

**FUTURE LAND USE MAP SERIES
PLAN AMENDMENT**

STAFF COMMENTS

*Small Scale Plan Amendment 22S.18 (22SS00015)
Township 26, Range 37, Section 32*

Property Information

Owner / Applicant: IR Tiki 2, LLC

Adopted Future Land Use Map Designation: Neighborhood Commercial (NC)

Requested Future Land Use Map Designation: Community Commercial (CC)

Acreage: 0.96 acres

Tax Account #: 2611662

Site Location: East of N Highway 1 and approx. 1,684 feet North of Post Rd,

Commission District: 4

Current Zoning: General Retail Commercial (BU-1)

Requested Zoning: N/A

Background & Purpose

The applicant is requesting to amend the Future Land Use designation from Neighborhood Commercial (NC) to Community Commercial (CC) on 0.96 acres of land in order to establish a consistent Future Land Use with the existing BU-1 zoning classification. In 1961, the subject property was approved for a zoning change from RU-1, a single-family residential classification, to BU-1 with Beer and Wine permit. A Future Land Use Map (FLUM) designation of Mixed Use District was adopted in 1988 and applied to the subject property. Comprehensive Plan Amendment 1999B.14 converted Mixed Use Districts into two new designations; NC and CC. The new commercial designation assigned to a particular piece of property depended on the current zoning placed on that land. CC was proposed for properties with the BU-1 zoning classification, however, NC was applied to the subject property.

The restaurant use on the subject property was permitted to continue because it meets the criteria of Sec. 62-1181, Nonconforming uses. "A "nonconforming use" is as the use of land or structures that was lawful prior to the effective date of the ordinance from which this article is derived or the county comprehensive plan, or the effective date of any amendments thereto, but is not now permitted within the applicable zoning

classification or is not permitted under any provisions of this article or the county comprehensive plan or any amendment thereto. In order for a use of land or structures to be included within such definition, such use must have been permanent and continuous prior to the effective date of the ordinance from which this article is derived or the effective date of any amendment to this article.”

The applicant is seeking to construct a Tiki Hut as an expansion to a non-conforming use. Active code enforcement cases related to the subject property include; **22CE-01360**, construction and renovations without permits done by unlicensed building contractor. The applicant is working with an engineer and Code Enforcement to address the code enforcement case. A Future Land Use Map amendment from (NC) to (CC) is required to establish consistency of the BU-1 zoning classifications with comprehensive plan, as set forth in Sec. 62-1255.

This segment of N. Highway 1 from the Town of Palm Shores city line to Post Road is a primarily commercial corridor where the majority of Future Land Use designations are CC & NC. Also, along this corridor to the north and south, are properties with Future Land use designation of RES 6 .

Comprehensive Plan Policies/Comprehensive Plan Analysis

Comprehensive Plan Policies are shown in plain text; Staff Findings of Fact are shown in **bold**.

Notice: The Comprehensive Plan establishes the broadest framework for reviewing development applications and provides the initial level of review in a three layer screening process. The second level of review entails assessment of the development application's consistency with Brevard County's zoning regulations. The third layer of review assesses whether the development application conforms to site planning/land development standards of the Brevard County Land Development Code. While each of these layers individually affords its own evaluative value, all three layers must be cumulatively considered when assessing the appropriateness of a specific development proposal.

Role of the Comprehensive Plan in the Designation of Commercial Lands

FLUE Policy 2.1

The Comprehensive Plan takes into consideration broad criteria for evaluating requests for commercial land use designations within Brevard County. At a minimum, these criteria address the following:

Criteria:

A. Overall accessibility to the site;

The subject property has frontage on N Highway 1, an urban principal arterial operating at 57.50% of Maximum Acceptable Volume. With the proposed commercial use being an addition of a 180 square foot tiki hut, traffic volume is not anticipated to increase higher than 0.02%. Please refer to the preliminary concurrency section for more details.

B. Compatibility and inter-connectivity with adjacent adopted Future Land Use designations and land uses;

There is a Future Land Use designation of RES 6 to the south and NC to the north and south adjacent to the subject property.

- C. Existing commercial development trend in the area;

This area of Highway 1 can be considered a commercial corridor with either NC or CC FLU designations. However, development in this area include a mix of commercial and single-family residential. There has not been any new commercial development within the last three (3) years.

- D. Fundamental changes in the character of an area prompted by infrastructure improvements undertaken by the County;

No fundamental changes in the character of the area prompted by infrastructure improvements undertaken by the County have been identified.

- E. Availability of required infrastructure at/above adopted levels of service;

The preliminary concurrency analysis did not indicate that the maximum development potential from the proposed Future Land Use designation would cause a deficiency in the transportation adopted level of service. The subject property is within the City of Melbourne's service area for potable water. Additionally, the subject property is connected to Brevard sanitary sewer services. The closest connection for sanitary sewer is located north of US Highway 1, approximately 1,390-feet away.

- F. Spacing from other commercial activities;

Commercial activities are located approximately 141-feet north of the subject property along the east of Highway 1 and immediately south of the subject property. Additional commercial activities are located southwest of the subject property along west of Highway 1 approximately 468-feet. Additional commercial activities can be found along this section of US Highway 1.

- G. Size of proposed commercial designation compared with current need for commercial lands;

The 0.96-acre subject property is developed as a restaurant and designated as NC is requesting a change from NC to CC.

- H. Adherence to the objectives/policies of the Conservation Element and minimization of impacts upon natural resources and systems;

The applicants will work with Natural Resources to ensure minimization of impacts upon natural resources and systems.

- I. Integration of open space; and

The provisions of this criterion will be addressed at the site plan stage.

- J. Impacts upon strip commercial development.

The applicant is proposing an expansion of his existing restaurant with an addition of a tiki hut. This site is not considered strip commercial

development, which is discouraged within the Future Land Use element of the Comprehensive Plan.

Activities Permitted in the Community Commercial (CC) Future Land Use Designations

FLUE Policy 2.7

Community Commercial (CC) development activities are intended to serve several neighborhoods, sub-regional and regional areas and provide an array of retail, personal and professional uses. Development activities which may be considered within the Community Commercial (CC) Future Land Use designation, provided that the guidelines listed in Table 2.2 are met, include the following:

- a) Existing strip commercial;
- b) Transient commercial uses;
- c) Tourist commercial uses;
- d) Professional offices;
- e) Personal service establishments;
- f) Retail establishments;
- g) Non-retail commercial uses;
- h) Residential uses;
- i) Institutional uses;
- j) Recreational uses;
- k) Public facilities;
- l) Transitional uses pursuant to Policy 2.1; and
- m) Planned Industrial Park development (as permitted by PIP zoning).

The applicant's proposed use can be considered consistent with Policy 2.7.

Locational and Development Criteria for Community Commercial Uses

FLUE 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.

The subject property is not located within a commercial cluster but rather along an existing commercial corridor (Highway 1).

- B. Community commercial complexes should not exceed 40 acres at an intersection.

The subject property is not located at an intersection and will not exceed 40 acres.

- 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.

Highway 1, a major arterial roadway, which is an existing commercial corridor serving the community and the surrounding region. As such, the development pattern in this area does not allow itself to cluster commercial analysis.

- D. The gross floor area of community commercial complexes should not exceed 150,000 square feet for commercial clusters up to 10 acres in size and shall not exceed 400,000 square feet for commercial clusters greater than 10 acres but less than 40 acres in size unless within a Planned Unit Development (PUD) zoning classification. The square footage may be increased if it is located within a PUD zoning classification.

The gross floor area is regulated through the land development regulations and reviewed at the time of site plan review.

- 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.

The overall subject property has the potential for a 41,817.6 sq. ft. building. The Floor Area Ratio (FAR) of up to 1.00 is permitted for CC designated sites. The Floor Area Ratio (FAR) is evaluated at the time of site plan review and regulated through the land development regulations. The applicant has not requested PUD zoning.

- 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.

The applicant is not requesting a change in zoning classification and the current BU-1 zoning does not permit recreational vehicle parks.

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 applicant proposes to utilize the eastern 0.96-acre parcel for tiki hut to complement their business. The hours of operation, lighting and traffic is not anticipated to affect the quality of life in the existing neighborhood. There is no anticipation of odor, noise level or site activity more so than already exists.

Per Brevard County Code of Ordinances, Section 62-2256 Odor, Section 62-2257 Lighting and Section 62-2271 establishes performance standards for all residential, commercial, and industrial uses.

- 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 (Member Appraisal Institute) appraisal can determine if material reduction has or will occur due to the proposed request.

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

1. historical land use patterns;

Land use patterns for this property has not changed since the adoption of the NC FLU designation.

No FLU amendments have occurred within 500-feet of the subject property since 2005.

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

There have been one residential development within this area over the past three (3) years:

East of N Highway 1, approximately 695 feet to the south, a new home construction was approved on 09/16/2020.

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

There has not been any approved development within this area in the preceding three (3) years that has not been constructed.

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

No material violation of relevant policies has been identified.

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

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

Criteria:

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

Parcels in the surrounding area range from 0.13-acres to 3.59-acres. The parcel to the north is zoned BU-1 (General retail Commercial) on 0.91-acres of vacant land. The parcels to the west across Highway 1 are zoned BU-1 (General retail commercial) and RU-1-7 (Single-family Residential). Both properties are zoned BU-1 on the eastern portion of the property fronting Highway 1. Parcel one (1) is owned by FDOT for ROW and stormwater pond on 2.4-acres. The other parcel is 2.16-acres of undeveloped land. The parcel to the south is vacant commercial land zoned BU-1 (General Retail Commercial) on 0.76-acres fronting Highway 1. The property was previously used as a daycare, which is owned by the applicant and provides ingress/egress to the two (2) properties to the rear. The 2 properties to the rear, 0.44-acres and 0.57-acres are zoned RU-1-9 with single-family residences. East of the subject property is the Indian River Lagoon.

There were three zoning actions within a half-mile radius of the subject properties within the last three years. 20Z00025, approved by the Board on December 3, 2020, was a request to change zoning classification RU-1-9 (Single-family Residential) to RU-1-7 (Single-family Residential) on 0.99 acres located south of E Elm Dr and east of US Highway 1. 21PZ00022, approved May 26, 2021, a variance request to Section 62-1341(5)(b), to permit a variance of 15.1 feet from the required 20 foot front setback for an accessory structure, Section 62-1341(5)(b) to permit a variance of 6.6 feet from the required 7.5 foot (north) side setback for an accessory structure and 62-1341(5)(b), to permit a variance of 5.0 feet from the required 5.0 foot structure spacing in an RU-1-9 (Single-family Residential) zoning classification on 0.21-acres located in Coquina Ridge Subdivision east of Highway 1. 20PZ00032, approved by the Board on July 9, 2020, was request to change zoning classification from RU-1-

7 (Single-family Residential), RU-2-10 (Medium Density Multi-family Residential), and BU-1 (General Retail Commercial) to all BU-1 (General Retail Commercial) on 0.92-acres located west of Highway 1, north of Post Rd and Highway 1.

Surrounding Land Use Analysis

	Existing Land Use	Zoning	Future Land Use
North	Vacant	BU-1	NC
South	Vacant Child Care Center/Single-family	BU-1/RU-1-9	NC/RES 6
East	Indian River Lagoon	N/A	N/A
West	Undeveloped	BU-1/RU-1-7	CC

To the north of the subject property is vacant parcel of land with a Future Land Use designation of NC with a BU-1 zoning classification.

The parcel fronting US Highway 1 is a vacant structure (former daycare center) with BU-1 zoning classification; eastern portion is a single-family residence with a Future Land Use RES 6 and zoning classification of RU-1-9.

To the east is the Indian River Lagoon.

West of the subject property is undeveloped land with CC FLU designation. This parcel has two (2) zoning classifications. BU-1 zoning is on the portion of the property fronting US Highway 1 and the remainder of the parcel is RU-1-7 Single-family Residential.

Concurrency

The closest concurrency management segment to the subject property is US Hwy 1, from Pineda Causeway to Post Rd, which has a Maximum Acceptable Volume (MAV) of 59,900 trips per day, a Level of Service (LOS) of D, and currently operates at 57.50% of capacity daily. The maximum development potential from the proposed Future Land Use change increases the percentage of MAV utilization by 0.02%. The corridor is anticipated to operate at 57.52% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

The parcel is not serviced by public sewer or within the Brevard County service area for potable water. The closest available Brevard County sewer connection to the subject property is approximately 1,385 feet to the north. Water service is provided by the City of Melbourne.

No school concurrency information has been provided as the development potential is considered below the minimum number of new residential lots that would require a formal review.

Environmental Resources

- Wetlands/Hydric Soils
- Floodplain Protection
- Surface Waters of the State
- Coastal High Hazard Area
- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Overlay
- Protected and Specimen Trees

Surface Waters of the State

The subject property is located on the Indian River Lagoon, designated as a Class III Water in this location. A 25-foot Surface Water Protection Buffer (Buffer) is required. Primary structures shall be located outside the Buffer. A maximum of 30% impervious area is permissible within the Buffer. Stormwater management in accordance with Section 62-3666(3) is required. The removal of native vegetation located within the Buffer shall be avoided, and any impacts require in-kind restoration. The Florida Department of Environmental Protection (FDEP) regulates mangrove trimming, and can be reached at 407-897-4101. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

Aquifer Recharge Soils

The subject parcel contains mapped aquifer recharge soils (Candler fine sand) as shown on the USDA Soil Conservation Service Soils Survey map. The applicant is hereby notified of the development and the impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance. The recent unpermitted land alteration of the parking lot may require stormwater management.

Protected and Specimen Trees

Protected (≥ 10 inches in diameter) and Specimen (≥ 24 inches in diameter) trees may exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree

Protection, for specific requirements for preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

Please refer to all comments provided by the Natural Resource Management Department at the end of this report.

Historic Resources

There are no recorded historic or archaeological sites on the project site according to the Master Site File from the Florida Division of Historic Resources.

For Board Consideration

The Board may wish to consider if the request is consistent with the Comprehensive Plan.

NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT
Zoning Review & Summary
Item #22SS00015

Applicant: Sandeep Patel

FLU Request: NC to CC

Note: To resolve unpermitted expansion of a non-conforming use.

P&Z Hearing Date: 03/13/23; **BCC Hearing Date:** 04/06/2023

Tax ID No: 2611662

- 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:

- Wetlands/Hydric Soils
- Floodplain Protection
- Surface Waters of the State
- Coastal High Hazard Area
- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Overlay
- Protected and Specimen Trees

Surface Waters of the State

The subject property is located on the Indian River Lagoon, designated as a Class III Water in this location. A 25-foot Surface Water Protection Buffer (Buffer) is required. Primary structures shall be located outside the Buffer. A maximum of 30% impervious area is permissible within the Buffer. Stormwater management in accordance with Section 62-3666(3) is required. The removal of native vegetation located within the Buffer shall be avoided, and any impacts require in-kind restoration. The Florida Department of Environmental Protection (FDEP) regulates mangrove trimming, and can be reached at 407-897-4101. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

Aquifer Recharge Soils

The subject parcel contains mapped aquifer recharge soils (Candler fine sand) as shown on the USDA Soil Conservation Service Soils Survey map. The applicant is hereby notified of the development and the impervious restrictions within Conservation

Element Policy 10.2 and the Aquifer Protection Ordinance. The recent unpermitted land alteration of the parking lot may require stormwater management.

Protected and Specimen Trees

Protected (≥ 10 inches in diameter) and Specimen (≥ 24 inches in diameter) trees may exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

Land Use Comments:

Wetlands/Hydric Soils

The subject parcel contains mapped National Wetlands Inventory (NWI) wetlands along the property shoreline. This is an indicator that wetlands may be present on the property. A wetland determination may be required prior to any land clearing activities, site plan design, or building permit submittal.

Section 62-3694(c)(3)b has allowances for wetland impacts for commercial land development activities along Mitigation Qualified Roadways (MQRs). U.S. Highway 1 is an MQR in this location. Prior to the allowance of any wetland impacts, the applicant shall complete High Function and Landscape Level wetlands assessments. Approval by the Brevard County Board of County Commissioners may be required for impacts. 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.

Floodplain Protection

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

Surface Waters of the State

The subject property is located on the Indian River Lagoon, designated as a Class III Water in this location. A 25-foot Buffer is required. Primary structures shall be located outside the Buffer. A maximum of 30% impervious area is permissible within the Buffer. Stormwater management in accordance with Section 62-3666(3) is required. The removal of native vegetation located within the Buffer shall be avoided, and any impacts require in-kind restoration. FDEP regulates mangrove trimming, and can be reached at 407-897-4101. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

Coastal High Hazard Area

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

Aquifer Recharge Soils

The subject parcel contains mapped aquifer recharge soils (Candler fine sand) as shown on the USDA Soil Conservation Service Soils Survey map. The applicant is hereby notified of the development and the impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance. The recent unpermitted land alteration of the parking lot may require stormwater management.

Indian River Lagoon Nitrogen Reduction Overlay

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

Protected and Specimen Trees

Protected (≥ 10 inches in diameter) and Specimen (≥ 24 inches in diameter) trees may exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.