

**FUTURE LAND USE MAP SERIES
PLAN AMENDMENT**

STAFF COMMENTS

*Small Scale Plan Amendment 22S.15 (22SS00013)
Township 21, Range 35, Section 06*

Property Information

Owner / Applicant: Austin and Kailey Mahan

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

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

Acreage: 0.77

Tax Account #: 3030132

Site Location: West of Highway 1 and north of ER Smyth Drive

Commission District: 1

Current Zoning: Agricultural Residential (AU)

**Requested Zoning: Retail, Warehousing and Wholesale Commercial (BU-2)
(22Z00054)**

Background & Purpose

The applicant is seeking to amend the Future Land Use designation from Neighborhood Commercial (NC) to Community Commercial (CC) on the front parcel off Highway 1 and north of E R Smyth Rd. totaling 0.77 acres in order to establish a consistent Future Land Use with the requested BU-2 zoning classification. Currently, the subject property is designated as NC FLU with AU zoning and is undeveloped.

A companion rezoning application was submitted accompanying this request to change the zoning classification from Agricultural Residential (AU) to Retail, Warehousing and Wholesale Commercial (BU-2) (**22Z00054**).

The existing AU zoning classification may be considered consistent with the existing NC Future Land Use designation under FLUE Policy 2.10.

Comprehensive Plan Policies/Comprehensive Plan Analysis

The proposed BU-2 zoning classification may not be considered consistent with the existing NC Future Land Use designation; however, the proposed BU-2 zoning classification may be considered consistent with the requested Community Commercial (CC) Future Land Use designation.

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 E R Smyth Drive and Highway 1, an urban principal arterial operating at 24.93% of Maximum Acceptable Volume. With the proposed commercial use being storage and warehousing for the applicant's kayak business, traffic volume is not anticipated to increase higher than 0.03%. 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 are NC and CC future land use map designations adjacent to the subject property.

- C. Existing commercial development trend in the area;

Existing commercial development in the immediate area includes a general retail store on east side of ROW Highway 1. Additional commercial uses are located along Highway 1. This area of Highway 1 can be considered a commercial corridor with either NC or CC FLU designations.

- 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 site is within the City of Cocoa's service area for potable water. There is no centralized sanitary sewer service available. The closest connection for sanitary sewer is located east of US Highway 1, approximately 250-feet away.

- F. Spacing from other commercial activities;

The closest Community Commercial facilities are located immediately to the north of the subject site with frontage on Highway 1 and immediately east across Highway 1 of the subject site. 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 0.77-acre subject property is designated as NC. There is already 27.04-acres of CC in the immediate surrounding area, this request would add an additional 0.77-acres.

- 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 that their site planning will not harm the ecosystem on the subject property.

- 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 to develop outside storage and warehousing for his business. Highway 1 is an existing commercial corridor, the proposal would not extend 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 these commercial and residential uses.

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 site 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 site 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 site has the potential for a 33,541 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 requested zoning classification of BU-2 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 subject parcel for outdoor equipment storage and wholesale/retail items for 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. However, CC FLU allows for an array of retail, personal and professional uses which may.

Per Brevard County Code of Ordinances, Section 62-1483 all business uses and all materials and products shall be confined within substantial buildings completely enclosed with walls and a roof, however, retail items of substantial size or which of necessity must remain outside of a building may be permitted to be displayed outside the building.

- 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;

The developed character of the surrounding area along Highway 1 corridor from Mc Cullough Road to the north down to Gloria Ave. to the south east. To the immediate north and south across E R Smyth Drive is Community Commercial (CC) FLU. Across US Highway 1 is also Community Commercial (CC) land use. All immediate surrounding areas to the north, south and east of US Highway 1 are commercial uses within 500-feet of this site.

The latest FLU amendment was approved under 20S.04, 20PZ00051, which changed the FLU from NC to CC on August 6, 2020 (Ordinance 20-11) roughly 650-feet to the northeast of the subject properties.

The subject site is located within the Mims Small Area Study, which was accepted by the Board on April 10, 2007. Recommendations of the Study recognized the Highway 1 corridor as a primary commercial area, particularly south of Grantline Road, which includes the area where the subject site is located. The Study recommendations also highlighted that commercial development should generally focus on providing goods and services to Mims residents, as opposed to larger regional markets.

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

There have been six commercial and residential developments within this area over the past three (3) years:

- **19PZ00127 was a rezoning from AU to RR-1 (Rural Residential) approved April 9, 2020 located approximately 0.5-miles from the subject property to legitimize the undersized lot to build a SFR.**
- **20Z00003 was an approved rezoning from AU to BU-1 (General Retail Commercial) approximately 960-feet north of the subject property for future commercial development effective August 6, 2020.**
- **Indian River Preserve Estates is an ongoing project for a Planned Unit Development (PUD), 22PUD00005, as of April 11, 2022, adding 1,375 single-family residential units.**
- **A 9,100 square foot retail commercial store was constructed, 21BC10252, across the ROW of US Highway 1 in February 2022.**
- **22Z00018 was a rezoning from AU to RR-1 approved November 2, 2022 located approximately 650-feet east of the subject property with the purpose of subdividing the property into two lots.**
- **22Z00050 was a rezoning from AU and RU-1-9 (Single-family Residential) to SR (Suburban Residential). The location is 0.5-miles from the subject property and the purpose was to legitimize the lot size to build a SFR.**

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 0.43-acres to 11.15-acres. The parcel to the north is zoned BU-2 (Retail, Warehousing & Wholesale Commercial) on 2.98-acres and is a motel. The parcels to the west and southwest across E R Smyth Drive are zoned RR-1 (Rural Residential), both single-family residences on 1-acre. The parcel to the south is vacant commercial land zoned BU-1 (General Retail Commercial) on 5.54-acres. Across the ROW US Highway 1 is a retail store zoned BU-1 on 1.48-acres.

- 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.

The parcel is located in a residential and commercial area directly west of Highway 1.

2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.

The subject property is requesting to be rezoned for commercial uses. The parcel to the north and parcels across ROW Highway 1 are also zoned for commercial use.

There were two zoning actions within a half-mile radius of the subject properties within the last three years. 20Z00003, approved by the Board on August 6, 2020, was a request to change AU (Agricultural Residential) to BU-1 (General Retail Commercial) on 1.32 acres located at the northwest corner of US Highway 1 and McCullough Road. 19PZ00127, approved April 9, 2020, was a request to change AU (Agricultural Residential) to RR-1 (Rural Residential) on 2-acres located on the south side of Richy Road and west of US Highway 1.

3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-

residential uses have been applied for and approved during the previous five (5) years.

The subject parcel is located to the east of a residential neighborhood. The parcel is located on a commercial corridor directly off Highway 1.

Surrounding Land Use Analysis

	Existing Land Use	Zoning	Future Land Use
North	Motel	BU-2	CC
South	Vacant	BU-1	CC
East	(across ROW US Hwy. 1) Retail Store	BU-1	CC
West	Single-family	RR-1	NC

Neighborhood Commercial (NC) Land Use designation are intended to be low-impact in nature and serve the needs of the immediate residential area. Development activities include professional offices and convenience stores without drive through lanes, institutional uses, recreational and residential uses as well as public facilities and transitional uses.

Community Commercial (CC) Land Use designation are intended to serve several neighborhoods, sub-regional and regional areas and provide an array of retail, personal and professional uses.

Preliminary Concurrency

The closest concurrency management segment to the subject property is US Highway 1, between SR 46 to Lionel Road, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 24.93% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.03%. The corridor is anticipated to operate at 24.96% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as the development proposal is for commercial use.

Environmental Constraints

- Wetlands Protection
- Aquifer Recharge
- Protected and Specimen Trees
- Protected Species

The subject property contains a small area of hydric soils (St. Johns sand, 0 to 2 percent slopes), an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities. The wetland delineation shall be verified at time of site plan submittal.

Approximately 75% of the Pine flatwoods property was cleared in 2021/2022. The parent parcel was split, leaving the subject property in violation of Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection.

Historic Resources

There are no recorded historical 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 and compatible with the surrounding area.

NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT
Zoning Review & Summary
Item #22SS00013

Applicant: Austin Mahan

Zoning Request: NC to CC

Note: Request to make property consistent with BU-2 zoning requirements.

LPA Hearing Date: 04/17/23; **BCC Hearing Date:** 05/04/23

Tax ID Nos: 3030132

- 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 Protection
- Aquifer Recharge
- Protected and Specimen Trees
- Protected Species

The subject property contains a small area of hydric soils (St. Johns sand, 0 to 2 percent slopes), an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities. The wetland delineation shall be verified at time of site plan submittal.

Approximately 75% of the Pine flatwoods property was cleared in 2021/2022. The parent parcel was split, leaving the subject property in violation of Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection.

Land Use Comments:

Wetlands

The subject property contains a small area of hydric soils (St. Johns sand, 0 to 2 percent slopes), an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities. The wetland delineation shall be verified at time of site plan 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. E. R. Smyth Drive is not an MQR. An amendment to the Comprehensive Plan shall be required to add a mitigation qualified roadway to Map 8 and the associated table. For a project that encompasses multiple properties assembled under one site plan development order, wetland impacts for those properties without direct frontage on the mitigation qualified roadway may be permitted only if the properties are combined so that any proposed wetland impact is contained within a property with direct frontage on the mitigation qualified roadway. The assemblage shall be deed restricted for commercial or industrial use.

Wetlands proposed for impact shall be assessed using methodologies established in the Countywide Wetlands Study, prepared BKI, Inc. Consulting Ecologists (September 30, 2013) to determine if they meet the criteria of High Functioning Wetlands or Landscape Level Wetlands. Impacts to high functioning and/or landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or of overriding public benefit. 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. Any unpermitted wetland impacts may result in Code Enforcement action. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any site plan design or permit submittal.

Aquifer Recharge Soils

St. Johns sand, 0 to 2 percent slopes, can also function as an aquifer recharge soil. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Protected and Specimen Trees

Approximately 75% of the property was cleared in 2021/2022. The parent parcel was split, leaving the subject property in violation of Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection. The property is mapped as Pine flatwoods. Protected (≥ 10 inches in diameter) and Specimen (≥ 24 inches in diameter) trees may exist on the parcel. The applicant shall perform a tree survey prior

to any site plan design in order to incorporate the remaining 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 more land clearing activities.

Protected Species

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