



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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STAFF COMMENTS

21Z00030

The Heather Calligan Trust

RU-1-11 (Single-family Residential) with two existing Binding Development Plans (BDP) to RU-1-7 with an amendment to the existing BDPs

Tax Account Number: 2112413
Parcel I.D.: 21-34-13-00-506
Location: Address Not Assigned; South side of SR 46, 635 feet east of Turpentine Road (District 1)
Acreage: 79.16 acres

Planning and Zoning Board: 11/15/2021

Board of County Commissioners: 12/02/2021

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	RU-1-11 with 2 BDPs	RU-1-7 with amended BDP
Potential*	198-units	198-units
Can be Considered under the Future Land Use Map	YES** RES 1, RES 4 & NC	YES** RES 1, RES 4 & NC

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. ** Zoning consistent in the RES 1 and RES 4 FLU designations due to limitations noted in the BDPs (existing or proposed).

Background and Purpose of Request

The applicant's request is to change the current zoning classification of Single-family Residential (RU-1-11) with two (2) existing Binding Development Plans (BDPs) to Single-family Residential (RU-1-7) with an amended BDP in order to reduce the minimum lot size required (from 75' by 75' and 7,500 square foot area requirements to 50' by 100' and 5,000 square foot square foot area requirements). Other noted conditions within the existing BDP do not appear to be amended or requested for removal under the new BDP.

This site is located within the Mims Small Area Study which was completed in March, 2007. This parcel is located within the I-95 commercial corridor lying west of Highway I-95. The Study's Buildout

Scenario section recommends leaving most settled areas, such as East Mims and around SR 46 as they are currently quantified with no FLU density reductions.

Although the applicant has indicated retaining the current 198-unit development limitation of the current BDP, there is a potential development allowance of up to 301-units under the various FLU designations as follows:

- 8-lots within the Residential 1 FLU (estimated 8.0 acres) – consistent with one unit per acre development;
- 38-lots in the Neighborhood Commercial FLU (estimated 6.4 acres) if sewer and water are provided – consistent with six units per acre development;
- 255-lots in the Residential 4 FLU area (estimated 63.9 acres) – consistent with four units per acre development, for a total of 301 units.

The first BDP, recorded in ORB 5472, Pages 3172-3183 approved as part of Zoning action **Z-11076** on May 25, 2005 provides the following conditions:

- Condition #2 - a development limitation of 2.5 dwelling units per acre or 198 units;
- Condition #3 - a berm, fence and buffering from the adjacent development to the west of the property;
- Condition #4 - conservation area easement, additional buffering, and minimum lot size of 1.0 acre lots along the western/southern portion of the site with minimum unit living area size of 2,200 square feet;
- Condition #5 - additional buffering;
- Condition #10 – provides a minimum living area of 1,800 square feet for all other areas not required to be 1.0 acre in size (refer to condition #4 above – this condition applies to all other areas);
- Condition #11 - provides a minimum lot size of 5,500 square feet with the average lot area of 6,000 square feet or higher.

The second BDP recorded in ORB 5620, Pages 5603-5609 on March 23, 2006, was approved as part of Zoning action **Z-11158** and limited development to 3-units upon a portion of the property that was rezoned from GU to RU-1-11. Only a fraction of the 1.45-acre portion that was changed from GU to RU-1-11 is included into this request; that area contains 0.033-acres.

The Board may wish to consider whether any of the existing conditions in the aforementioned BDP should remain to mitigate potential impacts.

Land Use

The subject property is currently designated as Residential 1, Residential 4 and Neighborhood Commercial FLU. The RU-1-11 zoning classification is consistent with the Residential 4 and Neighborhood Commercial FLU while the RU-1-7 zoning classification is only consistent with the Neighborhood Commercial FLU designation. The RU-1-11 zoning with BDP limits the project to be consistent with the Residential 1 FLU and the RU-1-7 zoning with BDP limits the proposed project to be consistent with the Residential 1 and Residential 4 FLU designations.

Applicable Land Use Policies

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

Policy 1.7 – The Residential 4 Future land use designation affords an additional step down in density from more highly urbanized areas. This land use designation permits a maximum density of up to four (4) units per acre, except as otherwise may be provided for within the Future Land Use Element.

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.

Residential Development in Neighborhood Commercial and Community Commercial Land Use Designations

Policy 2.13

Residential development or the integration of residential development with commercial development shall be permitted in the Neighborhood Commercial and Community Commercial land use designations, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and areas designated for residential use on the Future Land Use Map. Residential development is permissible in these commercial land use designations at density of up to one category higher than the closest residentially designated area on the Future Land Use Map (FLUM) which is on the same side of the street. Increases in density beyond this allowance may be considered through a public hearing. In the CHHA, however, residential development is strictly limited to the density of the closest residentially designated area on the FLUM that is on the same side of the street. Such residential development, as described above, shall be allowed to utilize the following characteristics:

a) Residential uses within Neighborhood Commercial and Community Commercial designations shall be encouraged to utilize neotraditional neighborhood development techniques, such as narrower road rights-of-way, mid-block pedestrian pass-throughs, alleys, smaller lot sizes, on-street parking, reduced lot line setbacks and public transit facilities.

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

The subject 79.16-acre property lies within three Future Land Use (FLU) designations: Residential 1, Residential 4 and Neighborhood Commercial (NC).

As the applicant continues to limit the number of units to that of the prior BDP (198-units), the existing FLU will not generate additional lots. The request will be consistent and compatible with the FLU designations only by the adoption of a BDP which limits the development potential of this site. As this site lies along the south side of SR Hwy 46, the FLU to the east, closer to the Highway I-95 intersection, changes from NC to Community Commercial (CC). To the south, this property borders additional Residential 4 FLU. To the west, the FLU transitions to lower Residential 2 and Residential 1 FLU designations.

Analysis of Administrative Policy #4 - Character of a neighborhood or area. The developed character of the surrounding area is a mixture of recreational vehicles, mobile home and single-family built structures upon various residential zoning classifications. To the north is Highway SR-46. To its north is a developed mobile home subdivision. This area under the Single-family Mobile Home (TR-1) zoning classification requires 7,500 square foot lots with a minimum living area of 600 square feet. To the east is an existing Seasons in the Sun RV Resort park and a KOA RV/Campground site. This area is under the Recreational Vehicle Park (RVP) zoning classification requires 2,000 square foot minimum sized lots and temporary use of RV's, park trailers and cabins. To the west is a developed mobile home subdivision under the Rural Residential Mobile Home (RRMH-1) zoning classification which requires minimum sized one-acre lots and Turpentine Road right-of-way. To the south are one acre lots zoned Suburban Residential (SR), Suburban Estate Use (SEU) and Agricultural Residential (AU).

Surrounding Area

The property to the North of Highway SR-46 is zoned Single-family Mobile home (TR-1). The property lying East of this site is zoned Recreational Vehicle Park (RVP), Single-family residential RU-1-11 and General Use (GU). To the South is are multiple parcels zoned Estate Use residential (EU-2), Suburban Residential (SR), Agricultural Residential (AU) and Suburban Estate Use (SEU). To this parcel's west are the Government Managed Lands (GML), Rural Residential Mobile home (RRMH-1) and General Use (GU) zoning classifications.

TR-1 is a single family residential mobile home zoning classification which permits mobile homes or residences of standard construction on lots of 7,500 square feet (minimum) with lot width of 65 feet and lot depth of 100 feet.

RVP recreational vehicle park zoning classification encompasses lands devoted for recreation vehicle, tent, park trailer and cabin uses together with such ancillary structures as allowed to promote a recreational type atmosphere for both park owners and/or their guests. Minimum park size shall be five acres. Recreational vehicle sites shall have a minimum area of 2,000 square feet, and shall have a minimum width of 30 feet and minimum depth of 60 feet. As defined, spaces or lots may be used by a recreational vehicle or equivalent facilities constructed in or on automotive vehicles, or tents, or other short-term housing devices. Cabins or park trailers used for short-term rentals may comprise no more than 20 percent of the permitted space or lots, and shall not exceed a maximum of 1,000 square feet each in size.

RU-1-11 classification permits single family residences on minimum 7,500 square foot lots, with a minimum width and depth of 75 feet. The minimum house size is 1,100 square feet. RU-1-11 does not permit horses, barns or horticulture.

EU-2 zoning classification is an estate single family residential zoning classification. The minimum lot size is 9,000 square feet with a minimum lot width of 90 feet and depth of 100 feet. The minimum living area is 1,500 square feet.

SR classification permits single family residences on minimum half acre lots, with a minimum width of 100 feet and a depth of 150 feet. The minimum house size in SR is 1,300 square feet.

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.

SEU zoning permits suburban estate residential uses on lots of one acre (minimum) with a width of 125 feet and a depth of 200 feet. Minimum floor area is 2,000 square feet of living area.

RRMH-1 classification permits single-family mobile homes and detached single-family residential land uses on minimum one acre lots, with a minimum width and depth of 125 feet. This classification permits horses, barns and horticulture as accessory uses. The minimum house size is 600 square feet.

There has been three zoning actions within a half-mile radius of the subject property within the last three years. The most recent action, **20Z00028**, was for a change of zoning from AU and EU-2 with BDP to all EU-2 and removal of BDP adopted on December 3, 2020. This location lies 1,440 feet in a southerly direction from this parcel and is located on the east side of Londontown Road. The second action, **18PZ00161**, was for a rezoning from BU-1, BU-2 and GU to all BU-2 approved under a BDP recorded in ORB 8454, Pages 2241-2244, (limiting development to a fast food restaurant with drive-thru, of no more than 2,700 square feet, a convenience store of no more than 10,300 square feet, a gas station of no more than 24 fueling stations, a tire center with a maximum of 3 bays and a hotel with a maximum of 120 rooms) adopted on June 4, 2019. This location lies 1,250 feet in an easterly direction from this site and is located on the north side of Highway SR-46. The third action, **18PZ00005**, was for a rezoning from AU to RR-1 adopted on May 3, 2018. This location lies 1,870 feet in a SW direction from this lot on the east side of Tomato Farm Road.

Preliminary Concurrency

The closest concurrency management segment to the subject property is US Highway 1, between Dairy Road to SR Highway 46, which has a Maximum Acceptable Volume (MAV) of 41,700 trips per day, a Level of Service (LOS) of D, and currently operates at 37.09% of capacity daily. The maximum development potential from the proposed rezoning does increase the percentage of MAV utilization by 4.51%. The corridor is anticipated to operate at 41.60% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

At this time, the school concurrency service area for the Mims Elementary School, Madison Middle School and Astronaut High School are projected to have sufficient capacity to accommodate the maximum potential residential development resulting from the proposed Summerfields development. This accommodation for predicting development and potential redistricting of students is done in coordination between Brevard County Government and Brevard County Schools, through

intergovernmental coordination. A copy of the Brevard Public Schools concurrency analysis is included in the package for Board consideration.

The parcel is not currently connected to water and sewer at this time, however, the owner has submitted for a Potable Water Service Capacity Availability Certificate and a Sanitary Sewer Service Capacity Availability Certificate from Brevard County Utilities. The County's analysis is, as of this date, that there is sufficient capacity available for the 198-unit project.

Environmental Constraints

- Wetlands/Hydric Soils
- Aquifer Recharge Soils
- Protected Species
- Specimen and Protected Trees

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

The property contains large areas of mapped wetland and upland forests. A tree survey will be required at time of site plan submittal, and is highly recommended prior to any site plan design/engineering. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. Land clearing is not permitted without prior authorization by NRM.

For Board Consideration

The Board may wish to consider whether the requested rezoning action is consistent and compatible with the surrounding area and does the stipulations in the BDP mitigate potential impacts.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT
Rezoning Review & Summary**

Item # 21Z00030

Applicant: Genoni for Calligan

Zoning Request: RU-1-11 with BDP to RU-1-7 with replacement BDP for a single-family subdivision with 301 units.

P&Z Hearing Date: 11/15/21; **BCC Hearing Date:** 12/02/21

Tax ID No: 2112413

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

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

The property contains large areas of mapped wetland and upland forests. A tree survey will be required at time of site plan submittal, and is highly recommended prior to any site plan design/engineering. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. Land clearing is not permitted without prior authorization by NRM.

Land Use Comments:

Wetlands/Hydric Soils

The subject parcel contains a large area of mapped NWI wetlands, SJRWMD wetlands, and hydric soils (Terra Ceia muck, Tomoka muck, Anclote sand frequently ponded, and Basinger sand) as shown on the NWI Wetlands, SJRWMD Florida Land Use & Cover Codes, and USDA Soil Conservation Service Soils Survey maps, respectively; indicators that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities or site plan/subdivision application. Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For subdivisions greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) including avoidance of impacts, and 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design or permit submittal.

Aquifer Recharge Soils

The subject parcel contains mapped aquifer recharge soils (Pomello sand, Pompano sand and Basinger sand) 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.

Specimen and Protected Trees

The subject property contains mapped areas of SJRWMD FLUCCS codes 4340-Upland Mixed Coniferous/Hardwood Forest, 6300-Wetland Mixed Forest, and 6170-Wetland Mixed Hardwoods. Protected Trees (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) are included in these FLUCCS codes and are likely found on the project area. A tree survey will be required at time of site plan submittal, and is recommended prior to any site plan design. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), the purpose and intent of the ordinance is to encourage the protection of Heritage Specimen trees. In addition, per Section 62-4341(18), Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. 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.