



AGENDA REPORT
February 7, 2019

**James M. and Joanne M. Thomas request a change of zoning from RR-1
and BU-1 to SR. (18PZ00112) (District 4)**

SUBJECT:

Public Hearing, Re: James M. and Joanne M. Thomas request a change of zoning classification from RR-1 (Rural Residential) and BU-1 (General Retail Commercial), to SR (Suburban Residential). The property is 1.25 acres, located on the west side of North Wickham Road, approximately 400 feet north of Pineda Plaza Way. (5850 North Wickham Road, Melbourne) (18PZ00112) (District 4)

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 change of zoning classification from RR-1 and BU-1 to SR.

SUMMARY EXPLANATION and BACKGROUND:

The applicant is seeking a change of zoning classification from Rural Residential (RR-1) and General Retail Commercial (BU-1) with Binding Development Plan (BDP) to all Suburban Residential (SR) and to remove the Binding Development Plan from the western 20 feet of the subject property, for the purpose of building a new single-family residence and converting the existing single-family home into a guesthouse with a kitchen facility.

A parcel zoned RR-1 would need to be two acres in size for the guesthouse to contain a kitchen facility to meet the density requirements of the Future Land Use designation. *Per section 62-1932 (c); a guesthouse or servants' quarters may contain kitchen facilities on parcels of at least one acre in size where the resulting density of the lot including the guesthouse or servants' quarters is consistent with the zoning regulation and comprehensive plan density designation.*

The Board may wish to consider whether the proposed zoning classification will be compatible with the developed single-family parcels to the south and the developed commercial parcels to the east along Wickham Road.

The Board should also be aware that the subject parcel is abutting an undeveloped parcel that wraps around this parcel to the west and north that is located in the City of Palm Shores.

On January 7, 2019, the Planning and Zoning Board unanimously tabled the request to the February 11, 2019, meeting, as the applicant failed to appear and had failed to respond to staff communication efforts.

ATTACHMENTS:

Description

- ☐ **Administrative Policies**
- ☐ **Staff Comments**
- ☐ **GIS Maps**
- ☐ **Existing BDP**
- ☐ **P&Z Minutes - January**

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

Administrative Policies in the Future Land Use Element establish the expertise of staff with regard to zoning and land use issues and set forth criteria when considering a rezoning action or request for Conditional Use Permit, as follows:

Administrative Policy 1

The Brevard County zoning official, planners and the director of the planning and development staff, however designated, are recognized as expert witnesses for the purposes of Comprehensive Plan amendments as well as zoning, conditional use, special exception and variance applications.

Administrative Policy 2

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

Criteria:

- A. Staff shall analyze an application for consistency or compliance with comprehensive plan policies, zoning approval criteria and other applicable written standards.
- B. Staff shall conduct site visits of property which are the subject of analysis and recommendation. As part of the site visit, the staff shall take a videotape or photographs where helpful to the analysis and conduct an inventory of surrounding existing uses. Aerial photographs shall also be used where they would aid in an understanding of the issues of the case.
- C. In cases where staff analysis is required, both the applicant and the staff shall present proposed findings of fact for consideration by the Board.
- D. For re-zoning applications where a specific use has not been proposed, the worst case adverse impacts of potential uses available under the applicable land use classification shall be evaluated by the staff.

Administrative Policy 3

Compatibility with existing or proposed land uses shall be a factor in determining where a rezoning or any application involving a specific proposed use is being considered. Compatibility shall be evaluated by considering the following factors, at a minimum:

Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in

existing neighborhoods within the area which could foreseeably be affected by the proposed use;

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:
 - 1. historical land use patterns;
 - 2. actual development over the immediately preceding three years; and
 - 3. development approved within the past three years but not yet constructed.
- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

Administrative Policy 4

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

Criteria:

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.
- B. In determining whether an established residential neighborhood exists, the following factors must be present:
 - 1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.
 - 2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.
 - 3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

Administrative Policy 5

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the use(s) shall be considered. In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following criteria:

Criteria:

- A. Whether adopted levels of service will be compromised;
- B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;
- C. Whether the surrounding existing road system is of sufficient width and construction quality to serve the proposed use(s) without the need for substantial public improvements;
- D. Whether the surrounding existing road system is of such width and construction quality that the proposed use(s) would realistically pose a potential for material danger to public safety in the surrounding area;
- E. Whether the proposed use(s) would be likely to result in such a material and adverse change in traffic capacity of a road or roads in the surrounding area such that either design capacities would be significantly exceeded or a de facto change in functional classification would result;
- F. Whether the proposed use(s) would cause such material and adverse changes in the types of traffic that would be generated on the surrounding road system, that physical deterioration of the surrounding road system would be likely;
- G. Whether projected traffic impacts of the proposed use(s) would materially and adversely impact the safety or welfare of residents in existing residential neighborhoods.

Administrative Policy 6

The use(s) proposed under the rezoning, conditional use or other application for development approval must be consistent with (a) all written land development policies set forth in these administrative policies; and (b) the future land use element, coastal management element, conservation element, potable water element, sanitary sewer element, solid waste management element, capital improvements element, recreation and open space element, surface water element and transportation elements of the comprehensive plan.

Administrative Policy 7

Proposed use(s) shall not cause or substantially aggravate any (a) substantial drainage problem on surrounding properties; or (b) significant, adverse and unmitigatable impact on significant natural wetlands, water bodies or habitat for listed species.

Administrative Policy 8

These policies, the staff analysis based upon these policies and the applicant's written analysis, if any, shall be incorporated into the record of every quasi-judicial review application for development approval presented to the Board including rezoning, conditional use permits and vested rights determinations."

Section 62-1151 (c) of the Code of Ordinances of Brevard County directs "The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.
- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.

The minutes of the planning and zoning board shall specify the reasons for the recommendation of approval or denial of each application."

CONDITIONAL USE PERMITS (CUPs)

In addition to the specific requirements for each Conditional Use Permit (CUP), Section 62-1901 provides that the following approval procedure and general standards of review are to be applied to all CUP requests, as applicable.

- (b) *Approval procedure.* An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in section 62-1151. The approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved. If the applicant meets its initial burden, then the Board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the Board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use...

...In stating grounds in support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odor, glare and noise, particulates, smoke, fumes and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.

(c) General standards of review.

- (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon a consideration of the factors specified in section 62-1151(c) plus a determination that the following general standards are satisfied. The Board shall make the determination whether an application meets the intent of this section.
 - a. The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1) the number of persons anticipated to be using, residing or working under the conditional use; (2) noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3) the increase of traffic within the vicinity caused by the proposed conditional use.
 - b. The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.
 - c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an MAI certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.
- (2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:
 - a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1) adequate to serve the proposed use without burdening adjacent and nearby uses, and (2) built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at Level of Service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable Brevard County standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the

numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.

- b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.
- c. Noise levels for a conditional use are governed by section 62-2271.
- d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
- e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
- f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.
- g. Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.
- h. Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.
- i. The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than thirty-five (35) feet higher than the highest residence within 1000 feet of the property line.
- j. Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

FACTORS TO CONSIDER FOR A REZONING REQUEST

Section 62-1151(c) sets forth factors to consider in connection with a rezoning request, as follows:

“...The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.
- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare...”

These staff comments contain references to zoning classifications found in the Brevard County Zoning Regulations, Chapter 62, Article VI, Code of Ordinances of Brevard County. These references include brief summaries of some of the characteristics of that zoning classification. Reference to each zoning classification shall be deemed to incorporate the full text of the section or sections defining and regulating that classification into the Zoning file and Public Record for that item.

These staff comments contain references to sections of the Code of Ordinances of Brevard County. Reference to each code section shall be deemed to incorporate the section into the Zoning file and Public Record for that item.

These staff comments contain references to Policies of the Brevard County Brevard County Comprehensive Plan. Reference to each Policy shall be deemed to incorporate the entire Policy into the Zoning file and Public Record for that item.

These staff comments refer to previous zoning actions which are part of the Public Records of Brevard County, Florida. These records will be referred to by reference to the file number. Reference to zoning files are intended to make the entire contents of the cited file a part of the Zoning file and Public Record for that item.

DEFINITIONS OF CONCURRENCY TERMS

Maximum Acceptable Volume (MAV): Maximum acceptable daily volume that a roadway can carry at the adopted Level of Service (LOS).

Current Volume: Building permit related trips added to the latest MPO traffic counts.

Volume with Development (VOL W/DEV): Equals Current Volume plus trip generation projected for the proposed development.

Volume/Maximum Acceptable Volume (VOL/MAV): Equals the ratio of current traffic volume to the maximum acceptable roadway volume.

Volume/Maximum Acceptable Volume with Development (VOL/MAV W/DEV): Ratio of volume with development to the Maximum Acceptable Volume.

Acceptable Level of Service (ALOS): Acceptable Level of Service currently adopted by the County.

Current Level of Service (CURRENT LOS): The Level of Service at which a roadway is currently operating.

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

REZONING REVIEW WORKSHEET

18PZ00112

Commission District # 4

Hearing Dates: P&Z ~~11/05/18~~ 01/07/19 BCC ~~12/06/18~~ 02/07/19

Owner Name: JAMES M. AND JOANNE M. THOMAS, TRUSTEES

Request: RR-1 and BU-1 with BDP to SR with removal of BDP

Subject Property:

Parcel ID# 26-36-24-00-762

Tax Acct.# 2605048

Location: West side of N. Wickham Rd., approx. 400 ft. north of Pineda Plaza Way

Address: 5850 N. Wickham Rd., Melbourne

Acreage: 1.25

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	RR-1 and BU-1 with BDP	SR
Potential*	1 Single Family Unit	2 Single Family Units
Can be Considered under FLU MAP	YES Neighborhood Commercial	YES Neighborhood Commercial

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

	ADT	PM PEAK		
Trips from Existing Zoning	10	1	Segment Number	370F
Trips from Proposed Zoning	19	2	Segment Name	Wickham Road Pineda Csw y. to Suntree Blvd.
Maximum Acceptable Volume (MAV)	39,800	3,582	Acceptable LOS	E
Current Volume	26,330	2,370	Directional Split	0.5
Volume With Proposed Development	26,349	2,371	ITE CODE 210	
Current Volume / MAV	66.16%	66.16%		
Volume / MAV with Proposal	66.20%	66.18%		
Current LOS	C	C		
OS With Proposal	C	C		
Findings	<input checked="" type="checkbox"/> Non-Deficiency		<input checked="" type="checkbox"/> Non-Deficiency	

Background & Purpose of Request

The applicant is seeking a change of Zoning classification from Rural Residential (RR-1) and General Retail Commercial (BU-1) with Binding Development Plan (BDP) to all Suburban Residential (SR) and to remove the Binding Development Plan from the western 20 feet of the subject property, for the purpose of building a new single-family residence and converting the existing single-family home into a guesthouse with a kitchen facility. The maximum development potential that a 1.25 acre parcel would allow for in the SR Zoning classification is two single-family lots, however with this parcel being a flag lot it could not be subdivided into two separate parcels.

August 21, 1991: a variance (**V-2374**) was approved for the parcel to permit a variance of 5 ft. from the required 25 ft. minimum width for a flag lot.

September 23, 1992: the subject parcel was rezoned (**Z-8844**) from Agricultural Residential (AU) to RR-1 except the west 20 feet of the parcel.

August 21, 2001: the west 20 feet of the subject parcel was a portion of a 1.96 acre parcel rezoned (**Z-10595**) from AU and Governmental Managed Lands (GML) to BU-1 with a Binding Development Plan recorded in Official Records Book 4404, page 3690. This west 20 feet strip of the subject parcel was a portion of the parcel to the west which has been annexed into the City of Palm Shores. This Binding Development Plan does not run with the portion of the parcel that was annexed. The Binding development plan does remain on the west 20 feet that was not annexed into the City of Palm Shores. This west 20 feet would not have the width to do any BU-1 uses; therefore, the Board may not wish to retain any of the current BDP conditions.

May 25, 2007: the west 20 feet of the subject parcel was Quit Claim to be included with the parcel per Official Records Book 5782, Page 8747.

Land Use Compatibility

The subject parcel retains the Neighborhood Commercial (NC) Future Land Use designation. **FLUE Policy 2.5** defines the Activities Permitted in NC.

Neighborhood Commercial (NC) development activities are intended to be low impact in nature and serve the needs of the immediate residential area. Intrusion of these land uses into surrounding residential areas shall be limited. Existing BU-1-A uses, which were established as of the adoption date of this provision shall be considered consistent with this policy. Development activities which may be considered within NC Future Land Use designation, provided that listed criteria are met, include the following:

- a) Professional offices (no drive through lanes permitted);
- b) Personal Services (no drive through lanes permitted);
- c) Convenience stores (no drive through lanes permitted);
- d) Residential uses;
- e) Institutional uses;
- f) Recreational uses;
- g) Public facilities; and
- h) Transitional uses pursuant to Policy 2.14.

The proposed SR Zoning classification is consistent with the NC Future Land Use designation pursuant to Policy 2.13 of the Future Land Use Element.

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 subject parcel is a Flag Lot located on the west side of Wickham Road, an urban principal arterial roadway consisting of mostly commercial zoning uses which serve the surrounding neighborhoods along with abutting single-family subdivisions. The parcel has an existing 1,559 sq. ft. single family residence. Directly across Wickham Road from the subject parcel is Whispering Pines Estates, a single-family residential subdivision with the SR Zoning classification.

SR

The SR classification permits single family residences on minimum half acre lots, with a minimum width of 100 feet and a depth of 150 feet. The minimum house size in SR is 1,300 square feet.

RR-1

The RR-1 classification permits single-family residential land uses on minimum one acre lots, with a minimum lot width and depth of 125 feet. The RR-1 classification permits horses, barns and horticulture as accessory uses to a single-family residence. The minimum house size is 1,200 square feet. The keeping of horses and agricultural pursuits are accessory to a principle residence within the RR-1, rural residential zoning classification.

BU-1

The BU-1 classification allows retail commercial land uses on minimum 7,500 square foot lots, with a minimum lot width and depth of 75 feet. The BU-1 classification does not permit warehousing or wholesaling. The BU-1 portion of the parcel does not meet the minimum lot size requirements.

This parcel abuts a parcel within the Town of Palm Shores jurisdiction to the west. The abutting 12.27 feet wide parcel to the north is zoned Restricted Neighborhood Retail Commercial (BU-1-A). The abutting parcel to the south is zoned RR-1 and BU-1. The abutting parcel to the north that runs along the flag stem of the parcel is zoned BU-1.

The half-mile radius around this site has seen two zoning changes within the last 3 years.

October 13, 2016; **16PZ00071**, an amendment to change the Future land Use from Public to Community Commercial (CC) and changed the Zoning classification from Government Managed Lands High-Intensity (GML (H) to BU-1. This zoning change was on a 0.25 acre parcel located approximately 0.25 miles southeasterly of the subject parcel.

April 25, 2018; **17PZ00109**, changed the Zoning classification from Planned Industrial Park (PIP) to Medium Density Multi-Family (RU-2-15). This zoning change was on four parcels with a total of 30.7 acres, located approximately 0.27 miles northeasterly of the subject parcel lying along the east side of Wickham Road.

For Board Consideration

The applicant is seeking a change of Zoning classification from Rural Residential (RR-1) and General Retail Commercial (BU-1) with Binding Development Plan (BDP) to all Suburban Residential (SR) and to remove the Binding Development Plan from the western 20 feet of the subject property, for the purpose of building a new single-family residence and converting the existing single-family home into a guesthouse with a kitchen facility.

A parcel zoned RR-1 would need to be two acres in size for the guesthouse to contain a kitchen facility to meet the density requirements of the Future Land Use designation. *Per section 62-1932 (c); a guesthouse or servants' quarters may contain kitchen facilities on parcels of at least one acre in size where the resulting density of the lot including the guesthouse or servants' quarters is consistent with the zoning regulation and comprehensive plan density designation.*

Staff Comments: Page 4
(18PZ00112)
11/05/18 PZ // 12/06/18 BCC

The Board may wish to consider whether the proposed Zoning classification will be compatible with the developed single-family parcels to the south and the developed commercial parcels to the east along Wickham Road.

The Board should also be aware that the subject parcel is abutting an undeveloped parcel that wraps around this parcel to the west and north that is located in the City of Palm Shores.

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Rezoning Review
SUMMARY

Item #: 18PZ00112 Request: RR-1 & BU-1 to SR & remove BDP P&Z Hearing Date: 11/05/18;	Applicant: James & Joanne Thomas BCC Hearing Date: 12/06/18
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This is a preliminary review based on environmental maps available to the Natural Resources Management (NRM) Department at the time of this review and does not include a site inspection to verify the accuracy of this information. This review does not ensure whether or not a proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations. In that this process is not the appropriate venue for site plan review, specific site designs that may be submitted with the rezoning will be deemed conceptual and any comments or omissions relative to specific site design do not provide vested rights or waivers from these regulations, unless specifically requested by the owner and approved by the Board of County Commissioners. If the owner has any questions regarding this information, he/she is encouraged to contact NRM prior to submittal of any development or construction plans.

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

Comments:

This review relates to the following property: Twp. 26, Rng. 36, Sec. 24;
Tax ID No. 2605048

The subject parcel contains mapped NWI wetlands and hydric soils (Satellite sand 0 to 2% slopes) as shown on the NWI Wetlands and USDA Soil Conservation Service Soils Survey maps, respectively; indicators that wetlands may be present on the property. Per Section 62-3694(c)(2), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. The preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts as described in Sec. 65-3694(c)(1)a above. Application of the one-unit-per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property as defined in Sec. 65-694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) and 62-3696. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any plan or permit submittal.

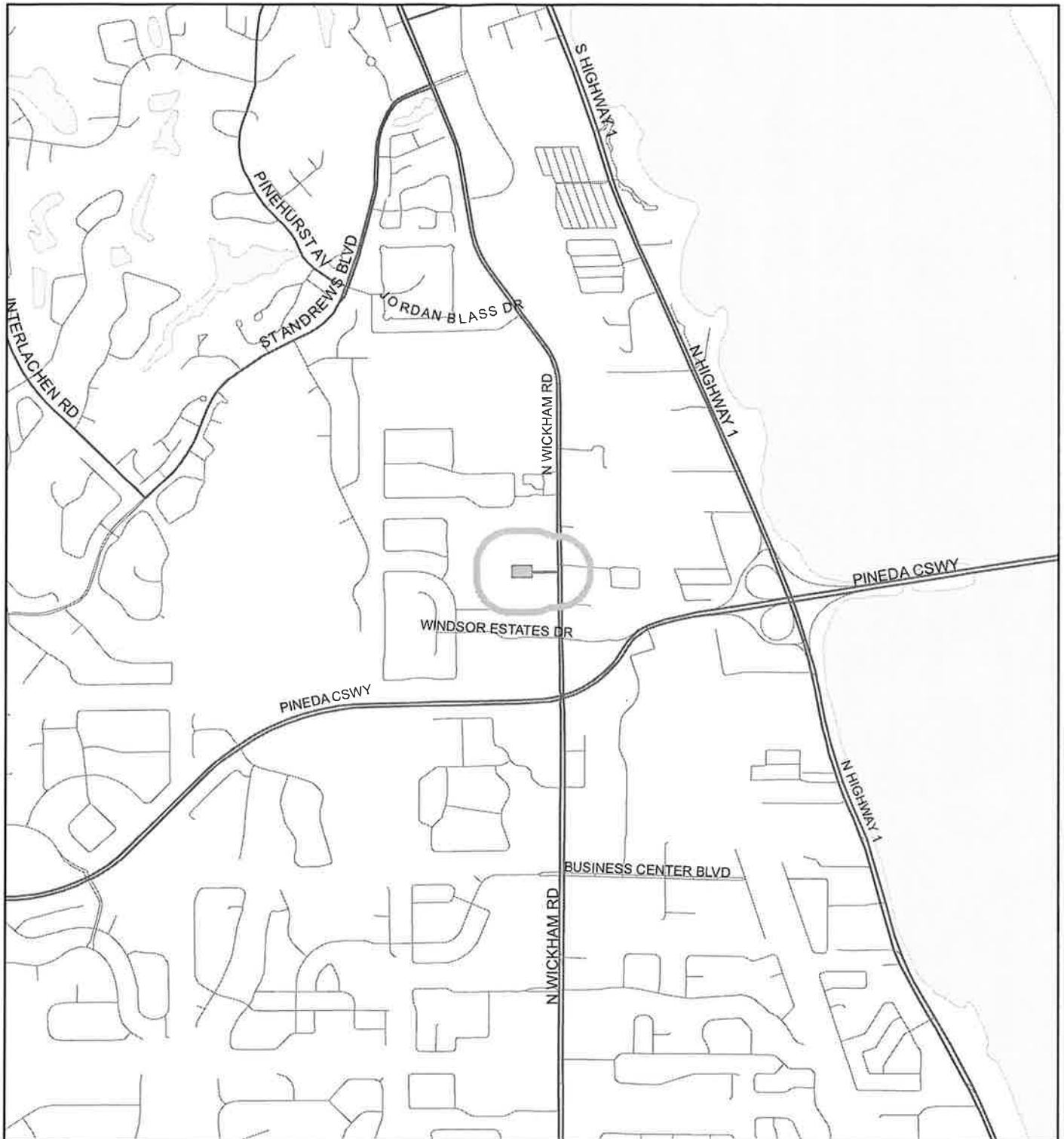
Satellite sand may also function as an aquifer recharge soil. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Information available to NRM indicates that federally and/or state protected species may be present on the property. A large Florida Scrub Jay polygon is located over the property and surrounding area; an indicator that Scrub Jays may be present. 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. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), the purpose and intent of the ordinance is to encourage the protection of heritage Specimen Trees. In addition, per Section 62-4341(18), Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. Applicant should contact NRM prior to performing any land clearing activities.

LOCATION MAP

JAMES M. AND JOANNE M. THOMAS, TRUSTEE
18PZ00112



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.

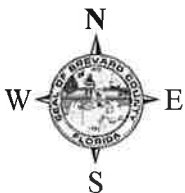
Produced by BoCC - GIS Date: 9/25/2018

— Buffer
■ Subject Property

ZONING MAP

JAMES M. AND JOANNE M. THOMAS, TRUSTEE

18PZ00112



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: 9/25/2018

— Subject Property

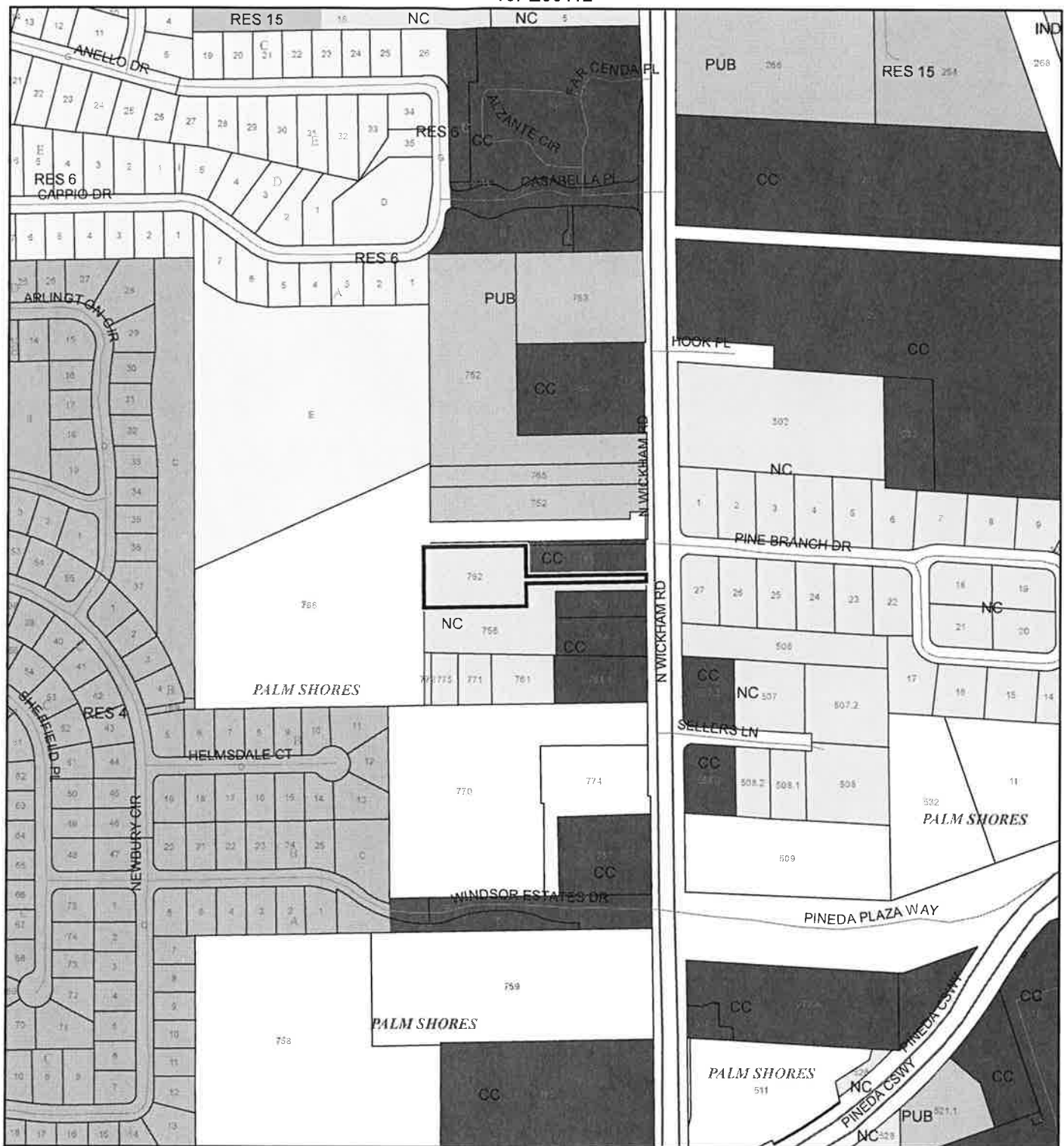
□ Parcels

□ Zoning

FUTURE LAND USE MAP

JAMES M. AND JOANNE M. THOMAS, TRUSTEE

18PZ00112



1:4,800 or 1 inch = 400 feet

— Subject Property

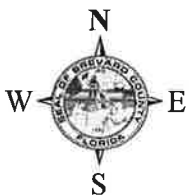
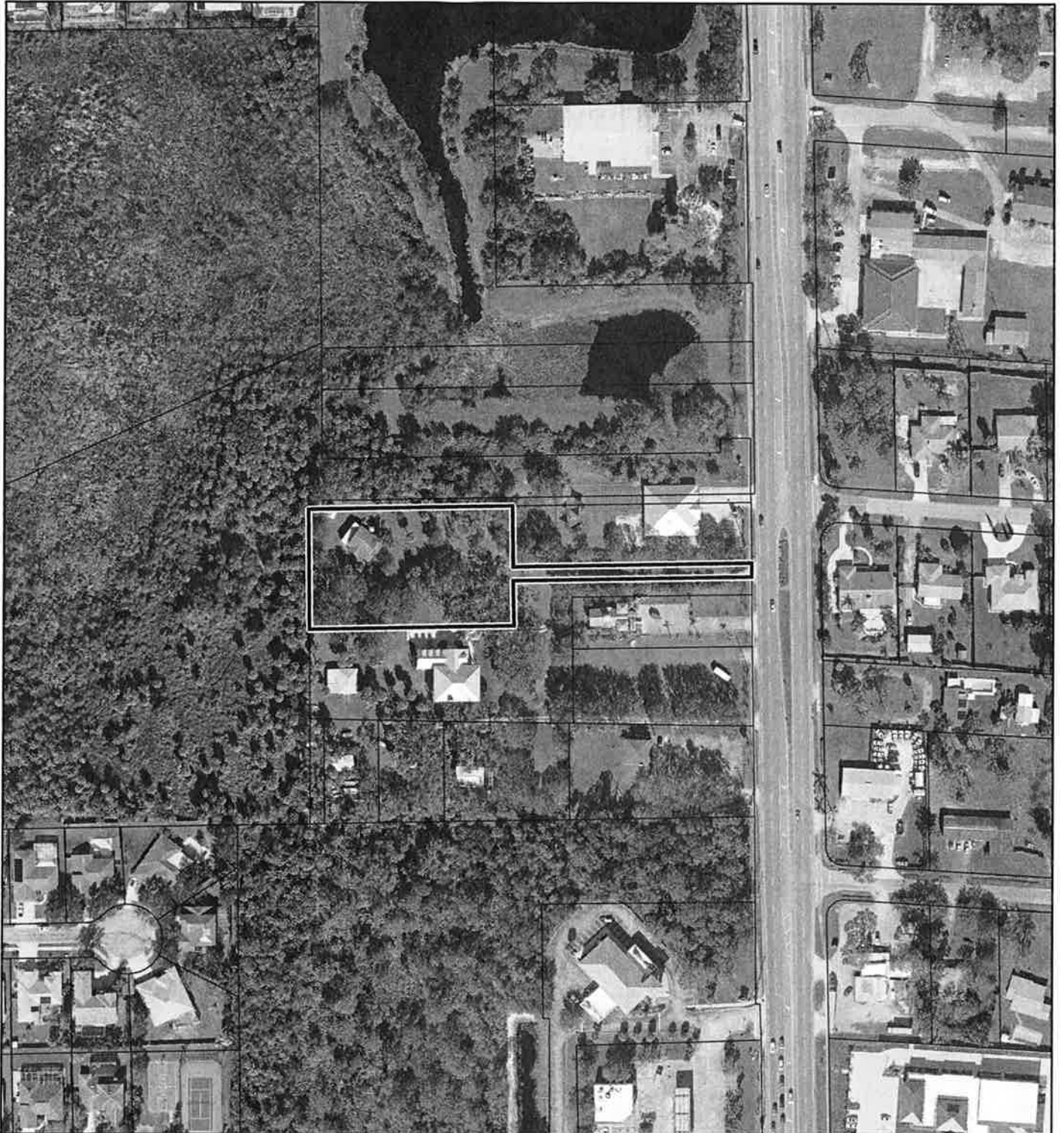
□ Parcels

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Produced by BoCC - GIS Date: 9/25/2018

AERIAL MAP

JAMES M. AND JOANNE M. THOMAS, TRUSTEE
18PZ00112



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2018

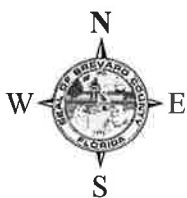
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 9/25/2018

— Subject Property
□ Parcels

NWI WETLANDS MAP

JAMES M. AND JOANNE M. THOMAS, TRUSTEE
18PZ00112



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 9/25/2018

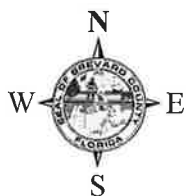
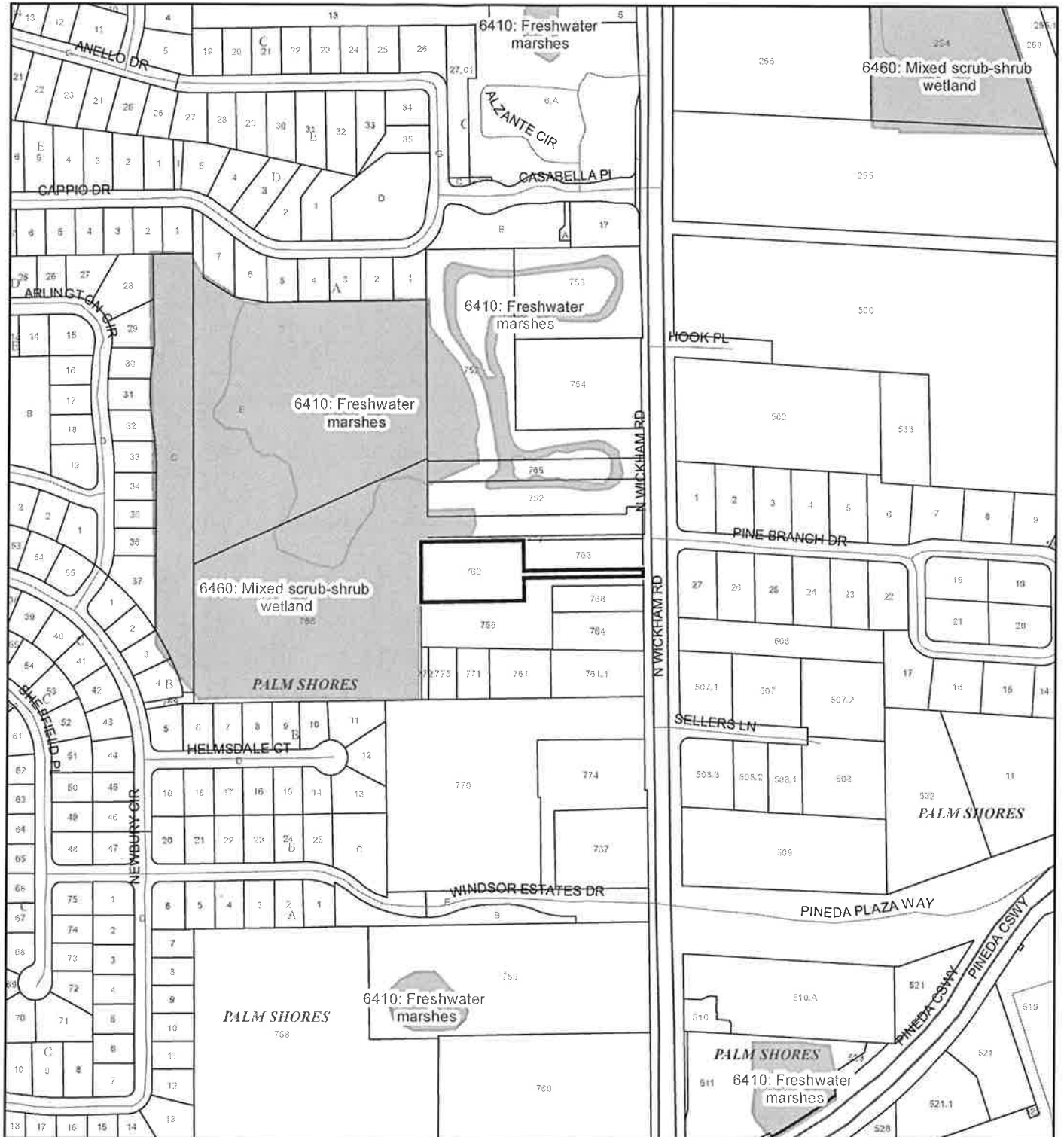
National Wetlands Inventory (NWI)

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

SJRWMD FLUCCS WETLANDS - 6000 Series MAP

JAMES M. AND JOANNE M. THOMAS, TRUSTEE

18PZ00112



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 9/25/2018

SJRWMD FLUCCS WETLANDS

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

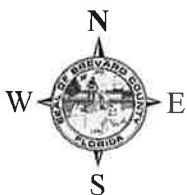
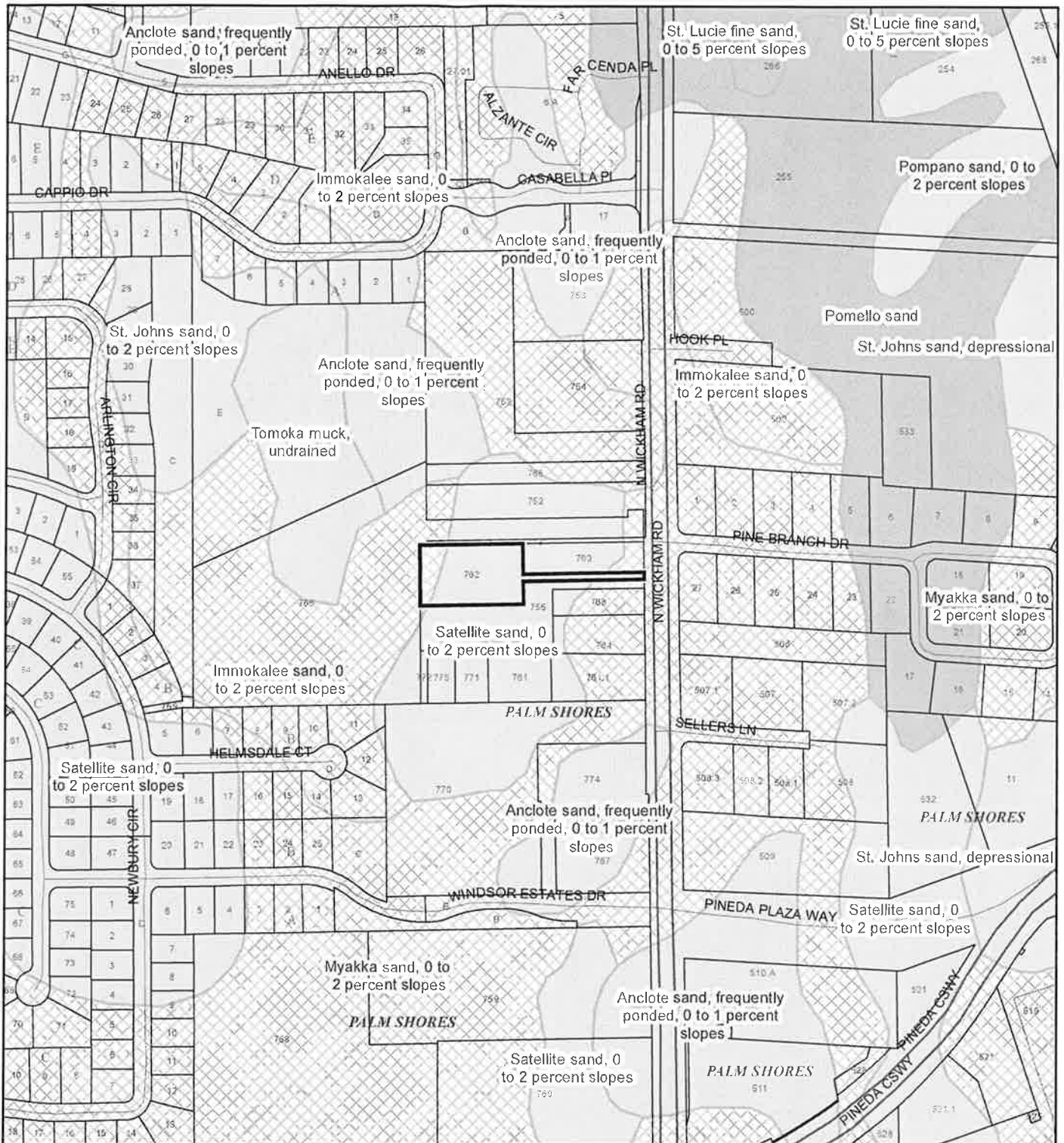
— Subject Property

□ Parcels

USDA SCSSS SOILS MAP

JAMES M. AND JOANNE M. THOMAS, TRUSTEE

18PZ00112



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 9/25/2018

USDA SCSSS Soils

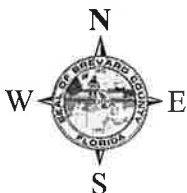
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

FEMA FLOOD ZONES MAP

JAMES M. AND JOANNE M. THOMAS, TRUSTEE

18PZ00112



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 9/25/2018

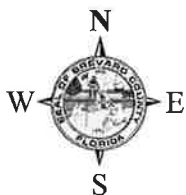
FEMA Flood Zones

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

EAGLE NESTS MAP

JAMES M. AND JOANNE M. THOMAS, TRUSTEE

18PZ00112



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 9/25/2018

 Subject Property

 Parcels

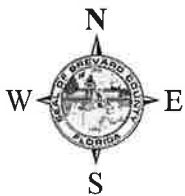


Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

JAMES M. AND JOANNE M. THOMAS, TRUSTEE




18PZ00112



1:4,800 or 1 inch = 400 feet

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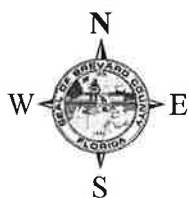
Produced by BoCC - GIS Date: 9/25/2018

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

JAMES M. AND JOANNE M. THOMAS, TRUSTEE

18PZ00112



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 9/25/2018

SJRWMD FLUCCS Upland Forests

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

Subject Property Parcels

FYI Existing BDP

18PZ00112

Thomas



CFN:2001176396

08-21-2001 08:32 am

OR Book/Page: 4404 / 3690

Prepared by:
Address:John Newton
4320 Woodland Park Drive
West Melbourne, FL 32901**Scott Ellis**

Clerk Of Courts, Brevard County

#Pgs: 6	#Names: 2	
Trust: 3.50	Rec: 25.00	Serv: 0.00
Deed: 0.00		Excise: 0.00
Mtg: 0.00		Int Tax: 0.00

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 23rd day of July, 2001, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Twigg-Newton Properties, LLC (hereinafter referred to as "Developer/Owner").

RECITALS

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

WHEREAS, Developer/Owner desires to develop the property as a two building retail-use facility and pursuant to the Brevard County Code, Section 62-1157; and

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

WHEREAS, the County is authorized to regulate development of the property;

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactorily to the County shall be responsible for the maintenance of any improvements.
2. Developer/Owner shall construct no more than two buildings in the BU-1 zoned property. The first building shall be set back a minimum of 25 feet from the eastern (Wickham Road) property line and the building footprint shall not exceed 4,400 square feet in size. The western end of the second building shall not be more than 600 feet from the eastern (Wickham Road) property line and the building footprint shall not exceed 6,600 square feet in size. Only stormwater retention, turn-around pavement, and parking

Z10595⑦

RETURN: Clerk to the Board #27

- shall be constructed in the BU-1 zoned area beyond 600 feet from the eastern (Wickham Road) property line.
3. Developer/Owner shall provide a 6 foot high wooden fence buffer along the western 260' of the south property line where the property is adjacent to Parcel # 26 362400762 (RR-1 zoning), but only if construction of buildings and/or parking occurs to a depth of more than 350' from the Wickham Road property line.
 4. Ingress and egress to the property shall be from Wickham Road at the east end of the property. Further rights to ingress and egress are likely to be granted to the owner of Parcel # 26 362400762.
 5. The development plan as herein provided will, in no way, prevent the use of the remaining AU-zoned land to the west (of that being rezoned to BU-1) from being utilized for a single-family residence. Ingress and egress for such residential use would be provided through the BU-1 zoned portion.
 6. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing property, provided they are routine and usual for such development. This agreement provides no vested rights against changes to the comprehensive plan or land development regulations as they may apply to this property.
 7. Developer/Owner, upon execution of this Agreement, shall pay the cost of recording this Agreement in Brevard County, Florida.
 8. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject property.
 9. At this time, no mortgage is involved.
 10. Legal description of the 1.96 acre site is attached, labeled "Exhibit A".

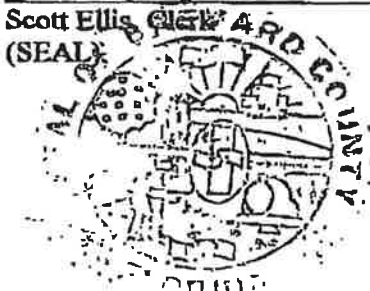
IN WITNESS THEREOF, the parties hereto have affixed their legal signatures to this document as of the date and year first written above.

ATTEST:

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



Scott Ellis, CLERK
(SEAL)





Susan Carlson, Chairman
As approved by the Board on May 24, 2001.

Approved by the Board

Z10595

(18)

CFN:2001176398
OR Book# age: 4404 / 3691

STATE OF FLORIDA
COUNTY OF BREVARD

SS
SS

CFN:2001176396

OR Book/Page: 4404 / 3692

The foregoing instrument was acknowledged before me this 14th day of August, 2001, by Susan Carlson, Chairman of the Board of County Commissioners of Brevard County, Florida, who is personally known to me or who has produced _____ as identification.

My commission expires


Notary Public

SEAL

Commission No.:



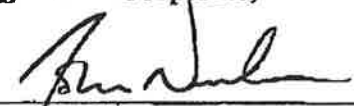
(Name typed, printed or stamped)

WITNESSES:

DEVELOPER/OWNER:

Twigg-Newton Properties, LLC

By:


John Newton, Manager
4320 WOODLAND PARK DR.
WEST MELBOURNE, FL

(Address)

32904



Rebecca Donhoff
(Witness Name typed or printed)



W. ROBERT ANDERSON JR.
(Witness Name typed or printed)

STATE OF FLORIDA

SS

Z10595 (19)



CFN:2001178396

OR Book/Page: 4404 / 3693

COUNTY OF BREVARD

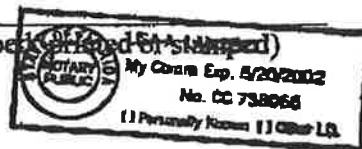
SS

The foregoing instrument was acknowledged before me this 23rd day
of July, 2001, by John Newton, who is personally
known to me or who has produced Personally known as identification.

My commission expires
SEAL
Commission No.:

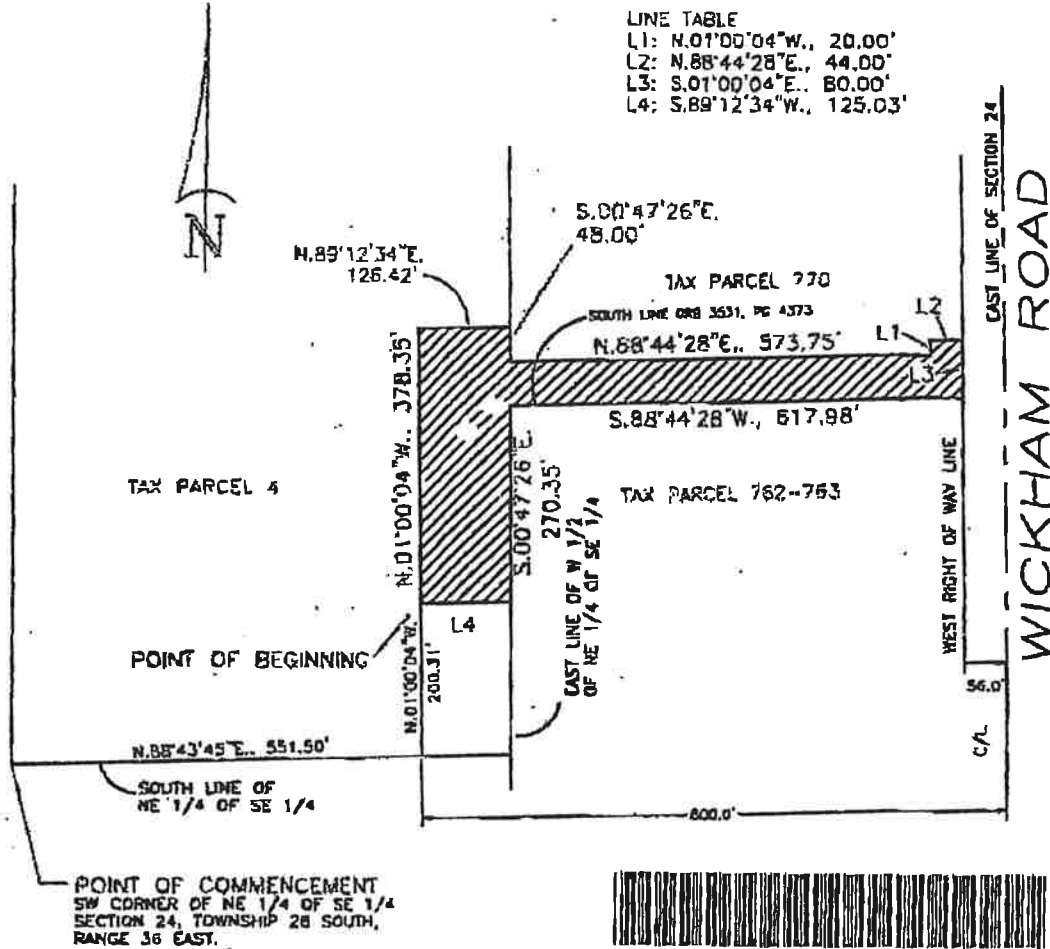
Rose A. Newton
Notary Public

(Name typed or stamped)



Z10595 (20)

EXHIBIT A



LEGAL DESCRIPTION:

A parcel of land lying in the Northeast 1/4 of the Southeast 1/4 of Section 24, Township 28 South, Range 36 East, Brevard County, Florida, and being more particularly described as follows:
 Commence at the Southwest corner of said Northeast 1/4 of the Southeast 1/4 and run N.88°43'45"E., along the south line of said Northeast 1/4 of the Southeast 1/4, a distance of 551.50 feet; thence run N.01°00'04"W., parallel with and 800.00 feet West of the East line of said Northeast 1/4 of the Southeast 1/4, a distance of 200.31 feet to the Point of Beginning; thence continue N.01°00'04"W., parallel with and 800.00 feet West of the East line of said Northeast 1/4 of the Southeast 1/4, a distance of 378.35 feet; thence run N.89°12'34"E., a distance of 126.42 feet to the East line of the West 1/2 of said Northeast 1/4 of the Southeast 1/4; thence run S.00°47'26"E., along said East line, a distance of 48.00 feet; thence run N.88°44'28"E., a distance of 573.75 feet; thence run N.01°00'04"W., parallel to said East line of Northeast 1/4 of the Southeast 1/4, a distance of 20.00 feet; thence run N.88°44'28"E., a distance of 44.00 feet to a point on the West right of way line of Wickham Road, said point lying 56.00 feet West of, by right angle measurement, said East line of the Northeast 1/4 of the Southeast 1/4; thence run S.01°00'04"E., along said West right of way line and parallel to and 56.00 feet West of said East line of Northeast 1/4 of the Southeast 1/4, a distance of 80.00 feet to a point on the South line of lands described in Official Records Book 3531, Page 4373 of the Public Records of Brevard County, Florida; thence run S.88°44'28"W., along said South line of Official Records Book 3531 Page 4373, a distance of 617.98 feet to a point on the aforementioned East line of the West 1/2 of the Northeast 1/4 of the Southeast 1/4; thence run S.00°47'26"E., along said East line, a distance of 270.35 feet; thence run S.89°12'34"W., a distance of 125.03 feet to the Point of Beginning, containing 1.883 acres, more or less.

Drawn by
WJF
Scale:
1"=200'
Date:
3/07/01
Project #
2001-341
DATE
03/23/01
04/18/01

Campbell SURVEYING & MAPPING
OF BREVARD, FL.

3525 N. COURTESY PARKWAY - SUITE 1
MAKING ADDRESS, P.O. BOX 542148
MERRITT ISLAND, FL 32954 PHONE (321) 433-5820

REVISIONS
ADDED 12th PARCEL
CHANGE TO 1.883 ACRES

LEGAL DESCRIPTION

Prepared for:

DROOR & ASSOCIATES, INC.

Prepared by:

Jim R. Droor
 210395



CFN:2001176396

OR Book/Page: 4404 / 3695

JOINDER IN BINDING DEVELOPMENT PLAN

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being authorized agent and signatory for the owner and holder of that certain Mortgage dated June 26, 2001, given by SUPRA COLOR ENTERPRISES, INC., as mortgagor, in favor of the undersigned, TWIGG-NEWTON PROPERTIES, LLC, as mortgagee, recorded in Official Records Book 4380, page 2323, Public Records of Brevard County, Florida, and encumbering lands described in said Mortgage, does hereby join in the foregoing Binding Development Plan for the purpose of subordinating the lien of the undersigned's Mortgage to said Binding Development Plan.

WITNESSES:

Suzanne M. Thurston
(Witness name typed or printed)

Barbara Salber

Barbara Salber
(Witness name typed or printed)

MORTGAGEE:

SUPRA COLOR ENTERPRISES, INC.
1980 North Atlantic Avenue, Suite 704
Cocoa Beach, FL 32931

Authorized Agent

Kurt Tezel, Vice President
(Name typed, printed or stamped)

STATE OF Florida
COUNTY OF Brevard

The foregoing instrument was acknowledged before me this 1st day of Aug, 2001, by Kurt Tezel who is personally known to me or who has produced as identification.

My commission expires:

SEAL:

Commission No:



Notary Public
Suzanne M. Thurston
(Name typed, printed or stamped)

210595 (2)

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, January 7, 2019**, at **3:00 p.m.**, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

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

Board members present were: Henry Minneboo, Chair; Ron Bartcher, Rochelle Lawandales, Brian Hodgers, Ben Glover; Ron McLellan; Scott Langston; Mark Wadsworth; and Dane Theodore.

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

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

Excerpt of complete agenda.

14. James M. and Joanne M. Thomas, Trustees:

Request a change of zoning classification from RR-1 (Rural Residential) and BU-1 (General Retail Commercial) to SR (Suburban Residential), and removal of existing BDP (Binding Development Plan). The property is 1.25 acres, located on the west side of North Wickham Road, approximately 400 feet north of Pineda Plaza Way. (5850 North Wickham Road, Melbourne) (18PZ00112) (District 4)

Erin Sterk – This applicant is in California and we haven't heard from him. You tabled it the last time on their behalf and they haven't responded to our requests, so I'm not sure what the board wants to do, if you want to table it one more time, but we certainly have reached out to them.

Henry Minneboo – I'm going to recommend we table it to the 28th. Do we want to push it to February? When did this applicant submit this?

Erin Sterk – It was submitted September 7th. They had a buyer who requested this and that buyer backed out, but the owner sees the value in requesting the change.

Ben Glover – I'll make a motion to table to February 11th.

Brian Hodgers – Second.

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

Upon consensus of the board, the meeting adjourned at 6:15 p.m.