



AGENDA REPORT
May 30, 2019

**Clark A. and Patricia A. Simms request a change of zoning classification
from RU-1-9 and EU to all RU-1-9. (18PZ00130) (District 2)**

SUBJECT:

Clark A. and Patricia A. Simms request a change of zoning classification from RU-1-9 (Single-Family Residential) and EU (Estate Use Residential) to all RU-1-9. The property is 2.92 acres, located on the west side of North Tropical Trail, approximately 685 feet north of Lucas Road. (700 St. Lawrence Lane, Merritt Island) (18PZ00130) (District 2)

DEPT/OFFICE:

Planning and Development

REQUESTED ACTION:

It is requested that the Board of County Commissioners conduct a public hearing to consider the request for a change of zoning classification from RU-1-9 to and EU to all RU-1-9.

SUMMARY EXPLANATION and BACKGROUND:

The applicants' request has been modified from the original request proposing Low-Density Multi-Family Residential (RU-2-4) Zoning classification on the front .93 acres of the parcel. The revised request proposes Single-Family Residential (RU-1-9) Zoning classification on the entire parcel that is 2.92 acres in size with a BDP limiting development to two lots, each developed with one single-family dwelling and one guesthouse with kitchen facilities. The applicants have revised the legal description of the request to cover the entire parcel and the revised proposal was re-advertised and re-noticed accordingly.

Guesthouses with a kitchen are permitted in the EU, RU-1-9, and RU-1-7 zoning classifications on parcels at least one acre in size when consistent with the comprehensive plan's density designation in each of these classifications.

Natural Resources Management Department has identified as a notable concern septic treatment within 100 feet from the buffer establishment line, the safe upland line, mean high water line or ordinary high water line, as determined by the FDEP bureau of survey and mapping, whichever line the applicant prefers, as an issue for concern. Section 62-3666(14) requires all OSTDS be set back at least 100 feet from surface waters as defined in Chapter 62, Article X, Division 3, Surface Water Protection. In those cases where there

is insufficient lot depth, the OSTDS may be set back a minimum of 75 feet.

The applicant has memorialized within the Binding Development Plan a commitment that any new single-family residence will be connected to sewer.

The Board should consider whether the requested RU-1-9 Zoning classification is consistent and compatible with surrounding developed parcels' EU Zoning on the subdivision to the south, RU-1-9 on the subdivision to the southeast across North Tropical Trail and the undeveloped land directly to the north, and the RU-1-7 on underutilized parcels across North Tropical Trail.

The Board should consider whether the proposed BDP conditions, limiting development to two single-family dwelling units and two guesthouses and requiring that any new single-family residence will be connected to sewer, mitigate any impacts of the proposed request.

On January 28, 2019, the Planning and Zoning Board unanimously approved the request with a Binding Development Plan limited to one single-family unit, and that there be shared access to North Tropical Trail.

On February 7, 2019, the Board of County Commissioners tabled the request to March 7, 2019, to allow the applicants to submit a concept plan.

On February 25, 2019, the applicants submitted a rough sketch, which is not a binding plan, indicating the proposed location of the future improvements on the property. Please note that this plan does not meet the minimum requirements of the County's Site Plan Code and cannot be used to satisfy that requirement, nor is it sufficient for inclusion in a Binding Development Plan to be approved by the Board. Also, interdepartmental reviews have not been conducted, and the feasibility of the layout cannot be confirmed without a formal site plan review.

On March 7, 2019, the Board tabled the request to the April 4, 2019, Commission meeting at the request of the applicant.

On April 4, 2019, the Board returned the request to the Planning and Zoning Board.

On May 6, 2019, the Planning and Zoning Board heard the request and voted 7:1 to deny.

ATTACHMENTS:

Description

- **Administrative Policies**
- **Staff Comments**
- **GIS Maps**
- **Survey**
- **Non-binding Concept Plan**
- **Disclosure**
- **Correspondence**
- **Public Comment**
- **P&Z Minutes 01-07-19**
- **P&Z Minutes 01-28-19**
- **Amended Request**
- **Addendum to Staff Comments**
- **Draft BDP**
- **P&Z Minutes 05-06-19**

Handwritten note: "Helo disclosure D2" circled in yellow.

D2 Disclosures for 05/30/19 BOCC Meeting (P&Z agenda items)

Public Hearing Item H.1 (change of zoning classification, Parcel#18PZ00130, Simms, Merritt Island)

- 3/20/19 - Commissioner Lober met with Susan Johnson & husband, who have concerns regarding the rezoning request.
- 5/12/19 – D2 received an e-mail from Ronald Bartcher supporting the rezoning request (bartcher@cfl.rr.com).
- 5/14/19 – Commissioner Lober met with John Mason, who has concerns regarding the rezoning request.
- 5/23/19 – Chief of Staff Fritz VanVolkenbourgh spoke with Bill Heink, who has concerns regarding the rezoning request.
- 5/23/19 – Commissioner Lober met at the Viera Government Center with Patricia Simms, Tad Calkins and Erin Sterk, to discuss rezoning request.
- 5/28/19 – Commissioner Lober met with Bill Heink, who has concerns regarding the rezoning request.

Public Hearing Item H.9 (change of zoning classification, Parcel#18PZ00166, Robertson, 20 Acres, Fleming Grant Rd, Micco)

- D2 received e-mails expressing opposition or concerns about the proposed rezoning from the following:
 - 4/30/19 – Barbara Reisert, babsnearl@aol.com
 - 5/1/19 – Carolyn Greene, cgreene@hotmail.com
 - 5/1/19 – Anne Briggs, annebriggs@yahoo.com
 - 5/1/19 – James Linder, jebdlinder@gmail.com
 - 5/2/19 – Linda McLain, lmclain45@yahoo.com
 - 5/2/19 – Ted Beck, scubadore@gmail.com
 - 5/3/19 – Jodi Lemaster, jodilemaster@att.net
 - 5/3/19 – Carol Decker, cdecker411@yahoo.com
 - 5/3/19 – Georgia Combs, georgiacombs2@live.com
 - 5/3/19 – Mark Locayano, mark_locayano@hotmail.com
 - 5/4/19 – Linda McLain, lmclain45@yahoo.com
 - 5/4/19 – Ralph Jones, edj0nes01@yahoo.com
 - 5/5/19 – Unknown, pirrungair@bellsouth.net
 - 5/7/19 – Stephen Calhoun, sc0171@att.com
 - 5/7/19 – Robin Carroll, rh20bug@aol.com
 - 5/7/19 – Diane Acker, dianeack1@bellsouth.net

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 development 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 development 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.

REZONING REVIEW WORKSHEET

18PZ00130

Commission District # 2

Hearing Dates: P&Z ~~01/07/19~~ 1/28/19

BCC ~~02/07/19~~ 3/7/19

Owner Name: CLARK A. AND PATRICIA A. SIMMS

Request: RU-1-9 to RU-2-4

Subject Property:

Parcel ID# 24-36-22-00-811 (east 400 feet)

Tax Acct.# 2444199

Location: West side of N. Tropical Trail, approx. 685 feet north of Lucas Rd.

Address: 700 Saint Lawrence Ln., Merritt Island

Acreage: 0.93

Consistency with Land Use Regulations

- NO** 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
Undeveloped or Developed	Undeveloped	3 Single-family residences
Zoning	RU-1-9**	RU-2-4
Potential*	0	3 units; SF or MF use
Can be Considered under FLU MAP	No Residential 4	Yes Residential 4

*Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations.** The existing zoning classification is not consistent with Section 62-1255, Exhibit A; however by limiting the density to be consistent with the FLUM, the existing zoning can be retained pursuant to Section 62-1255 (b) (2).

	ADT	PM PEAK	Segment Number	349B
Trips from Existing Zoning	0	0	Segment Name	N Tropical Trail Lucas to Crockett
Trips from Proposed Zoning	29	2	Acceptable LOS	E
Maximum Acceptable Volume (MAV)	15,600	1,404	Directional Split	0.52
Current Volume	4,639	418	ITE CODE 210	
Volume With Proposed Development	4,668	420		
Current Volume / MAV	29.74%	29.74%		
Volume / MAV with Proposal	29.92%	29.88%		
Current LOS	C	C		
OS With Proposal	C	C		
Findings	<input checked="" type="checkbox"/> Non-Deficiency		<input type="checkbox"/> Deficiency	

Background & Purpose of Request

The applicants are seeking a change of zoning classification on the eastern 400 feet of a 1,300 foot deep lot from Single-Family Residential (RU-1-9) to the Low-Density Multi-Family Residential (RU-2-4) classification for the purpose of developing 3 additional single-family residences for family members while maintaining single-family usage on the western lot remainder (900 foot in depth). The owners propose to maintain the overall lot under a single deed and not to divide the property. The overall property size is 2.92 acres. Each proposed residence will use the existing driveway for access. The applicant has stated that multiple driveways and lots will not be created.

The RU-1-9 classification permits single-family residential development on lots of 6,600 square feet (minimum). The minimum house size is 900 square feet. The RU-2-4 classification is a four unit per acre multiple-family residential zoning classification. It permits multi-family residential development or single family residences at a density of up to four units per acre. The minimum house size is 1,100 square feet.

The applicants would have the ability to develop multifamily residential dwellings or a duplex within the proposed Zoning classification, in addition to the single-family residential product they are proposing. There is no multi-family zoning within the area surrounding the property. The Board may wish to consider whether those additional uses within the RU-2-4 Zoning classification should be limited in order to ensure compatibility with development patterns in the surrounding area.

If the request was denied, the current zoning would not allow the development of a second parcel unless a flag lot application were to be pursued to subdivide the lot and the current RU-1-9 zoning being limited by BDP for one unit. An access easement pursuant to Section 62-102 (a) of Brevard County Code is not allowed as the parcel has not been split-out prior to January, 2011.

Land Use Compatibility

The subject property retains the Residential 4 (RES 4) Future Land Use designation on the portion being rezoned. The westerly 900 feet has a Residential 1 Future Land Use designation, which is not part of this zoning request.

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

The existing zoning RU-1-9 is not consistent with the 4-unit per acre residential designation. The proposed RU-2-4 zoning is consistent with the 4-units per acre residential designation on which the owner wishes to develop 3 units on 0.93 acres.

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 - 8 of the Future Land Use Element, as outlined on pages 2 through 5 of the Administrative Policies.

Environmental Constraints

Please refer to comments provided by the Natural Resource Management Department.

Natural Resource Management Department has identified as a notable concern septic treatment within 100 feet from the buffer establishment line, the safe upland line, mean high water line or ordinary high water line, as determined by the FDEP bureau of survey and mapping, whichever line the applicant prefers, as an issue for concern.

Applicable Land Use Policies

The parcel has roughly 101 feet of frontage on N. Tropical Trail and a lot depth of 1,300 feet. Due to the limited road frontage, the owner is presented with road access issues for developing multiple single-family lots. Although the Future Land Use designation allows densities up to 4 units per acre, those consistent zonings: EU, EU-1, EU-2 and TR-1 all have minimum lot depth requirements of 100 feet. Using any of these zoning classifications, the owners would not be able to develop a road to county standards and still retain sufficient area for future residential development without requesting variances.

Only the RU-1-11, RU-1-13, RA-2-4 and RU-2-4 zoning classifications require a minimum lot depth of 75 feet. Residential development under these conditions leaves only 25 feet of lot width for a roadway to access the western lot, as a flag lot, should the owner wish to split the property into two lots.

By utilizing a multi-family zoning classification, the owners have the option of building attached or detached residential units upon one parcel utilizing the entire lot frontage. By retaining the lot under single ownership, the owners maintain access to their existing residence located on the western remainder of the lot with a simple driveway for access. Flag lot review or public roadway is not required for this type of development.

Residential development could be accomplished as detached or attached residential structures. For neighborhood esthetics, the creation of detached residential buildings would be compatible with the area. There are five (5) existing residential lots to the south of this parcel. The owners of this request are only asking for the development of three (3) units over this same area. House spacing required by code at 15 feet could be expanded to make the development simulate individual single-family lots, if required by the Board and submitted by the applicants via a Binding Development Plan (BDP).

The zoning to the north of this request is zoned Estate Use (EU). To the east across of the N. Tropical Trail right-of-way is zoned Single-family Residential (RU-1-7). To the south, the zoning is EU. To the west lies the remaining portion of this parcel retaining EU zoning.

The EU zoning classification is an estate single family residential zoning classification. The minimum lot size is 15,000 square feet with a minimum lot width and depth of 100 feet. The minimum living area is 2,000 square feet. The EU-1 zoning classification is an estate single family residential zoning classification. The minimum lot size is 12,000 square feet with minimum lot width and lot depth of 100'. The minimum living area is 1,800 square feet. The EU-2 zoning classification is an estate single family residential zoning classification. The minimum lot size is 9,000 square feet with a minimum lot width of 90 feet and depth of 100 feet. The minimum living area is 1,500 square feet. TR-1 is a single family residential mobile home zoning classification which permits mobile homes or residences of standard construction on lots of 7,500 square feet (minimum) with lot width of 65 feet and lot depth of 100 feet.

The RU-1-11 classification permits single family residences on minimum 7,500 square foot lots, with a minimum width and depth of 75 feet. The minimum house size is 1,100 square feet. RU-1-11 does not permit horses, barns or horticulture. RU-1-13 permits single-family residences on minimum 7,500 square foot lots, with minimum widths and depths of 75 feet. The minimum house size is 1,300 square feet. RU-1-13 does not permit horses, barns or horticulture. The RA-2-4 classification permits single-family attached development at a density of up to 4 units per acre. RA-2-4 is intended to provide a transition between single-family detached zoning classifications and multiple-family zoning classifications, permitting fee simple ownership of individual attached units. The RU-2-4 classification is a four unit per acre multiple-family residential zoning classification. It permits multi-family residential development or single family residences at a density of up to four units per acre on 7,500 square foot lots.

The recent zoning changes within the last three years are:

- **17PZ00051** adopted on 8/3/2017 approving a change from the RU-1-11 to the RU-1-9 zoning classification on one lot totaling 0.567 acres. This action is located 720' to the SE of this request.
- **17PZ00138** adopted on 2/1/2018 approving a change from the AU to the RU-1-11 zoning classification on a lot totaling 0.83 acres which was later divided into two parcels. 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.

For Board Consideration

The applicants are seeking a change of zoning classification on the eastern 400 feet of a 1,300 foot deep lot from Single-Family Residential (RU-1-9) to the Low-Density Multi-Family Residential (RU-2-4) classification for the purpose of developing 3 additional single-family residences for family members while maintaining single-family usage on the western lot remainder (900 foot in depth). The owners propose to maintain the overall lot under a single deed and not to divide the property. The overall property size is 2.92 acres. Each proposed residence will use the existing driveway for access. Multiple driveways and lots will not be created.

The applicants would have the ability to develop multifamily residential dwellings or a duplex within the proposed Zoning classification, in addition to the single-family residential product they are proposing. There is no multi-family zoning within the area surrounding the property. The Board may wish to consider whether those additional uses within the RU-2-4 Zoning classification should be limited in order to ensure compatibility with development patterns in the surrounding area.

The Board may wish to limit approval of this request under a Binding Development Plan so the property is not subdivided.

The Board may also request the property owners submit a concept plan which depicts the potential house locations and driveway routes that each unit will access in order to fully evaluate the compatibility of the proposed development (lot size, building mass and unit orientation) to the existing residential character.

Natural Resource Management Department has identified as a notable concern septic treatment within 100 feet from the buffer establishment line, the safe upland line, mean high water line or ordinary high water line, as determined by the FDEP bureau of survey and mapping, which ever line the applicant prefers, as an issue for concern. Please refer to comments provided by the Natural Resource Management Department for their full analysis.

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Rezoning Review & Summary
Item # 18PZ00130

Applicant: Clark and Patricia Simms
Zoning Request: RU-1-9 to RU-2-4
Note: Applicant desires to build 3 houses
LPA Hearing Date: 01/28/19; **BCC Hearing Date:** 03/07/19
Tax ID No: 2444199

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

Notable Natural Resources Land Use Issues:

Section 62-3666(14) requires all OSTDS be set back at least 100 feet from surface waters as defined in Chapter 62, Article X, Division 3, Surface Water Protection. In those cases where there is insufficient lot depth, the OSTDS may be set back a minimum of 75 feet. The applicant is encouraged to contact NRM at 321-633-2016 prior to any land clearing activities, site planning or permit submittal.

Summary of Mapped Natural Resources Present on the Subject Property:

- Indian River Lagoon Septic Overlay
- Aquifer Recharge Soils
- Protected Species Potential
- Landscape and Tree Preservation Requirements

Land Use Comments:

Indian River Lagoon Septic Overlay

The site is mapped within the Indian River Lagoon Septic Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If sewer is not available, the use of an alternative septic system designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required.

Per Section 62-3666 (14) Onsite sewage treatment and disposal systems

- a. All onsite sewage treatment and disposal systems (OSTDS) shall be set back at least 100 feet from the buffer establishment line, the safe upland line, mean high water line or ordinary high water line, as determined by the FDEP bureau of survey and mapping, which ever line the applicant prefers.
- b. In those cases where there is insufficient lot depth, the OSTDS may be set back a minimum of 75 feet. Insufficient lot depth does not exist if the structure(s), driveway(s) or other features on the property can be moved and still comply with all applicable codes.

- c. Lots legally established and recorded prior to January 1, 1972, that cannot accommodate a 75-foot OSTDS setback due to insufficient lot depth shall meet FDOH siting criteria.

Aquifer Recharge Soils

The subject parcel contains a small area of mapped aquifer recharge soils (Orsino fine sand) as shown on the USDA Soil Conservation Service Soils Survey map. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

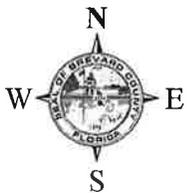
Protected Species Potential

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.

Landscape and Tree Preservation Requirements

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. Per Section 62-4341(18), Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. Applicant should contact NRM prior to performing any land clearing activities

LOCATION MAP
SIMMS, CLARK A. AND PATRICIA A.
18PZ00130



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

Buffer Distance: 500 feet

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.

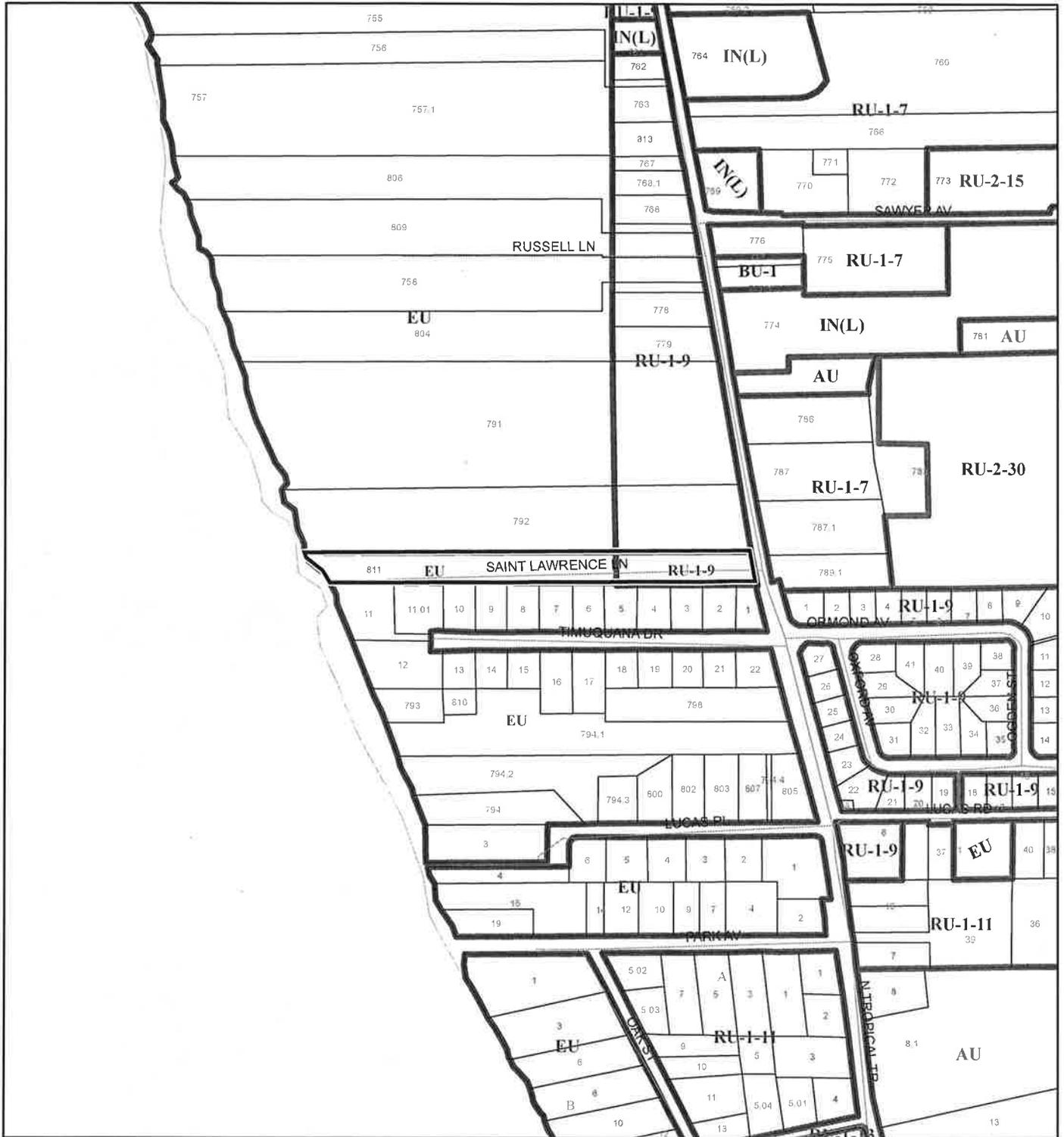
Produced by BoCC - GIS Date: 4/22/2019

-  Buffer
-  Subject Property

ZONING MAP

SIMMS, CLARK A. AND PATRICIA A.

18PZ00130



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.

Produced by BoCC - GIS Date: 4/22/2019

FUTURE LAND USE MAP

SIMMS, CLARK A. AND PATRICIA A.

18PZ00130



1:4,800 or 1 inch = 400 feet

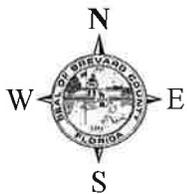
-  Subject Property
-  Parcels

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 BoCC - GIS Date: 4/22/2019

AERIAL MAP

SIMMS, CLARK A. AND PATRICIA A.
18PZ00130



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2018

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 BoCC - GIS Date: 4/22/2019

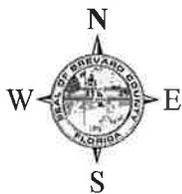
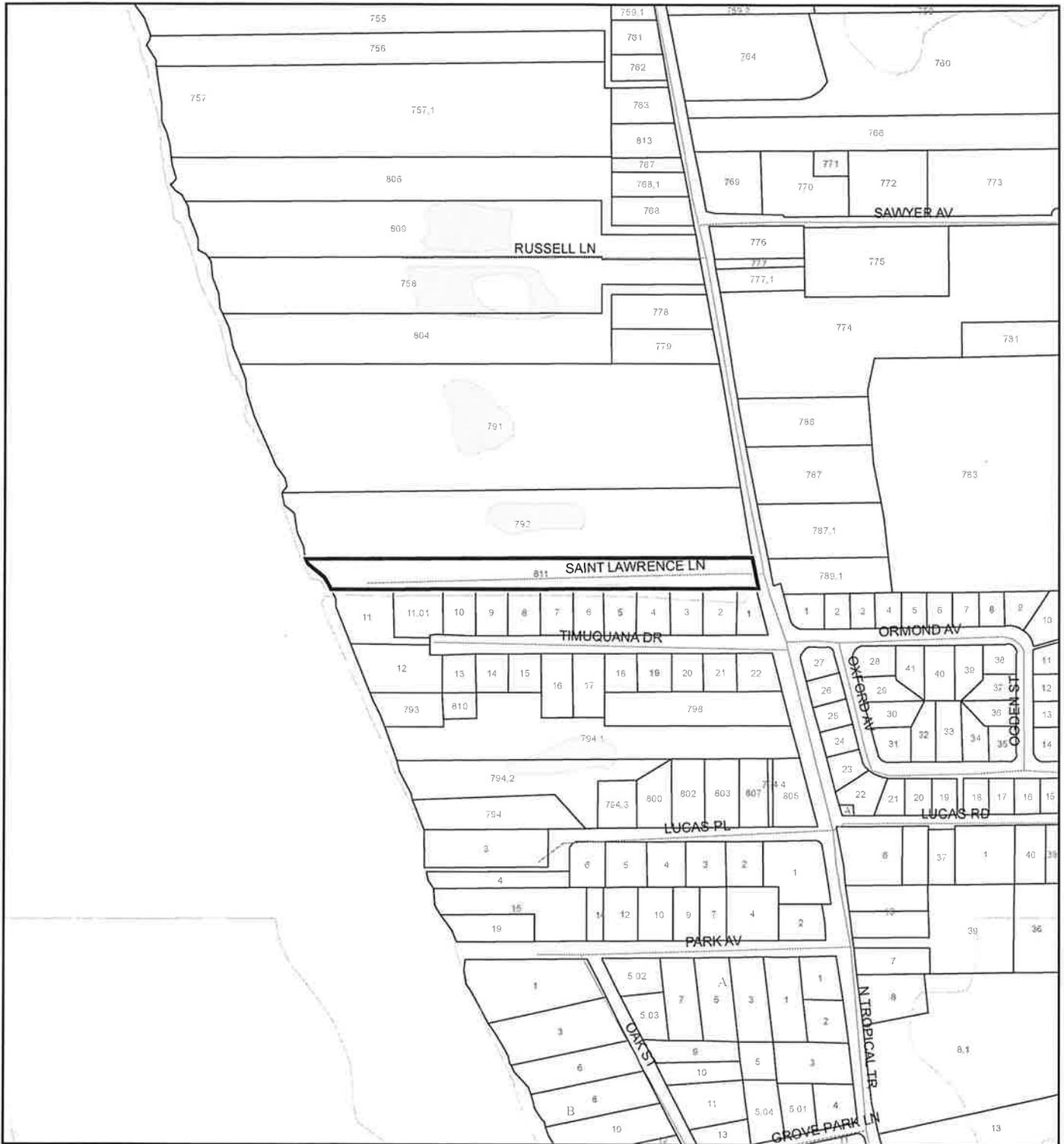
 Subject Property

 Parcels

NWI WETLANDS MAP

SIMMS, CLARK A. AND PATRICIA A.

18PZ00130



1:4,800 or 1 inch = 400 feet

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 BoCC - GIS Date: 4/22/2019

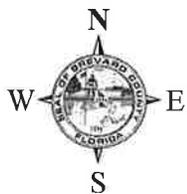
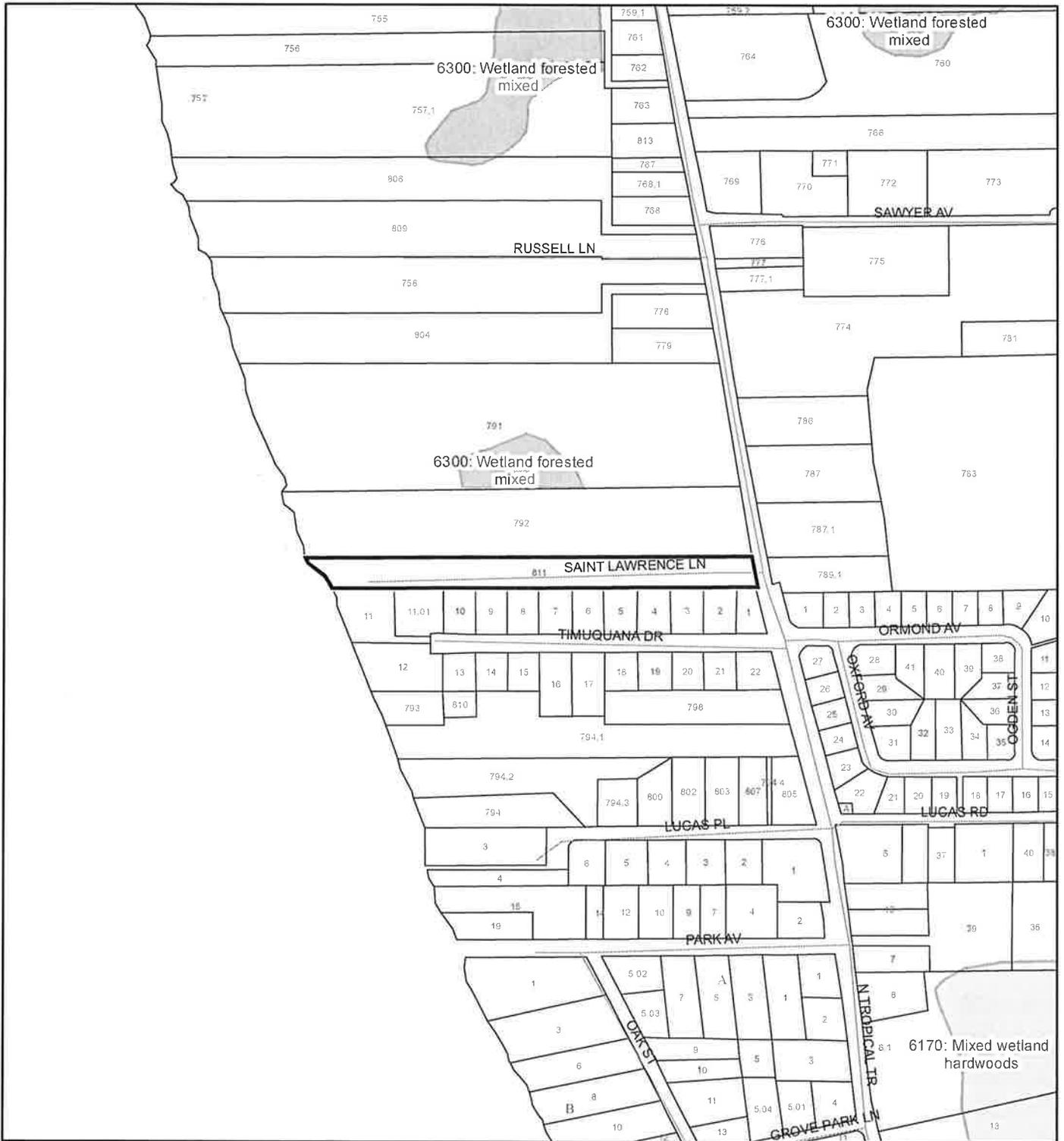
National Wetlands Inventory (NWI)

- | | | | |
|--|-----------------------------------|--|-----------------|
| | Estuarine and Marine Deepwater | | Freshwater Pond |
| | Estuarine and Marine Wetland | | Lake |
| | Freshwater Emergent Wetland | | Other |
| | Freshwater Forested/Shrub Wetland | | Riverine |
| | Subject Property | | Parcels |

SJRWMD FLUCCS WETLANDS - 6000 Series MAP

SIMMS, CLARK A. AND PATRICIA A.

18PZ00130



1:4,800 or 1 inch = 400 feet

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 BoCC - GIS Date: 4/22/2019

SJRWMD FLUCCS WETLANDS

-  Wetland Hardwood Forests - Series 6100
-  Wetland Coniferous Forest - Series 6200
-  Wetland Forested Mixed - Series 6300
-  Vegetated Non-Forested Wetlands - Series 6400
-  Non-Vegetated Wetland - Series 6500

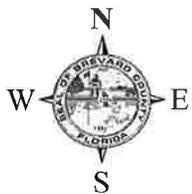
 Subject Property

 Parcels

USDA SCSSS SOILS MAP

SIMMS, CLARK A. AND PATRICIA A.

18PZ00130



1:4,800 or 1 inch = 400 feet

USDA SCSSS Soils

-  Aquifer and Hydric
-  Aquifer
-  Hydric
-  None
-  Subject Property
-  Parcels

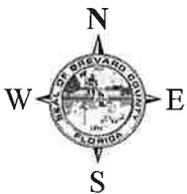
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 4/22/2019

FEMA FLOOD ZONES MAP

SIMMS, CLARK A. AND PATRICIA A.

18PZ00130



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/22/2019

FEMA Flood Zones

- | | | |
|--|--|--|
| | | |
| | | |
| | | |
| | | |
| | | |

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

SIMMS, CLARK A. AND PATRICIA A.

18PZ00130



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/22/2019

 Subject Property

 Parcels

Septic Overlay

 40 Meters

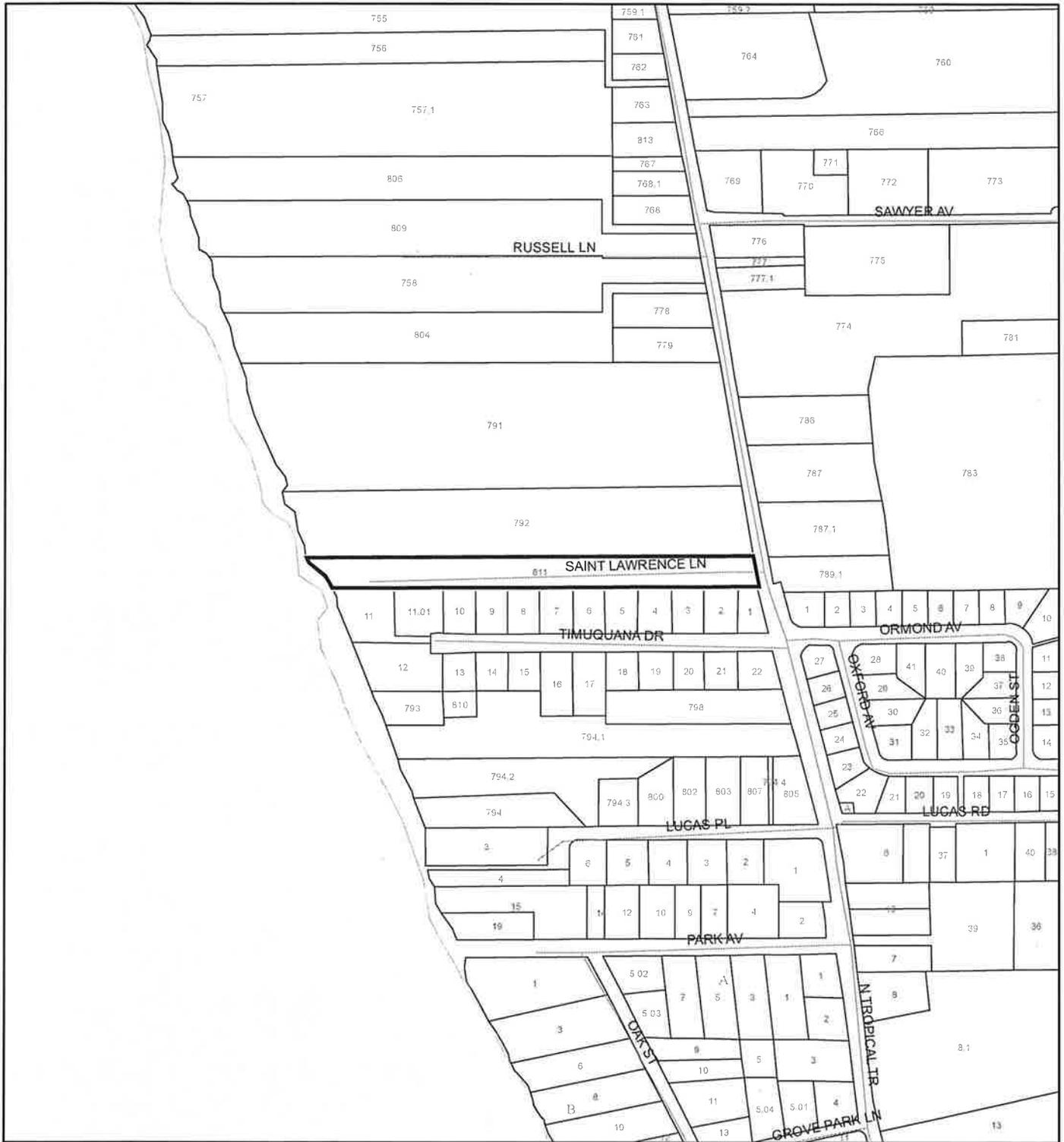
 60 Meters

 All Distances

EAGLE NESTS MAP

SIMMS, CLARK A. AND PATRICIA A.

18PZ00130



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/22/2019

 Subject Property

 Parcels

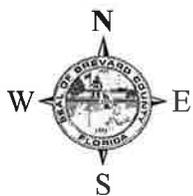
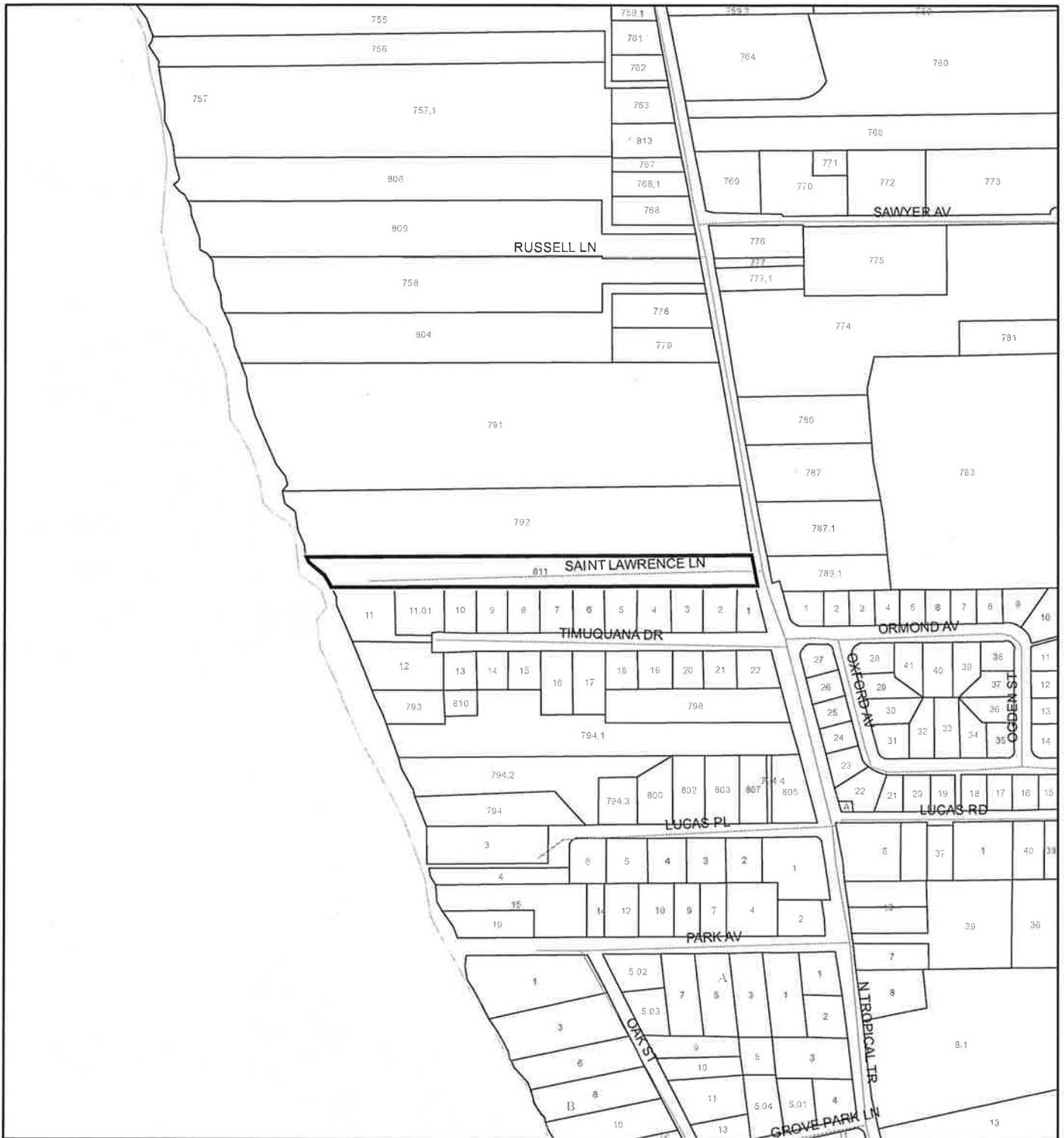


Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

SIMMS, CLARK A. AND PATRICIA A.

18PZ00130



1:4,800 or 1 inch = 400 feet

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.

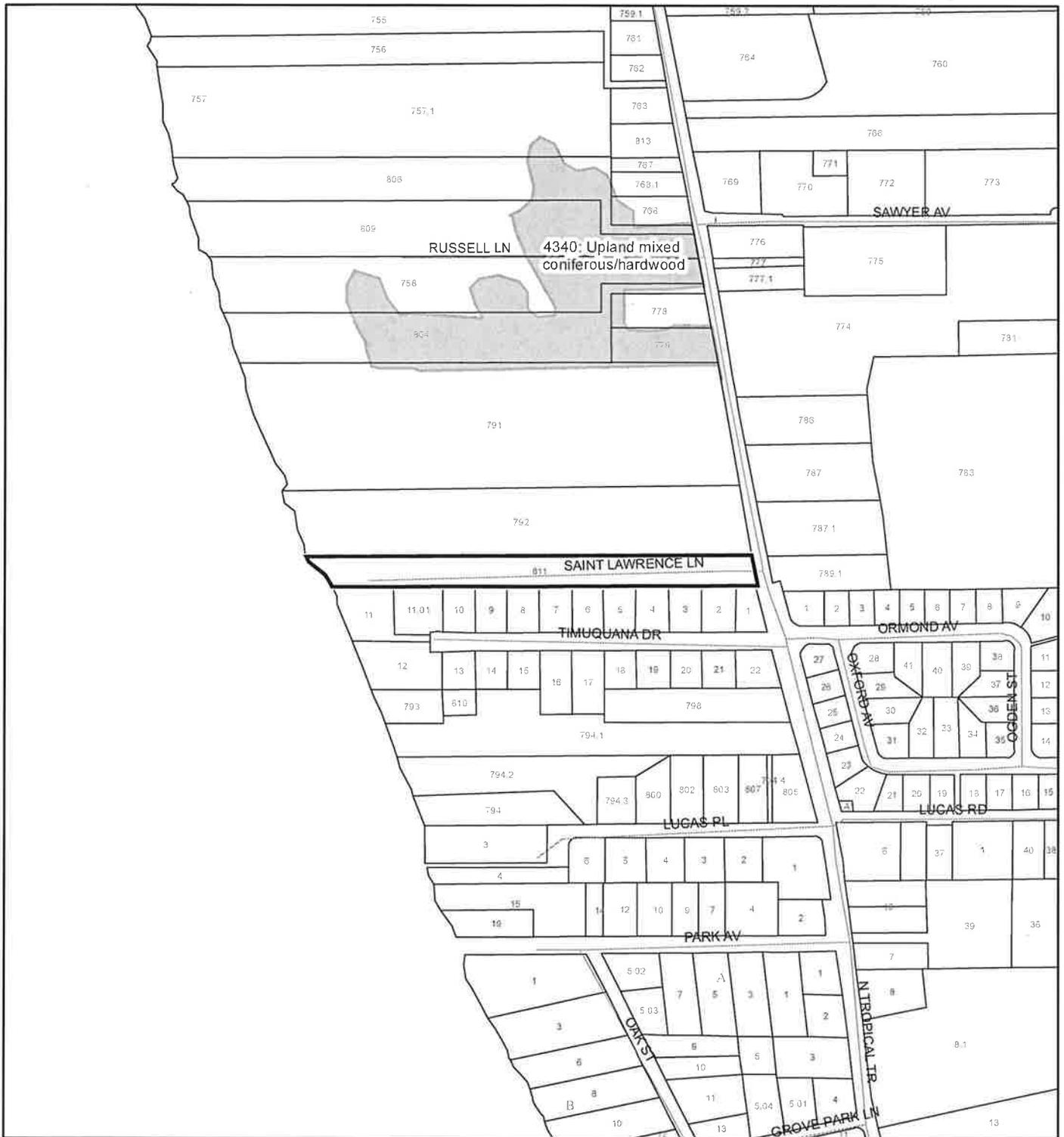
Produced by BoCC - GIS Date: 4/22/2019

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

SIMMS, CLARK A. AND PATRICIA A.

18PZ00130



1:4,800 or 1 inch = 400 feet

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 BoCC - GIS Date: 4/22/2019

SJRWMD FLUCCS Upland Forests

-  Upland Coniferous Forest - 4100 Series
-  Upland Hardwood Forest - 4200 Series
-  Upland Mixed Forest - 4300 Series
-  Tree Plantations - 4400 Series

 Subject Property  Parcels

CONCEPTUAL PLAN EXPLANATION
1201 N. TROPICAL TRAIL, MI 32953

Clark & Patricia Simms

We plan to build 3 single family homes, 1100 sf or larger, with at least 3 bedrooms, on the east parcel of our property, which is .93 acres and designated by FLU as Res 4.

At George Ritchie's (planning and zoning) direction, I met with Inspector Mary in Environmental Resources and with her guidance on setbacks and septic requirements, we offer the following plan. Taking into consideration the environmental requirements, the fact that we are located on a canal and the limitations the dimensions of the property create, the following have been considered on this plan:

Future Land Use is Res 4, we have .93 acres and will build 3 homes.

The parcel is 400 ft long, 100' wide

Pump tank must be 5' from each house

Drain field must be 75' from any standing water.

Setback from N. Tropical Trail is 25 ft.

Setback from rear parcel line is 20 ft.

The standing water on the property next door, at its closest point, is 138 ft from the NW corner of the parcel.

For the septic system.

In accordance with NSF 245 we will use an aerobic system

In accordance with FL Code 64E, Table 1 and 2:

Each septic system will be at least 5 feet from any house or water.

Each septic system will be 225 gallon pump tank as required for a 3 bedroom home

Each pump tank will be located on the west side of each house

Each drainage field will be located 75+ feet from all standing water.

Each drain field will have a 4' shoulder around it.

Environmental Resources has confirmed that the drain field requirements can be met using a long, narrow drain field no greater than 100 feet long.

According to Table 1, the estimated sewage flow for a residence of 3 Bedrooms with 1201-2250 sq. ft. of building area is 300 gal/day. According to Table 2, the minimum pump tank size is 225 and according to Table 3 that would be a max drain field of 347sf.

Here is the math for the length of the property with all setback considerations.

Length

$400' - 25' - 20' = 355'$ the length of the property after east and west setbacks

$355' / 3 = 118.3'$ the length of each section of property on which to place a house.

$118' - 50' = 68'$ the length of each section between houses after building three 50' long houses.

$68' - 5' - 5' = 58'$ length left after 5' setback from each home for placement of pump tank.

Depth**For the House:**

$100' - 10' - 10' = 80'$ for N. and S. setback to build a house.

$80 - 25 = 55'$ depth left after building a 25' x 50' home

For the Septic Drain Field:

$100' - 75' = 25'$ for setback from canal to put in a drain field

$25' - 8' = 17'$ left after driveway for septic drain field.

$25' - 5' - 4' - 4' = 12'$ left after 5' x 70' drain field with 4' shoulder on each side.

Note: We have plenty of room to make the drain field longer if necessary.

For the driveway:

12' is larger than our current driveway now and can be located on 10' building setback. No road is planned, just the driveway.



BOARD OF COUNTY COMMISSIONERS

Rita Pritchett, District 1 Commissioner

2000 South Washington Avenue, Ste. 2

Titusville, FL 32780

(321) 607-6901

D1.commissioner@brevardfl.gov

Planning and Development

Zoning Meeting March 7, 2019

Clark A. and Patricia A. Simms (Merritt Island) (18PZ00130)

John Mason called to talk to Commissioner Pritchett on February 19, 2019. Marcia Newell spoke to Mr. Mason and relayed the following information to Commissioner Pritchett.

Mr. Mason objects to 3 houses being built on the property. His house is across the canal from where they plan to build and he believes they will be for Airbnb or rental houses and not for family. Mr. Mason also is concerned about 3 new septic tanks being close to the river. The residents have asked for plans and have not seen what the applicants have planned for the location of the houses. He thinks a compromise would be one additional house next to the existing house.

From: Sterk, Erin
To: billheink@mindspring.com
Cc: [Commissioner, D1](#); [Commissioner, D2](#); [Commissioner, D3](#); [Commissioner, D4](#); [Commissioner, D5](#); [Calkins, Tad](#); [Bogoin, Rebecca](#); [Jones, Jennifer](#); [Campbell, Cheryl](#)
Subject: Research on Future Land Use in Merritt Island
Date: Monday, March 25, 2019 12:27:36 PM

Mr. Heink,

I understand you have recently contacted each of the Commissioners to express concern that the South North Tropical Trail Small Area Study included "a recommendation that the entire affected area be zoned for a minimum of one acre per dwelling unit," in addition to some concerns about the rezoning proposed today. I have included your comments are included below for reference, and my response will attempt to clarify the history of the Small Area Study and the Comp Plan Amendments that resulted from it.

I have done some digging and found the following:

South North Tropical Trail Small Area Study

- <https://www.brevardfl.gov/docs/default-source/planning-and-development/south-north-tropical-trail-small-area-study.pdf?sfvrsn=2>
- The recommendation for Future Land Use Map revision is on page 9 and 10 of the report, which recommended a change of FLU designation to Residential 4, Residential 2, Residential 1, and Agricultural and not just Residential 1.
- The parcel proposed for rezoning today falls within the area that previously had Residential 15 and was changed to Residential 4.

Adoption of Large Scale Comprehensive Plan Amendment

- https://na96.salesforce.com/sfc/dist/version/download/?oid=00D41000000G1CP&ids=06841000004gAtS&d=%2Fa%2F41000000cInv%2FNfji_YykllOSQvOm.IT9kfUC9V.aBAoc79xb7S305Kg&asPdf=false
- Brevard County transmitted the Large Scale Comprehensive Plan Amendment 2009-1.10 (DEO # 2009-1), which included the changes to the Future Land Use map recommended in the SSNTT Small Area Study, on July 21, 2009.
- The portion of that LSCPA package with these changes can be found on pages 141-149 of the package at the link above.
- The parcel proposed for rezoning today falls within the area that previously had Residential 15 and was changed to Residential 4.

Both the Small Area Study and the resulting Future Land Use Map amendment went through public hearing. The underlying Future Land Use of Residential 4 on the property proposed for rezoning today was adopted in 2009. The proposed **18PZ00130** rezoning has already received a recommendation from the Planning & Zoning Board and will be heading to the BCC on April 4th for consideration. This research will be included in that file, for reference.

Please let me know if you have any more questions,

Erin Sterk
Planning & Zoning Manager
Brevard County
(321) 633-2070 ext. 52640

I am writing to express my concern about the above re-zoning request. I am not directly affected, because my property - although close - does not directly abut the involved property. But I am writing because in 2005 I was the Co-Chair of a Small Area study committee that developed a recommendation for the long term land use of the area that includes the area of this re-zoning request.

To give you a little background, my wife and I are 55 year residents of Merritt Island, and take a great deal of pride in the fact that our little portion of the island has not succumbed to the dense development we see elsewhere. In 2005, our Small Area Committee was appointed by then D2 Commissioner Ron Pritchard to study an area on central Merritt Island bounded on the north by Venetian Way, on the south by Lucas Place, on the east by North Tropical Trail, and the Indian River on the west. Our review began with overwhelming "community" support, with over 70 residents in attendance at our first meeting, resulting in a standing room only situation. For all of our subsequent meetings, our "community" attendance averaged between 30 and 40 people. (When I use the phrase "community", I am referring to the people living in the affected area and not all of Merritt Island.)

It was obvious from our first meeting that our "community" did not want to see our area become more densely populated and wanted the open spaces and large homes that define this area to remain. That feeling never wavered. So after nearly a year of regular meetings, we submitted our final report to Commissioner Pritchard with a recommendation that the entire affected area be zoned for a minimum of one acre per dwelling unit. Obviously the few areas that were already more densely developed were grandfathered-in. The final report was supposed to go to the full Commission for

approval, but for reasons unknown, Commissioner Pritchard never took it forward. After Chuck Nelson was elected D2 Commissioner in 2016, the other Co-chair (Bert Blackwell) and I scheduled a meeting with Chuck and in a very short time the recommended plan had been approved by the Commission and sent to Tallahassee.

My concern about the current rezoning proposal is that it is a major departure from what our "community" so effectively told us they wanted in 2005, and I fear that should this "chink in the armor" be approved it could conceivably open the door for a myriad of similar requests, which none of us want. I am sorry I cannot be there in person to present this, but have a standing commitment on Thursday evenings that prevents that. But I would certainly like to see you reject this proposal when it gets to you, based solely on the approved recommendation of our small area study committee years ago. Nothing has changed that would warrant approval of this change.

There is one other "wrinkle" to this issue that I would like to ask you and probably P&Z to investigate. When our small area committee studied this situation in 2005, our charter was for the above mentioned area - bounded on the north by Venetian Way, on the south by Lucas Place, and on the east by North Tropical Trail. Our final recommendation was for that entire area.

But somehow since then, I have recently discovered that a mysterious north-south line has crept into the discussion that runs from the Timuquana Canal (the south side of the property under consideration in this zoning request) straight north to about the intersection of North Tropical and Easy Street, where the Trail makes a slight turn to the northwest. That line was never a part of our committee discussions, and our recommendation in 2005 was for the entire area west of Tropical Trail. This mysterious line effectively carves out an area alongside the Trail for potentially denser zoning, which was never our intent.

As I said above, before anything gets approved, I would hope there can be an in-depth P&Z review to determine where that line came from since it was never included in our study.

Thanks a lot for your consideration. If you would like to talk to me, I am available at 452-3035.

Bill Hink

685 Timuquana Drive, Merritt Island

From: [Alan Gaarder](#)
To: [Jones, Jennifer](#)
Subject: Re: 18PZ00130 Staff Comments
Date: Monday, January 7, 2019 9:02:53 AM

ID# 18PZ00130 700 Saint Lawrence Lane/Simms property

1/7/2019

Dear Planning and Zoning Board/ Board of County Commissioners. I respectfully request that a binding development plan and a concept plan for single-family product as proposed is required as part of the approval process. Thank-you for your consideration of this matter.

Alan Gaarder
482 Ormond Av
Merritt Island FL

(954) 746-7645

On Monday, January 7, 2019, 8:35:57 AM EST, Jones, Jennifer <jennifer.jones@brevardfl.gov> wrote:

"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."

Objection
18PZ00130
Simms
(Received 02/04/19)

ID# 18PZ00130 700 Saint Lawrence Lane/Simms Property

Dear Planning and Zoning Board/Board of County Commissioners.

There is some more information that should be taken into consideration before deciding this rezoning request.

Mr. Simms says he is wanting to build a place for his mother-in-law..... His mother-in-law is Sallie A Gould who currently has homestead exemption on 2 of her 5 properties and she has been a Realtor on Merritt Island for over a half a century. She has a trust worth over an estimated 2 million dollars and she lives in a condo on the River only 2 miles from the Simms, 420 Moore Park Ln unit 103 Merritt Island, FL 32952. We don't think she wants to move to a dusty little 1,100 sq ft duplex with no view. And his parents who live blocks from the ocean in West Palm Beach with children and grandchildren in the area. They are not going likely to pack up leave their friends and family to move to a tiny house in back yard and start all over in a new city in their mid 70's.

These house or houses are more than likely to be for rentals. And there are a hand full of other home owners in the area who are watching this case and if it gets approved, it WILL open the flood gates to others to apply for the same or similar rezoning for their properties.

Please take this into account before making a decision.

Thank You

Sincerely,

Concerned Citizens of and for Merritt Island

Objection
Simms
18PZ00130

From: [Susan Kern](#)
To: [Sterk, Erin](#); [Jones, Jennifer](#); [Commissioner, D1](#); d3commissioner@brevardfl.gov; d4commissioner@brevardfl.gov; d5commissioner@brevardfl.gov
Subject: Concerns for Rezoning: Simms 18PZ00130 Part 1
Date: Wednesday, March 20, 2019 5:44:17 PM
Attachments: [Commissioner presentation packet Simms 18PZ00130 part 1.docx](#)

Good afternoon,

We are sending this email as we have concerns about this rezoning request and will not be able to attend the next meeting on April 4. Although we were present and ready to make this presentation at the March meeting, the issue was immediately tabled.

We will be sending two more emails as the attachment size exceeds the Yahoo system limitations. They will contain the remainder of the necessary information.

Thank you for taking the time to review our concerns via the attached documents. Feel free to call if you have any questions.

Sincerely,

Susan and Linsey Johnson
520 Timuquana Dr.
Merritt Island, FL 32953
321-501-4562

RE: 18PZ00130 District 2
Clark and Patricia Simms
March 20, 2019

We are submitting this letter of concern prior to the April 4th zoning meeting for your consideration. Susan will not be able to attend, and there is a possibility that Linsey will not be able to attend as well. What follows is the presentation we had intended to give at the March 7th meeting, until Patty Simms requested the issue be tabled until April 4.

We are Susan and Linsey Johnson. We live at 520 Timuquana Drive, which is the NW corner lot of Timuquana and N. Tropical Trail, directly across the canal from the Simm's property. Susan has owned the house since 2004 and in that time we have developed a very nice neighborhood community. We were married in the Heink's back yard, down at the end of the street on the Indian River. Several of us team up 2-3 times a year to tackle the invasive Brazilian Peppers that populate the little canal separating our property from the Simm's and to clear out debris that prevents us from easily accessing the IRL. We share fruits and vegetables among ourselves, and help our elderly neighbors who might need help cleaning up the yard after a hurricane, or who suffer a panic attack when, due to dementia, has forgotten that their grown son had made plans to work on a jobsite on a Sunday afternoon. We try to be good neighbors and everyone is pretty considerate. We have always gotten along with Clark and Patty, and Clark has repeatedly granted us access to his side of the canal when removing the Brazilian Pepper trees.

We held a BBQ at our house the day before the 1st scheduled zoning committee meeting in January so we could find out what Clark and Patty were proposing to do with their property. They both expressed concerns for their elderly parents and indicated they were not able to build a guest house so they wanted to build a home for them on their

property, yet they made a few contradictory statements. Now that we have seen the proposed plan for the 3 structures they want to build, we see that they were not even remotely transparent with their intentions. Based on statements they have made, we believe they have changed their story throughout the process to play on people's emotions.

At this point they are claiming they need homes for 2 sets of parents and a sister who suffers from health issues. There are questions in our minds about the veracity of those statements based on both prior statements that they have made and research we have done online. We are certainly sensitive to the needs of aging parents, as Susan's mother only recently passed away, having lived to the ripe old age of 100. We know first-hand the challenges facing an elderly population. However, it is too easy to get bogged down in the emotion of the situation, especially when it appears people have not been candid with their intentions, so we'd like to address the structures that are being proposed.

We believe this is a long term solution to a short term situation which does not support the "we want to take care of our family" argument. We believe the end game is to develop this lot and create rental income. Patty's family has a history of rental ownership, and Clark has told Susan how the family lost their main income when they lost the contract to their software business. We are definitely sympathetic to these types of changes in personal circumstance; we just do not believe this is the solution.

This is a very narrow lot, 100' wide, and if you look at the site survey you will see the southern border of the property falls within the water of the canal. The canal is narrowest where it meets N. Tropical Trail and widens as it makes its way to the IRL. Currently there is a private lane, Saint Lawrence Lane, which provides Clark and Patty access to their house at the end of the lot on the IRL. This lane is adjacent to the

canal and the currently undeveloped land lies north of this lane. Based on the site plan recently submitted, they are proposing to relocate the lane, call it a driveway and have it run along the northern border of the lot. They would then build the 3 freestanding structures close to the edge of the top embankment of the canal.

Based on the rough site survey sketch provided by the Simms, it appears that the septic setbacks have been established based on the location of the southern property line. As stated, that property line actually falls in the canal, so their proposed setback numbers for locating the drainage fields are inaccurate. They state that out of 100' there is 25' to accommodate the driveway plus the drainage field and shoulders on both sides, which adds up to 21'. This only leaves a margin of 4' remaining from the original 25'. Given the property line falls within the canal, they need additional setback for the water's edge. Their math is incorrect; there just isn't enough room for this schematic. Based on the scale of the site survey supplied, the canal accounts for approximately 7.5' of the 100' site width close to N. Tropical Trail and at least 15' for the inner 2 properties. Please see the attached survey for details.

As we said earlier, we believe the intention is to generate rental income, although they state they are building these to accommodate elderly parents. Even if that's the case, in time those parents will no longer live there. At that point, do those structures remain vacant, or do they become rentals? If all our calculations are off, and they are able to determine a way to install a septic system, is the proposed system adequate to handle a rental property?

It is our understanding that this lot cannot be subdivided due to the road access necessary for the structure down at the river's edge. The next owners of this property will find themselves with 4 structures. It is inevitable that the future use of these 3 structures will be as rentals. It

would be prudent for this Board to anticipate that future use, and require commercial standards for waste disposal.

Lastly, the proposed drain field is 70' long and runs along the driveway. Where is the parking? Is there adequate protection to ensure no one parks their car, or a boat on trailer, on the drain field? While homeowners are usually sensitive to this, it is unlikely renters will be; they can unwittingly compromise the useful life of the drainage field.

The canal in question is essentially a drainage canal for rain runoff in the central Island area. When there is rainfall, there is good flow within the canal. If there is not any rain, water flow essentially comes to a standstill. It is easy to imagine there will be a certain amount of stress placed on this canal with the presence of 3 additional septic tanks. We would hate to do more harm to the IRL.

If they are in fact able to build the house within 10' of the canal, there are some geological issues they will have to address. The embankment near the road is reinforced with concrete bags of unknown age which ends roughly 40' from the road. The rest of the canal bank is a natural bank covered with vegetation. The soil in our area is very sandy and accordingly unstable, and we wonder if the bank could withstand the downward force that 3 3-bedroom structures would apply.

Based on our calculations, it does not appear that this lot is of adequate size to accommodate even 1 septic system, let alone 3. Until public utilities brings in a sewer system, we do not see how this lot can be further developed. We question the value in changing the zoning on a piece of property to allow development that cannot occur at the present time and may not in the foreseeable future.

We appreciate the opportunity to vocalize our concerns. Thank you.

For your consideration before the April 4 zoning meeting
Submitted by Susan and Linsey Johnson re: Simms application 18PZ00130

The attached diagram shows the septic setbacks based on the actual land mass. We have used the site map presented by the Simms with their supporting documentation prior to the March 7th zoning meeting. Those documents did not take into consideration the fact that the southern property line falls within the water of the canal.

The area highlighted in pink is the actual water in the canal, bordered by the southern property line and the bank of the canal. The vertical lines represent locations that are 15', 30', 45' and 60' from the eastern edge setback of the property. The dashed portion at the bottom of those same lines represents points along the canal and the width of the canal at that point.

Using a scale of $\frac{1}{4}'' = 15'$, you will see that at point A the water consumes 7.5' of the 100' width of the property. At point D, the water consumes 9.375' of the 100' width of the property.

With this information, we can determine the following:

Points A, B, and C:

100' defined property width
-7.5' occupied by water
92.5' actual land mass width
-75' for septic setback from edge of the land
17.5
-8 for driveway
9.5' left to put a 13' wide drain field (5' wide field with (2) 4' shoulders)

At these locations, they need an additional 3.5' in order to build the drain field.

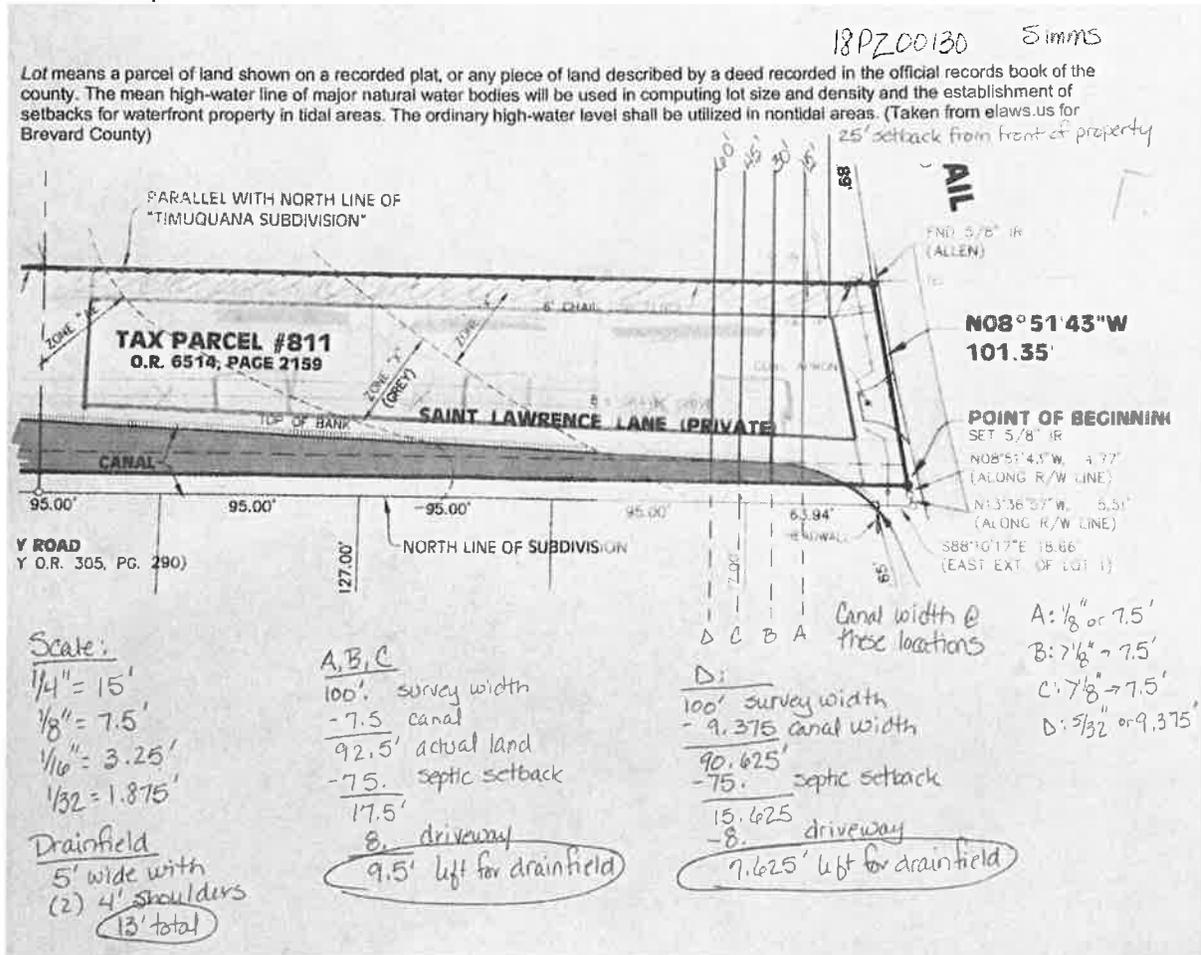
Point D:

100' defined property width
-9.25' occupied by water
90.625' actual land mass width
-75' for septic setback from edge of the land
15.625
-8 for driveway
7.625' left to put a 13' wide drain field (5' wide field with (2) 4' shoulders)

At this location, they need an additional 6.625' in order to build the drain field.

Please be advised there is no seawall or any mechanical means installed to protect the bank of the canal along the entire northern edge (with the exception of a small area where concrete bags were stacked near N. Tropical Trail).

NOTE: all dimensions calculated were developed as conservatively as possible. In actuality, given we live on this section of the canal, we know the canal is wider than as represented on this site map.



20' 125' Setbacks

Field 5' x 70'

DRIVEWAY 8' W

H. V. R. < 1250

X PUMP tank 225

11/11

5/8" IR
EN)

N08°51'43"W
101.35'



Objection
18PZ00130
Simms

From: billheink@mindspring.com
To: [Commissioner, D1](#)
Cc: [Bill Heink](#); [Jones, Jennifer](#)
Subject: Rezoning Request 18PZ00130
Date: Saturday, March 23, 2019 12:27:10 PM

Dear Rita,

I am writing to express my concern about the above re-zoning request. I am not directly affected, because my property - although close - does not directly abut the involved property. But I am writing because in 2005 I was the Co-Chair of a Small Area study committee that developed a recommendation for the long term land use of the area that includes the area of this re-zoning request.

To give you a little background, my wife and I are 55 year residents of Merritt Island, and take a great deal of pride in the fact that our little portion of the island has not succumbed to the dense development we see elsewhere. In 2005, our Small Area Committee was appointed by then D2 Commissioner Ron Pritchard to study an area on central Merritt Island bounded on the north by Venetian Way, on the south by Lucas Place, on the east by North Tropical Trail, and the Indian River on the west. Our review began with overwhelming "community" support, with over 70 residents in attendance at our first meeting, resulting in a standing room only situation. For all of our subsequent meetings, our "community" attendance averaged between 30 and 40 people. (When I use the phrase "community", I am referring to the people living in the affected area and not all of Merritt Island.)

It was obvious from our first meeting that our "community" did not want to see our area become more densely populated and wanted the open spaces and large homes that define this area to remain. That feeling never waivered. So after nearly a year of regular meetings, we submitted our final report to Commissioner Pritchard with a recommendation that the entire affected area be zoned for a minimum of one acre per dwelling unit. Obviously the few areas that were already more densely developed were grandfathered-in. The final report was supposed to go to the full Commission for approval, but for reasons unknown, Commissioner Pritchard never

took it forward. After Chuck Nelson was elected D2 Commissioner in 2016, the other Co-chair (Bert Blackwell) and I scheduled a meeting with Chuck and in a very short time the recommended plan had been approved by the Commission and sent to Tallahassee.

My concern about the current rezoning proposal is that it is a major departure from what our "community" so effectively told us they wanted in 2005, and I fear that should this "chink in the armor" be approved it could conceivably open the door for a myriad of similar requests, which none of us want. I am sorry I cannot be there in person to present this, but have a standing commitment on Thursday evenings that prevents that. But I would certainly like to see you reject this proposal when it gets to you, based solely on the approved recommendation of our small area study committee years ago. Nothing has changed that would warrant approval of this change.

There is one other "wrinkle" to this issue that I would like to ask you and probably P&Z to investigate. When our small area committee studied this situation in 2005, our charter was for the above mentioned area - bounded on the north by Venetian Way, on the south by Lucas Place, and on the east by North Tropical Trail. Our final recommendation was for that entire area.

But somehow since then, I have recently discovered that a mysterious north-south line has crept into the discussion that runs from the Timuquana Canal (the south side of the property under consideration in this zoning request) straight north to about the intersection of North Tropical and Easy Street, where the Trail makes a slight turn to the northwest. That line was never a part of our committee discussions, and our recommendation in 2005 was for the entire area west of Tropical Trail. This mysterious line effectively carves out an area alongside the Trail for potentially denser zoning, which was never our intent.

As I said above, before anything gets approved, I would hope there can be an in-depth P&Z review to determine where that line came from since it was never included in our study.

Thanks a lot for your consideration. If you would like to talk to me,
I am available at 452-3035.

Bill Hink

685 Timuquana Drive, Merritt Island

Objection
18PZ00130
Simms

From: billheink@mindspring.com
To: [Commissioner, D2](#)
Cc: [Bill Heink](#); [Jones, Jennifer](#)
Subject: Rezoning Request 18PZ00130
Date: Saturday, March 23, 2019 12:28:05 PM

Dear Bryan,

I am writing to express my concern about the above re-zoning request. I am not directly affected, because my property - although close - does not directly abut the involved property. But I am writing because in 2005 I was the Co-Chair of a Small Area study committee that developed a recommendation for the long term land use of the area that includes the area of this re-zoning request.

To give you a little background, my wife and I are 55 year residents of Merritt Island, and take a great deal of pride in the fact that our little portion of the island has not succumbed to the dense development we see elsewhere. In 2005, our Small Area Committee was appointed by then D2 Commissioner Ron Pritchard to study an area on central Merritt Island bounded on the north by Venetian Way, on the south by Lucas Place, on the east by North Tropical Trail, and the Indian River on the west. Our review began with overwhelming "community" support, with over 70 residents in attendance at our first meeting, resulting in a standing room only situation. For all of our subsequent meetings, our "community" attendance averaged between 30 and 40 people. (When I use the phrase "community", I am referring to the people living in the affected area and not all of Merritt Island.)

It was obvious from our first meeting that our "community" did not want to see our area become more densely populated and wanted the open spaces and large homes that define this area to remain. That feeling never waivered. So after nearly a year of regular meetings, we submitted our final report to Commissioner Pritchard with a recommendation that the entire affected area be zoned for a minimum of one acre per dwelling unit. Obviously the few areas that were already more densely developed were grandfathered-in. The final report was supposed to go to the full Commission for approval, but for reasons unknown, Commissioner Pritchard never

took it forward. After Chuck Nelson was elected D2 Commissioner in 2016, the other Co-chair (Bert Blackwell) and I scheduled a meeting with Chuck and in a very short time the recommended plan had been approved by the Commission and sent to Tallahassee.

My concern about the current rezoning proposal is that it is a major departure from what our "community" so effectively told us they wanted in 2005, and I fear that should this "chink in the armor" be approved it could conceivably open the door for a myriad of similar requests, which none of us want. I am sorry I cannot be there in person to present this, but have a standing commitment on Thursday evenings that prevents that. But I would certainly like to see you reject this proposal when it gets to you, based solely on the approved recommendation of our small area study committee years ago. Nothing has changed that would warrant approval of this change.

There is one other "wrinkle" to this issue that I would like to ask you and probably P&Z to investigate. When our small area committee studied this situation in 2005, our charter was for the above mentioned area - bounded on the north by Venetian Way, on the south by Lucas Place, and on the east by North Tropical Trail. Our final recommendation was for that entire area.

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As I said above, before anything gets approved, I would hope there can be an in-depth P&Z review to determine where that line came from since it was never included in our study.

Thanks a lot for your consideration. If you would like to talk to me, I am available at 452-3035.

Bill Heuck

685 Timuquana Drive, Merritt Island

P.S. A month or so ago I had an early morning meeting scheduled with you and you turned up sick. But I ended up spending an excellent hour with Fritz, and we discussed many subjects including this one. I was very impressed with him and think you've made a good choice with him as your Chief of Staff.

Objection
18PZ00130
Simms

From: billheink@mindspring.com
To: [Commissioner, D3](#)
Cc: [Bill Heink](#); [Jones, Jennifer](#)
Subject: Rezoning Request 18PZ00130
Date: Saturday, March 23, 2019 12:27:52 PM

Dear John,

I am writing to express my concern about the above re-zoning request. I am not directly affected, because my property - although close - does not directly abut the involved property. But I am writing because in 2005 I was the Co-Chair of a Small Area study committee that developed a recommendation for the long term land use of the area that includes the area of this re-zoning request.

To give you a little background, my wife and I are 55 year residents of Merritt Island, and take a great deal of pride in the fact that our little portion of the island has not succumbed to the dense development we see elsewhere. In 2005, our Small Area Committee was appointed by then D2 Commissioner Ron Pritchard to study an area on central Merritt Island bounded on the north by Venetian Way, on the south by Lucas Place, on the east by North Tropical Trail, and the Indian River on the west. Our review began with overwhelming "community" support, with over 70 residents in attendance at our first meeting, resulting in a standing room only situation. For all of our subsequent meetings, our "community" attendance averaged between 30 and 40 people. (When I use the phrase "community", I am referring to the people living in the affected area and not all of Merritt Island.)

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took it forward. After Chuck Nelson was elected D2 Commissioner in 2016, the other Co-chair (Bert Blackwell) and I scheduled a meeting with Chuck and in a very short time the recommended plan had been approved by the Commission and sent to Tallahassee.

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As I said above, before anything gets approved, I would hope there can be an in-depth P&Z review to determine where that line came from since it was never included in our study.

Thanks a lot for your consideration. If you would like to talk to me,
I am available at 452-3035.

Bill Hink

685 Timuquana Drive, Merritt Island

From: billheink@mindspring.com
To: [Commissioner, D4](#)
Cc: [Bill Heink](#); [Jones, Jennifer](#)
Subject: Rezoning Request 18PZ00130
Date: Saturday, March 23, 2019 12:27:27 PM

Dear Curt,

I am writing to express my concern about the above re-zoning request. I am not directly affected, because my property - although close - does not directly abut the involved property. But I am writing because in 2005 I was the Co-Chair of a Small Area study committee that developed a recommendation for the long term land use of the area that includes the area of this re-zoning request.

To give you a little background, my wife and I are 55 year residents of Merritt Island, and take a great deal of pride in the fact that our little portion of the island has not succumbed to the dense development we see elsewhere. In 2005, our Small Area Committee was appointed by then D2 Commissioner Ron Pritchard to study an area on central Merritt Island bounded on the north by Venetian Way, on the south by Lucas Place, on the east by North Tropical Trail, and the Indian River on the west. Our review began with overwhelming "community" support, with over 70 residents in attendance at our first meeting, resulting in a standing room only situation. For all of our subsequent meetings, our "community" attendance averaged between 30 and 40 people. (When I use the phrase "community", I am referring to the people living in the affected area and not all of Merritt Island.)

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Thanks a lot for your consideration. If you would like to talk to me,
I am available at 452-3035.

Bill Hinek

685 Timuquana Drive, Merritt Island

Objection
18PZ00130
Simms

From: billheink@mindspring.com
To: [Commissioner, D5](#)
Cc: [Bill Heink](#); [Jones, Jennifer](#)
Subject: Rezoning Request 18PZ00130
Date: Saturday, March 23, 2019 12:27:16 PM

Dear Kristine,

I am writing to express my concern about the above re-zoning request. I am not directly affected, because my property - although close - does not directly abut the involved property. But I am writing because in 2005 I was the Co-Chair of a Small Area study committee that developed a recommendation for the long term land use of the area that includes the area of this re-zoning request.

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Bill Henck

685 Timuquana Drive, Merritt Island

From: [Susan Kern](#)
To: [Commissioner, D3](#); [Commissioner, D4](#)
Subject: Rezoning concerns: Simms 18PZ00130 Part 1 of 3
Date: Wednesday, March 20, 2019 9:23:56 PM
Attachments: [Commissioner presentation packet Simms 18PZ00130 part 1.docx](#)

Good afternoon,

We are sending this email as we have concerns about this rezoning request and will not be able to attend the next meeting on April 4. Although we were present and ready to make this presentation at the March meeting, the issue was immediately tabled.

We will be sending two more emails as the attachment size exceeds the Yahoo system limitations. They will contain the remainder of the necessary information.

Thank you for taking the time to review our concerns via the attached documents. Feel free to call if you have any questions.

Sincerely,

Susan and Linsey Johnson
520 Timuquana Dr.
Merritt Island, FL 32953
321-501-4562

•

RE: 18PZ00130 District 2
Clark and Patricia Simms
March 20, 2019

We are submitting this letter of concern prior to the April 4th zoning meeting for your consideration. Susan will not be able to attend, and there is a possibility that Linsey will not be able to attend as well. What follows is the presentation we had intended to give at the March 7th meeting, until Patty Simms requested the issue be tabled until April 4.

We are Susan and Linsey Johnson. We live at 520 Timuquana Drive, which is the NW corner lot of Timuquana and N. Tropical Trail, directly across the canal from the Simm's property. Susan has owned the house since 2004 and in that time we have developed a very nice neighborhood community. We were married in the Heink's back yard, down at the end of the street on the Indian River. Several of us team up 2-3 times a year to tackle the invasive Brazilian Peppers that populate the little canal separating our property from the Simm's and to clear out debris that prevents us from easily accessing the IRL. We share fruits and vegetables among ourselves, and help our elderly neighbors who might need help cleaning up the yard after a hurricane, or who suffer a panic attack when, due to dementia, has forgotten that their grown son had made plans to work on a jobsite on a Sunday afternoon. We try to be good neighbors and everyone is pretty considerate. We have always gotten along with Clark and Patty, and Clark has repeatedly granted us access to his side of the canal when removing the Brazilian Pepper trees.

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canal and the currently undeveloped land lies north of this lane. Based on the site plan recently submitted, they are proposing to relocate the lane, call it a driveway and have it run along the northern border of the lot. They would then build the 3 freestanding structures close to the edge of the top embankment of the canal.

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As we said earlier, we believe the intention is to generate rental income, although they state they are building these to accommodate elderly parents. Even if that's the case, in time those parents will no longer live there. At that point, do those structures remain vacant, or do they become rentals? If all our calculations are off, and they are able to determine a way to install a septic system, is the proposed system adequate to handle a rental property?

It is our understanding that this lot cannot be subdivided due to the road access necessary for the structure down at the river's edge. The next owners of this property will find themselves with 4 structures. It is inevitable that the future use of these 3 structures will be as rentals. It

would be prudent for this Board to anticipate that future use, and require commercial standards for waste disposal.

Lastly, the proposed drain field is 70' long and runs along the driveway. Where is the parking? Is there adequate protection to ensure no one parks their car, or a boat on trailer, on the drain field? While homeowners are usually sensitive to this, it is unlikely renters will be; they can unwittingly compromise the useful life of the drainage field.

The canal in question is essentially a drainage canal for rain runoff in the central Island area. When there is rainfall, there is good flow within the canal. If there is not any rain, water flow essentially comes to a standstill. It is easy to imagine there will be a certain amount of stress placed on this canal with the presence of 3 additional septic tanks. We would hate to do more harm to the IRL.

If they are in fact able to build the house within 10' of the canal, there are some geological issues they will have to address. The embankment near the road is reinforced with concrete bags of unknown age which ends roughly 40' from the road. The rest of the canal bank is a natural bank covered with vegetation. The soil in our area is very sandy and accordingly unstable, and we wonder if the bank could withstand the downward force that 3 3-bedroom structures would apply.

Based on our calculations, it does not appear that this lot is of adequate size to accommodate even 1 septic system, let alone 3. Until public utilities brings in a sewer system, we do not see how this lot can be further developed. We question the value in changing the zoning on a piece of property to allow development that cannot occur at the present time and may not in the foreseeable future.

We appreciate the opportunity to vocalize our concerns. Thank you.

For your consideration before the April 4 zoning meeting
Submitted by Susan and Linsey Johnson re: Simms application 18PZ00130

The attached diagram shows the septic setbacks based on the actual land mass. We have used the site map presented by the Simms with their supporting documentation prior to the March 7th zoning meeting. Those documents did not take into consideration the fact that the southern property line falls within the water of the canal.

The area highlighted in pink is the actual water in the canal, bordered by the southern property line and the bank of the canal. The vertical lines represent locations that are 15', 30', 45' and 60' from the eastern edge setback of the property. The dashed portion at the bottom of those same lines represents points along the canal and the width of the canal at that point.

Using a scale of $\frac{1}{4}'' = 15'$, you will see that at point A the water consumes 7.5' of the 100' width of the property. At point D, the water consumes 9.375' of the 100' width of the property.

With this information, we can determine the following:

Points A, B, and C:

100' defined property width
-7.5' occupied by water
92.5' actual land mass width
-75' for septic setback from edge of the land
17.5
-8 for driveway
9.5' left to put a 13' wide drain field (5' wide field with (2) 4' shoulders)

At these locations, they need an additional 3.5' in order to build the drain field.

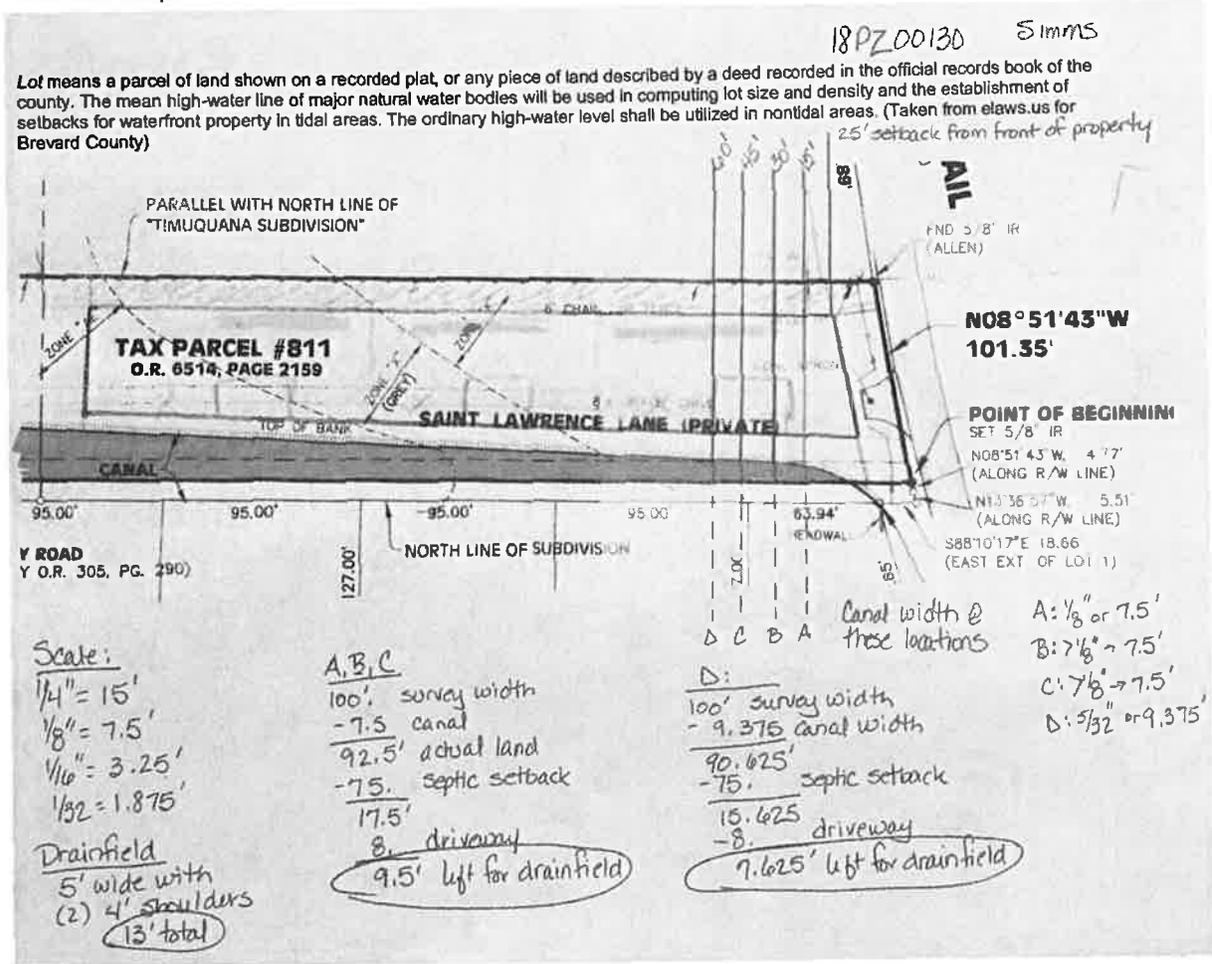
Point D:

100' defined property width
-9.25' occupied by water
90.625' actual land mass width
-75' for septic setback from edge of the land
15.625
-8 for driveway
7.625' left to put a 13' wide drain field (5' wide field with (2) 4' shoulders)

At this location, they need an additional 6.625' in order to build the drain field.

Please be advised there is no seawall or any mechanical means installed to protect the bank of the canal along the entire northern edge (with the exception of a small area where concrete bags were stacked near N. Tropical Trail).

NOTE: all dimensions calculated were developed as conservatively as possible. In actuality, given we live on this section of the canal, we know the canal is wider than as represented on this site map.



125 Setbacks

Field 5 x 70'

DRIVEWAY 8'W

HOUSE
> 125' W < 125' W

X PUMP
TANK
125



5/8" IR
EN)



N08°51'43"W
101.35'



March 20, 2019

TO: Commissioners of District 1, 3, 4, and 5
FROM: Susan and Linsey Johnson
RE: Zoning concerns Simms 18PZ00130

RECEIVED

APR 25 REC'D

DISTRICT 4
COMMISSION OFFICE

Good afternoon,

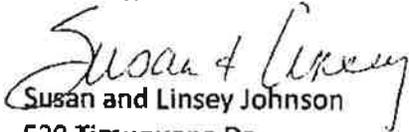
This envelope contains a hard copy of the email that was sent the evening of March 20. I had a few challenges in sending the email, and thought it might behoove everyone if I were to follow up with a hard copy mailed to your office.

We really appreciate your attention to this matter. Unfortunately we will not be able to be present at the April 4th meeting, but we did have the opportunity to meet with Commissioner Lober in his office this afternoon and express our concerns and answer his questions at that time.

If you have any questions for us, please do not hesitate to call Susan at 321-501-4562.

Thank you.

Sincerely,



Susan and Linsey Johnson
520 Timuquana Dr.
Merritt Island, FL 32953
321-501-4562

For your consideration before the April 4 zoning meeting
Submitted by Susan and Linsey Johnson re: Simms application 18PZ00130

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The area highlighted in pink is the actual water in the canal, bordered by the southern property line and the bank of the canal. The vertical lines represent locations that are 15', 30', 45' and 60' from the eastern edge setback of the property. The dashed portion at the bottom of those same lines represents points along the canal and the width of the canal at that point.

Using a scale of $\frac{1}{4}'' = 15'$, you will see that at point A the water consumes 7.5' of the 100' width of the property. At point D, the water consumes 9.375' of the 100' width of the property.

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17.5
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At these locations, they need an additional 3.5' in order to build the drain field.

Point D:

100' defined property width
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90.625' actual land mass width
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15.625
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7.625' left to put a 13' wide drain field (5' wide field with (2) 4' shoulders)

At this location, they need an additional 6.625' in order to build the drain field.

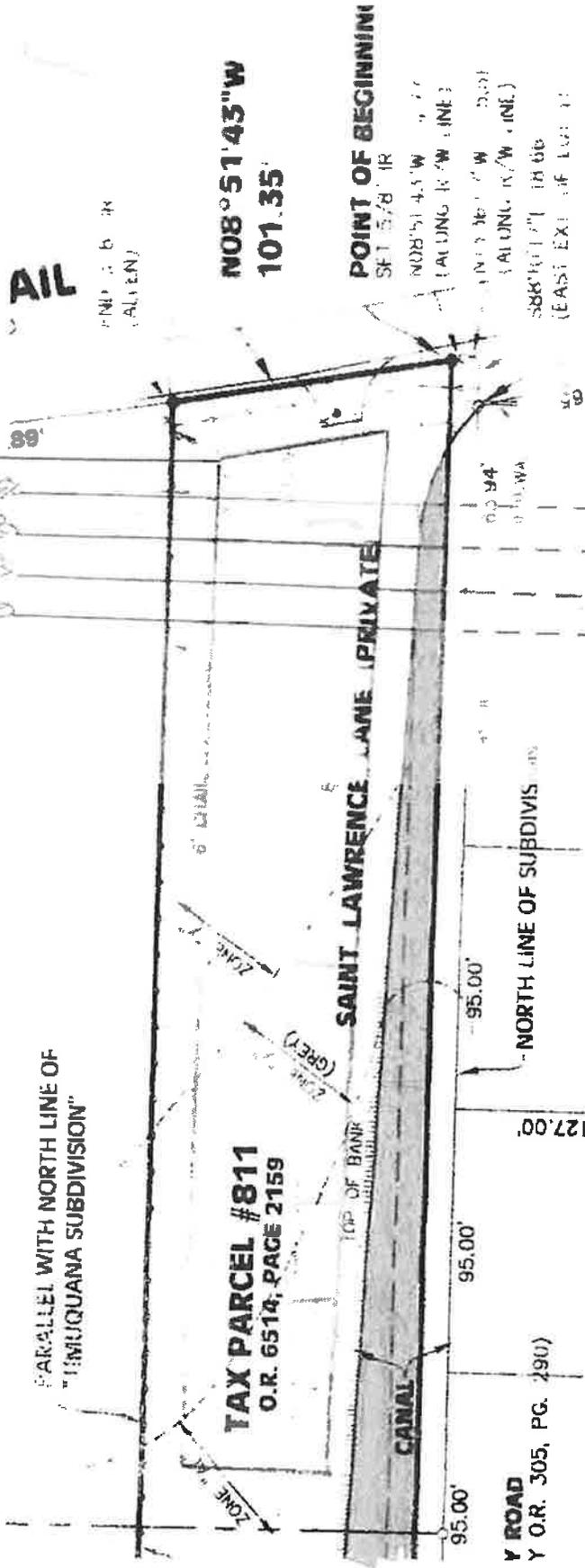
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18PZ00130 Simms

Lot means a parcel of land shown on a recorded plat, or any piece of land described by a deed recorded in the official records book of the county. The mean high-water line of major natural water bodies will be used in computing lot size and density and the establishment of setbacks for waterfront property in tidal areas. The ordinary high-water level shall be utilized in non-tidal areas. (Taken from elaws.us for Brevard County)

25' setback from front of property



Canal width @ these locations
A: 1/8" or 7.5'
B: 7 1/8" - 7.5'
C: 7 1/8" - 7.5'
D: 5/32" or 9.375'

Canal width @ these locations

D:
100' survey width
- 9.375' canal width
90.625'
- 7.5' septic setback
83.125'
15.625' driveway
- 8'
75.125' left for drainfield

A, B, C
100' survey width
- 7.5' canal
92.5' actual land
- 7.5' septic setback
85'
8.5' driveway
91.5' left for drainfield

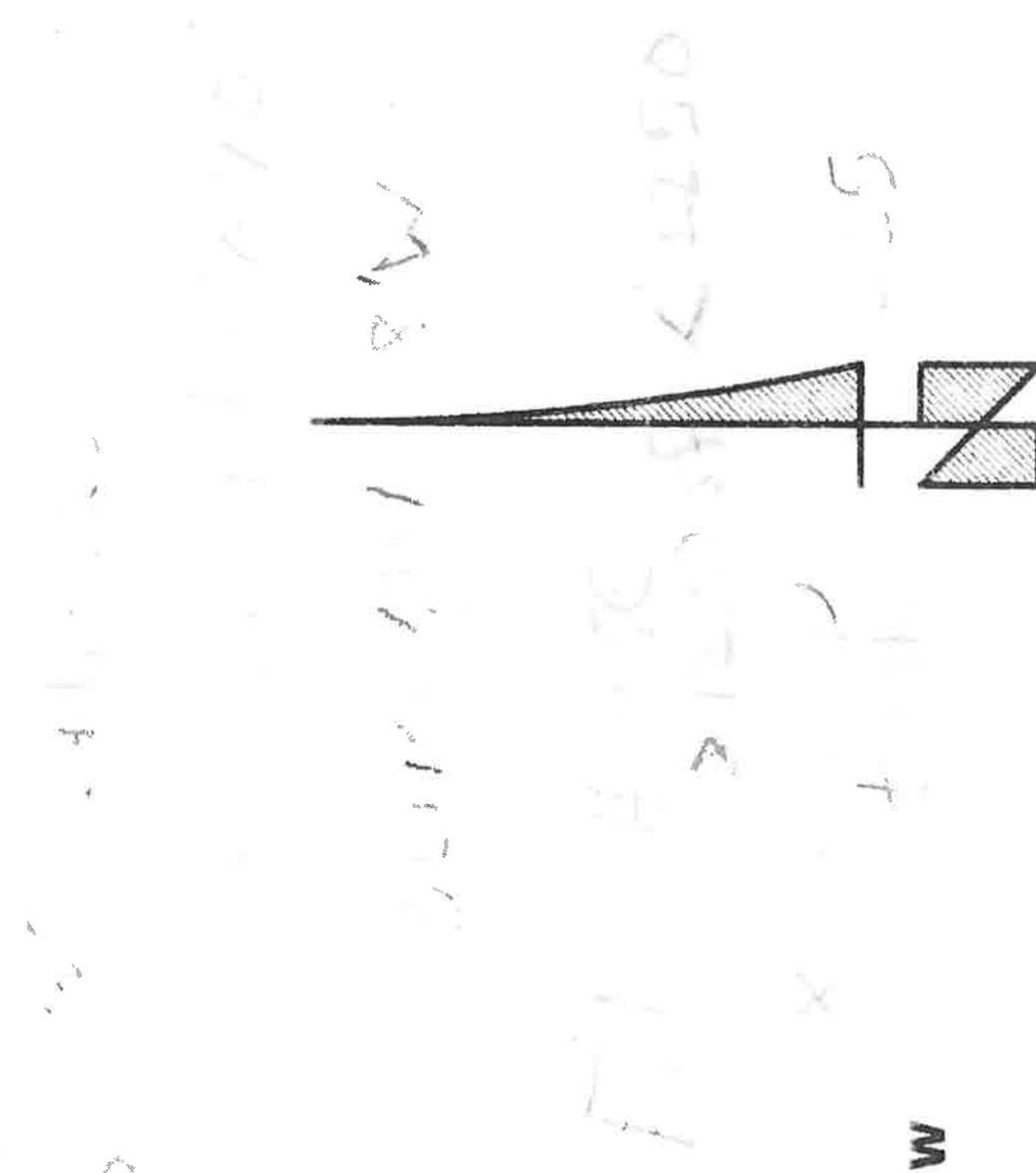
Scale:
1/4" = 15'
1/8" = 7.5'
1/16" = 3.75'
1/32" = 1.875'

Drainfield
5' wide with
(2) 4' shoulders
13' total

8' driveway
91.5' left for drainfield

15.625 driveway
- 8'
75.125' left for drainfield

PLANNED

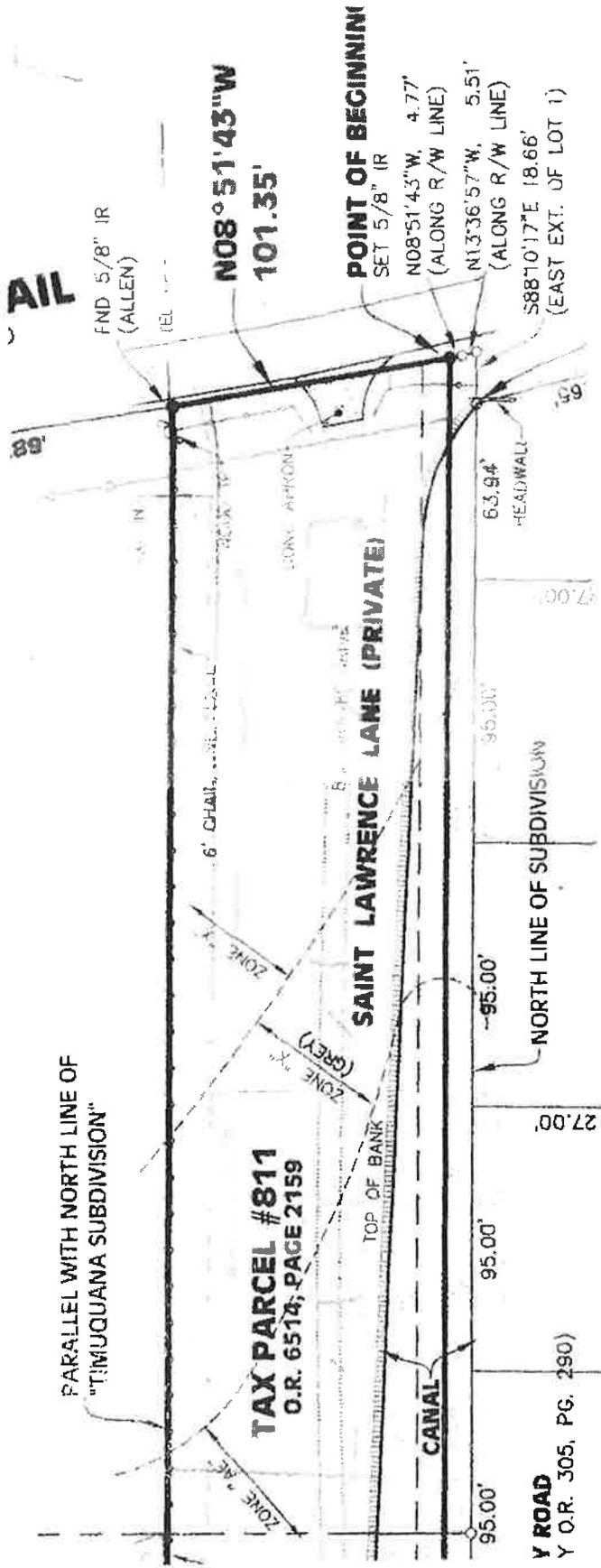


5/8" IR
EN)

N08° 51' 43" W
101.35'

Waterfront. Any site shall be considered as waterfront property provided any or all of its lot lines abut on or are contiguous to any body of water, including a creek, canal, bay, ocean, river or any other body of water, natural or artificial, not including a swimming pool, whether the lot line is a front lot line, a rear lot line or a side lot line. (Taken from elaws.us for Brevard County)

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RE: 18PZ00130 District 2
Clark and Patricia Simms
March 20, 2019

We are submitting this letter of concern prior to the April 4th zoning meeting for your consideration. Susan will not be able to attend, and there is a possibility that Linsey will not be able to attend as well. What follows is the presentation we had intended to give at the March 7th meeting, until Patty Simms requested the issue be tabled until April 4.

We are Susan and Linsey Johnson. We live at 520 Timuquana Drive, which is the NW corner lot of Timuquana and N. Tropical Trail, directly across the canal from the Simm's property. Susan has owned the house since 2004 and in that time we have developed a very nice neighborhood community. We were married in the Heink's back yard, down at the end of the street on the Indian River. Several of us team up 2-3 times a year to tackle the invasive Brazilian Peppers that populate the little canal separating our property from the Simm's and to clear out debris that prevents us from easily accessing the IRL. We share fruits and vegetables among ourselves, and help our elderly neighbors who might need help cleaning up the yard after a hurricane, or who suffer a panic attack when, due to dementia, has forgotten that their grown son had made plans to work on a jobsite on a Sunday afternoon. We try to be good neighbors and everyone is pretty considerate. We have always gotten along with Clark and Patty, and Clark has repeatedly granted us access to his side of the canal when removing the Brazilian Pepper trees.

We held a BBQ at our house the day before the 1st scheduled zoning committee meeting in January so we could find out what Clark and Patty were proposing to do with their property. They both expressed concerns for their elderly parents and indicated they were not able to build a guest house so they wanted to build a home for them on their

property, yet they made a few contradictory statements. Now that we have seen the proposed plan for the 3 structures they want to build, we see that they were not even remotely transparent with their intentions. Based on statements they have made, we believe they have changed their story throughout the process to play on people's emotions.

At this point they are claiming they need homes for 2 sets of parents and a sister who suffers from health issues. There are questions in our minds about the veracity of those statements based on both prior statements that they have made and research we have done online. We are certainly sensitive to the needs of aging parents, as Susan's mother only recently passed away, having lived to the ripe old age of 100. We know first-hand the challenges facing an elderly population. However, it is too easy to get bogged down in the emotion of the situation, especially when it appears people have not been candid with their intentions, so we'd like to address the structures that are being proposed.

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We appreciate the opportunity to vocalize our concerns. Thank you.

From: billheink@mindspring.com
To: Erin, Erin
Cc: Commissioner, D1; Commissioner, D2; Commissioner, D3; Commissioner, D4; Commissioner, D5; Calkins, Tad; Ragain, Rebecca; Jones, Jennifer; Campbell, Cheryl; Bill Heink
Subject: RE: Research on Future Land Use in Merritt Island
Date: Monday, March 25, 2019 8:22:47 PM

Hi Erin,

Thanks a lot for your rapid reply.

However, I am a bit befuddled by your response. To start with, I am assuming that R1 means no more than one dwelling unit per acre and R4 means up to 4 per acre. Please correct me if that is wrong.

The reason for my confusion is that never in our discussions in 2005/6 did our committee ever discuss the idea of R4 zoning within the area, so it would appear that somehow after we (the committee) submitted our final recommendations they were revised. I have no idea why or by whom that was done, but do know that the overwhelming community input was to not allow that density west of Tropical Trail except within areas already developed to a denser standard than R1. Never was the idea of carving out an area along the west edge of Tropical discussed except for those lots already developed. Our final future land use recommendation was to zone the entire area in question to R1 with the exception of all land within the area that was already built-up which would be grandfathered-in.

In reviewing the maps of that area, however, I think I maybe can understand how the north south line west of Tropical may have occurred. Starting north, near the intersection of Tropical and Easy Street, the west side of Tropical would have been grandfathered-in because it was already developed, but only south as parcel

One final comment on your final paragraph that the "The proposed **18PZ00130** rezoning has already received a recommendation from the Planning & Zoning Board and will be heading to the BCC on April 4th for consideration." I think it important to note the P&Z board only approved and sent forward a proposal to allow ONE dwelling unit to be built on the affected property. I know because I was there and spoke on the subject. At that time, Mr. Simms accepted that plan. If the P&Z meeting was audio recorded, I'm sure the recording supports this.

(Just for info, it was also my unscientific observation that P&Z was not enthusiastically supportive of the rezoning request, but felt they had no choice but to accept the one unit plan - so unanimously agreed to no more than one dwelling unit.)

Thanks again for your help!

From: Sterk, Erin <Erin.Sterk@brevardfl.gov>

Sent: Monday, March 25, 2019 12:28 PM

To: billheink@mindspring.com

Cc: Commissioner, D1 <D1.Commissioner@brevardfl.gov>; Commissioner, D2 <D2.Commissioner@brevardfl.gov>; Commissioner, D3 <d3.commissioner@brevardfl.gov>; Commissioner, D4 <D4.Commissioner@brevardfl.gov>; Commissioner, D5 <D5.Commissioner@brevardfl.gov>; Calkins, Tad <tad.calkins@brevardfl.gov>; Ragain, Rebecca <Rebecca.Ragain@brevardfl.gov>; Jones, Jennifer <jennifer.jones@brevardfl.gov>; Campbell, Cheryl <Cheryl.Campbell@brevardfl.gov>

Subject: Research on Future Land Use in Merritt Island

Mr. Heink,

I understand you have recently contacted each of the Commissioners to express concern that the South North Tropical Trail Small Area Study included "a recommendation that the entire affected area be zoned for a minimum of one acre per dwelling unit," in addition to some concerns about the rezoning proposed today. I have included your comments are included below for reference, and my response will attempt to clarify the history of the Small Area Study and the Comp Plan Amendments that resulted from it.

I have done some digging and found the following:

South North Tropical Trail Small Area Study

- <https://www.brevardfl.gov/docs/default-source/planning-and-development/south-north-tropical-trail-small-area-study.pdf?sfvrsn=2>
- The recommendation for Future Land Use Map revision is on page 9 and 10 of the report, which recommended a change of FLU designation to Residential 4, Residential 2, Residential 1, and Agricultural and not just Residential 1.
- The parcel proposed for rezoning today falls within the area that previously had Residential 15 and was changed to Residential 4.

Adoption of Large Scale Comprehensive Plan Amendment

- https://na96.salesforce.com/sfc/dist/version/download/?oid=00D41000000G1CP&ids=06841000004gAts&d=%2Fa%2F41000000cInV%2FNfj_YykJQ5QvOm.IT9kfUC9V.aBAocZ9xbZS305Kg&asPdf=false
- Brevard County transmitted the Large Scale Comprehensive Plan Amendment 2009-1.10 (DEO # 2009-1), which included the changes to the Future Land Use map recommended in the SSNTT Small Area Study, on July 21, 2009.
- The portion of that LSCPA package with these changes can be found on pages 141-149 of the package at the link above.
- The parcel proposed for rezoning today falls within the area that previously had Residential 15 and was changed to Residential 4.

Both the Small Area Study and the resulting Future Land Use Map amendment went through public hearing. The underlying Future Land Use of Residential 4 on the property proposed for rezoning today was adopted in 2009. The proposed **18PZ00130** rezoning has already received a recommendation from the Planning & Zoning Board and will be heading to the BCC on April 4th for consideration. This research will be included in

that file, for reference.

Please let me know if you have any more questions,

Erin Stark

Planning & Zoning Manager

Brevard County

(321) 633-2070 ext. 52640

I am writing to express my concern about the above re-zoning request. I am not directly affected, because my property - although close - does not directly abut the involved property. But I am writing because in 2005 I was the Co-Chair of a Small Area study committee that developed a recommendation for the long term land use of the area that includes the area of this re-zoning request.

To give you a little background, my wife and I are 55 year residents of Merritt Island, and take a great deal of pride in the fact that our little portion of the island has not succumbed to the dense development we see elsewhere. In 2005, our Small Area Committee was appointed by then D2 Commissioner Ron Pritchard to study an area on central Merritt Island bounded on the north by Venetian Way, on the south by Lucas Place, on the east by North Tropical Trail, and the Indian River on the west. Our review began with overwhelming "community" support, with over 70 residents in attendance at our first meeting, resulting in a standing room only situation. For all of our subsequent meetings, our "community" attendance averaged between 30 and 40 people. (When I use the phrase "community", I am referring to the people living in the affected area and not all of Merritt Island.)

It was obvious from our first meeting that our "community" did not want to see our area become more densely populated and wanted the open spaces and large homes that define this area to remain. That feeling never wavered. So after nearly a year of regular meetings, we submitted our final report to Commissioner Pritchard with a recommendation that the entire affected area be zoned for a minimum of one acre per dwelling unit. Obviously the few areas that were already more densely developed were grandfathered-in. The final report was supposed to go to the full Commission for approval, but for reasons unknown, Commissioner Pritchard never took it forward. After Chuck Nelson was elected D2 Commissioner in 2016, the other Co-chair (Bert Blackwell) and I scheduled a meeting with Chuck and in a very short time the recommended plan had been approved by the Commission and sent to Tallahassee.

My concern about the current rezoning proposal is that it is a major departure from what our "community" so effectively told us they wanted in 2005, and I fear that should this "chink in the armor" be approved it could conceivably open the door for a myriad of similar requests, which none of us want. I am sorry I cannot be there in person to present this, but have a standing commitment on Thursday evenings that prevents that. But I would certainly like to see you reject this proposal when it gets to you, based solely on the approved recommendation of our small area study committee years ago. Nothing has changed that would warrant approval of this change.

There is one other "wrinkle" to this issue that I would like to ask you and probably P&Z to investigate. When our small area committee studied this situation in 2005, our charter was for the above mentioned area - bounded on the north by Venetian Way, on the south by Lucas Place, and on the east by North Tropical Trail. Our final recommendation was for that entire area. But somehow since then, I have recently discovered that a mysterious north-south line has crept into the discussion that runs from the Timuquana Canal (the south side of the property under consideration in this zoning request) straight north to about the intersection of North Tropical and Easy Street, where the Trail makes a slight turn to the northwest. That line was never a part of our committee discussions, and our recommendation in 2005 was for the entire area west of Tropical Trail. This mysterious line effectively carves out an area alongside the Trail for potentially denser zoning, which was never our intent. As I said above, before anything gets approved, I would hope there can be an in-depth P&Z review to determine where that line came from since it was never included in our study.

Thanks a lot for your consideration. If you would like to talk to me, I am available at 452-3035.



685 Timuquana Drive, Merritt Island

"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."

RE: 18PZ00130 District 2
Clark and Patricia Simms
March 20, 2019

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We are Susan and Linsey Johnson. We live at 520 Timuquana Drive, which is the NW corner lot of Timuquana and N. Tropical Trail, directly across the canal from the Simm's property. Susan has owned the house since 2004 and in that time we have developed a very nice neighborhood community. We were married in the Heink's back yard, down at the end of the street on the Indian River. Several of us team up 2-3 times a year to tackle the invasive Brazilian Peppers that populate the little canal separating our property from the Simm's and to clear out debris that prevents us from easily accessing the IRL. We share fruits and vegetables among ourselves, and help our elderly neighbors who might need help cleaning up the yard after a hurricane, or who suffer a panic attack when, due to dementia, has forgotten that their grown son had made plans to work on a jobsite on a Sunday afternoon. We try to be good neighbors and everyone is pretty considerate. We have always gotten along with Clark and Patty, and Clark has repeatedly granted us access to his side of the canal when removing the Brazilian Pepper trees.

We held a BBQ at our house the day before the 1st scheduled zoning committee meeting in January so we could find out what Clark and Patty were proposing to do with their property. They both expressed concerns for their elderly parents and indicated they were not able to build a guest house so they wanted to build a home for them on their

property, yet they made a few contradictory statements. Now that we have seen the proposed plan for the 3 structures they want to build, we see that they were not even remotely transparent with their intentions. Based on statements they have made, we believe they have changed their story throughout the process to play on people's emotions.

At this point they are claiming they need homes for 2 sets of parents and a sister who suffers from health issues. There are questions in our minds about the veracity of those statements based on both prior statements that they have made and research we have done online. We are certainly sensitive to the needs of aging parents, as Susan's mother only recently passed away, having lived to the ripe old age of 100. We know first-hand the challenges facing an elderly population. However, it is too easy to get bogged down in the emotion of the situation, especially when it appears people have not been candid with their intentions, so we'd like to address the structures that are being proposed.

We believe this is a long term solution to a short term situation which does not support the "we want to take care of our family" argument. We believe the end game is to develop this lot and create rental income. Patty's family has a history of rental ownership, and Clark has told Susan how the family lost their main income when they lost the contract to their software business. We are definitely sympathetic to these types of changes in personal circumstance; we just do not believe this is the solution.

This is a very narrow lot, 100' wide, and if you look at the site survey you will see the southern border of the property falls within the water of the canal. The canal is narrowest where it meets N. Tropical Trail and widens as it makes its way to the IRL. Currently there is a private lane, Saint Lawrence Lane, which provides Clark and Patty access to their house at the end of the lot on the IRL. This lane is adjacent to the

canal and the currently undeveloped land lies north of this lane. Based on the site plan recently submitted, they are proposing to relocate the lane, call it a driveway and have it run along the northern border of the lot. They would then build the 3 freestanding structures close to the edge of the top embankment of the canal.

Based on the rough site survey sketch provided by the Simms, it appears that the septic setbacks have been established based on the location of the southern property line. As stated, that property line actually falls in the canal, so their proposed setback numbers for locating the drainage fields are inaccurate. They state that out of 100' there is 25' to accommodate the driveway plus the drainage field and shoulders on both sides, which adds up to 21'. This only leaves a margin of 4' remaining from the original 25'. Given the property line falls within the canal, they need additional setback for the water's edge. Their math is incorrect; there just isn't enough room for this schematic. Based on the scale of the site survey supplied, the canal accounts for approximately 7.5' of the 100' site width close to N. Tropical Trail and at least 15' for the inner 2 properties. Please see the attached survey for details.

As we said earlier, we believe the intention is to generate rental income, although they state they are building these to accommodate elderly parents. Even if that's the case, in time those parents will no longer live there. At that point, do those structures remain vacant, or do they become rentals? If all our calculations are off, and they are able to determine a way to install a septic system, is the proposed system adequate to handle a rental property?

It is our understanding that this lot cannot be subdivided due to the road access necessary for the structure down at the river's edge. The next owners of this property will find themselves with 4 structures. It is inevitable that the future use of these 3 structures will be as rentals. It

would be prudent for this Board to anticipate that future use, and require commercial standards for waste disposal.

Lastly, the proposed drain field is 70' long and runs along the driveway. Where is the parking? Is there adequate protection to ensure no one parks their car, or a boat on trailer, on the drain field? While homeowners are usually sensitive to this, it is unlikely renters will be; they can unwittingly compromise the useful life of the drainage field.

The canal in question is essentially a drainage canal for rain runoff in the central Island area. When there is rainfall, there is good flow within the canal. If there is not any rain, water flow essentially comes to a standstill. It is easy to imagine there will be a certain amount of stress placed on this canal with the presence of 3 additional septic tanks. We would hate to do more harm to the IRL.

If they are in fact able to build the house within 10' of the canal, there are some geological issues they will have to address. The embankment near the road is reinforced with concrete bags of unknown age which ends roughly 40' from the road. The rest of the canal bank is a natural bank covered with vegetation. The soil in our area is very sandy and accordingly unstable, and we wonder if the bank could withstand the downward force that 3 3-bedroom structures would apply.

Based on our calculations, it does not appear that this lot is of adequate size to accommodate even 1 septic system, let alone 3. Until public utilities brings in a sewer system, we do not see how this lot can be further developed. We question the value in changing the zoning on a piece of property to allow development that cannot occur at the present time and may not in the foreseeable future.

We appreciate the opportunity to vocalize our concerns. Thank you.

Public Comment
18PZ00130
Simms
(Submitted 05/06/19
by Jon Mason)

At Your Service
Questions? We're happy to help.
Contact Us

Property Search

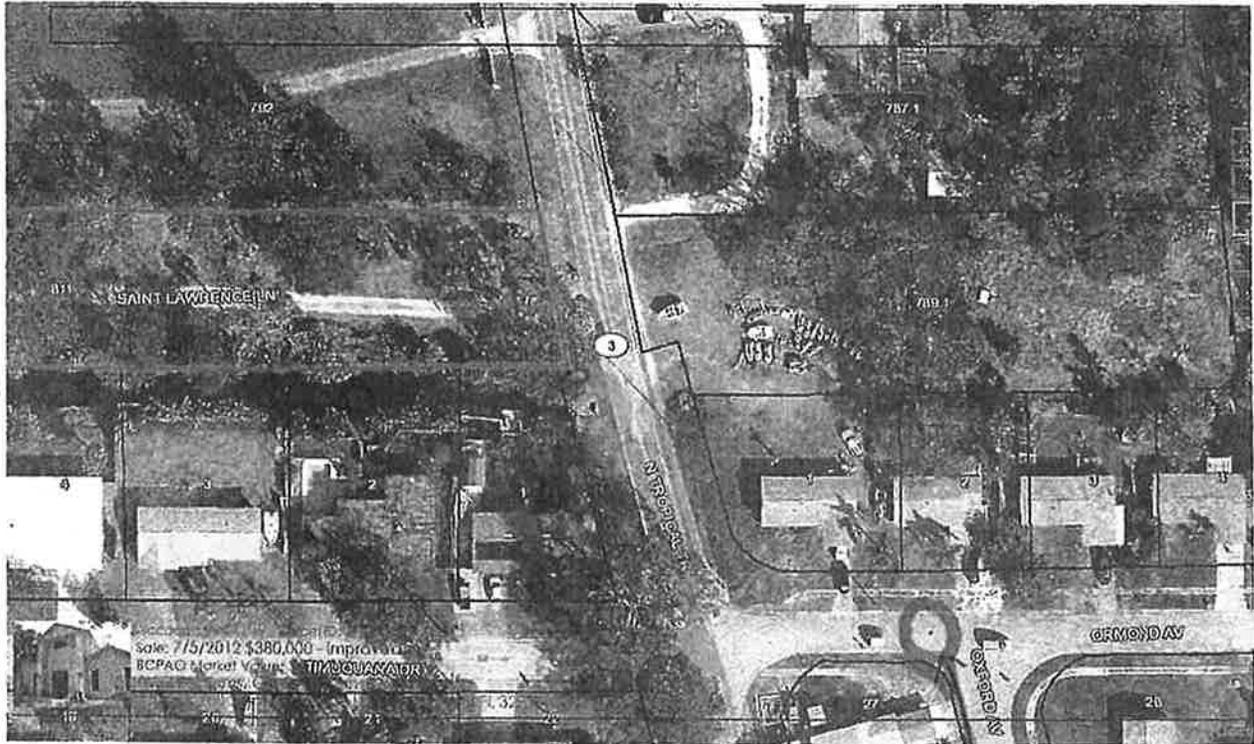
Brevard County Property Appraiser
Dana Blickey, CFA

Map Subject Property () () () Open Map In New Window ()

MapView ()

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StreetView ()



INSTRUCTIONS (//Docs/misc/Instructions_MapSearch.pdf)

Baffle
Box

Storm
Drain
Box

Sewer

From: [Commissioner, D1](#)
To: [Jones, Jennifer](#)
Cc: [Mascellino, Carol](#); [Pritchett, Rita](#); [Craddock, Amy](#)
Subject: FW: Rezoning Simms property on Merritt Island
Date: Tuesday, May 21, 2019 2:52:22 PM
Attachments: [image001.png](#)

Good afternoon.

On behalf of Commissioner Pritchett below is an email for Simms item for the agenda May 30th.

Regards,

Marcia Newell

Legislative Aide to Commissioner Rita Pritchett
Marcia.newell@brevardfl.gov



District 1 Commission Office

2000 S. Washington Avenue, Suite 2
Titusville, Florida 32780
321-607-6901

Please note:

Florida has a very broad public records law. Most written communications to or from the offices of elected officials are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure.

From: Ronald Bartcher <bartcher@cfl.rr.com>
Sent: Sunday, May 12, 2019 2:40 PM
To: Commissioner, D1 <D1.Commissioner@brevardfl.gov>
Subject: Rezoning Simms property on Merritt Island

Dear Commissioner Pritchett,

At the May 6, 2019 meeting of the P&Z Advisory Board, the Board voted to recommend denying the rezoning of the Simms property on Merritt Island. I voted against denying. The plan for the Simms property is to rezone the entire 2.92 acres as RU-1-9, add a BDP stating

that the density would not exceed one unit per acre, create a flag lot in front, and have a single-family residence with a guest house on each lot.

I believe that the Board was so hung up on the septic issue that they did not hear that Patti Simms clearly state at least twice that she would prefer and wants a sewer connection rather than septic tanks. She believes that the financial cost to connect to sewer is not a problem for her. In addition, she is eligible for \$18,000 reimbursement from Save Our Lagoon. No one asked her if she would be willing to put sewer connection as a requirement in the BDP.

One resident (Bill Heink) spoke about the work he had done on a previous Small Area Study for Merritt Island and that he believes this project fits with the aims of that Study.

Another issue that was brought up by a Board member was drainage. Neither the applicant nor other residents even mentioned drainage as a concern. The project will end up with a maximum of four homes on almost 2.92 acres. With almost $\frac{3}{4}$ of an acre per home, drainage can't possibly be a problem.

A concern expressed by the residents was that the guest houses might be rented. Erin clearly stated that guest houses cannot be rented. Erin explained how Code Enforcement would enforce the no renter policy.

It appears that some of the concerns raised by the Board are about the economic feasibility and site planning of the project rather than issues the Board should be considering. The owners are going to have to be creative with house design and lot layout to make it work. To prove that it will work would require expensive engineering drawings. They should be given the opportunity to see if it will work, especially since this project is all about taking care of family.

The P&Z staff has done a remarkable job working with the applicant to come up with a viable solution.

I listened to the Board discuss this project and was too flabbergasted to speak. Now that I've had the time to reflect on the Board's decision, I feel it necessary to communicate my thoughts to you.

I would ask that you support the Simms rezoning request.

Regards,
Ron Bartcher

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, January 7, 2019**, 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 Bartcher, Rochelle Lawandales, Brian Hodgers, Ben Glover; Ron McLellan; Scott Langston; Mark Wadsworth; and Dane Theodore.

Staff members present were: Erin Sterk, Planning and Zoning Manager; Jad Brewer, Assistant County Attorney; George Ritchie, Planner II; Darcie McGee, Assistant Director, Natural Resources Management; and Jennifer Jones, Special Projects Coordinator II.

Henry Minneboo, Chair, announced that the Board of County Commissioners will have the final vote on the recommendations made by the Planning and Zoning Board on Thursday, February 7, 2019, at 5:00 p.m.

Excerpt from complete agenda.

10. Clark A. and Patricia A. Simms:

Request a change of zoning classification from RU-1-9 (Single-Family Residential) to RU-2-4 (Low-Density Multi-Family Residential). The property is 0.93 acres, located on the west side of North Tropical Trail, approximately 685 feet north of Lucas Road. (700 Saint Lawrence Lane, Merritt Island) (18PZ00130) (District 2)

Henry Minneboo – Is the applicant here? I don't see anyone.

Rochelle Lawandales – Mr. Chairman, I'll move to table.

Ben Glover – Mr. Chairman, in the history of the board, has an item been denied if there is no notification of them not showing up?

Henry Minneboo – We try not to, only because it's very costly to come in front of us, and they could have blown a tire out here or something trying to get here.

Ron McLellan – I'll second the motion to table.

Rochelle Lawandales – What meeting are we tabling it to?

Henry Minneboo – It has to be the 28th.

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

LOCAL PLANNING AGENCY/PLANNING AND ZONING BOARD MINUTES

The Local Planning Agency/Planning and Zoning Board met in regular session on Monday, January 28, 2019, at 3:00 p.m., in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

Board members present were: Henry Minneboo, Chair; Ron Bartcher; Ben Glover; Scott Langston; Mark Wadsworth; Bruce Moia; and Peter Filiberto.

Staff members present were: Erin Sterk, Planning and Zoning Manager; Jad Brewer, Assistant County Attorney; Mary Taylor, Customer Service Specialist; and Jennifer Jones, Special Projects Coordinator II.

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

Excerpt of complete agenda.

Clark A. and Patricia A. Simms:

Request a change of zoning classification from RU-1-9 (Single-Family Residential) to RU-2-4 (Low-Density Multi-Family Residential). The property is 0.93 acres, located on the west side of North Tropical Trail, approximately 685 feet north of Lucas Road. (700 Saint Lawrence Lane, Merritt Island) (18PZ00130) (District 2)

Clark Simms – My name is Clark Simms, I'm the property owner at 700 Saint Lawrence Lane. My request is to change the zoning from RU-1-9 (Single-Family Residential) to RU-2-4 (Low Density Multi-Family Residential). What we really want to do is build a home for my mother-in-law, because my wife and I will be taking care of her.

Henry Minneboo – Are you on the west side?

Clark Simms – I'm on the west side of North Tropical Trail.

Henry Minneboo – You're the next property north of the Timuquana subdivision?

Clark Simms – Yes.

Bruce Moia – All you are proposing is one additional residence?

Clark Simms – Probably a duplex because my own parents are getting elderly as well, and we're hoping to have them there.

Bruce Moia – I was wondering why you were asking for multi-family zoning.

Clark Simms – The only other option was to make a flag lot and separate the property, but that's not really what we want to do, and because of the width of the property, that would cause problems with driveways and access.

Bruce Moia – So, you want to maintain ownership of the property and just rezone a portion of it.

Henry Minneboo – With a binding development plan?

Bruce Moia – We don't have any multi-family in that area. How big is the area?

Clark Simms – My property has two different zonings. I have EU-1 (Estate Use Residential) on the two acres, and then the front 0.92 acres is Single-Family Residential.

Bruce Moia – Our staff comments say they could get up to three more units. Is that three additional, or three total?

Clark Simms – It's Residential 4, but I can only put three according to staff because it's less than an acre.

Bruce Moia – Right, but you do back up to single-family residential.

Ben Glover – Bruce, do you want to limit him to just one duplex to keep him from building additional multi-family structures on the property?

Bruce Moia – How does that work when they want multi-family residential against single-family residential? Are there any other additional requirements in the Code?

Erin Sterk – Not really, and the protections preventing them from subdividing aren't there. They say they aren't going to do that, but there's nothing specifically to prohibit that if they could do a flag lot and develop it in a way that would allow the back to have access.

Bruce Moia – If we just flat-out rezone it they could build a triplex and rent it out. I don't think that was the intent, but we might want to have something to limit the development.

Bill Hank – I'm Bill Hank, I live at 685 Timuquana Drive, which is the first street south of the property in question. I live at the end of Timuquana Drive, so I'm kind of away from it. Personally, it probably doesn't affect me very much, but I'm here for another reason. Fourteen years ago I was involved in a small area plan committee that looked at everything in this area, everything west of Tropical Trail, south of Venetian Way, and north of Lucas Road. That small area plan was started because a developer wanted to rezone a 27-acre parcel and put in over 200 units; needless to say, the community got together. That particular plan, because of the opposition from a lot of people, the developer eventually withdrew their request, and as a result of that, Commissioner Pritchard put together a committee to do a small area study of this particular area to see what we could come up with. I know that because I was the co-chairman of that committee. We worked for almost a year and had incredible community support; we met once a month and it was rare not to have 30 – 40 people from the community present who felt strongly about it; and the desire was that we not make a major change like what was being considered. After a year's worth of deliberation, we came up with the recommendation that eventually went to the Commission, saying that nothing in the area would ever be good for anything except a minimum of one acre per dwelling lots. At that time, something went on with Commissioner Pritchard; he was also involved with a small area team that was working north of the Barge Canal, and they came up with a two-acre requirement, and he didn't like that. The end result was that our plan never got submitted to the County Commission, and when we discovered that it was around the time that Chuck Nelson got elected as our new Commissioner. The co-chair and I talked to Chuck and he didn't know anything about it, and within a month it had gone to the Commission and our plan for a minimum of one acre per dwelling in that area was approved and supposedly went on to Tallahassee to get incorporated into the Brevard County Master Land Use Plan. I'm confused with this request as to why that isn't in play; I don't know why it's not being considered, because that's what the plan was to do. That's an unknown at this point. I would like to recommend against approving this request. It doesn't seem like a big thing, but it opens the door for

other people along Tropical Trail. That being said, I fully understand that both you guys, and the Commission, have the right to approve this if you so desire, and if you do, what I'd like to ask is that you put some hooks in it in the form of a binding development plan that first says the property can never be subdivided. Also, before you approve it, the plan needs to show how he's going to situate a dwelling, or dwellings, on the property, because it is a narrow, 100-foot piece of land, 10 feet of which is taken up by the ditch on the north side of Timuquana Drive, and another 20 feet is taken up for his lane to get to his house on the river, so that doesn't leave a lot of space for building. The third item I think is important is that any such dwellings must be occupied by a blood relative of whoever is the owner at that time, and I'd also like to tie in that under no circumstances can any of the dwellings ever be rented to the general public. I don't know if that's possible, it's just my personal feelings on the subject.

Henry Minneboo – The last part is a little tricky. The first one, though, if he just put one additional, you'd be relatively satisfied?

Bill Hank – Yes, but I'm not sure how he can ever make it fit on that narrow property.

Henry Minneboo – Staff would have a position on that, right?

Erin Sterk – I had similar concerns and it was difficult to decipher how they would meet the lot width depth and get the access road past it, and without a concept plan it's hard to demonstrate that it is feasible. There are a lot of environmental constraints on the property that are unusual.

Bill Hank – The other hang-up that I didn't mention is that to the best of my knowledge, there are no sewers on that portion of North Tropical Trail, so these structures will have to be on septic systems, and I don't know how you fit that in on a piece of property that is right on a canal that directly flows into the Indian River.

Henry Minneboo – I don't think there is sewer up there.

Erin Sterk – I don't think so at all.

Henry Minneboo – Septic tanks have to be 75 feet from that.

Michael Notary – Michael Notary, my dad lives at the end of Timuquana Drive. We don't feel that Mr. Simms is being straight forward with what he is planning on doing with that property, and we feel he wants to put in rentals and do more than he's saying he wants to do.

Lana Walters – My name is Lana Walters, 530 Timuquana Drive.

John Mason – John Mason, same address.

Lana Walters – We're here today to recommend against the approval of this application. We do empathize with the Simms family and their situation, because a lot of us have been, or are about to be, impacted with the same situation with aging family members. As much as we do appreciate that, the impact of this change affects the whole neighborhood and community. We just purchased our property in October, and with the extensive research we did to find our new home, we finally chose this one for a lot of reasons. Had it backed up to a property with low-density multi-family, we probably would not have purchased it. Some of our concerns are the environmental impact on the area, and we are concerned about the market value of the surrounding property; we are directly across from the

subject property and will have an entirely different view, different noise levels, and things like that. The biggest concern we have is the future possibilities for that property. If it is zoned low-density multi-family, what is to stop somebody from turning it into a duplex, or triplex, or seasonal rentals? The entire area could change if that is rezoned. There would be a burden on the property itself, and as mentioned, it is a narrow property. We haven't seen any plans for how they are going to make that happen.

John Mason – We don't necessarily think this is what his intentions are. We've talked about it, and he plans on being there forever, but you don't know. We want to be there forever.

Henry Minneboo – Are you on the north side of the road, or the south side?

Lana Walters – The north side. We are the second house on the canal, so we can see all of it.

Clark Simms – I addressed the last couples' concerns, and I think they were really concerned about me putting a building right behind their lot. It will be as close to my house as possible, so it won't affect their view or anyone else's view. The gentleman who owns the houses that are adjacent to where I'd like to build this duplex, rents his houses out, the two houses on Timuquana Drive, so he has no issue with it. Like I said, it's for my mother-in-law and my parents. With Bill's concern about the small area plan, that was for separate lots, and we're not building a different lot, our objective is not to subdivide and sell off anything. I thought that my only option was going to be to create a flag lot, but after talking to staff – he was here, but he left, and he could have explained it better – he said this would be a better option.

Henry Minneboo – I know North Tropical Trail fairly well. One of the problems I see is that when you start at Lucas Road and go north there's not much double occupancy, meaning two houses, on the same parcel. That prevails as you continue northward, and there's a lot of people who own a lot of land up there.

Clark Simms – Only until you hit Easy Street, which looks like a development someone tried to start.

Henry Minneboo – Easy Street is a little different.

Clark Simms – I meant on the river side. They must have started that development in the mid-2000's.

Henry Minneboo – And it died, but then you go beyond that and everybody has larger parcels, and they just haven't busted them out. I really don't want to elaborate because I own five acres north of there, so I'll reveal that. That's never been our intent, but this is not about what I own. When we open it up for you, we might as well open it up for everybody, so I can't disagree with that one comment.

Erin Sterk – I was able to pull up the South North Tropical Trail Study. Although I can't speak to the exact moments in time that it came forward, on page 10 of the study is the Citizens Resource Group recommended Future Land Use change which depicts the Residential 1 on the portion of the property to the west, and Residential 4 on the property that currently retains the Residential 4. The recommendation of the committee was implemented, but in that recommendation, the front half of that property was always intended, according to the recommendation, to retain Residential 4 density potential. That's why the front half has a denser land use designation than the rear half, as a result of the study.

Henry Minneboo – I can tell you that happened because of some of the oddities to the north of this, and there were actually some businesses through there, and they've come and gone, so I think that might have had some impact.

Erin Sterk – It seems to me like they implemented the recommendations as proposed, leaving this gentleman with the density he has today.

Henry Minneboo – You know when we let one do it, you'll have 10 more applications next week.

Ben Glover – Is there a possibility for him to build another single-family home on the property?

Henry Minneboo – Yes.

Ben Glover – And then we could do away with the multi-family.

Henry Minneboo – He can build one and get away with it, yes.

Ben Glover – I agree with your statement, as far as if we let one do it, everyone is going to apply for it. I'm against the multi-family part of what he is requesting, and if he can make-do with one, then that would probably be the best situation.

Bruce Moia – What I'm seeing is that we don't have any multi-family on that side of the road. There are two choices: one, we deny this and he'll have to do a flag lot, or we approve it with the condition that he gets one unit.

Mark Wadsworth – He can already do that.

Bruce Moia – Yes, but he has to divide the property to do that. We can approve this rezoning, but limit him to one unit, and then he can maintain ownership of the property, but limited to one single-family residence.

Henry Minneboo – Tie it to a binding development plan?

Bruce Moia – In order for him not to have to divide his property, I will make the recommendation that we approve this with the condition that we only allow one additional unit on the property.

Ben Glover – Would that be multi-family?

Henry Minneboo – No.

Bruce Moia – No, one unit.

Mark Wadsworth – I'll second that.

Henry Minneboo – Are you willing to do a binding development plan?

Clark Simms – Yes, sir.

Henry Minneboo – For one unit?

Clark Simms – Yes, sir.

Erin Sterk – Can we clarify that the unit is intended as a single-family unit.

Bruce Moia – One single-family unit, yes.

Henry Minneboo – Is that acceptable to the other side?

Bill Hank – It is to my point of view, but I can tell you there are other people in the area that area thinking that if this goes through, they are going to do the same thing to their property.

Bruce Moia – They can still build one unit.

Henry Minneboo – At least now you have a binding development plan that will limit that.

Erin Sterk – The one valuable piece of doing it this way with the multi-family zoning as opposed to doing the administrative process is that the flag lot would be done administratively, but having the multi-family zoning allows him to share the access. If he had to create a flag lot for his current access and then another access with the canal on the property, two driveways out to Tropical Trail would be challenging.

Bruce Moia – I want to amend my motion to limit the binding development plan so that there would be shared access.

Erin Sterk – You get to the same place in the end, but allow the shared access, and never subdivide the property.

Bruce Moia – And it will make it a little easier for him to get a septic tank on there.

Mark Wadsworth – Second.

Jad Brewer – Is that for an amendment for shared access?

Bruce Moia – Yes, he re-seconded the motion.

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

From: Clark Simms
To: Ritchie, George C
Cc: Jones, Jennifer; Sterk, Erin; Calkins, Tad; Babin, Rebecca
Subject: Re: Zoning action - amending legal description to full lot
Date: Friday, April 19, 2019 2:01:28 PM

This sounds great, , please proceed.

Thank you all for all of your hard work.

Happy Easter
Clark A. Simms
CEO
Remote Billing Corporation

On Fri, Apr 19, 2019 at 1:54 PM Ritchie, George C <George.Ritchie@brevardfl.gov> wrote:

Good afternoon Mr. & Mrs. Simms

Staff has been looking at options for your zoning request and I'd like to discuss amending the zoning of the entire lot. In order to do that and keep you item on the current timeline we need your response by 2pm today so that we can amend the legal description for public advertisement requirements. Will you grant us the authority to amend the legal description to cover your entire lot?

The option we are reviewing is splitting the lot into two parcels. The river front lot would be accessed as a flaglot (needs a 25 foot wide access strip connecting the river lot to N. Tropical Trail). The road side lot will need to be amended to 1.0 acre or larger lot in order to allow a single-family house and one guesthouse with kitchen facilities. This same development allowance could be allowed upon the riverfront lot if sized to appropriately. Staff will need an updated survey to verify size allowances under this scenario.

This office can only provide zoning and comprehensive plan information. You may wish to contact other County agencies to fully determine the development potential of this property. This letter does not establish a right to develop or redevelop the property and does not constitute a waiver to any other applicable land development regulations. At the time of development, this property will be subject to all such regulations. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

George C. Ritchie, Planner III, Zoning Office

Brevard County Planning & Development Department

2725 Judge Fran Jamieson Way Bldg. A-114

Viera, FL 32940

Phone # (321)633-2070 ext 52657

Fax # (321)633-2152

"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."

ADDENDUM TO STAFF COMMENTS
April 26, 2019

18PZ00130

Commission District # 2

Hearing Dates:

P&Z 01/07/19 05/06/19

BCC 02/07/19 05/30/19

Owner Name: CLARK A. AND PATRICIA A. SIMMS

Request: EU and RU-1-9 to all RU-1-9 with BDP

Subject Property:

Parcel ID# 24-36-22-00-811

Tax Acct.# 2444199

Location: West side of N. Tropical Trail, approx. 685 feet north of Lucas Rd.

Address: 700 Saint Lawrence Lane, Merritt Island

Acreage: 2.92

Background & Purpose of Request

The applicants were originally seeking a change of zoning classification on the eastern 400 feet of a 1,300 foot deep lot from Single-Family Residential (RU-1-9) to the Low-Density Multi-Family Residential (RU-2-4) classification for the purpose of developing 3 additional single-family residences for family members while maintaining single-family usage on the western lot remainder (900 foot in depth). The original proposal was to maintain the overall lot under a single deed and not to divide the property.

The previous proposal went to the Board of County Commissioners, who asked that the applicants to evaluate their options in much greater detail and asked that staff provide more information regarding codes that may have the potential to significantly restrict development; sewer proximity, availability and incentives to provide connectivity; and continued consistency and compatibility with the surrounding neighborhood. Subsequently, the applicants voluntarily agreed to modify their request to a single-family zoning classification.

The applicants are now seeking a change of zoning classification on the entire lot (2.92 acres) from EU and RU-1-9 to all RU-1-9 with a BDP limiting development to two (2) single-family lots, which would include up to two single-family residences and two guesthouses. In order to be subdivided, the westernmost riverfront lot would be configured with a flag lot stem of 25 feet in width connecting the lot to N. Tropical Trail. The eastern lot containing the remaining road frontage will be designed to meet a minimum lot area of one acre in order to develop both a single-family residence and one detached guesthouse with kitchen facilities. The riverfront parcel with one existing single-family residence could also build and one detached guesthouse with kitchen facilities.

The proposal is anticipated to generate an additional impact of 10 trips per day, which the adjacent roadway could support without a reduction in level of service.

The property is connected to potable water, but currently sewer is not adjacent to the property, so there is no obligation to provide the connectivity for the density proposed. Sewer is located at the intersection of Ormond Avenue and Oxford Avenue, approximately 330 feet away from the southeast corner of the subject parcel.

The Save Our Indian River Lagoon (SOIRL) program currently offers incentives (i.e. reimbursements) up to \$18,000 per parcel for taking existing homes off of septic and converting them to sewer. If that connectivity is provided, the applicants would be eligible applicants for this reimbursement.

For Board Consideration

The applicants' request has being modified from the original request proposing Low-Density Multi-Family Residential (RU-2-4) Zoning classification on the front .93 acres of the parcel to a revised request proposing Single-Family Residential (RU-1-9) Zoning classification on the entire parcel that is 2.92 acres in size with a BDP limiting development to two lots; each developed with one single-family dwelling and one guesthouse with kitchen facilities. The applicants have revised the legal description of the request to cover the entire parcel and the revised proposal was readvertised and renoticed accordingly.

Guesthouses are a conditional use within the EU, RU-1-9 and RU-1-7 zoning classifications on parcels equal to or not exceeding one-half acre in size; would be permitted to have a kitchen on parcels of at least one acre in size, when consistent with the comprehensive plan's density designation in each of these classifications; and do not necessitate a conditional use permit on parcels equal to or exceeding one acre in size.

Natural Resource Management Department has identified as a notable concern septic treatment within 100 feet from the buffer establishment line, the safe upland line, mean high water line or ordinary high water line, as determined by the FDEP bureau of survey and mapping, which ever line the applicant prefers, as an issue for concern. Section 62-3666(14) requires all OSTDS be set back at least 100 feet from surface waters as defined in Chapter 62, Article X, Division 3, Surface Water Protection. In those cases where there is insufficient lot depth, the OSTDS may be set back a minimum of 75 feet. Please refer to comments provided by the Natural Resource Management Department for their full analysis.

The Board should consider whether the requested RU-1-9 Zoning classification is consistent and compatible with surrounding developed parcel's EU zoning on the subdivision to the south, RU-1-9 on the subdivision to the southeast and the undeveloped land directly to the north, and the underutilized RU-1-7 on underutilized parcels across North Tropical Trail.

Prepared by: Patricia and Clark Simms

Address: 1201 N. Tropical Trail

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 30 day of May 2019 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Clark and Patricia Simms (hereinafter referred to as "Developer/Owner") RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner has requested the RU 1-9 zoning classification(s) and desires to develop the Property with a BDP limiting development to two (2) single-family lots, which would include up to two single-family residences and two guesthouses pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the

Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.

2. The Developer/Owner shall limit development to two single-family homes and two guesthouses, which may be further restricted by any changes to the Comprehensive Plan or to the Land Development Regulations.
3. Any new single-family residence will be connected to sewer.
4. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This agreement provides no vested rights against changes to the Comprehensive Plan or land development regulations as they may apply to this Property.
5. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Court the cost of recording this Agreement in the Public Records of Brevard County, Florida.
6. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on May 30, 2019. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.
7. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as may be amended.
8. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s),

(President)

(Witness Name typed or printed)

(Name typed, printed or stamped)

STATE OF _____ §

COUNTY OF _____ §

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, President of _____, who is personally known to me or who has produced _____ as identification.

My commission expires

Notary Public

SEAL

Commission No.:

(Name typed, printed or stamped)

JOINDER IN BINDING DEVELOPMENT PLAN

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being the authorized agent and signatory for the owner and holder of that certain Mortgage dated _____, given by _____, as mortgagor, in favor of the undersigned, _____, as mortgagee, recorded in Official Records Book _____, page _____, Public Records of Brevard County, Florida, and encumbering lands described in said Mortgage, does hereby join in the foregoing Binding Development Plan for the purpose of consenting to the change of property use and development requirements as set forth therein.

WITNESSES:

MORTGAGEE NAME/ADDRESS

(Address)

Authorized Agent Signature

(Witness name typed or printed)

(Name/title typed, printed or stamped)

(Witness name typed or printed)

STATE OF _____ §

COUNTY OF _____ §

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____, who is personally known to me or who has produced
_____ as identification.

My commission expires

Notary Public

SEAL

Commission No.:

(Name typed, printed or stamped)

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, May 6, 2019**, 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 Bartcher, Rochelle Lawandales; Brian Hodgers, Mark Wadsworth; Bruce Moia; Peter Filiberto; and Dane Theodore.

Staff members present were: Erin Sterk, Planning and Zoning Manager; Jad Brewer, Assistant County Attorney; Paul Body, Planner II; Lee Ann McCullough-Wham, Program Manager, Natural Resources; and Jennifer Jones, Special Projects Coordinator II.

Henry Minneboo, Chair, announced that the Board of County Commissioners will have the final vote on the recommendations made by the Planning and Zoning Board on Thursday, May 30, 2019, at 5:00 p.m.

Excerpt from complete agenda.

Clark A. and Patricia A. Simms

A change of zoning classification from RU-1-9 (Single-Family Residential) and EU (Estate Use Residential) to all RU-1-9. The property is 2.92 acres, located on the west side of North Tropical Trail, approximately 685 feet north of Lucas Road. (700 Saint Lawrence Lane, Merritt Island. (18PZ00130) (District 2)

Erin Sterk – This is the same property that came forward with a multi-family proposal in the past. We re-advertised the item and switched to a single-family zoning, and we think we can get to the product the applicant is looking for, with some limitations in a BDP (Binding Development Plan). You do not have that BDP in your package, but we can walk you through the conditions that would make the proposal consistent with the mixed land use of Residential 1 on a portion of the property, and Residential 4 on the other portion. The limitation they're proposing to make RU-1-9 consistent is a limitation to two single-family houses and two guesthouses. We're not addressing accessory structures, those will be subject to the limitations in the code. Because we don't know exactly where the property would be subdivided in the future for the front house versus the back house, we felt like the condition of generally limiting the 2.92 acres to two single-family residences and two guesthouses still gets them the four-house type of product. It would require subdividing the property in the future to build the second single-family residence and then the guesthouse.

Henry Minneboo – In theory, we're adding four?

Erin Sterk – We see it as two houses. There is one house there now, and this would be a separate lot with a separate house, and then each of those lots meets the minimum one acre required to have a guesthouse with a kitchen facility. The guesthouses could not be rented out, nor can they have separate meters, and they cannot have a separate family living in the second house. It would relieve the property owner from having the multi-family proposal on the same lot, which their family members could live in, but there were concerns from the public about what happens after the family members are gone and there would be no option to use the homes except to rent them. This would be a separate parcel, so if it needed to turn hands into another owner at some point it wouldn't be encumbered.

Henry Minneboo – Do we know exactly now the distance from the north property line to the water?

Erin Sterk – The survey shows that it's anywhere between 75 to 80 feet to the canal that's 7 feet into their property, so it's about a 100-foot wide lot. They are still going to have some challenges with the septic component and the distance separation from the canal, but they can go through all of that and if they can't meet the criteria they could always extend the sewer line like we talked about previously, to that front piece. We also met with the Save Our Indian River Lagoon folks and talked about the benefits they have to converting the existing residence to sewer service; it's a long run to get across North Tropical Trail, and then to get to the house in the back, but if they were to do that there would be an \$18,000 available refund from that program.

Henry Minneboo – So, whatever they are charged, the County would give them back \$18,000?

Erin Sterk – Right. That wouldn't have anything to do with developing the new unit, so you either get the septic or the sewer through whatever means, but that resource is available for converting existing units from septic to sewer. If they were going through the trouble of bringing sewer underneath the road, they would probably want to hook up both properties.

Henry Minneboo – Do you want to come up and tell us what you have?

Patti Simms – Patti Simms, 1201 North Tropical Trail, Merritt Island.

Henry Minneboo – Erin did a great job explaining this, but is there anything you can add to it?

Patti Simms – I've met with staff so many times that I honestly believe we have explored every option possible to minimize the objections and still be able to build a place for our parents. We have no objection to including sewer. Everybody is worried about the cost, and I'm not sure that's anybody's concern but ours, but I will address it just in case. If we're going to finance a house, there's no reason we can't add the sewer. It's literally one street away, it's 330 feet. I'm not looking to impact the environment negatively. I am looking for a way to take care of my mother, she's 83 years old, and since this process started she has had a stroke, and as many of you with aging parents can understand, I don't necessarily want her driving far distances anymore. Clark's parents are a few years behind. This is the best solution we can come up with to keep the multi-family out of it, which seems to be a huge deal for our neighbors, and still be able to build houses and put our family in them. They are worried that our parents will die, but I have six children, so this is going to be a family estate for a long time. It's not that we're not ever going to have a use for the homes.

Henry Minneboo – My concern is that the Board of County Commissioners is literally spending millions and millions of dollars as it relates to septic tanks. I'm concerned that, especially the Commissioner of your district, that we do the best job we can do up here and avoid those things, especially being so close to the river. I think the Commissioners would be extremely disappointed in us if we said to put it right next to the river. That's an issue way before you got here, and it's going to be an issue way after you're gone. Septic tanks are not well-received here, and that's just something that we have to concern ourselves with. This board has gone to great lengths that if we had to do a septic tank, put the proper one needs to be put in. In the old days septic tanks were \$3,000 and now they are \$18,000. This board has worked hard and we're not pro-septic tank.

Patti Simms – I'm not pro-septic tank. The reason we're back here is because I made the error of bringing up in front of the Commission that there was a sewer line close by and that we fell into the Save Our Indian River Lagoon zone for converting our own, which is riverside, so it really should be converted because it's closer than 50 yards to the Indian River. If we're going to bring sewer to our

own house, it's going to run the length of the property, it's underground, and there's no problem putting a road over it. Our intent is to put sewer there, but for some reason that word is not good enough. I find septic tanks a little bit gross and I don't want three more on my property. I don't know how to tell you our intent is to use the sewer line. If the septic isn't safe, we're not going to get approved after it leaves here anyway.

Rochelle Lawandales – I need you to refresh my memory. You own the house that's there now, and you want to build a guesthouse for your mother.

Patti Simms – We have two sets of parents and an elderly sister, so that's three. We can't put more than that anyway.

Rochelle Lawandales – You want the house that you're living in and a guesthouse for your other family members, correct?

Patti Simms – We'll need our house, a guesthouse, another house, and another guesthouse. We have 2.92 acres. It's a long, thin, piece of property, which is causing a lot of trouble.

Rochelle Lawandales – I'm trying to understand the need for so many houses, and why they couldn't be housed in a house or why they couldn't be housed in the guesthouse. Why would the property have to be subdivided in order for you to do this?

Patti Simms – Two sets of parents and an elderly sister, all of them somewhat independent, and I don't know how your in-laws get along, but let's just say it's best for everybody if they all have their own independent places. The house and the guesthouse can each have kitchens this way. The way it is now we can't have a full kitchen, so I don't want a big kitchen, but I have to allow them to maintain their independence as long as possible. When they are gone, I have my children, and when they want to come home they're going to have significant others and families. To have your own space is nice when you come home. I have a three-bedroom house; it's a large three-bedroom house, but it only has three bedrooms. I don't want six to 12 people in my house.

Brian Hodgers – Have you seen an estimate for how much it will cost to bring the sewer line?

Patti Simms – They are very reluctant to give any numbers, but it has been confirmed that it would be a minimum of \$25,000 to \$30,000, and up to \$60,000. They have to do a soil sample and see what they actually have to go through to drill to put in the pipe.

Erin Sterk – The Utilities Department said it depends on geotechnical analysis to figure out if there's rock they have to get through to get under the road.

Brian Hodgers – They would need a septic for each structure?

Erin Sterk – No, not necessarily.

Brian Hodgers – So, just two maximum, and they already have one.

Erin Sterk – They could do it with two, I believe, if their existing one had capacity.

Patti Simms – I'm not planning to put in more septic tanks.

Erin Sterk – One thing between the last time the Commission heard this and when it changed to the single-family proposal, what we did, as staff, was held an interdepartmental meeting and went over all of the codes that would come into play in developing the multi-family proposal, specifically because that would need to go through the site plan process. If you talk about the driveway alone, a driveway to a residence can be a small little thing, it can be the existing dirt driveway that she has, but when you go and put in multi-family you need 24 feet of pavement, you need a turnaround for a fire truck, and so when we started to quantify all of those costs, it became clear that the development, through that process, would have necessitated a lot of things that not only would have taken up space, but would cost a lot of money to install. I think that was the turning point where we thought the single-family product could go through a building permit procedure, they could do cross-access and share the driveway with the existing one they have, or they could share one driveway; one would be developed with a flag stem to the rear lot, and one would have full frontage on Tropical Trail, so that's how we got to where we are now.

Henry Minneboo – You all jumped through some hoops here. Is there anybody in the audience who would like to speak for or against this?

Bill Heink – I'm Bill Heink, 685 Timuquana Drive, Merritt Island. My purpose in being here is to stress the fact that I was Co-Chair of the small area plan committee in 2005 that spent the better part of a year studying this whole area. We surveyed the community and the end result was they unanimously told us they didn't want the character of the community to change, they wanted it to remain with plenty of open green space, they wanted large lots, and single-family homes. When our committee finished, the recommendation that went to the Commission was for a minimum of one-acre lots per dwelling unit, or whatever that code turned out to be, because at that time it was difficult to understand. To the best of my knowledge that did get codified eventually and became part of the master land use plan. I'm here to represent that committee and let you know this original request flew in the face of that plan, and we looked at it as a chink in the armor because once one person does it, someone else will. The tenor of this whole discussion has changed, because now the plan is to subdivide the property, create two lots that are each in excess of one acre and build, at most, two dwelling units with the allotted guesthouse. The best news I've heard about the guesthouse is that by definition they cannot be rented out, they have to be for family. That's great, that's our big concern, that we'll end up with multiple rental units which nobody in the community is interested in. If the agreement is to subdivide the property, I do not think that would meet with opposition from the people who were on our committee, but what's being presented certainly would.

Henry Minneboo – What year was that?

Bill Heink – 2005. Our projected plan disappeared. We were commissioned by Commissioner Ron Pritchard to do the study and we presented it to him, but it never made it to the Commission. We went back after he left office and talked to Chuck Nelson, and Chuck said he would see what he could do, and two weeks later it was in front of the Board.

Leanna Walters – I'm Leanna Walters, 530 Timuquana Drive.

Jon Mason – I'm Jon Mason and I've got a map of the area for the septic for you. If the proposed septic comes in from Ormond Avenue it is going to be right next to a drain box, which directly drains into the canal, so if the sewer were to ever rupture, that's a concern as well. I'm not sure what kind of piping is below there and where the storm drain comes into, but it's something to be concerned about.

Once they run it to their property it's got to go down 1,300 feet, and depending where they put the second house, I don't know if they'll have a drain because the elevation goes toward the river, if they'll have a drain towards the river, and then have a pump for both houses back out to the sewer, so that's 2,000 feet or so of pipe. In speaking with neighbors, I understand most have been opposed to the rezoning of the property; some met with the Commissioner, some submitted emails and letters, and some appeared at meetings. It's been difficult to come to the meetings all the time because some of them get cancelled, tabled, or moved around, so we've had to juggle our work schedule accordingly. We also have some concerns with RU-1-9 (Single-Family Residential) zoning, just the possible things that can happen in the future. In that zoning there can be a bed and breakfast, power stations, transformer stations and facilities, and if somebody else buys it with the idea that they've got these different things they can do with RU-1-9, not realizing what we've already been through and what people before use have been through to make sure this area is preserved. I know right now her mother lives just down the road, on the river, so I'm not sure why they see the need to do this. We were told at a picnic that Clark's parents, who live in West Palm Beach, are probably not going to move up here and make new friends after living down there most of their lives, so the likelihood of this a little bit suspect, but it sounds good to say that in front of the board and get them to approve. Also, the preliminary sketches are not binding, and I wish we could have a sketch of what they're really going to do, because we've been asking that from the very beginning and it seems to continually change, and every time we come up here it's something different. They almost said no at the Commission meeting, and then at the last minute they said they would do sewer and the Save Our Lagoon is going to pay for it. Our neighbors' drainfield collapsed and they have to do new sewer now, and because they are on Tier 3 instead of Tier 1, they're not going to get that funding. That funding is going to be kept for other people who have other ideas and they can get in there first but someone who really needs it is not going to get that money. There are people out there with needs that need that money, and there are people out there with wants who want that money. I just think it should go for those that need it.

Leanna Walters – This is our sixth appearance for this, so it's been a long process, forgive us for seeming a little frustrated, we're definitely tired. Things are changing as we go to these different meetings, and they've been tabled a couple of times, and then new information. There has not been any type of concept plan or site plan, and I'm trying to learn a lot about all the differences of what's going on and why this is happening. We just moved to Brevard and chose this as our home, and as Mr. Heink mentioned, the open green space is what attracted us here, the character of the neighborhood as it stands today, so to rezone this for multiple houses has been a concern. We've always talked about renters, that's been a big concern. Patti mentioned at one of the hearings that her family is in real estate; I don't know if it's development or rentals, but it concerns me that that may be an angle with why they need so many houses. They do say their experience would be if renters are there they are experienced to manage and maintain that. That's my background, property Management, and if one person is going to decide who lives in three homes that affects so many houses along that canal, it concerns me of what renters, or what people, would be allowed to be in there with one owner.

Keith Notary – Keith Notary, 690 Timuquana Drive, Merritt Island. Over the years, when they first moved into the house they have presently, it needed quite a bit of work and it took them about 18 months to be able to move in, and once they did they started burning plastic and debris from the building of the home, so these are the kind of people we've been dealing with since then. There's a lot of other issues that have been taken up with the police. There's 22 homes on my street, and if we're Tier 3 in line for the money for the sewer out of 22 homes getting more direct service that now

goes up to Ormond Avenue, across North Tropical Trail, versus going north and only servicing 4 homes, is going to be more beneficial for that money. I would imagine there's a finite amount of money to get rid of the septic tanks. Is that an unlimited fund?

Henry Minneboo – This board is thankful we don't have to deal with that. We're not making any determination in who gets sewer first, believe me.

Keith Notary – I just wanted to voice my opposition. Thank you.

Henry Minneboo – How long have the Notarys lived at the end?

Keith Notary – Since 1959.

Rochelle Lawandales – I'm looking at the survey and there's two zonings on this one property, and there's two land uses on this one property. Could the front portion that's in the Residential 4 and RU-1-9 (Single-Family Residential) be severed and a house put there? I don't know how big it is, it may not accommodate a guesthouse, but they could at least have a house on that front piece, right?

Erin Sterk – It could if it has a binding development plan that limits the density to make the zoning classification that it has today consistent with the Comprehensive Plan that changed since it got that land use.

Rochelle Lawandales – They can have one house on the front?

Erin Sterk – Yes.

Rochelle Lawandales – They would still have enough property on the remaining part of the property to do a guesthouse, correct?

Erin Sterk – We think, with rough calculations, that they need to steal some of the front portion to add to the back piece to get the guesthouse on the back piece. We don't know exactly where that line will be because they haven't proposed that lot line.

Rochelle Lawandales – It's almost three acres, so I'm going to say down the middle of the big piece. If you took the whole piece and cut it down the middle, that's going to be about an acre and a half, roughly.

Erin Sterk – They need to subdivide it a little different than that in order to meet the density allowance in the Comprehensive Plan.

Rochelle Lawandales – One would be the RU-1-9 piece and one would be the EU (Estate Use Residential) piece, so in my way of thinking, they can have a guesthouse to go along with the existing house on that long piece and then they can have one house up front. Is that correct?

Erin Sterk – That's correct.

Rochelle Lawandales – Was that proposed to them, and was that not acceptable to them?

Erin Sterk – The reason why we came up with the idea to do one consistent zoning across all of it, even though they could do what they want to do in the EU (Estate Use Residential) zoning on the rear

lot, is that we think they're going to have to steal some of that front piece to get to the density allowance for a guesthouse. When you take out the flag stem we don't know exactly it's going to be 25 feet at minimum for the flag stem, and when you cut that line it may be just east of where the zoning classification split is today, so that would leave the rear lot with EU and little bit of RU-1-9 (Single-Family Residential), and if felt like that would be challenging to interpret later, especially if a binding development plan were tied to just the RU-1-9 piece. If some of it needed to be borrowed and combined with the back piece, we felt like one zoning action on the whole lot, with one BDP (Binding Development Plan) on the whole lot, would allow us to cut it up later, and if we limited it to two units total on 2.92 acres, that would be consistent with the Comprehensive Plan.

Rochelle Lawandales – How are you going to enforce the no rentals?

Erin Sterk – We enforce it the way we do with the guesthouse code across the entire County. If someone calls in we will investigate. There are also provisions in the Code about not having a second meter on a guesthouse, so if someone tries to pull a permit for a second meter to a guesthouse, which would be what it would take to subdivide the property into a whole separate.....

Rochelle Lawandales – They could just meter it through the main house and then charge the renter an equivalent amount for that.

Erin Sterk – Code Enforcement investigates that all across the County today, the same way in this instance. It's not something specific to a guesthouse at this location proposed by this applicant, but that's the guesthouse code everywhere.

Bruce Moia – Can anybody in a residential zoning build a guesthouse on their property?

Erin Sterk – I don't believe so. Paul?

Paul Body – You have to have at least a half-acre; you need a CUP (Conditional Use Permit) if you have less than an acre but anything over an acre doesn't require a CUP.

Rochelle Lawandales – With the EU they'd have enough to have a guesthouse.

Henry Minneboo – I know this area about as well as anybody, and the group that spent the time doing the study were extremely emphatic about trying to leave that place in its character. The northernmost part of the secondary coverage area goes almost up to Indianola Drive, which is further to the north, and everybody there is emphatic about not putting that second house. This area is the southernmost, but if you go to the northern areas, everybody that owns at least 5 to 10 acres, there's no obsession to break it up. Unfortunately, in my opinion, it's just in a bad location for what the people want that are there. We had someone speak here who has been here since 1959. It's just hard for me to support it because it's too close to the river, and I'm not comfortable with it.

Mark Wadsworth – We were talking about four structures, and this is all running straight toward the Lagoon. Is there something where we have to create some type of retention for them to do this? Let's say we approve it, what about drainage?

Rochelle Lawandales – What's the minimum acreage on EU (Estate Use Residential)?

Paul Body – It's 15,000 square feet, just over one-third of an acre.

Rochelle Lawandales – They have more than enough.

Lee Ann McCullough-Wham – To answer your question for Natural Resources, as the properties were developed, retention would be required because anything that would be within that first 25 feet would need retention for any impervious surfaces, so it would depend on how you were going to do these lots. I'm not sure how they're going to make everything fit in the box, but if you have a good engineer like Bruce and can figure out how to make it work, it can work. You're trying to do sewer, or if you can't do sewer you've got septic. Let's say you're going to do sewer, then you've got the sewer under there, then you've got the driveway, then you're trying to do the impervious house or anything else you've got that you need retention for, but if you can design it so you would have a retention swale, which I would suggest along that whole driveway to keep it from going into the canal to keep it from going into the river.

Mark Wadsworth – You all have had a serious concern about the septic tanks there.

Lee Ann McCullough-Wham – We do, but again, the property owner is talking about doing sewer, so that relieves that septic. If we were to go septic, if for some reason the sewer did not work out, you would do the advanced system. They are very expensive and you would need one for each home. It would probably be more cost effective to do the sewer line than it would be to do the septic tanks, but that's the property owner's decision. The difficult part with septic would also be that it would have to be a minimum of 75 feet off the water. I don't know that we have it from that water line. It's 100 feet wide, but that 100 feet goes to the property line, which is actually on the other side of the canal if I understand the survey correctly. You're measuring from the water line, but if she's talking about sewer, then septic doesn't come into play.

Bruce Moia – We talked about a BDP (Binding Development Plan) but no one has mentioned the proposed conditions. Is there a list of conditions the applicant is going to volunteer to provide?

Erin Sterk – The condition that would make the zoning classification consistent with the Comprehensive Plan would be a limitation to two single-family homes and two guesthouses. They don't need to specifically say two guesthouses in a BDP because any single-family home that met the criteria could come in later with a guesthouse, but we didn't want it to be perceived that the condition prohibited it later when we're trying to interpret that. That would allow the lot to be chopped up wherever it needed to be, depending on how they could meet the flag lot stem and get the net density for a guesthouse on the back piece and the front piece. I also want to elaborate on the small area study and go on the record of what my findings were from that process. I researched the small area study, and I wasn't here when that took place, but my findings, and I'm not sure what the committee recommended, but what I can find is what the Commission saw. The small area study made a recommendation for a Future Land Use Map revision; there was a lot of Residential 15 in the area, which was a little extreme, so they recommended some portions of the area go to Residential 4, some portions to Residential 2, some to Residential 1, and some to Agricultural. There was a density reduction, and in certain areas it was recommended to be stepped down, but not all to Residential 1 across the whole area. That's where we differ with what he's saying and what I find the report contained. The parcel proposed for this rezoning today falls within the area that previously had Residential 15 and was changed to Residential 4. That's why they are here under the Residential 4. There was a follow-up with the adoption of a Large Scale Comprehensive Plan Amendment after that small area study came forward where the Commission directed staff to actually make the change as proposed. It was made exactly as proposed and that was in Comprehensive Plan Amendment 2009-

1.1, which put into place the changes recommended and this parcel went from Residential 15 to Residential 4. The idea that the study recommended Residential 1 across the whole study area, I just don't find that in the report.

Rochelle Lawandales – When was the back half of all of that EU (Estate Use Residential) made into Residential 1?

Erin Sterk – In the same Comprehensive Plan Amendment, 2009. There was always a delineation on the front half of this lot and what we think is that's the section line, and it really had nothing to do with reality, but that's why the front half literally goes vertically, and there's a chunk where you might see several of these proposals come forward in that area.

Bruce Moia – Based on what I've heard and some other things that I think need to be looked at, obviously we've got some inconsistency with some zoning and land use, and we might want to consider straightening that out. The density issue, Mr. Heink said as long as we're one unit per acre that's consistent with the small area study findings, and based on the way the code is written, they're proposing two units, even though it sounds like four it's really two by code. There are some issues with this property, being long and skinny, close to the water, and having the canal on one side, so it's challenging at best. If we even consider a binding development plan, I think it's best to address a few things. One is access, and I think the access would be limited to the existing driveway, that they cannot have a second driveway, especially being such a skinny piece of property. Two, I think it should be required that they go on sewer and that septic would not be allowed on the property. I don't think they could fit it on this property because I don't think they would get the variances, and with all the things they are trying to cram in there I don't think they'll get it. And the third thing is drainage. To continue to talk about sewer, we have an opportunity that if you do bring sewer there is an existing home that's on septic now, and we could require them to hook up to sewer and that would get one less septic tank off the river, so I think we would want to require that to be modified and changed over to sewer. My last issue is drainage and right now it is a single-family home that drains directly to the river. If we were going to look at that we should require drainage improvements to not only the proposed house, but to the existing house as well. Those are my issues based on the layout of this property, that even if we consider accepting this we need to iron out those details.

Rochelle Lawandales – I'm going to see if this can go in a different way. I'm concerned about the RU-1-9 (Single-Family Residential), and I don't think it's appropriate all the way to the river. I think they could do what it is they claim they want to do by changing the Residential 4 in the front to Residential 1, making the entire property Residential 1, or one unit per acre, making it all EU (Estate Use Residential) zoning, and then they have 2.92 acres and they can still have two houses; they would have to come in off the same driveway, both houses would be on sewer, and drainage for the whole piece, but I think trying to squeeze RU-1-9 in here is inappropriate. The only way that I would even consider it is if it's all done under the Residential 1 and all is EU.

Bruce Moia – What really is the reason to go to RU-1-9? What gives them the advantage that they don't have with EU?

Erin Sterk – When we came forward last time, the legal description that was advertised was the portion of the lot that was RU-1-9 (Single-Family Residential); if we were to apply a binding development plan to it to limit the development to be consistent with the Residential 4, because right now if you cut off the lot and access wasn't an issue, you could cut up a 7,500 square-foot lot and get

more than four units per acre. In order to limit it to be consistent with the Comprehensive Plan we would need a binding development plan, and if we put a binding development plan on the front piece that limited it to one house and one guesthouse, and then the back piece, once they shave off some of that RU-1-9 area for a flag stem, which they have to do because they have to have separate access, then every lot must have access to a County maintained road. It cannot be accessed by easement. No new lots can be accessed by easement, so we would need to shave off 25 feet of the RU-1-9 area, either adjacent to the canal or on the north side for a flag stem. Once you do that, and if you need to get to the net density on the back half to allow for the house and the guesthouse, you may need to steal some of that RU-1-9 area. If there was a binding development plan prohibiting that it wouldn't allow for that to happen, and we don't know exactly where that line would need to be. That's why we wanted to advertise the whole entire piece so that we could apply a binding development plan to limit it to two units total and that line could be drawn wherever it needed to be.

Rochelle Lawandales – You can do that under EU (Estate Use Residential) by making the whole thing EU under a Residential 1 category.

Paul Body – They wouldn't be able to have a flag lot going back because you have to cut 25 feet off of it and it's only 100 feet wide.

Erin Sterk – The lot is 99.6 feet wide, and EU requires 100 feet wide. You take 25 feet out for the flag stem, you're left with 74.65 feet. The next closest lot width for a zoning classification under 74.65 feet is RU-1-9, or RU-1-3, or something like that that has a 66-foot width. EU makes sense if it weren't for the lot dimensions required. We didn't want to put them in a position of needing to get a variance. You could do EU across the whole thing if the lot width wasn't a factor and limit it with a BDP (Binding Development Plan) and it would be consistent with the Comprehensive Plan, but you can't do that because you have to cut out the 25 feet for the flag stem to the rear lot.

Rochelle Lawandales – What if they didn't subdivide it and just used the one access?

Erin Sterk – You have to subdivide it; you can only have one single-family residence per lot. One thing you could do, but it could result in the rear lot having split zoning in the end, but if you left the rear lot zoning EU, and you left the front, what may be the front lot, RU-1-9, and you apply a BDP to the whole thing the way we're talking about, then the zoning wouldn't change but the net density would be maintained in the BDP, making the existing zoning on both pieces consistent with the Comprehensive Plan. The reason why we brought the whole thing back forward was to have a BDP apply to the whole area, that way it can be chopped up later, once a surveyor and designer get involved, and engineering gets involved.

Henry Minneboo – We have to make a decision.

Bruce Moia – I want to make a motion to deny.

Rochelle Lawandales – I'll second.

Henry Minneboo called for a vote on the motion as stated, and it passed 7:1, with Ron Bartcher voting nay.