



**AGENDA REPORT**  
**September 5, 2019**

**Barbara J. and Joseph J. Tulsie, Jr. request an amendment to an existing BDP in a BU-2 zoning classification. (18PZ00159) (District 2)**

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**SUBJECT:**

Barbara J. and Joseph J. Tulsie, Jr. request an amendment to an existing BDP in a BU-2 zoning classification. The property is 1.55 acres, located on the southeast corner of Tangerine Avenue and North Tropical Trail. (18PZ00159) (District 2)

**DEPT/OFFICE:**

Planning and Development

**REQUESTED ACTION:**

It is requested that the Board of County Commissioners conduct a public hearing to consider an amendment to an existing BDP.

**SUMMARY EXPLANATION and BACKGROUND:**

In March 2019, the applicants sought an amendment to an existing BDP on two parcels zoned BU -2 (Retail, Warehousing, and Wholesale Commercial) for the purpose of consignment sales of recreational vehicles (RV), an RV storage yard and to allow other BU -2 uses in the future. The Board approved this request on March 7, 2019, limiting the uses as follows: RV display/sales with detailing and minor repairs, and a retail/office building that is a maximum of 2,600 square feet.

On May 21, 2019, the Board directed staff to reopen the public hearing after the applicants discovered that the BU -1 (General Retail Commercial) uses previously permissible within the existing BDP were inadvertently omitted from the BDP approved by the Board. The omitted Condition No. 11 was to state, "No other BU-2 uses shall be permitted. Any other uses of the subject property shall be limited to those within the BU-1 classification listed as Permitted Uses".

On July 22, 2019, the Planning and Zoning Board tabled the request to the August 5, 2019 Planning and Zoning meeting as the applicants failed to appear.

On August 5, 2019, the Planning and Zoning Board heard the request and unanimously approved the amendment to an existing BDP as originally approved on March 7, 2019, with the following limitations: the uses on the property shall be limited to recreational vehicle display/sales with detailing and minor repairs; a retail and office building of a maximum of 2,600 square feet; the only access to the site will be from the existing access on North Tropical Trail and the existing access on Tangerine Avenue; an

opaque access gate on North Tropical Trail; the property shall be completely buffered by a combination of plantings, fence, and the opaque gate on North Tropical Trail; parking of vehicles or equipment from any use on the site will not be allowed outside the property; and approved the additional stipulation that no other BU -2 uses shall be permitted. Any other uses of the subject property shall be limited to those within the Brevard County Land Development Code under the BU -1 commercial zoning classification listed as "permitted uses".

**ATTACHMENTS:**

**Description**

- ▢ **Administrative Policies**
- ▢ **Staff Comments**
- ▢ **Addendum to Staff Comments**
- ▢ **GIS Maps**
- ▢ **MIRA Memo**
- ▢ **Concept Plan**
- ▢ **Existing BDP**
- ▢ **Strike Through and Underlined Draft BDP**
- ▢ **Planning and Zoning Board Minutes 08/05/19**

## **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 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 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 percent 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 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 of intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, et cetera), 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 services 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, odors, 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 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 M A I 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 35 feet higher than the highest residence within 1,000 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 this section into the Zoning file and Public Record for that item.

These staff comments contain references to Policies of the 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 TPO (Transportation Planning Organization) 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 (CURRENT LOS):** The Level of Service at which a roadway is currently operating.

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

**REZONING REVIEW WORKSHEET**

**18PZ00159**

Commission District # 2

Hearing Dates: P&Z 02/11/19

BCC 03/07/19

Owner Name: Barbara J. and Joseph J. Tulske, Jr.

Request: Amendment to Existing BDP

**Subject Property:**

Parcel ID# 24-36-35-31-D-1; 24-36-35-31-D-3  
 Tax Acct.# 2426943; 2426944  
 Location: Southeast corner of Tangerine Ave. and N. Tropical Trail  
 Address: Lot 1 = 140 N. Tropical Trail; Lot 3 = No assigned address.  
 Acreage: 1.55

**Consistency with Land Use Regulations**

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

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	BU-2 with BDP	BU-2 without BDP
<b>Potential*</b>	18,905 square feet limited by BDP for BU-1 uses or mini-warehouse use	18,905 square feet
<b>Can be Considered under FLU MAP</b>	YES Community Commercial	Yes Community Commercial

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

	ADT	PM PEAK		
Trips from Existing Zoning	11,054	578	Segment Number	349A
Trips from Proposed Zoning	15,475	809	Segment Name	N. Tropical TR - SR 520 to Merritt Avenue
Maximum Acceptable Volume (MAV)	15,600	1,404	Acceptable LOS	E
Current Volume	8,843	796	Directional Split	0.51
Volume With Proposed Development	24,318	1,605	ITE CODE	
Current Volume / MAV	56.69%	56.69%		
Volume / MAV with Proposal	155.88%	114.31%	937	
Current LOS	C	C		
LOS With Proposal	F	F		
<b>Findings</b>	<input type="checkbox"/> Non-Deficiency		<input checked="" type="checkbox"/> Deficiency	

\*\*Requires binding development plan (BDP) excluding convenience store and drive-thru uses to not create a deficiency.

## Background & Purpose of Request

The applicant is seeking an amendment to an existing binding development plan (BDP) on the property to do consignment sales of recreational vehicles (RV), RV storage yard, and allow other Retail, Warehouse, and Wholesale Commercial (BU-2) uses in the future. Mobile home and travel trailer sales and outdoor storage of RV's are permitted with conditions uses under Sections 62-1837.7 and 62-1833.5 (Contractor's offices, plants and storage yards) of Brevard County Zoning Regulations.

The original BDP was placed on the property when it was rezoned from General Retail Commercial (BU-1) to BU-2 via **Z-11171**, approved by the Board on 10/29/2005. That BDP allowed all BU-1 uses as well as limited BU-2 uses to "lawn service, storage of lawn service equipment within the compound, and mini storage facility for personal items with no other BU-2 uses allowed."

After preliminary traffic concurrency was conducted that determined certain BU-2 uses would make the segment of North Tropical Trail from Merritt Avenue-Lucas Road to SR 520 exceed the adopted LOS E, the applicant volunteered to submit an amended BDP, excluding convenience stores and drive-thru uses. All other conditions within the existing BDP are proposed to be stricken.

The subject property is located within the Merritt Island Redevelopment Area (MIRA) in a historical subdivision known as Merritt Park Place that was historically a mix of residential and commercial zoning and is two (2) streets north of the intersection of SR-520 and N. Tropical Trail on the southeast corner of North Tropical Trail and Tangerine Avenue. A considerable amount of residential property in this area has converted to commercial over the last 40 years, including the subject property which used to be a Nonconforming Mobile Home (NMH) park.

The only condition of **Section 62-1837.7** is that if a Mobile Home and Travel Trailer Sales use is located in MIRA that it not be located on SR-520. The subject property does not abut SR-520 and thereby meets this condition. **Section 62-1833.5** requires that Contractor's Offices, Plants, and Storage yards, which include RV Storage Yards must: a) be enclosed with a six-foot wall, louvered fence or chain link fence and b) In MIRA, contractor's plants and storage yards shall not be located on any parcel with frontage on State Road 520. Within the remainder of MIRA, there shall be no visible outside storage. Storage yards must be enclosed with a six-foot opaque wall or fence. Contractors' offices not associated with plants or storage yards may be located on any parcel with frontage on SR 520. **Section 62-1483(6)** requires a principal building with a minimum of 300 square feet of floor area.

The existing BDP imposed the following limitations on the property per **Z11171**, approved 11/22/05, and recorded BDP in OR Book 5570 and Page 4219 on 11/29/05:

- "There will be only two access points: North Tropical Trail will be the primary access for all vehicles. Tangerine Avenue will be available only for emergency vehicle access purposes";
- "The site will be completely enclosed with a wall and fence. A decorative concrete block wall will surround the property on the North Tropical Trail and Tangerine Avenue sides";
- "Pavers will be used at the driveway entry-ways for enhanced aesthetics";
- "Wrought or similar type of 'iron' gates will be used";
- "Landscaping will be on the outside of the wall to soften the appearance of the wall";
- "No parking of vehicles or equipment will be allowed outside the wall";
- "All lawn maintenance/sweeper equipment and materials used in association with the lawn care business shall be contained within the compound.";
- "The Developer/Owner shall limit the uses under the BU-2 zoning district classification to only that of:
  - a. An office for the operation of the storage and lawn care/sweeper business;
  - b. Equipment storage associated with the lawn care/sweeper business as noted in #8 above, and
  - c. Mini warehouse (self storage)"

- "No other BU-2 uses shall be permitted. Any other uses of the subject property shall be limited to those identified within the Brevard County Land Development Code under the BU-1 Commercial Zoning category as 'Permitted Uses.'";
- "No storage doors shall be located on North Tropical Trail."
- "The owner would agree to the County administratively rezoning the property to another commercial district classification provided that the existing approved uses and operations on the site continued to be conforming uses under the new zoning district and land development regulations."

The applicant is requesting that all of the above conditions of **Z11171** be removed and replaced with an amended BDP that prohibits convenience store and drive-thru uses on the property. The Board may wish to consider whether any access management or buffering conditions in the existing BDP should be retained. Specifically, The Board may wish to consider retaining the following conditions:

- "There will be only two access points: North Tropical Trail will be the primary access for all vehicles. Tangerine Avenue will be available only for emergency vehicle access purposes";
- "The site will be completely enclosed with a wall and fence. A decorative concrete block wall will surround the property on the North Tropical Trail and Tangerine Avenue sides";
- "Landscaping will be on the outside of the wall to soften the appearance of the wall";
- "No parking of vehicles or equipment will be allowed outside the wall";
- "No storage doors shall be located on North Tropical Trail."

The original zoning of the property was split zoning of RU-2 and RU-3. The property was rezoned to split zoning of RU-2, BU-1-A, and BU-1 on 5/9/1968 via **Z-2270**. A variance of 19 feet from the required 25 foot front setback in BU-1 was approved via **V-2138** on 05/17/1989. The property was platted as Tropical Mobile Manor and had mobile homes on it until early in the 21st Century. The property had NMH status, but lost this nonconforming status when the property was rezoned to BU-2 via **Z-11171** and all mobile homes were removed in 2005. That loss of NMH status is documented in a memo to file **NMH-99** dated 05/22/2014. An amendment to the existing BDP was applied for as **10PZ-00094**, but was withdrawn by the applicant in July of 2010.

## Land Use Compatibility

The subject property retains a Future Land Use(FLU) designation of Community Commercial (CC). The requested removal of the BDP is consistent with this FLU designation as long as it does not create a deficiency to any adopted LOS. The property is located within a regional commercial district of more than 600 contiguous acres north and south of SR-520 on Merritt Island.

**FLUE 2.1** outlines the role of the Comprehensive Plan in the designation of commercial land.

The request for BU-2 zoning should be evaluated within the context of **Policy 2.7** of the Future Land Use Element, which identifies "development activities that may be considered within the Community Commercial Future Land Use Designation..."

Existing strip commercial;  
Transient commercial uses;  
Tourist commercial uses;  
Professional offices;  
Personal service establishments;  
Retail establishments;  
Non-retail commercial uses;  
Residential uses;  
Institutional uses;  
Recreational uses;  
Public facilities;  
Transitional uses pursuant to Policy 2.14; and

Planned Industrial Park development (as permitted by PIP zoning).

The request for BU-2 zoning should be evaluated within the context of **Policy 2.8** of the Future Land Use Element, which sets forth locational criteria for community commercial land use activities, as follows:

- A. Community Commercial clusters of up to ten (10) acres in size should be located at arterial intersections. Collector/arterial intersections area acceptable for clusters of up to ten (10) acres in size, however, the collector roadways must serve multiple residential areas. Intrusion of these land uses into the surrounding residential areas shall be limited. For Community Commercial clusters greater than ten (10) acres in size, they must be located at principal/ arterial intersections.
- B. Community Commercial complexes should not exceed 40 acres at an intersection.
- C. Community Commercial clusters up to 10 acres in size should be spaced at least 2 miles apart and community commercial clusters up to 40 acres in size should be spaced at least five (5) miles apart.
- D. The gross floor area of community commercial complexes should not exceed 150,000 square feet for commercial clusters up to 10 acres in size and shall not exceed 400,000 square feet for commercial clusters greater than 10 acres but less than 40 acres in size.
- E. Floor Area Ratio (FAR) of up to 1.00 will be permitted for Community Commercial sites.

This request should be evaluated within the context of **Policy 2.14A** of the Future Land Use Element, which establishes locational criteria for non-retail commercial uses, as follows:

A. Non-retail commercial land uses shall be limited to those areas where non-retail commercial or industrial characteristics are established or planned so as to protect residential areas from their influence. Non-retail uses, including wholesaling, contracting, heavy repair services, paint and body shops, storage and warehousing uses, may serve as a transitional use between the following higher intensity and lower intensity uses, in the following listed Future Land Use designations:

Higher Intensity Uses: Heavy Industrial or Light Industrial activities.

Lower Intensity Uses: Community Commercial, Planned Industrial Park or Planned Business Park uses.

Future Land Use Designations: Community Commercial, Heavy/Light Industrial or Planned Industrial (Planned Industrial permits PIP zone uses only).

Roadway Access Requirements: Convenient access to a major transportation corridor or along a railroad corridor with visual buffering from such corridors.

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.

## **Applicable Land Use Policies**

The two lots which comprise this application are surrounded by:

- To the north, BU-1 zoning developed from east to west as The Wesleyan Methodist Church of Merritt Island, an office building with two-story southern single-family architecture, and an strip center style office building;
- To the east, BU-2 zoning developed as commercial warehouses;
- To the south, BU-2 zoning developed as a warehouse, distribution, and trucking center and BU-1 developed as a 1-story, single-tenant office building, and;

- To the west, BU-2 zoning developed as mixed uses of commercial retail, commercial services, and commercial warehousing, distribution, and trucking terminal.

A considerable amount of the surrounding area has converted from residential to commercial use over the last few decades. The existing zoning trends in the area over the past three (3) years have been conducive for commercial development. The following actions have occurred:

**18PZ00032** adopted on 8/16/2018, was a zoning change from RA-2-10 to BU-1 with BDP limiting use to a self-storage mini-warehouse with 40% building coverage and a 25-foot-wide landscape buffer and public sidewalk easement along the west property line adjacent to the South Tropical Trail right-of-way recorded in ORB 8239, Pages 1698-1701 dated August 16, 2018. This site is located approximately 1,800 feet south, on the south side of SR-520, and on the east side of South Tropical Trail and connecting through to South Courtney Parkway.

**17PZ00107** adopted on 11/2/2017, was full liquor Conditional Use Permit (CUP) in conjunction with a 50-seat Irish Pub restaurant located approximately 1,950 east and in the Home Depot shopping center.

**16PZ00084** adopted on 2/2/2017, was a truck and trailer rental CUP for Home Depot with the following limitations: To park all rental equipment with the rental trucks in the area designated on the approved site plan that is to be clearly marked with signage or striping; No more than ten (10) rental trucks at any given time on the property; After hours drop-off of vehicles must be in the designated area and any outside of the area will be moved to the approved location at the start of the Home Depot business; additional condition of no trailers on the property. This site is located approximately 1,400 feet directly east of the subject site.

The following actions are currently under consideration:

**18PZ00138** was heard before the Planning & Zoning Board on 01/07/2019 and is scheduled to go before the Board on 02/07/2019. The request is to expand the existing CUP for alcoholic beverages (beer and wine only) for on-premises consumption onto the adjacent lot located to the north of the property that currently retains the CUP and into a second building on the original parcel. This site is located approximately 1,100 feet east, southeast of the subject site on the northeast corner of Mc Leod Street and Myrtice Avenue.

**18PZ0114** was also heard before the Planning & Zoning Board on 01/07/2019 and is scheduled to go before the Board on 02/07/2019. The request is to expand an existing CUP for alcoholic beverages (beer and wine only) to a CUP for alcoholic beverages (full liquor) for on-premises consumption in conjunction with a quality sit-down restaurant. This site is located approximately 700 feet directly east of the subject site at the southeast corner of Tangerine Avenue and North Grove Street.

## For Board Consideration

The applicant is seeking to amend an existing binding development plan (BDP) on the property to do consignment sales of recreational vehicles (RV), RV storage yard, and allow other Retail, Warehouse, and Wholesale Commercial (BU-2) uses in the future.

The subject property is located within the Merritt Island Redevelopment Area (MIRA) in a historical subdivision known as Merritt Park Place that was historically a mix of residential and commercial zoning and is two (2) streets north of the intersection of SR-520 and N. Tropical Trail on the southeast corner of North Tropical Trail and Tangerine Avenue. A considerable amount of residential property in this area has converted to commercial over the last 40 years, including the subject property which used to be a Nonconforming Mobile Home (NMH) park.

**Section 62-1833.5** requires that Contractor's Offices, Plants, and Storage yards, which include RV Storage Yards must: a) be enclosed with a six-foot wall, louvered fence or chain link fence and b) In MIRA, contractor's plants and storage yards shall not be located on any parcel with frontage on State Road 520. Within the remainder of MIRA, there shall be no visible outside storage. Storage yards must be enclosed with a six-foot opaque wall or fence. Contractors' offices not associated with plants or storage yards may be located on any

parcel with frontage on SR 520. **Section 62-1483(6)** requires a principal building with a minimum of 300 square feet of floor area.

After preliminary traffic concurrency was conducted that determined certain BU-2 uses would make the segment of North Tropical Trail from Merritt Avenue-Lucas Road to SR 520 deficient to the adopted LOS E, the applicant volunteered to submit an amended BDP, excluding convenience stores and drive-thru uses, and thereby retain the segment at volumes that would not create such deficiency. The applicants have not submitted a concept plan demonstrating how they plan to develop the site for the sale of RV's.

The existing BDP was placed on the property when it was rezoned from General Retail Commercial (BU-1) to BU-2 via **Z-11171**, approved by the Board on 10/29/2005. That BDP allowed all BU-1 uses as well as limited BU-2 uses to "lawn service, storage of lawn service equipment within the compound, and mini storage facility for personal items with no other BU-2 uses allowed." Mobile home and travel trailer sales and outdoor storage of RV's are permitted with conditions uses under **Sections 62-1837.7** and **62-1833.5** (Contractor's offices, plants and storage yards) of Brevard County Zoning Regulations.

All conditions imposed by **Z-11171** are proposed to be removed and replaced with conditions prohibiting convenience store and drive-thru uses in order to ensure that development of the property does not cause the adopted LOS of E for the North Tropical Trail roadway segment to be exceeded.

Some BU-2 uses may be significantly impactful to North Tropical Trail and/or Tangerine Avenue, either aesthetically or in trip generation. The Board may wish to consider whether the voluntary limitation of uses is sufficient to maintain the adopted traffic LOS E on North Tropical Trail and excluding drive-thru services, including banks/financial institutions and restaurants; and convenience stores.

The Board should carefully consider all of the conditions of the BDP currently in place to determine which, if any, should remain binding on the property. The Board may wish to consider whether retaining any of the existing conditions in the amended BDP concerning access and buffering:

- "There will be only two access points: North Tropical Trail will be the primary access for all vehicles. Tangerine Avenue will be available only for emergency vehicle access purposes";
- "The site will be completely enclosed with a wall and fence. A decorative concrete block wall will surround the property on the North Tropical Trail and Tangerine Avenue sides";
- "Landscaping will be on the outside of the wall to soften the appearance of the wall";
- "No parking of vehicles or equipment will be allowed outside the wall";
- "No storage doors shall be located on North Tropical Trail."

**NATURAL RESOURCES MANAGEMENT DEPARTMENT  
 Rezoning Review  
 SUMMARY**

<b>Item #: 18PZ00159</b>	<b>Applicant: Honeycutt C/O Tulske</b>
<b>Zoning Request: BU-2 w/BDP to BU-2</b>	
<b>P&amp;Z Hearing Date: 02/11/19</b>	<b>BCC Hearing Date: 03/07/19</b>

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

Natural Resource	Preliminary Assessment	Natural Resource	Preliminary Assessment
Hydric Soils/Wetlands	Not mapped	Coastal Protection	N/A
Aquifer Recharge Soils	Not Mapped	Surface Waters	N/A
Floodplains	Not mapped	Wildlife	Potential

**Comments:**

**This review relates to the following property: Twp. 24, Rng. 36, Sec. 35;  
 Tax ID Nos. 2426943 & 2426944**

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.

Heritage Specimen Trees (greater than or equal to 24 inches in diameter) may reside on the parcel. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), the purpose and intent of the ordinance is to encourage the protection of heritage Specimen Trees. In addition, per Section 62-4341(18), Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

2725 Judge Fran Jamieson Way  
Building A, Room 114  
Viera, Florida 32940  
(321)633-2070 Phone / (321)633-2074 Fax  
<https://www.brevardfl.gov/PlanningDev>

**ADDENDUM TO STAFF COMMENTS  
18PZ00159**

**Barbara J. and Joseph J. Tulske, Jr.  
Amendment to Existing BDP (Binding Development Plan)**

Tax Account Number: 2426943; 2426944  
Parcel I.D.: 24-36-35-31-D-1; 24-36-35-31-D-3  
Location: 140 North Tropical Trail, Merritt Island (District 2)  
Acreage: 1.55 acres

Planning and Zoning Board: 07/22/19  
Board of County Commissioners: 08/01/19

**Background and Purpose of Request**

On May 21, 2019, the Board directed staff to reopen the public hearing after the applicants discovered that the BU-1 (General Retail Commercial) uses previously permissible within the existing BDP (Binding Development Plan) were inadvertently omitted from the BDP approved by the Board.

The applicants were originally seeking an amendment to an existing BDP on two parcels with a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification for the purpose of allowing for consignment sales of recreational vehicles (RV), an RV storage yard and to allow other BU-2 uses in the future. Mobile home and travel trailer sales and outdoor storage of RV's are Permitted with Conditions uses under Sections 62-1837.7 and 62-1833.5 (contractor's offices, plants, and storage yards) of Brevard County Zoning Regulations.

The Board approved this request on March 7, 2019, limiting the use as follows: RV display/sales with detailing and minor repairs, and a retail/office building that is a maximum of 2,600 square feet.

The applicant inadvertently omitted the following condition from the BDP: Condition No. 11, no other BU-2 uses shall be permitted. Any other uses of the subject property shall be limited to those within the Brevard County Land Development Code under the BU-1 commercial zoning classification listed as 'permitted uses'.

The corrected BDP limits uses on the property to all BU-1 permitted uses and only the proposed BU-2 use of RV display/sales with detailing and minor repairs as regulated by Sections 62-1837.7 and 62-1833.5

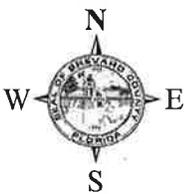
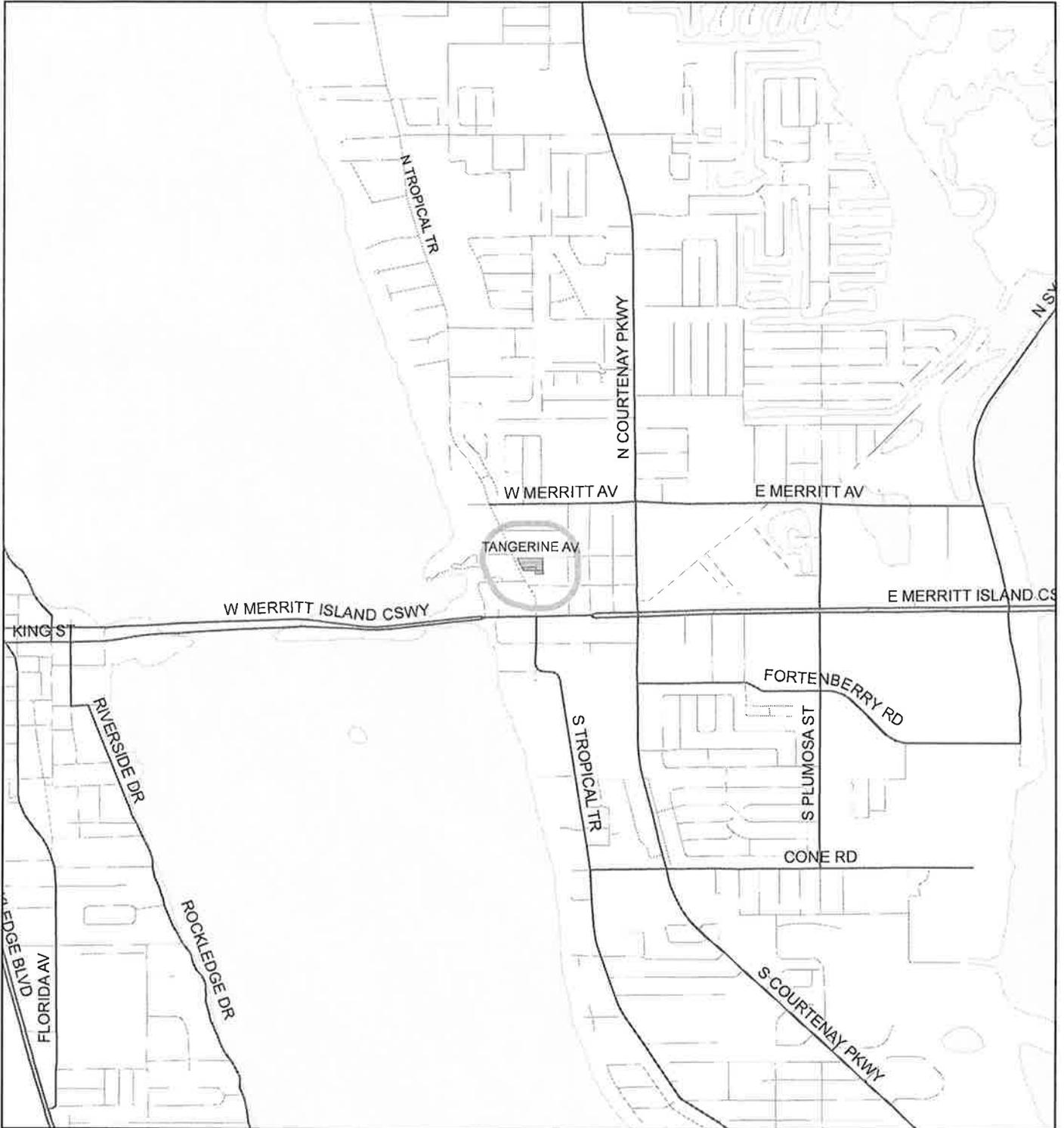
**For Board Consideration**

The Board may wish to consider whether the additional BU-1 permitted uses are consistent and compatible with the adjacent BU-1 and BU-2 uses.

# LOCATION MAP

TULSKIE, BARBARA J. AND JOSEPH J., JR.

18PZ00159



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: 12/17/2018

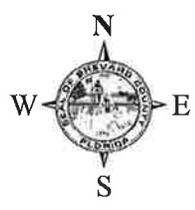
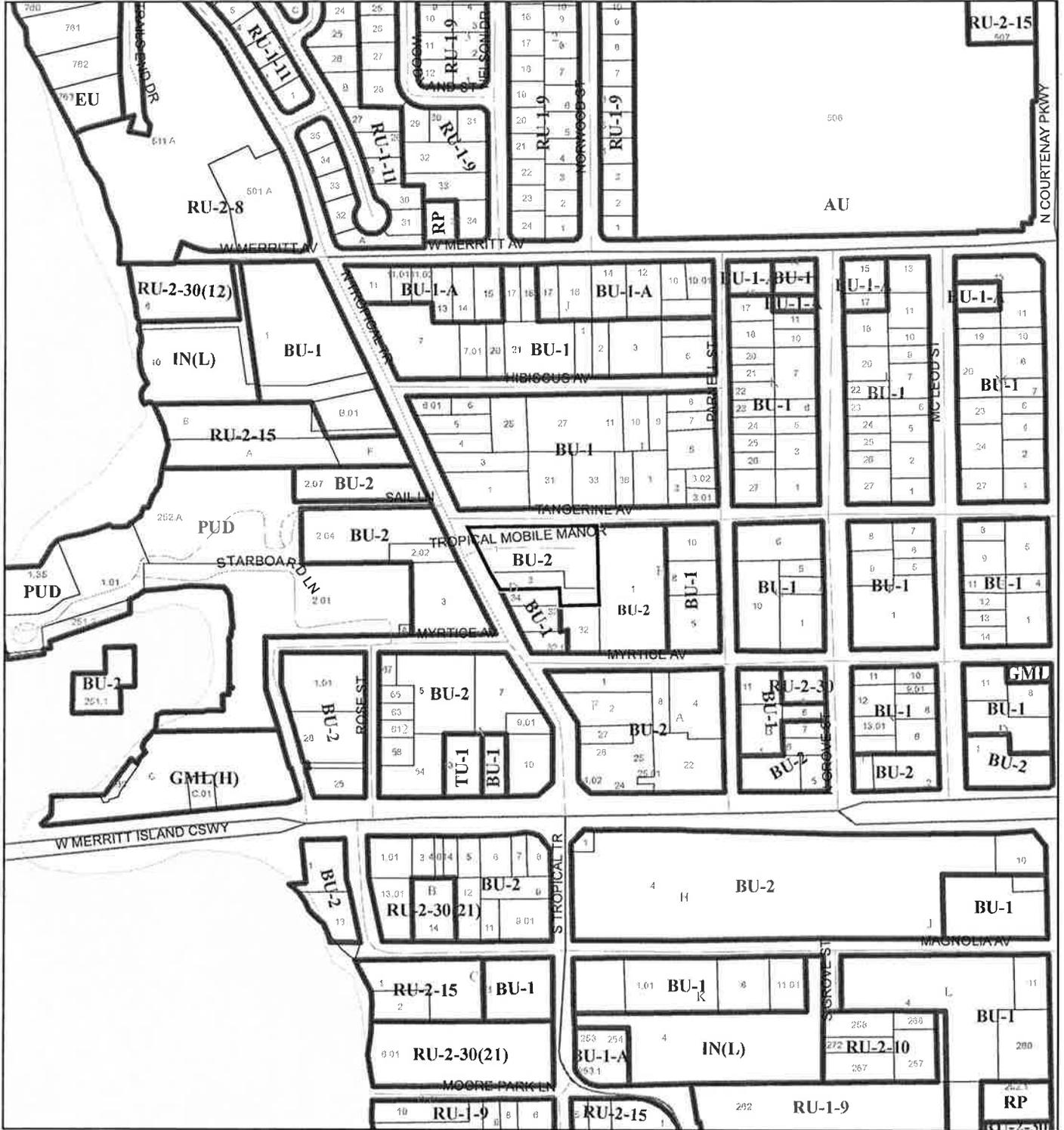
 Buffer

 Subject Property

# ZONING MAP

TULSKIE, BARBARA J. AND JOSEPH J., JR.

18PZ00159



1:4,800 or 1 inch = 400 feet

-  Subject Property
-  Parcels
-  Zoning

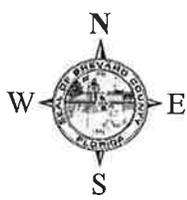
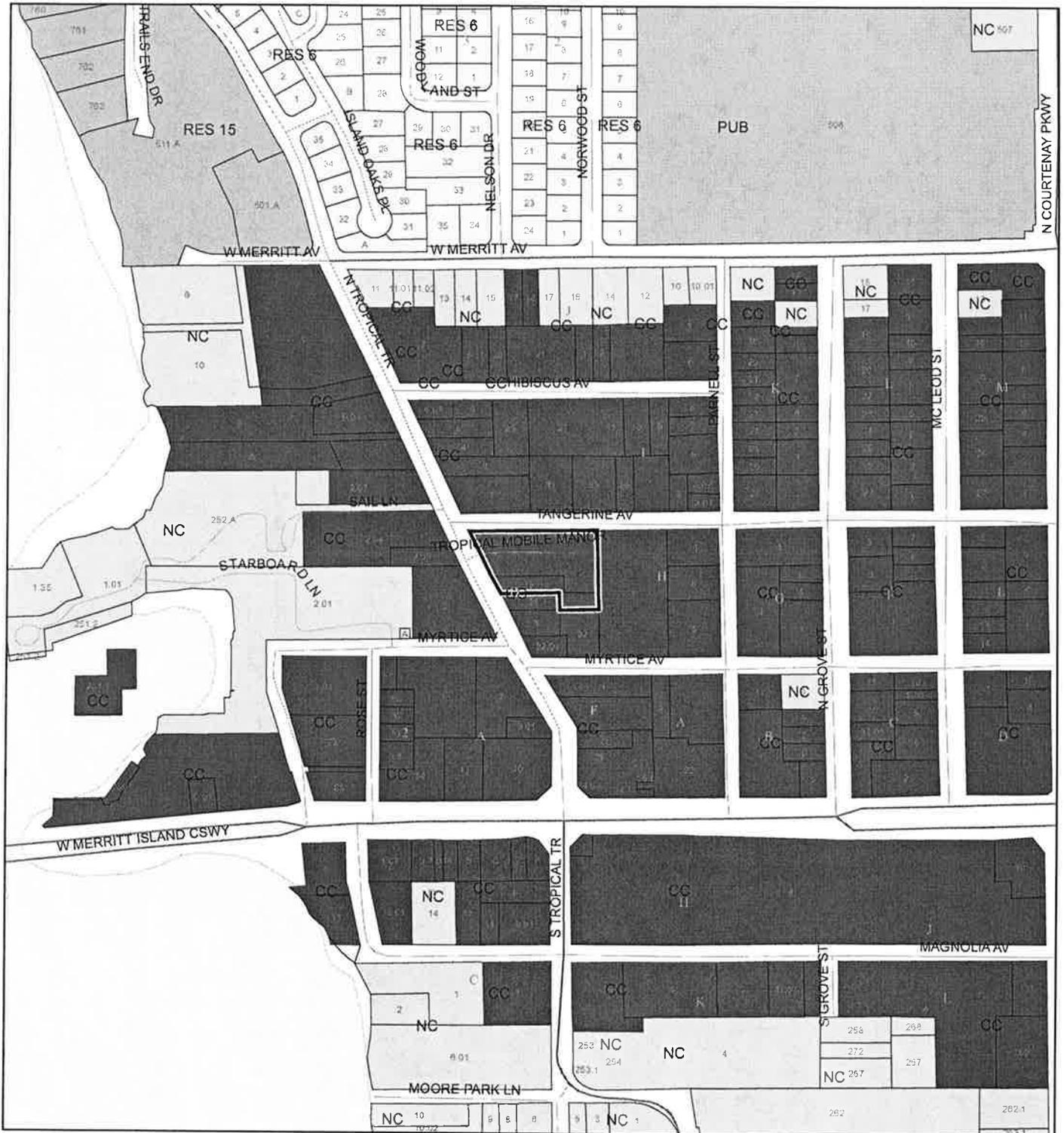
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 12/17/2018

# FUTURE LAND USE MAP

TULSKIE, BARBARA J. AND JOSEPH J., JR.

18PZ00159



1:4,800 or 1 inch = 400 feet

 Subject Property  
 Parcels

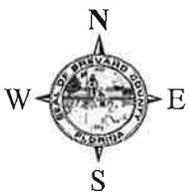
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Produced by BoCC - GIS Date: 12/14/2018

# AERIAL MAP

TULSKIE, BARBARA J. AND JOSEPH J., JR.

18PZ00159



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2018

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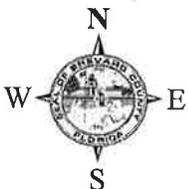
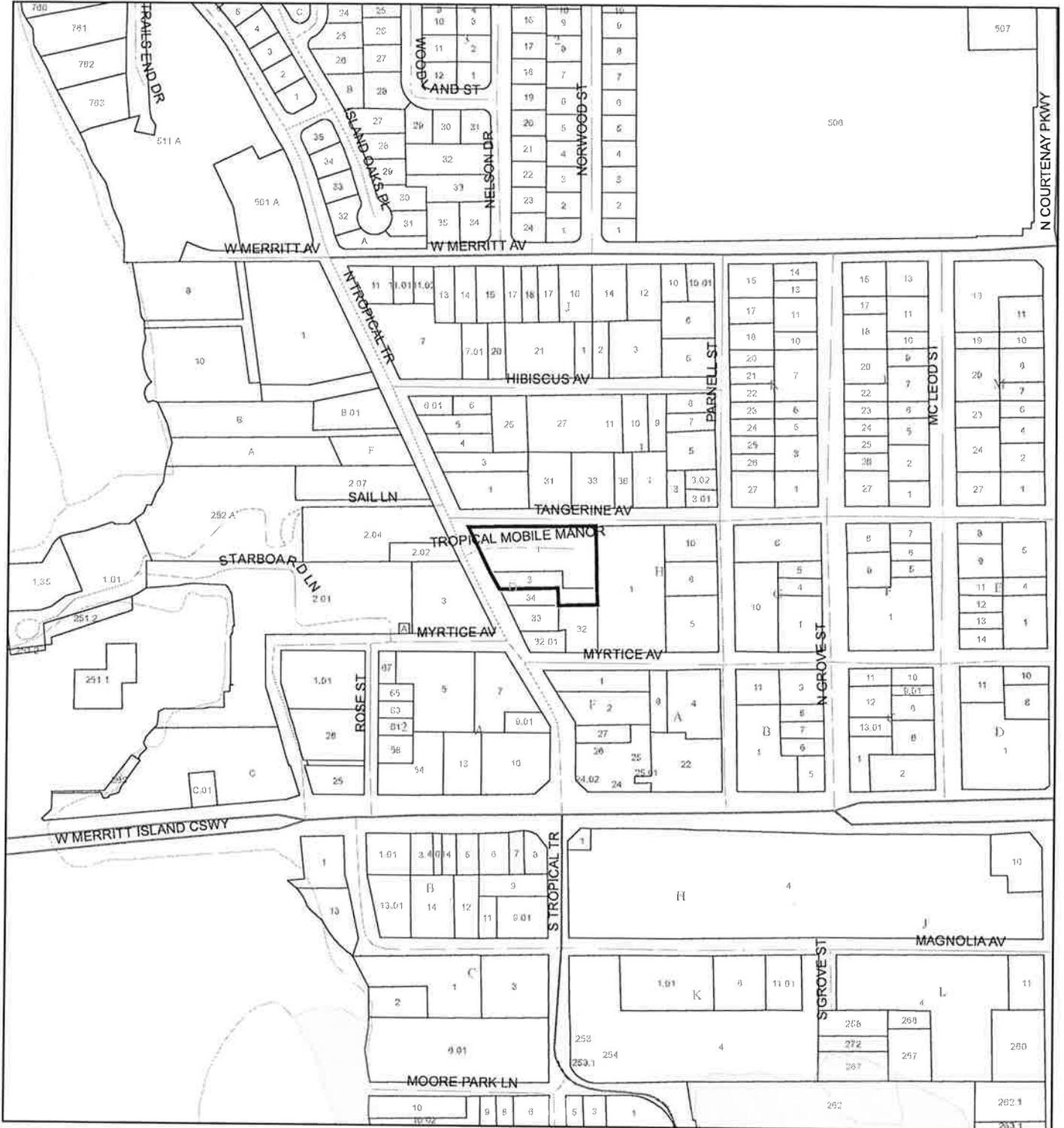
Produced by BoCC - GIS Date: 12/14/2018

 Subject Property  
 Parcels

# NWI WETLANDS MAP

TULSKIE, BARBARA J. AND JOSEPH J., JR.

18PZ00159



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 12/14/2018

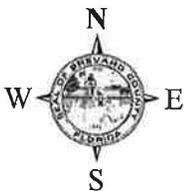
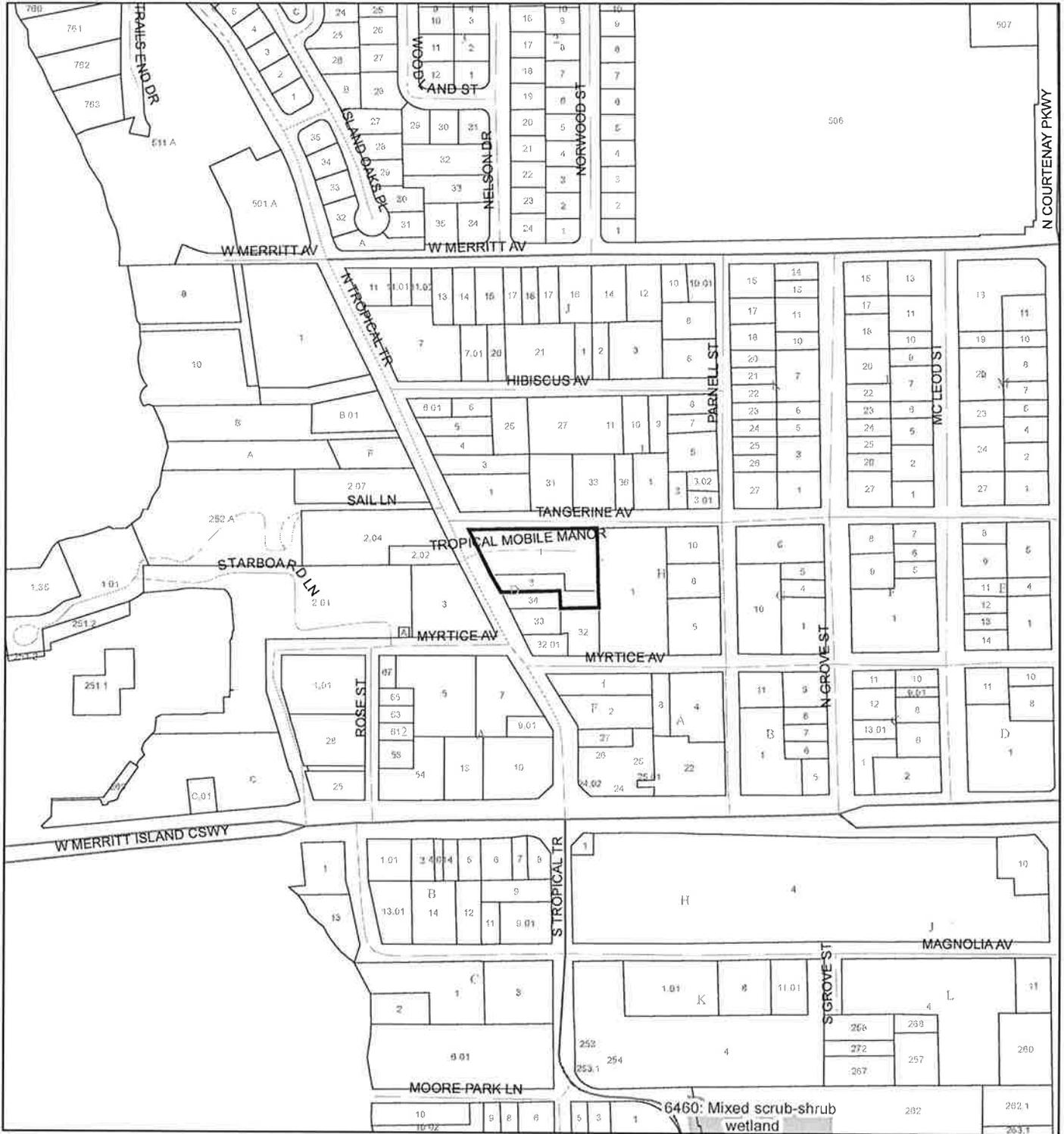
### National Wetlands Inventory (NWI)

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

TULSKIE, BARBARA J. AND JOSEPH J., JR.

18PZ00159



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 12/14/2018

## 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

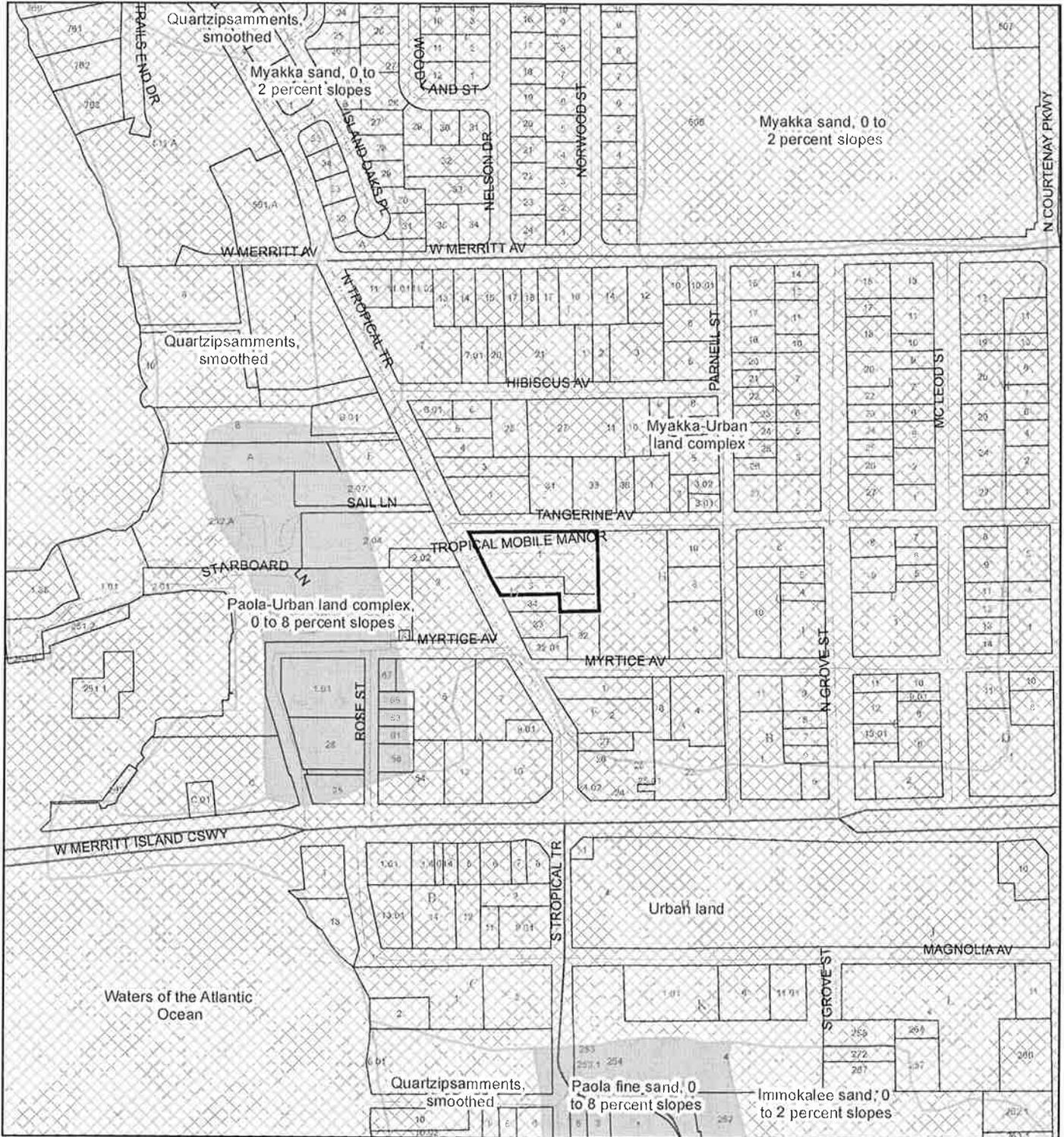
 Subject Property

 Parcels

# USDA SCSSS SOILS MAP

TULSKIE, BARBARA J. AND JOSEPH J., JR.

18PZ00159



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 12/14/2018

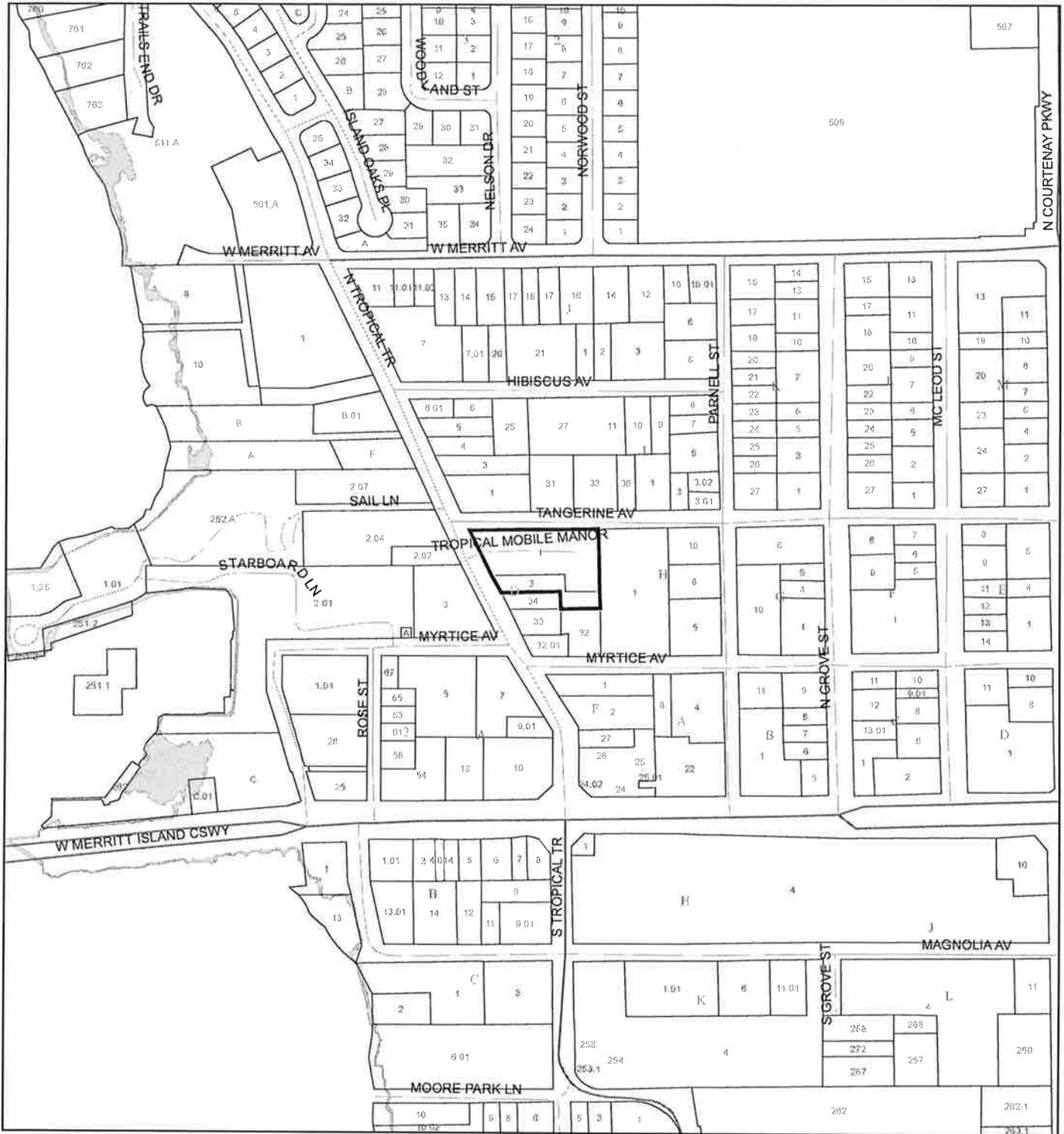
## USDA SCSSS Soils

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

# FEMA FLOOD ZONES MAP

TULSKIE, BARBARA J. AND JOSEPH J., JR.

18PZ00159



1:4,800 or 1 inch = 400 feet

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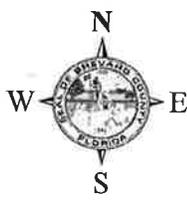
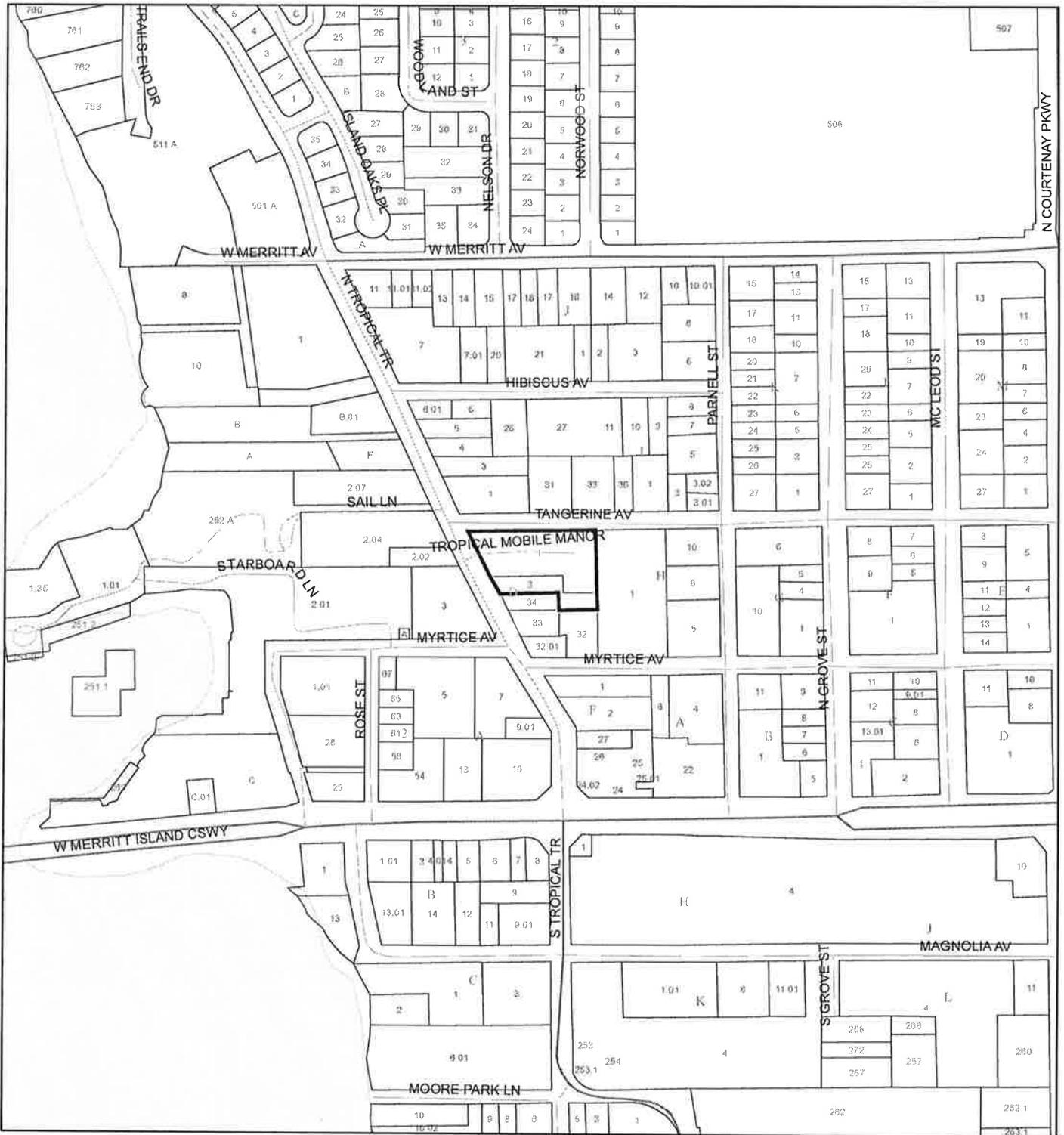
Produced by BoCC - GIS Date: 12/14/2018

- FEMA Flood Zones**
- A
  - AE
  - AH
  - AO
  - Open Water
  - VE
  - X
  - X Protected By Levee
  - 0.2 Percent Annual Chance Flood Hazard
  - 0.2 Percent Annual Chance Flood Hazard Contained in Channel
  - Subject Property
  - Parcels

# EAGLE NESTS MAP

TULSKIE, BARBARA J. AND JOSEPH J., JR.

18PZ00159



1:4,800 or 1 inch = 400 feet

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 Subject Property

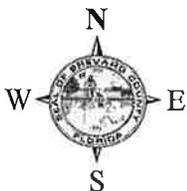
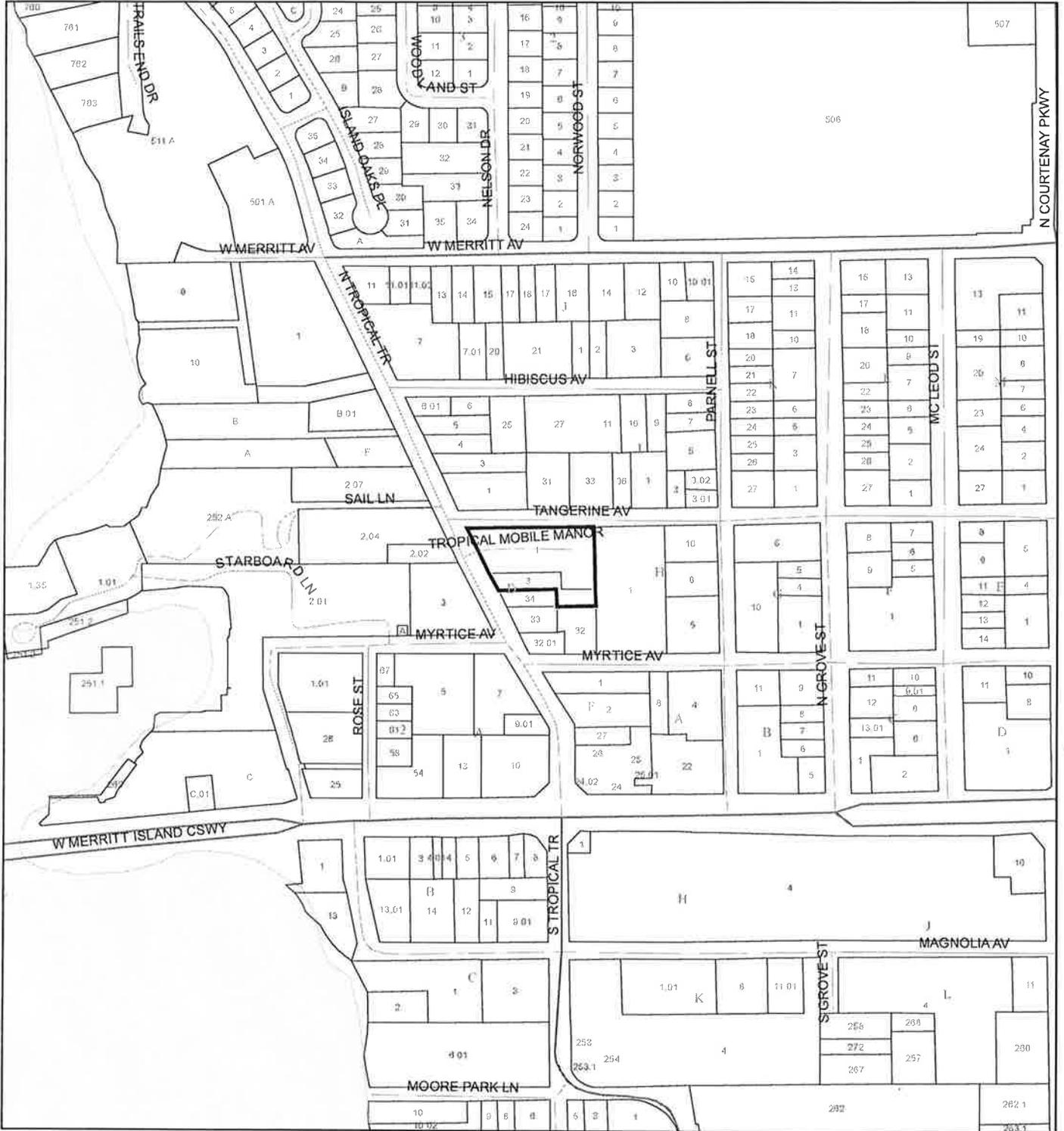
 Parcels

 Eagle Nests  
FWS 2010

# SCRUB JAY OCCUPANCY MAP

TULSKIE, BARBARA J. AND JOSEPH J., JR.

18PZ00159



1:4,800 or 1 inch = 400 feet

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

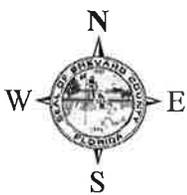
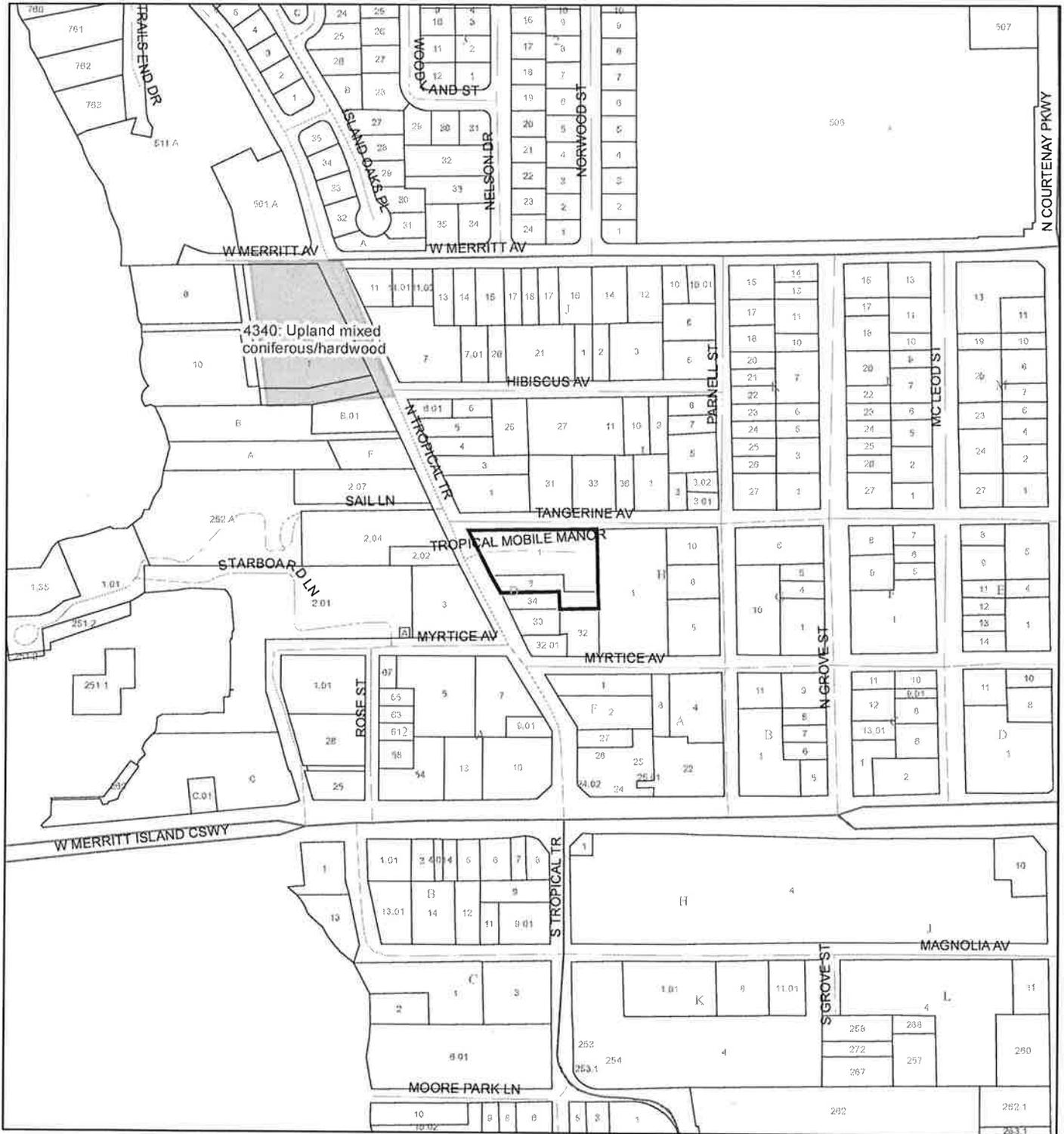
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 12/14/2018

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

TULSKIE, BARBARA J. AND JOSEPH J., JR.

18PZ00159



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 12/14/2018

## 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



# MERRITT ISLAND REDEVELOPMENT AGENCY

---

DATE: June 28, 2019

TO: Tad Calkins, Planning & Development Director  
Erin Sterk, Planning & Zoning Manager  
Jennifer Jones, Special Projects Coordinator

FROM: Cindy Thurman, MIRA Land Development Manager on behalf of the  
Merritt Island Redevelopment Agency Board of Directors

RE: **June 27, 2019 MIRA Meeting; Joseph & Barbara Tulske/ Rodney Honeycutt & Associates Inc.; 140 N. Tropical Trail; P & D Application for Amended BDP**

Pursuant to Section 62-2114 of Brevard County Code, "When an application is made to the P&Z Board for a change in zoning or approval of a conditional use permit, or to the Board of Adjustment for a variance, for property located in the MIRA area, the application shall be forwarded to the MIRA agency prior to the applicable public hearing before the P&Z board or the Board of Adjustment."

On February 28, 2019 at their regular meeting, the Merritt Island Redevelopment Agency Board of Directors heard the request for an amendment to the Binding Development Plan approved under zoning action #18PZ000159 for 140 N. Tropical Trail.

The request was approved unanimously by the Merritt Island Redevelopment Agency Board as amended.



**Scott Ellis**  
Clerk Of Courts, Brevard County  
#Pgs: 5 #Names: 3  
Trust: 3.00 Rec: 41.00 Serv: 0.00  
Deed: 0.00 Excise: 0.00  
Mtg: 0.00 nt Tax: 0.00

RETURN: Clerk to the Board #27

**Nick and Laura Stipanovich**  
**Prepared by:** Rochelle W. Lawandales, AICP  
Lawandales Planning Affiliates  
**Address:** 2200 Front Street  
Melbourne, Florida 32901  
**Phone:** 321.757.3197  
**Fax:** 321.757.3088

**BINDING DEVELOPMENT PLAN**

THIS AGREEMENT, entered into this 22nd day of November, 2005, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Nicholas S. and Laura J. Stipanovich, owners of real property located at 140 North Tropical Trail, Merritt Island, Florida (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 desires to develop the property as commercial, with office and mini-storage uses 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. There will be only two access points: North Tropical Trail will be the primary access for all vehicles. Tangerine Avenue will be available only for emergency vehicle access purposes.
3. The site will be completely enclosed with a wall and fence. A decorative concrete block wall will surround the property on the North Tropical Trail and Tangerine Avenue sides.

711171  
21

RETURN: Clerk to the Board #27  
↑

4. The owner will apply for a variance to allow an eight (8) foot wall. However, failure to obtain the variance from the County Board of Adjustment shall not affect the approval of this conditional use request nor the ability to obtain site plan or any other permit approvals needed to develop the project.
5. Pavers will be used at the driveway entry-ways for enhanced aesthetics.
6. Wrought or similar type of "iron" gates will be used.
7. Landscaping will be on the outside of the wall to soften the appearance of the wall.
8. No parking of vehicles or equipment will be allowed outside the wall.
9. All lawn maintenance/sweeper equipment and materials used in association with the lawn care business shall be contained within the compound.
10. The Developer/Owner shall limit the uses under the BU-2 zoning district classification to only that of:
  - a. An office for the operation of the storage and lawn care/sweeper business
  - b. Equipment storage associated with the lawn care/sweeper business as noted in #8 above, and
  - c. Mini warehouse (self storage)
11. No other BU-2 uses shall be permitted. Any other uses of the subject property shall be limited to those identified within the Brevard County Land Development Code under the BU-1 Commercial Zoning category as "Permitted Uses".
12. No storage doors shall be located on N. Tropical Trail.
13. The owner would agree to the County administratively rezoning the property to another commercial district classification provided that the existing approved uses and operations on the site continued to be conforming uses under the new zoning district and land development regulations.
14. 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.
15. Developer/Owner, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in Brevard County, Florida.

Z1117 1

RETURN: Clerk to the Board #27

- 16. 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 22, Nov. 05. In the event the subject property is annexed into a municipality and rezoned, this Agreement shall be null and void.
- 17. 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 it may be amended.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

*Scott Ellis*  
\_\_\_\_\_  
Scott Ellis, Clerk  
(SEAL)

*Helen Voltz*  
\_\_\_\_\_  
Helen Voltz, Chair  
As approved by the Board on 11-22-05

STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 22 day of November, 2005, by Helen Voltz, Chair of the Board of County Commissioners of Brevard County, Florida, who is personally known to me or who has produced as identification.

My commission expires

Notary Public

SEAL

Commission No.:

(Name typed or stamped)



(Please note: You must have two witnesses and a notary for each signature required. The notary may serve as one witness.)

7 1 1 1 7 1

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WITNESSES:

Heather Reed  
HEATHER L REED  
(Witness Name typed or printed)

DEVELOPER/OWNER

Nicholas S. Stipanovich  
Nicholas S. Stipanovich  
(Name typed or printed)

Heather Reed  
HEATHER L REED  
(Witness Name typed or printed)

Laura J. Stipanovich  
Laura J. Stipanovich  
(Name typed or printed)

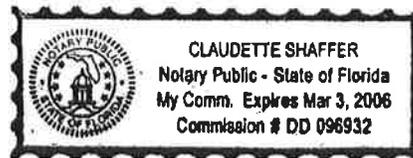
STATE OF Florida §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 8th day of November, 2005, by Nicholas S. and Laura J. Stipanovich, Owners of 140 N. Tropical Trail, who is personally known to me or who has produced Personally known as identification.

My commission expires  
SEAL  
Commission No.:

Claudette Shaffer  
Notary Public

(Name typed, printed or stamped)



211171

**BINDING DEVELOPMENT PLAN**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred as "County") and Joseph J. and Barbara J. Tulskie (hereinafter referred to as "Developer/Owner").

**RECITALS**

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

WHEREAS, Developer/Owner has requested a BU-2 zoning classification with a Binding Development Plan amendment and desires to develop the Property as ~~Mobile Home~~ Motor Home and Travel Trailers Sales (Travel Trailers shall include all types of RV Vehicles and equipment) ~~on a portion of the site with a future retail and office building on the balance of the site,~~ and 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 future 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 BU-2 uses on the property shall be limited to RV Display/Sales with Detailing and Minor Repairs ~~and a retail/office building that is a maximum of 2,600 square feet.~~

3. The only access to the site will be from the existing access on North Tropical Trail and the existing access on Tangerine Avenue which will be updated to current Brevard County Standards.

4. There shall be an opaque access gate on North Tropical Trail.

5. The property will be completely buffered by a combination of plantings, fence and the opaque gate on North Tropical Trail.

6. No parking of vehicles or equipment from any use on the site will be allowed outside the property.

7. The Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developers/Owners agreement to meet additional standards or restrictions in future development of 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.

8. The Developer/Owner, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in Brevard County, Florida.

9. 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 \_\_\_\_\_. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

10. 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.

11. No other BU-2 uses shall be permitted. Any other uses of the subject property shall be limited to those within the Brevard County Land Development code under the BU-1 commercial zoning category listed as "permitted uses".

12. Conditions precedent. All mandatory conditions set forth in the Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 6 above

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed, all as of the date and year first written above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

\_\_\_\_\_  
Scott Ellis, Clerk  
(SEAL)

\_\_\_\_\_  
Kristine Isnardi, Chairman  
As approved by the Board on \_\_\_\_\_

(Please note: You must have two witnesses and a notary for each signature required. The notary may serve as one witness.)

WITNESSES:

OWNER

\_\_\_\_\_

\_\_\_\_\_  
Joseph J. Tulske, Jr.

\_\_\_\_\_  
(Witness Name typed or printed)

\_\_\_\_\_  
(Address)

WITNESSES:

OWNER

\_\_\_\_\_

\_\_\_\_\_  
Barbara J. Tulske

\_\_\_\_\_  
(Witness Name typed or printed)

\_\_\_\_\_  
(Address)

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  
SEAL  
Commission No.:

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
(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

\_\_\_\_\_

\_\_\_\_\_

(Witness name typed or printed)

(Address)

\_\_\_\_\_

Authorized Agent Signature

(Witness name typed or printed)

(Name/title typed, printed or stamped)

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)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lots 1, 2, 3, 4 and 5 and the East 112 feet of the North 49 feet of Lot 34, Block D, MERRITT WINTER HOMES DEVELOPMENT SUBDIVISION, Map No. 2, according to the plat thereof as recorded in Plat Book 2, page 78, public records of Brevard County, Florida.

## PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, August 5, 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 at 3:00 p.m.

Board members present were: Ron Bartcher, Rochelle Lawandales; Ben Glover; Ron McLellan; Mark Wadsworth; Bruce Moia; Peter Filiberto; and Dane Theodore.

Staff members present were: Amanda Elmore, Interim Planning and Zoning Manager; Tad Calkins, Planning and Development Director; Jad Brewer, Assistant County Attorney; Paul Body, Planner II, and Jennifer Jones, Special Projects Coordinator II.

### Excerpt from Complete Agenda

#### **7. Barbara J. and Joseph J. Tulsie, Jr. (Rodney Honeycutt)**

An amendment to an existing BDP (Binding Development Plan), in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification. The property is 1.55 acres, located on the southeast corner of Tangerine Avenue and North Tropical Trail. (140 North Tropical Trail, Merritt Island) (18PZ00159) (District 2) This item was tabled from the July 22, 2019, Local Planning Agency meeting.

Rodney Honeycutt, 3700 South Washington Avenue, Titusville, stated the reason for the request is because the original BDP (Binding Development Plan) on the property allowed a landscape and storage area, as well as all of the BU-1 (General Retail Commercial) uses. He explained that the Tulsie's rezoned to BU-2, but changed the allowable use to recreational vehicle sales and display, as well as a retail building, but they did not include the BU-1 uses because they didn't see a need for it, but when they tried to record the BDP, the bank would not sign the joinder because the BU-1 uses were not included. He noted there is no change in their plans, they just want the BU-1 uses included in the BDP.

Motion by Rochelle Lawandales, seconded by Bruce Moia, to approve the requested amendment to an existing BDP as originally approved on March 7, 2019, with the following limitations: the uses on the property shall be limited to recreational vehicle display/sales with detailing and minor repairs; a retail and office building of a maximum of 2,600 square feet; the only access to the site will be from the existing access on North Tropical Trail and the existing access on Tangerine Avenue; an opaque access gate on North Tropical Trail; the property shall be completely buffered by a combination of plantings, fence, and the opaque gate on North Tropical Trail; parking of vehicles or equipment from any use on the site will not be allowed outside the property; and approved the additional stipulation that no other BU-2 uses shall be permitted. Any other uses of the subject property shall be limited to those within the Brevard County Land Development Code under the BU-1 commercial zoning classification listed as "permitted uses". The motion passed unanimously.

Upon consensus of the board, the meeting adjourned at 4:26 p.m.