



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

G.10.

7/13/2023

Subject:

Stephen J. and Pacharee Ellison request a change of zoning classification from RU-1-7 to SR. (23Z00017) (Tax Account 3008319) (District 3)

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 change of zoning classification from RU-1-7 (Single-Family Residential) to SR (Suburban Residential).

Summary Explanation and Background:

The applicants are requesting a change of zoning classification from RU-1-7 to SR for the purpose of building a single-family residence. The subject parcel is currently undeveloped. The proposed SR zoning classification permits single-family residences on a minimum of 0.5 acre, with a minimum lot width of 100 feet and depth of 150 feet, and a minimum house size of 1,300 square feet. The SR zoning classification may be considered less intense since it requires a larger lot and larger house size than RU-1-7. Since the property was split after the adoption of the Comprehensive Plan and zoning adoption, it does not qualify as a non-conforming lot of record. Granting the rezoning will legitimize the property split and allow a single family home.

The subject property is directly east of U.S. Highway 1. Within 500 feet there are three (3) zoning classifications: RU-1-7, BU-1-A (Restricted Neighborhood Retail Commercial), and BU-1 (General Retail Commercial). The closest SR zoning classification is approximately 1,050 feet to the north.

The area east of U.S. Highway 1 is single-family residential in character with homes on lots ranging in size from approximately 0.24 to 0.78 acres. Across U.S. Highway 1 the lots range from 0.23 acres to one (1) acre in size with both commercial and residential zoning classifications.

The Board may wish to consider if the request is consistent and compatible with the surrounding area.

On June 12, 2023, the Planning and Zoning Board heard the request and unanimously recommended approval.

Clerk to the Board Instructions:

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

Resolution 23Z00017

On motion by Commissioner Tobia, seconded by Commissioner Feltner, the following resolution was adopted by a unanimous vote:

WHEREAS, Stephen J. and Pacharee Ellison request a change of zoning classification from RU-1-7 (Single-Family Residential) to SR (Suburban Residential), on property described as Lot 2, Block D, San Sebastian Plat No. 1, as recorded in ORB 9264, Pages 897 - 899, of the Public Records of Brevard County, Florida. **Section 24, Township 30, Range 38.** (0.78 acres) Located on the east side of U.S. Highway 1, directly across from 10th St., (8999 U.S. Highway 1, Micco); 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; and

WHEREAS, the Board, after considering said application and the 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 as recommended; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from RU-1-7 to SR, be approved. 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 July 13, 2023.

BOARD OF COUNTY COMMISSIONERS

Brevard County, Florida


Rita Pritchett, Chair

Brevard County Commission

As approved by the Board on July 13, 2023.

ATTEST:


RACHEL SADOFF, CLERK

(SEAL)

P&Z Board Hearing – June 12, 2023

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.**

District 2 Disclosures
7/13/2023 BOCC Zoning Meeting

G.10. Stephen J. and Pacharee Ellison request a change of zoning classification from RU-1-7 to SR. (23Z00017) (Tax Account 3008319) (District 3)

- On 4/28/2023, received email from Steve Ellison with a power point attachment: To the Brevard County Commissioners,

I believe I am being treated unfairly with respect to rezoning from one SFR to another SFR zoning classification merely to correct an inconsistency with FLU designation.

Since County staff says I don't have standing for an appeal, I plan to use the "Public Comment" portion of the 4 May hearing to present my case.

As a courtesy, I have attached .ppt slides with notes pages included so that you are prebriefed.

Very Respectfully,

Steve Ellison

321-367-4829



8999 Hwy 1 -
Zoning Appeal.pptx

- On 5/3/2023, received email from Jennifer Jones that included attachments with a power point to be presented by Stephen Ellison, along with a memo from staff in response to the presentation and pending zoning action.



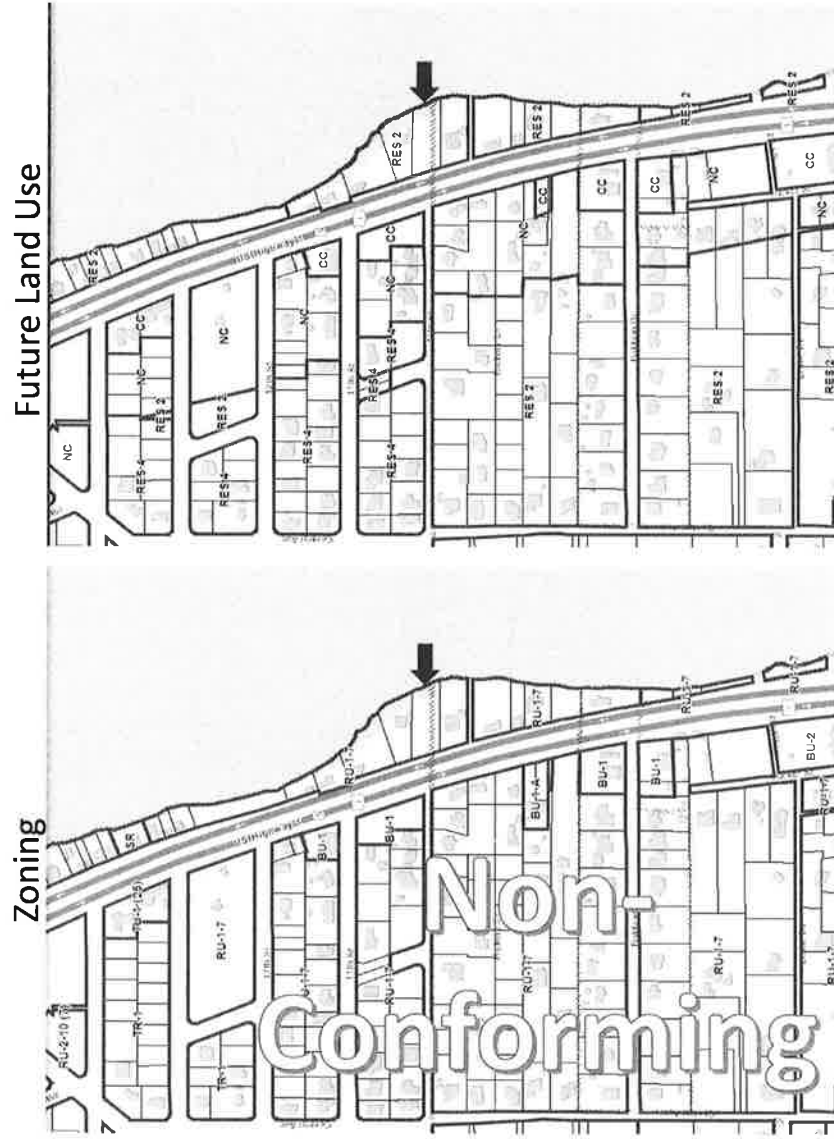
Ellison PowerPoint
for 05-04-23.pptx



05-04-23 Staff
Memo - Public Comr

Current Address: 1625 Las Palmas Dr SW, Palm Bay FL 32908

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- Purchased lot Sep 21
 - Retirement home
 - Ensured SFR zoning (RU-1-7)
- Applied for “RES SFR-Duplex New” building permit (23BC08901) on Feb 6th
 - RU-1-7 zoning not consistent with FLU
 - Lot unbuildable for any use
 - Rezoning to SR offered as only “solution”



Zoning Classifications	Land Use									
	Agric	Res 1-2.5	Res 1	Res 2	Res 4	Res 6	Res 10	Res 15	I	Res
GU, PA, AGR, RRMH-S, PUD, RPUD, THPUD, RVP					Y					
5 acres										
AU, REU, RRMH-2.5	N					Y				
2.5 acre										
ARR, RP-1, SEU, RRMH-1	N					Y				
1 acre										
0.5 acre										
SEU, TR-2										
EU, EU-1, EU-2, RU-1-13, RU-1-11, TR-1, RA-2-4, RU-2-4		N					Y			
15-7.5K sqft										
RU-1, RU-1-9, TR-1-4, TR-3, TRC-1, RU-2-6, RA-2-6			N							Y

RU-1-7 vs. SR

Sec. 62-1342. Single-family residential, RU-1-7.

The RU-1-7 single-family zoning classification encompasses lands devoted to single-family residential development of spacious character, together with such accessory uses as may be necessary or are normally compatible with residential surroundings.

(1) Permitted uses.

- a. *Permitted uses are as follows:*
 - One single-family residential detached dwelling.
 - Parks and public recreational facilities.
 - Private golf courses.
 - Foster homes.
 - Sewer lift stations.
- b. *Permitted uses with conditions are as follows (see division 5, subdivision II, of this article):*
 - Group homes, level I, subject to the requirements set forth in section 62-1835.9.
 - Power substations, telephone exchanges and transmission facilities.
 - Preexisting use.
 - Private parks and playgrounds. **Excluded in SR.**
 - Temporary living quarters during construction of a residence.

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

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

- Bed and breakfast inn.
- Change of nonconforming agricultural use.
- Guesthouses or servants' quarters, without kitchen facilities.
- Land alteration (over five acres and up to ten acres).
- Recreational facilities.
- Recreational/residential marina.
- Resort dwellings.
- Single-family residential second kitchen facility.
- Skateboard ramps.
- Substantial expansion of a preexisting use.
- Wireless telecommunication facilities and broadcast towers.
- Zero lot line subdivision. **Excluded in SR.**

Sec. 62-1338. Suburban residential, SR.

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

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- Resort dwellings.
- Single-family residential second kitchen facility.
- Skateboard ramps.
- Substantial expansion of a preexisting use.
- Wireless telecommunication facilities and broadcast towers.

1988 Comprehensive Plan vs. County Zoning Code

- **Objective 15:** Brevard County shall eliminate inconsistencies between the Comprehensive Plan and the zoning regulations of the Land Development Regulations, and thereafter, shall reduce the number of existing land uses which are non-conforming to the Comprehensive Plan.
 - **Policy 15.1.** Brevard County retains the authority to initiate appropriate administrative actions, such as administrative rezonings.
 - **Policy 15.2.** County staff may initiate administrative rezonings for those properties that are found to be inconsistent with the Future Land Use Map at the time of a development permit application.
 - **Policy 15.3.** Brevard County shall continue to administratively rezone those properties with zoning classifications which are inconsistent with the Future Land Use Map, the acceptable levels of service, and this Comprehensive Plan.
 - **Criteria A:** Administrative rezonings shall not be required for single family or duplex residential lots which meet the requirements of the Brevard County Zoning Code and which are located within Neighborhood Commercial, Community Commercial Agricultural or any residential land use designations.
- County Zoning Code (Sec. 62-1811) narrowly limits Criteria A to “Non-conforming Lots of Record” and grants Administrative Action Waivers to allow permitting without rezoning if the “record” has not changed since 1988
- In 1994 our lot was split from the lot to the South, so the “record” changed but zoning mismatch wasn’t corrected
 - Parcel to the South had an existing structure so retained “vested” rights to build a new SFR in 2004 without rezoning
- A year ago we were issued a “SFR Res Addition” permit (22BC08901) for a retaining wall
 - RU-1-7 zoning specifically noted in reviewer’s comments but FLU inconsistency was not flagged

Florida Statute vs. Brevard County Zoning Code

Florida Statute, Title IX, 125.66 Ordinances; enactment procedure; emergency ordinances; rezoning of change of land use ordinances or resolutions.

Delineates three cases for rezoning ordinance enactments based on who initiates, acreage and changes to the actual list of permitted, conditional, or prohibited uses within a zoning category. Each case has unique notification and hearing requirements.

1. 125.66(2) Not initiated by county and no change in uses:

- BoCC hearing with 10 days public notice

2. 125.66(4)(a) Initiated by county, < 10 acres, and no change in uses:

- Notify property owner of who's land will be rezoned
- 30 day notice for time and place of hearing(s)

3. 125.66(4)(b) Initiated by county, 10+ acres, and/or change in uses:

- Two advertised public hearings (with notification, time of day and interval specifications)
- Published in print edition of newspaper (size and font requirements) OR
- Mail a notice to property owners within the area covered by the ordinance

Sec. 62-1151. Amendments to official zoning map—Amendments initiated by property owner

- a. Application: “a different zoning classification or conditional use from the use designated on the official zoning map”
- b. Notice requirements: the zoning official shall forthwith schedule a hearing...

- 1) To applicant 15 days prior
- 2) Newspaper 15 days prior
- 3) Posted at the County Courthouse 15 days prior
- 4) Posted at the property 15 days prior
- 5) Mail a notice to property owners within the area...(Not in the code but done anyways)

c. Hearing before Planning and Zoning board (June 12)

d. Hearing before Board of County Commissioners (July 13)

Sec. 62-1152. Amendments initiated by board of county commissioners

(b)(1) Follows Florida Statute 125.66(4)(a) except for lot size

(b)(2) Follows Florida Statute 125.66(4)(b) except for lot size

Staffing and Timeline

- What could be as little as a 10 day (Florida Statute) or 15 day (County Code) timeline in my case turns into **5 months**

- BoCC doesn't meet in Jun
- County needs time to staff rezoning through various departments and prepare a case file for the P+Z Board
 - Rezoning fees include \$300.00 for NRMD review
 - Full blown concurrency evaluation in this case is a "make work" exercise
 - Surrounded by SFR parcels
 - No wetlands
 - Already have a well
 - Septic permit approved
 - Driveway permit approved by Florida DOT
 - Approved project from FPL for electric
 - Cable/high speed internet on adjoining lots

2023 MEETING SCHEDULE PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY & BOARD OF COUNTY COMMISSIONERS

Applications are accepted by appointment. Please call 321-633-2070 to schedule an appointment. Please note there are no Planning and Zoning Board meetings in the months of May and December.

Application Deadline by 4:00 p.m.	Planning & Zoning Meeting Date at 3:00 p.m.	County Commission Meeting Date at 5:00 p.m.
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Variances and Appeals

DIVISION 5 - VARIANCES

Any person owning an interest in any real property may apply to the board of adjustment for a **variance from the provisions** of article VI of this chapter, **pertaining to zoning...**

Sec. 62-253. - Prerequisites to granting of variance.

(a)...not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary and undue hardship...**all** of the following factors to exist:

- (1) That **special conditions and circumstances** exist which are not applicable to other lands, structures or buildings in the applicable zoning classification
- (2) That the special conditions and circumstances **do not result from the actions of the applicant**
- (3) That granting the variance requested will **not confer** on the applicant any **special privilege** that is denied by the provisions of this chapter to other lands, buildings or structures in the identical zoning classification
- (4) That **literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the identical zoning classification** under the provisions of this chapter and will constitute **unnecessary and undue hardship** on the applicant
- (5) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure; and
- (6) That the granting of the variance will be in harmony with the general intent and purpose of this chapter and that such use variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
- (b) In no case shall the board of adjustment grant a variance which will result in a change of land use that would not be permitted in the applicable zoning classification.

DIVISION 6 - APPEALS

Sec. 62-301. - Appeal procedure.

- Appeals to the board of county commissioners may be taken by any person aggrieved by the decision or interpretation of any administrative officer rendered under this chapter

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Sec. 62-507. - Comprehensive plan interpretation appeal procedure

- Generally. The board of county commissioners shall hear appeals relating to any administrative decision or interpretation concerning the implementation of the 1988 county comprehensive plan...

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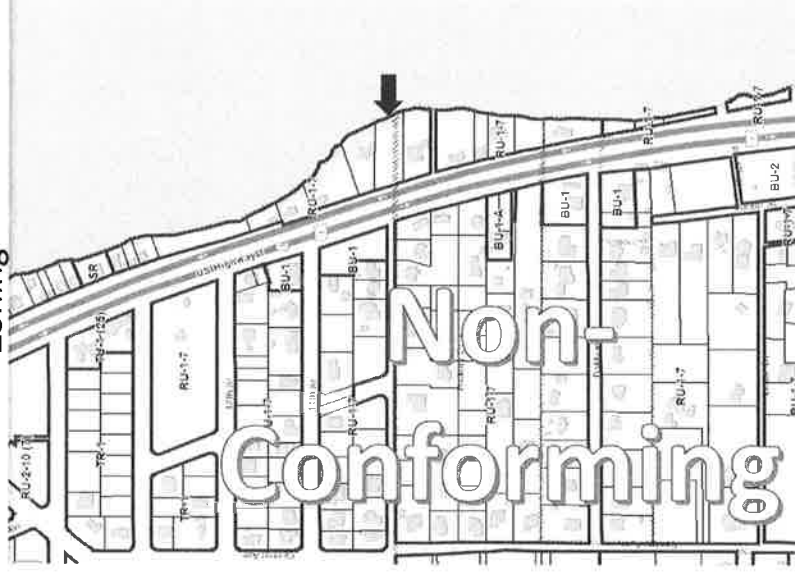
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Zoning



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(4) That **literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the identical zoning classification** under the provisions of this chapter and will constitute **unnecessary and undue hardship** on the applicant

(5) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure; and

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Planning and Development Department

2725 Judge Fran Jamieson Way


Building A

Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

Inter-Office Memo

TO: Board of County Commissioners

FROM: Tad Calkins, Director – Planning & Development 

Cc: Frank Abbate, County Manager
John Denninghoff, P.E., Assistant County Manager

DATE: May 3, 2023

SUBJECT: Public Comment on Pending Zoning Action (23Z00017)

This memo is in response to Mr. Ellison's April 28, 2023, email stating that he plans to attend the Board's Zoning Meeting on Thursday to seek an appeal, administrative action, variance, administrative rezoning, and/or direction to staff to issue a building permit. His presentation contains a lot of quotes from and references to Florida Statutes, the County's Comprehensive Plan, and Zoning Regulations; however, it does not include all of the relevant information, requirements, and/or procedures for Board consideration. The primary issue with the property Mr. Ellison purchased September 21, 2021, is that a previous owner subdivided a nonconforming lot of record back in 1994. Unfortunately for Mr. Ellison, since his lot was created after the Board's actions establishing the RU-1-7 zoning classification in 1972 and the adoption of the Comp Plan in 1988, the property lost its nonconforming status and associated administrative remedies.

Staff is providing the following clarification should the Board wish to entertain Mr. Ellison's requests (*identified below in italics*) prior to the scheduled public hearing for his rezoning application (23Z00017) on July 13, 2023.

- *"Administrative Action Waiver – Follow the spirit of the Comp Plan and keep current zoning."*
Since the property is not a nonconforming lot of record, neither Comp Plan Policy 15.5 nor the provisions of Section 62-1188 apply to Mr. Ellison's property.
- *"Variance – Keep current zoning. Refence the variance code I believe I can make a case that all the determining factors apply."*
The issue here is inconsistency between zoning and the Comprehensive Plan. This cannot be resolved through a variance.
- *"Administrative Rezoning as authorized in the Comp Plan"*
The administrative rezoning process that Mr. Ellison is seeking is identified in Section 62-1152, Amendments Initiated by Board of County Commissioners. By no means is this

process intended to be truncated; in fact, under Section 62-1152(b)(1), a written notice must be sent to the property owner at least 30 days prior to the date set for a public hearing in which the rezoning is to be taken up by the Board. This section requires the notice shall be given at least 30 days prior to the public hearing, rather than the 15 day notification required for a rezoning request initiated by the property owner under Section 62-1151(b). In addition, the administrative process follows the same path as applicant-initiated application which include both LPA/P&Z and Board. *See*, Section 62-1152(c).

- *“Approve regular rezoning to SR this evening.”*

As mentioned above there is no mechanism to allow this to happen. Additionally, this item has not been noticed for public hearing as required by County Code and Florida Statute.

- *“Direct staff to issue a building permit concurrent with ongoing rezoning.”*

There is no mechanism for this to occur. This Comp Plan policy that Mr. Ellison refers to, Policy 15.3, is subject to criteria A and B. Such criteria includes, but is not limited to, “prior to the commencement of the administrative rezonings, small area plans shall be completed by the appropriate County staff for each area....” This has not occurred here and, therefore, this policy does not apply. In essence, this policy is designed to allow for administrative rezonings, with Board direction to staff to do so, where the Board has made a broad policy decision (based on a plan or study) to amend the future land use map that necessitates the actions to obtain consistency.

It should also be noted that the Planning and Zoning Board next meets on June 12, when this item is scheduled to be heard. The Board of County Commissioners next Zoning Meeting is July 13, when this item is scheduled to be heard before the Board. As such, given the current meeting schedule, legal requirements, and the well-established practice of hearing quasi-judicial zoning-related public hearings at Zoning Meetings, the timeline currently provided for hearing is the most expeditious available, as it stands today.¹

Additional Relevant Information:

- Mr. Ellison purchased the property located at 8999 Highway 1 on September 21, 2021;
- Mr. Ellison incorrectly cites his application submittal date (February 8, 2023) as the point where the rezoning process was initiated. In reality, this was the date Mr. Ellison submitted a building permit to build a house on the property. The inconsistency between the Future Land Use designation and the zoning classification was found by County staff and the application was marked as deficient on the same day, February 8, 2023. However, the application to rezone the property was not submitted by Mr. Ellison on March 14, 2023;
- The current FLU and zoning can not be considered consistent per Section 62-1255;
- The subject property was Platted in 1928;
- Property was administratively rezoned from RU-1 to RU-1-7 in 1972 as the RU-1 zoning classification was phased out of the Code;

¹ See Sections 62-1151, Brevard County Code of Ordinances, requiring two public hearings for amendments initiated by property owner, including the initial hearing before the Planning and Zoning Board.

- In 1988, the property was given a Residential 2 FLU designation;
- The property was split in 1994. According to Section 62-1188, the property lost its ability to be considered a Nonconforming Lot of Record;
- 2017 Comprehensive Plan Objective 15, Policy 15.2 states, "County staff *may* initiate administrative rezoning for those properties that are found to be inconsistent with the Future Land Use Map at the time of development permit application" ...Historically, staff does not administratively rezone properties without Legislative Intent from the Board and not for individual properties;
- In citing Objective 15, Policy 15.3, Mr. Ellison has left out Criteria B, which states in part "small area plans shall be completed by the appropriate County staff for each area." This has not occurred (this policy is meant to apply on a larger scale rather than being applied to individual properties);
- Regardless if the application is applicant or staff initiated, it still requires the same staff analysis and procedures;
- A Board initiated rezoning process (Section 62-1152) requires an even longer process, as such an action requires at least two public hearings by the Board, each occurring after 5 p.m., as well as additional advertising and notice requirements;
- At the State level, minimum notice requirements for adoption of an ordinance or resolution are established by Section 125.66, Florida Statutes. However, at the County level, Sections 62-1151 and 62-1152 establish additional notice requirements that must be followed when considering rezoning applications. In either case, the Board is prevented from fast-tracking such applications.

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, however designated, are recognized as expert witnesses for the purposes of Comprehensive Plan amendments as well as zoning, conditional use, special exception, and variance applications.

Administrative Policy 2

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

Criteria:

- A. Staff shall analyze an application for consistency or compliance with comprehensive plan policies, zoning approval criteria and other applicable written standards.
- B. Staff shall conduct site visits of property which are the subject of analysis and recommendation. As part of the site visit, the staff shall take a videotape or photographs where helpful to the analysis and conduct an inventory of surrounding existing uses. Aerial photographs shall also be used where they would aid in an understanding of the issues of the case.
- C. In cases where staff analysis is required, both the applicant and the staff shall present proposed findings of fact for consideration by the Board.
- D. For development 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:

- 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

23Z00017

Stephen J. and Pacharee Ellison

RU-1-7 (Single-Family Residential) to SR (Suburban Residential)

Tax Account Number: 3008319
Parcel I.D.: 30-38-24-HH-D-2
Location: 8999 Highway 1, Micco, FL 32976; East of Highway 1 directly across 10th Street. (District 3)
Acreage: 0.78 acres

Planning & Zoning Board: 6/12/2023

Board of County Commissioners: 7/13/2023

Consistency with Land Use Regulations

- Current zoning is not consistent with 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-1-7	SR
Potential*	0	Single-family residence
Can be Considered under the Future Land Use Map	No RES 2	YES RES 2

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

Background and Purpose of Request

The applicants are requesting a change of zoning classification from RU-1-7 (Single-family Residential) to SR (Suburban Residential) for the purpose of building a single-family residence. The current zoning classification cannot be considered consistent with the Future Land Use designation according to Sec. 62-1255. The subject parcel is currently undeveloped.

The subject parcel was originally recorded in Plat Book 8, Page 15A as part of Tract D in September 1928. The parcel went through an Administrative Rezoning to a new classification, RU-1 to RU-1-7, which took effect June 1, 1972. The Comprehensive Plan took effect in 1988 giving this parcel and others on the east of Highway 1 corridor a Future Land Use designation of Residential 2 units per acre (RES 2). October 9, 1990 the property was split/sold as two parcels, Parcel No. 1 and No. 2, per Official Record Book 3088, Page 1270. The property was subdivided and sold on August 22, 1994 per Official Record Book 3415, Page 3373. Since the lot split occurred after the zoning actions and

the adoption of the Comprehensive Plan, the property it is not eligible to be considered as a nonconforming lot or record.

Land Use

The subject property is currently designated as Residential 2 (RES 2) FLU. The proposed SR zoning can be considered consistent with the existing Residential 2 FLU designation per Sec. 62-1255.

Applicable Land Use Policies

FLUE Policy 1.8 –The Residential 2 Future land use designation. The Residential 2 land use designation permits lower density residential development with a maximum density of up to two (2) dwelling units per acre, except as otherwise may be provided for within the Future Land Use Element.

The applicant's request can be considered consistent with the existing Future Land Use.

The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 of the Future Land Use Element.

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

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;

The proposed single-family residence is not anticipated to have hours of operation, lighting, odor, noise levels, traffic or site activity that would diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area.

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

Only a certified Master Appraiser Institute (MAI) appraisal can determine if material reduction has or will occur due to the proposed request.

- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

- 1. historical land use patterns;

East of Highway 1 is single-family residential in character with homes on lots ranging in size from approximately 0.24-acres to 0.78-acres. Across Highway 1

the lots range from 0.23-acres to one (1) acre in size and are both commercial and residential.

2. actual development over the immediately preceding three years; and

There have been several residential developments within this area over the preceding three (3) years:

- **20BC15335 was a single-family residence completed June 15, 2021, approximately 960-feet to the southwest of the subject property.**
- **20BC17069 was a single-family residence completed April 14, 2021, approximately 0.4-miles to the southwest of the subject property.**
- **20BC18995 was a single-family residence completed October 21, 2021, approximately 1,685-feet to the northwest of the subject property.**
- **21BC03183 was a single-family residence completed February 18, 2022, approximately 1,860-feet to the southwest of the subject property.**
- **21BC11773 was a mobile home installation completed January 24, 2022, approximately 1,162-feet to the northwest of the subject property.**
- **21BC19327 was a single-family residence completed February 8, 2023, approximately 1,672-feet to the southwest of the subject property.**
- **22BC17334 was a single-family residence completed May 15, 2023, approximately 300-feet south of the subject property.**

3. development approved within the past three years but not yet constructed.

There has not been any approved development within this area in the preceding three (3) years that has not yet been constructed.

- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

No material violation of relevant policies has been identified.

Analysis of Administrative Policy #4 - Character of a neighborhood or area.

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

Criteria:

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

There is an existing pattern of residential land uses surrounding the subject parcel. We do not conduct a concurrency analysis on a single-family residence. The developed character of the surrounding area is low-density residential. Most parcels in the immediate area are 0.23-acres or larger in size and developed with single-family homes to the east of Highway 1. To the north is a 0.43-acre parcel developed with a single-family residence zoned RU-1-7. To the south is a 0.69-acre parcel developed with a single-family residence zoned RU-1-7. To the east is the Intercoastal Waterway. To the west is Highway 1.

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.

This undeveloped parcel is directly east of Highway 1 and 10th Street. Within 500-feet there are three (3) zoning classifications: RU-1-7 (Single-family Residential), BU-1-A (Restricted Neighborhood Retail Commercial and BU-1 (Retail Commercial). The closest SR zoning classification is approximately 1,050-feet to the north.

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.

The request is not for commercial use. It is located in an existing residential area.

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.

The area is primarily single-family residential along with commercial uses across Highway 1. Zoning Resolution Z-9874 was approved by the Board taking effect April 24, 1997, rezoning from BU-1 to RR-1, on 0.33 acres, located approximately 1,050-feet north of the subject property.

Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	SF residence	RU-1-7	RES 2
South	SF residences	RU-1-7	RES 2
East	Intercoastal Waterway	N/A	N//A

West	Highway 1	N/A	N/A
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The existing RU-1-7 zoning classification permits single-family residences on 5,000 sq. ft. lots, with a minimum lot width of 50-feet and depth of 100 feet. The minimum house size in RU-1-7 is 700 square feet.

The proposed SR zoning classification permits single-family residences of relatively spacious land character, together with such accessory uses as may be necessary or are normally compatible with residential surroundings. Must meet a minimum lot size of 0.5 acres, with a minimum lot width of 100 feet and depth of 150 feet. The minimum house size in SR is 1300 square feet. SR may be considered less intense since it requires a larger lot and dwelling requirements.

Preliminary Concurrency

The closest concurrency management segment to the subject property is US Highway 1, between Indian River County Line and Micco Road, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 51.64% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.02%. The corridor is anticipated to operate at 51.66% of capacity daily. The proposal is not anticipated to 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 applicants will be using a deep well and septic tank.

Environmental Constraints

- Floodplain Protection
- Coastal High Hazard Area (CHHA)
- Surface Waters of the State
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Wetlands Protection
- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species – Florida Scrub Jay

The property is mapped as being within Special Flood Hazard Areas VE and AE, as identified by the Federal Emergency Management Agency, and as shown on the FEMA Flood Map. The parcel 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."

The property is located within the Coastal High Hazard Area (CHHA) as defined by Florida Statute 163.3178(2)(h), and as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates Coastal High Hazard Areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute. The parcel may be susceptible to nuisance flooding.

The subject property is located on the Indian River Lagoon, designated as a Class II Water, Outstanding FL Water (OFW), and Aquatic Preserve in this location. A 50-foot Surface Water Protection Buffer is required. The removal of native vegetation located within the Buffer shall be avoided. Temporary impacts to native vegetation require in-kind restoration.

Unpermitted clearing of the property, including the Buffer, occurred in 2021/2022. NRM met with the applicant on March 31, 2023, to discuss the activity and compliance options. A restoration plan meeting Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection, and Article X, Division 3, entitled Surface Water Protection shall be provided during the Building Permit review.

Shoreline hardening (e.g., revetments) requires a NRM Surface Water Permit. The Florida Department of Environmental Protection (FDEP) also regulates shoreline activities, and can be reached at 407-897-4101. The applicant is encouraged to contact NRM at 321-633-2016 prior to any additional activities, plan, or permit submittal.

The entire parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay. If adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required.

Protected (≥ 10 inches in diameter) and Specimen (≥ 24 inches in diameter) trees may have existed on the parcel. Unpermitted clearing of the property occurred in 2021/2022. NRM met with the applicant on March 31, 2023, to discuss the activity and compliance options. A restoration plan meeting Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection; and Article X, Division 3, entitled Surface Water Protection shall be provided during the Building Permit review.

For Board Consideration

The Board may wish to consider if the request is consistent and compatible with the surrounding area.

**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT
Zoning Review & Summary**

Item #23Z00017

Applicant: Stephen J. Ellison

Zoning Request: RR-1-7 to SR

Note: To allow permit for single-family residence

Zoning Hearing Date: 06/12/2023; **BCC Hearing Date:** 07/13/2023

Tax ID No: 3008319

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

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Floodplain Protection
- Coastal High Hazard Area (CHHA)
- Surface Waters of the State
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Wetlands Protection
- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species – Florida Scrub Jay

The property is mapped as being within Special Flood Hazard Areas VE and AE, as identified by the Federal Emergency Management Agency, and as shown on the FEMA Flood Map. The parcel 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."

The property is located within the Coastal High Hazard Area (CHHA) as defined by Florida Statute 163.3178(2)(h), and as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates Coastal High Hazard Areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute. The parcel may be susceptible to nuisance flooding.

The subject property is located on the Indian River Lagoon, designated as a Class II Water, Outstanding FL Water (OFW), and Aquatic Preserve in this location. A 50-foot Surface Water Protection Buffer is required. The removal of native vegetation located within the Buffer shall be avoided. Temporary impacts to native vegetation require in-kind restoration.

Unpermitted clearing of the property, including the Buffer, occurred in 2021/2022. NRM met with the applicant on March 31, 2023, to discuss the activity and compliance options. A restoration plan meeting Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection, and Article X, Division 3, entitled Surface Water Protection shall be provided during the Building Permit review.

Shoreline hardening (e.g., revetments) requires a NRM Surface Water Permit. The Florida Department of Environmental Protection (FDEP) also regulates shoreline activities, and can be reached at 407-897-4101. The applicant is encouraged to contact NRM at 321-633-2016 prior to any additional activities, plan, or permit submittal.

The entire parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay. If adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required.

Protected (≥ 10 inches in diameter) and Specimen (≥ 24 inches in diameter) trees may have existed on the parcel. Unpermitted clearing of the property occurred in 2021/2022. NRM met with the applicant on March 31, 2023, to discuss the activity and compliance options. A restoration plan meeting Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection; and Article X, Division 3, entitled Surface Water Protection shall be provided during the Building Permit review.

Land Use Comments:

Floodplain Protection

The property is mapped as being within Special Flood Hazard Areas VE and AE, as identified by the Federal Emergency Management Agency, and as shown on the FEMA Flood Map. The parcel 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

The property is located within the Coastal High Hazard Area (CHHA) as defined by Florida Statute 163.3178(2)(h), and as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates Coastal High Hazard Areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute. The parcel may be susceptible to nuisance flooding.

Surface Waters of the State

The subject property is located on the Indian River Lagoon, designated as a Class II Water, Outstanding FL Water (OFW), and Aquatic Preserve in this location. A 50-foot Surface Water Protection Buffer is required. Primary structures shall be located outside the Buffer. Accessory structures are permissible within the Buffer with conditions (e.g., storm water management is provided, avoidance/minimization of impacts, and maximum 30% impervious). The removal of native vegetation located within the Buffer shall be avoided. Temporary impacts to native vegetation require in-kind restoration.

Unpermitted clearing of the property, including the Buffer, occurred in 2021/2022. NRM met with the applicant on March 31, 2023, to discuss the activity and compliance options. A restoration plan meeting Chapter 62, Article XIII, Division 2, Landscaping, Land Clearing & Tree Protection; and Article X, Division 3, Surface Water Protection shall be provided during the Building Permit review.

Shoreline hardening (e.g., revetments) requires a NRM Surface Water Permit. The Florida Department of Environmental Protection (FDEP) also regulates shoreline activities, and can be reached at 407-897-4101. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

Indian River Lagoon Nitrogen Reduction Overlay

The entire parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

Wetlands Protection

The subject parcel contains mapped NWI wetlands along the eastern shoreline, in/east of the Buffer.

Aquifer Recharge Soils

The entire subject parcel contains mapped aquifer recharge soils (Paola fine sand, 0 to 8 percent slopes) as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations indicate the soils may consist of Type 3 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Protected and Specimen Trees

Protected (≥ 10 inches in diameter) and Specimen (≥ 24 inches in diameter) trees may have existed on the parcel. Unpermitted clearing of the property occurred in 2021/2022. NRM met with the applicant on March 31, 2023, to discuss the activity and compliance options. A restoration plan meeting Chapter 62, Article XIII, Division 2, Landscaping, Land Clearing & Tree Protection; and Article X, Division 3, Surface Water Protection shall be provided during the Building Permit review.

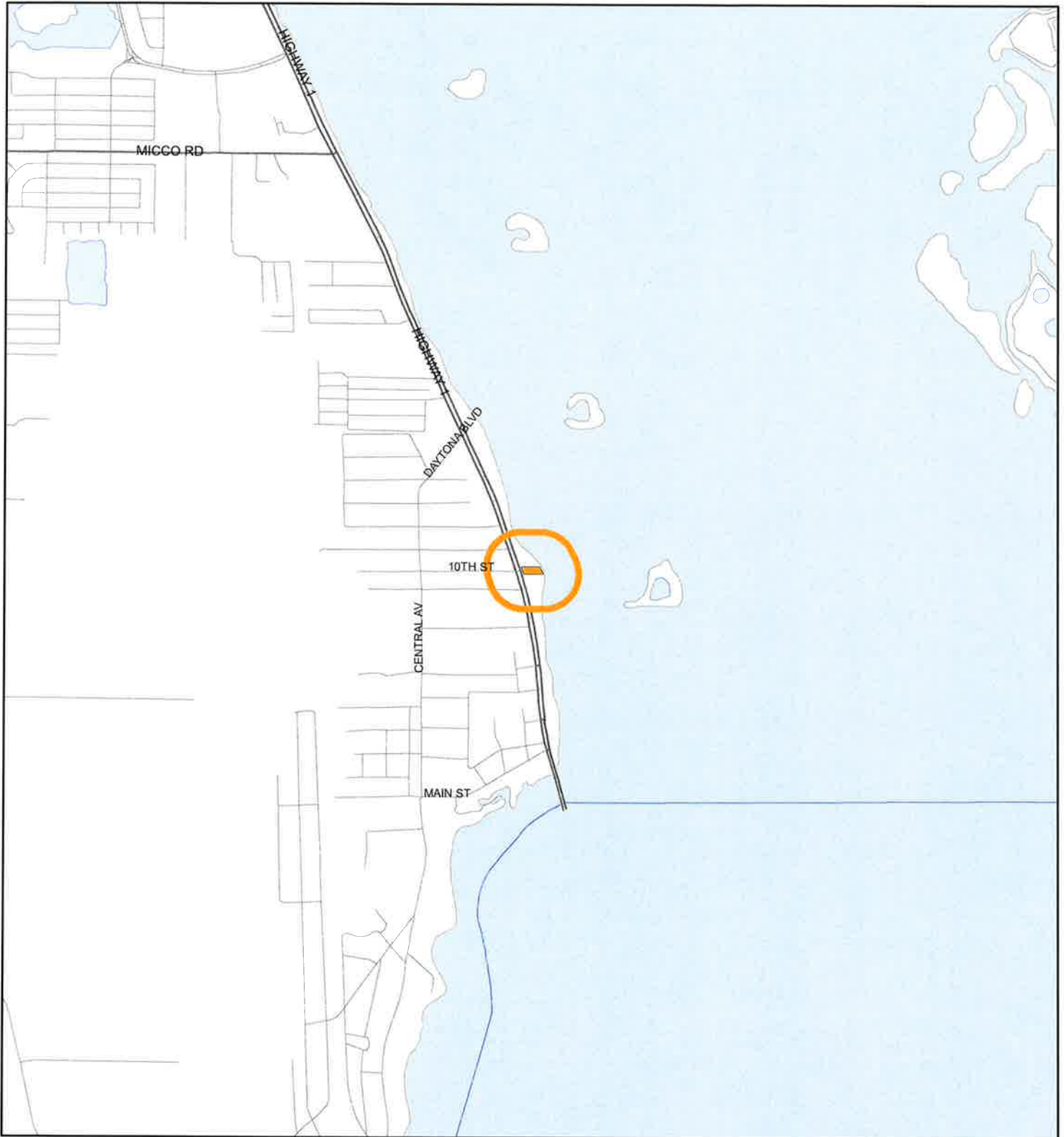
Protected Species

Information available to NRM indicates that federally and/or state protected species may be present on the property. Specifically, nearby the property is adjacent to a mapped Florida Scrub Jay occupancy polygon. Additionally, gopher tortoises can be found in 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.

LOCATION MAP

ELLISON, STEPHEN & PACHAREE

23Z00017



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.

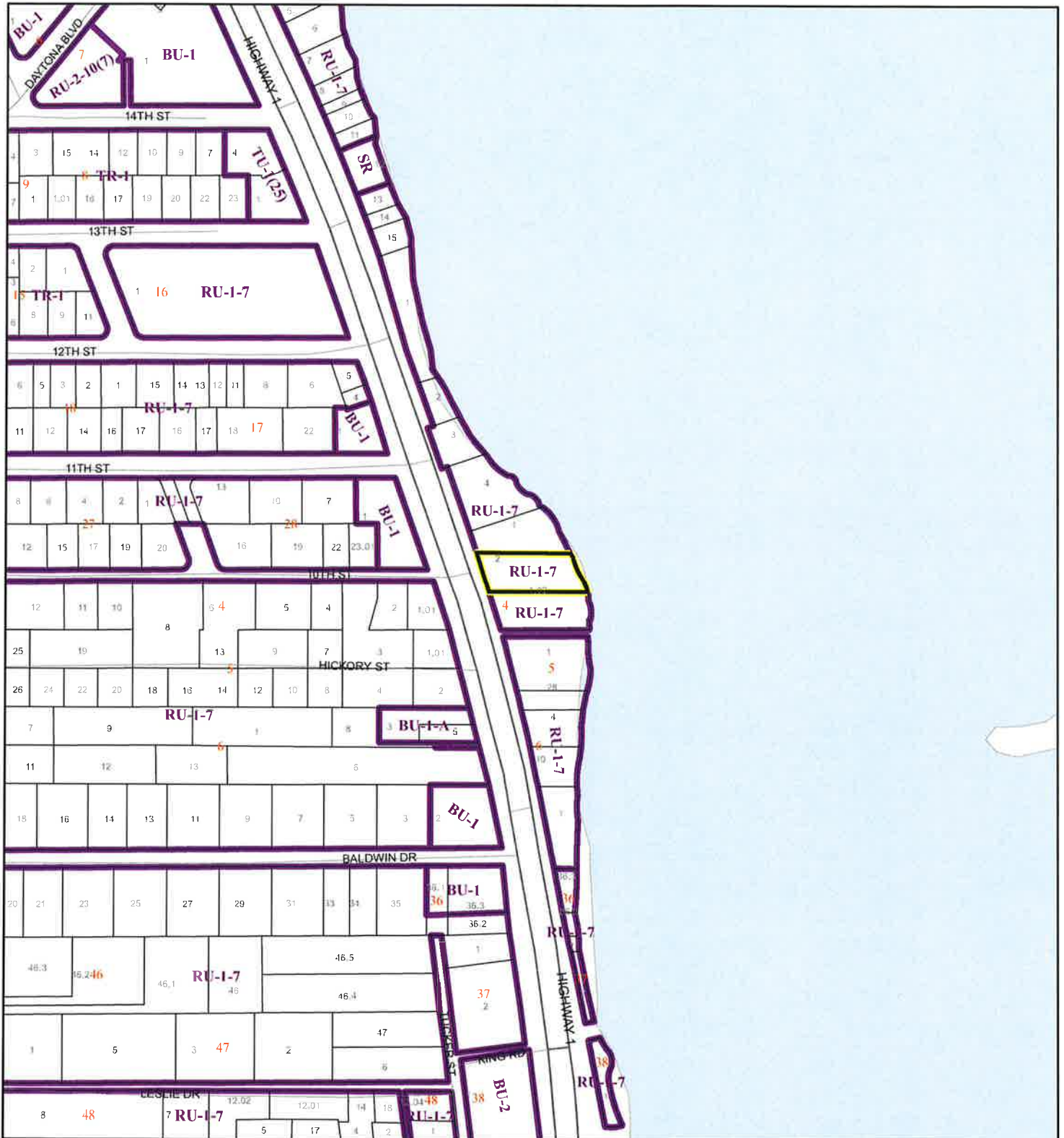
Produced by BoCC - GIS Date: 3/21/2023

— Buffer

— Subject Property

ZONING MAP

ELLISON, STEPHEN & PACHAREE
23Z00017



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/21/2023

Subject Property

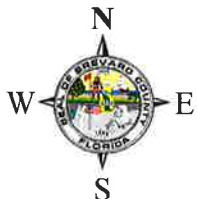
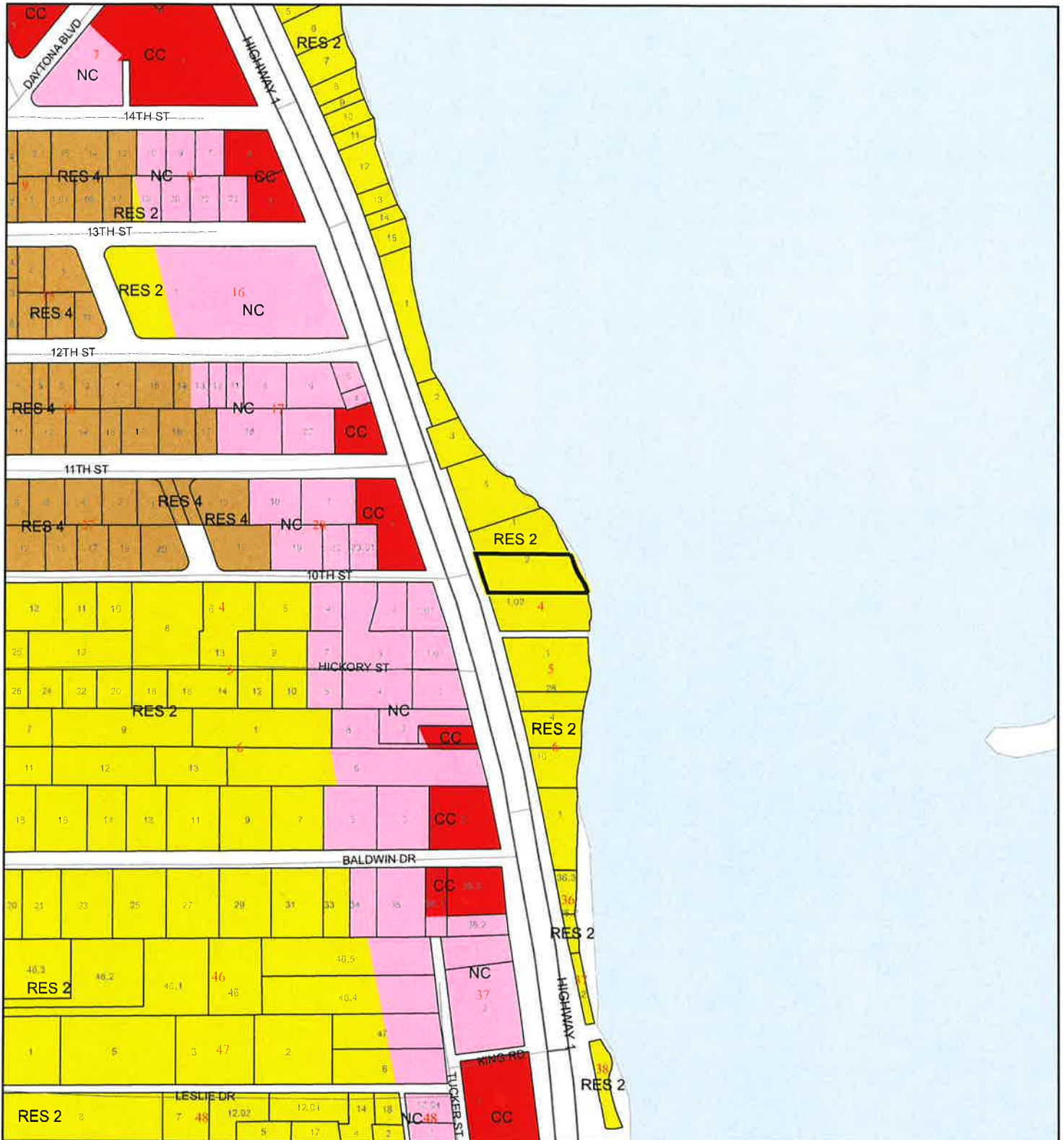
Parcels

Zoning

FUTURE LAND USE MAP

ELLISON, STEPHEN & PACHAREE

23Z00017



1:4,800 or 1 inch = 400 feet

Subject Property

Parcels

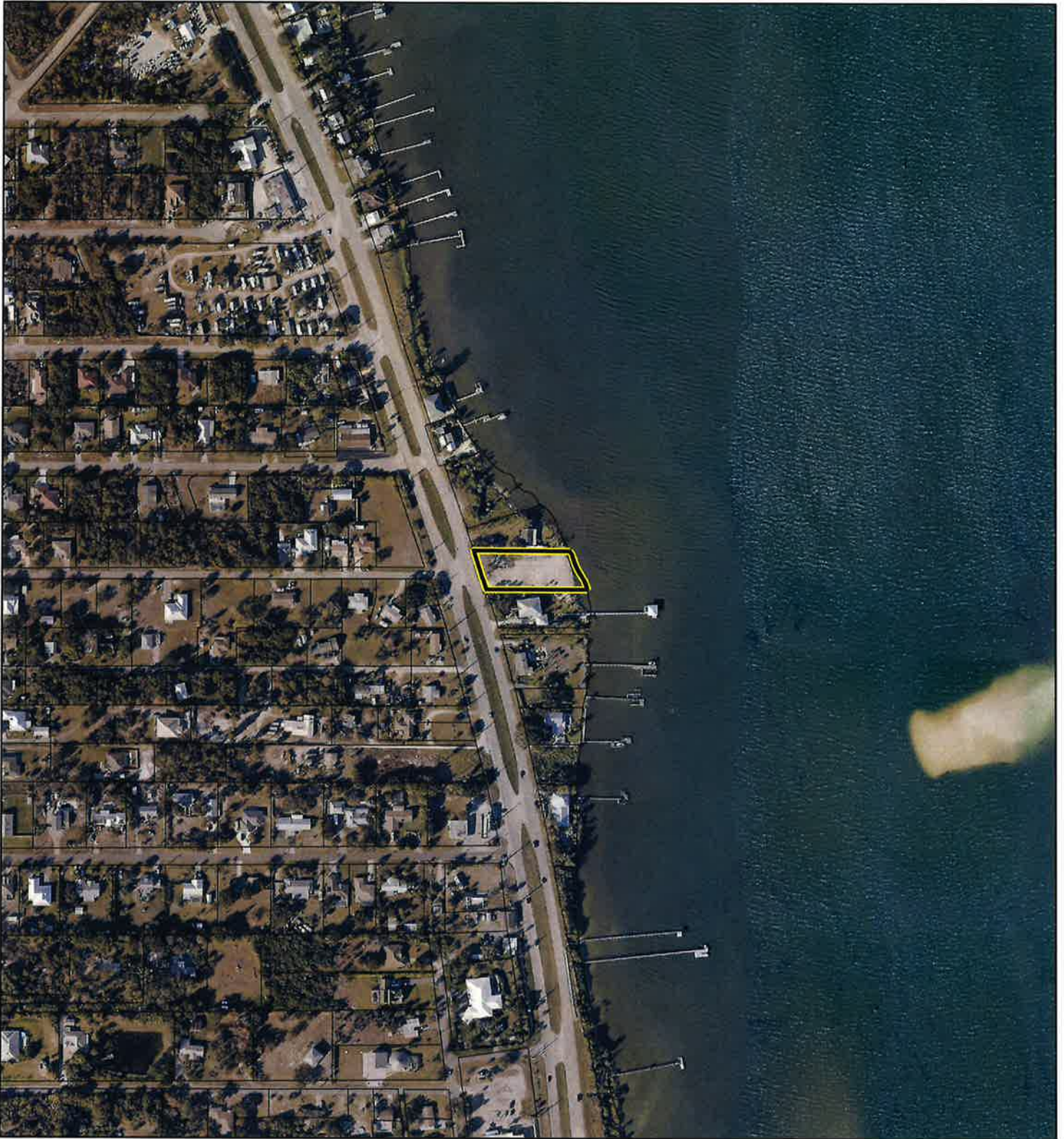
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/20/2023

AERIAL MAP

ELLISON, STEPHEN & PACHAREE

23Z00017



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2022

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: 3/20/2023

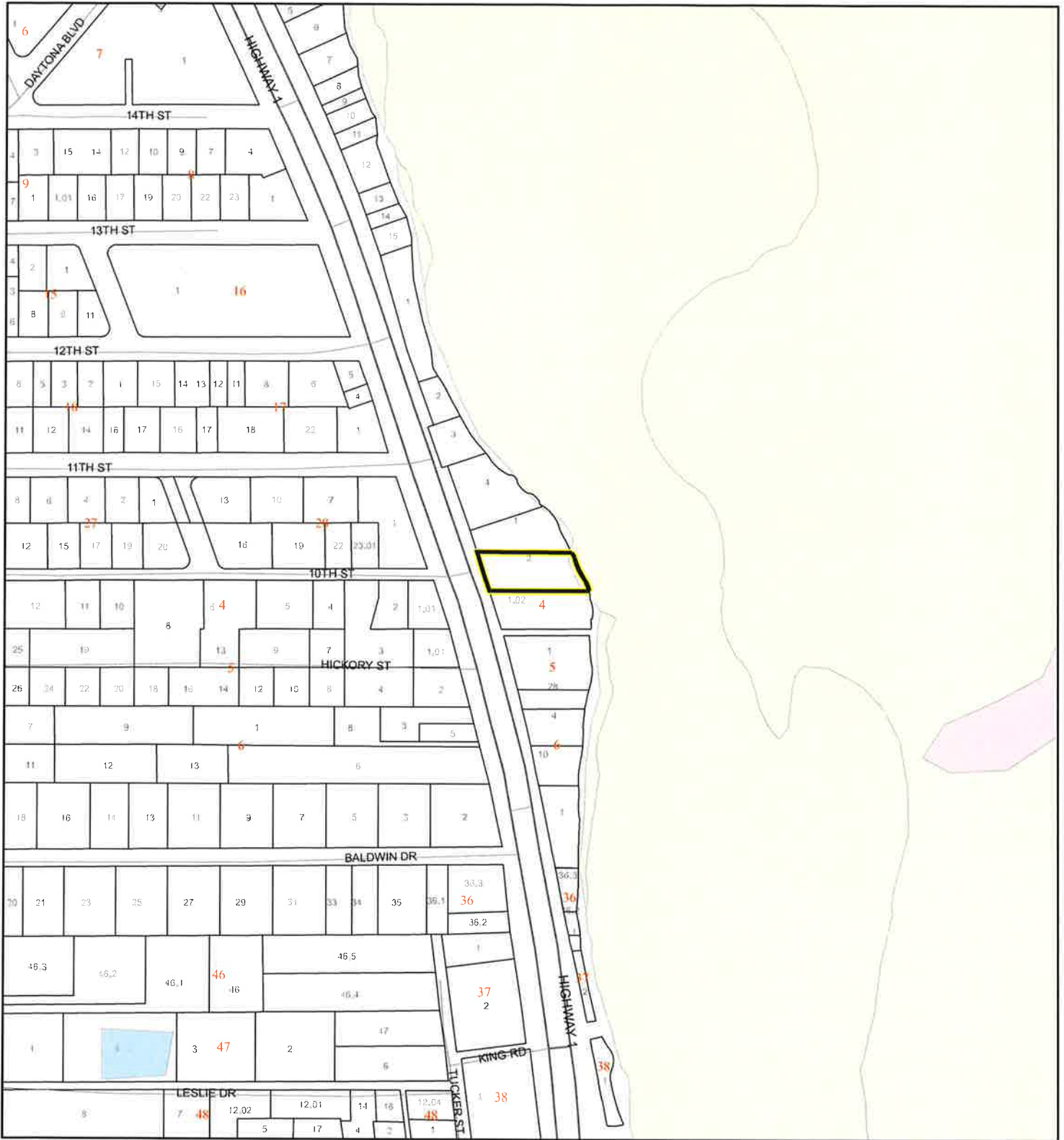
 Subject Property

 Parcels

NWI WETLANDS MAP

ELLISON, STEPHEN & PACHAREE

23Z00017



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/20/2023

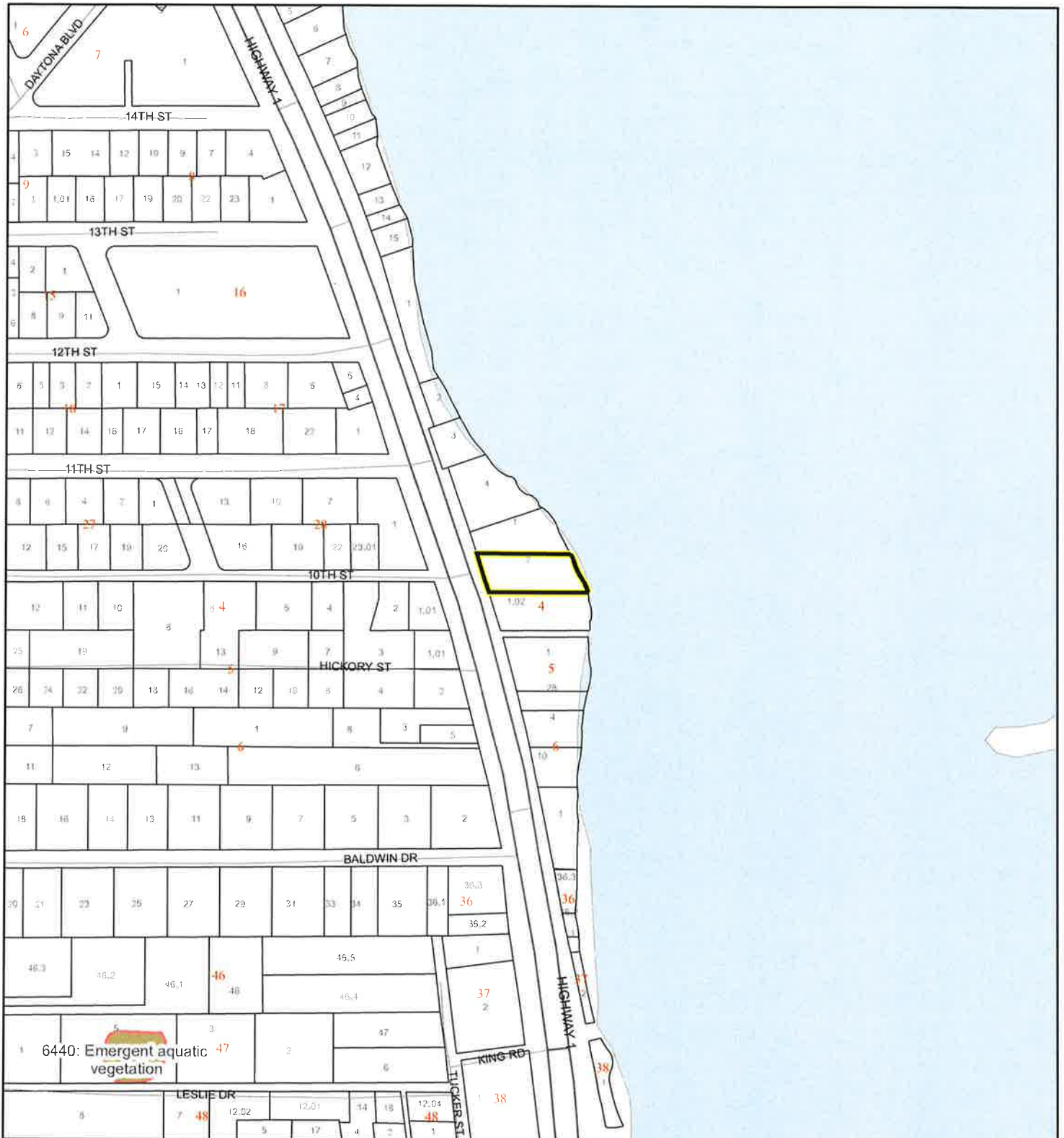
National Wetlands Inventory (NWI)

	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

ELLISON, STEPHEN & PACHAREE

23Z00017



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/20/2023

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

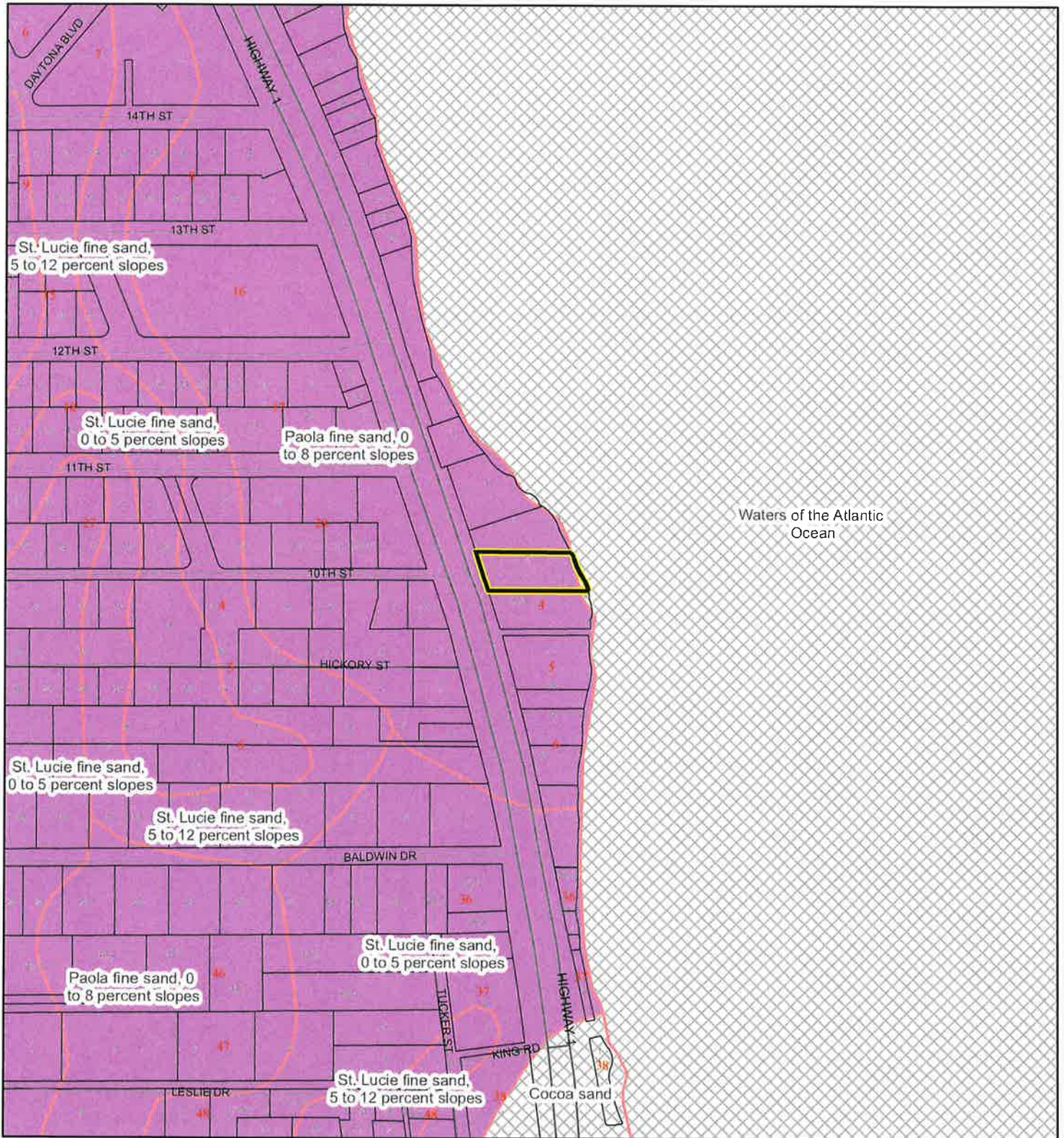
Subject Property

Parcels

USDA SCSSS SOILS MAP

ELLISON, STEPHEN & PACHAREE

23Z00017



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/20/2023

USDA SCSSS Soils

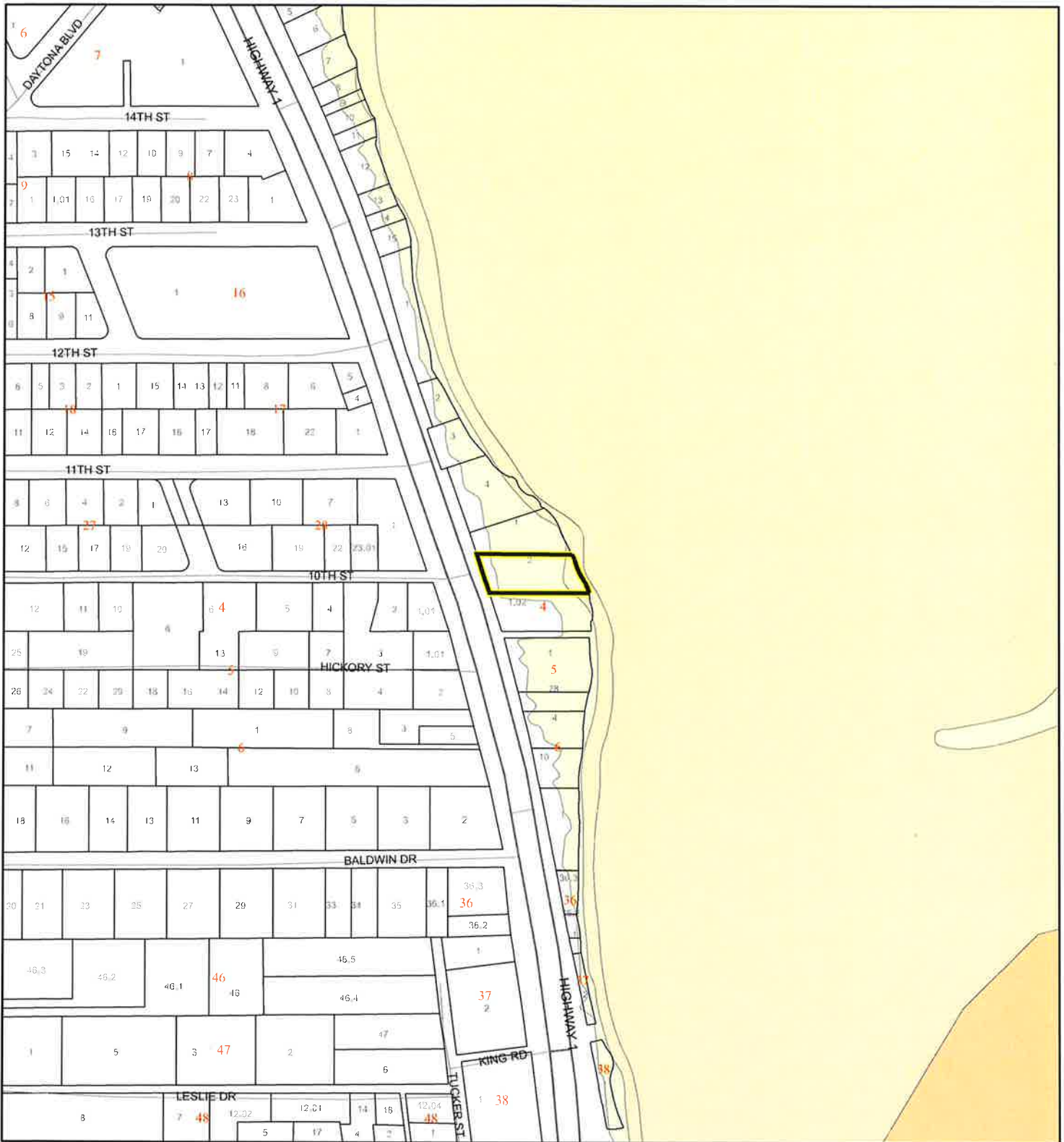
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

FEMA FLOOD ZONES MAP

ELLISON, STEPHEN & PACHAREE

23Z00017



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/20/2023

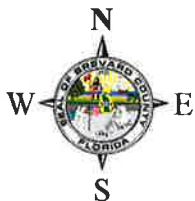
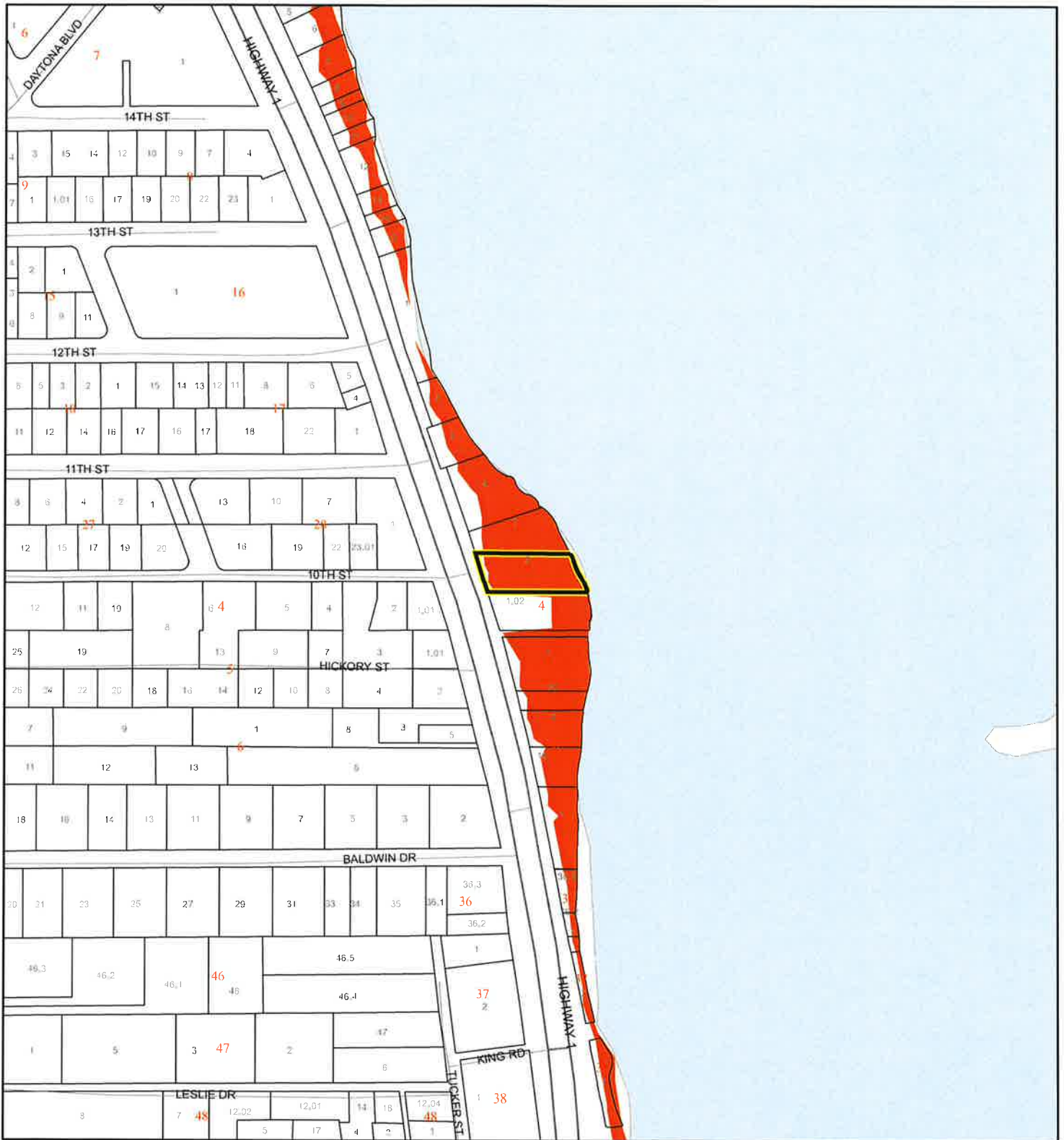
FEMA Flood Zones

A	AO	X
AE	Open Water	
AH	VE	
Subject Property	Parcels	

COASTAL HIGH HAZARD AREA MAP

ELLISON, STEPHEN & PACHAREE

23Z00017



1:4,800 or 1 inch = 400 feet


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Produced by BoCC - GIS Date: 3/20/2023

 Subject Property

 Parcels

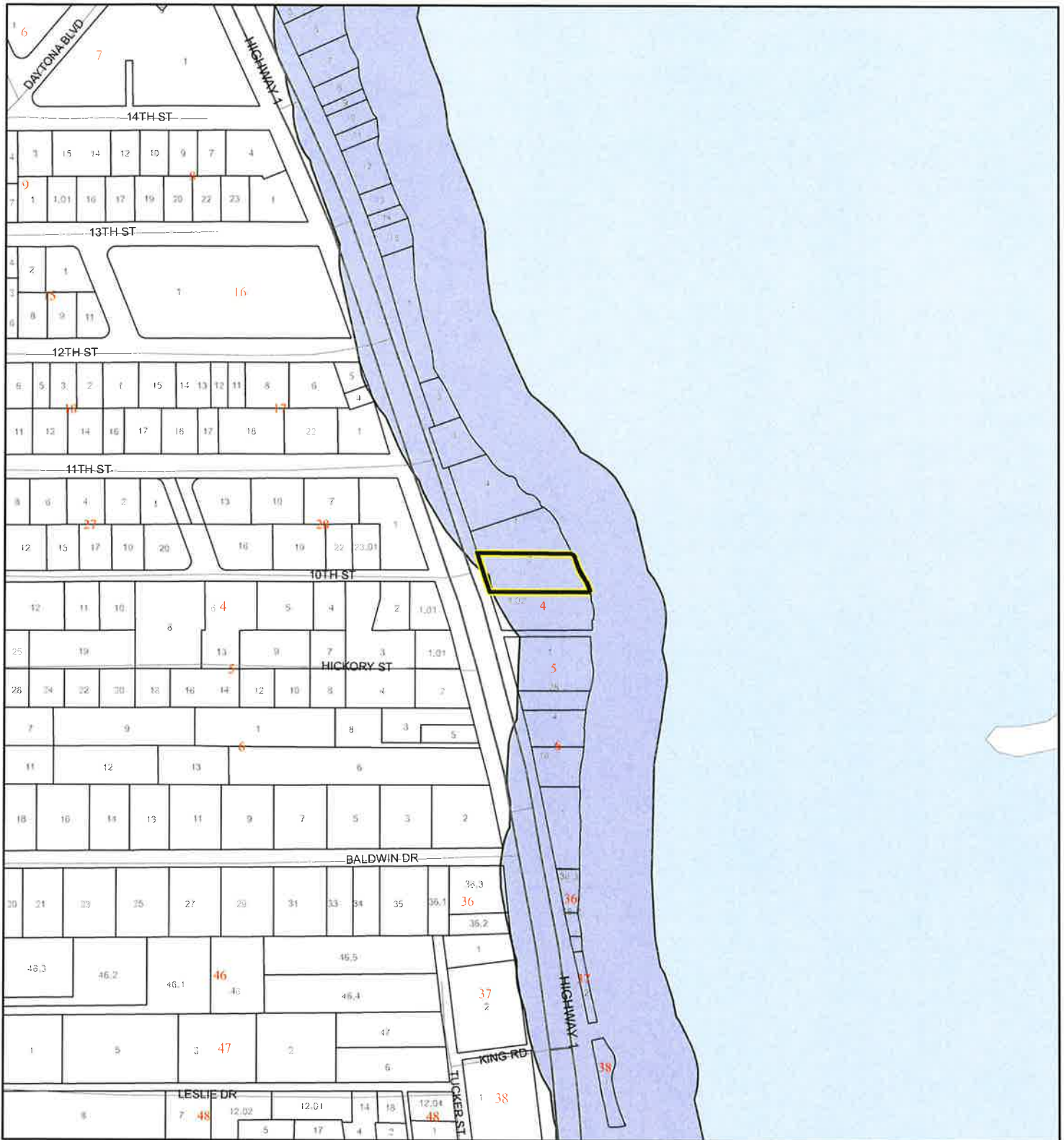
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

ELLISON, STEPHEN & PACHAREE

23Z00017



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/20/2023

 Subject Property

 Parcels

Septic Overlay

 40 Meters

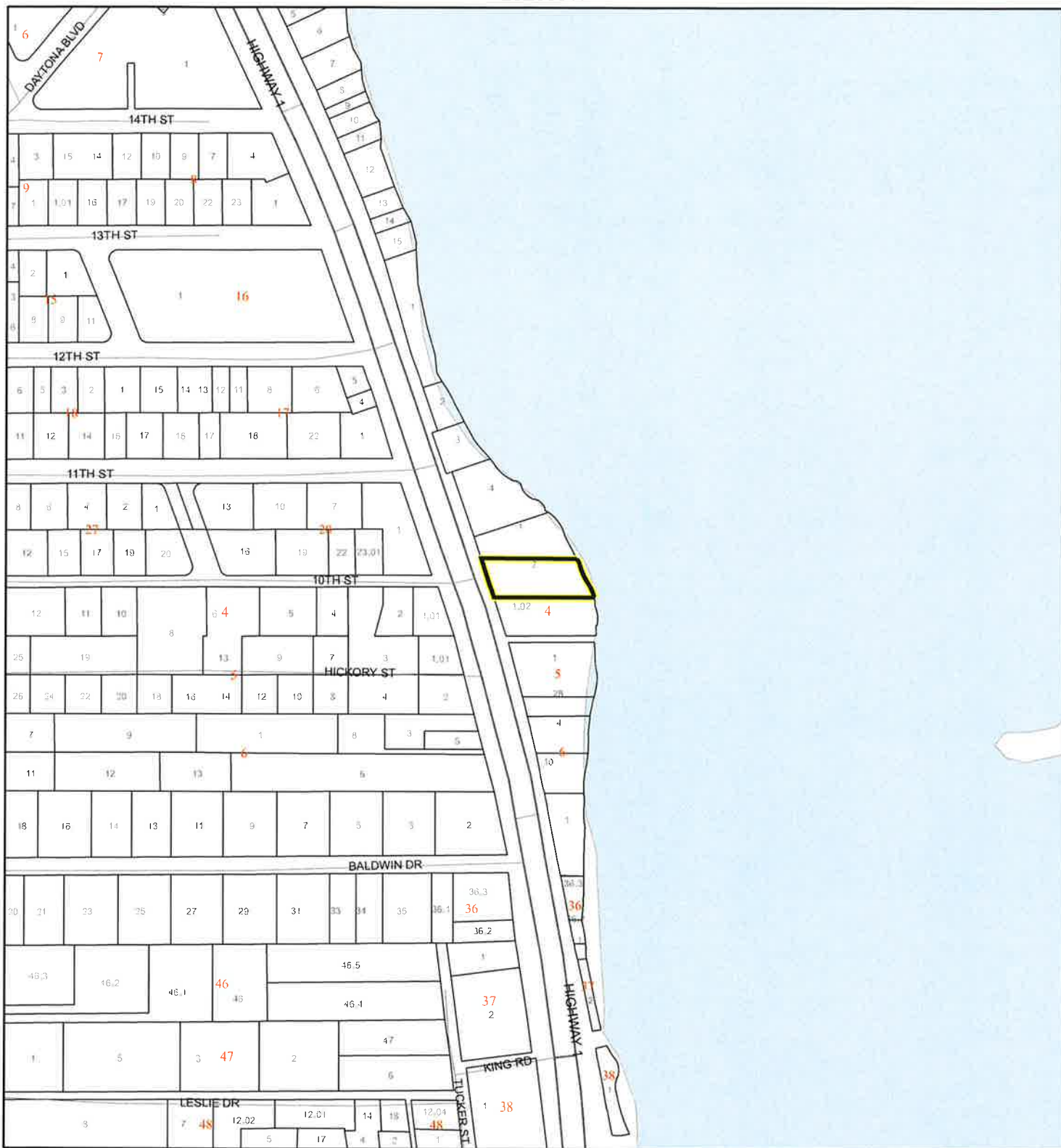
 60 Meters

 All Distances

EAGLE NESTS MAP

ELLISON, STEPHEN & PACHAREE

23Z00017



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/20/2023

 Subject Property

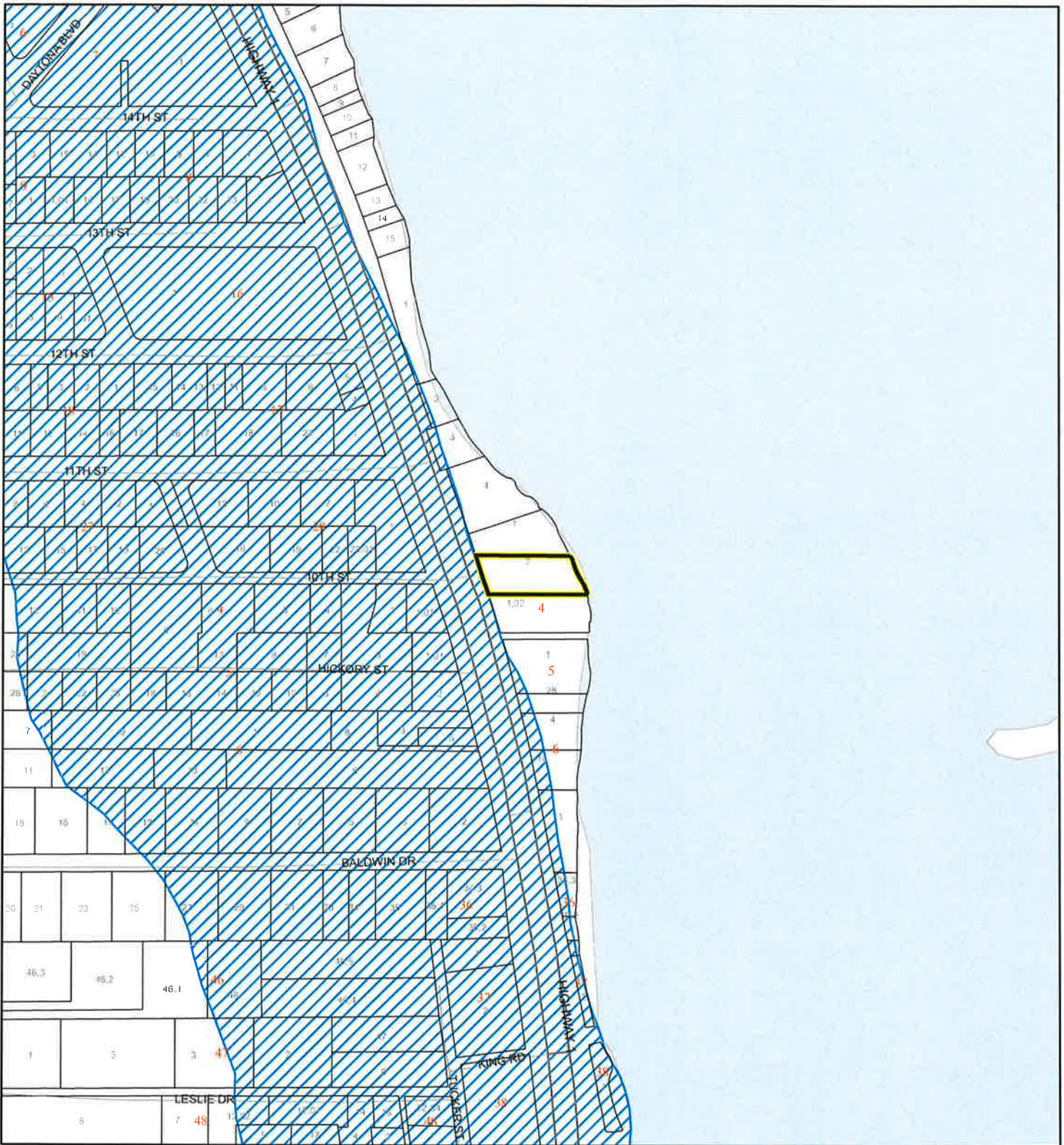
 Parcels

 Eagle Nests FWS

SCRUB JAY OCCUPANCY MAP

ELLISON, STEPHEN & PACHAREE

23Z00017



1:4,800 or 1 inch = 400 feet

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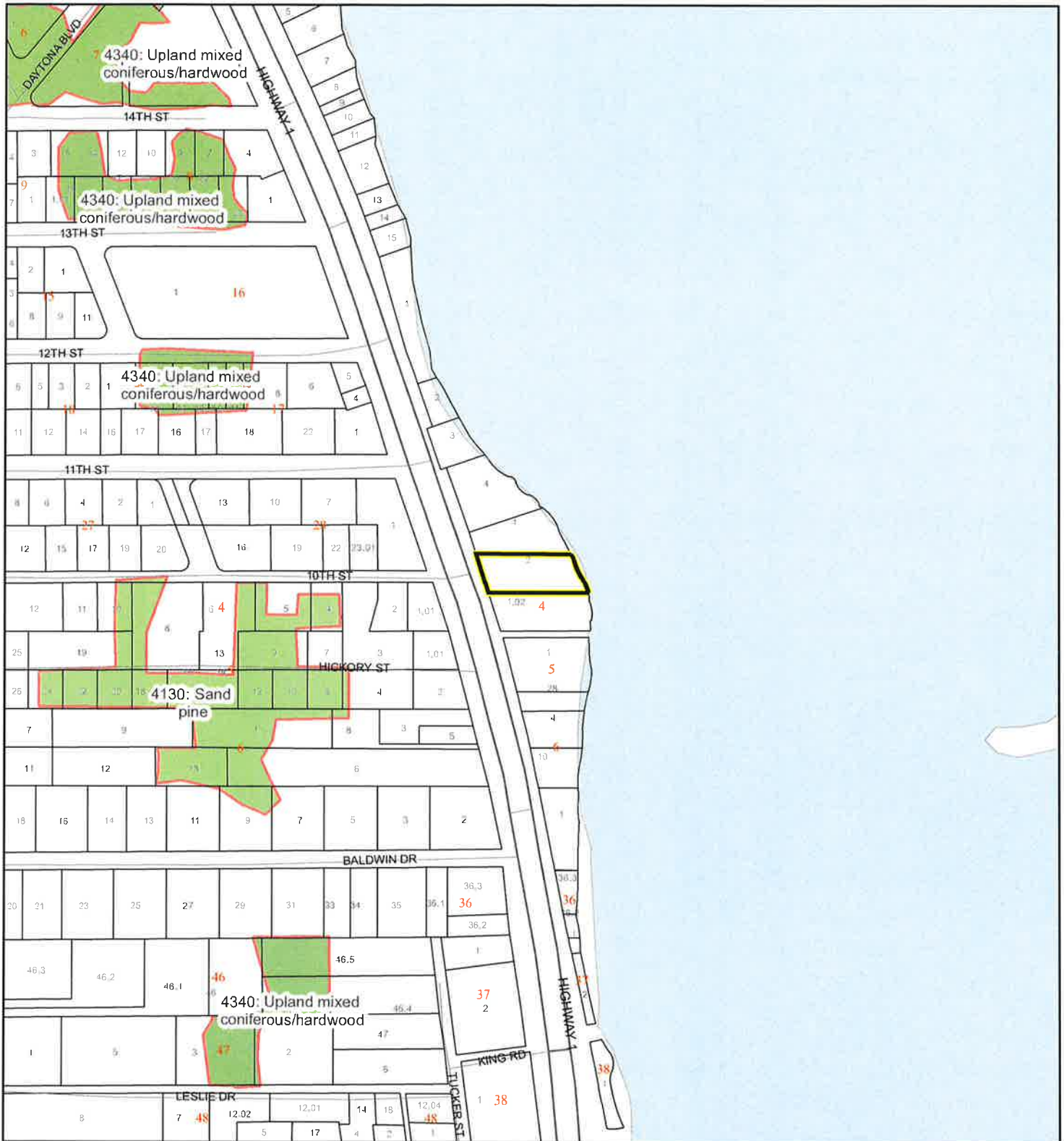
Produced by BoCC - GIS Date: 3/20/2023

- Subject Property
- Parcels
- Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

ELLISON, STEPHEN & PACHAREE

23Z00017



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 3/20/2023

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

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Tax Account 3008319

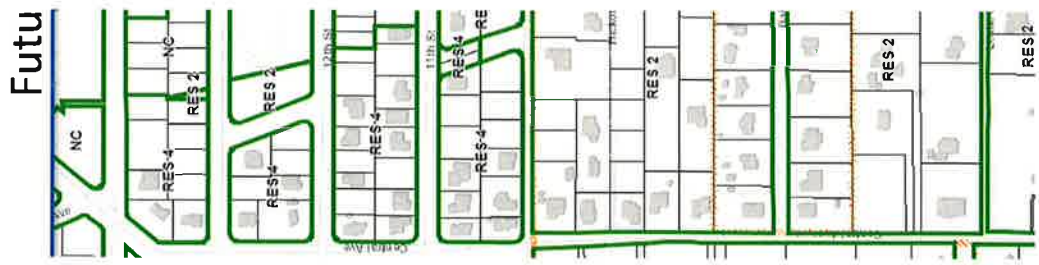
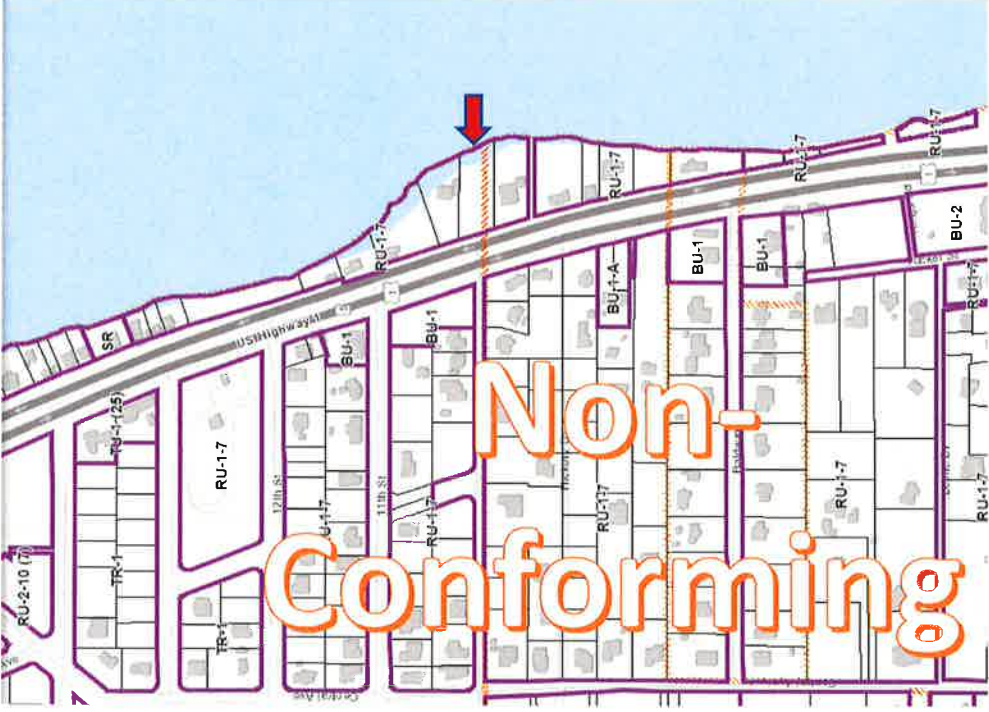
(Rezoning - 23Z000017)

Steve and Pach Ellison

Current Address: 1625 Las Palmos Dr SW, Palm Bay FL 32908

- Moved to FL in Jul 21
- Purchased lot Sep 21
 - Retirement home
 - Ensured SFR zoning
- Applied for “RES SFR-Duplex New” building permit (23BC08901) on Feb 6th
 - Zoning not consistent with FLU
 - Lot unbuildable for any use
 - Regular rezoning to SR offered as “solution”

Zoning



Zoning Classifications	Land Use									
	Agric	Res 1:2.5	Res 1	Res 2	Res 4	Res 6	Res 10	Res 15	Res	Res
GU, PA, AGR, RRMH-5, PUD, RPUD, THPUD, RVP				Res 2						
AU, REU, RRMH-2.5	N					Y				
ARR, RR-1, SEU, RRMH-1		N				Y				
TR-2		N					Y			
EU, EU-1, EU-2, RU-1-13, RU-1-11, TR-1, RA-2-4, RU-2-4		N						Y		
TR-1, RU-1-9, TR-1-A, TR-3, TRC-1, RU-2-6, RA-2-6				N					Y	

RU-1-7 vs. SR

Sec. 62-1342. Single-family residential, RU-1-7.

The RU-1-7 single-family zoning classification encompasses lands devoted to single-family residential development of spacious character, together with such accessory uses as may be necessary or are normally compatible with residential surroundings.

(1) Permitted uses.

a. *Permitted uses are as follows:*

- One single-family residential detached dwelling.
- Parks and public recreational facilities.
- Private golf courses.
- Foster homes.
- Sewer lift stations.

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

- Group homes, level I, subject to the requirements set forth in section 62-1835.9.
- Power substations, telephone exchanges and transmission facilities.
- Preexisting use.

- Private parks and playgrounds. **Excluded in SR.**

- Resort dwellings.

- Temporary living quarters during construction of a residence.

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

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

- Bed and breakfast inn.
- Change of nonconforming agricultural use.
- Guesthouses or servants' quarters, without kitchen facilities.
- Land alteration (over five acres and up to ten acres).
- Recreational facilities.
- Recreational/residential marina.
- Resort dwellings.
- Single-family residential second kitchen facility.
- Skateboard ramps.
- Substantial expansion of a preexisting use.
- Wireless telecommunication facilities and broadcast towers.
- Zero lot line subdivision. **Excluded in SR.**

Sec. 62-1338. Suburban residential, SR.

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

(1) Permitted uses.

a. *Permitted uses are as follows:*

- One single-family residential detached dwelling.
- Parks and public recreational facilities.
- Private golf courses.
- Foster homes.
- Sewer lift stations.

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

- Group homes, level I, subject to the requirements set forth in section 62-1835.9.
- Power substations, telephone exchanges and transmission facilities.
- Preexisting use.
- Resort dwellings.
- Temporary living quarters during construction of a residence.

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

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

- Bed and breakfast inn.
- Change of nonconforming agricultural use.
- Guesthouses or servants' quarters, without kitchen facilities.
- Land alteration (over five acres and up to ten acres).
- Recreational facilities.
- Recreational/residential marina.
- Resort dwellings.
- Single-family residential second kitchen facility.
- Skateboard ramps.
- Substantial expansion of a preexisting use.
- Wireless telecommunication facilities and broadcast towers.

1988 Comprehensive Plan vs. County Zoning Code

- **Objective 15:** *Brevard County shall eliminate inconsistencies between the Comprehensive Plan and regulations of the Land Development Regulations, and thereafter, shall reduce the number of existing non-conforming to the Comprehensive Plan.*
 - **Policy 15.1.1.** *Brevard County retains the authority to initiate appropriate administrative actions, such as administrative rezonings.*
 - **Policy 15.2.** *County staff may initiate administrative rezonings for those properties that are found to be in Future Land Use Map at the time of a development permit application.*
 - **Policy 15.3.** *Brevard County shall continue to administratively rezone those properties with zoning classifications inconsistent with the Future Land Use Map, the acceptable levels of service, and this Comprehensive Plan.*
 - **Criteria A:** *Administrative rezonings shall not be required for single family or duplex residential lots and requirements of the Brevard County Zoning Code and which are located within Neighborhood Commercial Agricultural or any residential land use designations.*
- County Zoning Code (Sec. 62-1811) narrowly limits Criteria A to “Non-conforming Lots of Record” and Administrative Action Waivers to allow permitting without rezoning if the “record” has not changed
- In 1990 our lot was split from the lot to the South, so the “record” changed but zoning mismatch was
 - Parcel to the South had an existing structure so retained “vested” rights to build a new SFR in 2004 without
- Over 1 year ago we were issued a “SFR Res Addition” permit (22BC08901) for a retaining wall
 - RU-1-7 zoning specifically noted in reviewer’s comments but FLU inconsistency was not flagged

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, June 12, 2023**, at **3:00 p.m.**, in the Florida 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: Board members present were: Henry Minneboo, (D1); Ron Bartcher (D1); Robert Sullivan (D2); Brian Hodggers (D2); Lorraine Koss (D2-Alt.); Ben Glover (D3); Debbie Thomas (D4); Mark Wadsworth, Chair (D4); Logan Luse (D4-Alt.); Robert Brothers (D5); and John Hopengarten (BPS).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Alex Esseeesse, Deputy County Attorney; Jane Hart, Planner III; Paul Body, Planner III; Trina Gilliam, Planner II; Melissa Wilbrandt, Associate Planner; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Agenda

Stephen J. and Pacharee Ellison

A change of zoning classification from RU-1-7 (Single-Family Residential) to SR (Suburban Residential). The property is 0.78 acres, located on the east side of U.S. Highway 1, directly across from 10th St., (8999 U.S. Highway 1, Micco) (23Z00017) (Tax Account 3008319) (District 3)

Steve Ellison, 1625 Las Palmos Drive, Palm Bay, stated in order to comply with the Future Land Use, he needs to change the zoning to a classification that is compatible. He said it is a change from single-family residence to single-family residence.

No public comment.

Motion by Brian Hodggers, seconded by Henry Minneboo, to recommend approval of a change of zoning classification from RU-1-7 to SR. The motion passed unanimously.