



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.1.

3/5/2020

Subject:

Beatrice Akman (Corey Lancaster) requests a CUP for a Guesthouse in an RU-1-11 zoning classification. (19PZ00139) (Tax Account 2514604) (District 2)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a CUP (Conditional Use Permit) for a Guesthouse in an RU-1-11 zoning classification.

Summary Explanation and Background:

The applicant is seeking a CUP to build a 1,188 sq. ft guesthouse to be used for visiting family and not rented. The property is located at 1291 Newfound Harbor Drive, Merritt Island and is currently developed with a 4,250 square-foot single-family home with 3,549.7 sq. ft of living area on 0.96 acres. As the property is less than one acre, a CUP is required for a guesthouse, per Section 62-1932(b). The proposed guesthouse is not allowed to have a kitchen, and may not be used for rental purposes.

At 0.96 acres, four detached accessory structures are permitted on the property, each not exceeding 600 square feet or 50% of the living area of the principal structure, whichever is greater. All detached accessory structures shall not exceed the floor area of the principal structure. Per the proposed plan, the guesthouse will be 1,188 square feet and will meet the accessory structure size requirements.

The developed character of the surrounding area are single-family residential residences with a Residential 4 and Residential 6 (across Newfound Harbor Rd.) Future Land Use designation and RU-1-11 zoning.

The existing house is not connected to sewer; however, Brevard County sewer is located along the east side of Newfound Harbor Drive directly in front of the parcel.

The Board may wish to consider whether the use of a guesthouse is compatible with the abutting lots and surrounding single-family residences. There are no other guesthouses within a half-mile of the subject property. The Board may wish to consider that the guesthouse be connected to Brevard County sewer and not be on septic. In addition, the Board may wish to consider additional conditions beyond those cited in Sections 62-1901 and 62-1932 in order to mitigate potential impacts to the community.

This item was tabled from the January 13, 2020, Planning and Zoning meeting, and the February 6, 2020, Commission meeting due to the applicant's failure to appear.

On February 10, 2020, the Planning and Zoning Board heard the request and recommended approval by a 6:3 vote, with the condition that the applicant connect both the principal structure and the guesthouse to sewer, if available.

Clerk to the Board Instructions:

Once resolution is received, please execute and return to Planning and Development.

Resolution 19PZ00139

On motion by Commissioner Smith, seconded by Commissioner Lober, the following resolution was adopted by a unanimous vote:

WHEREAS, Beatrice A. Akman has requested a CUP (Conditional Use Permit) for a Guesthouse in an RU-1-11 (Single-Family Residential) zoning classification, on property described as Lot 15.03, Banana River Drive Subdivision, as recorded in ORB 7515, Pages 2415 – 2417, of the Public Records of Brevard County, Florida. **Section 06, Township 25, Range 37.** (0.96 acres) Located on the west side of Newfound Harbor Dr., approximately 150 ft. north of Jaren Ave. (1291 Newfound Harbor Dr., Merritt Island); and

WHEREAS, a public hearing of the Brevard County Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning and Zoning Board recommended that the application be approved with the condition that the principal structure and the guesthouse be connected to sewer if available; and

WHEREAS, the Board, after considering said application and Brevard County Planning and Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be approved with the condition that the principal structure and the guesthouse be connected to sewer if available, or the advanced septic system if sewer is not available; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested CUP for Guesthouse in an RU-1-11 zoning classification, be approved with the condition that the principal structure and the guesthouse be connected to sewer if available, or the advanced septic system if sewer is not available. The Planning and Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of March 5, 2020.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida

Bryan Andrew Lober

Bryan Lober, Chair

Brevard County Commission

As approved by the Board on March 5, 2020.

ATTEST:

Scott Ellis
SCOTT ELLIS, CLERK

(SEAL)

Planning and Zoning Board Hearing – February 10, 2020

Please note: A CUP (Conditional Use Permit) will generally expire on the three-year anniversary of its approval if the use is not established prior to that date. CUPs for Towers and Antennas shall expire if a site plan for the tower is not submitted within one year of approval or if construction does not commence within two years of approval. A Planned Unit Development Preliminary Development Plan expires if a final development plan is not filed within three years. **The granting of this zoning does not guarantee physical development of the property. At the time of development, said**

development must be in accordance with the criteria of the Brevard County Comprehensive Plan and other applicable laws and ordinances.

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.



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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STAFF COMMENTS

19PZ00139

Beatrice A. Akman

**CUP (Conditional Use Permit) for Guesthouse in an RU-1-11 (Single-Family Residential)
Zoning Classification**

Tax Account Number: 2514604
Parcel I.D.: 25-37-06-CX-*-15.03
Location: west side of Newfound Harbor Dr., approximately 150 ft. north of
Jaren Ave. (1291 Newfound Harbor Dr., Merritt Island) (District 2)
Acreage: 0.96 acres

Planning and Zoning Board: 01/13/20

Board of County Commissioners: 02/06/20

Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	RU-1-11	RU-1-11 and Guesthouse
Potential*	One Unit	Two Units
Can be Considered under the Future Land Use Map	Yes RES 4 (Residential 4)	Yes RES 4 (Residential 4)

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

Background and Purpose of Request

The applicant is seeking a Conditional Use Permit (CUP) to build a proposed 1,188 square-foot guesthouse. The site is currently developed with a 4,250 square-foot single-family home which has 3,549.7 square feet of living area and a 482.8 square-foot detached garage on 0.96 acres. As the size of the site is not one acre in size, a CUP is required for the proposed guesthouse. Per Sec. 62-1932(b), "A conditional use permit shall not be required on parcels equal to or exceeding one acre in size." The proposed guesthouse will be used by the applicant's family and not rented.

The parcel contains 0.96 acres which permits four detached accessory structures. Each detached accessory building or structure shall not exceed 600 square feet or 50 percent of the

living area of the principal building, whichever is greater. All detached accessory buildings shall not exceed the floor area of the principal structure. Per the proposed plan, the guesthouse will be 1,188 square feet and will meet accessory structure size requirements.

The original zoning of the site was GU (General Use) and RU-1 (Single Family Residential), which was changed to RU-1-13 per Resolution No. **Z-2980** in 1972. The single-family home on the parcel was constructed in 1987.

Land Use

This site retains the Residential 4 (RES 4) Future Land Use (FLU) designation. The current zoning classification of RU-1-11 is consistent with the Future Land Use designation.

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

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 through 8 of the Future Land Use Element, outlined in the Administrative Policies.

Environmental Constraints

Natural Resource Management Department has listed Hydric Soils, Aquifer Recharge Soils, Floodplain, Coastal High Hazard Area, State Surface Waters, Indian River Lagoon Septic Overlay, Heritage Specimen Trees and Protected Species as a summary of mapped resources and noteworthy land use issues on the subject parcel.

Preliminary Transportation Concurrency

The subject property is on the concurrency management segment of Newfound Harbor Drive, between Highway 520 and the west end of Newfound Harbor Drive, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of E, and currently operates at 45.13% of capacity daily. The maximum development potential from the proposed CUP does increase the proposed trip generation by 0.06 percentage points. The corridor is anticipated to operate at 45.19% of capacity daily (LOS C). The trips anticipated from this CUP activity will not create a deficiency in LOS.

No school concurrency information has been provided as the development potential of this site falls below the minimum number of new residential lots that would require a formal review.

The existing house is not connected to sewer; however, Brevard County sewer is located running along the east side of Newfound Harbor Drive directly in front of the parcel.

The parcel is serviced by City of Cocoa water.

Applicable Land Use Policies

The applicant is seeking a Conditional Use Permit (CUP) to build a proposed 1,188 square-foot guesthouse. The site is currently developed with a 4,250 square-foot single-family home which has 3,549.7 square feet of living area and a 482.8 square-foot detached garage on 0.96 acres. The proposed guesthouse will be 1,188 square feet and will not have a kitchen but will have a wet bar. Per Sec. 62-1932(c), "A guesthouse or servants' quarters may contain kitchen facilities on parcels of at least one acre in size where the resulting density of the lot including the guesthouse or servants' quarters is consistent with the zoning regulation and comprehensive plan density designation."

The current zoning of the property is 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.

The developed character of the area along both sides of Newfound Harbor Drive is RU-1-11 single-family residentially-zoned lots with a RES 4 FLU designation.

The abutting parcels to the north of the subject property are zoned RU-1-11 with a FLU designation of RES 4 on 0.76 acres and 0.41 acres. To the east of the property is Newfound Harbor Drive. The abutting parcels to the south are zoned RU-1-11 with a RES 4 FLU designation on 0.43 acres and 0.48 acres. To the west of the property is Newfound Harbor waterway.

There has been one zoning action within a half-mile of the subject property in the last 5 years. On September 05, 2019, application **19PZ00080** replaced existing CUP for mitigating a nonconforming use (marina) with modified CUP for the marina on 7.06 acre parcel located approximately 710 feet east of the subject property.

Special Considerations for CUP (Conditional Use Permit)

The Board may consider the compatibility of the proposed CUP pursuant to Section 62-1151(c) and to Section 62-1901, as outlined on pages 6 – 8 of these comments. Section 62-1901 provides that 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.** The applicant's responses and staff observations, if any, are indicated below.

Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP based upon consideration of applicable regulations relating to zoning and land use within the context of public health, safety and welfare. The applicant has submitted documentation in order to demonstrate consistency with the standards set forth in Section 62-1901 and Section 62-1932, guesthouses or servants' quarters.

This request should be evaluated in the context of Section 62-1932 which outlines conditions for guesthouses or servants' quarters which states:

(a) *Guesthouses or servants' quarters are subject to the following minimum requirements:*

- (1) *The structure shall contain no kitchen facilities except where consistent with paragraph (c) below.*

Staff's Observation: Guesthouse will not have a kitchen, see (c) below.

- (2) *The structure shall be a detached accessory structure located to the rear of the principal structure and shall not be attached to any other accessory structure.*

Staff's Observation: Parcel is a double frontage lot with frontage on Newfound Harbor Drive and Newfound Harbor a major water way. The owner has elected the Newfound Harbor water line as the front property line of parcel. Proposed guesthouse will be located to the rear of the principal structure and shall not be attached to any other accessory structure.

- (3) *The structure shall not exceed the maximum size permitted for accessory structures in the applicable zoning classification. Where there is no maximum, the structure shall not exceed 50 percent of the size of the principal structure.*

Staff's Observation: The existing single-family house has 3,549.7 sq. ft. of living area. Each detached accessory building or structure shall not exceed 600 square feet or 50 percent of the living area of the principal building, whichever is greater. Per the proposed plan the Guesthouse will be 1,188 sq. ft. and will meet accessory size requirement.

- (4) *The structure shall be used for the accommodation of family members, temporary guests (maximum six months), or servants only.*

Staff's Observation: The guesthouse will be for family members.

- (5) *The structure shall not be used for rental purposes.*

Staff's Observation: The guesthouse will be for family members and not rented.

- (6) *The structure shall be set back a minimum of ten feet from the side and rear lot lines.*

Staffs Observation: Proposed site plan shows guesthouse will be setback 31 feet off south side property line.

- (b) *This conditional use shall not be granted on a parcel of land containing less than one-half acre. A conditional use permit shall not be required on parcels equal to or exceeding one acre in size.*

Staff's Observation: The parcel contains 0.96 acre which requires the CUP.

- (c) *A guesthouse or servants' quarters may contain kitchen facilities on parcels of at least one acre in size where the resulting density of the lot including the guesthouse or servants' quarters is consistent with the zoning regulation and comprehensive plan density designation. All other conditions enumerated above shall apply.*

Staff's Observation: Per the proposed plan provided the guesthouse will not have a kitchen, but will have a wet bar. Per Definitions and rules of construction in section 62-1102: Kitchen means a room or area within a room whose primary purpose is to store, prepare and cook food. A kitchen will have a refrigerator to store food, counter space and a sink to prepare food, and a stove and/or range to cook food.

General Standards of Review

Section 62-1901(c)(1)(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.

Applicant's Response: None of them would be affected by the project.

Staff's Observation: Proposed guesthouse should not affect these or cause a deficiency in LOS trips.

Section 62-1901(c)(1)(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.

Applicant's Response: Yes.

Staff's Observation: Will meet setbacks and building size per proposed plans.

Section 62-1901(c)(1)(c): The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebutably presumed to have occurred if abutting property suffers a 15 percent reduction in value as a result of the proposed conditional use. A reduction of ten percent of the value of abutting property shall create a reputable 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.

Applicant's Response: Does not apply.

Staff's Observation: Proposed guesthouse should not reduce values of abutting properties. Parcel is 0.96 acres, if parcel was one acre applicant would not need CUP for a guesthouse.

Section 62-1901(c)(2)(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 percent, or ten percent 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 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.

Applicant's Response: Will not cause any additional traffic.

Staff's Observation: Proposed guesthouse should not affect these or cause a deficiency in LOS trips.

Section 62-1901(c)(2)(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.

Applicant's Response: Will not interfere adjacent property.

Staff's Observation: Proposed guesthouse should not create these.

Section 62-1901(c)(2)(c): Noise levels for a conditional use are governed by section 62-2271.

Applicant's Response: Don't apply.

Staff's Observation: Proposed guesthouse should not create high noise levels.

Section 62-1901(c)(2)(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.

Applicant's Response: Don't apply.

Staff's Observation: Proposed guesthouse should not exceeded level of service.

Section 62-1901(c)(2)(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.

Applicant's Response: Will not apply.

Staff's Observation: Proposed guesthouse should not exceeded level of service.

Section 62-1901(c)(2)(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.

Applicant's Response: Will not apply.

Staff's Observation: Proposed CUP does not require these.

Section 62-1901(c)(2)(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.

Applicant's Response: Not applicable

Staff's Observation: Proposed CUP does not require these.

Section 62-1901(c)(2)(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.

Applicant's Response: Not applicable.

Staff's Observation: Not applicable to this CUP.

Section 62-1901(c)(2)(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.

Applicant's Response: See attached plan.

Staff's Observation: Proposed guesthouse will be one story high per proposed plans.

Section 62-1901(c)(2)(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.

Applicant's Response: Do not apply.

Staff's Observation: Parcel is 0.96 acres and will have adequate parking.

For Board Consideration

The applicant is seeking a Conditional Use Permit (CUP) to build a proposed 1,188 square-foot guesthouse and will not have a kitchen, but will have a wet bar. The site is currently developed with a 4,250 square-foot single-family home which has 3,549.7 square feet of living area and a 482.8 square-foot detached garage on 0.96 acres. As the size of the site is not one acre in size, a CUP is required for the proposed guesthouse. Per Sec. 62-1932(b), "A conditional use permit shall not be required on parcels equal to or exceeding one acre in size." The proposed guesthouse will be used by the applicant's family and not rented.

The Board may consider whether the use of a guesthouse is compatible with the abutting lots and surrounding area, which are developed with single-family residences. There are no other guesthouses within a half-mile of the subject property. The parcel abuts the natural waterbody Newfound Harbor. The Board may consider that the guesthouse be connected to Brevard County sewer and not be on septic. The Board may also consider the restriction that the guesthouse be not rented out.

CUP may be: 1) approved subject to the conditions of Section 62-1932; 2) approved subject to the conditions of 62-1932 and conditions imposed by the Board above and beyond the requirements of Section 62-1932; or 3) denied.

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

Item # 19PZ00139

Applicant: Beatrice Akman

CUP Request: Applicant desires to build a guesthouse

P&Z Hearing Date: 01/13/20; **BCC Hearing date:** 02/06/20

Tax ID No: 2514604

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

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Hydric Soils
- Aquifer Recharge Soils
- Floodplain
- Coastal High Hazard Area
- State Surface Waters
- Indian River Lagoon Septic Overlay
- Heritage Specimen Trees
- Protected Species

The entire property is mapped within the Indian River Lagoon Septic Overlay. If sewer is not available, the conditional use to allow for a guesthouse may require septic system modifications designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If sewer is not available, the applicant shall contact the Florida Department of Environmental Health at 321-633-2100.

Land Use Comments:

Hydric Soils

The subject parcel contains a small area of mapped hydric soils (Turnbull and Riomar soils, tidal) on the northwest portion of the property, as shown on the USDA SCSSs soils map; an indicator that hydric soils and wetlands may be present on the property. Per Section 62-3694(c)(2), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy would render a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. Application of the one-unit-per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property as defined in Sec. 65-694(c)(6). Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and Section 62-3696.

Aquifer Recharge Soils

The subject parcel contains mapped aquifer recharge soils (Paola fine sand) as shown on the USDA SCSSs soils map. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance

Floodplain

The subject parcel contains an area of mapped floodplain as identified by FEMA, and as shown on the FEMA Flood Map. The floodplain area is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

Coastal High Hazard Area

A portion of the property is in the Coastal High Hazard Area (CHHA). Objective 7.0 of the Brevard County Comprehensive Plan, Coastal Management Element is to, "Limit densities within the coastal high hazard zone **and direct development outside of this area.**"

Surface Water Classification

The property is located on surface waters designated by the State as an Aquatic Preserve and Outstanding Florida Waters. A 50-foot surface water protection buffer (Buffer) is required. Except as allowable under Section 62-3668(7), primary structures shall be located outside of the Buffer. Accessory structures within the Buffer are permissible provided that stormwater management is provided, impervious areas do not exceed 30% of Buffer area, and avoidance/minimization of Buffer impacts is followed so that surface water quality and natural habitat is not adversely affected.

Indian River Lagoon Septic Overlay

The entire property is mapped within the Indian River Lagoon Septic Overlay. If sewer is not available, the conditional use to allow for a guesthouse may require septic system modifications designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If applicable, the applicant shall contact the Florida Department of Environmental Health at 321-633-2100.

Heritage Specimen Trees

Aerials indicate the subject property may contain Heritage Specimen trees (greater than or equal to 24 inches in diameter), or Protected trees (greater than or equal to 10 inches in diameter). 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 and Protected 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.

Protected Species

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

From: Ritchie, George C
To: Jones, Jennifer
Subject: FW: sewer connectivity to zoning file 19PZ00139
Date: Tuesday, February 18, 2020 8:34:33 AM

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 # (321-350-8272)

From: Hurley, Tammy L
Sent: Tuesday, February 18, 2020 8:27 AM
To: Ritchie, George C
Cc: Ball, Jeffrey
Subject: RE: sewer connectivity to zoning file 19PZ00139

George

They are not connected to sewer. There is a gravity line on the east side of Newfound Harbor they can connect to.

Tammy

From: Ritchie, George C
Sent: Monday, February 17, 2020 8:27 AM
To: Hurley, Tammy L <Tammy.Hurley@brevardfl.gov>
Cc: Ball, Jeffrey <Jeffrey.Ball@brevardfl.gov>
Subject: sewer connectivity to zoning file 19PZ00139

Good morning Tammy,

Does this lot have access to sewer? They want a guesthouse added to the residential lot. Would they need a lift station or just gravity connection.

Account # 2514604

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.

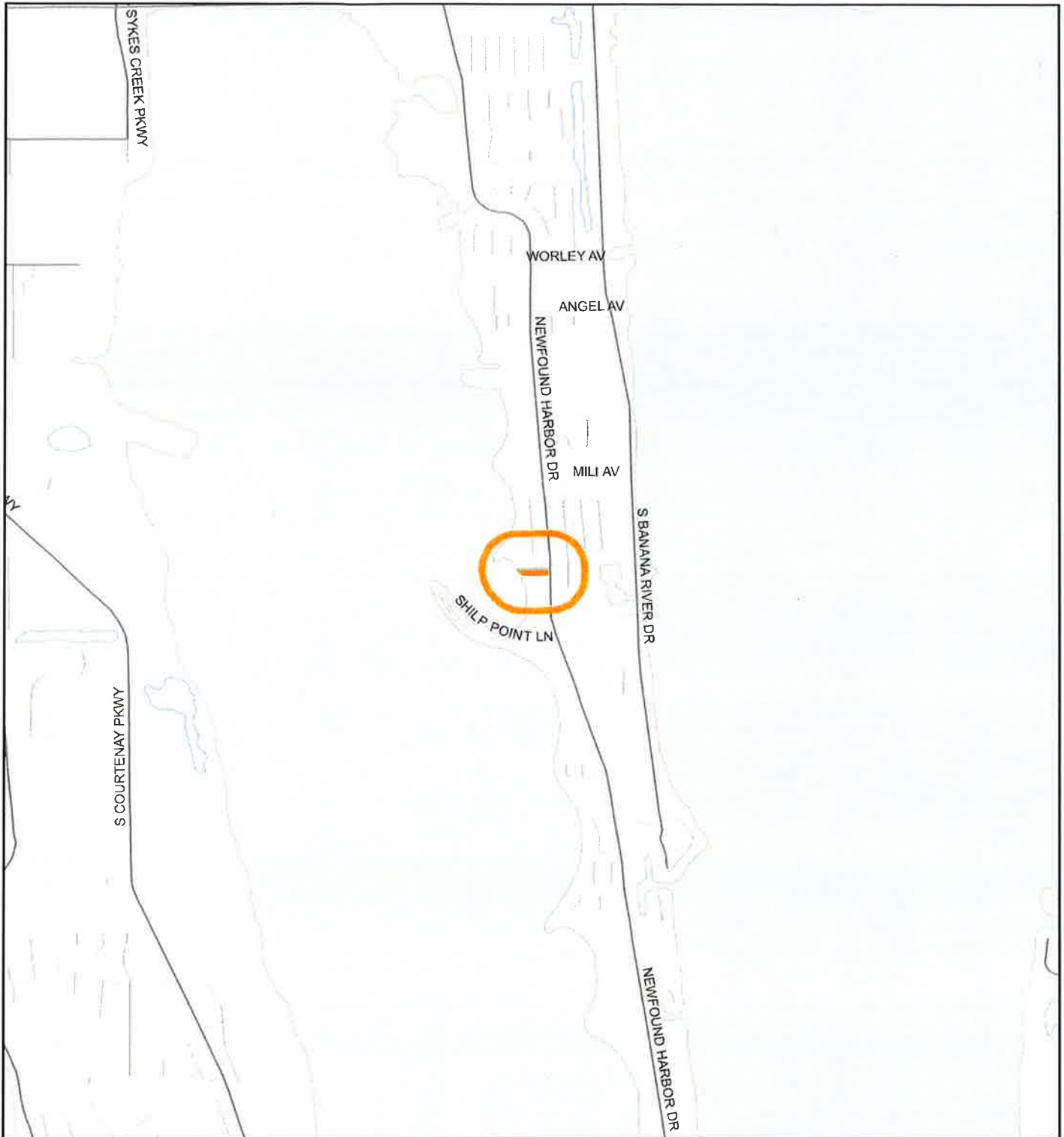
George C. Ritchie, Planner III, Zoning Office
Brevard County Planning & Development Department
2725 Judge Fran Jamieson Way Bldg. A-114
Viera, FL 32940

Phone # (321-350-8272)

LOCATION MAP

AKMAN, BEATRICE A.

19PZ00139



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: 11/4/2019

Buffer
Subject Property

ZONING MAP

AKMAN, BEATRICE A.

19PZ00139



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/4/2019

Subject Property

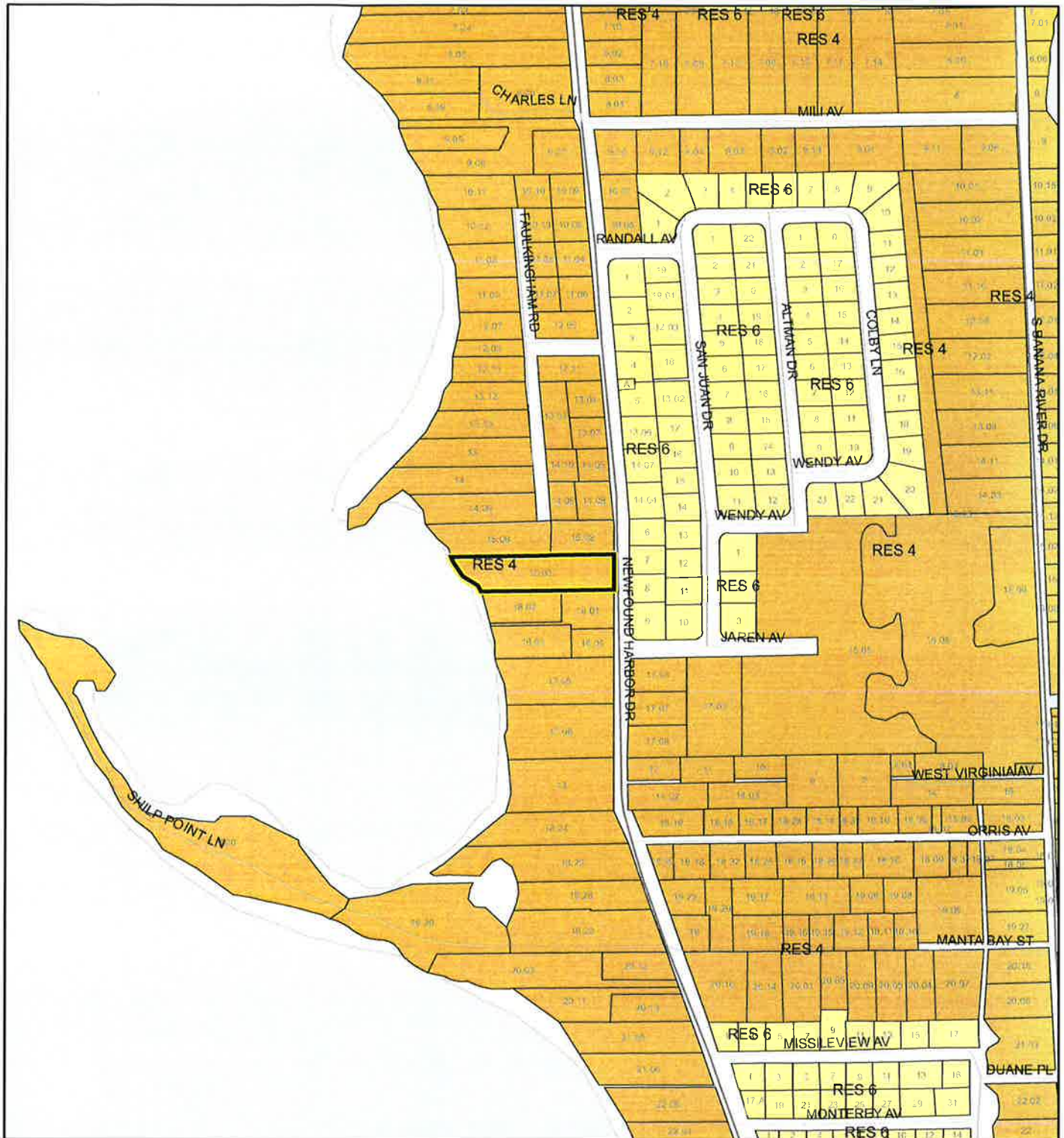
Parcels

Zoning

FUTURE LAND USE MAP

AKMAN, BEATRICE A.

19PZ00139



1:4,800 or 1 inch = 400 feet

Subject Property
Parcels

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Produced by BoCC - GIS Date: 11/4/2019

AERIAL MAP

AKMAN, BEATRICE A.

19PZ00139




1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2019

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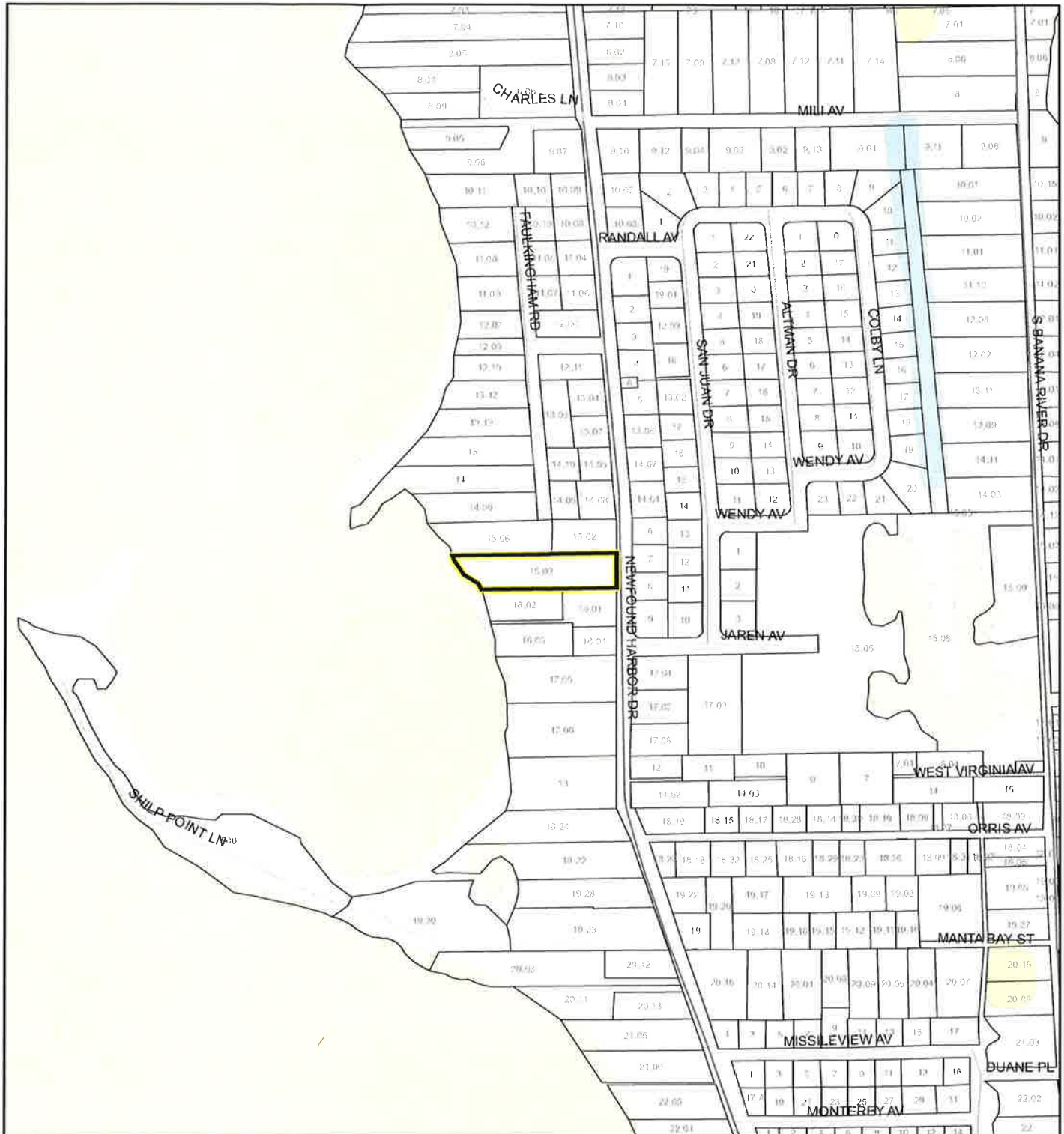
 Subject Property

 Parcels

NWI WETLANDS MAP

AKMAN, BEATRICE A.

19PZ00139



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/4/2019

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

AKMAN, BEATRICE A.

19PZ00139



1:4,800 or 1 inch = 400 feet

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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

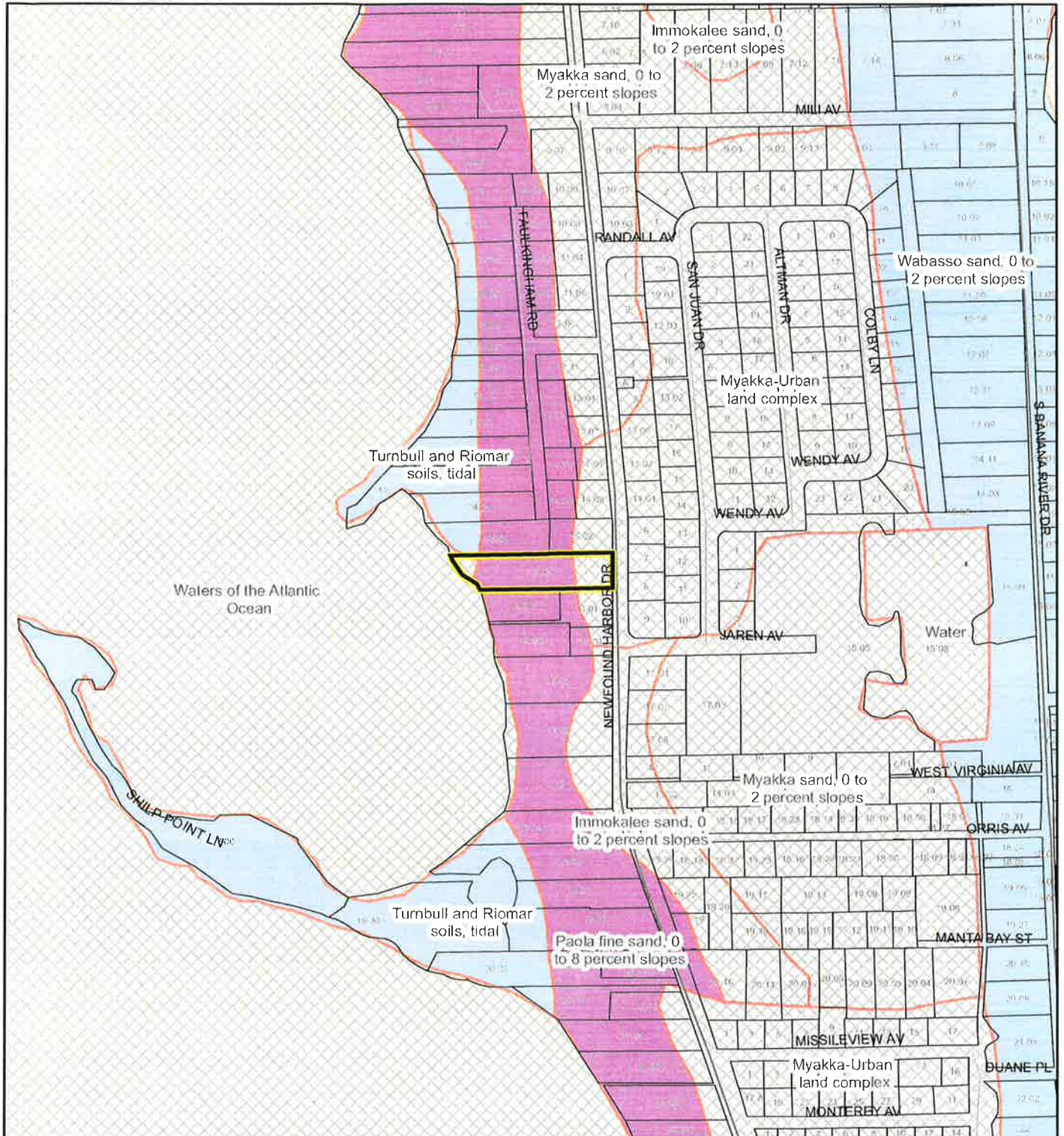
Subject Property

Parcels

USDA SCSSS SOILS MAP

AKMAN, BEATRICE A.

19PZ00139



1:4,800 or 1 inch = 400 feet

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USDA SCSSS Soils

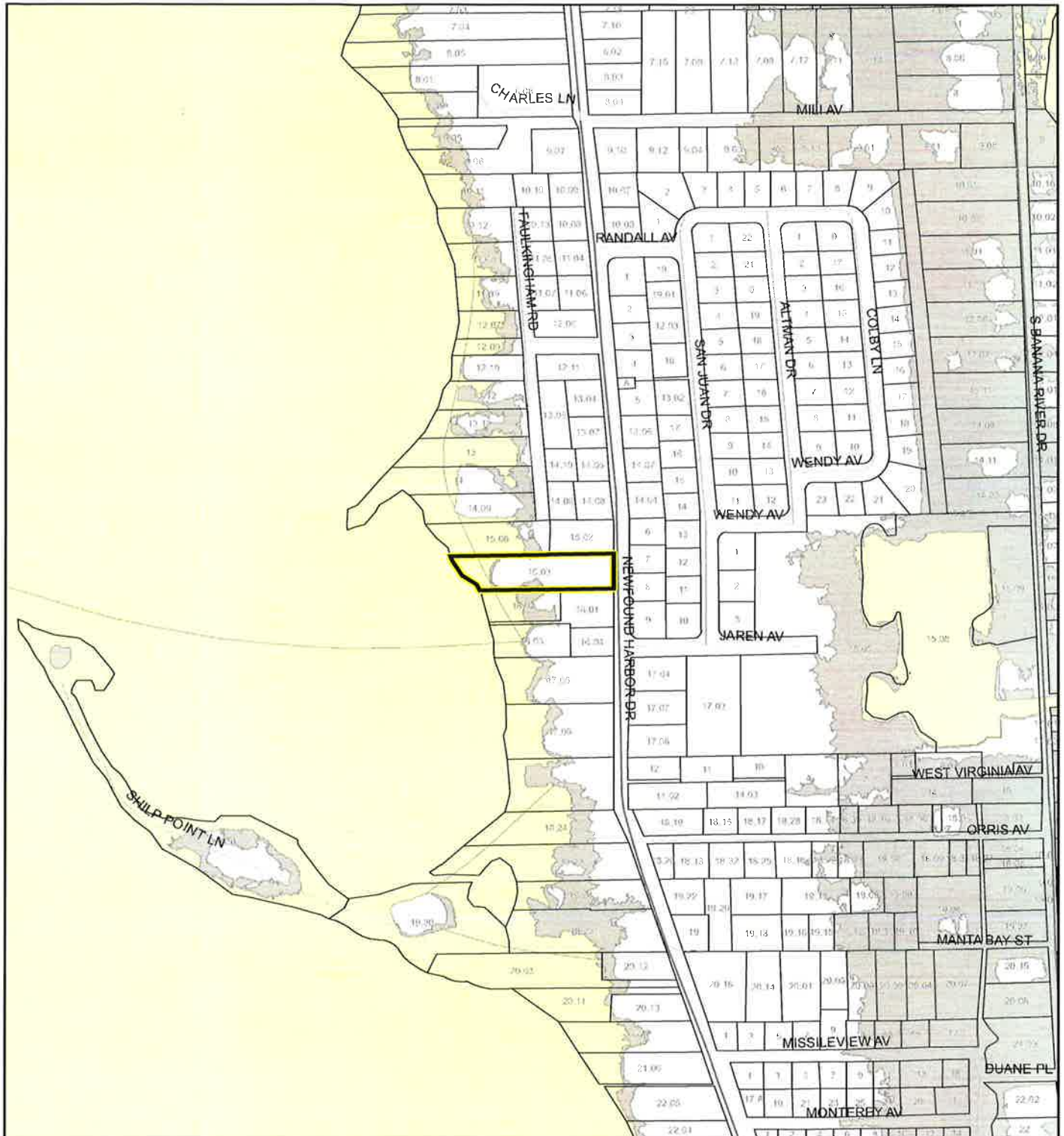
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

FEMA FLOOD ZONES MAP

AKMAN, BEATRICE A.

19PZ00139



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/4/2019

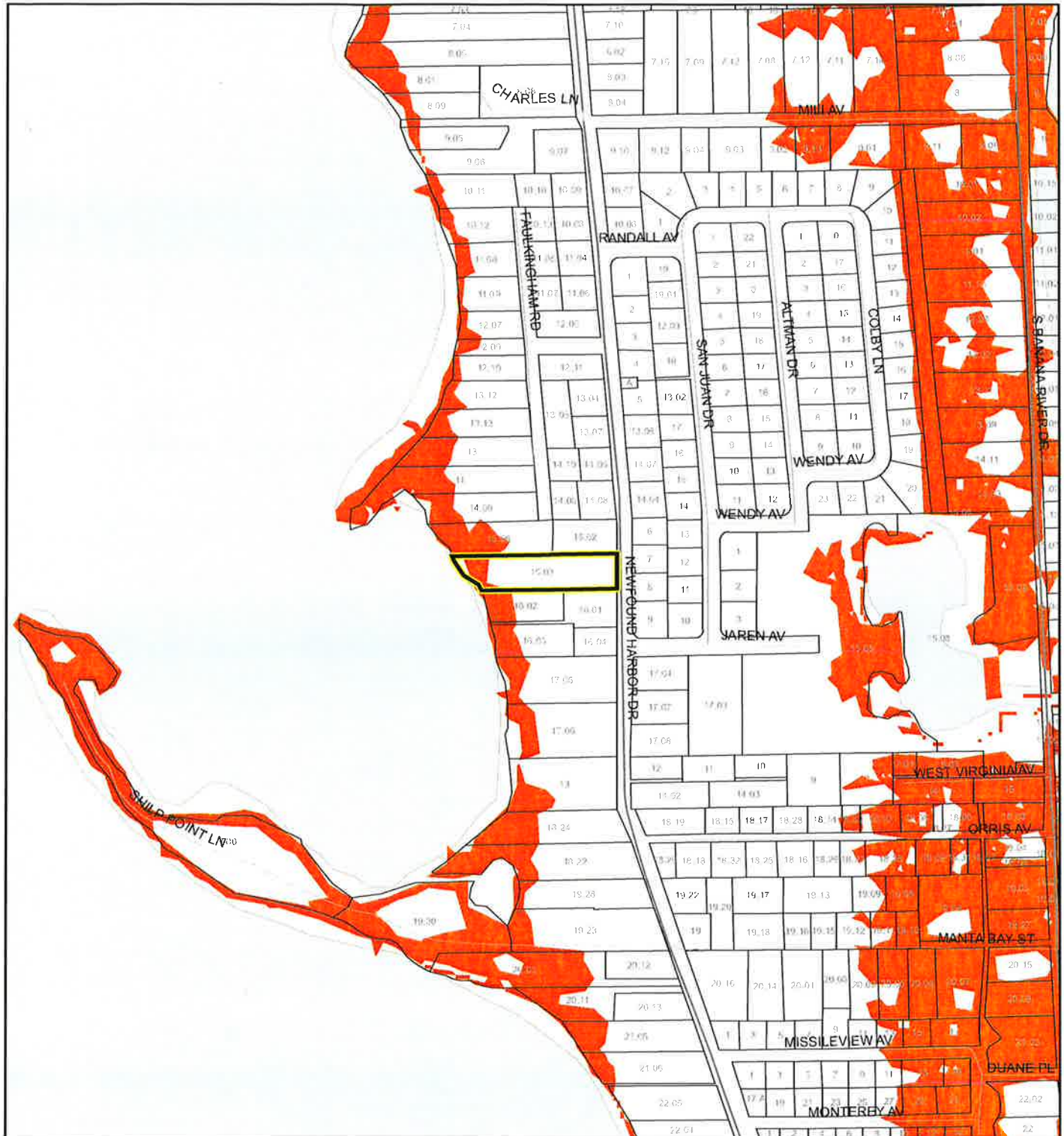
FEMA Flood Zones

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

COASTAL HIGH HAZARD AREA MAP

AKMAN, BEATRICE A.

19PZ00139



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/4/2019

— Subject Property

□ Parcels

Coastal High Hazard Area

■ SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

AKMAN, BEATRICE A.

19PZ00139



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/4/2019

— Subject Property

□ Parcels

Septic Overlay

■ 40 Meters

■ 60 Meters

■ All Distances

EAGLE NESTS MAP

AKMAN, BEATRICE A.

19PZ00139



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

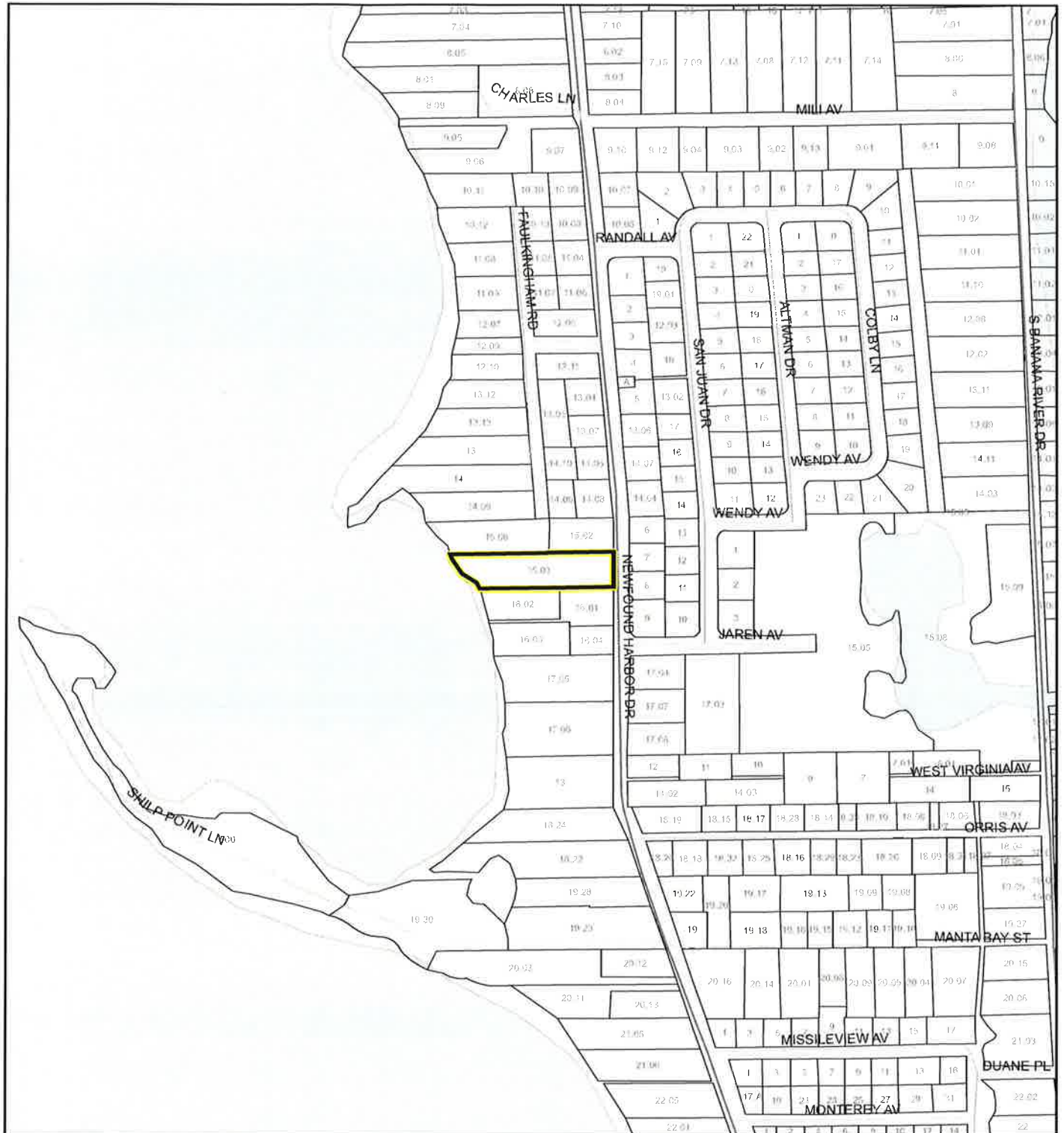


Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

AKMAN, BEATRICE A.

19PZ00139



1:4,800 or 1 inch = 400 feet

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- Subject Property
- Parcels
- Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

AKMAN, BEATRICE A.

19PZ00139



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/4/2019

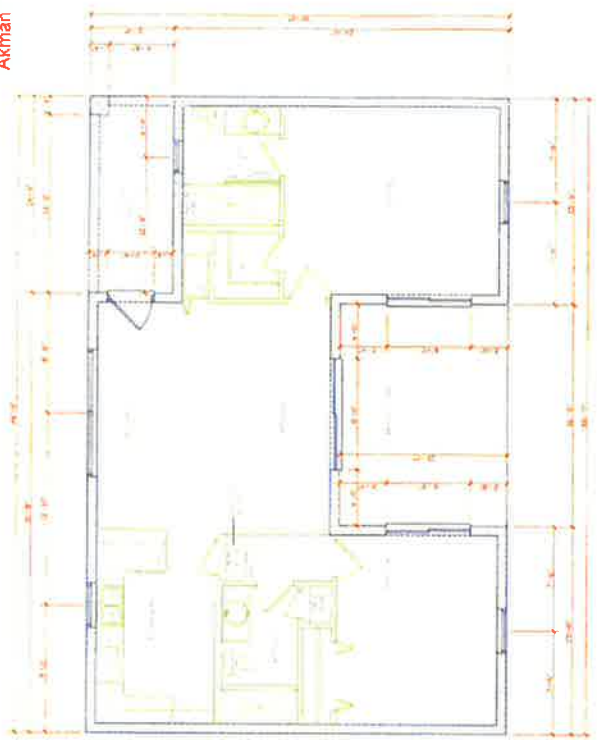
SJRWMD FLUCCS Upland Forests

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

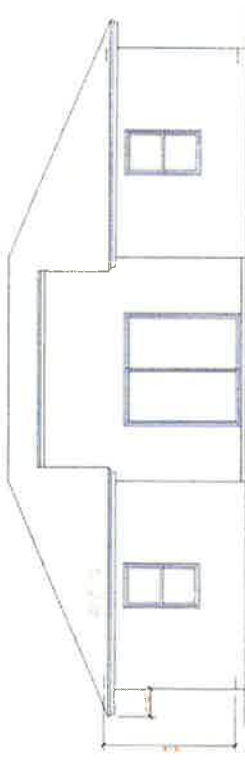
Subject Property

Parcels

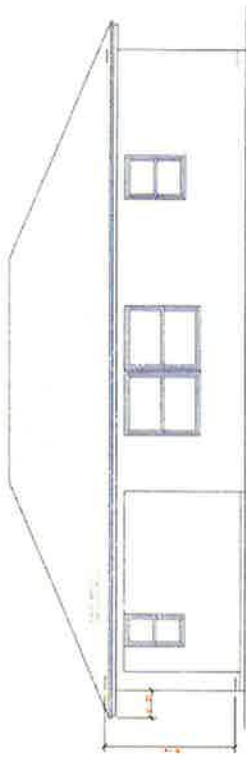
Floor Plan
19PZ00139
Akman



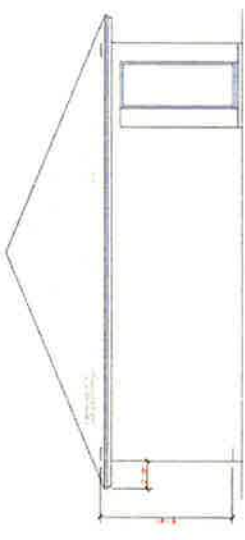
GUEST HOUSE FLOOR PLAN
SCALE: 1/4" = 1'-0"



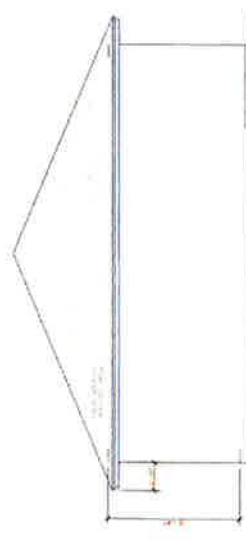
GUEST HOUSE REAR ELEVATION
SCALE: 1/4" = 1'-0"



GUEST HOUSE FRONT ELEVATION
SCALE: 1/4" = 1'-0"



GUEST HOUSE LEFT SIDE ELEVATION
SCALE: 1/4" = 1'-0"



GUEST HOUSE RIGHT SIDE ELEVATION
SCALE: 1/4" = 1'-0"

ENGINEERING AND DESIGN CONCEPTS, INC.

EDC

GUEST HOUSE FOR:

1291 NEWFOUND HRBR DR

WEBB COUNTY, TEXAS 75783

A2