



AGENDA REPORT
May 24, 2018

SUBJECT:

Public Hearing, Re: Michael N. Malegiannakis (Steve and Penny DeFillips) requests a CUP (Conditional Use Permit) for a Private Boat Dock Accessory to a Single-Family Residential Lot in RU-1-13. The property is 0.03-acre, associated with 300 Ross Ave., Melbourne Beach, and located approx. 250 ft. west of Lakeview Dr. (18PZ00016) (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 the request for a CUP for a Private Boat Dock Accessory to a Single-Family Residence.

SUMMARY EXPLANATION and BACKGROUND:

The applicant is seeking approval of a CUP for a private residential boat dock in the RU-1-13 zoning classification. This site had a previous CUP approved on August 6, 2009; however, the CUP wasn't utilized and was removed pursuant to Section 62-1901(f). CUP's shall expire within three years from the date of approval if the approved use is not constructed or under substantial and continuous construction. One administrative extension of up to two years may be approved by staff prior to expiration if the applicant has submitted an application for a development order.

A private boat dock, per Section 62-1943.3, is a boat dock that is used in connection with a waterfront lot or parcel which may be undersized for the residential Zoning classification in which it is located, and is therefore associated with and considered part of an adjacent residential lot. The term "adjacent", for the purposes of this section, means any lot within the same neighborhood. The applicant owns lot 11 Block D located approximately 660 feet east of the waterfront lot. Both lot/parcel locations have the same RU-1-13 Zoning classification, which permits single-family residences. Several properties within the neighborhood have been granted similar requests for CUPs for residential boat docks.

The existing RU-1-13 Zoning classification is consistent with the Res 2 Future Land Use designation.

The Board should consider whether the proposed CUP for a residential boat dock is

consistent and compatible with the surrounding land uses and neighborhood.

On May 7, 2018, the Planning and Zoning Board heard the request and unanimously recommended approval.

Staff contact: Erin Sterk, Interim Planning & Zoning Manager, erin.sterk@brevardfl.gov

ATTACHMENTS:

Description

- **Staff Report 18PZ00016**
- **Maps**
- **FYI**

WB

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

WHEREAS, MICHAEL N. MALEGIANNAKIS – has requests a CUP (Conditional Use Permit) for a Private Boat Dock Accessory to a Single-Family Residential Lot, in an RU-1-13 (Single-Family Residential) zoning classification, on property described as Lot 11, Block D, Crystal Lakes Subdivision, as recorded in ORB 7865, Pages 484 – 485, of the Public Records of Brevard County, Florida. (0.43 acre) (0.03 acre proposed dock location) Located on the south side of Ross Ave., approx. 250 ft. west of Lakeview Dr. (Proposed dock location); and the southwest corner of Seiler St. and Ross Ave. (300 Ross Ave., Melbourne Beach); and

Section 03, Township 29S, Range 38E, and,

WHEREAS, a public hearing of the Brevard County Planning & 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 & Zoning Board recommended that the application be approved; and,

WHEREAS, the Board, after considering said application and the Brevard County Planning & 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; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested CUP for a Private Boat Dock Accessory to a Single-Family Residential Lot, in an RU-1-13 zoning classification, be APPROVED as recommended, and that the zoning classification relating to the above described property remain unchanged, and the Planning & 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 May 24, 2018.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida

by Rifa Pritchett, Chair
Brevard County Commission

As approved by Brevard County Commission on May 24, 2018.

ATTEST:

SCOTT ELLIS, CLERK
(SEAL)

(P&Z Hearing – May 7, 2018)

Please note: A Conditional Use Permit will generally expire on the three year anniversary of its approval if the use is not established prior to that date. Conditional Use Permits for Towers and Antennas shall expire if a site plan for the tower is not submitted within one (1) year of approval or if construction does not commence within two years of approval. A PUD 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.

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RESOLUTION NO. 18PZ00016

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

WHEREAS, MICHAEL N. MALEGIANNAKIS – (Steve and Penny DeFillips) – requests a CUP (Conditional Use Permit) for a Private Boat Dock Accessory to a Single-Family Residential Lot, in an RU-1-13 (Single-Family Residential) zoning classification, on property described as Lot 11, Block D, Crystal Lakes Subdivision, as recorded in ORB 7865, Pages 484 – 485, of the Public Records of Brevard County, Florida. (0.43 acre) (0.03 acre proposed dock location) Located on the south side of Ross Ave., approx. 250 ft. west of Lakeview Dr. (Proposed dock location); and the southwest corner of Seiler St. and Ross Ave. (300 Ross Ave., Melbourne Beach); and

Section 03, Township 29S, Range 38E, and,

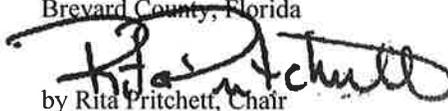
WHEREAS, a public hearing of the Brevard County Planning & Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning & Zoning Board recommended that the application be approved; and,

WHEREAS, the Board, after considering said application and the Brevard County Planning & 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; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested CUP for a Private Boat Dock Accessory to a Single-Family Residential Lot, in an RU-1-13 zoning classification, be APPROVED as recommended, and that the zoning classification relating to the above described property be changed to AU, and the Planning & 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 May 24, 2018.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida



by Rita Pritchett, Chair
Brevard County Commission

As approved by Brevard County Commission on May 24, 2018.

ATTEST:


SCOTT ELLIS, CLERK
(SEAL)

(P&Z Hearing – May 7, 2018)

Please note: A Conditional Use Permit will generally expire on the three year anniversary of its approval if the use is not established prior to that date. Conditional Use Permits for Towers and Antennas shall expire if a site plan for the tower is not submitted within one (1) year of approval or if construction does not commence within two years of approval. A PUD 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.

REZONING REVIEW WORKSHEET

18PZ00016

Commission District # 3

Hearing Dates:

P&Z 05/07/18

BCC 05/24/18

Owner Name: MICHAEL N. MALEGIANNAKIS

Request: CUP for a Private Boat Dock Adjacent to a Single-Family Residential Lot in RU-1-13

Subject Property:

Parcel ID# 29-38-03-50-D-11

Tax Acct.# 2953237

Location: south side of Ross Ave., approx. 250 ft. west of Lakeview Dr. (Proposed dock location); and the southwest corner of Seiler St. and Ross Ave. (Single-Family Residence)

Address: 300 Ross Ave., Melbourne Beach

Acreage: 0.43 acre (0.03 acre proposed dock location)

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	RU-1-13	RU-1-13 with CUP
Potential*	1 single-family	Private Boat Dock
Can be Considered under FLU MAP	YES Residential-2	YES Residential-2

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

	ADT	PM PEAK		
Trips from Existing Zoning	10	1	Segment Number	335B
Trips from Proposed Zoning	10	1	Segment Name	Hwy A1A Heron - Marlen
Maximum Acceptable Volume (MAV)	24,200	2,178	Acceptable LOS	D
Current Volume	9,878	889	Directional Split	0.5
Volume With Proposed Development	9,888	890	ITE CODE	
Current Volume / MAV	40.82%	40.82%	210	
Volume / MAV with Proposal	40.86%	40.86%		
Current LOS	C	C		
OS With Propos.	C	C		
Findings	<input checked="" type="checkbox"/> Non-Deficiency		<input type="checkbox"/> Deficiency	

Background & Purpose of Request

The applicant is seeking approval of a Conditional Use Permit (CUP) for a private residential boat dock in the RU-1-13 Zoning classification. This site had a previous CUP approved on August 6, 2009 under **CUP-11513**; however, the CUP wasn't utilized and was removed pursuant to **Section 62-1901 (f)**. Conditional Use Permits approved after the effective date of Ordinance No. 99-43 shall expire within three years from the date of approval if the approved use is not constructed or under substantial and continuous construction. One administrative extension of up to two years may be approved by staff prior to expiration if the applicant has submitted an application for a development order.

Renewals of expired conditional use permits may be considered by the board in public hearing pursuant to **Subsection 62-1901 (b)** if the applicant can demonstrate compliance with all current standards or review criteria." The current property owner wishes to pursue this same endeavor. The property has changed hands three times since the CUP was originally requested.

Land Use Compatibility

This parcel retains the Residential 2 (Res 2) Future Land Use designation. **FLUE Policy 1.8** addresses the Res 2 Future Land Use designation, which permits lower density residential development with a maximum density of up to two (2) units per acre, except as otherwise may be provided for within the Future Land Use Element. As the CUP request concerns dock usage and not additional residential development, this request is not in conflict with the Future Land Use Element.

The existing RU-1-13 Zoning classification is consistent with the Res 2 Future Land Use designation.

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

Environmental Constraints

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

Applicable Land Use Policies

The applicant is requesting a Conditional Use Permit for a private boat dock accessory to an adjacent single-family residential lot. The applicant owns lot 11 Block D located approximately 660 feet east of the waterfront lot. Both lot/parcel locations have the same RU-1-13 Zoning classification, which permits single-family residences on minimum 7,500 square foot lots, with minimum widths and depths of 75 feet. The minimum house size is 1,300 square feet. RU-1-13 does not permit horses, barns or horticulture.

The last similar action within the area occurred on May 2, 2013 under **13PZ-00007**. That lot lies north of Ross Ave on parcel # 1.07 (lies across the street and slightly to the west). Several properties within the neighborhood have been granted similar request for CUPs for residential boat docks.

This request should be evaluated in the context of **Section 62-1943.3**, governing private boat docks accessory to adjacent single family residential lots, as follows:

A private boat dock, for the purposes of this section, is a boat dock that is used in connection with a waterfront lot or parcel which may be undersized for the residential Zoning classification in which it is located, and is therefore associated with and considered part of an adjacent residential lot. The term "adjacent", for the purposes of this section, means any lot within the same neighborhood as described below in paragraph (1).

A conditional use for a private boat dock on a waterfront lot or parcel may be considered as an accessory use to an adjacent developed or undeveloped buildable residential lot in any residential Zoning classification under the following conditions. Owners of docks established prior to November 17, 2008, as evidenced by a certified survey or other irrefutable evidence, may request a waiver of any of the below conditions as part of the conditional use permit review process.

The applicant purchased this lot in April, 2017. Currently, there is no existing dock. The applicant is not requesting any waivers to this section.

- (1) The lot or parcel upon which the dock is to be constructed must be owned and used by the owner of a residential lot or parcel (or residential tenant of said lot or parcel) located within either the same platted subdivision or within 1000' of the dock parcel. The owner of the dock lot or parcel and the residential lot shall maintain fee simple ownership to both properties at all times. The applicants' residential lot is within 660 feet to the east of the dock lot.
- (2) The lot or parcel shall have at least 30 feet of water frontage, except where located on the Indian or Banana River Lagoons, where it shall have river frontage equal to or exceeding the minimum lot width requirement of the parcel's Zoning classification. The lot has approximately 50 feet of canal water frontage.
- (3) The boat dock may contain slips for no more than two boats and shall not be used for commercial purposes.
- (4) No other accessory structures are permitted on the dock lot or parcel.
- (5) The dock lot or parcel shall not be used to store a boat trailer, nor shall it be used to launch a boat.
- (6) The dock shall meet all applicable development standards described in Section 62-2118.

The Board should consider the compatibility of the proposed CUP pursuant to **Section 62-1151(c)** and to **Section 62-1901**, as outlined on pages 11 – 15 of these comments. **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. The applicant's responses are indicated in bold and staff observations are provided in italics.

Section 62-1901(c)(1)(a) Impact upon adjacent and nearby properties from the proposed use: (1) Number of persons using property; (2) Noise, odor, particulates, smoke, fumes and other emissions; and (3) Increase in traffic within the vicinity.

No additional impact will result. Only to be used by owner to dock a boat.

Section 62-1901(c)(1)(b) Compatibility with the character of adjacent and nearby properties with regard to use: Adjacent properties; Operating hours; Amount of traffic generated; Building size and setbacks; and Parking availability.

The property is only to be used as a boat dock the same as adjacent properties.

Section 62-1901(c)(1)(c) Impact upon property values of abutting residential properties:

The proposed boat dock will be in compliance with building code regulations.

Section 62-1901(c)(2)(a) Adequacy of ingress and egress to serve the use without burdening adjacent and nearby uses:

The ingress and egress is adequate. The owner is the only anticipated traffic. Owner to park on the

Staff Comments: Page 4
(18PZ00016)
05/07/18 PZ // 05/24/18 BCC

owners lot – not in the street.

Section 62-1901(c)(2)(b) Noise, glare, odor, particulates, smoke, fumes, etc.:
There will be no substantial disturbance to neighbors from the boat dock or boat.

Section 62-1901(c)(2)(c) Actual Noise Levels:
No response noted.

Section 62-1901(c)(2)(d) Impact upon solid waste disposal level of service:
No additional waste will be generated.

Section 62-1901(c)(2)(e) Impact upon potable water and waste water levels of service:
None will be required.

Section 62-1901(c)(2)(f) Screening and buffering:
The property is the same type of property as the neighbors.

Section 62-1901(c)(2)(g) Signage and glare from lighting:
None will be used.

Section 62-1901(c)(2)(h) Hours of operation:
Hours will be the same as neighboring properties.

Section 62-1901(c)(2)(I) Height of proposed use:
The dock height will be compatible with the character and codes of the area.

Section 62-1901(c)(2)(J) Impact of off-street parking and loading areas upon adjacent
None will be required. Any parking will be on the property. Parking will only be while boat is in use.

For Board Consideration

The code makes a distinction that three boat slips are considered a marina. The current CUP proposal would allow for the docking of up to two boats.

The existing RU-1-13 Zoning classification is consistent with the Res 2 Future Land Use designation.

The Board should consider whether the proposed CUP for a residential boat dock is consistent and compatible with the surrounding land uses and neighborhood.

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Rezoning Review

SUMMARY

Item #: 18PZ00016	Applicant: Michael Malegiannakis
Request: CUP for Private Boat Dock Accessory	
P&Z Hearing Date: 05/07/18	BCC Hearing Date: 05/24/18

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

Natural Resource	Preliminary Assessment	Natural Resource	Preliminary Assessment
Hydric Soils/Wetlands	Mapped	Coastal Protection	N/A
Aquifer Recharge Soils	Mapped	Surface Waters	Class III
Floodplains	Mapped	Wildlife	Potential

Comments:

**This review relates to the following property: Twp. 29, Rng. 38, Sec. 03;
Tax ID No. 2953237**

The subject property is located on the Indian River Lagoon system, designated as Class III surface water in this location. A 25-foot surface water protection buffer (Buffer) is required. The removal of native vegetation located within the Buffer shall be avoided. Temporary impacts to native vegetation during construction activities will require in-kind restoration. The Florida Department of Environmental Protection (FDEP) regulates mangrove trimming and can be reached at (407) 897-4100. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

The subject parcel contains mapped hydric soils (Canaveral-Anclote complex, gently undulating), an indicator that wetlands may be present on the property. Per Section 62-3694(c)(1), 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 renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, site plan or permit submittal. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) and 62-3696 of the Wetland Protection ordinance.

Canaveral-Anclote complex, gently undulating sand may also function as an aquifer recharge soil. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

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

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

The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.

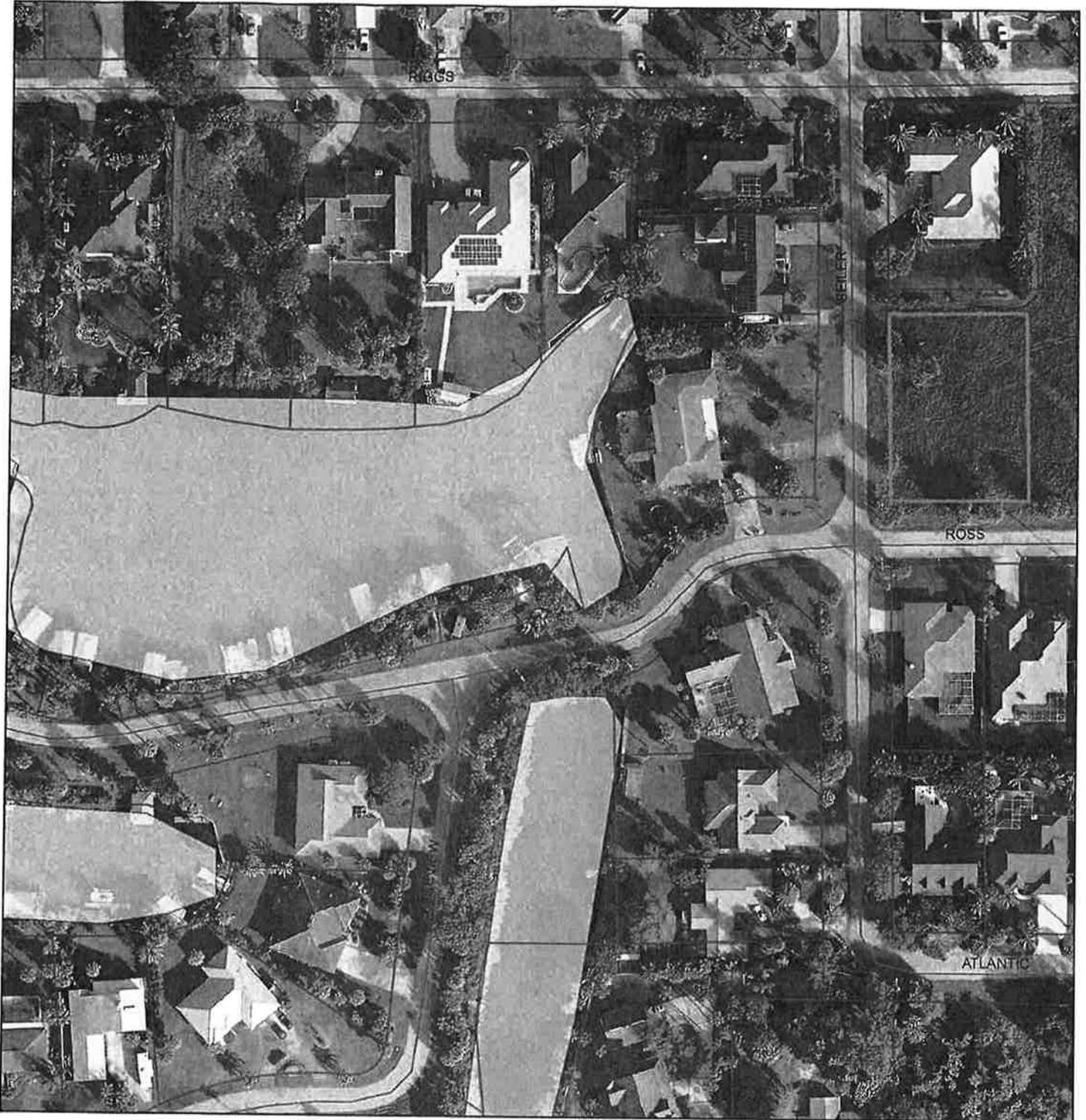


Legend

AQUIFER, HYDRIC

-  Hydric
-  Aquifer Recharge
-  Aquifer Recharge, Hydric

Soils
18PZ00016



Legend

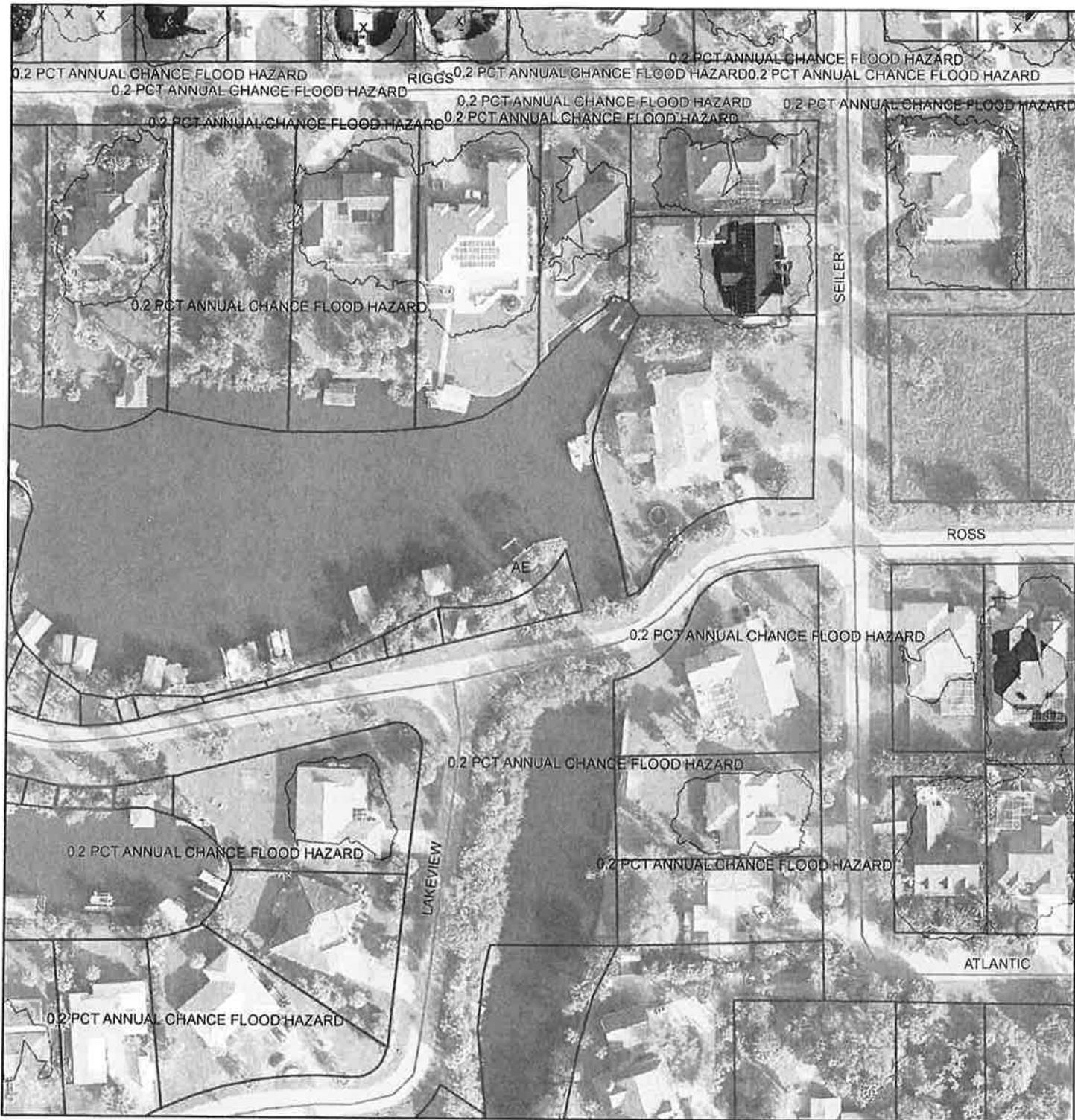
NWI

WETLAND_TY

- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland

- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Other
- Riverine

**NWI Wetlands
18PZ00016**



Legend

S_Fld_Haz_Ar

FLD_ZONE

- 0.2 PCT ANNUAL CHANCE FLOOD HAZARD
- 0.2 PCT ANNUAL CHANCE FLOOD HAZARD CONTAINED IN CHANNEL
- A
- AE

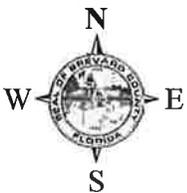
- AH
- AO
- OPEN WATER
- VE
- X
- X PROTECTED BY LEVEE

**FEMA SFHA
18PZ00016**

LOCATION MAP

MALEGIANNAKIS, MICHAEL N.

18PZ00016



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

Buffer Distance: 500 feet

-  Buffer
-  Subject Property

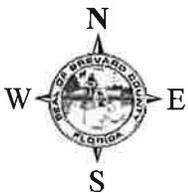
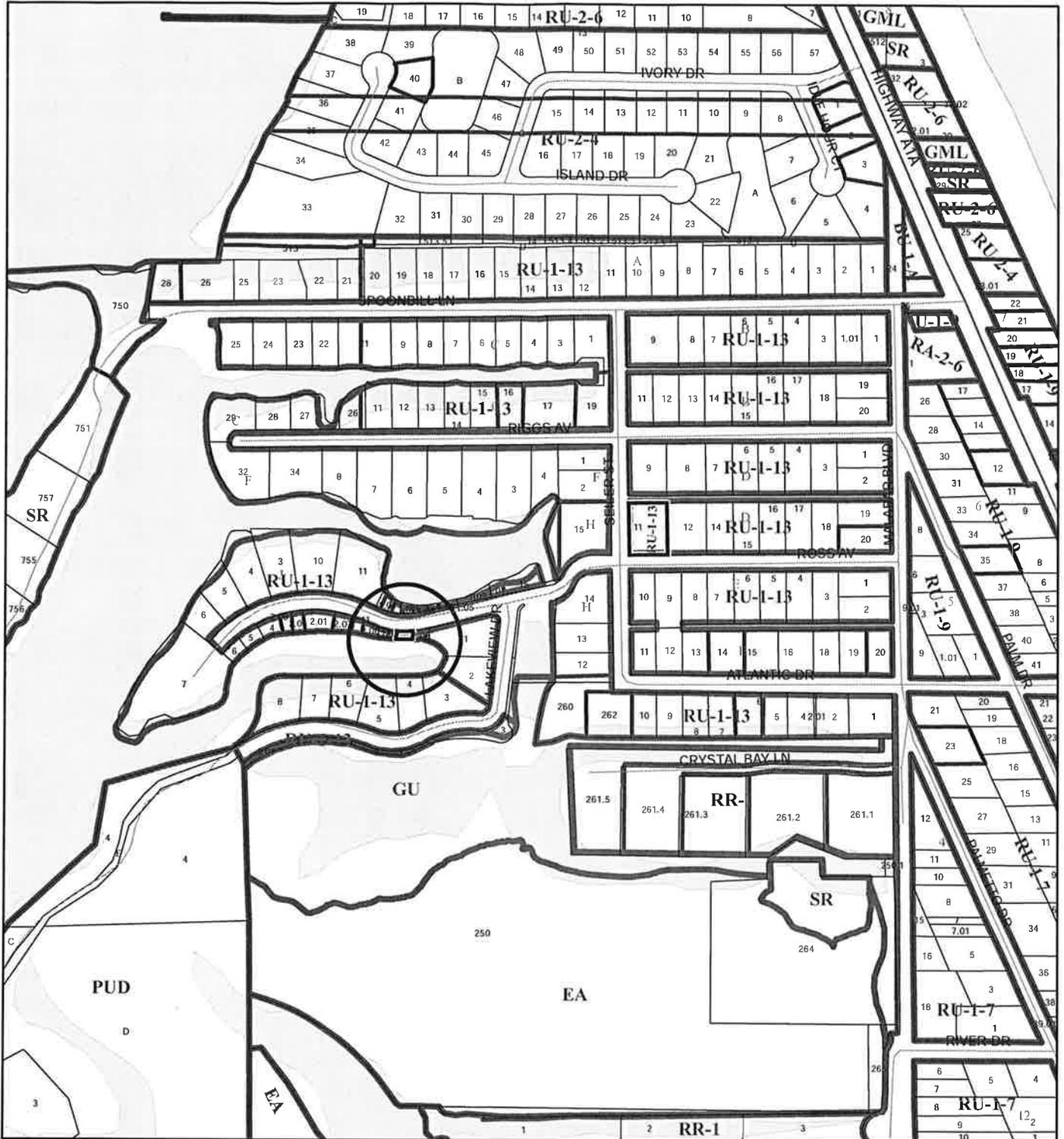
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by the Brevard County Planning and Zoning Office - GIS Section Date: 3/1/2018

ZONING MAP

MALEGIANNAKIS, MICHAEL N.

18PZ00016



1:4,800 or 1 inch = 400 feet

-  Subject Property
-  Parcels
-  Zoning

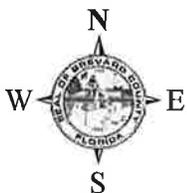
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FUTURE LAND USE MAP

MALEGIANNAKIS, MICHAEL N.

18PZ00016



1:4,800 or 1 inch = 400 feet

— Subject Property
□ Parcels

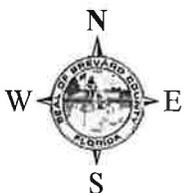
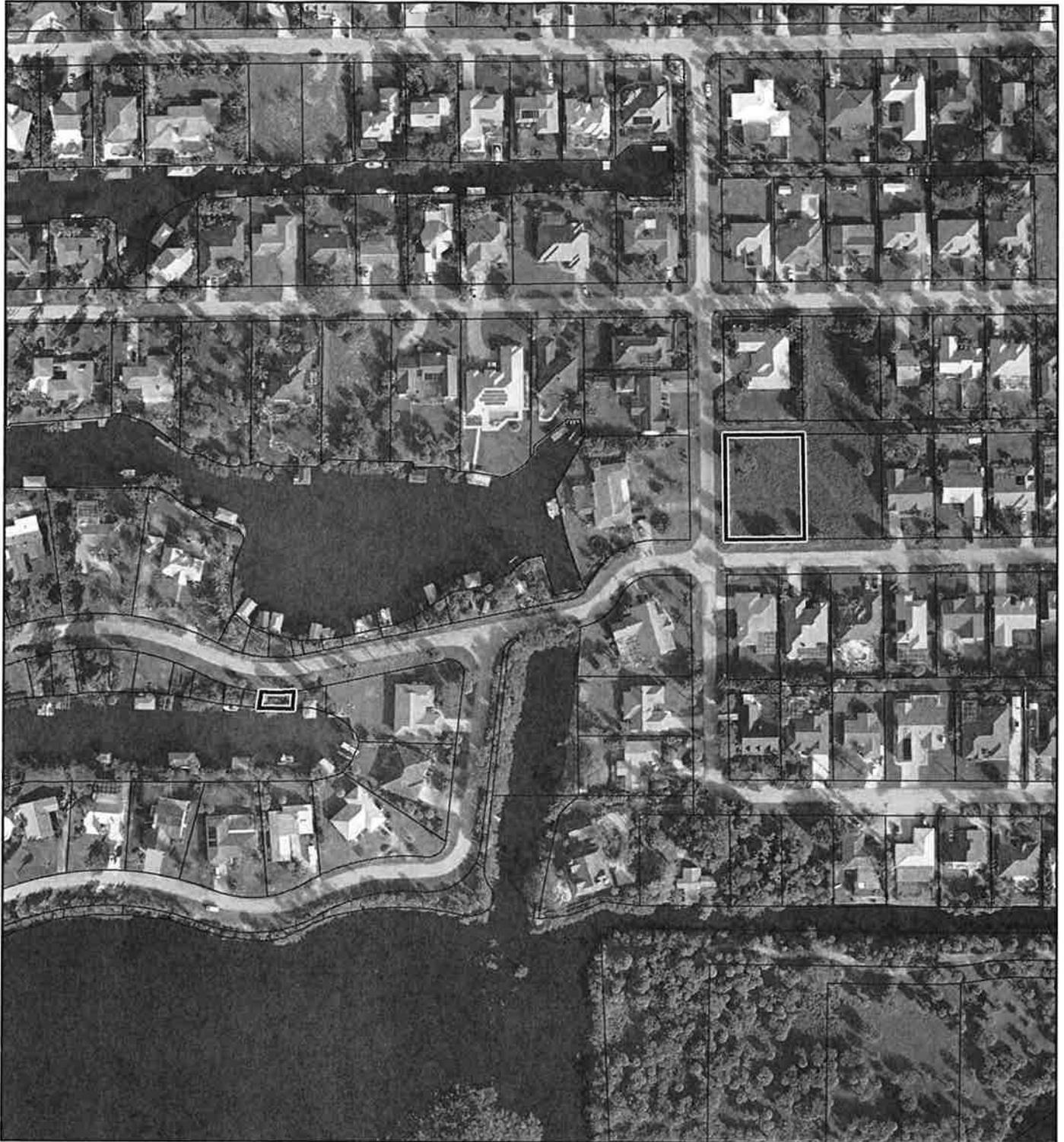
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AERIAL MAP

MALEGIANNAKIS, MICHAEL N.

18PZ00016



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2017

— Subject Property

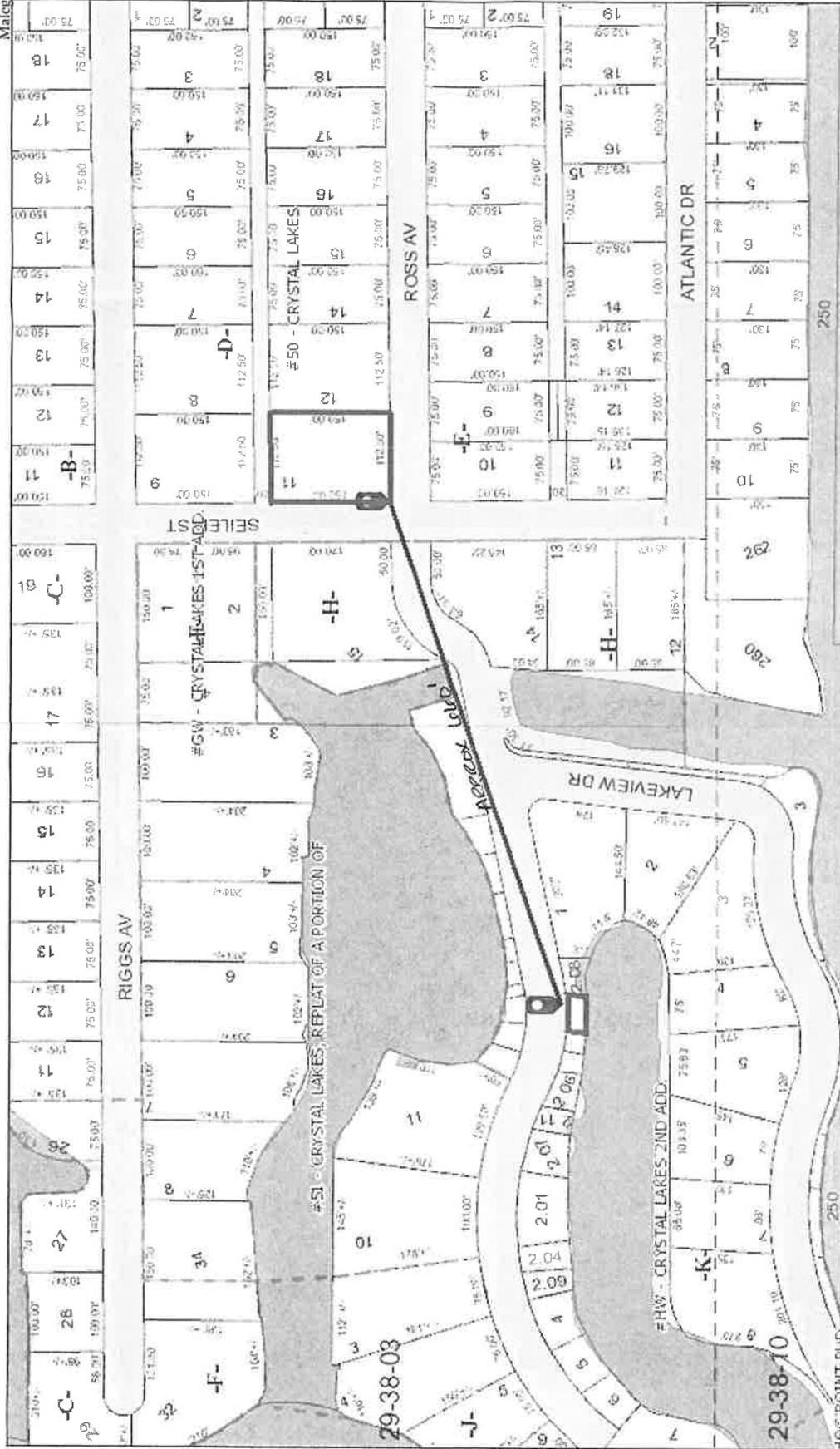
▭ Parcels

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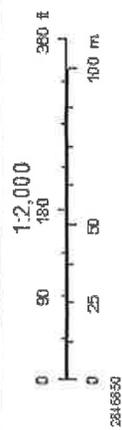
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Brevard County Property Appraiser

FYI
18PZ00016
Makgiannakis



February 21, 2018



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