryan Andrew Lober, Chairman

G. PUBLIC COMMENTS

H. PUBLIC HEARINGS

H.1. Skyview Plaza, LLC (Paige Lane) requests a CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a bar, in a BU-1 zoning classification. (20Z00017) (Tax Account 2607202) (District 4)

H.2. Health First, Inc., requests Transmittal of the 2020-1.1 Large Scale Comprehensive Plan Amendment to permit a countywide increase in Floor Area Ratio for Community Commercial designated sites from 1.00 to 1.75 within a PUD zoning classification. (20Z00069)

H.3. Public Hearing Re: Amendment to Chapter 62, Article VI, Zoning Regulations to allow Administrative Approval of on-premises consumption of alcoholic beverages for restaurants\snack bars. (Second Reading)

Add Ons

- J.1.** Interlocal Agreement with the Barefoot Bay Recreation District and the Brevard County Board of County Commissioners regarding a cap on the levy and collection of special assessments within the District and companion Resolution rescinding Resolution 20-001 which called for a Referendum Election on November 3, 2020 on the question as to whether to revoke the Barefoot Bay Recreation District's authority to collect its special assessments in the manner provided for ad valorem taxes.

K. PUBLIC COMMENTS

L. BOARD REPORTS

- L.1. Frank Abbate, County Manager
- L.2. Eden Bentley, County Attorney
- L.3. Rita Pritchett, Commissioner District 1, Vice Chair
- L.4. Bryan Lober, Commissioner District 2, Chair
- L.5. John Tobia, Commissioner District 3
- L.6. Curt Smith, Commissioner District 4
- L.7. Kristine Isnardi, Commissioner District 5

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing special accommodations or an interpreter to participate in the proceedings, please notify the County Manager's Office no later than 48 hours prior to the meeting at (321) 633-2010.

Assisted listening system receivers are available for the hearing impaired and can be obtained from SCGTV staff at the meeting. We respectfully request that ALL ELECTRONIC ITEMS and CELL PHONE REMAIN OFF while the County Commission is in session. Thank You.

This meeting will be broadcast live on Space Coast Government Television (SCGTV) on Spectrum Cable Channel 499, Comcast (North Brevard) Cable Channel 51, and Comcast (South Brevard) Cable Channel 13 and AT&T U-verse Channel 99. SCGTV will also replay this meeting during the coming month on its 24-hour video server nights, weekends, and holidays. Check the SCGTV website for daily program updates at <http://www.brevardfl.gov>. The Agenda may be viewed at: <http://www.brevardfl.gov/Board Meetings>

In accordance with Resolution 2014-219 Section VIII (8.1) the agenda shall provide a section for public comment limited to thirty (30) minutes following approval of the consent agenda during each regular County Commission meeting. The purpose of public comment is to allow individuals to comment on any topic relating to County business which is not on the meeting agenda. Individuals delivering public comment shall be restricted to a three-minute time limit on their presentation. During this thirty (30) minute segment of public comment, speakers will be heard in the order in which they turned in a speaker card asking to be heard. Any speaker not heard during the first thirty (30) minute segment will be heard during a second public comment segment held at the conclusion of business specified on the regular Commission agenda. With the exception of emergency items, the Board will take no action under the Public Comment section, but can refer the matter to another meeting agenda.



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.1.

9/3/2020

Subject:

Skyview Plaza, LLC (Paige Lane) requests a CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a bar, in a BU-1 zoning classification. (20Z00017) (Tax Account 2607202) (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 a CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a bar, in a BU-1 zoning classification.

Summary Explanation and Background:

The property owner is seeking to expand the existing CUP (Conditional Use Permit) for alcoholic beverages for on-premises consumption (license type) from beer and wine to a full liquor approval accessory to a proposed sports bar and to expand the (licensed area) size of the approval to include an outside seating area - existing patio located on the west side of the building/unit.

The character of the area is commercial development fronting Highway A1A with single-family uses lying to the west. The east side of Highway A1A is developed with multi-family apartments/condominiums identified as the Sandpiper Towers Condominium, Flores De La Playa Condominium and Ocean Residence North. North of this property is a mixture of BU-1 and BU-2 commercial zoning classifications, with the property lying east of Highway A1A being zoned for RU-2-15. To the south is a continuation of commercial development zoned BU-1. To the west lies single-family zoning under the RU-1-11 designation.

The Board may wish to consider the compatibility of the proposed CUP and the proposed outdoor seating area with surrounding development. The Board may consider additional conditions beyond those cited in Sections 62-1901 and 62-1906 in order to mitigate potential impacts to the abutting properties such as providing a visual buffer and/or acoustically screening the proposed outdoor patio area from the nearby residential lots. In addition, the Board may wish to consider that the abutting nonconforming adult entertainment business shall not have an internal connection.

On August 24, 2020, the Planning and Zoning Board heard the request and unanimously recommended approval.

Clerk to the Board Instructions:

Upon receipt of resolution, please execute and return a copy to Planning and Development.

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

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

Administrative Policy 2

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

Criteria:

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

Administrative Policy 3

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

Criteria:

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

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

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

Administrative Policy 4

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

Criteria:

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

Administrative Policy 5

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

Criteria:

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

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

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

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

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

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

CONDITIONAL USE PERMITS (CUPs)

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

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

(c) General Standards of Review.

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

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

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

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

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

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

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

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

2725 Judge Fran Jamieson Way
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Viera, Florida 32940
(321)633-2070 Phone / (321)633-2074 Fax
<https://www.brevardfl.gov/PlanningDev>

STAFF COMMENTS 20Z00017 SKYVIEW PLAZA LLC

Conditional Use Permit (CUP) for Alcoholic beverages for on-premises consumption (full liquor);

Tax Account Number: 2607202
Parcel I.D.: 26-37-23-00-759
Location: SW corner of Highway A1A and Ocean Boulevard (District 4)
Acreage: 3,200 square feet +/- for Unit # 220

Planning and Zoning Board: 08/24/2020
Board of County Commissioners: 09/03/2020

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	BU-1 with CUP for beer and wine	BU-1 with CUP for full liquor
Potential*	3,000 square feet	3,200 square feet
Can be Considered under the Future Land Use Map	YES Community Commercial	YES Community Commercial

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

Background and Purpose of Request

The property owner is seeking to expand the existing Conditional Use Permit (CUP) for alcoholic beverages for on-premises consumption (license type) from beer and wine to a full liquor approval accessory to a proposed sports bar and to expand the (licensed area) size of the approval to include an outside seating area - existing patio located on the west side of the building/unit.

This site was granted Board approval of a CUP under zoning action **Z-7858**. **Z-7858** was adopted on August 18, 1987, limited to beer and wine only. The area this zoning action covered was identified as Unit # 220 (a 40' x 75' dimensioned area with an estimated size of 3,000 square feet).

Since this adoption, many tenants have requested state beverage license approval from the County. On March 28, 2016, a request for liquor approval was sought from the County by a business named SportsPage (Sports Paige) to increase the license capacity/type from a 2COP (beer/wine) to 4COP (liquor/beer/wine) license. It was discovered during this Division of Alcoholic Beverages and Tobacco

(ABT) review that an active State issued 4COP license (**BEV1504955**) was of record in the State's database. With that license approval, the County issued a nonconforming approval for the increased license type. Recently, that license expired; with that event, the nonconforming use lapsed pursuant to Section 62-1183 of Brevard County Code and that use could not be reissued/reinstated; therefore, the applicant is making this current CUP request for license increase from beer/wine to full liquor.

Sec. 62-1183. Abandonment.

If any nonconforming use of land or structures is abandoned or discontinued for a period of 180 consecutive days or for 18 cumulative months during any three-year period, the land or structure shall thereafter only be put to a use specifically in conformity with the provisions of the applicable zoning classification and any other provision of this article or amendment to this article, and the privileges of this subdivision shall be deemed forfeited for the land or structures. This provision shall not apply to any nonconforming residential structure in a residential or GU zoning classification, or to an agricultural use which has been seasonally discontinued as part of an on-going agricultural operation.

Currently there is a sign posted within Unit # 220 identifying an area of 3,200 square feet as available for lease.

The owner's agent states that the intent of this request is to acquire a 4COP license for a sports bar.

Land Use

The BU-1 zoning classifications is consistent with the Community Commercial (CC) Future Land Use designation. The CUP request is also consistent with the CC FLU designation.

Environmental Constraints

No formal review by the Natural Resources Management Department is required for a CUP for on-premises consumption of alcoholic beverages. Natural Resources Management (NRM) reserves the right to assess consistency with environmental ordinances at all applicable future stages of development, including any land alteration permits or landscape restoration plans.

Preliminary Concurrency

The closest concurrency management segment to the subject property is U.S. Highway A1A, between Berkeley Street and Ocean Boulevard, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 50.16% of capacity daily. The development potential from the proposed CUP request on the existing building mass of 3,200 square feet does increase (0.02%) the percentage of MAV utilization. The corridor is anticipated to remain operating at 50.18% of capacity daily (LOS C). The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as this site is a proposed commercial development.

The subject property is served by potable water by the City of Melbourne. Sewer is provided by the County.

Applicable Land Use Policies

FLUE Policy 2.2 – Role of Zoning Regulations in the Designation of Commercial Lands

The zoning process regulates the types and intensities of uses for a parcel of land. Criteria which aid in assessing zoning compatibility, shall include consideration of the following standards:

Criteria:

A. Permitted/prohibited uses;

Staff analysis: The current CUP for beer and wine is not in operation at this time. Under Section 62-1901 (e), the Board has the authority to either renew, modify or revoke the existing CUP. The owner proposes to expand the existing alcoholic beverage use (beer and wine) to a full liquor approval with outside expansion of use to include a 17.6-foot by 18-foot (316-square foot) uncovered patio located to the west of the unit.

The Board should consider the compatibility of the proposed CUP with surrounding development. To the north of this unit, within Unit 218B, is a nonconforming adult entertainment business that also has a full liquor license approved under **Z-8054**. The Board denied this request for full liquor; however, this decision was overruled by the Eighteenth Judicial Circuit Court in Case No. 88-7474-AP.

B. Existing commercial zoning trends in the area;

Staff analysis: There have been no recent commercial zoning requests within the area.

C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;

Staff analysis: This CUP request, if approved, could be compatible with the commercial shopping center as long as the adjacent nonconforming adult entertainment business does not expand into this unit and that the outdoor patio area proposed on the west side of the building near the abutting single-family residential uses does not become a noise and/or lighting issue. The Board may desire that additional buffering and parking be added to the property and/or use limitations created in order to reduce those concerns.

D. Impact upon Level of Service (LOS) standards for roads, potable water service, sanitary sewer service and solid waste disposal;

Staff analysis: It appears no LOS has been exceeded for road capacity. Other LOS criteria will be reviewed at the site plan review stage.

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 through 8 of the Future Land Use Element, outlined in the Administrative Policies.

Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area. This site is surrounded by right-of-way upon the north, east and west sides. To its north is Ocean Boulevard. To its east is U.S. Highway A1A. To its west is

Flamingo Drive. The south property line abuts an adjacent convenience store with gasoline sales. The entire block is under the FLUM designation of Community Commercial. The commercial zoning is pre-existing. The residential areas to the east and west are under the Residential 15 FLUM designation. This property offers a vegetative roadway buffer along its west property line to buffer the view from nearby residential lots; palm trees and sod are within the eastern roadway buffer allowing views into the site.

Analysis of Administrative Policy #4 - Character of a neighborhood or area. The character of the area is commercial development fronting Highway A1A with single-family uses lying to the west. The east side of Highway A1A is developed with multi-family apartments/condominiums identified as the Sandpiper Towers Condominium, Flores De La Playa Condominium and Ocean Residence North. North of this property is a mixture of BU-1 and BU-2 commercial zoning classifications, with the property lying east of Highway A1A being zoned for RU-2-15. To the south is a continuation of commercial development zoned BU-1. To the west lies single-family zoning under the RU-1-11 designation.

Surrounding Area

There have been three zoning actions within a half-mile radius around this site within the last 3 years. The three zoning changes include:

- Zoning item (**17PZ00037**) adopted on July 26, 2017, rezoned 0.66 acres from BU-1 to BU-2 with a Binding Development Plan recorded in ORB 7946, Pages 375-377, which allows all BU-1 uses and limited the BU-2 uses to dog boarding, grooming, training and retail sales of related products; This site is located on the north side of Ocean Boulevard about 360 feet north of front door of Unit #220.
- Zoning Item (**19PZ00060**) adopted on October 25, 2019, updated the BDP on 8.49 acres from 155 to 188 multi-family units under the RU-2-30 zoning classification and was recorded in ORB 8572, Pages 318-322; This site is located on the west side of Highway A1A about ½-mile south of Unit #220.
- Zoning item (**19PZ00103**) adopted on November 7, 2019, denied rezoning of a 0.52-acre site from BU-1 to RU-2-15; This site is located on the west side of Highway A1A about 460 feet south of Unit #220.

Special Considerations for CUP (Conditional Use Permit)

The Board should consider the compatibility of the proposed CUP pursuant to Section 62-1151(c) and to Section 62-1901, as outlined on pages 6 – 8 of these comments. Section 62-1901 provides that the approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. **The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved.** The applicant's responses and staff observations, if any, are indicated below.

Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP based upon consideration of applicable regulations relating to zoning and land use within the context of public

health, safety and welfare. The applicant has submitted documentation in order to demonstrate consistency with the standards set forth in Section 62-1901 and Section 62-1906, on-premises consumption of alcohol.

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

- 3) Except for restaurants with more than 50 seats, no alcoholic beverages shall be sold or served for consumption on the premises from any building that is within 300 feet from the lot line of a school or church if the use of the property as a school or church was established prior to the commencement of the sale of such alcoholic beverages. For the purposes of this subsection, a school shall include only grades kindergarten through 12. For the purpose of establishing the distance between the proposed alcoholic beverage use and churches and schools, a certified survey shall be furnished from a registered engineer or surveyor. Such survey shall indicate the distance between the front door of the proposed place of business and all property lines of any church or school within 400 feet. Each survey shall indicate all such distances and routes.

Staff analysis: The owner/applicant has not provided a survey which states that there are no churches or schools within 400 feet of the area within this CUP request.

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

Staff analysis: Serving and consumption of food and beverages, alcohol or otherwise, shall be strictly prohibited outside of the existing buildings except as has been identified on the outdoor patio pursuant to Section 62-1837.9 (Outdoor restaurant seating) of Brevard County Code.

General Standards of Review

Section 62-1901(c)(1)(a): The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1) the number of persons anticipated to be using, residing or working under the conditional use; (2) noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3) the increase of traffic within the vicinity caused by the proposed conditional use.

Applicant's Response: The use will be consistent with the historical uses of the property. A 4COP has been located at the property since 1999.

Staff analysis: The owner/applicant has not addressed the adverse impacts such as noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the

conditional use nor has the number of patrons been identified nor has the traffic parameters been addressed.

Section 62-1901(c)(1)(b): The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.

Applicant's Response: Another bar is located adjacent to the property with the same 4COP license in place. No changes will be made to the historical use of the property.

Staff analysis: The parcel is a portion of a developed commercial property that is bounded by right-of-way (not adjacent to residential development). During site plan review, the proposed outdoor patio will need to comply with the noise ordinance.

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

Applicant's Response: No value reduction is anticipated as this property has been the location of a 4COP since 1999. No real change will occur.

Staff analysis: Competent and substantial evidence by a MAI certified appraiser has not been provided by the applicant.

Section 62-1901(c)(2)(a): Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1) adequate to serve the proposed use without burdening adjacent and nearby uses, and (2) built to applicable county standards, if any.

Note: Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20 percent, or ten percent if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at level of service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable county standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.

Applicant's Response: No increase in traffic is anticipated.

Staff analysis: This project has multiple access points identified on the concept plan. The change of use will not substantially increase parking and traffic needs for this site. If needed, additional improvements can be addressed at the site plan review stage for the outdoor patio inclusion.

Section 62-1901(c)(2)(b): The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.

Applicant's Response: No interference is anticipated.

Staff analysis: This project must be compliance with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272. Any proposed outdoor lighting and noise standards should remain within code parameters or a violation will be created.

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

Applicant's Response: Noise levels will be consistent with historical use of the property.

Staff analysis: The concept plan's "noise standards" will be reviewed as part of the site plan review process. Proposed outside seating must comply with noise ordinance.

Section 62-1901(c)(2)(d) The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.

Applicant's Response: Solid waste disposal will be consistent with historical use of the property.

Staff analysis: The adopted level of service for solid waste disposal will be reviewed as part of the site plan review process.

Section 62-1901(c)(2)(e): The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.

Applicant's Response: Potable water and waste water use will not change from the historical use of the property.

Staff analysis: The adopted level of service for potable water or wastewater will be reviewed by utilities as part of the site plan review process.

Section 62-1901(c)(2)(f): The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.

Applicant's Response: These conditions will not vary from the historical use of the property.

Staff analysis: As the project is buffered by right-of-way, minimal screening or buffering has been identified on the concept plan. Note, the outdoor patio area is nearby an access point which will have no screening or buffer when seen from the public roadway. Should the Board determine that additional measures become necessary, the Board may wish to request the applicant submit a Binding Development Plan (BDP) to provide for those additional measures.

Section 62-1901(c)(2)(g): Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to, traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.

Applicant's Response: Signage will remain the same with respect to impact on traffic safety and nearby properties.

Staff analysis: No signage or exterior lighting has been identified on the concept plan. Should the Board determine that additional measures become necessary, the Board may wish to request the applicant submit a Binding Development Plan (BDP) to provide for those additional measures.

Section 62-1901(c)(2)(h): Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.

Applicant's Response: Hours of operation will remain consistent with the historic use of the property.

Staff analysis: The hours of operation (for any proposed business) has not been addressed. Should the Board determine that additional measures become necessary, the Board may wish to request the applicant submit a Binding Development Plan (BDP) to provide for those additional measures.

Section 62-1901(c)(2)(i): The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.

Applicant's Response: No changes will be made to the property in respect to height.

Staff analysis: The existing commercial complex appears to be constructed as a single floored structure.

Section 62-1901(c)(2)(j): Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

Note: for existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

Applicant's Response: No additional loading areas will be created.

Staff analysis: The CUP concept plan has been updated to add 8 additional parking spaces to the project which identifies 143 parking spaces for a new total of 151 parking spaces.

For Board Consideration

The property owner is seeking to expand the existing Conditional Use Permit (CUP) for alcoholic beverages for on-premises consumption (license type) from beer and wine to a full liquor approval accessory to a proposed sports bar and to expand the (licensed area) size of the approval to include an outside seating area - existing patio located on the west side of the building/unit.

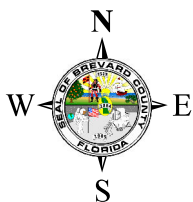
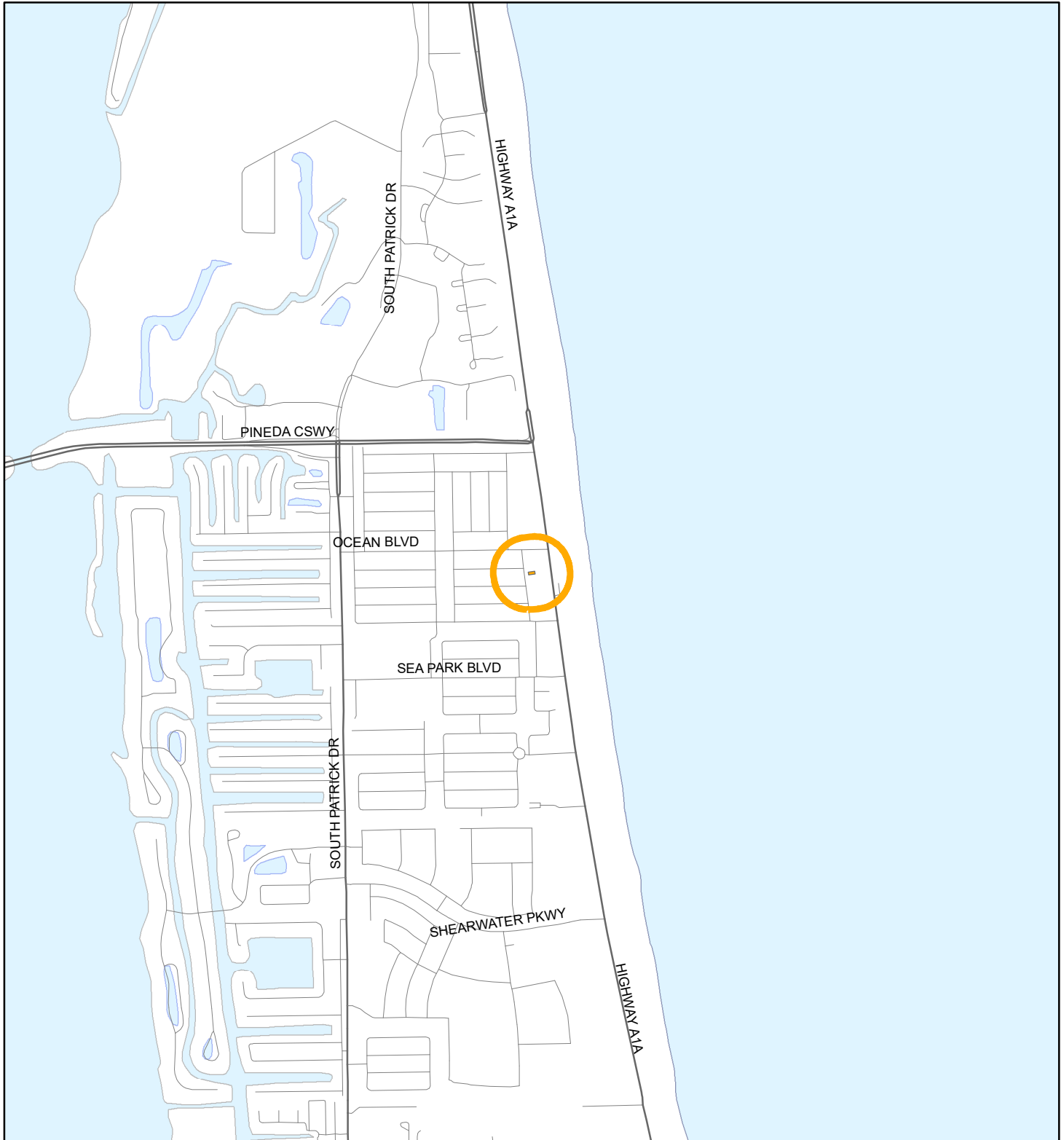
The Board may wish to consider the compatibility of the proposed CUP with surrounding development. The Board may consider additional conditions beyond those cited in Sections 62-1901 and 62-1906 in order to mitigate potential impacts to the abutting properties such as: provide a visual buffer and/or acoustically screen the proposed outdoor patio area from the nearby residential lots.

The Board may also wish to consider that the abutting nonconforming adult entertainment business shall not have an internal connection.

LOCATION MAP

SKYVIEW PLAZA, LLC

20Z00017



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: 8/5/2020

— Buffer
— Subject Property

ZONING MAP

SKYVIEW PLAZA, LLC

20Z00017



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/5/2020

Subject Property

Parcels

Zoning

FUTURE LAND USE MAP

SKYVIEW PLAZA, LLC

20Z00017



1:4,800 or 1 inch = 400 feet

Subject Property
Parcels

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Produced by BoCC - GIS Date: 8/5/2020

AERIAL MAP

SKYVIEW PLAZA, LLC

20Z00017




1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2020

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Produced by BoCC - GIS Date: 8/5/2020

 Subject Property

 Parcels

NWI WETLANDS MAP

SKYVIEW PLAZA, LLC

20Z00017













1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/5/2020

National Wetlands Inventory (NWI)

 Estuarine and Marine Deepwater	 Freshwater Pond
 Estuarine and Marine Wetland	 Lake
 Freshwater Emergent Wetland	 Other
 Freshwater Forested/Shrub Wetland	 Riverine
	 Subject Property
	 Parcels

SJRWMD FLUCCS WETLANDS - 6000 Series MAP

SKYVIEW PLAZA, LLC

20Z00017



1:4,800 or 1 inch = 400 feet

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SJRWMD FLUCCS WETLANDS

- Wetland Hardwood Forests - Series 6100
- Wetland Coniferous Forest - Series 6200
- Wetland Forested Mixed - Series 6300
- Vegetated Non-Forested Wetlands - Series 6400
- Non-Vegetated Wetland - Series 6500

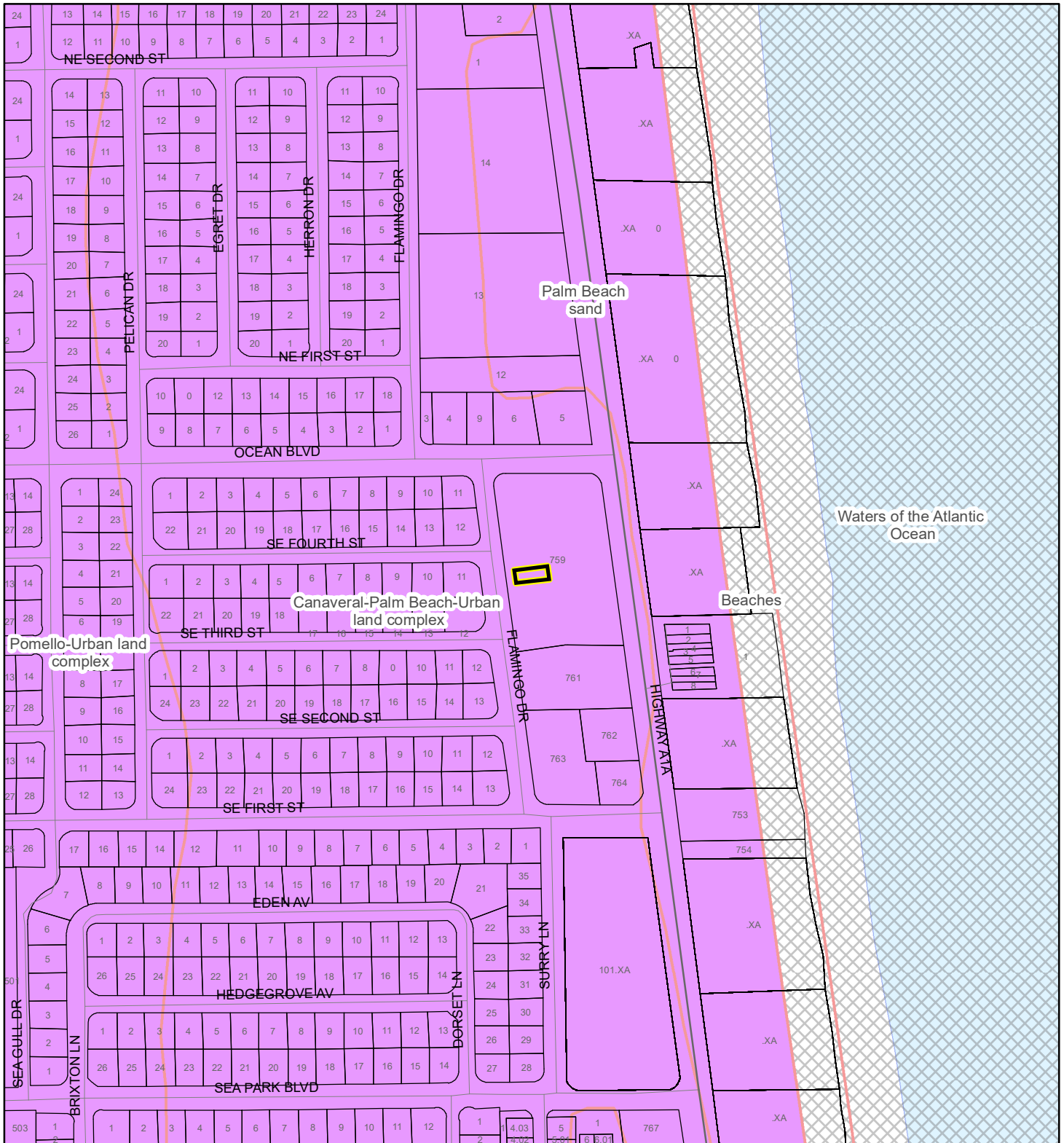
Subject Property

Parcels

USDA SCSSS SOILS MAP

SKYVIEW PLAZA, LLC

20Z00017



1:4,800 or 1 inch = 400 feet

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USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

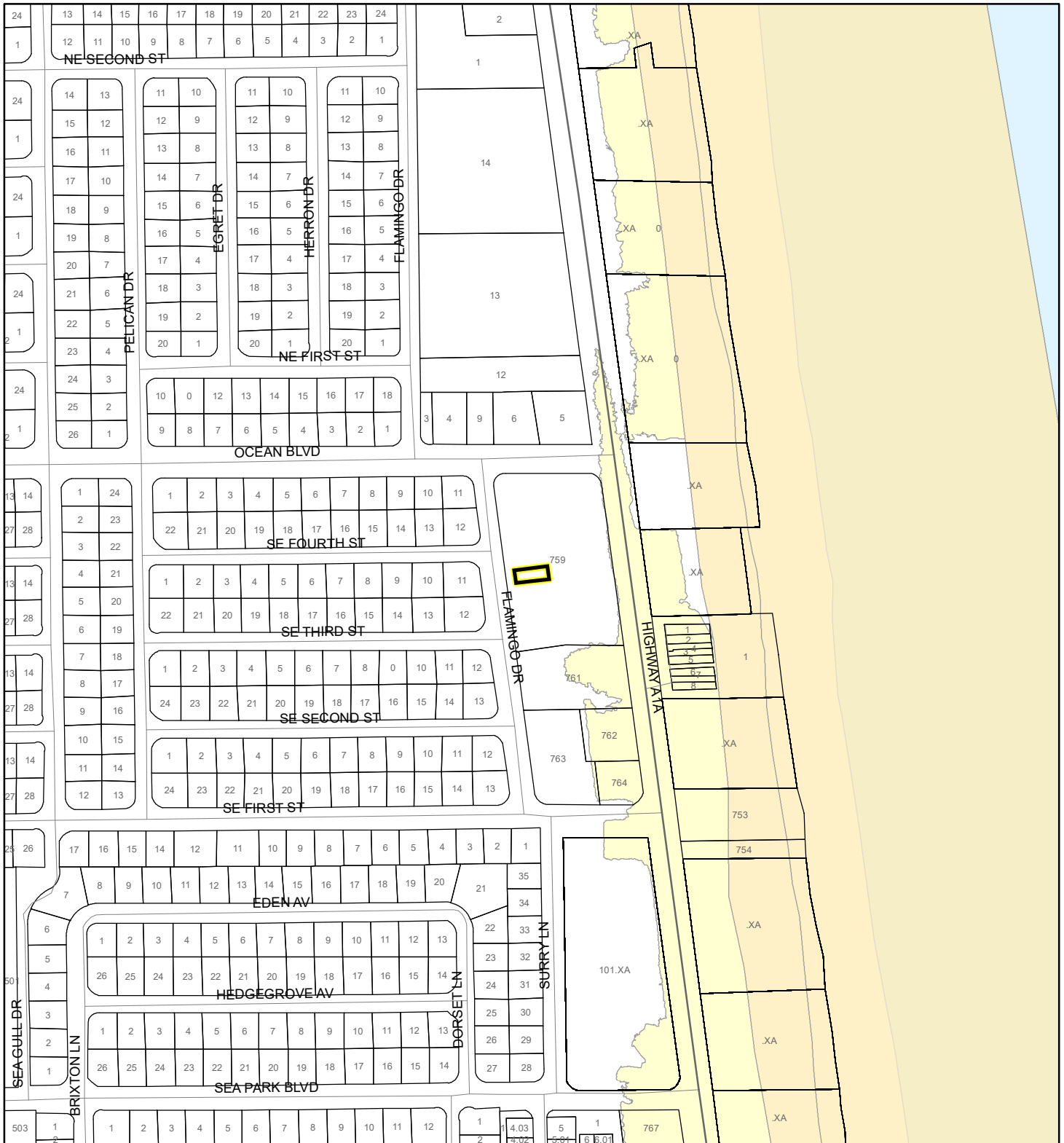
Subject Property

Parcels

FEMA FLOOD ZONES MAP

SKYVIEW PLAZA, LLC

20Z00017



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/5/2020

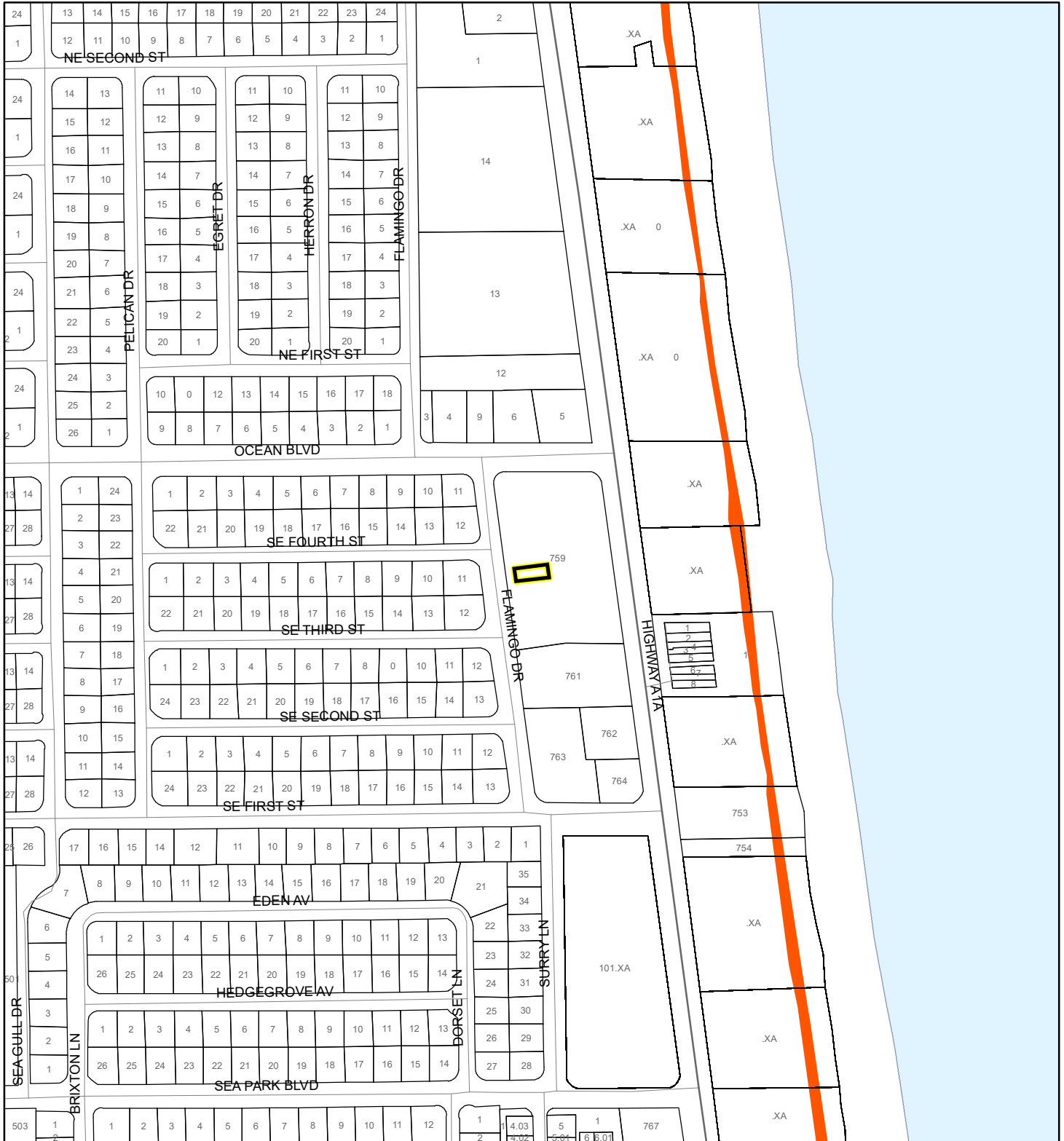
FEMA Flood Zones

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

COASTAL HIGH HAZARD AREA MAP

SKYVIEW PLAZA, LLC

20Z00017



1:4,800 or 1 inch = 400 feet


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 Subject Property

 Parcels

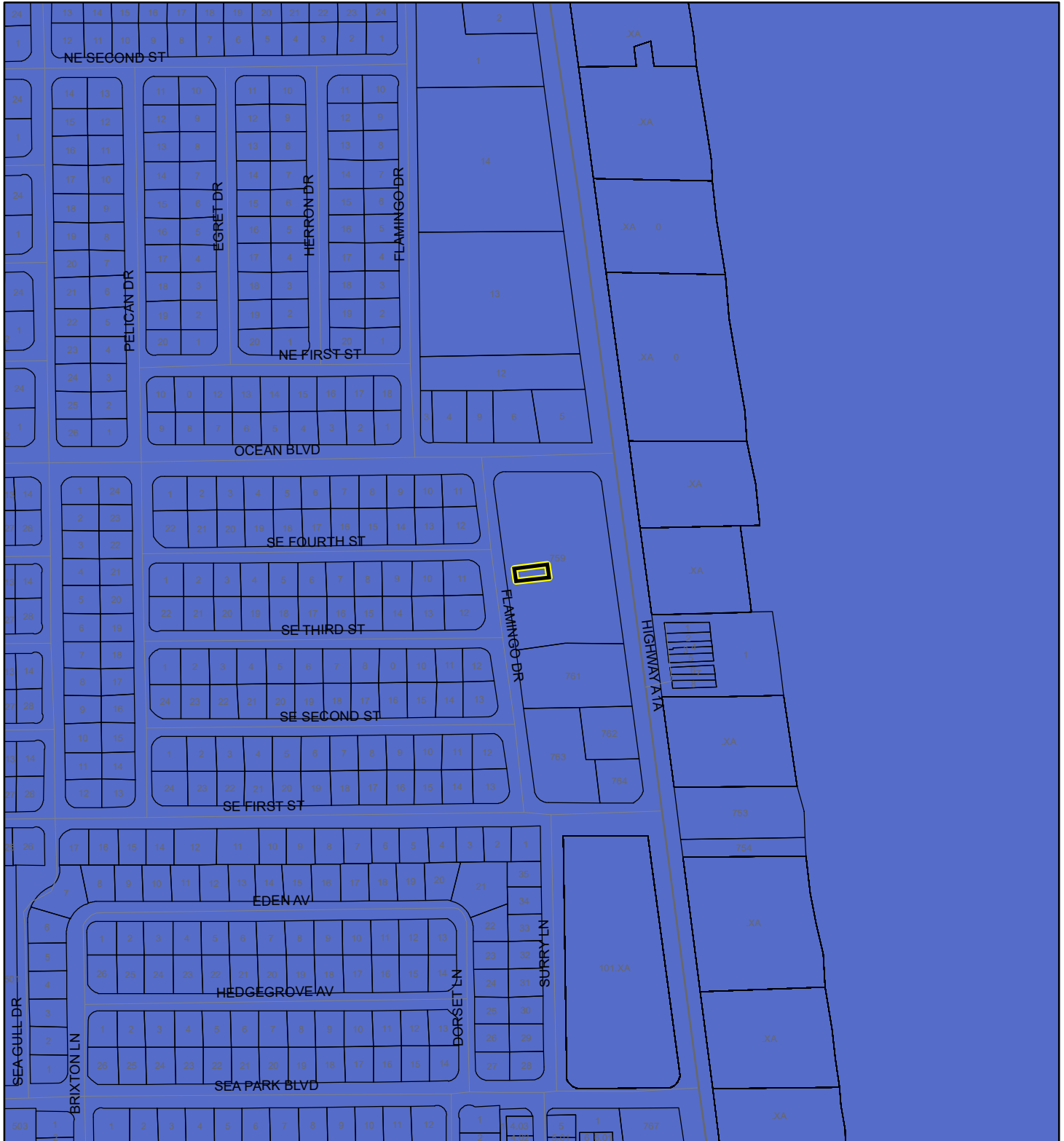
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

SKYVIEW PLAZA, LLC

20Z00017



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

Septic Overlay

 40 Meters

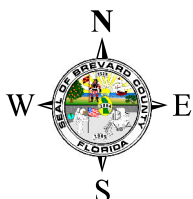
 60 Meters

 All Distances

EAGLE NESTS MAP

SKYVIEW PLAZA, LLC

20Z00017




1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/5/2020

 Subject Property

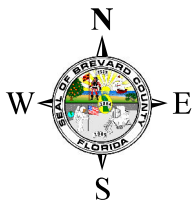
 Parcels

 Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

SKYVIEW PLAZA, LLC

20Z00017



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.

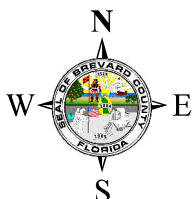
Produced by BoCC - GIS Date: 8/5/2020

- Subject Property
- Parcels
- Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

SKYVIEW PLAZA, LLC

20Z00017



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: 8/5/2020

SJRWMD FLUCCS Upland Forests

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

Subject Property Parcels

Flores de la Playa Condominium
245 Highway A1A, Satellite Beach, Florida 32937

August 14, 2020

Brevard County Planning and Zoning Board
Brevard County Government Center – Building A
2725 Judge Fran Jamieson Way Viera, Florida 32940

Re: ID# 20Z00017

Dear Board Members:

Thank you for the courtesy notice, advising that application for a Conditional Use Permit for use in a 3,700 SF establishment with full liquor license, within 500 feet of our property has been submitted to the County. For clarity, our homes are not just within 500 feet of the property; we are within 100 feet of the property. Skyview Plaza is located directly across the street from our condominium and spans the entire width of our condominium building. We already endure three establishments that serve alcohol.

The Plaza is a constant source of noise from cars, motorcycles, especially during the later night hours. Often we hear loud music from vehicles, and on occasion from the establishments; and altercations by patrons, verbal and physical.

In addition, it has been noted that the Skyview Plaza parking lot has become a gathering spot for the homeless and the associated “pan handling” activities.

We respectfully ask the Board not to support the approval of this Conditional Use Permit.

Signatures on Page 2

Letter dated August 14, 2020 – Brevard Planning and Zoning Board

Signed: Flores de la Playa Residents

David Baranek, 404

Chaim Maypole 304

Carolyn Barry 202

Kevin Barry 202

Pat + Ben Braine 201

Dennis J. Brown 302

Lee & Susan Brown 601

Willie E. Felt 501

Debbie Macken 401

DAN MACKEN 401

Claudia Cune 503

CIRDO A. DUARTE 301

Heidi Gutierrez 501

LOCAL PLANNING AGENCY/PLANNING AND ZONING BOARD MINUTES

The Brevard County Local Planning Agency/Planning & Zoning Board met in regular session on Monday, August 24, 2020, at 3:00 p.m., in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order by Chair Mark Wadsworth, at 3:00 p.m.

Board members present were: Ron Bartcher; Brian Woltz; Brian Hodgers; Harry Carswell; Mark Wadsworth, Chair; Peter Filiberto, Vice Chair; Bruce Moia; and Joe Buchanan. Bruce Moia's presence was noted at 3:11 p.m.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Abigail Jorandby, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Minutes

1. Skyview Plaza (Paige Lane)

A request for CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a bar, in a BU-1 (General Retail Commercial) zoning classification. The property is 3,700 +/- square feet, located on the southwest corner of Ocean Boulevard and Highway A1A (220 Highway A1A, Satellite Beach) (20Z00017) (Tax Account 2607202) (District 4)

Paige Lane, 440 South Waterway Drive, Satellite Beach, stated in 1998 he placed a liquor license in Unit 220, and through a clerical error at that time, it was only approved for beer and wine consumption. The license was in continual use until last year when the bar was sold by the person he sold it to, and now he represents the shopping center as a realtor, and there is a tenant who would like to continue using the space as a full liquor bar. He stated during the process of applying for a new liquor license in that unit it has been discovered that the use is still considered beer and wine only because of the clerical error in 1998 and again in 2016. He said the unit has been historically used as a full liquor bar, and the new tenant would like to continue that operation.

Joe Buchanan stated he visited the site, and the property offers a vegetative roadway buffer behind the plaza, and across Flamingo Road, some of the residents have a large wooden fence that provides additional buffering. He asked if the new expansion for outdoor dining will continue throughout the week.

Mr. Lane replied he is not asking for outdoor seating, he is only asking for the same footprint as the previous bar. He said if the potential tenants want to expand the footprint, that would be another process and the request would have to come back to the board.

Mr. Buchanan stated the outdoor area is approximately 300 square feet, so 15 – 17 people would be the maximum. Mr. Lane stated for the purpose of the request today, he is not asking for any outdoor seating. The previous owner set up an area outside where people could smoke, but there are no liquor sales in that area; the new tenant will keep it as a smoking area.

Mr. Buchanan asked if the outdoor seating would be included in the total seating for the inside and outside. Jeffrey Ball replied the application indicates there is a request for an outdoor seating area of approximately 200 square feet to the rear of the property.

Mr. Lane stated the previous owner might have expanded the footprint; he included all of the areas on the drawings he provided for the application, so the drawing may include the back area for smoking, but there is no bar in that area.

Mr. Buchanan stated the abutting adult entertainment needs to be separated. Mr. Lane stated there is a separation between the two units, and the units are not connected in any way.

Peter Filiberto stated the request appears to be a housekeeping item, and it appears the two businesses are separated.

Motion by Peter Filiberto, seconded by Joe Buchanan, to approve the requested CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a bar, in a BU-1 zoning classification. The motion passed unanimously. Bruce Moia absent.



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.2.

9/3/2020

Subject:

Health First, Inc., requests Transmittal of the 2020-1.1 Large Scale Comprehensive Plan Amendment to permit a countywide increase in Floor Area Ratio for Community Commercial designated sites from 1.00 to 1.75 within a PUD zoning classification. (20Z00069)

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 transmittal of the 2020-1.1 Large Scale Comprehensive Plan Amendment initiated by Health First, Inc. to amend Part XI, Future Land Use Element, to amend Policy 2.8 D., to increase the allowable building square footage countywide within a PUD (Planned Unit Development), Policy 2.8 E., to permit a countywide increase in FAR (Floor Area Ratio) for CC (Community Commercial) designated sites from 1.00 to 1.75 within a PUD zoning classification; and Policy 2.8, Table 2.2, to update the table to the FAR increase from 1.00 to 1.75 within a PUD zoning classification.

Summary Explanation and Background:

Health First, Inc. requests to build a state-of-the-art Wellness Village, a new concept, intended to serve the needs of the local community in all aspects of health to include preventive care. The mixed-use development program includes a hospital with medical offices, and retail with associated parking facilities, centrally located to create a Wellness Village. This request will allow for increased flexibility to the urban form (compact design) within the PUD zoning classification. This Text Amendment to the Future Land Use Element of the Comprehensive Plan will allow 76,230 of GFA (Gross Floor Area) per one acre of land, for a total building area of 1,083,990 square feet. Health First, Inc. has submitted a PUD rezoning application requesting a total building area of 1,078,000 square feet.

There are three proposed changes:

- Policy 2.8 D: to increase the allowable building square footage countywide within a PUD. Currently, there is a cap of 400,000 square feet for commercial clusters, greater than 10 acres and less than 40 acres. This proposal would eliminate the 400,000 square foot cap.
- Policy 2.8 E: allows for a FAR (Floor Area Ratio) of up to 1.00 in CC (Community Commercial) designated land uses. This proposal would increase the FAR from 1.00 to 1.75 in a CC land use provided it has a PUD zoning classification.

- Table 2.2: reiterates Policy 2.8 D and E; the cap of 400,000 square feet and the FAR of 1.0. This proposal would make Table 2.2 consistent with Policy 2.8 D and E.

On August 24, 2020, the Local Planning Agency heard the transmittal and unanimously recommended approval.

Clerk to the Board Instructions:

None

**PROPOSED COMPREHENSIVE PLAN AMENDMENT 2020-1.1
FUTURE LAND USE ELEMENT – TEXT AMENDMENT**

Request: A proposal initiated by Health First, Inc. to amend Part XI, the Future Land Use Element, to amend Policy 2.8 D., to increase the allowable building square footage countywide within a Planned Unit Development (PUD), Policy 2.8 E., to permit a countywide increase in Floor Area Ratio (FAR) for Community Commercial (CC) designated sites from 1.00 to 1.75 within a PUD zoning classification; and Policy 2.8 Table 2.2, to update the table to the FAR increase from 1.00 to 1.75 within a PUD zoning classification.

Owner / Applicant: Health First, Inc.

Location: Countywide

Acreage: N/A

Existing Land Use Designation: N/A

Proposed Land Use Designation: N/A

PROPOSED TEXT AMENDMENT

Background:

Health First, Inc. requests to build a state-of-the-art Wellness Village, a new concept, intended to serve the needs of the local community in all aspects of health to include preventive care. The mixed-use development program includes a hospital with medical offices, and retail with associated parking facilities, centrally located to create a Wellness Village. This request will allow for increased flexibility to the urban form (compact design) within the Planned Unit Development (PUD). This Text Amendment to the Future Land Use Element of the Brevard County Comprehensive Plan to allow 76,230 of Gross Floor Area (GFA) per one acre of land, for a total building area of 1,083,990 sq. ft. Health First Inc. has submitted a PUD rezoning application that is requesting a total building area of 1,078,000 sq. ft.

Description:

The proposed amendment will allow for an increased in flexibility to the urban form within the Planned Unit Development (PUD). By going vertical, this

flexibility allows for a more compact design by allowing for more area to be allocated to the required infrastructure including but not limited to parking, stormwater, open space etc. Increased intensities shall be directed to areas that have the appropriate central infrastructure and support services or the ability to provide it in conjunction to the proposed development.

Floor Area Ratio (FAR) is the ratio of a building's total floor area to the size of the piece of land upon which it is built on. A FAR of 1.0 on a one-acre piece of land equals a building of 43,560 sq. ft. in size.

There are three proposed changes:

Policy 2.8 D: to increase the allowable building square footage countywide within a PUD (Planned Unit Development). Currently, there is a cap of 400,000 square feet for commercial clusters, greater than 10 acres and less than 40 acres. This proposal would eliminate the 400,000 sq.ft. cap.

Policy 2.8 E: allows for a Floor Area Ratio (FAR) of up to 1.00 in Community Commercial (CC) designated land uses. This proposal would increase in Floor Area Ratio (FAR) from 1.00 to 1.75 in a Community Commercial (CC) land use provided it has Planned Unit Development (PUD) zoning classification.

Table 2.2: reiterates Policy 2.8 D and E; the cap of 400,000 sq. ft and the FAR of 1.0. This proposal would make Table 2.2 consistent with Policy 2.8 D and E.

Proposed Text Amendment

Additions to the Objectives are shown as underlined and deletions are shown as ~~struck-through~~. The Policy 2.8, shown below for ease of reference, would remain unchanged.

Locational and Development Criteria for Community Commercial Uses **Policy 2.8**

Locational and development criteria for community commercial land uses are as follows:

Criteria:

- A. Community Commercial clusters of up to ten (10) acres in size should be located at arterial/arterial intersections. Collector/ arterial intersections are 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/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 not less than 40 acres in size unless within a Planned Unit Development (PUD) zoning classification. The square footage may be increased if it is located within a PUD zoning classification.
- E. Floor Area Ratio (FAR) of up to 1.00 will be permitted for Community Commercial sites unless accompanied with a PUD zoning classification wherein the FAR may be increased up to 1.75.
- F. Recreational vehicle parks shall be located in areas which serve the needs of tourists and seasonal visitors to Brevard County. The location of recreational vehicle parks shall have access to interstate interchanges via arterial and principal collector transportation corridors or the property shall be located on a major multi-county transportation corridor.

In summary, Table 2.2 reiterates the specific development parameters and issues for consideration, as discussed in Policies 2.1 and 2.8, when evaluation requests for CC land use designations. The table also outlines issues which affect decision making for rezoning requests and for site plan review, as described in Policies 2.2 and 2.3.

TABLE 2.2 THREE LAYER DEVELOPMENT REVIEW PROCESS FOR EVALUATING NEW COMMUNITY COMMERCIAL (CC) FUTURE LAND USES		
FIRST LEVEL OF REVIEW	SECOND LEVEL OF REVIEW	THIRD LEVEL OF REVIEW
CONSISTENCY WITH COMPREHENSIVE PLAN ¹	CONSISTENCY WITH ZONING REGULATIONS ²	CONSISTENCY WITH LAND DEVELOPMENT REGULATIONS ³
Issues for Evaluation	Issues for Evaluation	Issues for Evaluation
Overall accessibility to the proposed CC site. (Policy 2.1.A)	Permitted/prohibited uses. (Policy 2.2.A)	Integration of vehicular and non-vehicular access into the site plan. (Policy 2.3.A)
Compatibility and inter-connectivity of proposed CC site with adjacent adopted Future Land designations and uses. (Policy 2.1.B)	Proposed zoning is consistent with zoning trends for the area. (Policy 2.2.B)	Access management features of the site design. (Policy 2.3.A.)
Existing commercial development trend in the area. (Policy 2.1.C)	Compatibility of proposed zoning with surrounding land uses. (Policy 2.2.C)	Adequacy of buffering provided. (Policy 2.3.B)
Changes in character of an area due to infrastructure improvements. (Policy 2.1.D)	Availability of public facilities to accommodate proposed zoning at or above adopted Level of Service standards. (Policy 2.2.D)	Open space provisions and balance of proportion between gross floor area and site size. (Policy 2.3.C)
Availability of public facilities to accommodate proposed CC Future Land Uses at or above adopted Level of Service standards. (Policy 2.1.E)	Impacts upon natural resources, including wetlands, flood plains, and endangered species. (Policy 2.2.E)	Adequacy of pervious surface area in terms of drainage requirements of Land Development Code. (Policy 2.3.D)
Minimum Spacing from Nearest CC Land Use: 2 miles for sites up to 10 acres and 5 miles for sites >10 acres. (Policies 2.1.F and 2.8.C)	Other issues which may emerge specific to a particular property. (Policy 2.2.F)	Placement of signage on site. (Policy 2.3.E)
Size of proposed CC designation compared with current need. (Policy 2.1.G)	Development Parameters Addressed by BU-1 & BU-2 Zoning Regulations	Adequacy of site lighting and intrusiveness of lighting upon the surrounding area. (Policy 2.3.F)
Adherence of proposed CC land use to objectives/policies of the Conservation Element and the minimization of impacts upon natural systems. (Policy 2.1.H)	Listing of permitted/prohibited uses.	Safety of on site circulation patterns and points of conflicts. (Policy 2.3.G)
Integration of open space. ⁴ (Policy 2.1.I)	Minimum building setbacks requirements.	Landscaping conforms with policies of the Comprehensive Plan and the Land Development Code. (Policy 2.3.H)
Effect upon strip commercial development as a result of approving CC Future Land Use. (Policy 2.1.J)	Minimum lot size requirements.	Site plan sensitivity to protecting unique natural features. (Policy 2.3.I)
Locations: Limited to intersections of Arterial/ Arterial or Collector/ Arterial roadways for sites up to 10 acres (with exceptions) and limited to Principal Arterial/Principal Arterial intersections for sites >10 acres. (Policy 2.8.A)	Minimum floor area requirements.	Other performance based requirements. (Policy 2.3.J)
CC Future Land Use Site Size: >2 acres and <40 acres. (Policy 2.8.B)	Maximum building height allowances.	³ This table serves as a summary. Refer to Policies 2.3 and 2.8 for full details.
Minimum spacing from nearest CC land use: 2 miles for sites up to 10 acres and 5 miles for sites > 10 acres. (Policy 2.8.C)	Buffering requirements.	
Maximum Building Size: up to 150,000 square feet for sites up to 10 acres and up to 400,000 square feet for sites > 10 acres <u>unless within an approved PUD, then a maximum of 76,230 GFA per acre.</u> ⁴ (Policy 2.8.D)	² This table is a summary. Refer to Policies 2.2 and 2.8 for full details.	
Maximum Floor Area Ratio (FAR): .40 for sites up to 10 acres and 3.2 for sites >10 acres <u>unless with PUD zoning classification wherein the FAR is up to 1.75.</u> ⁴ (Policy 2.8.E)		
¹ This table serves as summary. Refer to Policies 2.1 and 2.8 for full details.		
⁴ These parameters will be applied during the plan review process.		

Staff Analysis:

Staff has looked at the surrounding Unincorporated areas of Brevard County. Research indicates an increase in the Floor Area Ratio (FAR) in the Downtown Mixed-Use area in Titusville of 5.0, the Redevelopment Districts and non-residential Downtown areas of Cocoa Beach to be 3.0, the Central Business District in the City of Cocoa to be 2.5, the Commercial Use area of Palm Bay to be 2.5 and in the General Commercial areas of Melbourne to be 6.0. The request appears to be comparable with the adjacent Cities.

Objective 11 of the Future Land Use Element of the Comprehensive Plan. As outlined in Objective 11, Brevard County shall alleviate the impacts of inadequate public facilities and services, substandard structures and lot configurations in blighted or other affected areas in the County through redevelopment initiatives.

Staff's determination that there is sufficient public facilities and services to serve this development.

For Board Consideration:

The Board may wish to consider this increase in intensity countywide within lands designated as Community Commercial (CC) FLU, with a zoning classification of Planned Unit Development (PUD) by increasing the allowable FAR from 1.0 to 1.75 is appropriate.

ORDINANCE NO. 20-__

ORDINANCE AMENDING ARTICLE III, CHAPTER 62, OF THE CODE OF ORDINANCES OF BREVARD COUNTY; ENTITLED “THE COMPREHENSIVE PLAN”, SETTING FORTH PLAN AMENDMENT 2020-1.1; AMENDING SECTION 62-501, ENTITLED “CONTENTS OF THE PLAN”; SPECIFICALLY AMENDING SECTION 62-501, PART XI, ENTITLED FUTURE LAND USE ELEMENT; PROVIDING FOR INTERNAL CONSISTENCY WITH THESE AMENDMENTS; PROVIDING LEGAL STATUS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 163.3161 et. seq., Florida Statutes (1987) established the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Section 163.3167, Florida Statutes, requires each County in the State of Florida to prepare and adopt a Comprehensive Plan as scheduled by the Department of Economic Opportunity; and

WHEREAS, on September 8, 1988, the Board of County Commissioners of Brevard County, Florida, approved Ordinance No. 88-27, adopting the 1988 Brevard County Comprehensive Plan, hereafter referred to as the 1988 Plan; and

WHEREAS, Sections 163.3184 and 163.3187, and 163.3189, Florida Statutes, established the process for the amendment of comprehensive plans pursuant to which Brevard County has established procedures for amending the 1988 Plan; and

WHEREAS, Brevard County initiated amendments and accepted application for amendments to the Comprehensive Plan on June 30, 2020, for adoption as the Plan Amendment Cycle 2020-1; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida, have provided for the broad dissemination of proposals and alternatives, opportunity for written comments, public hearings after due public notice, provisions for open discussion, communication programs and consideration of and response to public comments concerning the provisions contained in the 1988 Plan and amendments thereto; and

WHEREAS, Section 62-181, Brevard County Code designated the Brevard County Planning and Zoning Board as the Local Planning Agency for the unincorporated areas of Brevard County, Florida, and set forth the duties and responsibilities of said local planning agency; and

WHEREAS, on November 9, 2020, the Brevard County Local Planning Agency held a duly noticed public hearing on Plan Amendment 2020-1.1, and considered the findings and advice of the Technical Advisory Groups, and all interested parties submitting comments; and

WHEREAS, on December 3, 2020, the Brevard County Board of County Commissioners held a duly noticed public hearing, and considered the findings and recommendations, and all interested parties submitting written or oral comments, and the recommendations of the Local Planning Agency, and upon thorough and complete consideration and deliberation, approved for the adoption of Plan Amendment 2020-1.1; and

WHEREAS, Plan Amendment 2020-1.1 adopted by this Ordinance complies with the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Plan Amendment 2020-1.1 adopted by this Ordinance is based upon findings of fact as included in the data and analysis.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Section 1. Authority. This ordinance is adopted in compliance with, and pursuant to the Local Government Comprehensive Planning and Land Development Regulations Act, Sections 163.3184 and 163.3187, Florida Statutes.

Section 2. Purpose and Intent. It is hereby declared to be the purpose and intent of this Ordinance to clarify, expand, correct, update, modify and otherwise further the provisions of the 1988 Brevard County Comprehensive Plan.

Section 3. Adoption of Comprehensive Plan Amendments. Pursuant to Plan Amendment 2020-1.1 to the 1988 Comprehensive Plan, Article III, Chapter 62-504, Brevard County Code, the 1988 Brevard County Comprehensive Plan is hereby amended as specifically shown in Exhibit A. Exhibit A is hereby incorporated into and made part of this Ordinance.

Section 4. Legal Status of the Plan Amendments. After and from the effective date of this Ordinance, the plan amendment, Plan Amendment 2020-1.1, shall amend the 1988 Comprehensive Plan and become part of that plan and the plan amendment shall retain the legal status of the 1988 Brevard County Comprehensive Plan established in Chapter 62-504 of the Code of Laws and Ordinances of Brevard County, Florida, as amended.

Section 5. Severability. If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 6. Effective Date. The plan amendment shall become effective once the state land planning agency issues a final order determining the adopted amendment to be in compliance in accordance with Florida Statutes, Section 163.3184(9), or until the Administration Commission issues a final order determining the amendment to be in compliance in accordance with Florida Statutes, Section 163.3184(10). A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten days of enactment.

DONE AND ADOPTED in regular session, this __th day of _____, 2020.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

Scott Ellis, Clerk

By: _____
Bryan Andrew Lober, Chairman

Approved by the Board on _____, 2020.

EXHIBIT A

2020-1.1 COMPREHENSIVE PLAN AMENDMENT

PUBLIC HEARING NOTICE

The Brevard County Local Planning Agency (LPA) will meet on **Monday, August 24, 2020, at 3:00 p.m.**, at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, Building C, Commission Room, to consider the following item:

1. An ordinance amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, entitled "The Comprehensive Plan", setting forth the transmittal of Plan Amendment Cycle 2020-1; amending Section 62-501, entitled Contents of the Plan; specifically amending Section 62-501 as described below; and provisions which require amendments to maintain internal consistency with this amendment; providing legal status; providing a severability clause; and providing an effective date.

a. Plan Amendment 2020-1.1 – a proposal initiated by Health First, Inc. to amend Part XI, the Future Land Use Element, to amend Policy 2.8 D., to increase the allowable building square footage countywide within a PUD (Planned Unit Development), Policy 2.8 E., to permit a countywide increase FAR (Floor Area Ratio) for CC (Community Commercial) designated sites from 1.00 to 1.75 within a PUD zoning classification; and Policy 2.8 Table 2.2, to update the table to the FAR increase from 1.00 to 1.75 within a PUD zoning classification.

2. An ordinance amending Chapter 62, Land Development Regulations, Code of Ordinances of Brevard County, Florida; amending Article VI, Division 1, Section 62-1102, Definitions; specifically adding definitions for Eating and Drinking Establishments and Restaurants; Article VI, Division 5, Subdivision III, Section 62-1906, Alcoholic Beverages for On-Premises Consumption; specifically creating Subsection (1)(c) to establish a baseline of 51 percent of gross sales to be attributed to food sales in order for restaurants and snack bars to seek review under Administrative Approval of the Alcoholic Beverages for On-Premises Consumption Conditional Use Permit; amending Subsection (4) to create the Administrative process by which restaurants and snack bars must follow in order to obtain Administrative Approval of On-Premises Sale or Serving of Alcoholic Beverages; and amending Subsection (6) to address which process should be followed in the event of expansion of alcohol use and whether such use is reviewed under Administrative Approval or the filing of a new application for a conditional use; providing for conflicting provisions; providing for severability; providing for area encompassed; providing an effective date; and providing for inclusion in the Code of Ordinances of Brevard County, Florida.

All persons for or against said items can be heard at said time and place. If a person decides to appeal any decision made by the Board with respect to any matter considered at this meeting or hearing, such a person will need a record of this proceeding and that, for such purposes, such person may need to ensure that a verbatim record of this proceeding is made, at his/her expense, which record includes testimony and evidence upon which any appeal is to be based. In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodations to participate in this proceeding should contact the Planning & Development Department no later than five (5) days prior to the meeting at 321-633-2069 for assistance.

FAR Policy References in the Comprehensive Plans of Brevard County and local municipalities

Entity	Land Use Designation	FAR - maximum	Policy/Reference
Brevard Co	NC	0.75	FLU element Policy 2.6 E
	CC	1.00	FLU element Policy 2.8 E
	Industrial - light	2.48	FLU element Policy 3.7 D
	Industrial - heavy	1.76	FLU element Policy 3.8 C
	PUB	0.25	FLU element Policy 6.2 A
	Viera PUD - retail	3.0 (in town center) 2.0 (outside town center)	Table A. Page 34 FLU element
	Farmton DRI – mixed use areas	1.0 (commercial) 2.48 (light industrial) 2.0 (hotel)	Page 77 FLU element
	Plat Ranch Mixed Use District (PRMXD)	0.75 (neighborhood: non-residential) 0.70 (core neighborhoods and village centers: non-residential) 1.0 (commerce center: non-residential)	Page 105-110 FLU element
	MXD with public water access incentive	20% increase in FAR	FLU element Policy 20.1
	Mixed Use Development (MXD)	0.75	FLU element Policy 22.5
Titusville	Commercial High Intensity	1.0	FLU element Policy 1.21.1 (page 30 EAR 2018)
	Commercial Low Intensity	1.0	
	Downtown Mixed Use	5.0	
	Urban Mixed Use	1.0	
	Shoreline Mixed Use	1.0	
	Industrial	1.0	
	PIP	1.5	
Cocoa Beach	Redevelopment Districts and Downtown Area: non - residential	3.0	FLU element table I-1 (page I-32); Policy IV.2.2 and Policy III.3.2
Cocoa	Commercial	1.0	Figure FLU-1 (page 1-2)
	Mixed Use	1.0	
	Redevelopment Area	2.0	
	Central Business District (outside Cocoa Village Overlay)	2.5	
Palm Bay	Commercial Use	2.5	Land Use element page 7-8
	Bayfront Mixed Use Village - commercial	1.8	
	Bayfront Mixed Use - commercial	1.0	
	Mixed Use	2.0	
	Industrial	5.0	
Melbourne	General Commercial	0.7 (Outside Activity Centers) 2.0 (MAC, CAC) 3.0 (EGAC) 6.0 (DMAC)	Excerpt from Melbourne Comp Plan



LOCAL PLANNING AGENCY/PLANNING AND ZONING BOARD MINUTES

The Brevard County Local Planning Agency/Planning & Zoning Board met in regular session on Monday, August 24, 2020, at 3:00 p.m., in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order by Chair Mark Wadsworth, at 3:00 p.m.

Board members present were: Ron Bartcher; Brian Woltz; Brian Hodggers; Harry Carswell; Mark Wadsworth, Chair; Peter Filiberto, Vice Chair; Bruce Moia; and Joe Buchanan. Bruce Moia's presence was noted at 3:11 p.m.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Abigail Jorandby, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Minutes

2. Large Scale Comprehensive Plan Amendment 2020-1.1 – Health First, Inc.

An ordinance amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, Florida, entitle The Comprehensive Plan, setting forth the transmittal of Large Scale Plan Amendment 2020-1.1; amending Section 62-501, entitled Contents of the Plan; specifically amending Section 62-501 as described below; and provisions which require amendments to maintain internal consistency with this amendment; providing legal status; providing a severability clause; and providing an effective date. A proposal initiated by Health First, Inc. to amend Part XI, the Future Land Use Element, to amend Policy 2.8 D., to increase the allowable building square footage countywide within a PUD (Planned Unit Development), Policy 2.8 E., to permit a countywide increase FAR (Floor Area Ratio) for CC (Community Commercial) designated sites from 1.00 to 1.75 within a PUD zoning classification; and Policy 2.8 Table 2.2, to update the table to the FAR increase from 1.00 to 1.75 within a PUD zoning classification.

Kim Rezanka, Cantwell & Goldman, P.A., 96 Willard Street, Cocoa, stated she is representing Health First, Inc., which is building a medical wellness village in Merritt Island. She stated as Health First was developing the site on State Road 520 and Merritt Avenue, they discovered there are limitations as to what they can build based on the Comprehensive Plan. She said the Floor Area Ratio (FAR) and limitation of square footage has been in the comp plan for a very long time. She stated Health First realized they need more FAR than the comp plan allows. She said other municipalities in Brevard County allow much higher FAR; Titusville has a 5.00 FAR in the downtown mixed use; Cocoa Beach has a FAR of 3.00 in the redevelopment district; Cocoa has a FAR of 2.5 in the central business district, and a 2.00 in the redevelopment area; commercial use in Palm Bay is 2.5; industrial in Palm Bay is 5.00 FAR; and Melbourne has a FAR in the redevelopment district of 2.00, 3.00, and 6.00. She said the request from Health First from 1.00 to 1.75 is not a large increase. She said the County could be losing out on redevelopment projects because the FAR is low, and there are also properties near the Health First site that could benefit from an increased FAR, as well as other areas in the County. She stated there are two changes to the Comprehensive Plan being requested; Policy 2.8 D., that the gross floor area of Community Commercial complexes shall not exceed 400,000 square feet unless in a PUD (Planned Unit Development) zoning classification, and subsection E, where the FAR will be increased from 1.00 up to 1.75, but only in Community Commercial Future Land Use and the PUD zoning classification.

No public comment.

Peter Filiberto asked why make a change to the Comprehensive Plan when the board could make a change to the site plan. Ms. Rezanka replied the comp plan cannot be waived, so it has to be changed in the comp plan and then a waiver in the PUD process will need to be obtained.

Bruce Moia stated he would be in favor of going higher than 1.75 given the proposed location of the wellness village.

Motion by Joe Buchanan, seconded by Peter Filiberto, to approve the proposal by Health First, Inc. to amend Part XI, the Future Land Use Element, to amend Policy 2.8 D., to increase the allowable building square footage countywide within a PUD (Planned Unit Development), Policy 2.8 E., to permit a countywide increase FAR (Floor Area Ratio) for CC (Community Commercial) designated sites from 1.00 to 1.75 within a PUD zoning classification; and Policy 2.8 Table 2.2, to update the table to the FAR increase from 1.00 to 1.75 within a PUD zoning classification. The motion passed unanimously.



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.3.

9/3/2020

Subject:

Public Hearing Re: Amendment to Chapter 62, Article VI, Zoning Regulations to allow Administrative Approval of on-premises consumption of alcoholic beverages for restaurants\snack bars. (Second Reading)

Fiscal Impact:

Reduction of \$5,148 in revenue.

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider code revisions to Chapter 62, Article VI, Zoning Regulations to allow Administrative Approval of on-premises consumption of alcoholic beverages for restaurants\snack bars.

Summary Explanation and Background:

The Board of County Commissioners, in regular session on April 21, 2020, approved legislative intent to grant permission to advertise revisions to Chapter 62, Article VI, Zoning Regulations, and directed staff to revise the Code to allow for on-premises consumption of alcoholic beverages in conjunction with a restaurant\snack bar for administrative approval.

Staff is requesting the Board's consideration of the proposed revisions to Chapter 62, Article VI, Division I, Section 62-1102, "Definitions and rules of construction"; to specifically add definitions for "eating and drinking establishments" and "restaurants\snack bars".

Eating and drinking establishments means a commercial establishment selling food and/or alcoholic beverages for immediate consumption, on the premises, whether or not the food is cooked on the premises and the serving of alcoholic beverages extends beyond the hours that food is prepared, served and sold for immediate consumption.

Restaurants\snack bars means a commercial establishment where food and alcoholic beverages are prepared or served for on-premises consumption. Takeout or meal delivery may occur, but on-site consumption must also be offered and able to occur. Restaurants must be licensed through the State of Florida and must derive at least 51% of gross revenue from sales of food and non-alcoholic beverages. Food shall be continuously ready to be prepared, served, and sold during all operational hours of the business.

In addition, staff is seeking the Board's consideration of the proposed changes to Chapter 62, Article VI, Zoning Regulations, Division 1, Section 62-1906, Alcoholic Beverages for On-Premises Consumption, regarding

granting staff the ability to Administratively Approve (AA) on-premises consumption of alcoholic beverages without the need for a Conditional Use Permit (CUP) in conjunction of a restaurant or snack bar. The AA requires a restaurant to satisfy the same criteria as previously required for the CUP.

On August 12, 2020, the Building and Construction Advisory Committee heard the request and unanimously recommended approval.

On August 24, 2020, the Local Planning Agency heard the request and unanimously recommended approval.

On August 25, 2020, the Board of County Commissioners unanimously approved the first reading of the ordinance.

Clerk to the Board Instructions:

Upon execution, please return a certified copy of the ordinance to Planning and Development.

ORDINANCE NO. 2020-_____

AN ORDINANCE AMENDING CHAPTER 62, "LAND DEVELOPMENT REGULATIONS", CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VI, DIVISION I, SECTION 62-1102, "DEFINITIONS"; SPECIFICALLY ADDING DEFINITIONS FOR "EATING AND DRINKING ESTABLISHMENTS" AND "RESTAURANTS"; ARTICLE VI, DIVISION 5, SUBDIVISION III, SECTION 62-1906, "ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION"; SPECIFICALLY CREATING SUBSECTION (1) (C) TO ESTABLISH A BASELINE OF 51 PERCENT OF GROSS SALES TO BE ATTRIBUTED TO FOOD SALES IN ORDER FOR RESTAURANTS AND SNACK BARS TO SEEK REVIEW UNDER ADMINISTRATIVE APPROVAL OF THE ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION CONDITIONAL USE PERMIT; AMENDING SUBSECTION (4) TO CREATE THE ADMINISTRATIVE PROCESS BY WHICH RESTAURANTS AND SNACK BARS MUST FOLLOW IN ORDER TO OBTAIN ADMINISTRATIVE APPROVAL OF ON-PREMISES SALE OF OR SERVING OF ALCOHOLIC BEVERAGES; AND AMENDING SUBSECTION (6) TO ADDRESS WHICH PROCESS SHOULD BE FOLLOWED IN THE EVENT OF EXPANSION OF ALCOHOL USE AND WHETHER SUCH USE IS REVIEWED UNDER ADMINISTRATIVE APPROVAL OR THE FILING OF A NEW APPLICATION FOR A CONDITIONAL USE; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA.

WHEREAS, the Board of County Commissioners, on April 21, 2020, directed the preparation of an amendment to the Zoning Regulations as it relates to on-premises consumption of alcoholic beverages; and

WHEREAS, the Building Construction Advisory Committee, on August 12, 2020, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Local Planning Agency, on August 24, 2020, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Board of County Commissioners has reviewed the recommendations of the Local Planning Agency and the Building Construction Advisory Committee and has considered the comments of interested citizens in public hearing; and

WHEREAS, the Board of County Commissioners has determined that the proposed amendment serves the public health, safety and welfare of the citizens of Brevard County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Underline indicates additions.
~~Strike-through indicates deletions.~~

Sec. 62-1102. Definitions and rules of construction. Code of Ordinances of Brevard County, Florida, is hereby amended, as follows:

Eating and drinking establishments means a commercial establishment selling food and/or alcoholic beverages for immediate consumption, on the premises, whether or not the food is cooked on the premises and the serving of alcoholic beverages extends beyond the hours that food is prepared, served and sold for immediate consumption.

Restaurants/snack bars means a commercial establishment where food and alcoholic beverages are prepared or served for on-premises consumption. Take out or meal delivery may occur, but on-site consumption must also be offered and able to occur. Restaurants must be licensed through the State of Florida and must derive at least 51% of gross revenue from sales of food and non-alcoholic beverages. Food shall be continuously ready to be prepared, served, and sold during all operational hours of the business.

SECTION 1. Section 62-1906, Alcoholic Beverages for On-Premises Consumption, Code of Ordinances of Brevard County, Florida, is hereby amended, as follows:

Sec. 62-1906. Alcoholic beverages for on-premises consumption.

The sale of or serving of alcoholic beverages on the premises shall only be permitted in accordance with the following conditions:

- (1) a. A bar or cocktail lounge as defined in section 62-1102, may be a conditional use in a general retail zoning classification (BU-1), a retail warehousing and wholesale business zoning classification (BU-2), a general tourist commercial zoning classification (TU-1) and a transient tourist zoning classification (TU-2). Such conditional use shall be considered in the same manner and according to the same standards of review as specified in this division. A bar or cocktail lounge is prohibited within the restricted neighborhood commercial zoning classification (BU-1A).
- b. A bar or cocktail lounge is prohibited within the restricted neighborhood commercial zoning classification, BU-1-A. The on-premises sale or serving of alcoholic beverages in an eating and drinking establishment as defined in Section 62-1102 BU-1-A may be a conditional use in all of the zoning

classifications that allow restaurants and snack bars. ~~a conditional use as accessory to a snack bar and restaurant pursuant to section 62-1842.~~ Such conditional use shall be considered in the same manner and according to the same standards of review as specified in Section 62-1901 and in this division- Section.

- c. The on-premise sale or serving of alcoholic beverages in restaurants as defined in Section 62-1102, is an Administrative Approval. Such Administrative Approval shall be considered in the same manner and according to the same standards of review as specified in this Section.
- (2) The on-premises sale or serving of alcoholic beverages may be a conditional use as an accessory use to civic, philanthropic or fraternal organizations, lodges, fraternities and sororities, or marinas, golf courses, stadiums or other similar recreational uses, in those zoning classifications in which such uses are permitted. Such conditional use shall be considered in the same manner and according to the same standards of review as specified in section 62-1151. The conditional use shall be granted only as an accessory use to the primary use requested. Bottle clubs shall be considered commercial uses subject to the requirements of this section.
- (3) Except for restaurants with more than 50 seats, no alcoholic beverages shall be sold or served for consumption on the premises from any building that is within 300 feet from the lot line of a school or church if the use of the property as a school or church was established prior to the commencement of the sale of such alcoholic beverages. For the purposes of this subsection, a school shall include only grades kindergarten through 12. For the purpose of establishing the distance between the proposed alcoholic beverage use and churches and schools, a certified survey shall be furnished from a registered engineer or surveyor. Such survey shall indicate the distance between the front door of the proposed place of business and all property lines of any church or school within 400 feet. Each survey shall indicate all such distances and routes.
- (4) ~~For restaurants with more than 50 seats located in shopping centers, no conditional use permit is required for on-premise consumption of alcoholic beverages~~ Restaurants may request the on-premises sale of or serving of alcoholic beverages as an Administrative Approval (AA). The Administrative Approval shall be reviewed under the following criteria.
- a. Restaurant\snack bar Administrative Approval (AA) procedure requires the submittal of the following documents:
1. Application for Administrative Approval (AA) with payment of fee identified in the fee schedule.
 2. A notarized letter from restaurant owner attesting that 51 percent of total gross revenue is from the sales of food and non-alcoholic beverages and food will be continuously ready to be prepared, served, and sold during all operational hours of the restaurant.

3. Submittal of a certified survey in compliance with subsection (3) above.
 4. A site plan signed by a registered engineer, land surveyor, or architect; or a scaled dimensional sketch plan showing the building location, any outdoor seating areas, required parking, ingress and egress, and buffering.
 5. Submittal of state required paperwork for alcoholic beverage license together with interior layout, seating count, and any outside seating areas of the licensed premises. A separate fee is required.
- b. Upon approval of the AA, the applicant shall have 365 days to obtain the state issued alcohol permit. Failure to obtain said permit within 365 days, will cause the AA to expire.
 - c. AA shall terminate if any of the following conditions apply: termination of administrative approval by request of the current applicant, closure of the business, or license transfer requested under different management has been received by this office.
 - d. Staff shall have the authority to process replacement AA applications where new ownership/management has occurred.
 - e. The Board shall have the authority to revoke a previously granted AA should the use fail to comply with any of the conditions and restrictions imposed in the AA, or has created an unforeseen negative impact such as emissions, particulates, noise, or other negative impact, or has otherwise caused substantial and adverse effects on the general health, safety or welfare of adjoining and nearby property owners and residents, and the owner has had adequate opportunity to correct the deficiency through code enforcement procedures or other avenues of due process. This provision shall apply retroactively.
- (5) Imposition of additional operational requirements. When deemed appropriate, as based upon circumstances revealed through the general and specific standards of review set forth in this division, the Board shall have the option of imposing operational requirements upon an establishment approved for a conditional use for on-premises consumption of alcoholic beverages. Requirements may include, but are not limited to, the following: maximum number of patrons; hours of operation; limitations upon outdoor seating and service of alcoholic beverages; limitations upon outside music and/or public address systems; additional buffering requirements; additional parking requirements; internal floor plan arrangement; or other specific restrictions based upon special neighborhood considerations. Additional requirements shall not exceed the limits of regulatory authority granted to local governments in the State Beverage Law, F.S. § 562.45.

- (6) Expansion of ~~conditional use permit on-premises consumption~~. The square footage area or the location of the premises designated for a conditional use permit or Administrative Approval for on-premises consumption of alcoholic beverages shall not be expanded beyond that approved by the conditional use permit or Administrative Approval without filing a new application for a conditional use permit or Administrative Approval in accordance with the requirements contained in this section and section 62-1901 and having same approval by the board of county commissioners. "Expansion," as used herein, shall include the enlargement of space for such use and uses incidental thereto as well as the extension of a beer and/or wine use to include intoxicating liquor. The new application must cover both the existing approved designated area as well as the proposed expanded area. All areas approved shall be regulated under the same business license and shall be subject to uniform rules and regulations.

SECTION 2. Conflicting Provisions. In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

SECTION 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 4. Area Encompassed. This ordinance shall take effect only in the unincorporated area of Brevard County, Florida.

SECTION 5. Effective Date. A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This ordinance shall take effect upon adoption and filing as required by law.

SECTION 6. Inclusion in code. It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida; and that the sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

DONE, ORDERED AND ADOPTED, in regular session, this * ____ day of _____ *, 2020.

Attest:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk

Bryan Andrew Lober, Chair
(as approved by the Board on _____,
(2020)

(S E A L)

Reviewed for legal form and content by: _____

ORDINANCE NO. 2020-_____

AN ORDINANCE AMENDING CHAPTER 62, "LAND DEVELOPMENT REGULATIONS", CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VI, DIVISION I, SECTION 62-1102, "DEFINITIONS"; SPECIFICALLY ADDING DEFINITIONS FOR "EATING AND DRINKING ESTABLISHMENTS" AND "RESTAURANTS"; ARTICLE VI, DIVISION 5, SUBDIVISION III, SECTION 62-1906, "ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION"; SPECIFICALLY CREATING SUBSECTION (1) (C) TO ESTABLISH A BASELINE OF 51 PERCENT OF GROSS SALES TO BE ATTRIBUTED TO FOOD SALES IN ORDER FOR RESTAURANTS AND SNACK BARS TO SEEK REVIEW UNDER ADMINISTRATIVE APPROVAL OF THE ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION CONDITIONAL USE PERMIT; AMENDING SUBSECTION (4) TO CREATE THE ADMINISTRATIVE PROCESS BY WHICH RESTAURANTS AND SNACK BARS MUST FOLLOW IN ORDER TO OBTAIN ADMINISTRATIVE APPROVAL OF ON-PREMISES SALE OF OR SERVING OF ALCOHOLIC BEVERAGES; AND AMENDING SUBSECTION (6) TO ADDRESS WHICH PROCESS SHOULD BE FOLLOWED IN THE EVENT OF EXPANSION OF ALCOHOL USE AND WHETHER SUCH USE IS REVIEWED UNDER ADMINISTRATIVE APPROVAL OR THE FILING OF A NEW APPLICATION FOR A CONDITIONAL USE; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA.

WHEREAS, the Board of County Commissioners, on April 21, 2020, directed the preparation of an amendment to the Zoning Regulations as it relates to on-premises consumption of alcoholic beverages; and

WHEREAS, the Building Construction Advisory Committee, on August 12, 2020, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Local Planning Agency, on August 24, 2020, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Board of County Commissioners has reviewed the recommendations of the Local Planning Agency and the Building Construction Advisory Committee and has considered the comments of interested citizens in public hearing; and

WHEREAS, the Board of County Commissioners has determined that the proposed amendment serves the public health, safety and welfare of the citizens of Brevard County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Section 62-1102. Definitions and rules of construction. Code of Ordinances of Brevard County, Florida, is hereby amended, as follows:

Eating and drinking establishments means a commercial establishment selling food and/or alcoholic beverages for immediate consumption, on the premises, whether or not the food is cooked on the premises and the serving of alcoholic beverages extends beyond the hours that food is prepared, served and sold for immediate consumption.

Restaurants/snack bars means a commercial establishment where food and alcoholic beverages are prepared or served for on-premises consumption. Take out or meal delivery may occur, but on-site consumption must also be offered and able to occur. Restaurants must be licensed through the State of Florida and must derive at least 51% of gross revenue from sales of food and non-alcoholic beverages. Food shall be continuously ready to be prepared, served, and sold during all operational hours of the business.

SECTION 1. Section 62-1906, Alcoholic Beverages for On-Premises Consumption, Code of Ordinances of Brevard County, Florida, is hereby amended, as follows:

Section 62-1906. Alcoholic Beverages for On-Premises Consumption.

The sale of or serving of alcoholic beverages on the premises shall only be permitted in accordance with the following conditions:

- (1) a. A bar or cocktail lounge, as defined in Section 62-1102, is a conditional use in a general retail (BU-1) zoning classification; a retail, warehousing, and wholesale commercial (BU-2) zoning classification; a general tourist commercial (TU-1) zoning classification; and a transient tourist commercial (TU-2) zoning classification. Such conditional use shall be considered in the same manner and according to the same standards of review as specified in this division. A bar or cocktail lounge is prohibited within the Restricted Neighborhood Commercial (BU-1-A) zoning classification.
- b. The on-premises sale or serving of alcoholic beverages in an eating and drinking establishment as defined in Section 62-1102, is a conditional use in all of the zoning classifications that allow restaurants and snack bars. Such conditional use shall be considered in the same manner and according to the same standards of review as specified in Section 62-1901 and in this Section.
- c. The on-premises sale or serving of alcoholic beverages in restaurants as defined in Section 62-1102, is an Administrative Approval. Such Administrative Approval shall be considered in the same manner and according to the same standards of review as specified in this Section.

- (2) The on-premises sale or serving of alcoholic beverages may be a conditional use as an accessory use to civic, philanthropic or fraternal organizations, lodges, fraternities and sororities, or marinas, golf courses, stadiums or other similar recreational uses, in those zoning classifications in which such uses are permitted. Such conditional use shall be considered in the same manner and according to the same standards of review as specified in Section 62-1151. The conditional use shall be granted only as an accessory use to the primary use requested. Bottle clubs shall be considered commercial uses subject to the requirements of this section.
- (3) Except for restaurants with more than 50 seats, no alcoholic beverages shall be sold or served for consumption on the premises from any building that is within 300 feet from the lot line of a school or church if the use of the property as a school or church was established prior to the commencement of the sale of such alcoholic beverages. For the purposes of this subsection, a school shall include only grades kindergarten through 12. For the purpose of establishing the distance between the proposed alcoholic beverage use and churches and schools, a certified survey shall be furnished from a registered engineer or surveyor. Such survey shall indicate the distance between the front door of the proposed place of business and all property lines of any church or school within 400 feet. Each survey shall indicate all such distances and routes.
- (4) Restaurants may request the on-premises sale of or serving of alcoholic beverages as an Administrative Approval (AA). The Administrative Approval shall be reviewed under the following criteria.
- a. Restaurant/snack bar Administrative Approval (AA) procedure requires the submittal of the following documents:
1. Application for Administrative Approval (AA) with payment of fee identified in the fee schedule.
 2. A notarized letter from restaurant owner attesting that 51 percent of total gross revenue is from the sales of food and non-alcoholic beverages and food will be continuously ready to be prepared, served, and sold during all operational hours of the restaurant.
 3. Submittal of a certified survey in compliance with subsection (3) above.
 4. A site plan signed by a registered engineer, land surveyor, or architect; or a scaled dimensional sketch plan showing the building location, any outdoor seating areas, required parking, ingress and egress, and buffering.

5. Submittal of state required paperwork for alcoholic beverage license together with interior layout, seating count, and any outside seating areas of the licensed premises. A separate fee is required.
- b. Upon approval of the AA, the applicant shall have 365 days to obtain the state issued alcohol permit. Failure to obtain said permit within 365 days will cause the AA to expire.
- c. AA shall terminate if any of the following conditions apply: termination of administrative approval by request of the current applicant, closure of the business, or license transfer requested under different management has been received by Planning and Development.
- d. Staff shall have the authority to process replacement AA applications where new ownership/management has occurred.
- e. The Board shall have the authority to revoke a previously granted AA should the use fail to comply with any of the conditions and restrictions imposed in the AA, or has created an unforeseen negative impact such as emissions, particulates, noise, or other negative impact, or has otherwise caused substantial and adverse effects on the general health, safety, or welfare of adjoining and nearby property owners and residents, and the owner has had adequate opportunity to correct the deficiency through code enforcement procedures or other avenues of due process. This provision shall apply retroactively.
- (5) Imposition of additional operational requirements. When deemed appropriate, as based upon circumstances revealed through the general and specific standards of review set forth in this division, the Board shall have the option of imposing operational requirements upon an establishment approved for a conditional use for on-premises consumption of alcoholic beverages. Requirements may include, but are not limited to, the following: maximum number of patrons; hours of operation; limitations upon outdoor seating and service of alcoholic beverages; limitations upon outside music and/or public address systems; additional buffering requirements; additional parking requirements; internal floor plan arrangement; or other specific restrictions based upon special neighborhood considerations. Additional requirements shall not exceed the limits of regulatory authority granted to local governments in the State Beverage Law, F.S. § 562.45.
- (6) Expansion of on-premises consumption. The square footage area or the location of the premises designated for a conditional use permit or Administrative Approval for on-premises consumption of alcoholic beverages shall not be expanded beyond that approved by the conditional use permit or Administrative Approval without filing a new application for a

conditional use permit or Administrative Approval in accordance with the requirements contained in this section and section 62-1901 and having same approval by the board of county commissioners. "Expansion", as used herein, shall include the enlargement of space for such use and uses incidental thereto as well as the extension of a beer and/or wine use to include intoxicating liquor. The new application must cover both the existing approved designated area as well as the proposed expanded area. All areas approved shall be regulated under the same business license and shall be subject to uniform rules and regulations.

SECTION 2. Conflicting Provisions. In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

SECTION 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 4. Area Encompassed. This ordinance shall take effect only in the unincorporated area of Brevard County, Florida.

SECTION 5. Effective Date. A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This ordinance shall take effect upon adoption and filing as required by law.

SECTION 6. Inclusion in code. It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida; and that the sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

DONE, ORDERED AND ADOPTED, in regular session, this ____ day of _____, 2020.

Attest:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk

Bryan Andrew Lober, Chair
(as approved by the Board on _____, 2020)

(S E A L)

Reviewed for legal form and content by: _____



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Addon

J.1.

4/21/2020

Subject:

Legislative Intent and Permission to Advertise RE: Code Revisions to On-premise Consumption for Alcoholic Beverages

Fiscal Impact:

Option 1 - Reduction of \$5,148 in revenue / Option 2 - Reduction of \$2,288 in revenue

Dept/Office:

Planning and Development

Requested Action:

Staff requests that the Board grant legislative intent and permission to advertise amendments to Article VI, Zoning Regulations, relating to the on-premise consumption of alcoholic beverages for restaurants and snack bars.

Summary Explanation and Background:

During the February 6, 2020 Board of County Commissioners (BOCC) meeting, staff was directed to develop options that streamline the approval process for On-Site Consumption of alcoholic beverages (beer and wine only) in conjunction with a restaurant. Brevard County Zoning Regulations has provisions for either a Conditional Use Permit (CUP) or an administrative approval of State issued Alcohol Beverage Licenses to allow the consumption of alcoholic beverages for restaurants.

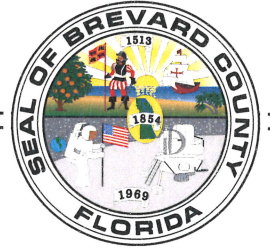
The attached report identifies County requirements, State requirements & license types, and potential improvements for the BOCC's consideration relating to the expediting of the approval process. Amending the code to allow administrative approval of on-site consumption of alcoholic beverages would result: in reducing the approval process by 60 days for applicants, saving applicants \$572.00, reducing staff time by approximately 75%, and reducing the number of CUP public hearings between 66% and 30%.

Option 1. Amend the Code to allow staff to provide an Administrative Approval process for on-site consumption of alcohol beverages with restaurants, without the need for a CUP, regardless of number of seats and the relation to a shopping center, and stipulate conditional use for cocktail lounge/bars as defined in the Code.

Option 2. Amend the Code to allow staff to provide and Administrative process for on-site consumption of beer and wine only, with restaurants, without the need for a CUP, regardless of relation to a shopping center, and stipulate conditional use for cocktail lounge/bars as defined in the Code.

Option 3. Provide alternative direction.

Clerk to the Board Instructions:



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

April 22, 2020

MEMORANDUM

TO: Tad Calkins, Planning and Development Director

RE: Item J.1, Legislative Intent and Permission to Advertise for Code Revisions to On-Premise Consumption for Alcoholic Beverages

The Board of County Commissioners, in regular session on April 21, 2020, granted legislative intent and permission to advertise amendments to Article VI, Zoning Regulations, relating to the on-premise consumption of alcoholic beverages for restaurants and snack bars.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Kimberly Powell
Kimberly Powell, Deputy Clerk

/cmw

cc: Finance
Budget

LOCAL PLANNING AGENCY/PLANNING AND ZONING BOARD MINUTES

The Brevard County Local Planning Agency/Planning & Zoning Board met in regular session on Monday, August 24, 2020, at 3:00 p.m., in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order by Chair Mark Wadsworth, at 3:00 p.m.

Board members present were: Ron Bartcher; Brian Woltz; Brian Rodgers; Harry Carswell; Mark Wadsworth, Chair; Peter Filiberto, Vice Chair; Bruce Moia; and Joe Buchanan. Bruce Moia's presence was noted at 3:11 p.m.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Abigail Jorandby, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Minutes

An ordinance allowing Administrative Approval of on-premises consumption of alcoholic beverages for restaurants / snack bars.

Jeffrey Ball stated the Board of County Commissioners directed staff to streamline the process for on-premises consumption of alcoholic beverages. He said there is an anticipated time savings of two months, whereas a CUP would take about three months. Staff would review an application for on-premises consumption of alcohol within 30 days, and will have a cost savings to the applicants as well; a CUP is \$849, and the Administrative Approval process would be \$277. He stated there are two formative changes being made; one change is to Section 62-1102, which adds definitions for restaurants and an eating and drinking establishment, tying the restaurant part to 51% of the gross sales attributed to food sales and non-alcoholic beverage sales. The other substantial change is the process where staff would review the code changes administratively, so the process would change from bringing the applications to the board, to an administrative process, but all of the requirements that would be required for a CUP would be reviewed by staff.

No public comment.

Joe Buchanan stated it appears it will simplify the process.

Bruce Moia stated the BCAC heard the ordinance and all agreed it is lessening the burden on the applicant and making it less expensive for them to ask for things that are almost automatic when they come to the board.

Motion by Joe Buchanan, seconded by Bruce Moia, to approve an ordinance allowing Administrative Approval of on-premises consumption of alcoholic beverages for restaurants / snack bars. The motion passed unanimously.

Adjournment:

Upon consensus of the board, the meeting adjourned at 3:27 p.m.



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Add-On

J.1.

9/3/2020

Subject:

Interlocal Agreement with the Barefoot Bay Recreation District and the Brevard County Board of County Commissioners regarding a cap on the levy and collection of special assessments within the District and companion Resolution rescinding Resolution 20-001 which called for a Referendum Election on November 3, 2020 on the question as to whether to revoke the Barefoot Bay Recreation District's authority to collect its special assessments in the manner provided for ad valorem taxes.

Fiscal Impact:

None to Brevard County.

Dept/Office:

Brevard County Commission District 3.

Requested Action:

1. Approve Interlocal Agreement between the Barefoot Bay Recreation District and the Brevard County Board of County Commissioners regarding a cap on the levy and collection of special assessments within the District.
2. Approve Resolution 20- ____, rescinding Resolution 20-001 which called for a Referendum Election on November 3, 2020 on the question as to whether to revoke the Barefoot Bay Recreation District's authority to collect its special assessments in the manner provided for ad valorem taxes.

Summary Explanation and Background:

The Barefoot Bay Recreation District is an independent mobile home park recreation district established under Chapter 418, Florida Statutes which levies special assessments. The Barefoot Bay Recreation District currently collects the special assessments in the manner provided for ad valorem taxes under Chapter 197, Florida Statutes.

In May of 2020, the Brevard County Board of County Commissioners adopted Resolution 20-001 placing on the November 3, 2020 ballot the question of whether to revoke the Barefoot Bay Recreation District's authority to collect the Barefoot Bay Recreation District's special assessment in the manner provided for ad valorem taxes under Chapter 197, Florida Statutes.

The Barefoot Bay Recreation District via the proposed Interlocal Agreement has agreed to cap the increase in special assessments to CPI in exchange for the ability to continue to collect the special assessments in the manner provided for ad valorem taxes under Chapter 197, Florida Statutes. Upon approval of the Interlocal Agreement by the Board, the Board will rescind Resolution 20-001 requesting that the Referendum Election be

placed on the ballot for the November 3, 2020 election. Accordingly, the requested action is twofold:

- 1) Adopt the proposed Interlocal Agreement between Barefoot Bay Recreation District and the Brevard County Board of County Commissioners
- 2) Approve Resolution 20-____, rescinding Resolution 20-001 that requested a Referendum Election on the November 3, 2020 ballot regarding the Barefoot Bay Recreation District's method of collecting the special assessment.

Clerk to the Board Instructions:

INTERLOCAL AGREEMENT
BETWEEN BAREFOOT BAY RECREATION DISTRICT
AND THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS
REGARDING LEVY AND COLLECTION OF BAREFOOT BAY RECREATION
DISTRICT'S NON-AD VALOREM ASSESSMENT RATE

THIS INTERLOCAL AGREEMENT is made and entered into by and between the BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "County" and BAREFOOT BAY RECREATION DISTRICT, an independent mobile home park recreation district established under Chapter 418, Florida Statutes, sections 418.30 through 418.309, and specifically pursuant to Ordinance Number 84-05 of the Brevard County Board of County Commissioners (as subsequently amended), hereinafter referred to as "BBRD."

RECITALS:

WHEREAS, BBRD, an independent mobile home park recreation district established under Chapter 418, Fla. Stat. Secs. 418.30 through 418.309, as may be amended, and specifically pursuant to Ordinance Number 84-05 of the Brevard County Board of County Commissioners (as subsequently amended by Ordinance 96-53, Ordinance 08-03, Ordinance 12-01, and Ordinance 18-22 adopted by the Board of County Commissioners of Brevard County); and

WHEREAS, Fla. Stat. Sec. 418.304 (4)(a) and Article VI, Section 1 of Ordinance 84-05 requires the Board of Trustees of BBRD to prepare and adopt an itemized budget on or before July 1 or each year, which budget shall show the amount of money necessary for the operation of the next ensuing fiscal year; and

WHEREAS, Fla. Stat. Sec. 418.304 (4)(b), and Article VI, Section 2 of Ordinance 84-05, requires the Board of Trustees of BBRD to fix and adopt the amount of an assessment for the next ensuing year on or before July 30 or each year after a public hearing to fund the ensuing year's adopted budget; and

WHEREAS, pursuant to Fla. Stat. Sec. 418.304 (4)(b) and Article VI, Section 2 of Ordinance 84-05, the special assessments levied by BBRD may be collected in the manner provided for ad valorem taxes under Fla. Stat. Ch. 197, subject to the conditions of Fla. Stat. Sec. 197.363; and

WHEREAS, pursuant to Fla. Stat. Sec. 418.304 (4)(e)1 and Article VI, Section 3 of Ordinance 84-05, the assessment levied by BBRD, shall be a valid lien upon each improved residential lot within the District until it has been paid in full; shall be considered a part of the county tax; and is subject to the same penalties, charges, fees, and remedies provided for the enforcement and collection of county taxes; and

WHEREAS, Brevard County Board of County Commissioners desires that BBRD voluntarily limit any increase in the amount of annual assessment levied in any given year pursuant to Fla. Stat. Sec. 418.304 (4)(b) such that the rate shall not exceed the percentage change in the Consumer Price Index (as set by Fla. Stat. Sec. 193.155(1)(b) or as such section may be amended)

over the assessment levied by BBRD in the immediately preceding year; and

WHEREAS, BBRD voluntarily agrees that any increase in the amount of the annual assessment levied in any given year pursuant to Fla. Stat. Sec. 418.304 (4)(b) shall not exceed the percentage change in the Consumer Price Index (as set by Fla. Stat. Sec. 193.155(1)(b) or as such section may be amended) over the assessment levied by BBRD in the immediately preceding year; and

WHEREAS, given BBRD's willingness to voluntarily limit its assessment rate as provided herein, the Brevard County Board of County Commissioners agrees to allow BBRD to continue to collect its assessment in the manner provided for ad valorem taxes under Fla. Stat. Ch. 197, subject to the conditions of Fla. Stat. Sec. 197.363 and the terms and conditions of this Interlocal Agreement as set forth herein below.

NOW THEREFORE, the County and BBRD the covenant and agree that they have full power and authority to enter into this Agreement and bind their respective governmental entities as follows:

SECTION 1. RECITALS.

The above recitals are true and correct and by this reference are hereby incorporated into and made an integral part of this Agreement.

SECTION 2. STATUTORY AUTHORITY.

This Agreement shall be considered a Interlocal Agreement pursuant to the authority of Florida Statutes, Chapter 163, Part 1, specifically including, but not limited to, Fla. Stat. Sec. 163.01(5).

SECTION 3. ASSESSMENT RATE LIMITATION.

(a) Barefoot Bay Recreation District hereby voluntarily agrees that any increase in the amount of the annual assessment levied in any given year pursuant to Fla. Stat. Sec. 418.304 (4)(b) shall not exceed the percentage change in the Consumer Price Index (as set by Fla. Stat. Sec. 193.155(1)(b) or as such section may be amended) over the annual assessment levied by BBRD in the immediately preceding year.

(b) Notwithstanding the above limitation in subsection (a), the Brevard County Board of County Commissioners may approve BBRD's levy of an annual assessment above the percentage change in the Consumer Price Index over the annual assessment levied by BBRD in the immediately preceding year if a supermajority of the Brevard County Board of County Commissioners finds that such an excess is necessary because of an emergency or critical need. An unfunded mandate by any Federal, State, or Local authority may constitute such an emergency or critical need in the sole determination of the Brevard County Board of County Commissioners. The Brevard County Board of County Commissioners' finding of an emergency or critical need shall set forth the ultimate facts upon which it is based and shall be valid for a single budget year.

BBRD agrees to seek approval from the Brevard County Board of County Commissioners prior to the final levy of an annual assessment pursuant to Fla. Stat. Sec. 418.304 (4)(b) which is above the percentage change in the Consumer Price Index over the annual assessment levied by BBRD in the immediately preceding year; however, the parties agree that such approval is not required where an annual assessment increase does not exceed the percentage change in the Consumer Price Index over the assessment levied by BBRD in the immediately preceding year.

SECTION 4. ALLOWANCE OF COLLECTION METHOD VIA COUNTY TAX ROLL.

(a) So long as BBRD voluntarily continues to limit any increase in the amount of the annual assessment levied in any given year pursuant to Fla. Stat. Sec. 418.304 (4)(b) such that said increase shall not exceed the percentage change in the Consumer Price Index (as set by Fla. Stat. Sec. 193.155(1)(b) or as such section may be amended) over the annual assessment levied by BBRD in the immediately preceding year, the County shall allow BBRD to continue to collect its annual assessment in the manner provided for ad valorem taxes under Fla. Stat. Ch. 197, subject to the conditions of Fla. Stat. Sec. 197.363.

(b) In addition to subsection (a) above, and as consideration for the entry of this Agreement, the County agrees to take action to rescind Resolution 20-001 calling for a referendum election on November 3, 2020 on the question of whether to revoke BBRD's authority to collect its assessment in the manner provided for ad valorem taxes. If the rescission of Resolution 20-001 cannot be done with enough time to remove the referendum question from the ballot, the Supervisor of Elections shall be instructed not to count the ballot response and BBRD agrees to pay any costs associated with Notice to voters regarding rescission of the referendum question from the ballot.

(c) If BBRD, in any year subsequent to the entry of this Agreement, fixes or adopts an annual assessment rate that exceeds the percentage change in the Consumer Price Index (as set by Fla. Stat. Sec. 193.155(1)(b) or as such section may be amended) over the annual assessment levied by BBRD in the immediately preceding year, unless an excess rate is approved by the Brevard County Board of County Commissioners due to an emergency or critical need, BBRD shall pay all unauthorized collected funds that exceed the percentage change in the Consumer Price Index (as set by Fla. Stat. Sec. 193.155 (1)(b) or as such section may be amended) over the annual assessment levied by BBRD in the immediately preceding year (hereinafter "unauthorized funds") to the County and the County shall refund the unauthorized funds to the taxpayers of the Barefoot Bay Recreation District who paid the assessment.

SECTION 5. TERM AND EFFECTIVE DATE.

Pursuant to Chapter 163, Florida Statutes, the effective date of this Agreement shall be the date on which it is recorded with the Clerk of the Circuit Court in and for Brevard County. This Agreement shall apply to the assessment rate set for the 2021-2022 fiscal year on or before July 30, 2021 and for every year thereafter. The initial term of this Agreement shall be for five (5) years. Thereafter, this Agreement shall automatically renew for an unlimited number of five (5) year periods unless and until otherwise amended in writing by both parties.

SECTION 6. NOTICES.

Any Notices required under this Agreement, and as not otherwise directed herein, shall be in writing and delivered to the parties by United States mail, hand delivery, express mail or electronic mail (email) as follows:

(a) BBRD Representative:

Community Manager, John Coffey
625 Barefoot Blvd.
Barefoot Bay, FL 32976
jcoffey@bbrd.org
(772)664-3141

(b) County Representative:

County Manager, Frank Abbate
Brevard County Board of County Commissioners
2725 Judge Fran Jamieson Way Bldg C
Viera, FL 32940
Frank.Abbate@brevardfl.gov
(321) 633-2000

SECTION 7. DEFAULT.

Either Party to this Agreement, in the event of any act of default by the other, shall have all remedies available to it under the laws of the State of Florida. The County shall also be authorized to proceed in accordance with Section 4 (c) in the event of default by BBRD.

SECTION 8. SEVERABILITY.

If any part of this Agreement is found to be invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can still be accomplished.

SECTION 9. RECORDING.

Upon execution of this Agreement, the County shall record a fully executed original of this Agreement in the Public Records of Brevard County, Florida, and shall return a recorded original of the Agreement to the BBRD representative listed in Section 6. BBRD shall pay the costs of said recording.

SECTION 10. ATTORNEYS FEES.

In the event of any legal action to enforce the terms of this Agreement, each party shall

bear its own attorney's fees and costs.

SECTION 11. VENUE AND NON-JURY TRIAL.

Any legal action to enforce, interpret, or construe the terms of this Agreement, shall be in a court of competent jurisdiction in and for Brevard County, Florida and any trial shall be a non-jury trial.

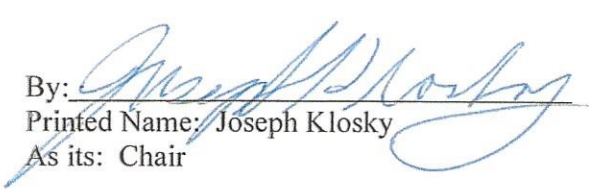
SECTION 12. COMPLIANCE WITH STATUTES.

It shall be each party's responsibility to be aware of and comply with all federal, state, and local laws. BBRD specifically waives any right to challenge the validity of this Agreement.

SECTION 13. ENTIRETY.


This Agreement represents the understanding and agreement of the parties in its entirety. There shall be no amendments to this Agreement unless such amendments are in writing and signed by both parties.

BAREFOOT BAY RECREATION DISTRICT

By: 
Printed Name: Joseph Klosky
As its: Chair

Approved by the BBRD Board of Trustees:
August 25, 2020

Approved as to legal form and content:


Clifford R. Repperger, Jr.
General Counsel

BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____
Printed Name: Bryan Andrew Lober
As its: Chair

As approved by the Board on:

ATTEST:

Scott Ellis, Clerk to the Board

Approved as to legal form and content:

Attorney for the County

RESOLUTION 2020-_____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA RESCINDING RESOLUTION 2020-001, WHICH CALLED FOR A REFERENDUM ELECTION ON NOVEMBER 3, 2020 ON THE QUESTION OF WHETHER THE CHARTER OF THE BAREFOOT BAY RECREATION DISTRICT SHOULD BE AMENDED TO REVOKE THE AUTHORITY OF THE BAREFOOT BAY RECREATION DISTRICT TO COLLECT ITS ASSESSMENTS IN THE MANNER PROVIDED FOR AD VALOREM TAXES UNDER CHAPTER 197, FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA:

SECTION 1. AUTHORITY FOR RESOLUTION. This resolution is adopted pursuant to the authority of the Board of County Commissioners of Brevard County, Florida pursuant to Section 418.30, Florida Statutes regarding amendment of the charter of a Mobile Home Recreation District, and any other applicable provisions of law.

SECTION 2. FINDINGS. It is hereby found and determined as follows:

A. On May 19, 2020, the Board of County Commissioners of Brevard County, Florida passed Resolution 2020-001 calling for a referendum election on November 3, 2020 on the question of whether the Charter of the Barefoot Bay Recreation District should be amended to revoke the authority of the Barefoot Bay Recreation District to collect its assessments in the manner provided for ad valorem taxes under Chapter 197, Florida Statutes;

B. The Board of County Commissioners of Brevard County and the Board of Trustees of Barefoot Bay Recreation District have entered into an interlocal agreement which limits the increase of any annual assessment levied by Barefoot Bay Recreation District to no greater than the applicable CPI percentage;

C. The interlocal agreement between the Board of County Commissioners of Brevard County and the Board of Trustees of Barefoot Bay Recreation District further provides that as consideration for the entry of the interlocal agreement the Board of County Commissioners of Brevard County agrees to remove from the November 3, 2020 ballot the question of whether the Charter of the Barefoot Bay Recreation District should be amended;

D. The Board of County Commissioners of Brevard County desires that the referendum election scheduled for November 3, 2020 be cancelled and that the referendum question proposed by Resolution 2020-001 be removed from the ballot by the Supervisor of Elections. If the Supervisor of Elections cannot remove the referendum election from the ballot then Board of County Commissioners of Brevard County instructs the Supervisor of Elections to not tabulate the referendum question election results and provide notice in advance of the election to the registered electors that the referendum question will not be tabulated.

SECTION 3. RESCISSION OF RESOLUTION CALLING FOR REFERENDUM ELECTION. Resolution 2020-001 calling and ordering a referendum election to be held concurrently with the general election to be held on November 3, 2020 regarding an amendment to the Charter for Barefoot Bay Recreation District is hereby rescinded.

SECTION 4. CANCELLATION OF REFERENDUM ELECTION. The referendum election called and ordered to be held on November 3, 2020 by way of Resolution 2020-001 is hereby cancelled.

SECTION 5. REMOVAL OF LANGUAGE FROM OFFICIAL BALLOT. The following language approved in Section 6 of Resolution 2020-001 is hereby ordered removed from the official ballot for November 3, 2020 by the Supervisor of Elections, if possible:

BALLOT

~~Barefoot Bay Recreation District, Brevard County, Florida~~

~~NO. 1~~

~~BAREFOOT BAY RECREATION DISTRICT CHARTER AMENDMENT~~

~~ARTICLE VI~~

~~REVOCATION OF TAXING AUTHORITY~~

~~Shall the Charter be amended to revoke the authority of the Barefoot Bay Recreation District to collect its assessments in the manner provided for ad valorem taxes?~~

~~YES (for approval)~~

~~NO (for rejection)~~

SECTION 6. NO TABULATION OF REFERENDUM ELECTION VOTE IF INCLUDED ON BALLOT AND NOTICE TO REGISTERED ELECTORS. If the Supervisor of Elections cannot remove the referendum language provided for in Section 6 of Resolution 2020-001 from the official election ballot for November 3, 2020, the Supervisor of Elections is instructed not to tabulate the referendum question election results and to provide notice in advance of the election to registered electors that the referendum question will not be tabulated. The Supervisor of Elections is authorized to take all actions deemed necessary by the Supervisor of Elections to ensure that the referendum election is cancelled and/or the results are not tabulated.

SECTION 7. PAYMENT COSTS ASSOCIATED WITH CANCELLATION OF REFERENDUM ELECTION. The Barefoot Bay Recreation District shall pay all costs associated with cancellation of the referendum election, including payment of all costs of any notices sent to the registered electors as deemed necessary by the Supervisor of Elections to effectuate the cancellation of the referendum election.

SECTION 8. SEVERABILITY. In the event that any word, phrase, clause, sentence or paragraph hereof shall be held invalid by any court of competent jurisdiction, such holding shall not affect any other word, clause, sentence or paragraph hereof.

SECTION 9. REPEALING CLAUSE. All resolutions or other actions of Brevard County which are in conflict herewith, including Resolution 2020-001, are hereby repealed to the extent of such conflict or inconsistency.

SECTION 10. EFFECTIVE DATE. This resolution shall take effect immediately upon adoption.

DONE, AND ADOPTED in Regular Session of the Board of County Commissioners of Brevard County, Florida this _____ day of _____, 2020.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

CLERK

By: _____
BRYAN ANDREW LOBER, CHAIR