

Meeting Date
July 12, 2016



AGENDA	
Section	Unfinished Business
Item No.	IV A

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Mark and Kathleen Nathan, Resolution Denying Rezoning Request from SEU to AU
DEPT/OFFICE:	County Attorney/Eden Bentley, Deputy County Attorney

Requested Action:
 Approve findings of fact upholding denial of the request for rezoning 9.90 acres property from SEU to AU north of the Pineda Causeway and west of South Tropical Trail.

Summary Explanation & Background:
 On May 5, 2016, the Board of County Commissioners heard the request to rezone the property from Suburban Estate Residential to Agricultural. The Board of County Commissioners denied the request and directed the staff to return to the Board with findings of fact. The requested resolution is attached.

Contact:
 Phone/e-mail:

Clerk to the Board Instructions:

Exhibits Attached:

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager	Assistant County Manager	Department Director / Extension Scott Knox/52090
Stockton Whitten	Assistant County Manager	



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

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

July 13, 2016

M E M O R A N D U M

TO: Scott Knox, County Attorney Attn: Eden Bentley

RE: Item V.A., Resolution Denying Rezoning Request from Suburban Estate Use Zoning Classification (SEU) to Agricultural Use Zoning Classification (AU)

The Board of Commissioners, in regular session on July 12, 2016, adopted Resolution No. 16-106, setting forth the Findings of Fact and Conclusions of the Board pertaining to the denial of rezoning request from SEU to AU on property north of the Pineda Causeway and west of South Tropical Trail. Enclosed is a certified Resolution.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

Encl. (1)

RESOLUTION NO. 16-106

**A RESOLUTION SETTING FORTH THE FINDINGS OF FACT
AND CONCLUSIONS OF THE BREVARD COUNTY BOARD OF
COUNTY COMMISSIONERS PERTAINING TO THE DENIAL OF
REQUEST FOR AGRICULTURAL ZONING ON PROPERTY
OWNED BY MARK AND KATHLEEN NATHAN.**

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida as follows:

STATEMENT OF THE CASE AND FACTS

This item came before the Brevard County Planning and Zoning Board (P&Z) on April 11, 2016. The Planning and Zoning Board recommended denial. The item came before the Brevard County Board of County Commissioners on May 5, 2016 and was denied after a public hearing. The documentary evidence and record page number for the document is listed below. These documents and transcripts or minutes create the record and will be referred to as R-___.

Description	Page Numbers
Application for rezoning	1-16
Planning & Zoning Staff Comments	17-24
Location Map, Zoning Map, Future Land Use Map and Aerial Photo	21-24
Notice to applicant and courtesy notice list	25-31
Emails and objections and documents submitted	32-49
62-1337, Code of Ordinances of Brevard County, Florida, Suburban Estate Use Zoning Classification (SEU)	52-54
62-1334, Code of Ordinances of Brevard County, Florida Agricultural Use Zoning Classification (AU)	50, 51
Administrative Policies 2-8 of the Future Land Use Element of the Brevard County Comprehensive Plan.	55-63
Minutes of the Planning and Zoning (P&Z) Board Meeting April 11, 2016	64-76
Minutes of the Brevard County Board of County Commissioners meeting May 5, 2016	77-78

The applicants, Mark and Kathleen Nathan requested a rezoning of their property from Suburban Estate Use to Agricultural Use. R-1-16.

The 9.90 acre property is located on the west side of South Tropical Trail approximately 1 mile North of the Pineda Causeway. R-17-2 . The property is bounded on the north, south and west by property zoned Suburban Estate Residential Use (SEU) which allows residential development on lots of 1 acre or more. R-17-24 and 52-54 . The area is characterized by single family residential development. R-18 . The requested rezoning can be considered under the Future Land Use Map Designation of Residential 1. R-17 . The administrative policies of the Brevard County Comprehensive Plan require consideration of compatibility of a proposed rezoning with existing uses and proposed land uses. R-56-63 . Criteria to review include hours of operation, lighting, odor, noise, traffic or site activity that may occur as a result of the proposed rezoning. The character of an area must not be materially or adversely affected by the proposed rezoning. R-57 .

The staff comments stated the property owners' intent was to assemble 2.5 acres so that the AU zoning could be established and an accessory structure could be built. R-18. The staff comments indicated produce would be grown and sold from the property along with mangroves. R-18 . A letter from the property owners stated the intended use was to grow container plants, specifically, mangroves. R-12. At the Planning and Zoning Board hearing, the property owner mentioned other plants, specifically Royal Poinciana. R-64-76. He also described small growing trays and stated nothing would be seen from the road and there would be no smells. R-73,74 . Mr. Nathan stated there would be no impact to adjacent property values. R-70. Emails indicating objections to the rezoning request were received, indicating the residents believed the rezoning would change or damage the character of the existing development and reduce property values. R-32,33. Copies of the code enforcement action against the Nathans were presented. R-34-37. The code enforcement citation resulted from several dead trees on the property. R-34-35. Several citizens and an attorney, Scott Widerman, appeared to express opposition to the item. R-64-76, 71. Mr. Widerman stated the property taxes were unpaid for two years on the subject property and that if proposed rezoning were granted, it would constitute spot zoning. R-64-76. The SEU zoning requires a minimum house of 2,000 square feet, and the AU only requires 750 square feet, so the AU is not consistent with existing development. R-72. The neighbors commented that the proposed use was incompatible with existing uses and out of character with the neighborhood. R-72-74. Even though the property owners plan to grow plants, they could easily change their minds and put in chickens or goats. R-72. The neighbors also stated that the river recently had a massive fish kill and no new agricultural development should occur right next to the river. R-71. One of the Planning and Zoning Board members commented that there is no AU zoning from Cone Road to Pineda and there "isn't one bit of agriculture." R-75. The Planning and Zoning Board recommended denial of the rezoning request on April 11, 2016. R-77. The Board of County Commissioners heard the item on May 3, 2016. The applicant did not appear. Attorney Scott Widerman appeared representing the neighbors in opposition to the

rezoning request and he again described the incompatibility of the proposed rezoning with the surrounding development and zoning. R-77-78. Commissioner Barfield stated the request is totally incompatible with the location. R-78. A motion to deny the request was made and the motion passed unanimously. R-78.

FINDINGS OF FACT

The Board of County Commissioners finds:

1. The subject property is 9.90 acres zoned Suburban Estate Use.
2. The subject property is currently surrounded by property zoned Suburban Estate Use. There is no other Agricultural zoning in the neighborhood or the vicinity between Cone Road and Pineda Causeway.
3. If granted, the proposed rezoning will result in one parcel of land zoned Agricultural Use surrounded by Suburban Estate Use.
4. The proposed use of agricultural zoning at this location is not compatible with the surrounding single family residential development on lots zoned for Suburban Estate Use.

CONCLUSION

Based on the foregoing, the Board of County Commissioners hereby finds the proposed use is incompatible with the future land use plan policies requiring compatibility with surrounding land uses. Accordingly, the request for rezoning from SEU to AU is hereby denied.

DONE AND RESOLVED this 12th day of July, 2016.

ATTEST:

By:


Scott Ellis, Clerk

By:


Jim Barfield, Chairperson

As approved by the Board on: July 12, 2016

Reviewed for legal form and content:



BREVARD COUNTY PLANNING AND DEVELOPMENT
APPLICATION FOR ZONING ACTION, COMPREHENSIVE PLAN AMENDMENT OR VARIANCE

All applications with fees must be submitted in person. Call 321-633-2070 for an appointment at least 24 hours in advance. DO NOT MAIL THE APPLICATION. An approval does not entitle the owner to a development permit.

Existing FLU RES1 Existing Zoning BEU
Proposed FLU RES1 Proposed Zoning AU

APPLICATION NAME

- COMBINATION - COMPREHENSIVE PLAN AND REZONING (COCPR)
COMPREHENSIVE PLAN (CP)
Large Scale Amendment Small Scale Amendment
Text Amendment - Element
Other
REZONING (Without CUP) (RWOC)
COMBINATION - ZONING AND CUP (CORC)
CUP (Without zoning) (CUP)
VARIANCE(S) (V)
AA (AA)
AA Type:
OTHER (O):

COUNTY PLANNER USE ONLY
ACCELA# 16P200020 Fee \$ 538
Date filed Feb 12, 2016 Planner CS
District# 2 Tax Account ID# 7605911

Notification radius (feet) 500 Sign Issued [checked]

Table with columns: Meeting(s), Date, Time. Rows include NMI, PSJ Board, P&Z / LPA (April 14, 2016, 3:00pm), BCC (May 5, 2016, 5:00pm), BOA.

JPA/MIRA/500' of Palm Bay Extension: Yes or No (No)

Location: Westside of south tropical forest 1/4 mile north of pine dale court
Detailed Description: To have detached accessory building along with agricultural uses, grow and sell produce

Tax Parcel: T 26 R 31 S 17 S/D 66 Blk/Par 9 Lot

Acreage of Request: 2.56

Reason for Request: Because from BEU to AU to allow for agricultural uses

PROPERTY OWNER:

Name: MARK & KATHY NATHAN
Address: 160 EGRET DRIVE
City: SATELLITE BEACH
Phone: (321) 543-0373
Company:
E-Mail: MARKNATHANMUSIC@GMAIL.COM
State: FLORIDA Zip: 32937

APPLICANT IF OTHER THAN OWNER (check): Attorney Agent Contract Purchaser

Name:
Address:
City:
Phone: Fax: Cell:

The undersigned understands that this application must be complete and accurate prior to advertising a public hearing: State of FLORIDA County of BREVARD being first duly sworn, depose and say that I hereby certify that the information in this application and all sketches and data attached to and made a part hereof are true and accurate to the best of my knowledge, and:

I am the owner of the subject property, or if corporation, I am the officer of the corporation authorized to act on this request.
I am the legal representative of the owner of the subject property of this application. (Notarized statement attached)

Signature of Property Owner/Authorized Representative: [Signature] Date: 2-12-16

The foregoing instrument was acknowledged before me this 12th day of February 2016, by Mark Nathan, who is Personally Known by me OR Produced Identification. Type of Identification Produced: FLOR

Notary Public Signature: [Signature]



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ACCELA # 16P200020

DOCUMENT SUBMITTAL REQUIREMENTS

Application type	Application	Authorization to Act Form ¹	Recorded Property Deeds	Legal Description of Request ²	Survey 11" x 17" (max. size)	Property Appraisers Map	Concurrency	School Concurrency ³	Wetland Survey ⁴	CUP Worksheet & Sketch ⁵	Comp Plan Information ⁶	Notice to Applicants	Neighbors Affidavit ⁷	Letter to Zoning Official	Variance Hardship Worksheet ⁹	*Additional Documentation	Fees	
	NUMBER OF COPIES REQUIRED																	
Staff to check full time tax lot																		
Comprehensive Plan Amendment ⁶	1	1	1	2	2	1					1						*	Y
Zoning request	1	1	1	1	1 ⁸	1	X	X	1 ⁸			1					*	Y
Conditional Use Permit (CUP)	1	1	1	1	1 ⁸	1				1		1						Y
AA - Waiver	1	1			1	1								1	1			Y
AA - Easement	1	1	1	1	4	1												Y
Variance	1	1	1	1	1	1									1	*		Y

¹Authorization to Act form is required, if other than the owner of record is making the application. If the property is not owned in entirety, by the applicant, either a Form "A", or a notarized letter must accompany the application giving written consent by all property owners of the subject property.

²Legal Description must be typed on a separate sheet, if not easily described on the deed.

³School Board Concurrency application is required if the request represents an increase of more than one residential unit.

⁴Wetland Survey required on Commercial or Industrial property.

⁵CUP applications require a completed worksheet and a sketch plan with the application signed by a planner.

⁶Must include Comprehensive Plan Amendment supplemental form reviewed by a planner prior to submitting formal application. The supplement must include a written statement explaining the rationale and the appropriate data and analysis necessary to support the proposed change.

⁷Administrative waivers requiring a signed affidavit from all abutting property owners indicating no objection to the requested waiver of lot size, width or depth requirement. The affidavit must state the specific request.

⁸Survey must be submitted if requested by staff.

⁹Variance Hardship Worksheet must be filled out completely, addressing the six criteria for a hardship.

***Additional information may be requested by staff dependent upon the requested action. These include but are not limited to impact analysis studies:**

Traffic Impact Analysis (TIA): TIA must be submitted if required by the County Traffic Engineer. Analysis methodology must be coordinated with the Traffic Engineering Office.

Environmental Impact Analysis: The analysis must be conducted by a qualified environmental professional and dated less than one year old. The analysis must document the types of habitat found on site; identify vegetation types, soils types, wetlands, floodplains, and any other environmental concerns.

Water and Sewer Demand: Identify the potable water and sanitary sewer demand for the amendment based on the current and proposed future land use designations using the per capita water and wastewater standards of the applicable service provider.

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ACCELA FEE SHEET

Fee Schedule: Zoning

Version: Version 1

Payment period	Priority	Subgroup	Fee Code	Fee Item	Quantity (Amount)
FINAL			PZ300	Zoning /Variance	238
FINAL			PZ310	Comprehensive plan	
FINAL			PZ320	Waiver/Easement	
FINAL			PZ330	Address Assignment	
FINAL			PZ340	NRMO	
FINAL			PZ350	Miscellaneous	250
FINAL			PZ360	Tower Application/ Consultant Fee	
FINAL			PZ370	Land Development PUD Review	

CALCULATION OF PUBLIC HEARING APPLICATION FEES - ZONING OFFICE

PUBLIC HEARING APPLICATION FEES

REZONING BASE FEE ACREAGE FEE UNIT FEE SUB-TOTAL

Environmental Area 511.00

Residential Professional 960.00

General Use and Agricultural Use 849.00 *

Single-Family Residential 849.00 **

Single-Family Mobile Home 849.00 **

Commercial/Planned Commercial 1,184.00

Tourist Commercial 1,855.00

Industrial/Planned Industrial 1,855.00

Planned Unit Development 5,661.00

Single-Family Attached Residential 960.00

Multiple-Family Residential 960.00

Recreational Vehicle Park 1,408.00

Mobile Home Park/Mobile Home Co-op 1,408.00

CUP's or ROU APPLICATIONS

Fee per request (with rezoning) 447.00

Fee per request (without rezoning) 849.00

OTHER APPLICATION FEES

Consultant Fee Retainer per Tower Application 6,934.00

Transfer of Development Rights 1,520.00

Comprehensive Plan Appeals (Vested Rights) 433.00

One (5.0 acres or less) Single family residential 1,733.00

All other appeals 598.00

Variance/Appeals of Administrative Interpretation 182.00

Base fee 3,692.00

Fee for each additional request 1,872.00

Special Hearing Fee for P & Z / LPA 849.00

Special Hearing Fee for BOA 849.00

All Other Unlisted Zoning Applications 849.00

Miscellaneous 849.00

Office of Natural Resources review fee (if applicable) 289.66

(\$250.00 for rezoning review, \$300.00 for flag lot & easement review)

Address Assignment review of flag lot & easement 250.00

Land Development PUD Review Fee (\$100.00) 50.00

SUB-TOTAL**** 289.66

TOTAL 538.00

BASE FEE ADJUSTMENTS

* If area for these requests have the potential for only one more lot, fee is 288.00

** Maximum acreage fees for these requests shall be 2,240.00

*** Maximum Planned Unit Development Fee shall be 13,432.00

**** Maximum fee for all other zoning requests shall be 13,432.00

Zoning Information Worksheet

Owner(s): Mark & Kathy Matham
(Does this match the warranty deed?)

Applicant(s): Mark Matham
(Does this person have authorization from everyone listed on the warranty deed?)

Parcel ID#: 26-37-17-00-00009.0-0000.00
(If more than one parcel, they must share a property line to be on the same application.)

PRESENT ZONING: SEU
• Is there a BDP or a CUP on the property? Yes/No: _____
• Is this a non-conforming lot of record? Yes/No: Why? _____
• Is this a substandard lot? Yes/No: Why? _____

REQUESTED ZONING/CUP: AM

What is the FLU Designation of the property?: RES 1
• Is the requested zoning consistent with the FLU? Yes/No (see compatibility table)
• If no, what is the requested **small scale plan amendment**? (MUST BE 10.00 ACRES OR LESS.)

BDP Requested? Yes/No: NA

If CUP Request, do you have a CUP worksheet filled out by the applicant? Yes/No

PREVIOUSLY APPROVED ZONING ACTIONS: AA

Most recent zoning change in same section? Z# 3275

If this is a CUP request, list all CUP's on adjacent properties: NA

Abutting property zoning classifications: N SEU S SEU E Road W SEU

JPA/Special Board/Special Section? Yes/No (Circle one and make a note on the application) PSJ, NMI, MIRA, ROCKLEDGE, MELBOURNE, PALM SHORES, TITUSVILLE, PALM BAY or within 500' of PALM BAY EXTENSION

REASON FOR REZONING REQUEST: To allow for agricultural uses and accessory struct.
• If proposing single-family or multi-family how many units? nil
• If proposing a CUP for alcohol, how many seats? nil Bar or Restaurant? NA
o Do you have a certified survey indicating there are no churches or schools within 400'? Yes/No
o Do you have a site plan showing the layout and parking configuration? Yes/No
o Do you have a CUP worksheet filled out by the applicant? Yes/No
• If the request is for commercial zoning, do you have a wetland survey that includes a legal description of the wetland? Yes/No (If no, NR must have checked no on the front of the application)

Existing structures/uses on the property? Vacant

Describe the character of the area:
The area is primarily residential

Did you print out the Property Appraiser's Map for this property? _____
Did you mark the map? _____
Did you stamp the deed(s)? _____

Planner: 10

Checked by: _____

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This Warranty Deed

Made this 10th day of **October** A.D. 2002
by **CHARLES W. McELWEE and JENNIE PING**
McELWEE, husband and wife


CFN:2002265162 10-21-2002 08:43 am
OR Book/Page: **4714 / 3954**

hereinafter called the grantor, to
MARK NATHAN and KATHLEEN NATHAN, husband and wife

whose post office address is:
160 EGRET DRIVE
SATELLITE BEACH,, FLORIDA 32937
Grantees' SSN:

Scott Ellis
Clerk Of Courts, Brevard County
#Pgs: 3 #Names: 4
Trust: 2.00 Rec: 13.00 Serv: 0.00
Deed: 2,278.50 Excise: 0.00
Mfg: 0.00 Int Tax: 0.00

hereinafter called the grantee:
(Whenever used herein the term "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth, that the grantor, for and in consideration of the sum of \$ **10.00** and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in **Brevard** County, Florida, viz:

See Schedule A attached hereto and by this reference made a part hereof.

VACANT LAND
SUBJECT TO Covenants, restrictions, easements of record and taxes for the current year.

Said property is not the homestead of the Grantor(s) under the laws and constitution of the State of Florida in that neither Grantor(s) or any members of the household of Grantor(s) reside thereon.


Parcel Identification Number: 26-37-17-00-9


Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining. To Have and to Hold, the same in fee simple forever.

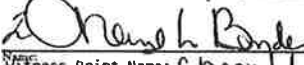
And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances except taxes accruing subsequent to December 31, 2001

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence:


Name: Lynn Del Villar
Witness Print Name: Lynn Del Villar


Name & Address: CHARLES W. McELWEE
PO BOX 61050 POTOMAC, MD 20859 LS


Name: Cheryl L. Bender
Witness Print Name: Cheryl L. Bender


Name & Address: JENNIE PING McELWEE
PO BOX 61050 POTOMAC, MD 20859 LS

Name: _____
Witness Print Name: _____

Name & Address: _____ LS

Name: _____
Witness Print Name: _____

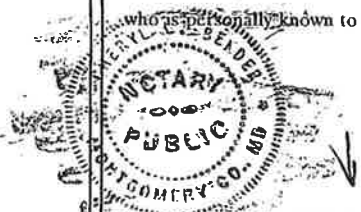
Name & Address: _____ LS

State of MARYLAND
County of Montgomery

The foregoing instrument was acknowledged before me this 10th day of **October**, 2002, by

CHARLES W. McELWEE and JENNIE PING McELWEE, husband and wife

who is personally known to me or who has produced **drivers license** as identification.




Notary Public
Print Name: CHERYL L. BENDER
My Commission Expires NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires May 17, 2003

PREPARED BY: LOLA J. CAMPBELL
RETURN TO: Alday-Donalson Title
1990 WEST NEW HAVEN AVENUE, SUITE 102
Melbourne, Florida 32904
File No: 1102663



CFN:2002265162
OR Book/Page: 4714 / 3955

Schedule A

PARCEL A

THAT PORTION OF TRACT K OF A CIRCUIT COURT PLAT, RECORDED IN CIRCUIT COURT MINUTES BOOK 2, PAGE 530 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA IN GOVERNMENT LOT 2, SECTION 17, TOWNSHIP 26 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF LOT 28, SOUTH BANYAN ISLES, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 21, PAGE 76, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE RUN NORTH 89 DEGREES 23 MINUTES 00 SECONDS WEST, ALONG THE SOUTH LINE OF SAID TRACT K, FOR 56.73 FEET, TO THE WESTERLY RIGHT OF WAY LINE OF FLORIDA STATE ROAD NO. 3 (ALSO KNOWN AS SOUTH TROPICAL TRAIL), A 50 FOOT WIDE RIGHT OF WAY; THENCE RUN NORTH 24 DEGREES 35 MINUTES 00 SECONDS WEST, ALONG SAID RIGHT OF WAY LINE FOR 397.14 FEET, TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 24 DEGREES 35 MINUTES 00 SECONDS WEST, ALONG SAID RIGHT OF WAY LINE, FOR 198.55 FEET; THENCE RUN NORTH 87 DEGREES 56 MINUTES 42 SECONDS WEST, FOR 141.40 FEET; THENCE RUN SOUTH 03 DEGREES 37 MINUTES 00 SECONDS WEST, FOR 171.13 FEET' THENCE RUN SOUTH 86 DEGREES 23 MINUTES 00 SECONDS EAST, 350 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID TRACT K, FOR 235.17 FEET TO THE POINT OF BEGINNING; TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL OF LAND:

COMMENCE AT THE NORTHWEST CORNER OF LOT 28 OF SAID PLAT OF SOUTH BANYAN ISLES, THENCE RUN NORTH 86 DEGREES 23 MINUTES 00 SECONDS WEST, ALONG THE SOUTH LINE OF SAID TRACT K FOR 56.73 FEET, TO THE WESTERLY RIGHT OF WAY LINE OF SAID FLORIDA STATE ROAD NO. 3; THENCE RUN NORTH 24 DEGREES 35 MINUTES 00 SECONDS WEST, FOR 397.14 FEET; THENCE RUN SOUTH 86 DEGREES 23 MINUTES 00 SECONDS EAST, 350 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID TRACT K, FOR 56.73 FEET, TO THE POINT OF BEGINNING ON THE EASTERLY RIGHT OF WAY LINE OF SAID FLORIDA STATE ROAD NO. 3; THENCE RUN SOUTH 86 DEGREES 26 MINUTES 00 SECONDS EAST, 350 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID TRACT K, FOR 150 FEET, MORE OR LESS TO THE EASTERLY SHORE OF THE BANANA RIVER; THENCE MEANDER NORTHWESTERLY ALONG THE EASTERLY SHORE OF SAID BANANA RIVER FOR 269 FEET MORE OR LESS; THENCE RUN NORTH 87 DEGREES 56 MINUTES 42 SECONDS EAST, FOR 83 FEET, MORE OR LESS, TO THE EASTERLY RIGHT OF WAY LINE OF SAID FLORIDA STATE ROAD NO. 3; THENCE RUN SOUTH 24 DEGREES 35 MINUTES 00 SECONDS EAST, FOR 228.03 FEET TO THE POINT OF BEGINNING;

PARCEL B

THAT PORTION OF TRACT K, CIRCUIT COURT PLAT, RECORDED IN CIRCUIT COURT MINUTES BOOK 2, PAGE 530 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA IN GOVERNMENT LOT 2, SECTION 17, TOWNSHIP 26 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF LOT 28, SOUTH BANYAN ISLES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 21, PAGE 76, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE NORTH 86 DEGREES 23 MINUTES 00 SECONDS WEST, ALONG THE SOUTH LINE OF SAID TRACT K, FOR 56.73 FEET TO THE WESTERLY RIGHT OF WAY LINE OF FLORIDA STATE ROAD NO. 3, (ALSO KNOWN AS SOUTH TROPICAL TRAIL), A 50 FOOT WIDE PUBLIC RIGHT OF WAY; THENCE RUN NORTH 24 DEGREES 35 MINUTES 00 SECONDS WEST, ALONG THE WESTERLY RIGHT OF WAY LINE OF SAID FLORIDA STATE ROAD NO. 3, FOR 595.69

File No: 1102663



CFN:2002265162

OR Book/Page: 4714 / 3956

Schedule A

FEEET, TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 24 DEGREES 35 MINUTES 00 SECONDS WEST, ALONG THE WESTERLY RIGHT OF WAY LINE OF SAID FLORIDA STATE ROAD NO. 3 FOR 27.97 FEET THENCE RUN N 87 DEGREES 56 MINUTES 42 SECONDS WEST, FOR 353.88 FEET; THENCE RUN SOUTH 03 DEGREES 37 MINUTES 00 SECONDS WEST, FOR 189.99 FEET; THENCE RUN SOUTH 86 DEGREES 23 MINUTES 00 SECONDS EAST, 350 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID TRACT K, FOR 225.62 FEET; THENCE RUN NORTH 03 DEGREES 37 MINUTES 00 SECONDS EAST, FOR 171.13 FEET; THENCE RUN SOUTH 87 DEGREES 56 MINUTES 42 SECONDS EAST, FOR 141.40 FEET, TO THE POINT OF BEGINNING; TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL OF LAND:

COMMENCE AT THE NORTHWEST CORNER OF SAID LOT 28; THENCE RUN NORTH 86 DEGREES 23 MINUTES 00 SECONDS WEST, ALONG THE SOUTH LINE OF SAID TRACT K, FOR 56.73 FEET, TO THE WESTERLY RIGHT OF WAY LINE OF SAID FLORIDA STATE ROAD NO. 3; THENCE RUN NORTH 24 DEGREES 35 MINUTES 00 SECONDS WEST, FOR 397.14 FEET; THENCE RUN SOUTH 86 DEGREES 23 MINUTES 00 SECONDS EAST, 350 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID TRACT K, FOR 56.73 FEET, TO THE EASTERLY RIGHT OF WAY LINE OF SAID FLORIDA STATE ROAD NO. 3; THENCE RUN NORTH 24 DEGREES 35 MINUTES 00 SECONDS WEST, ALONG THE EASTERLY RIGHT OF WAY LINE OF SAID FLORIDA STATE ROAD NO. 3, FOR 228.25 FEET TO THE POINT OF BEGINNING; THENCE RUN SOUTH 87 DEGREES 58 MINUTES 42 SECONDS EAST, FOR 84 FEET, MORE OR LESS TO THE EASTER SHORE OF THE BANANA RIVER; THENCE MEANDER NORTHWESTERLY ALONG THE EASTERLY SHORE OF THE BANANA RIVER, FOR 35 FEET, MORE OR LESS; THENCE RUN NORTH 87 DEGREES 56 MINUTES 42 SECONDS WEST, FOR 72 FEET, MORE OR LESS TO THE EASTERLY RIGHT OF WAY LINE OF SAID FLORIDA STATE ROAD NO. 3; THENCE RUN SOUTH 24 DEGREES 35 MINUTES 00 SECONDS EAST, ALONG THE EASTERLY RIGHT OF WAY LINE OF SAID FLORIDA STATE ROAD NO. 3, FOR 27.97 FEET, TO THE POINT OF BEGINNING.

File No: 1102663

000008A

FYI
IV.B.6.

Dear Neighbors,

This is a letter to our neighbors to inform you of our intention to change our property on Tropical Trail from SEU to AU (Agricultural/Residential) for the express purpose of growing container plants (mangroves). Our property has plenty of open space without having to alter our lot in any way (i.e. cut trees, bushwhack). The property will not change in any noticeable way from what it is today.

I have been growing mangroves, red, black and white along with buttonwoods for many years. I got started working with Jim Egan at the Marine Resource Council where I volunteered for water testing and mangrove planting. Today I have sixteen trays with 8-10 plants each. Our home in Satellite Beach is crowded with the trays and it would be a relief to move them to the property where there is ample room to grow and maintain them.

I plan to keep enough trays in Satellite Beach for all retail sales. Our property on Tropical Trail will not be used for retail sales.

If you have any questions, please feel free to call me or my wife, Kathy.

Very respectfully,

Mark Nathan

Contact info – Mark 321-543-0373

Kathy 321-890-8345

000012

12

Dana Blickley, CFA
Property Appraiser
Brevard County, FL



**Property
 Details**

General Parcel Information

Parcel ID:	26-37-17-00-00009.0-0000.00	Millage Code:	<u>2800</u>	Exemption:		Use Code:	<u>9</u>
Site Address:						Tax ID:	2605911

Site Address is assigned by Brevard County Address Assignment for E-911 purposes and may not reflect the postal community name.

Owner Information

Owner Name:	NATHAN, MARK
Second Name:	NATHAN, KATHLEEN H/W
Mailing Address:	160 EGRET DR
City, State, Zipcode:	SATELLITE BCH, FL 32937

Abbreviated Description

Sub Name:	PART OF GOVT LOT 2 BEING PART OF TRACTS J & K OF CIRCUIT COURT PLAT PER CCM BK 2 PG 531 AS DESC IN ORB 2936 PG 999
------------------	---

Value Summary

Roll Year:	2013	2014	2015
Market Value Total: ¹	\$350,960	\$350,960	\$350,960
Agricultural Market Value:	\$0	\$0	\$0
Assessed Value Non-School:	\$350,960	\$350,960	\$350,960
Assessed Value School:	\$350,960	\$350,960	\$350,960
Homestead Exemption: ²	\$0	\$0	\$0
Additional Homestead: ²	\$0	\$0	\$0
Other Exemptions: ²	\$0	\$0	\$0
Taxable Value Non-School: ³	\$350,960	\$350,960	\$350,960
Taxable Value School: ³	\$350,960	\$350,960	\$350,960

Land Information

Acres:	2.66
Site Code:	<u>117</u>
Land Value:	\$350,960

1: Market value is established for ad valorem purposes in accordance with s.193.011(1) and (8), Florida Statutes. This value does not represent anticipated selling price for the property.

2: Exemptions are applicable for the year shown and may or may not be applicable if an owner change has occurred.

3: The Additional Homestead exemption does not apply when calculating taxable value for school districts pursuant to Amendment 1.

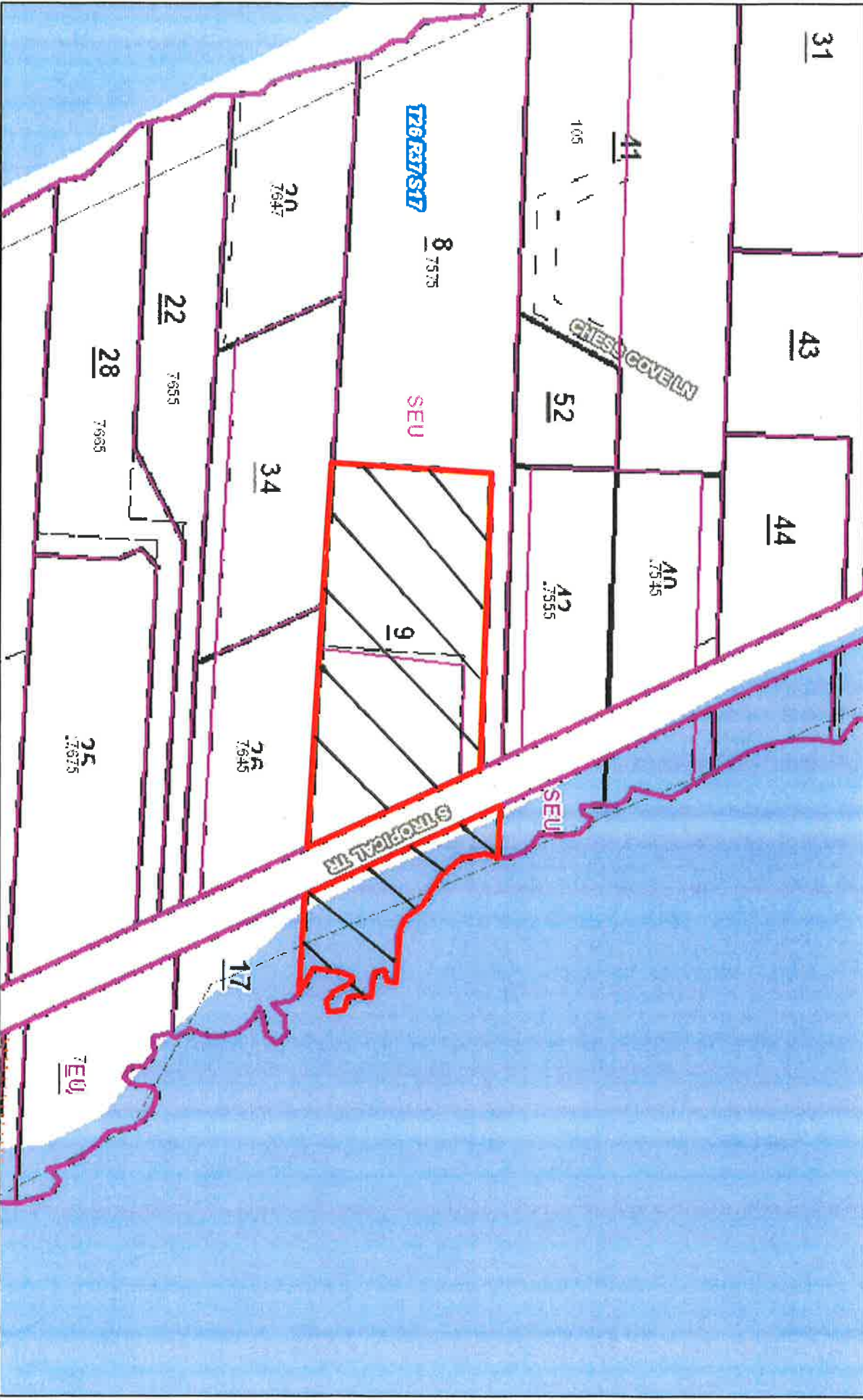
Sale Information

Official Records Book/Page	Sale Date	Sale Amount	Deed Type	Sale Screening Code	Sale Screening Source	Physical Change Code	Vacant/Improved
<u>4714/3954</u>	10/10/2002	\$325,500	WD				V
<u>2936/0999</u>	8/1/1988	\$163,000	WD				V
<u>2848/1160</u>	10/1/1987	\$275,000	PT				V

Sale screening and sale screening source codes are for assessment purposes only and have no bearing on potential marketability of the property.

000013 B

Mark Nathan



RECEIPT

BREVARD COUNTY
2725 JUDGE FRAN JAMIESON WAY
VIERA, FL 32940



Application: 16PZ00020
Application Type: Development/Miscellaneous/Planning Zoning/NA
Address: FL

Receipt No.: 404684

Payment Method	Ref Number	Amount Paid	Payment Date	Cashier ID	Comments
Credit Card	22583749	\$538.00	02/12/2016	LISA.SMITH	
Owner Info.:	NATHAN, MARK 160 EGRET DR SATELLITE BCH, FL 32937				

Work Description: Rezone from SEU to AU to allow for accessory structure without primary structure.

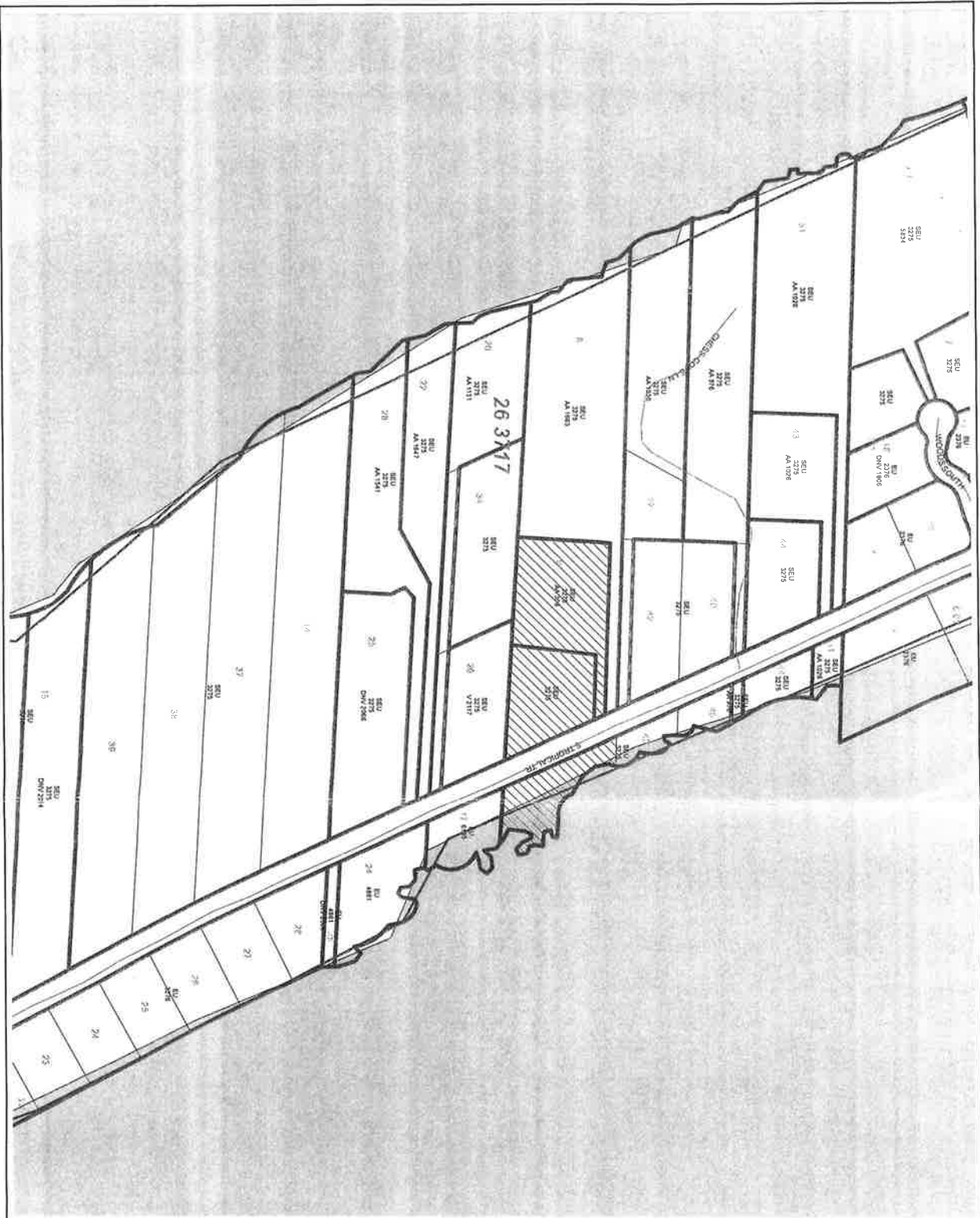
Invoice #	Invoice Date	Period	Fee Item	Fee
422906	12-Feb-16	FINAL	NRMO	\$250.00
		FINAL	Zoning/Variance	\$288.00
Subtotal:				\$538.00
Total Fee:				\$538.00

***Note: Additional Fees may apply to obtain a Certificate of Completion, a Certificate of Occupancy, or a Final Building Inspection. Please call the Central Cashier to verify.**

Contact Numbers

Building Dept. – 633-2072, Central Cashier – 633-2068, Code Enforcement – 633-2086,
Land Development – 633-2065, Licensing, Regulation, and Enforcement – 633-2058

16P200020-111111 & PARTIALLY 1111111111



TOWNSHIP 26, RANGE 37, SECTION 17

16P200020

SEU to AU

Legend

- Subject Property
- TwinRing_Lines
- Sections
- Parcels
- Streets
- Zoning Easements
- Zoning Actions
- Municipality

For Brevard County
Planning & Zoning
Office Use Only



0 50 100 200
Feet

1 Inch = 200 Feet

Date: 2/25/2016

000016 10

IV.B.6.

Commission District # 2 (16PZ00020)
Initial Hearing Dates: P&Z 04/11/16 BCC 05/05/16

REZONING REVIEW WORKSHEET

Applicant Name: MARK AND KATHLEEN NATHAN

Request: SEU to AU

Subject Property:

Parcel ID#: 26-37-17-00-9
Tax Acct#: 2605911
Location: West side of S. Tropical Trail, approx. 1 mile north of Pineda Cswy.
Address: No assigned address. In the Merritt Island area.
Acreage: 9.90 acres.

Consistency with Land Use Regulations

- YES Current zoning can be considered under the Future Land Use Designation. Sec. 62-1255
- YES Proposal can be considered under the Future Land Use Designation. Sec. 62-1255
- YES Would proposal maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	SEU	AU
Potential*	9 units	3 Units
Can be Considered under FLU MAP	YES RESIDENTIAL 1	YES

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

ADT PM PEAK				
Trips from Existing Zoning	0	0	Segment Number	350B
Trips from Proposed Zoning	29	3	Segment Name	S Tropical Trail
Maximum Acceptable Volume (MAV)	12,600	1,147	Acceptable LOS	E
Current Volume	7,321	666	Directional Split	0.50
Volume With Proposed Development	7,350	669	ITE CODE 210	
Current Volume / MAV	58%	58%		
Volume / MAV with Proposal	58%	58%		
Current LOS	E	E		
LOS With Proposal	E	E		

The preliminary concurrency analysis did not indicate that the proposed amendment will cause a deficiency on the availability of existing transportation facilities.

Land Use Compatibility

FLUE Policy 1.1 requires consideration of land use compatibility and character of the area.

The request is for the AU zoning classification. The AU zoning classification permits single-family residences and agricultural pursuits on 2 ½ 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. The surrounding properties are zoned SEU. 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. This area of Merritt Island is characterized by single-family development on parcels of one acre or greater in area. The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 - 8 of the Future Land Use Element, as outlined on pages 2 through 5 of these staff comments.

Environmental Constraints

_____ * Does the project appear to meet county use or density restrictions based upon:
 * Refer to NRM's comments following these staff comments.

The following environmental factors may affect development potential (Policies 1.1.A, II.2.E, and 3.1.F, of the Future Land Use Element):

Environmental Factor	Preliminary Assessment of Factor	Environmental Factor	Preliminary Assessment of Factor
Hydric Soils	Mapped Wetlands East Side	Coastal Protection	NA
Aquifer Recharge Soils	Mapped	Surface Water Protection	Aquatic Preserve
Floodplains	Mapped on East Side	Habitat for Protected Species	Potential

Note: This is a preliminary review based upon environmental maps available to the Natural Resources Management (NRM) at the time of this review and does not include a site inspection to verify the accuracy of this information. This review does not ensure whether a proposed use or development of the property can be permitted under current federal, state or local regulations. Hydric Soils may be associated with wetlands. If applicable, the full text of NRM's comments follow these staff comments.

Other Considerations: This request represents the applicants' desire to assemble 2.5 acres so that the property can be zoned to AU, an agricultural zoning classification. The applicants want to have a detached accessory building over the maximum allowed in the existing SEU zoning classification. The property owners would also like to grow and sell produce from the property with other future agricultural pursuits.

This area of South Tropical Trail in Merritt Island is predominantly zoned SEU or EU, the County's "estate use" zoning classifications that provide for single-family development that is spacious in character. The only agricultural type pursuit that can be sought under the existing SEU zoning classification are for horses, mules, goats and barns is a Conditional Use Permit (Section 62-1935) and require a minimum of five acres.

Summary: The applicants are requesting the AU zoning classification so that they may develop the property with accessory structures and agricultural pursuits, such as selling produce from the property. This area of south Merritt Island is developed with large single-family homes in an area where the zoning classifications provide for larger homes on properties that are spacious in character. Given the existing development, the AU zoning classification in this area may be incompatible with existing uses. The Board may wish to consider limitations upon the types of AU uses for this property, such as excluding horses and livestock through a Binding Development Plan.

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Rezoning Review
SUMMARY

Item #: 16PZ00020	Applicant: Mark and Kathy Nathan
Zoning Request: SEU to AU	
P & Z Hearing Date: 04/11/16	BCC Hearing Date: 05/05/16

This is a preliminary review based on environmental maps available to the Natural Resources Management Department (NRM) at the time of this review and does not include a site inspection to verify the accuracy of this information. This review does not ensure whether or not a proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations. In that this process is not the appropriate venue for site plan review, specific site designs that may be submitted with the rezoning will be deemed conceptual and any comments or omissions relative to specific site design do not provide vested rights or waivers from these regulations, unless specifically requested by the owner and approved by the Board of County Commissioners. If the owner has any questions regarding this information, he/she is encouraged to contact NRM prior to submittal of any development or construction plans.

Natural Resource	Preliminary Assessment	Natural Resource	Preliminary Assessment
Wetlands Potential/Hydric Soils	Mapped wetlands on east side of Tropical Trail.	Coastal Protection	N/A
Aquifer Recharge Soils	Mapped	Surface Waters	Aquatic Preserve
Floodplains	Mapped on east side of Tropical Trail.	Wildlife	Potential

Comments:

**This review relates to the following property: Twp. 26, Rng. 31, Sec. 17;
 Tax ID No. 2605911**

The subject property contains mapped SJRWMD wetlands on the east side of South Tropical Trail, an indicator that wetlands may be present on the property. Section 62-3694(a)(1) states that agricultural and forestry operations utilizing best management practices shall be permitted in wetlands provided they do not result in permanent degradation or destruction of wetlands. Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt.

The eastern portion of the property is located on Aquatic Preserve surface waters. A 50-foot surface water protection buffer (buffer) is required. Except as allowable under Section 62-3668 (7), primary structures shall be located outside the buffer. Accessory structures within the buffer are permissible with conditions (e.g., stormwater management provided, avoidance/minimization of impacts, maximum 30% impervious). The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan or permit submittal.

The subject parcel contains mapped aquifer recharge soils (Paola Fine Sand, 0-Candler – Urban Land). The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

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. Land clearing is permitted without prior authorization by NRM only if the activity is a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

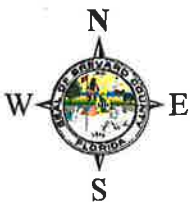
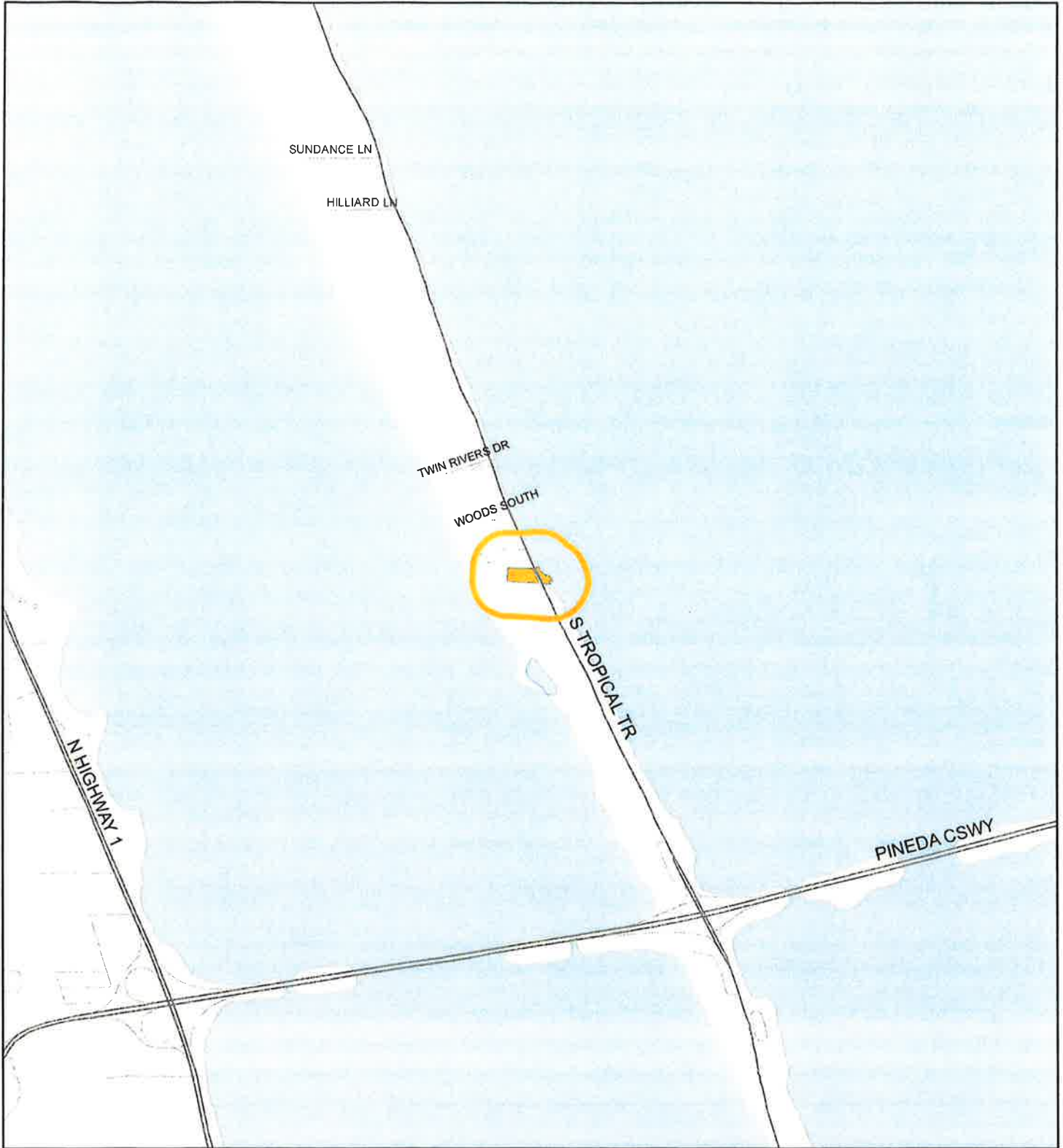
The eastern portion of the property is mapped as being within floodplain as identified by the Federal Emergency Management Agency; and is subject to the development criteria in Conservation Objective 4, its subsequent policies, and the Floodplain Ordinance.

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.

LOCATION MAP



NATHAN, MARK

16PZ00020



1:24,000 or 1 inch = 2,000 feet

Buffer Distance: 500 feet

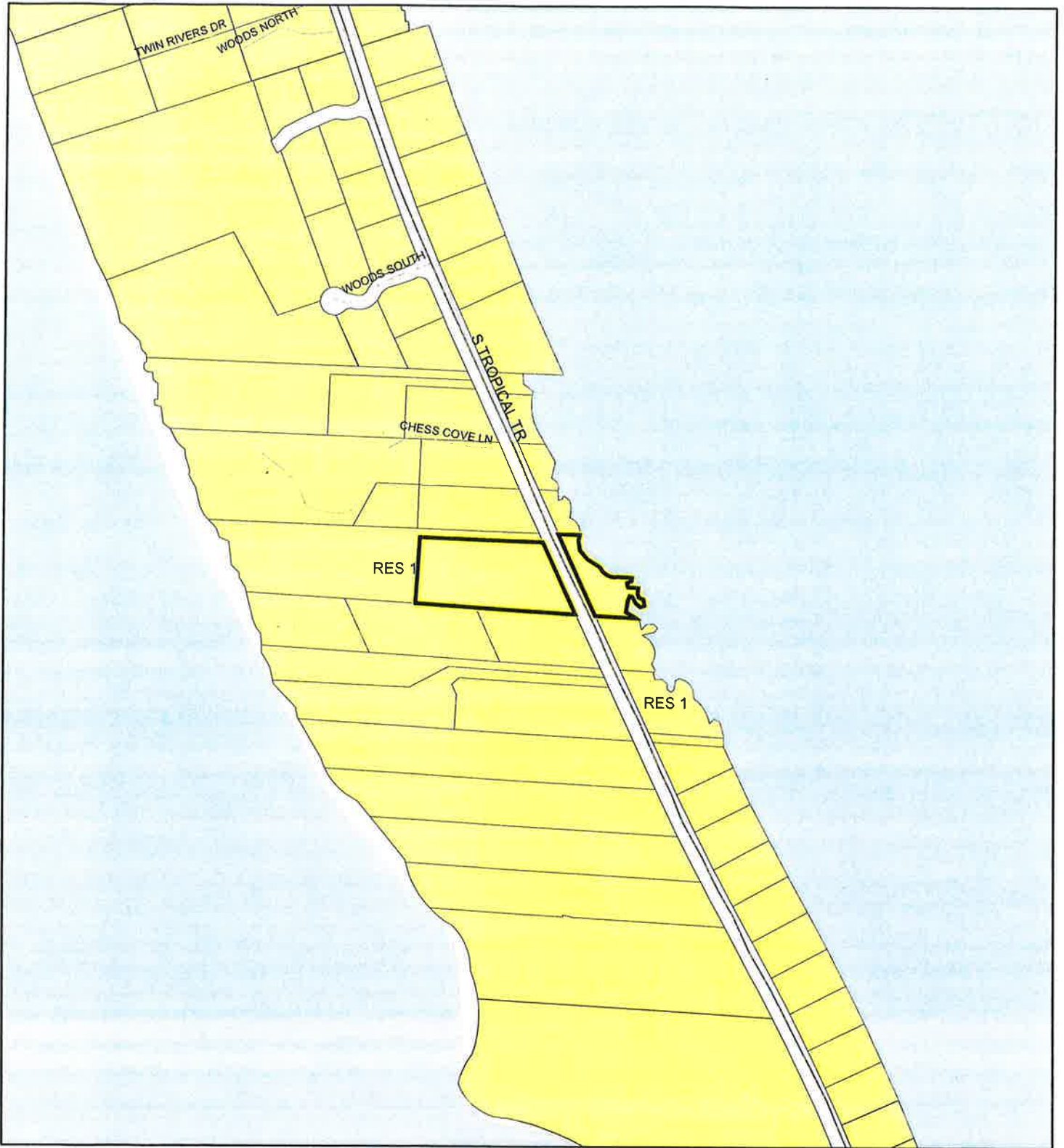
 Buffer
 Subject Property

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

FUTURE LAND USE MAP

NATHAN, MARK

16PZ00020



1:4,800 or 1 inch = 400 feet

-  Subject Property
-  Parcels

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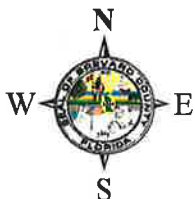
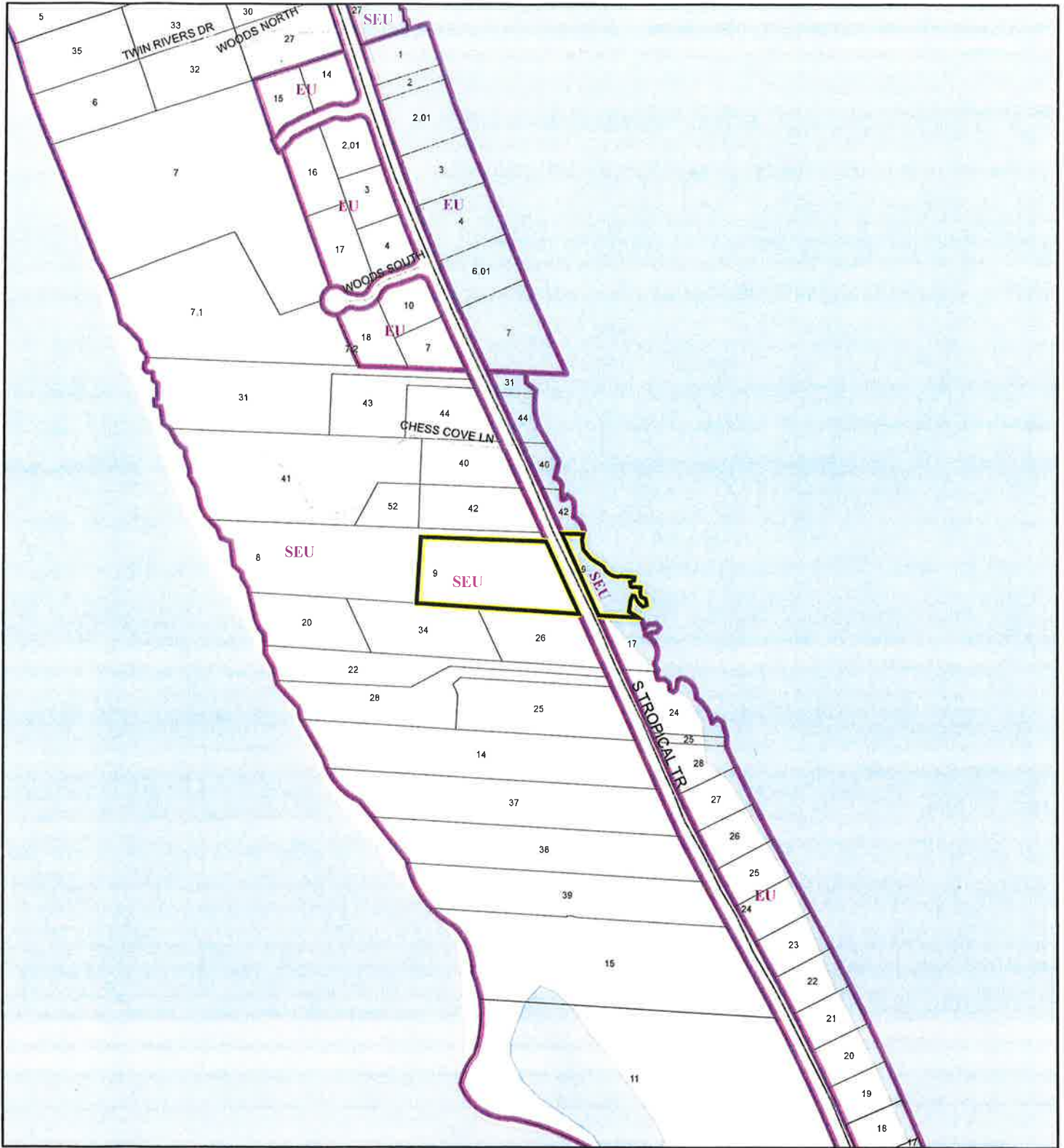
Produced by the Brevard County Planning and Zoning Office - GIS Section Date: 2/23/2016

000022




ZONING MAP

NATHAN, MARK

16PZ00020



1:4,800 or 1 inch = 400 feet

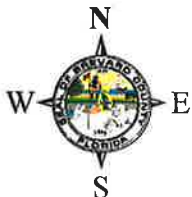
-  Subject Property
-  Parcels
-  Zoning

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

AERIAL MAP


NATHAN, MARK

16PZ00020



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2015

 Subject Property

 Parcels

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by the Brevard County Planning and Zoning Office - GIS Section Date: 2/23/2016

000024



Planning & Development Department

2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

March 25, 2016

Dear Applicant: MARK & KATHLEEN NATHAN

Your request for zoning action will be considered by the Brevard County Planning and Zoning Board (Local Planning Agency) at the public hearing scheduled for **MONDAY, APRIL 11, 2016**, as Item **6**. This hearing will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Building C, Viera, Florida, beginning at **3:00 p.m.**, or as soon thereafter as possible.

A public hearing will be held by the Board of County Commissioners on **THURSDAY, MAY 5, 2016**, at **5:00 p.m.** This hearing will also be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Building C, Viera, Florida. You, as applicant, or your representative, must be present at **both** of these public hearings. If your request is postponed until the following month as a result of **your** request, error, or failure to appear, or to be represented, you will be required to pay a reprocessing fee of 80 percent of the original fee before your request can be heard at a subsequent meeting.

The needs of hearing or visually impaired persons shall be met, if the Planning and Development Department is contacted at least five (5) days prior to the public hearing by any person wishing assistance.

Sincerely,

Robin M. Sobrino, AICP, Director
Planning & Development Department

RMS/jj

Dear Property Owner:

ID# 16PZ00020

This COURTESY NOTICE is being sent to inform you that your property is within 500 ft. of property owned by **MARK & KATHLEEN NATHAN**, who are requesting a change of classification on 2.56 acres. The property is located on the west side of S. Tropical Trail, approx. 1 mile north of Pineda Cswy. (No assigned address. In the Merritt Island area)

Current Zoning: SEU (Suburban Estate Use)

Request: AU (Agricultural Residential)

A public hearing will be held by the Planning & Zoning Board (LPA) at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida, 32940, on **Monday, April 11, 2016**, beginning at **3:00 p.m.** The final public hearing will be held by the Board of County Commissioners on **Thursday, May 5, 2016**, beginning at **5:00 p.m.**, at the same location.

You are invited to attend these public hearings to voice any comments you may have, or you may also write to the address shown on the front of this card. For the complete agenda, you may visit our internet site at www.brevardcounty.us/PlanningDev/Boards/PZBoard, or call the Planning & Development Department at (321) 633-2069. Your correspondence or inquiry should refer to the ID# located in the upper right-hand corner of the card. The needs of hearing or visually impaired persons shall be met if the Planning & Development Department is contacted at least five (5) days prior to the public hearing.

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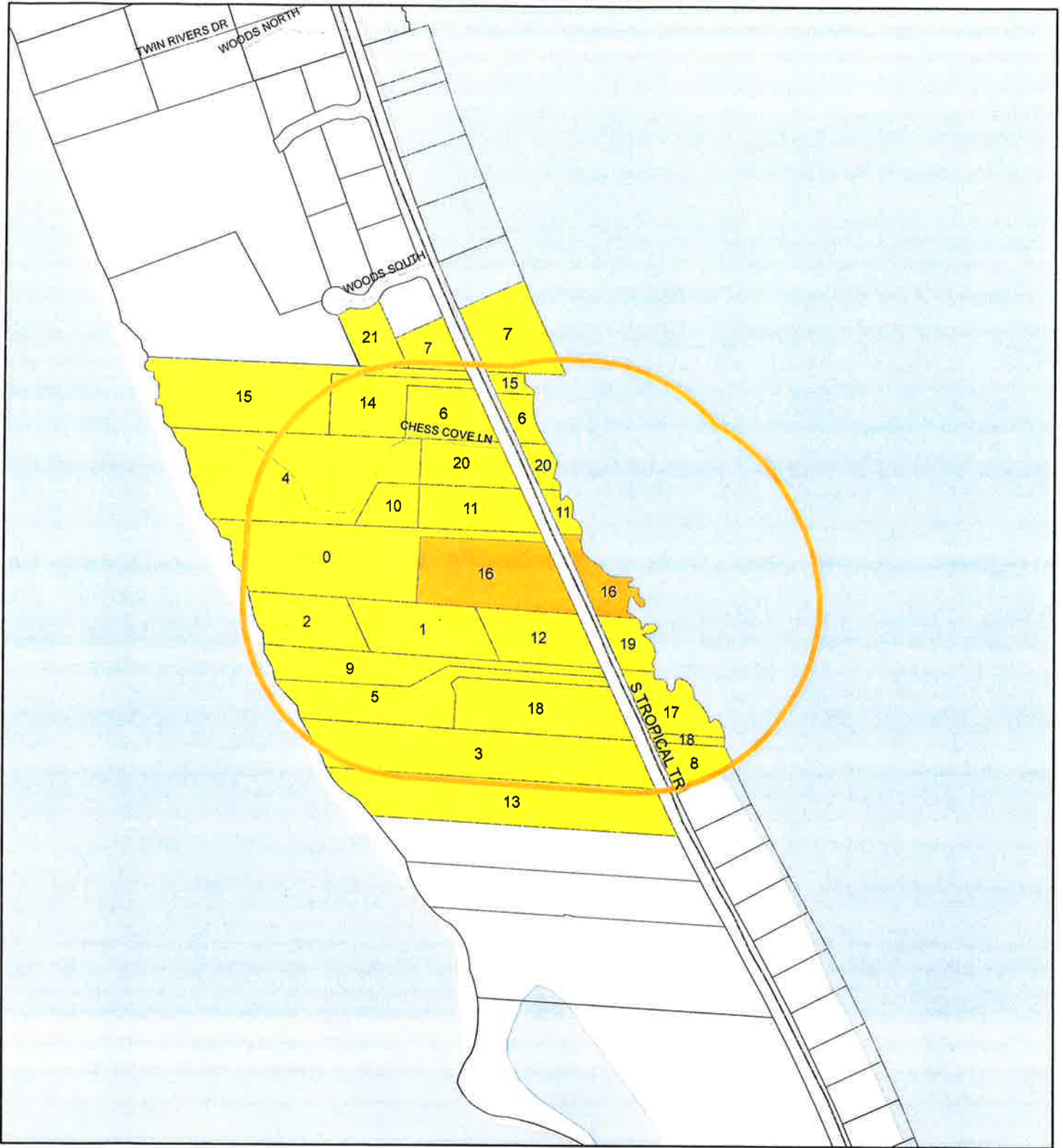
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RADIUS MAP





NATHAN, MARK

16PZ00020



1:4,800 or 1 inch = 400 feet

Buffer Distance: 500 feet

-  Buffer
-  Subject Property
-  Notify Property
-  Parcels

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

NATHAN, Mark and Kathy

160 Egret Drive
Satellite Beach, FL 32937

ARAJ, JEFFREY S
7575 S TROPICAL TRAIL
MERRITT ISLAND FL 32952-4703

BREDIKIS, AUDRIUS
BREDIKIS, EGLE H/W
7647 TROPICAL TRAIL
MERRITT ISLAND FL 32952-0000

BREDIKIS, AUDRIUS J
BREDIKIS, EGLE H/W
7647 S TROPICAL TRAIL
MERRITT ISLAND FL 32952-0000

DENNIS, CLAYTON J
DENNIS, DONNA J CO-TRUSTEES
7705 SOUTH TROPICAL TRAIL
MERRITT ISLAND FL 32952-0000

DYSON, PETER B
DYSON, KARENA H/W
100 CHESS COVE LANE
MERRITT ISLAND FL 32952-0000

FENTON, JAMES
FENTON, SUZANNE H/W
7665 TROPICAL TRAIL S
MERRITT ISLAND FL 32952-0000

GIACCO, MILAN
603 GRANT CT
SATELLITE BCH FL 32937-3946

GILBANE, ROBERT F
GILBANE, DONNA MARGRET H/W
P O BOX 411325
MELBOURNE FL 32941-1325

GUIDERA, MARTIN J
7710 S TROPICAL TRAIL
MERRITT ISLAND FL 32952-0000

HART, RICHARD J
HART, VICKIE A H/W
7645 S TROPICAL TRL S
MERRITT ISLAND FL 32952-0000

LARKIN, STEPHEN
7555 S TROPICAL TRL
MERRITT ISLAND FL 32952-0000

LARKIN, STEPHEN J
7555 S TROPICAL TRL
MERRITT ISLAND FL 32952-0000

LEVY, KENNETH MAURICE
LEVY, JAREN L S H/W
7645 S TROPICAL TRL LOT 1
MERRITT ISLAND FL 32952-6716

LOVE, JAMES P
LOVE, GAIL J H/W
31 MARINA ISLE
INDIAN HBR BCH FL 32937-0000

MERCER, ALAN W
MERCER, MICHELE M TRUST
2172 ROYAL OAKS DR
ROCKLEDGE FL 32955-0000

MUELLER, LINDA
P O BOX 510001
MELBOURNE BCH FL 32951-0001

NATHAN, MARK
NATHAN, KATHLEEN H/W
160 EGRET DR
SATELLITE BCH FL 32937-0000

SCHMITT, LYNNE J
7670 S TROPICAL TRL
MERRITT ISLAND FL 32952-0000

SHEPPARD, ROBERT L
SHEPPARD, SUSAN C H/W
7675 S TROPICAL TRAIL
MERRITT ISLAND FL 32952-0000

SLOAN-LEVY, JAREN L TRUSTEE
7645 S TROPICAL TRAIL
MERRITT ISLAND FL 32952-0000

WARDY, DONALD
WARDY, SUSANNE M H/W
7545 TROPICAL TRL S
MERRITT ISLAND FL 32952-0000

ZEGEL, MARK F
115 WOODS SOUTH
MERRITT ISLAND FL 32952-0000

16PZ00020-m.txt

OWNER1|OWNER2|MAIL1|MAIL2|CITY_STATE_ZIP5_ZIP4
16PZ00020|page1|
NATHAN, Mark and Kathy|160 Egret Drive|Satellite Beach, FL 32937|
ARAJ, JEFFREY S|7575 S TROPICAL TRAIL|MERRITT ISLAND FL 32952-4703
BREDIKIS, AUDRIUS|BREDIKIS, EGLE H/W|7647 TROPICAL TRAIL|MERRITT ISLAND FL 32952-0000
BREDIKIS, AUDRIUS J|BREDIKIS, EGLE H/W|7647 S TROPICAL TRAIL|MERRITT ISLAND FL 32952-0000
DENNIS, CLAYTON J|DENNIS, DONNA J CO-TRUSTEES|7705 SOUTH TROPICAL TRAIL|MERRITT ISLAND FL 32952-0000
DYSON, PETER B|DYSON, KAREN A H/W|100 CHESS COVE LANE|MERRITT ISLAND FL 32952-0000
FENTON, JAMES|FENTON, SUZANNE H/W|7665 TROPICAL TRAIL S|MERRITT ISLAND FL 32952-0000
GIACCO, MILAN|1603 GRANT CT|Satellite BCH FL 32937-3946
GILBANE, ROBERT F|GILBANE, DONNA MARGRET H/W|P O BOX 411325|MELBOURNE FL 32941-1325
GUIDERA, MARTIN J|7710 S TROPICAL TRAIL|MERRITT ISLAND FL 32952-0000
HART, RICHARD J|HART, VICKIE A H/W|7655 TROPICAL TRAIL S|MERRITT ISLAND FL 32952-0000
LARKIN, STEPHEN|7555 S TROPICAL TRAIL|MERRITT ISLAND FL 32952-0000
LARKIN, STEPHEN J|7555 S TROPICAL TRAIL|MERRITT ISLAND FL 32952-0000
LEVY, KENNETH MAURICE|LEVY, JAREN L S H/W|7645 S TROPICAL TRAIL LOT 1|MERRITT ISLAND FL 32952-6716
LOVE, JAMES P|LOVE, GAIL J H/W|31 MARINA ISLE|INDIAN HBR BCH FL 32937-0000
MERCER, ALAN W|MERCER, MICHELE M TRUST|2172 ROYAL OAKS DR|ROCKLEDGE FL 32955-0000
MUELLER, LINDA|P O BOX 510001|MELBOURNE BCH FL 32951-0001
NATHAN, MARK|NATHAN, KATHLEEN H/W|160 EGRET DR|Satellite BCH FL 32937-0000
SCHMITT, LYNNE J|7670 S TROPICAL TRAIL|MERRITT ISLAND FL 32952-0000
SHEPPARD, ROBERT L|SHEPPARD, SUSAN C H/W|7675 S TROPICAL TRAIL|MERRITT ISLAND FL 32952-0000
SLOAN-LEVY, JAREN L TRUSTEE|7645 S TROPICAL TRAIL|MERRITT ISLAND FL 32952-0000
WARDY, DONALD|WARDY, SUSANNE M H/W|7545 TROPICAL TRAIL S|MERRITT ISLAND FL 32952-0000
ZEGEL, MARK F|115 WOODS SOUTH|MERRITT ISLAND FL 32952-0000

16PZ00020-o.txt

BUFF_ID	TAXID	PARCELID	OWNER1	OWNER2	MAIL1	MAIL2	CITY	STATE	ZIP5	ZIP4
0	2605909	26 371700	ARAJ, JEFFREY S	7575 S TROPICAL TRAIL	MERRITT ISLAND FL 32952	4703				
1	2605937	26 371700	BREDIKIS, AUDRIUS	BREDIKIS, EGLE H/W	7647 TROPICAL TRAIL	MERRITT ISLAND FL 32952	0			
2	2605923	26 371700	BREDIKIS, AUDRIUS	J BREDIKIS, EGLE H/W	7647 S TROPICAL TRAIL	MERRITT ISLAND FL 32952	0			
3	2605915	26 371700	DENNIS, CLAYTON J	DENNIS, DONNA J	CO-TRUSTEES	17705 SOUTH TROPICAL TRAIL	MERRITT ISLAND FL 32952	0		
4	2618233	26 371700	DYSON, PETER B	DYSON, KAREN A	H/W	100 CHESS COVE LANE	MERRITT ISLAND FL 32952	0		
5	2605931	26 371700	FENTON, JAMES	FENTON, SUZANNE	H/W	7665 TROPICAL TRAIL S	MERRITT ISLAND FL 32952	0		
6	2618656	26 371700	GIACCO, MILAN	1603 GRANT CT	SATELLITE BCH FL 32937	3946				
7	2605952	26 371701	GILBANE, ROBERT F	GILBANE, DONNA MARGRET	H/W	P O BOX 411325	MELBOURNE FL 32941	1325		
8	2605896	26 3717JF	GUIDERA, MARTIN J	17710 S TROPICAL TRAIL	MERRITT ISLAND FL 32952	0				
9	2605925	26 371700	HART, RICHARD J	HART, VICKIE A	H/W	7655 TROPICAL TRAIL S	MERRITT ISLAND FL 32952	0		
10	2632328	26 371700	LARKIN, STEPHEN J	7555 S TROPICAL TRAIL	MERRITT ISLAND FL 32952	0				
11	2618464	26 371700	LARKIN, STEPHEN J	7555 S TROPICAL TRAIL	MERRITT ISLAND FL 32952	0				
12	2605929	26 371700	LEVY, KENNETH MAURICE	LEVY, JAREN L	S H/W	7645 S TROPICAL TRAIL LOT 1	MERRITT ISLAND FL 32952	6716		
13	2605940	26 371700	LOVE, JAMES P	LOVE, GAIL J	H/W	31 MARINA ISLE	INDIAN HBR BCH FL 32937	0		
14	2618655	26 371700	MERCER, ALAN W	MERCER, MICHELE M	TRUST	2172 ROYAL OAKS DR	ROCKLEDGE FL 32955	0		
15	2605934	26 371700	MUELLER, LINDA	P O BOX 510001	MELBOURNE BCH FL 32951	1				
16	2605911	26 371700	NATHAN, MARK	NATHAN, KATHLEEN	H/W	160 EGRET DR	SATELLITE BCH FL 32937	0		
17	2605927	26 371700	SCHMITT, LYNNE J	7670 S TROPICAL TRAIL	MERRITT ISLAND FL 32952	0				
18	2605928	26 371700	SHEPPARD, ROBERT L	SHEPPARD, SUSAN C	H/W	7675 S TROPICAL TRAIL	MERRITT ISLAND FL 32952	0		
19	2605920	26 371700	SLOAN-LEVY, JAREN L	TRUSTEE	17645 S TROPICAL TRAIL	MERRITT ISLAND FL 32952	0			
20	2617722	26 371700	WARDY, DONALD	WARDY, SUSANNE M	H/W	17545 TROPICAL TRAIL S	MERRITT ISLAND FL 32952	0		
21	2605963	26 371702	ZEGEL, MARK F	1115 WOODS SOUTH	MERRITT ISLAND FL 32952	0				

Identify [X]

Identify from: **Zoning Actions**

Zoning Actions
 RU-2-15

Location: 784,178.620 1,469,459.087 Feet

Field	Value
ZONING	RU-2-15
DENSCAP	
ZONINGFILE	25
HISTORY	No
BLANKETF	
ZONINGDATE	<null>
ORDNUM	73-13
ACTION	
ACTIONFILE	
ACTIONDATE	<null>
COMMENTS	<null>
FILE_SERVER	\\GCADC01\PLZON\$
ZFILE_PATH	\\Scanned Files\Zoning\Z0001-Z0999\
ZFILE_NAME	Z0025.PDF
ZFILE_LINK	\\GCADC01\PLZON\$\Scanned Files\Zoning\Z0001-
AFILE_SERVER	<null>
AFILE_PATH	<null>
AFILE_NAME	<null>
AFILE_LINK	<null>

Identified 1 feature

Identify [X]

Identify from: **Zoning Actions**

Zoning Actions
 SEU

Location: 770,231.498 1,413,357.065 Feet

Field	Value
ZONING	SEU
DENSCAP	
ZONINGFILE	3275
HISTORY	No
BLANKETF	
ZONINGDATE	<null>
ORDNUM	
ACTION	
ACTIONFILE	
ACTIONDATE	<null>
COMMENTS	<null>
FILE_SERVER	\\GCADC01\PLZON\$
ZFILE_PATH	\\Scanned Files\Zoning\Z3000-Z3999\
ZFILE_NAME	Z3275.PDF
ZFILE_LINK	\\GCADC01\PLZON\$\Scanned Files\Zoning\Z3000-
AFILE_SERVER	<null>
AFILE_PATH	<null>
AFILE_NAME	<null>
AFILE_LINK	<null>

Identified 1 feature

OBJECTION
IV. B. 6 .
Nathan

Jones, Jennifer

From: Ritchie, George C
Sent: Tuesday, March 29, 2016 10:16 AM
To: jeff araj
Cc: Jones, Jennifer; Fox, Cynthia C
Subject: RE: south merritt island zoning change, ID# 16PZ00020

I have received your email and will have place a copy into the appropriate zoning file. Have a nice day.

From: jeff araj [<mailto:jeffaraj@yahoo.com>]
Sent: Tuesday, March 29, 2016 10:10 AM
To: Ritchie, George C
Subject: south merritt island zoning change, ID# 16PZ00020

Dear Mr Ritchie,

Thanks for your call this AM.

Myself, and my two neighbors, Ken Levy and Dr Audrius Bredikis, who are all the adjoining property owners, would like to formally object to any zoning change. The area is now zoned SEU and is an area of nice, larger homes with large lots.

We do not wish to have the character of the area changed by a zoning change to agricultural use and we feel any change will hurt our property values.

We will be retaining an attorney to represent us and plan on attending the scheduled meetings.

A zoning change to accommodate Mr. Nathan's proposed use for 'sixteen trays of 8-10 mangrove' plants seems like overkill. He can certainly grow that amount of plants on his present property.

We feel his main desire is to decrease his property tax bill by a zoning change. He is holding the property for investment purposes and seems to have no desire to ever build a residence on it. If he wants to develop a 'nursery' there are many other places in Brevard county he can, with a lot lower land costs.

Sincerely,

Jeff Araj MD

April 1, 2016

Brevard County Board of County Commissioner
Planning and Development Department
2725 Judge Fran Jamieson Way, Bldg. A
Viera, Fl. 32940

OBJECTION
IV. B. 6.

Attn: Mr. George Ritchie
ID# 16PZ00020

Dear Mr. Ritchie,

We are writing to you in regards to the change of zoning on the above referenced property owned by Mark and Kathleen Nathan.

My wife and I are against any change from SEU to AU. Our property abuts the Nathan's property to the south. We have lived in our home for 26 years and feel it would damage the character of the neighborhood if the zoning change was approved. It could lower the selling value of our home. In speaking with the other neighbors, whose property surrounds the lot in question; they have also voiced concerns against this change.

We feel that a change to AU will allow too many possibilities of changes that will not be in the best interest of all adjoining properties. It would be a deterrent to the quiet, peaceful existence that we are fortunate enough to have living here.

An interesting fact to note is that the code enforcement office has a claim against this property. Mr. Michael Verostic, extension 52598, is aware of this case.

Sincerely;

*Dr. Kenneth M. Levy
Jaren L. Sloan-Levy*

Dr. Kenneth M Levy
Jaren L. Sloan-Levy
7645 S Tropical Trail
Merritt Is, Fl 32952



000033

OBJECTION
IV. B. 6.
Submitted at
4/11 P2 mtg

**CODE ENFORCEMENT SPECIAL MAGISTRATE
BREVARD COUNTY, FLORIDA**

**BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA, a political subdivision
of the State of Florida,
Petitioner,**

CASE NO: 14CE-02023

vs.

**MARK NATHAN & KATHLEEN NATHAN
Respondents.**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER & LIEN FOR COSTS

THIS CAUSE came on for public hearing before the Special Magistrate on 01 / 15 / 2015 after due notice to the Respondents, and the Special Magistrate having heard testimony under oath, received evidence, and issued his Findings of Fact, Conclusions of Law and Order, thereupon issued his oral Order which was reduced to writing and furnished to the Respondents, as follows:

I. FINDINGS OF FACT: There are violations of SPECIFICALLY:

Remove all dead trees within 25 feet of abutting properties or right-of-ways

On property described as:

Township: Range: Section: Subdivision: Block: 9 Lot:

Also identified as S TROPICAL TRL, MERRITT ISLAND FL (Tax ID 2605911)

II. CONCLUSIONS OF LAW: Based upon the testimony heard and the evidence presented, the Special Magistrate concludes there is a violation of the following County Code Sections:

Section 114-28(c)2, Brevard County Code: Dead standing tree(s) on undisturbed lot in native state shall be cut, clear, and removed within 25' from common property line of improved property or within 25' of any federal, state or county highway, street, road or road right-of-way when taller than the distance separating it/them from said abutting improved property or right-of-way.

Initial XX Recurring Repeat

HEIGHTENED THREAT to public health, safety, or welfare: YES NO XX

Page 2
14CE-02023

III. ORDER:

Based upon the foregoing Findings of Fact and Conclusion of Law, it is hereby ORDERED THAT:

Respondents are to bring the property into compliance by 1/22/15 (7 days).

Fine assessed in the amount of \$ 25.00 per day beginning 1/23/15, until compliance as determined by the Officer/Inspector.

REPEAT VIOLATION FINE: \$ N/A per day beginning N/A, until compliance as determined by the Officer/Inspector.

Fine assessed for irreversible/irreparable violation(s): \$ N/A
FINES MAY BE IMPOSED AS A LIEN IN COMPLIANCE WITH F.S.162.09
SPECIAL REQUIREMENTS: _____

To ensure compliance with this Order, pursuant to the applicable laws and at Respondent (s) ' expense, the County may: Tow _____ Demolish _____ Secure _____

ENFORCEMENT COSTS ASSESSED IN THE AMOUNT OF \$ 550.00 ARE TO BE PAID WITHIN 30 DAYS OF THIS HEARING DATE. Enforcement costs are hereby imposed as a lien on Respondents real and personal property in compliance with Florida Statute 162.09, including any fines assessed for irreversible or irreparable violations.

IT SHALL BE THE RESPONDENTS' RESPONSIBILITY TO CONTACT THE CODE ENFORCEMENT OFFICER/BUILDING INSPECTOR WITHIN 24 HOURS AFTER THE VIOLATION HAS BEEN CORRECTED TO STOP THE FINE FROM ACCRUING AT (321) 633-2086.

DONE AND ORDERED this 15th day of January, 2015.

STATE OF FLORIDA)
COUNTY OF BREVARD) CERTIFICATION
I hereby certify on this 15th day of January, 2015, this document is a true and correct copy of the original Code Enforcement Record.

David J. Woodland
Records Custodian of Code Enforcement

CODE ENFORCEMENT SPECIAL MAGISTRATE
BREVARD COUNTY, FLORIDA

Stewart Capps
Stewart Capps

You have a right to appeal this Order to the Circuit Court within a period of 30 days from the date of this Order, in accordance with Brevard County Code, Section 2-178.

ALL PAYMENTS PAYABLE TO THE BOARD OF COUNTY COMMISSIONERS and mailed to: Code Enforcement, 2725 Judge Fran Jamieson Way, Bldg A, Room 103, Viera, FL 32940.
CC: MARK NATHAN & KATHLEEN NATHAN 160 EGRET DRIVE MERRITT ISLAND FL 32952

OBJECTION
IV. 6. 6.
 Submitted at
 4/11 P2 mtg



BREVARD COUNTY TAX COLLECTOR

Lisa Cullen, CFC

[Tax Collector Home](#) [Search](#) [Reports](#) [Shopping Cart](#)

Real Estate Account #2605911

Real Estate Account #2605911

[Parcel details](#) [Latest bill](#) [Full bill history](#)

Pay All: \$12,535.81

2015	2014	2013	2012	...	2005
\$5886.83 due	\$6648.98 due	PAID	PAID		PAID

[Apply for the 2016 Installment Payment Plan](#)

Lisa Cullen

Real Estate 2014 Annual Bill

[Print this bill \(PDF\)](#)

Brevard County Tax Collector

Notice of Ad Valorem Taxes and Non-ad Valorem Assessments

Account number	Alternate key	Escrow code	Millage code
2605911	2605911	—	2800

Pay this bill: \$6,648.98

[Get Bills by Email](#)

Owner
 NATHAN, MARK & NATHAN, KATHLEEN H/W
 160 EGRET DR
 SATELLITE BCH, FL 32937

Situs address
 (unknown)

Legal description
 26 371700 9 PART OF GOVT LOT 2 BEING PART OF
 TRACTS J & K OF CIRCUIT COURT PLAT PER CCM BK 2
 PG 5 ...

Full legal available: [Parcel details](#)

Ad Valorem Taxes

Taxing authority	Millage	Assessed	Exemption	Taxable	Tax
COUNTY GENERAL FUND	4.6814	350,960	0	350,960	\$1,642.98
BREVARD LIBRARY DISTRICT	0.5720	350,960	0	350,960	\$200.75
BREVARD MOSQUITO CONTROL	0.2055	350,960	0	350,960	\$72.12
SCHOOL - BY STATE LAW	5.0910	350,960	0	350,960	\$1,786.74
SCHOOL - BY LOCAL BOARD	0.7480	350,960	0	350,960	\$262.52
SCHOOL - CAPITAL OUTLAY	1.5000	350,960	0	350,960	\$526.44
FIRE CONTROL MSTU	0.7775	350,960	0	350,960	\$272.87
LAW ENFORCEMENT MSTU	1.3000	350,960	0	350,960	\$456.25
ROAD & BRIDGE DIST 2 MSTU	0.2970	350,960	0	350,960	\$104.24
M I REC DIST 2 MSTU 2001-2020	0.0982	350,960	0	350,960	\$34.46
ST JOHNS RIVER WATER MGMT DST	0.3164	350,960	0	350,960	\$111.04
FLA INLAND NAVIGATION DIST	0.0345	350,960	0	350,960	\$12.11

MERRITT ISLAND LIBRARY - MAINT	0.0958	350,960	0	350,960	\$33.62
ENV END LD/WTR LTD 05-24	0.0558	350,960	0	350,960	\$19.58
ENV END LD/WTR LTD(DBTP) 05-24	0.1163	350,960	0	350,960	\$40.82
M I REC D 2 MSTU (DBTP) 01-20	0.7018	350,960	0	350,960	\$246.30
Total	16.5912				\$5,822.84

Non-Ad Valorem Assessments

Levying authority	Rate	Amount
No non-ad valorem assessments.		

Combined taxes and assessments: \$5,822.84

Face Amt 6,326.41
Bid % 0.25
Bidder 3869574

Certificate #6467
Year 2015

If received by:
Please pay:

Apr 29, 2016
\$6,648.98

May 31, 2016
\$6,648.98

Jun 30, 2016
\$6,648.98

Pay this bill: \$6,648.98

Get Bills by Email

OBSJECTION
IV. O. G.
Submitted at
4/11 P2 mtg.

District Court of Appeal of Florida, Fourth District.

223 So.2d 344 (Fla. Dist. Ct. App. 1969)

⊕ COUNTY OF BREVARD V. WOODHAM



*346

REED, Judge.

This is an appeal from a final decree of the Circuit Court for Brevard County, Florida, which enjoined that county from enforcing against the plaintiff's property a single family residential zoning classification imposed by the county's comprehensive zoning ordinance.

The plaintiff, William H. Woodham, filed a complaint on 2 February 1967 in which he alleged that he owned three lots in Brevard County located on Merritt Island. These lots were zoned by the defendant County for single family residential use (RU-1). The lots are not suited for residential purposes and the only use for which they are adaptable is business. The zoning ordinance as applied to the plaintiff's property destroys the greater part of the value of the lots and is, therefore, confiscatory. The complaint also alleges that the ordinance has no reasonable relation to the police power and that the continued enforcement of the ordinance constitutes a confiscation of the plaintiff's property.

Brevard County filed an answer which denied most of the material averments in the complaint. The answer did admit, however, that the property in question was zoned "RU-1" for single family residential use.

The cause was tried before the chancellor on 5 December 1967. On 5 February 1968 the chancellor entered a final judgment which ordered:

"* * * [T]hat the defendant and its agencies are hereby permanently enjoined from enforcing any zoning regulation on plaintiff's property more restrictive than neighborhood retail business.(BU-1)."

It is from this final judgment that the defendant appeals.

Basically, the only point which is presented by this appeal is whether or not the trial court erred in holding that the present zoning classification of RU-1 as applied to the plaintiff's property was void as unconstitutional.

The plaintiff's land is situated south of Cone Road and on State Road 3, which ^{*347} runs approximately north and south through south Merritt Island. Its frontage on State Road 3 is 247.46 feet. Its depth varies from 70.63 feet to 220.87 feet.

Comprehensive zoning regulations were adopted by Brevard County on 22 May 1958 pursuant to Chapter 57-1162, Laws of Fla. 1957. At that time, the plaintiff's property and all immediately surrounding properties were zoned for single family residential purposes. At the time the zoning ordinance was adopted the population on south Merritt Island was sparse. Virtually the only commercial use of property south of Cone Road along State Road 3 was the Pooley Grocery Store which was operated on the land in question and the Ramsey Garage which was approximately one-half mile south of the Pooley Grocery Store. These commercial uses were continued as non-conforming uses under Section 18 of the zoning ordinance.

The plaintiff began to operate the Pooley Grocery Store in 1962. His initial operation was under a lease from Mr. Pooley. The plaintiff took title to the property in March of 1964. After he bought the property, the plaintiff made several attempts to rezone the property to BU-1. The plaintiff's first attempt at rezoning was in July of 1964. This attempt and each attempt thereafter was met with a denial by the county commissioners of Brevard County, Florida. His intention at the time he applied for the rezoning was to tear down the store on his property and to build thereon a grocery store, a barber shop and a gasoline station.

Since the zoning was established on south Merritt Island in 1958, the property south of Cone Road has continued to develop as a single family residential area. However, a parcel one-half mile south of plaintiff's property has been rezoned from RU-1 to BU-1 (neighborhood retail). The property which was

rezoned BU-1 runs 600 feet along State Road 3 on both the east and west sides of the street and has a depth on each side of about 200 feet.

State Road 3 is a two-lane, hilly road. The speed limit is 45. The traffic is heavy between 3:30 and 6:30 p.m.

O.D. Peavy, the director of the Brevard County Zoning Commission, testified that the plaintiff's property was not initially zoned for commercial purposes because it was desired to have the entire area develop as a residential area. He also testified that in 1958 the population in the area was sparse and that it was unnecessary to provide at that time for commercial use. An expert real estate appraiser and Mr. Peavy both testified that rezoning plaintiff's property to BU-1 would adversely affect the surrounding residential property.

Section 12 of the Brevard County zoning ordinance provides that in a BU-1 district property may be used for automobile storage, pool rooms, self-service type hand laundries with drive-in facilities, restaurants and cafeterias, and bars after a public hearing. These are just several of the many retail business uses that may function in a BU-1 district.

The constitutional validity of a zoning ordinance depends upon its relationship to the public health, safety, morals, and welfare. If the zoning ordinance has a substantial relationship to any one of these objectives it may be constitutionally valid, that is, within the police power of the legislative body. *City of Miami Beach v. Weiss*, Fla. 1969, 217 So.2d 836; *City of Miami v. Rosen*, 1942, 151 Fla. 677, ([/case/city-of-miami-v-rosen-et-al](#)) 10 So.2d 307 ([/case/city-of-miami-v-rosen-et-al](#)); *City of Miami Beach v. 8701 Collins Ave.*, Fla. 1954, 77 So.2d 428 ([/case/city-of-miami-beach-v-8701-collins-ave](#)). A zoning ordinance, however, cannot be confiscatory. By this it is meant that the ordinance cannot deprive an owner of the beneficial use of his property by precluding all uses to which the property might be put or the only use to which it is reasonably adaptable. *Forde v. City of Miami Beach*, 1941, 146 Fla. 676, ([/case/forde-et-al-v-city-of-miami-beach-et-al](#)) 1 So.2d 642 ([/case/forde-et-al-v-city-of-miami-beach-et-al](#)).

It is not necessary to the constitutional validity of an ordinance that it permit the highest and best use of a particular piece of property. In *City of Miami v. Zorovich*, Fla.App. 1967, 195 So.2d 31, cert. den. Fla. 1967, 201 So.2d 554, the Third District held:

"A zoning ordinance is not invalid merely because it prevents the owner from using the property in the manner which is economically most advantageous. If the rule were otherwise, no zoning could ever stand."

Please also see the recent case of *City of St. Petersburg v. Aikin*, Fla. 1968, 217 So.2d 315 ([/case/city-of-st-petersburg-v-aikin-1](#)). There the Florida Supreme Court points out that the mere fact that the land owner is proposing to make a reasonable use of his property and one which is consistent with the public welfare does not permit the conclusion that the existing zoning which precludes the proposed use is constitutionally defective.

As already mentioned, the general object of zoning is to advance the public health, safety and general welfare. More specifically, however, it has been held that zoning regulations may be employed to promote the integrity of a neighborhood and preserve its residential character, *City of Miami v. Zorovich*, supra. It has also been held that zoning may be employed to protect the economic value of existing uses and to avoid serious traffic congestion. *City of Miami Beach v. Lachman*, Fla. 1953, 71 So.2d 148 ([/case/city-of-miami-beach-v-lachman](#)).

An ordinance is presumed to be valid. Therefore, the burden of proof of demonstrating the invalidity of a zoning ordinance is upon the person who attacks the ordinance. *City of St. Petersburg v. Aikin*, supra.

Because zoning is a legislative function, the discretion which might otherwise be reposed in reviewing courts is somewhat limited. Where the validity of a zoning ordinance is *fairly debatable*, a court may not substitute its judgment for that of the zoning authorities. *City of Miami Beach v. Weiss*, supra; *City of Miami v. Rosen*, supra; *City of Miami Beach v. Lachman*, supra; *City of Miami Beach v. Wiesen*, Fla. 1956, 86 So.2d 442 ([/case/city-of-miami-beach-v-wiesen-1](#)); and *Friedland v. City of Hollywood*, Fla. App. 1961, 130 So.2d 306 ([/case/friedland-v-hollywood](#)). In *City of Miami Beach v. Weiss* the Florida Supreme Court said:

"On the merits of the controversy, the record here conclusively establishes that the zoning of the lands under consideration is palpably arbitrary and unreasonable and has no reasonable debatable relation to the public health, safety or general welfare, and that it should be rezoned * * *."

Another good statement of the policy to be followed in reviewing zoning ordinances is found in the case of *City of Miami Beach v. Wiesen*, supra, where the court at page 445 of 86 So.2d said:

"Recognizing the fundamental premise that there must be a line somewhere, the courts should be highly respectful of the decision of the legislative body which, under the law, is vested with the power and charged with the duty of zoning. The courts should tread lightly in this field and then only where the actions of the City Council are so unreasonable and unjustified as to amount to confiscation of property."

In applying these principles to the present case, we conclude that the chancellor misconceived the legal effect of the evidence when he held that the RU-1 zoning does not bear a substantial relationship to the public welfare. Zoning for the purpose of maintaining the integrity of a residential area does relate to the public welfare. *City of Miami v. Zorovich*, supra. It is essential for cities and counties to provide areas in which their residents may feel free to build homes and make the financial and other sacrifices that go into the development of a home without the fear of being deprived of a large measure of their investment or of the enjoyment of their homes by the out-croppings of commercial developments. The purpose of including the plaintiff's land in the residential zoning classification was to preserve and ³⁴⁹ promote the integrity of the surrounding land as a residential area. The evidence in the present case clearly showed that to rezone the plaintiff's parcel for use as BU-1 property would lead to a deterioration of the surrounding residential properties. The effect of the chancellor's decree is to create a small area of commercial zoning in an area of single family residences. This is spot zoning, the practice of which is condemned by all authorities on zoning. See *Parking Facilities v. City of Miami Beach*, Fla. 1956, 88 So.2d 141 (COUNTY OF BREVARD v. WOODHAM • 223 So.2d 344, **348** (Fla. Dist. Ct. App. 1969) (/case/parking-facilities-v-city-of-miami-beach-1)).

The trial court's judgment cannot be sustained on the theory that the RU-1 zoning is confiscatory as it applies to the plaintiff's property. The plaintiff himself testified that the property with its present zoning is worth what he paid for it. Other evidence shows that the plaintiff's property can be used for single family residential lots and will have a value for such use. In these circumstances, the plaintiff who purchased the property in the face of the zoning ordinance, has no basis for claiming that the ordinance is confiscatory. See *City of Miami Beach v. Greater Miami Hebrew Academy*, Fla.App. 1958, 108 So.2d 50 (/case/city-of-miami-v-greater-miami-hebrew).

The trial court found that there was no provision made for commercial zoning on south Merritt Island when the zoning ordinance was initially enacted. This is supported by the evidence, but it does not warrant the conclusion that the zoning ordinance was void as unconstitutional in its application to the plaintiff's property. The evidence without dispute shows that the area on south Merritt Island was

sparsely populated at the time the zoning ordinance was enacted in May of 1958. There was testimony that residents in the area were consulted and they were opposed to the area being used for anything except residential purposes. Furthermore, the Pooley Grocery Store was permitted to continue as a non-conforming use under Section 18 of the zoning ordinance even though it was zoned as RU-1. The effect of the zoning ordinance was to provide a large area in which citizens could develop homes with some reasonable degree of security and protection from inconsistent uses. Thus, the failure to provide for a commercial district at the time the zoning ordinance was enacted can hardly support a conclusion that the zoning ordinance in its application to the plaintiff's property was not substantially related to public welfare and was void from the beginning.

The trial court in its final decree took note of the fact that the property south of the plaintiff's property was changed from RU-1 to BU-1. The plaintiff was contending at the time of the final hearing that the zoning ordinance was void *at the time it was enacted in 1958*. The zoning change referred to took place well after 1958; therefore, it has no relevancy to the validity of the zoning ordinance as it applied to the plaintiff's property in 1958. Furthermore, we do not believe that the existence of the tract for commercial zoning one-half mile south of the plaintiff is sufficient competent substantial evidence to remove the validity of the zoning ordinance as it now applies to the plaintiff's property from the area of a fairly debatable proposition. The fairly debatable rule is particularly pertinent to a determination of the boundaries between use districts. See *City of Miami Beach v. Wiesen*, *supra*, where the court stated:

"If the fairly debatable rule is a sound one, and we have so held, there is no situation in the field of zoning in which it is more applicable than that involving the decision of where the dividing line between use districts should be * * *."

Finally, the trial court found that the highest and best use of the plaintiff's property was for neighborhood retail business. In view of the surrounding residential uses such a fact does not compel a conclusion that residential zoning on the plaintiff's property is unconstitutional. See *City of Miami v. Zorovich*, *supra*. *350

In summary we conclude that the plaintiff failed to demonstrate that the ordinance in its application to his property was confiscatory or had no reasonably debatable relationship to public welfare. The validity of the ordinance was at least fairly debatable, and the trial court erred in substituting his judgment for that of the zoning authority which in this case was the County Commission of Brevard County, Florida.

The judgment appealed from is reversed.

Reversed.

CROSS and McCAIN, JJ., concur.

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OBJECTION
IV.B.6.

**Brevard County Code Enforcement
Case Application (CAP) Report**

CAP#: 14CE-02023

Date Complaint Received:

Related CAP's:

Case Status: Hearing

Officer/Inspector:

Subject Property Information:

Parcel ID #: Twn. Rg. Sec. Sub. Blk: 9 Lot

Address: S TROPICAL TRL MERRITT ISLAND FL

Complaint:

Cited Violation(s):

Section 114-28(c)2, Brevard County Code: Dead standing tree(s) on undisturbed lot in native state shall be cut, clear, and removed within 25' from common property line of improved property or within 25' of any federal, state or county highway, street, road or road right-of-way when taller than the distance separating it/them from said abutting improved property or right-of-way.

Initial XX Recurring Repeat

SPECIFICALLY: Remove all dead trees within 25 feet of abutting properties or right-of-ways

Comments:

ViewID Comment(s):

VERIFIED COMPLAINANT

This report relates to the citizen's complaint concerning dead trees (3-4) on vacant lot, trees have been dead for 2 years located just north of 7645 S. Tropical Trail in Merritt Island.

On Wednesday 10/22/14, Code Enforcement Officer (CEO) Michael Verostic contacted the listed complainant, Mr. Kenneth Levy, and verified the contact information and complaint.

INSPECTION / NOTICE OF VIOLATION

Officer Supplemental: On Thursday, 10/23/14 at 2:45 P.M., CEO inspected the subject property and observed two dead trees on the south side of the property. A Notice of Violation (NOV) was generated citing Brevard County Code (BCC): Section 114-28(c); Dead Standing Trees Prohibited, with a compliance period of ten calendar days after receipt of the NOV. Case pending

NOV RETURNED UNCLAIMED

Officer Supplement: On 11/03/14 the NOV was returned unclaimed. A follow-up inspection will be made to determine current status.

SCHEDULE FOR HEARING

Officer Supplement: On Monday, 11/10/14 at 2:55 P.M., CEO made an inspection of the property and observed no change. This case will be scheduled for resolution at the next available hearing.

SAFETY ISSUE: NO. CERTIFIED
ZONING CLASSIFICATION: SEU
DATE VIOLATION 1ST OBSERVED: 10/23/14
DATE NOTICE OF VIOLATION RECEIVED:
DATE GIVEN FOR COMPLIANCE:
RE-INSPECTION DATE: 11/10/14

12/9/14 Case scheduled for 01/15/2015 Special Magistrate Hearing. Notice will be provided by Property Posting.dh

POSTING OF PROPERTY

Officer supplemental: On Tuesday, 12/30/14 at 9:25 A.M., CEO Michael Verostic posted the subject property with a Notice of Hearing. Photos were taken. A copy of the Notice of Hearing was also posted at the Brevard County Courthouse. Case pending

ViewID Comment(s):

PRE-HEARING INSPECTION

Officer Supplemental: On Wednesday, 01/14/15 at 11:30 A.M., CEO Verostic made a pre-hearing inspection of the property and observed the two dead trees on the south side of the property. Photos were taken. Case pending

CSM 01/15/15

Mark Nathan & Kathleen Nathan, Respondents, were not present.

Michael Verostic, CEO, was present and stated there are 2 dead trees on the property. He talked with Amanda Elmore from the Natural Resources Management Office and showed her photos. Ms. Elmore confirmed the trees are dead.

Special Magistrate, Stewart Capps, stated that Ms. Elmore has testified before and is a certified arborist.

Exhibits A-F were entered into evidence.

The Special Magistrate ordered the Respondent(s) be found in violation of Initial, Section 114-28 (c) 2, Brevard County Code, and ordered a compliance date of 01/22/15 (7 days) with a fine to begin to accrue of \$25 per day if not in compliance. Costs were assessed in the amount of \$550 and must be paid within 30 days of this hearing. Findings of Fact, Conclusions of Law and Order and Lien for Cost recorded in the official records of Brevard County, Book 7283, Page 2164.

POST-HEARING INSPECTION

Officer Supplement: On Friday, 01/23/15 at 3:30 PM, CEO inspected the property for post hearing compliance and observed the two dead trees had not been removed. The property is not in compliance. Photos were taken. Case pending

3/5/15 Generated Affidavit of Non-Compliance.dh

4/11/16: Telephone call to Brett Hyde, attorney for neighbors, who sent e-mail inquiring about status. Informed of Order and active violations, fines of \$11,100 plus costs of \$550. adm.

FOLLOWUP INSPECTION

Officer Supplement: On Wednesday, 04/13/16, at 1:00 P.M., CEO met with the property owner, Mr. Mark Nathan. We inspected the property and specified which dead trees needed removed. Case pending

ViewID Comment(s):

FOLLOWUP INSPECTION / COMPLIANCE

Officer Supplement: On Monday, 04/18/16, at 1:00 P.M., CEO inspected the property and met with the property owner, Mr. Mark Nathan. The dead trees in question had been removed. Photos were taken and the property is in compliance. Case pending

5/5/16: Affidavit of Late Compliance prepared. Fines accrued and assessed of \$11,275. Costs remain due of \$550. Total amount due: \$11,825. adm.

Property Owner Information:

Name	Address	City	State	ZIP	Phone
MARK NATHAN & KATHLEEN NATHAN	160 EGRET DRIVE	MERRITTT ISLAND	FL	32952	-

Complainant Information:

Name	Address	City	State	ZIP	Phone
KENNETH LEVY	7645 S TROPICAL TRAIL	MERRITT ISLAND	FL	32952	(321)452-6747

Other Contact Information:

Name	BusinessName	Address	City	State	ZIP	Phone
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Owner's Name: MARK & KATHY NATHAN
Hearing Date: 4-11-16
First Public Hearing before Applicable Board

16P200020

THIS AFFIDAVIT IS TO BE PRESENTED AT THE PUBLIC HEARING

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF BREVARD

Before me, this undersigned authority, personally appeared, _____, to me well known and known to me to be the person described in and who executed the foregoing affidavit, after being first duly sworn, says:

1. That the affiant posted the notice provided by the Brevard County Planning & Zoning Office, which contains the time(s) and date(s) of the Public Hearing(s) involved.
2. Said posted notice contains the name of the applicant, the total acreage of the property in question, the existing land use classification, special use classification or conditional use designation, and the requested amendment to the official zoning maps. Said notice also contains the time and place of the public hearing on the consideration of said application by the Board of County Commissioners of Brevard County, if applicable.
3. The said notice has been posted in a conspicuous place on the subject property not more than twenty-five (25) days, nor less than fifteen (15) days prior to the first public hearing before the applicable board (as indicated on notice). If the property abuts a public road right-of-way, the notice has been posted within ten (10) feet of the road right-of-way in such a manner so as to be visible from the road right-of-way.
4. The affiant understands that this affidavit is intended to be submitted as a requirement for a public hearing, and as such, will be officially filed with the Government of Brevard County, Florida

Mark Nathan
Signature

Sworn to and Subscribed before me, this 11th day of April, 2016


(Print, Type, or Stamp Commissioned Name of Notary Public)

Jennifer Jones
Notary Public, State of Florida

Personally Known OR Produced Identification

Type of I.D. Produced PL DL

THIS AFFIDAVIT IS TO BE PRESENTED AT THE PUBLIC HEARING

Sec. 62-1334. - Agricultural residential, AU and AU(L).

The AU agricultural residential zoning classification encompasses lands devoted to agricultural pursuits and single-family residential development of spacious character.

The classification is divided into two types, AU and AU(L). The AU is the standard agricultural residential classification, while the AU(L) is a low intensity sub-classification more suited to smaller lots where the neighborhood has a more residential than agricultural character.

(1) *Permitted uses.*

a. (1) Permitted uses within the AU classification are as follows:

Single-family detached residential dwelling.

All agricultural pursuits, including the packing, processing, and sales of commodities raised on the premises as provided in chapter 86, article IV.

Raising and grazing of animals.

Dude ranches, with a minimum area of 40 acres. Barns or stables shall be 200 feet from any property line.

Fowl raising and beekeeping.

Parks and public recreational facilities.

Plant nurseries.

Private golf courses.

Private camps.

Foster homes.

(2) Permitted uses within the AU(L) sub-classification are as follows:

Single-family detached residential dwelling.

Agricultural pursuits of a personal non-commercial nature. Structures for the housing of livestock and animals shall not be permitted within 100 feet of any existing residence under different ownership, except where otherwise permitted in section 62-2108.

Parks and public recreational facilities.

Foster homes.

b. Permitted uses with conditions are as follows (see division 5, subdivision II, of this article):

Fish camps (section 62-1835.4.5).

Group homes, level I, subject to the requirements set forth in section 62-1835.9.

Landscaping business (section 62-1837).

Mobile home residential dwelling (section 62-1837.7.5).

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Power substations, telephone exchanges and transmission facilities (section 62-1839).

Preexisting use (section 62-1839.7).

Private parks and playgrounds (section 62-1840).

Resort dwellings.

Temporary living quarters during construction of a residence.

Tenant dwellings: Mobile homes (section 62-1843).

Tenant dwellings: One unit is permitted for each five acres of land under the same ownership. Tenant dwellings must be 100 feet from property of different ownership (section 62-1842.5).

(2) *Accessory buildings or uses.* Accessory buildings and uses customary to residential and agricultural uses are permitted. (Refer to definition cited in section 62-1102 and standards cited in section 62-2100.5).

(3) *Conditional uses.* Conditional uses are as follows:

Airplane runways (section 62-1905).

Bed and breakfast inns (section 62-1912).

Boarding of horses and horses for hire (section 62-1913).

Captive wildlife (section 62-1958).

Change of nonconforming agricultural use.

Composting facility.

Farmers' market (section 62-1929).

Guesthouses or servants' quarters, without kitchen facilities (section 62-1932).

Hog farms (section 62-1934).

Land alteration (over five acres) (section 62-1936).

Private heliports (section 62-1943.5).

Roadside stand (section 62-1945.5).

Security mobile homes.

Single-family residential second kitchen facility.

Skateboard ramps (section 62-1948).

Substantial expansion of a preexisting use (section 62-1949.7).

Veterinary hospital, office or clinic, pet kennels (section 62-1956).

Wireless telecommunication facilities and broadcast towers.

Zoological parks (section 62-1960).

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- (4) *Minimum lot size.* An area of not less than two and one-half acres is required, having a minimum width of 150 feet and a minimum depth of 150 feet.
- (5) *Setbacks.*
- a. Structures shall be set back not less than 25 feet from the front lot line, not less than ten feet from the side lot lines, and not less than 20 feet from the rear lot line. If a corner lot is contiguous to a key lot, then the side street setback shall be not less than 25 feet.
 - b. Accessory buildings shall be located to the rear of the front building line of the principal building and shall be set back not less than 15 feet from the side lot lines and not less than 15 feet from the rear lot lines.
 - c. Setbacks for barns and stalls are as follows:
 1. *Front:* 125 feet from the front lot line.
 2. *Side:* 50 feet from the side lot line.
 3. *Rear:* 50 feet from the rear lot line.
- (6) *Minimum floor area.* Minimum floor area is 750 square feet of living area.
- (7) *Maximum height of structures.* Maximum height of structures is as follows:
- a. Residential structures: 35 feet.
 - b. Structures accessory to an agricultural use: 45 feet.

(Code 1979, § 14-20.08(D); Ord. No. 95-47, §§ 8, 9, 10-19-95; Ord. No. 95-49, § 18, 10-19-95; Ord. No. 95-51, § 3, 10-19-95; Ord. No. 96-16, §§ 8, 9, 3-28-96; Ord. No. 96-46, § 10, 10-22-96; Ord. No. 97-29, § 2, 8-12-97; Ord. No. 97-46, § 1, 12-2-97; Ord. No. 98-03, § 6, 1-29-98; Ord. No. 98-08, § 2, 2-10-98; Ord. No. 98-11, § 3, 2-26-98; Ord. No. 98-62, § 5, 12-3-98; Ord. No. 2002-49, § 5, 9-17-02; Ord. No. 2003-03, § 6, 1-14-03; Ord. No. 03-40, § 1, 8-12-03; Ord. No. 04-29, § 6, 8-5-04; Ord. No. 2004-52, § 4, 12-14-04; Ord. No. 2005-25, § 5, 5-19-05; Ord. No. 05-27, § 2, 5-19-05; Ord. No. 2007-59, § 9, 12-6-07; Ord. No. 2009-06, § 2(Exh. A), 2-5-09; Ord. No. 2010-22, § 10, 11-23-10; Ord. No. 2011-17, § 4, 5-26-11; Ord. No. 2013-38, § 1, 11-19-13; Ord. No. 2013-38, § 1, 11-19-13; Ord. No. 2014-30, § 3, 10-2-14)

Editor's note— Ord. No. 2013-38, § 1, adopted November 19, 2013, amended § 62-1334 to read as set out herein. Previously § 62-1334 was titled agricultural residential, AU and AU(L).

Sec. 62-1337. - Suburban estate residential use, SEU.

The SEU suburban estate residential use zoning classification encompasses lands devoted to single-family residential development of spacious character, together with such accessory uses as may be necessary or are normally compatible with residential surroundings.

- (1) *Permitted uses.*
- a. Permitted uses are as follows:
 - One single-family detached residential dwelling.
 - Parks and public recreational facilities.
 - Private golf courses.
 - Foster homes.
 - Sewer lift stations.

- b. Permitted uses with conditions are as follows (see division 5, subdivision II, of this article):

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Group homes, level I, subject to the requirements set forth in section 62-1835.9.

Preexisting use.

Power substations, telephone exchanges and transmission facilities.

Private parks and playgrounds.

Resort dwellings.

Temporary living quarters during construction of a residence.

(2) *Accessory buildings or uses.* Accessory buildings and uses customary to residential uses are permitted. (Refer to definition cited in section 62-1102 and standards cited in section 62-2100.5).

(3) *Conditional uses.* Conditional uses are as follows:

Bed and breakfast inn.

Change to nonconforming agricultural use.

Guesthouses or servants' quarters, without kitchen facilities.

Horses, mules, goats and barns.

Land alteration (over five acres and up to ten acres).

Recreational facilities.

Recreational/residential marina.

Resort dwellings.

Single-family residential second kitchen facility.

Skateboard ramps.

Substantial expansion of a preexisting use.

Wireless telecommunication facilities and broadcast towers.

(4) *Minimum lot size.* An area of not less than one acre (43,560 square feet) is required, having a width of not less than 125 feet and having a depth of not less than 200 feet.

(5) *Setbacks.* (Also see special waterfront setbacks.)

a. Structures shall be set back not less than 25 feet from the front lot line, not less than 15 feet from the side lot lines, and not less than 20 feet from the rear lot line. On a corner lot, the side street setback shall be not less than 15 feet. If a corner lot is contiguous to a key lot, then the side street setback shall be not less than 25 feet.

b. Accessory buildings shall be located to the rear of the front building line of the principal building, and no closer than 15 feet to the rear and side lot lines, but in no case within the setback from a side street, with a minimum spacing of five feet.

(6) *Minimum floor area.* Minimum floor area is 2,000 square feet of living area.

(7) *Maximum height of structures.* Maximum height of structures is 35 feet.

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(Code 1979, § 14-20.08(G); Ord. No. 95-47, §§ 14, 15, 10-19-95; Ord. No. 95-49, § 18, 10-19-95; Ord. No. 96-16, §§ 14, 15, 3-28-96; Ord. No. 98-08, § 2, 2-10-98; Ord. No. 2000-03, § 3, 1-11-00; Ord. No. 2002-49, § 9, 9-17-02; Ord. No. 2003-03, § 10, 1-14-03; Ord. No. 04-29, § 10, 8-5-04; Ord. No. 2004-52, § 8, 12-14-04; Ord. No. 05-27, § 2, 5-19-05; Ord. No. 06-06, § 1, 1-24-06; Ord. No. 2007-59, § 13, 12-6-07; Ord. No. 2010-22, § 12, 11-23-10; Ord. No. 2014-30, § 3, 10-2-14)

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Planning & Development Department
2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940
(321) 633-2069

BOARD OF COUNTY COMMISSIONERS

TO: Planning & Zoning Board Members
FROM: Cindy Fox, Planning & Zoning Manager
SUBJ: Planning and Zoning Staff Comments
April 11, 2016
DATE: March 8, 2016

The following comments are compiled by the Planning and Zoning staff and are reflections of a combination of technical reviews. These are presented to the Planning and Zoning Board and the Board of County Commissioners as a collection of known facts surrounding each proposal and their relationship to the policies of the Comprehensive Plan. It is hoped that these known facts and policy statements will assist each member in their individual decision-making efforts as additional information is received through the public hearing process. The material contained in these comments will be provided to the Commissioners in staff briefings. Any matter discussed in staff briefings not contained in this review will be disclosed at the Board of County Commissioners meeting.

STAFF COMMENTS PREPARED BY:

Planning & Zoning Office
NATURAL RESOURCES MANAGEMENT DEPARTMENT

Legend of Terms:

FLU Map - Future Land Use Map of Comprehensive Plan
FLUE - Future Land Use Element

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

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

Administrative Policy 2

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

Criteria:

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

Administrative Policy 3

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

Criteria:

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

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:
 - 1. historical land use patterns;
 - 2. actual development over the immediately preceding three years; and
 - 3. development approved within the past three years but not yet constructed.
- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

Administrative Policy 4

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

Criteria:

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

Administrative Policy 5

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

Criteria:

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

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

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

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

CONDITIONAL USE PERMITS (CUPs)

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

- (b) *Approval procedure.* An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in section 62-1151. The approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved. If the applicant meets its initial burden, then the Board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the Board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use...

...In stating grounds in support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odor, glare and noise, particulates, smoke, fumes and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.

- (c) *General standards of review.*

- (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon a consideration of the factors specified in section 62-1151(c) plus a determination that the following general standards are satisfied. The Board shall make the determination whether an application meets the intent of this section.
- a. The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1) the number of persons anticipated to be using, residing or working under the conditional use; (2) noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3) the increase of traffic within the vicinity caused by the proposed conditional use.
 - b. The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.

- c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an MAI certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.
- (2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:
- a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1) adequate to serve the proposed use without burdening adjacent and nearby uses, and (2) built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at Level of Service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable Brevard County standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.
 - b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.
 - c. Noise levels for a conditional use are governed by section 62-2271.
 - d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
 - e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
 - f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.

- g. Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.
- h. Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.
- i. The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than thirty-five (35) feet higher than the highest residence within 1000 feet of the property line.
- j. Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

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

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

Current Volume: Building permit related trips added to the latest MPO traffic counts.

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

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

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

Acceptable Level of Service (ALOS): Acceptable Level of Service currently adopted by the County.

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

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

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, April 11, 2016, at 3:00 p.m.**, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order by the Chair, Henry Minneboo, at 3:00 p.m.

Board members present were: Henry Minneboo, Chair; Ron McLellan; Robert LaMarr; Loretta Goggin; Ron Bartcher; Andy Barber; Bruce Moia; Clyde Thodey; John Stone; Rochelle Lawandales; and Richard Charbonneau.

Staff members present were: Cristina Berrios, Assistant County Attorney; Cindy Fox, Planning and Zoning Manager; and Jennifer Jones, Special Projects Coordinator II.

The 10 regular and 1 alternate members present voted throughout the meeting. Mr. Charbonneau was not eligible to vote.

Henry Minneboo – This is the Planning and Zoning Board meeting, which is an advisory board to the Board of County Commissioners, and all items today will be heard on Thursday, May 5th, back in this room here, at 5:00 p.m. Each applicant today will be given 15 minutes for their presentation, and each person speaking in opposition or has some questions will be given 5 minutes. Has everybody had an opportunity to see the P&Z minutes of March 7th, 2016?

Clyde Thodey – Motion to approve.

Ron McLellan – Second.

Henry Minneboo called for a vote on the motion as stated, and it passed unanimously.

IV.B.2. (16PZ00008) – BRAVEHEART PROPERTIES OF BREVARD, INC. – requests a change of classification from TR-3 to AU, on 5 +/- acres, located on the west side of Sandpiper Dr., approx. 0.11 mile south of Tucker Ln. (222 Flamingo Dr., Cocoa)

P&Z Recommendation: McLellan/Thodey – Approved with a Binding Development Plan limited to four (4) horses. Vote was unanimous.

Jinkie Echols – My name is Jinkie Echols. What else do you want me to tell you?

Henry Minneboo – What you're trying to do today.

Ron McLellan – We need her address.

Jinkie Echols – 3701 Meadowlark St., Cocoa, Florida. I am the Vice President of Braveheart Properties, which is a non-profit, affordable housing company. We currently own 35 acres, TR-3 zoning, in Cocoa, off of Tucker Road, south of S.R. 520. We would like to rezone five acres of the property in the far northwest corner, which includes a portion of an FPL easement for agriculture in order to maintain two horses on the property.

Henry Minneboo – Anybody have any questions for this lady? Seeing none, is there anybody in the audience who would like to speak for or against this item? Yes, sir, please come forward.

Charles Holmes – My name is Charles Holmes, I live at 3903 Silk Oak Court, Cocoa, which is adjacent to this property. I live in the Condominium Association, Forest Lakes of Cocoa, and our property is immediately adjacent to this area. We have serious concerns about potential waste runoff from this property with it being requested to be rezoned to agricultural. We're concerned with contamination of our lake, and if you can refer to your P&Z staff comment report there is an aerial map of that particular area, and the large lake on the left side of that map is the lake which our condo association is built around, and the area requested for zoning is

clearly marked on that map. As she mentioned, it is a small portion of the 35 acres. We did send a letter to the board.

Henry Minneboo – We got it.

Charles Holmes – We're requesting consideration of our concerns. We're concerned with potential runoff from a general re-classification to agricultural. To be quite honest with you, if the applicant's request is to maintain two horses on that five acre parcel we don't have a problem with two horses. Two horses are not going to create enough waste to be a concern, but if it is rezoned agricultural then that doesn't say that somebody can't put 500 pigs on it, so your P&Z staff comments report, in the summary of that report to the board, it recommends that the board may wish to consider a binding development plan to limit the number of horses. We would recommend that the board consider a binding approval of that plan to limit it to two horses, and we would not object to that at all. We don't know what the next owner is going to do, so if your approval limits it to two horses then we have reasonable assurance there's not going to be excessive animal waste runoff into our lake. Our lake is the lowest point in the area, and even the lake that's a portion of the zoning change, even that lake drains into our lake, so we're the lowest point and we'd like to protect our lake and the runoff that goes into it. We'd appreciate your consideration to do that binding development approval.

Henry Minneboo – Is there anybody else who would like to speak for or against this? I bring the applicant back. Did you sort of understand the request?

Jinkie Echols – Yes, sir, I did, and it is my understanding from the County that the AU that we're requesting, since it is only five acres, we would only be allowed to have four horses maximum on that property. We are not allowed to run an agricultural business or commercial development, or anything of the sort, it would be for personal use and not for profit. I do understand that.

Henry Minneboo – If we had a binding development plan – that's some terminology we use – and you can only put four, and you couldn't put five, would you be agreeable to that?

Jinkie Echols – Sure, we have no intention.....our two horses are rescues and we have no intention of running a horse farm, so we have no intention of doing that. The only concern I would have with that is that we are very conscientious, environmentally, on our property, we don't treat or do anything because we are so extremely close to a fresh water source in Lake Poinsett, so we choose to recycle our waste, our horses are fed organically, so we utilize the waste from any animals on our property other than dogs and cats, that we can control to then use as fertilizer and some of that will be sold to other local organic farming sources. So, the only concern I would have with restricting it to two horses is that our hope is, eventually, to be able to maybe have a goat or the possibility of some chickens.

Henry Minneboo – Cindy, with five acres, four horses.....we usually give 15.

Cindy Fox – I think that she has two horses, but she doesn't want to be limited to other farm animals, so if she would like to volunteer to say she'll limit it through a binding development plan to two horses, that would be.....everything else that she asked for with AU.....

Henry Minneboo – She should be able to do it.....she can keep a goat there and a dog.

Cindy Fox – Right, and anything more than one pig I believe you'd have to come in for a conditional use permit, so you would be back here doing the same process. AU is the appropriate zoning and a binding development plan to limit it to certain animals.....

Henry Minneboo – Haven't we allowed four on five acres.....four is not out of line, is it?

Cindy Fox – There really is no limitation in AU, the rule of thumb is no more than four per acre so they each have at least 10,000 square feet.

Henry Minneboo – Is four adequate?

Jinkie Echols – Yes, sir.

Henry Minneboo – More than adequate?

Jinkie Echols – Yes, sir, I have all I can handle.

Henry Minneboo – You've got to agree to this, we can't necessarily make you do it, and all the attorneys I've got over here can't make you do it.

Jinkie Echols – Yes, sir, four is more than adequate.

Henry Minneboo – Does anybody have any questions for this applicant?

Clyde Thodey – Are you agreeing to a binding development plan?

Jinkie Echols – That states that we will not have more than four horses? Yes.

Clyde Thodey – Okay.

John Stone – How does the binding development plan address the potential goat and chickens that you talked about?

Cindy Fox – It would be regulated by the AU zoning classification, whatever is allowed in there.

Henry Minneboo – Code enforcement would go out there and count everything with four legs.

Andy Barber – How many legs do chickens have?

Henry Minneboo – Not sure of that one. I need a motion by the board.

Ron McLellan – Approve.

Clyde Thodey –Second.

Henry Minneboo called for a vote on the motion as stated, and it passed unanimously.

IV.B.3. (16PZ00017) – RONALD W. & WANDA F. MASEK, TRUSTEES – request a change of classification from RU-1-7 to RR-1, on 1 acre, located on the north side of Ricard St., between Railroad Ave. and Kentucky Ave. (3180 Ricard St., Mims)

P&Z Recommendation: McLellan/LaMarr – Approved. Vote was unanimous.

Cindy Fox – This is one of those situations where they have an existing house, they have an acre of property, and they're looking to be able to build a larger accessory structure. In this instance, going for the rezoning was less expensive than going for a variance, so I just wanted to point that out.

Ronald Masek – My name is Ronald Masek, I live at 3180 Ricard Street, Mims. Like Cindy said, I have one acre of land that I'm trying to build a building on and I'm restricted because of the size of my home, and all I'm trying to do is get it rezoned from RU-1-7 to RR-1, and I don't want any horses on it.

Henry Minneboo – That's certainly going to help us today. Does anybody have any questions for this gentleman from the board? Seeing none, I go out to the audience. Is there anybody in the audience who would like to speak for or against this item? Seeing none, I bring it back to the board.

Ron McLellan – So moved.

Robert LaMarr – Second.

Henry Minneboo called for a vote on the motion as stated, and it passed unanimously.

IV.B.4. (16PZ00018) – ROBERT G. MILLIKEN, TRUSTEE – (Anthony Rumbaugh) – requests a change of classification from AU to RR-1 on 1.4 acres, located on the south side of N. Tropical Trail, approx. 0.17 mile east of Tanglewood Lane. (No assigned address. In the Merritt Island area.)

P&Z Recommendation: Thodey/McLellan – Approved. Vote was unanimous.

Anthony Rumbaugh – My name is Anthony Rumbaugh, I live at 6500 Margot Lane, Merritt Island. The property in question is a piece that I'm looking to buy from Mr. Milliken. It's currently 1.4 acres on AU and is out of compliance with AU at the size that it's in. I'd like to make it RR-1, that way I can actually do the purchase and it will be buildable.....potentially, I realize that site plans need to be filed before that's official, but that I will actually be able to purchase the property with the potential to possibly put one to two horses on it.

Henry Minneboo – You're east of Tanglewood, on the south side, by the big tree there?

Anthony Rumbaugh – That's correct.

Henry Minneboo – I know a little bit about it. Any questions from the board on this? Anybody out in the audience who would like to speak for or against this item? Seeing none, I bring it back to the board.

Clyde Thodey – I make a motion to approve as submitted.

Ron McLellan – Second.

Henry Minneboo called for a vote on the motion as stated, and it passed unanimously.

IV.B.5. (16PZ00019) – ELINOR R. GARRISON – (Father Edward Sorin Real Estate Trust) – requests a change of classification from RU-2-15 to IN(L), on 0.17 acres, located on the southwest corner of Winslow Circle and Azure Lane (No assigned address. In the Cape Canaveral area)

P&Z Recommendation: McLellan/Lawandales – Approved with a Binding Development Plan limited to a monastery for retired clergy. Vote was unanimous.

Cindy Fox – I just want to make sure that everyone is aware that IN(L) is not industrial, it is institutional, and in this instance the Institutional zoning classification is necessary so that they can put in a small monastery in for retired priests and pastors in the area.

Henry Minneboo – This is about the only street we have left over there. Is the applicant here? Mr. Nohrr, it's always a pleasure to have you here.

Phil Nohrr – Thank you, it's always nice to be greeted, so hopefully you won't send me packing. Mr. Chairman, members of the board, my name is Philip Nohrr, my business address is 1795 W. Nasa Blvd., in Melbourne. I get the pleasure tonight to be here on behalf of the Father Edward Sorin Real Estate Trust, and with me in the audience is Father James Lackenmier who can answer any technical questions if and when they're needed. As staff has pointed out, we're here tonight seeking a rezoning from RU-2-15 to IN(L), which is Institutional – Low Intensity, which allows facilities such as we're asking for, monastery activities including the hiring of retired or semi-retired priests and brothers that are engaged in education, foreign missions, and pastoral activities. There will be no public services on this property. If I may just take a moment, this is off of the Property Appraiser's map.....staff, I'll provide you with one in a moment. What I wanted to do here is show you.....you've got a symbol showing the vacant property in question. That property currently houses – depending on the day of the week – cars parking illegally, boat trailers, and things of that nature. What I'd like to draw your attention to is if you continue north you will see the next street over is Arthur, and you'll see a two-story building. The reason I wanted to point that out is that that building is currently housing between 10 – 20 retired and semi-retired priests. The reason I point that out is to show you that we're not introducing any type of use or activity into the neighborhood that isn't already there, and we believe is very compatible with the neighborhood. Again, it's used primarily so that the priests can really continue their studies and continue foreign missions as they see fit. That facility has places where priests can meet and it also has a cafeteria-type of facility, so that any type of activity that would be a group would not be on the property that we're talking about here today, but within a block to the north. Father Lackenmeier walked the area and contacted about 6 or 7 people and got consents to the proposed rezoning. During his canvassing of the neighborhood he did not appear to find anyone in opposition, but of course we'll find out better when I sit down if there is someone here in opposition. We have a chance tonight to do something beneficial to our general public in general, and also as far as our activities extend beyond our borders. We believe the staff report has set forth accurately what the request is, we believe we will be compatible with our neighbors, and we would urge you to grant us a favorable recommendation. With that, I'd be happy to answer any questions you may have.

Andy Barber – The property to the north is zoned RU-2-15, and so what is the need to change this if you're not going to open it to the public and you're able to build four units because it is zoned RU-2-15. What's the rationale for wanting to change the zoning?

Phil Nohrr – Most of that area is RU-2-15, and what normally would occur in this type of development is we would be putting up to four townhouse-type of units on this property, and when you look at the size they're not meant to be elaborate inside as far as a lot of space, it's really to house retired priests in furtherance of their calling, so this type of zoning request works out a lot better, as it's more compatible with the property that I pointed out to the north. That's the primary reason.

Andy Barber – I still don't quite understand.

Cindy Fox – By going to Institutional they actually gain two units because the property is only .17 of an acre, so they would not get four units out of it, so by going Institutional, which calculates density on traffic trips.....

Andy Barber – Enough said.

Henry Minneboo – Anybody else for Mr. Nohrr? Seeing none, is there anybody in the audience who would like to speak for or against this item?

Steve Stockton – Good afternoon, my name is Steve Stockton and I'm the President of the Meridian Condominium Association of Brevard, which is a 64-unit development within 500 ft. of the subject property. I want to start by saying that we think this is an excellent spot for retired people of any profession and we have no objection to the plan as proposed by the Real Estate Trust. We have no problems with the increased density, because our own condominium association has quite a bit of density. I'm sure they'll make very good

neighbors. However, like the Braveheart application, we're concerned about future changes in use. I've seen the chart in the ordinance as to what IN(L) would allow, but it's unclear whether other less compatible uses than a retirement home would be allowed. So, what I'm asking a question about is a technical interpretation. For example, could the property later be converted into a facility for other than retired priests? We've seen, in the past, not in this location, but people wanting to put half-way houses, for example, in institutional zoning areas. So, once the zoning is changed, is there any danger to us that this use could be converted, just like in the Braveheart.

Henry Minneboo – I normally don't answer you quickly..... Cindy, I think he's okay, isn't he?

Cindy Fox – It will remain Institutional, so he's mentioned the other uses in Institutional, so the board may want to consider a binding development plan to limit it.

Henry Minneboo – Yes, there's things that could happen, and we'll share that with the applicant. Anything else?

Steve Stockton – No, I appreciate that, thank you.

Henry Minneboo – Is there anybody else out in the audience who would like to speak for or against? Seeing none, Mr. Nohrr, I bet you're meeting with your client.

Phil Nohrr – It'll be a short meeting. We would have no problem voluntarily submitting to a binding development plan.

Henry Minneboo – Anybody else have any questions for Mr. Nohrr? Seeing none, what's the pleasure of the board?

Ron McLellan – I move to approve with a binding development plan.

Rochelle Lawandales – Second.

Cindy Fox – Specifically, I think we're looking at a binding development plan limited to the use of a monastery to house retired.....

Henry Minneboo called for a vote on the motion as stated, and it passed unanimously.

IV.B.6. (16PZ00020) – MARK & KATHLEEN NATHAN – request a change of classification from SEU to AU on 2.56 acres, located on the west side of S. Tropical Trail, approx. 1 mile north of Pineda Cswy. (No assigned address. In the Merritt Island area.)

P&Z Recommendation: Thodey/Stone – Denied. Vote was 9:1, with Goggin voting nay.

Mark Nathan – My name is Mark Nathan, our address is 160 Egret Drive, Satellite Beach, Florida. We are asking for a rezoning for our property on Tropical Trail from SEU to AU so I can grow and maintain storage for our growing plants, mostly mangroves, Royal Poinciana's and such that I've taken up these last five years or so. I've been a licensed framing contractor/builder in Brevard County for 35 years up until the recession. Since then I've been helping ends meet by playing guitar locally, I'm a singer/songwriter, I'm a kayak guide, so I do a lot of that, and growing and selling plants, mostly mangroves and Royal Poinciana's. Financially, my wife, Kathy, does most of the heavy lifting these days, for she is a much respected Program Manager at Harris Corporation for the past 27 years. Although I still have my building license company, my building days are mostly behind me. I've been growing and maintaining my plants at our home in Satellite Beach for about five years. I've got them along the side yards, the backyards, and my Royals are mostly out front. It would be a

great relief to bring my growing trays and pots to our property on the Trail to grow and maintain them there. At this time I have about 24 trays with about 12 pots in each. I also have about 40 larger red and black mangroves in bigger pots 4 – 6 feet tall, and about 25 Royal Poinciana trees. Being next to the river would allow me easier access to obtain the brackish water my mangroves need to grow, rather than fill up 3-gallon containers and bring them home to fill the trays there. I got started 20 years ago with Jim Eagan, the Director of the MRC (Marine Resource Council) to where I volunteered to plant mangroves and for water testing. A few years ago I thought I'd try my hand at growing the mangroves myself and I've gotten quite good at doing so. I'm also on the REAC committee, which is the Recreational Educational Advisory board, where I was appointed by the County Commission to work with the EEL's Program, headed by Mike Knight back in 2005. I also volunteer with the FWC collecting data on some Pelican rookeries and bird counts and I've done a lot of public speaking as well, especially concerning our diminishing river here, and I helped enact the fertilizer ban. No one should doubt my resolve and commitment to our environment, or that I or my wife, Kathy, would do anything to diminish our beautiful property on the Trail. I talked with Carolyn Heacock from the Property Appraiser's Office and she's assured me the zoning change from SEU to AU would not affect the value of our property in any way, and that the formula they use for both designations are the same. She also stated that the taxes would remain the same, that SEU and AU values are identical. I have no illusions of becoming wealthy growing mangroves, I've donated and planted literally hundreds of my mangroves to help stabilize our lagoon. Mangroves, of course, are a keystone species, a species on which other species in an ecosystem largely depend on. We're not trying to upset anyone to change the character of the neighborhood or disrupt the peace and quiet. We will not be cutting trees or clearing land. You'd have to go to some lengths to even know we're there. The footprint of our property will not change or be altered in any noticeable way. We are not asking the Planning and Zoning Board for any more or any less than anyone else whose property meets or exceeds the requirements to be rezoned to AU. These are two letters of objection, one from Jeffrey Araj. Regarding Mr. Araj's letter –and I have no problem, I know people want to know what's going on – and I believe I've answered his main objection regarding his concern over property values. Again, according to the Property Appraiser's Office, SEU and AU zoning are identical in all values. I think he surmised that our main reason for the zoning change is so we could decrease our property tax bill. I wish that was true, but it is not. Again, they told me the SEU and AU values are identical, that the zoning change in no way would affect the value or the taxes of the property. Regarding Mr. Levy's objection letter, pretty much the same thing, and I hope I've answered his concerns as well that AU zoning will not damage the neighborhood or property value, it will not in any way have an effect on the peace and quiet, or peaceful existence, of the neighborhood, nor will the footprint or essence of our property change in any noticeable way. Kathy and I are more than willing to compromise and find common ground if there is a particular concern, and we would be open to a BDP. As far as the exclusion of horses and livestock, which we don't have any plans for that anyway. So, I guess that's all I have.

Clyde Thodey – Have you met with these two people that have objected?

Mark Nathan – We sent them letters.

Clyde Thodey – You didn't actually meet with them at all?

Mark Nathan – I did not.

Henry Minneboo – How long have you owned this property?

Mark Nathan – We've owned it since 2001, a long time.

Henry Minneboo – I've asked that question of other and they've owned it since the '50's, I just didn't know if you were one of them. Would anybody like to speak for or against? Yes, sir, please come up.

Scott Wiederman – Thank you, Mr. Chair, my name is Scott Wiederman, my business address is 1990 W. New Haven Ave., Melbourne. I'm here and have the pleasure of representing Dr. and Mrs. Araj; Dr. and Mrs. Kenneth Levy; and Dr. and Mrs. Audrius Bredikis.

Henry Minneboo – And you're an attorney?

Scott Wiederman – I'm an attorney, yes, sir. If I may briefly hand out some documents that I think will make very clear what we believe really is going on there. Dr. Araj, Dr. Levy, and Dr. Bredikis, object to this spot zoning that is being contemplated by this board. The first thing I'd like to draw the attention to the board on, I know you have your packet with regard to staff's requirements and staff's comments. We're talking about a location that is currently zoned SEU, and the Future Land Use and Future Comp Plan all have this location as Residential 1. We're talking about the area on S.R. 3 from Pineda Causeway, all the way back toward Cone Road, where there are two gas stations on the corner, just before the Merritt Island airport. As far as some of the comments made by the applicant, the minimum house size and structure size in AU is 750 square feet, as you saw in your comments from staff. SEU requires lots of an acre and 2,000 square feet, not to mention this is a drastic spot zoning, there is no agricultural AU zoning surrounding these properties, and this is predominantly the side between Pineda Causeway and about 2 miles of Pineda, so it is the most southern end of our area that is the Cone Road and S.R. 3 area. The second document that I handed out is the actual tax bill documents for this property. The property has unpaid taxes for the last two years, 2014 and 2015 are unpaid, and in fact, they paid in arrears for the last several years, so this agricultural zoning isn't about taxes to Brevard County, per se, but if there ever was a case where I would suggest possibly you have an agricultural desire in an area where the tax bill isn't being paid so that the tax credits go to themselves, this is that in a nutshell. The next document that I gave you all is the Code Enforcement document. The property is currently, and has been, in an ongoing Code Enforcement violation and is accruing \$25 per day for failing to maintain the property, adequately pick up and clean the brush in the area. There's thousands of dollars owed on the Code Enforcement, and simply changing it to now be able to say, "I've got plants and I've got these things on the property", which I suggest to you is a very realistic interpretation of this application, also the board should be on note about, this board was not put in place to allow a change in spot zoning to allow somebody's use to go above and beyond the integrity of the neighborhood. There's a great case for the County of Brevard vs. Woodham. It's an older case from 1969, and the zoning in this established area of Merritt Island, in this case it is about a property that wanted to go from residential to commercial, not quite what we have here, but I think you'll see the similarities when you talk about the integrity of the neighborhood, which the purpose of the Brevard County Comprehensive Plan, the FLUM, and the current zoning designations for an area are to make sure that we keep and maintain the welfare and integrity of the neighborhood. This area from Cone Road south was established in 1958, and this area has been zoned SEU and Residential as the Future Land Use, especially between Pineda Causeway and the Merritt Island airport, we have all been down that road and S.R. 3 is nothing less than there are a few places that have horses and livestock, but those are still toward the north side of where our properties lie. Use of your property is not in itself designed as a Code or zoning compliance issue in that you can't change your zoning, you can't do anything that would make the zoning spot zoning, which we all know on any level is improper, but you can't correct a situation with Brevard County by changing its zoning. Again, as I stated earlier, taxes are unpaid, Code violations continue to ensue, and if this Board allows this zoning change you're allowing compliance to come in on certain levels, and we all know we can go back to the Value Adjustment Board and go into arrears and say it was always AU zoning and need some changes. I just don't believe that is where we should go today.

Henry Minneboo – Try to wrap it up. I've given you more than I'm supposed to.

Scott Wiederman – Two minutes. Just to read some of the basics of this case, which is about Brevard County in this section. The general object of zoning is to advance public health and safety and general welfare. More specifically, however, it's been held that zoning regulations may be employed to promote the integrity of a neighborhood and preserve its residential character. It has also been held that zoning may be employed to

protect the economic value of existing uses. I know the applicant brought those things up, but I'm sorry if the board doesn't agree, but if you've got a residential zoning classification where you need an acre and 2,000 square feet minimum, and you allow an AU zoning for 750 square feet, the area is going to be impacted. We all know we traditionally call this area 'Pill Hill', it's there for a reason. Lastly, Mr. Chair, zoning for the purpose of maintaining the integrity of residential area does relate to the public welfare. That's your job. It's essential for cities and counties to provide areas which the residents may feel free to build and make financial and other sacrifices that go into the development of a home without (TAPE CHANGE) large measure of their investment, or their enjoyment of their homes by the outcropping of commercial development. Again, I said they were trying to do commercial in this case, this is agricultural, in his land use document submitted he has a retail division of his growing mangroves. The purpose of the integrity, and the purpose of including land residential zoning classification was to preserve and promote the integrity of the surrounding land and residential area. This area, even based on case law, is determined to be residential where it should stay. Spot zoning, the practice of which is condemned by all authorities on zoning, is being attacked here. We all know spot zoning, we all know it was running rampant for a long time, and there's just no continuous parcel for which to give the relief requested, and I think it's important that this board not condone bad behavior with a zoning change that would allow it to now fall within their plan and the overall scheme of the neighborhood that we're here to protect. Thank you, sir.

Henry Minneboo – Thank you. Let the record show, Cindy, that I gave him 11 minutes.

Scott Wiederman – I appreciate that.

Henry Minneboo – Let me see if there's anybody else who would like to speak for or against. Yes, ma'am, please come up.

Alison Poe – Hello, my name is Alison Poe, I live at 7555 S. Tropical Trail, two lots from his, Mark and Kathy's, property. We are opposed to this being agriculture. We built our home 15 years ago and this is where we love. We don't want to smell.....he could very well have a change of heart and put chickens, goats.....we don't want to smell livestock, it's a pristine piece of property where we live. Even if he grows his mangroves and plants down there.....we just had a massive fish kill, we don't want any fertilizer, we don't want anything dead.....we have the Banana River in our front yard, the Indian River in the back yard, we don't want any problems, we just don't want any livestock. This is a great piece of property and it should be residential only.

Henry Minneboo – Thank you, ma'am. Is there anybody else who would like to speak for or against?

Sue Wardy – I'm Sue Wardy, I live right next to Alison, 7545, I feel the same way, but I also wanted to ask you all something. I just find it rather interesting that he can even ask for this kind of zoning. Can someone please tell me why this is possible that he could ask for this kind of zoning?

Henry Minneboo – Because the two attorneys to my left here probably allowed me to.

Sue Wardy – Because we might need to change this. I mean, this is right on the river where we almost had a state of emergency, and now we're looking at having agriculture right on this river?

Cindy Fox – The way that the zoning works is that it is at the request of the applicant, the property owner. The staff, the County, has no say in the requests that they make. We advise them the best that we can, and we have advised this applicant, but that's just the way it works, everybody gets their day to come in front of the board and ask.

Sue Wardy – I see, so no matter what kind of zoning, anybody can ask for anything?

Henry Minneboo – Yeah, but they've got to get through this board and the Board of County Commissioners.

Sue Wardy – So, I'm looking at you right now, okay? Thank you.

Henry Minneboo – Anybody else who would like to speak for or against? Does anybody on the board have a question before I bring the applicant back up? I've got a couple. When we have Code Enforcement charges, how have we handled that in the past, Cindy?

Cindy Fox – It's a separate process that is run by a separate section.....

Henry Minneboo – Just let Code Enforcement do their thing.....

Cindy Fox – We did check on this one, and we can ask the applicant, but we believe it was over a dead tree that needed to be removed.

Henry Minneboo – I'm not going to debate whether.....but I didn't know if we had litigation on a property if we can.....

Cindy Fox – There's actually language in the Code that abates it during this hearing process.

Henry Minneboo – My other question is, is there any other ag through there?

Cindy Fox – No, it is all Estate Use and Suburban Estate Use.

Henry Minneboo – Probably all the way to Pineda?

Cindy Fox – Yes, pretty much, it goes all the way down.

Henry Minneboo – Does the applicant want to come back up?

Mark Nathan – First of all, to address the lady that was concerned about the property, or the river and such, I think what I just read before.....I'm on all these different boards and work with the FWC. I was instrumental in getting the fertilizer ban, I spoke at the County twice and at seven different cities. No one cares more about the river than I do. I don't do this for the money. I planted, literally, hundreds of mangroves on the river and I do many other things as well. The Code Enforcement is.....this is almost ridiculous.....

Henry Minneboo – You don't have to address it.

Mark Nathan – I just found out about this just this week when Mr. Levy's letter, his letter of concern, at the very bottom he says, "an interesting fact to note is that the Code Enforcement Office has a claim against the property. Mr. Michael Verostic is aware of the case". Of course, Mr. Levy got a hold of Mr. Verostic about this. They sent the letter to another address and never did get a hold of us and hadn't gotten a hold of us. So, I addressed that because I didn't know until I saw the letter and called him and he said.....the address was right, 160 Egret Drive, but it was gone to Merritt Island some place, so he just sent us a letter and I believe we got it on Saturday, or Friday, but I was going to meet with him this coming week to address this. He apologized.....this is not something that Kathy or I would ever do. In 64 years of life my character has never been challenged, and 40 years in business as a builder has never been challenged, with the Better Business Bureau or anything else. Kathy and I are outstanding citizens. As far as the tax bills, we are behind. We have some health issues, not with ourselves, but my son is a drug addict and has hepatitis C and we're trying to put some things together for that, the Harvoni treatment is not cheap, so we are behind on the taxes, but it's not like we're not going to pay them. It has never been an issue. As I did say, through a BDP we could do some

things to satisfy everybody. We're not going to raise and graze animals. We would be open to building a bigger house there than the 750, and just because it allows us to go that low doesn't mean we would do it anyway. We would be open to that, to put the square footage of the house back. I know that was a concern I just heard, which would be the bigger square footage. Again, we wouldn't have a problem doing that, doubling the size of the 750, or even making it 2,000. I'd rather keep it on the smaller side, but other than that.....so that takes care of the property taxes, and we are going to catch up, we're hoping to catch up with our tax refund and such. The other is going to be address, but I just got the letter on Friday. Again, I don't know why they didn't have our address, because I did call the Property Appraiser's Office and the address was right, so I don't know what happened there. Again, he did apologize and I will meet with him and we will clear that up as well. Any questions?

Andy Barber – You've been growing plants on the property already?

Mark Nathan – Not really. I've got a couple of trays there, that I just put there in the last two weeks when I had taken some of the mangroves down on our property, the seeds, but I had been growing them at our house for five years, down the side yards and the back yard.

Andy Barber – What is the square footage of all your containers? Would you say it's 100 x 100?

Mark Nathan – I would say that, yes. The trays are about as big as this table. The thing is, if I could bring them over there I might even have more, but right now I've got 24 trays that you can put 12 plants in each one. I've got another 30 – 40 bigger plants six feet tall in the bigger 25 gallon trays, and then I've got 25 Royal Poinciana trees that are 6, 7, 8 feet and they are in bigger 25 gallon containers.

Andy Barber – So it will look like a nursery operation?

Mark Nathan – No.

Andy Barber – It won't have any retail sales, it will just look like a nursery operation.

Mark Nathan – Not that you could see it, no.

Andy Barber – Is it on the water side or on the land side?

Mark Nathan – It would be on the land side, yes. It's nothing that you would ever be able to see from the road. There were concerns about smells, and of course it wouldn't smell or anything like that.

Ron McLellan – The mangroves that you grow and stuff that you do, what do you do with it? Do you donate them?

Mark Nathan – No, I sell them, and I also donate them. Like I said, I started with the Marine Resource Council, but yes, I sell them, absolutely.

Ron McLellan – To homeowners?

Mark Nathan – Homeowners mostly, yes.

Ron McLellan – I appreciate it, that's a good thing, but the only problem I've got is sticking that AU in the middle of it, and you know what happens when we start doing that.

Henry Minneboo – You've got all of South Courtenay, from Cone Road to Pineda, there isn't one bit of agriculture. It would be like putting commercial out on the Mormon Ranch, I don't know.

Ron McLellan – Everything you're doing there is fine, I agree with everything it is, and you can put a BDP on it and all that would stop you from having cattle or goats.

Mark Nathan – We could put a BDP on it.

Ron McLellan – But still, you're right back to the same thing of sticking AU right in the middle of it and it's going to bite us in the rear end every time we do it. That's just me.

Richard Charbonneau – The comparison to be going from residential to commercial is going upward, I can see there being a complaint on that, but to go from residential back to what it was before – I mean, it was agricultural at one time – I just don't see that as the problem. If he was going to build an Auto Zone there I can see that.....

Mark Nathan – But we do plan to build our home there, too.

Richard Charbonneau – If it was a commercial thing I could see the complaint, but I just don't see the problem.

Mark Nathan – It's going to be very low key, it's not like.....you're not even going to know we're there, and I've already said we're not going to do wholesale there, or selling from there. I said in my letter to the neighbors that I don't mind selling out of the house, I can keep a couple there for the sales, but I'm not going to make it a nursery as such, and we can put that in the BDP as well.

Richard Charbonneau – I received a letter, I can't remember which one, but there was something basically accusing you of trying to pay lesser taxes so you can hold onto the property longer and then flip the property and make a whole pile of money later on.

Mark Nathan – I was going to address all that, but I didn't feel like I needed to.

Richard Charbonneau – I thought it was a silly letter.

Mark Nathan – It was mean spirited, I think.

Richard Charbonneau – How does somebody know, unless they've got clairvoyance, how do they know what's in your mind to do 10 years from now.

Mark Nathan – I actually had it in there, but I chose not to say anything about it. But yes, I did catch that as well, sir.

Clyde Thodey – What's wrong with you just leaving it like you have it and doing what you want to do by bringing plants on it? What's wrong with doing that? Why do you have to go AU?

Mark Nathan – AU would allow me to put the accessory buildings there as well. I've got wheelbarrows and all the soil, it adds up, the pots, the trays, things like that. I know I can't put accessory buildings on a property unless you have a home there already, but that's about all we're really looking for is some accessory buildings, one or two, to store the equipment in. There's no machinery involved with this, I've never used machinery. I mean, I'm potting plants, and right now I've got hundreds of them.

Clyde Thodey – I understand, basically you want to put AU in the middle of all this.....

Mark Nathan – What's in a name? I mean, I know it's AU, but it's not agriculture as such that we're going to do anything other than that. I thought we were within our rights with 2.5 acres to be zoned to AU, but I would never have brought it up if that were the case.

Andy Barber – I find it interesting, the perception of your application was simply to put some plants on it, and now you're talking about accessory buildings, and building a home there that's 1,500 square feet or something like that. This is a whole lot different than having a small area to put some potted plants on.

Mark Nathan – But it would still be a small area we're talking about.

Andy Barber – I know, but now you're talking about accessory buildings.

Mark Nathan – That's what AU allows. AU allows that, that's all I'm saying.

Henry Minneboo – Thank you all. What's the pleasure of the board?

Bruce Moia – I have a question for Cindy. Based on what he was saying I want to make sure I understand this right, AU would allow him.....usually on a zoning like SEU you can't have accessories before you have a primary use.

Cindy Fox – That's right.

Bruce Moia – But in agriculture you can have an accessory use before you have the primaries, is that the deal?

Cindy Fox – Yes, you can have barns.

Bruce Moia – So if he kept it SEU he could build his house and then he could come in and do his house first and then he could do his plants, or build an accessory structure after he builds his primary residence.

Cindy Fox – Yes, but SEU is really not designed to be a zoning classification that allows horticulture or anything like that, so it would have to be a private garden for his own use and the product for sales is not really accessory to a residential operation.

Bruce Moia – Okay, thank you.

Clyde Thodey – I'd like to make a motion that we deny the request.

Ron McLellan – Second.

After a roll call vote, the motion to deny passed 9:1, with Loretta Goggin voting nay.

Cindy Fox – Are you saying the motion to deny has passed?

Henry Minneboo – It has been denied, the request of the applicant has been denied.

Upon consensus, the meeting was adjourned at 4:00 p.m.

MAY 5, 2016, VERBATIM TRANSCRIPT OF ITEM IV.B.6. (16PZ00020) – MARK AND KATHLEEN NATHAN – REQUESTS A CHANGE OF CLASSIFICATION FROM SEU TO AU ON 2.56 ACRES, LOCATED ON THE WEST SIDE OF S. TROPICAL TRAIL, APPROXIMATELY, ONE MILE NORTH OF PINEDA CAUSEWAY. (NO ASSIGNED ADDRESS. IN THE MERRITT ISLAND AREA.)

- Cynthia Fox: IV.B.6., Mark and Kathleen Nathan. This is a request to change a classification from SEU to AU on 2.56 acres. This property is located on the south side of Tropical Trail in the South Merritt Island area. The request is for agricultural pursuits, specifically to grow mangroves and some royal Poinciana palms, and other plants. This was considered by the Planning and Zoning Board and they denied it. The vote was 9:1, citing incompatibility issues.
- Jim Barfield: I have one card on this. Scott Widerman.
- Fox: Is the applicant here?
- Scott Widerman: And actually I was going to say if the applicant's not here, I represent the surrounding families that were against it, so if they are not here I have nothing further; and I expect a denial will be upheld, unless anybody has questions for me.
- Barfield: No.
- Robin Fisher: What is the reason for a denial? What is the concern of the families surrounding it?
- Widerman: The, it's the area of State Road 3 between Pineda Causeway and the gas station that is just near the Merritt Island Airport. The houses in those, as we all know in that area, are very large. The Agricultural Use that was given out to the Planning and Zoning Board was one that was also going to be retail sales at some point, multiple buildings, and some other issues that were not compatible with Residential. It's also a Spot Zoning issue. The Future Land Use is Residential 1. It's SEU now, so the Agricultural just simply wasn't going to fit and there were concerns about the integrity of the neighborhood.
- Curt Smith: Can I ask you a question? If they want to grow mangroves, can't they just grow mangroves as long as they are not selling them?
- Widerman: It was certainly a question that could have been addressed. They didn't bring it up. I believe that on some level you can still have plants, no different than I have potted plants at my house, your house, or anybody else's. I think it was the level at which they were talking about it. I don't remember the exact numbers, but he was saying, you know, they come in like these big pallet eggshell looking things, and it was, you know, 40, 50, 60 per pallet, and there were multiple pallets. This wasn't your garden variety I want to build mangroves, they wanted to build them and then sell them to the County or the cities everywhere else

to put into the area. So, it was definitely not that simple of an issue.

Barfield: I want to make, I want to make absolutely sure that Mark and Kathleen Nathan are not here. Okay? For me this is totally incompatible with with the location.

Widerman: I agree.

Barfield: It, it really doesn't need to happen. In fact, I'd like to go ahead and pass the gavel to you, Curt, and I'd like to make a Motion that this be denied as a fact that it is incompatible, and instruct our lawyers to do a Findings of Fact.

Fisher: Second.

Barfield: Got a Motion. I'm sorry.

Smith: We have a Motion on the floor by Commissioner Barfield, to deny this, and we have a second by Commissioner Fisher. All those in favor of denying it?

Barfield: Aye.

Fisher: Aye.

Smith: Aye.

Andy Anderson: Aye.

Trudie Infantini: Aye.

Eden Bentley: And...

Smith: Opposed? The vote is 5:0.

Bentley: And for the Findings of Fact, the first meeting in July?

Barfield: Just a minute.

Bentley: What is that date?

Clerk: The 12th.

Bentley: The 12th we'll bring them back, July 12th.

Smith: July 12th.

Barfield: Thank you.

Fox: And that's the end of the P&Z Items.