



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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STAFF COMMENTS

22PZ00002

Clair John Jaussi & Janet Hamilton Jaussi Revocable Trust Conditional Use Permit (CUP) for six goats in SEU zoning classification

Tax Account Number: 2416958 (7.04-acre portion on west side of N. Tropical Trail)
Parcel I.D.: 24-36-22-00-6 (7.04-acre portion on west side of N. Tropical Trail)
Location: West side of N. Tropical Trail, 250 feet northwest of Mango Hill Drive
(District 2)
Acreage: 7.04 acres portion of a 10.05-acre lot

Planning and Zoning Board: 03/14/2022
Board of County Commissioners: 04/07/2022

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	SEU	SEU with CUP for six goats
Potential*	One single-family home	One single-family home w/ six goats
Can be Considered under the Future Land Use Map	YES Residential 1	YES Residential 1

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

Background and Purpose of Request

The property owner is seeking a Conditional Use Permit (CUP) to allow up to six goats in the SEU zoning classification as per Sec. 62-1935. The CUP is for the western 7.04-acre portion of a 10.05-acre parcel that is split by N. Tropical Trail. The lot currently contains a single-family home and three accessory buildings. The applicant intends to locate the goats on a portion of his property enclosed with a 5-ft. tall fence as depicted on the boundary survey.

The remaining 3.01 acres of this parcel is located on the east side of N. Tropical Trail. This portion of the parcel is currently vacant and is zoned Agricultural Residential (AU). It is not included in this request.

Sec. 62-1935 allows an application for a CUP for horses, mules, goats and barns in the SEU classification if the following conditions are met: a minimum of five acres; one horse, mule, or goat permitted for each 20,000 square feet of land area; maximum of six such animals. This application is

only for goats. Another CUP application would be necessary if the landowner were to request horses, mules, or a barn in the future.

The original zoning of this property was EU (Estate Use Residential). On May 3, 2018, it was rezoned under zoning action **18PZ00007** from EU to SEU with the intention of creating a subdivision with five lots, and in order to be consistent with the RES 1 Future Land Use designation.

Land Use

The SEU zoning classification can be considered consistent with the Residential 1 (RES 1) Future Land Use designation.

Applicable Land Use Policies

Policy 1.9 –The Residential 1 Future land use designation. The Residential 1 land use designation permits low density residential development with a maximum density of up to one (1) dwelling unit per acre, except as otherwise may be provided for within the Future Land Use Element.

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

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

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

Criteria:

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

The proposed CUP for goats is not anticipated to 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 the surrounding area.

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

Only a certified MAI appraisal can determine if material reduction has or will occur due to the proposed use.

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

- 1. historical land use patterns;

The historic land use pattern on the western side of N. Tropical Trail has been the development of single-family homes on lots of an acre or greater in size. The lots to the north and south of the subject property. The Future Land Use designation on the eastern side of N. Tropical Trail is primarily RES 15, which allows for residential development that is more dense.

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

It appears no changes to the immediate area have occurred within the last three years. This parcel is adjacent to developed parcels lying to the north and south of this site that were developed more than three years ago.

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

It appears there has been no development approved within the past three years that has not yet been constructed.

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

The proposed use would not result in a material violation of relevant policies in any elements of the Comprehensive Plan.

The subject property was part of the **2007 Southern N. Tropical Trail Small Area Study (SAS)** boundary. Among the recommendations of the SAS are to encourage maintenance of the current semi-rural atmosphere of the study area.

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

The developed character of the surrounding area differs depending on which side of N. Tropical Trail the lots are located. The western side contains several riverfront lots developed with single-family homes. Besides these, most of the other lots on the western side of N. Tropical Trail are approximately one acre in size and are also developed with large single-family homes. SEU and EU are the most common zoning classifications. The EU zoning in this area is nonconforming to the FLU designation of RES 1. Approximately 500 feet to the north of the subject property is an approved residential subdivision zoned SEU that has been developed. There is also an approved subdivision located approximately 250 feet south of the subject property with EU zoning that has not been developed.

The lot directly east across N. Tropical Trail of the subject property is zoned AU and is part of the overall parcel owned by the applicant.

East of this AU lot, the other zoning classifications vary widely and include BU-1-A, BU-1, RU-1-7, RU-2-30, and IN(L). Lot sizes are smaller here, with many under 0.25 acres in size. The neighborhood to the east of Hill Avenue has a mix of housing types, including site-built single-family homes, duplexes, and multifamily structures. There is a convenience store where N. Tropical Trail meets Hill Avenue.

The area does not appear to have other CUP's for farm animals. Across N. Tropical Trail on the east side there are several parcels with the AU zoning classification including a portion of the subject property (which is not included in this application. None of these properties are currently being used for agricultural purposes.

Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	Single-family residence	EU	RES 1
South	Single-family residence and nursery	EU	RES 1
East	Undeveloped land	AU	RES 15
West	River	N/A	N/A

The properties to the north and south of the subject property both contain single-family homes with EU zoning, which are nonconforming lots that are not consistent with their FLU designations of RES 1. The Brevard County Property Appraiser lists the property to the south as having a nursery.

The EU zoning classification is an estate single family residential zoning classification. The minimum lot size is 15,000 square feet with a minimum lot width and depth of 100 feet. The minimum living area is 2,000 square feet.

The AU zoning classification permits single-family residences and agricultural uses on 2.5 acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing of animals, fowl and beekeeping.

There has been one zoning actions within a half-mile radius around this site within the last 3 years. The zoning changes identify:

21Z00007 – 05/03/2021; A rezoning from RU-2-30 to RU-2-15 was approved on 1.78 acres located approximately 900 feet east of the subject property on the northern side of Houston Lane.

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 62-1935** which governs **Section 62-1935** which governs the keeping of horses, mules, goats, and barns.

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: This is a request for 6 goats to graze on 6 acres of property. (1) No additional persons will be using the property. (2) The only emissions will be scattered goat dung. These are small less than ½ inch round balls that become fertilizer. The noise will be limited to goat "bleating" which only happens when someone is trying to feed them. (3) No increase in traffic because the goats will only be used for grazing.

Staff analysis: The CUP will not permit the goats to be used for any commercial purposes. The CUP is not anticipated to result in excessive noise, odor, or traffic.

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: Yes. Palm farm on both sides. These properties on both the north and south sides have palm groves which are used to obtain an agricultural tax exemption for orchard use. The property on the east [of N. Tropical Trail] is thick jungle. West is the Indian River.

Staff analysis: The proposed area where the goats will be held is a large grazing area. If there is noise and odor, it may be close to neighboring properties.

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. All grazing of 6 goats will have no impact on adjacent properties that are presently being used as orchard properties.

Staff analysis: Evidence from an 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: All fences are inside property lines and off roads on perimeter. No additional traffic will be caused.

Staff analysis: This property will remain residential and therefore is not anticipated to cause an increase of any traffic.

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 (goats don't stink). Goats don't make noise unless someone tries to feed them, then they will beg.

Staff analysis: This project shall comply with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272.

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

Applicant's Response: No noise is expected or anticipated.

Staff analysis: This project shall comply 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)(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: No change in solid waste disposal.

Staff analysis: The use is not anticipated to cause the adopted level of service for solid waste disposal to be exceeded.

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: The only water use will be sufficient drinking water for the goats provided by an existing well located on the property.

Staff analysis: The subject property is not served by any water or sewer lines.

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: Fencing will be provided to ensure the goats are contained. This will be a 5-ft. tall "tensile electric" fence (see attached drawings). This type of fence is very secure and less noticeable than standard fencing. It is powered by a standard electric fence charger with battery backup. It has a tensile strength of 920 lbs. $\frac{3}{32}$ – 7x7 hot dip galvanized steel cable

Staff analysis: Must meet the fence code of 62-2109 and any requirements in the building code for materials. The proposed fencing appears to meet all code requirements.

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: No new signs or exterior lighting.

Staff analysis: No signage or exterior lighting has been identified.

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: Goats graze 24/7, plants grow 24/7.

Staff analysis: The use will need to comply with noise level performance standards.

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: All buildings are pre-existing and maximum fence height will be 5 feet.

Staff analysis: No new structures are proposed. The proposed fence meets height limitations.

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 parking needed. Any "catch pens" are already constructed or will be built within the enclosure. None will exceed 5 feet in height.

Staff analysis: New parking will not be required.

Preliminary Concurrency

The closest concurrency management segment to the subject property is N. Tropical Trail, between Lucas and Pioneer, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of C, and currently operates at 21.86% of capacity daily. The CUP is not anticipated to increase the MAV utilization. The corridor is anticipated to operate at 21.86% of capacity daily (LOS D). The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as this site is not proposing additional residential density.

The subject property is not connected to potable water or sewer.

Environmental Constraints

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands
- Aquifer Recharge Soils
- Floodplain Protection
- Coastal High Hazard Area
- Indian River Lagoon Nitrogen Reduction Overlay
- Surface Water Protection Buffer
- Protected and Specimen Trees
- Protected Species

Mapped natural resources such as wetlands, floodplain, CHHA, and surface water protection buffer (including native vegetation in the buffer) are located adjacent to the Indian River Lagoon (IRL), but are located outside of the proposed fenced-in area (as shown on the drawing in the CUP application) for the goats. The remaining mapped natural resources are located within the fenced-in area. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

For Board Consideration

The Board may wish to consider the compatibility of the proposed CUP with the surrounding area. The Board may also wish to consider additional conditions beyond those cited in Sections 62-1901 and 62-1906 in order to mitigate potential offsite impacts to the abutting properties.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT
Conditional Use Permit (CUP) Review & Summary**

Item # 22PZ00002

Applicant: Jaussi

CUP: Applicant wants six goats

P&Z Hearing Date: 03/14/22; **BCC Hearing Date:** 04/07/22

Tax ID No: 2416958 (portion on west side of N. Tropical Trail)

- This is a preliminary review based on best available data maps reviewed by the Natural Resources Management Department (NRM) and does not include a site inspection to verify the accuracy of the mapped information.
- In that the rezoning process is not the appropriate venue for site plan review, specific site designs submitted with the rezoning request will be deemed conceptual. Board comments relative to specific site design do not provide vested rights or waivers from Federal, State or County regulations.
- **This review does not guarantee whether or not the proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations.**

Summary of Mapped Resources and Noteworthy Land Use Issues:

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Mapped natural resources such as wetlands, floodplain, CHHA, and surface water protection buffer (including native vegetation in the buffer) are located adjacent to the Indian River Lagoon (IRL), but are located outside of the proposed fenced-in area (as shown on the drawing in the CUP application) for the goats. The remaining mapped natural resources are located within the fenced-in area. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Land Use Comments:

Wetlands

The subject parcel contains a small area of mapped National Wetland Inventory (NWI) wetlands (Estuarine and marine deep-water wetlands) along the IRL as shown on the NWI Wetlands map, an indicator that wetlands may be present on the property.

Section 62-3694 states that non-bona fide agricultural and forestry operations utilizing best management practices are permitted in wetlands provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design or permit submittal.

Aquifer Recharge Soils

Most of the parcel contains mapped aquifer recharge soils (Paola-Urban land complex) as shown on the USDA Soil Conservation Service Soils Survey map. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Floodplain Protection

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

Coastal High Hazard Area

A portion of the property located along the IRL is mapped within the Coastal High Hazard Area as defined by Florida Statute 163.3178(2)(h), and as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates Coastal High Hazard Areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute. The mapped area may be susceptible to nuisance flooding.

Indian River Lagoon Nitrogen Reduction Overlay

The entire parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. For any future development requiring sewer/septic, and if sewer is not available, then use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

Surface Water Protection Buffer

The subject property is located on the Indian River Lagoon, designated as a Class II surface water in this location. A 50-foot surface water protection buffer (Buffer) is required. The removal of native vegetation located within the Buffer shall be avoided.

Per Section 62-3668(10) & (12), discharges into Class II waters shall not degrade existing water quality below existing conditions, or those standards outlined in Chapter 62-302, F.A.C., as amended, for Class II water bodies, whichever provides for better water quality. Within the surface water protection buffer, the storage of fertilizers, pesticides, hazardous materials or other pollutants which may run off into surface waters shall be prohibited. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or building permit submittal within the surface water protection buffer.

Protected and Specimen Trees

Aerials indicate that Protected (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) may reside on subject property. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4341(18), Protected and Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for tree preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.

Protected Species

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