



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.1.

10/1/2020

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### **Subject:**

Carmen Fanczi (Michael Maguire) requests a change of zoning classification from AU to EU. (20Z00013) (Tax Account 2511450) (District 2)

### **Fiscal Impact:**

None

### **Dept/Office:**

Planning and Development

### **Requested Action:**

It is requested that Board of County Commissioners conduct a public hearing to consider a change of zoning classification from AU (Agricultural Residential) to EU (Estate Use Residential).

### **Summary Explanation and Background:**

The applicant is requesting a change of zoning classification from AU to EU for the purpose of creating an 11-unit subdivision on 6.33 acres located on the southwest corner of Curry Dell Lane and S. Courtenay Parkway.

The subject parcel is a remnant undeveloped AU parcel surrounded by AU, EU and SEU (Suburban Estate Residential Use) zoning classifications. The abutting developed parcel to the west is also zoned AU. Most of the subject property lies between S. Tropical Trail and S. Courtenay Parkway. This portion of the property is proposed to be split into two segments. The portion accessed by S. Tropical Trail will be developed as a 1.0+ acre flag lot. The portion accessing S. Courtenay Parkway is proposed to be developed as multiple EU zoned lots. There is also a portion lying east of S. Courtenay Parkway extending to the Banana River which contains an estimated 1.24 acres.

The developed character of the surrounding area is residential. The abutting parcels to the north are zoned EU. The abutting parcel to the east is also part of this application request. The abutting parcels to the south are EU except for that portion lying east of S. Courtenay Parkway which is zoned SEU. The abutting developed parcel to the west is zoned AU.

This area is within the Indian River Lagoon Nitrogen Reduction Overlay and if not connected to sewer facilities will need to utilize alternative septic systems designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes.

During the Planning and Zoning meeting, the applicant acknowledged that since Curry Dell Road is private, they cannot utilize it for access. They will need to ensure the proposed lots have adequate access during the subdivision phase and access may limit their lot yield.

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

The Planning and Zoning Board heard the request on September 14, 2020, and recommended approval by a 6:1 vote.

**Clerk to the Board Instructions:**

Upon receipt of resolution, please execute and return to Planning and Development.

**District 2 Disclosures**  
**10/01/2020 BOCC Planning & Zoning Meeting**

**H.1. Carmen Fanczi (Michael Maguire) requests a change of zoning classification from AU to EU (20Z00013)**

- 09/11/20 – Commission staff met with Phil Barnes of Merritt Island who expressed concerns about the proposal.
- 09/22/20 and 09/29/20 – Judy Gustafson of Merritt Island sent emails expressing concerns about the proposal.
- 09/28/20 – Jarl Gustafson of Merritt Island sent an email expressing his opposition to the proposal.
- 09/29/20 – Kevin McCann, on behalf of some property owners in the immediate area, met with Commissioner Lober to discuss concerns about the proposal.
- 09/29/20 – William Jefferson of Merritt Island sent an email expressing concerns about the proposal.
- 09/29/20 and 09/30/20 – Robin Silvea of Merritt Island called and spoke with D2 staff and also sent emails expressing concerns about the proposal.

**Resolution 20Z00013**

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

**WHEREAS**, **Carmen Fanczi** has requested a change of zoning classification from AU (Agricultural Residential) to EU (Estate Use Residential), on property described as Tax Parcel 31, as recorded in ORB 2726, Pages 913 - 914, of the Public Records of Brevard County, Florida. **Section 24, Township 25, Range 36**. (6.33 acres) Located on the southwest corner of Curry Dell Ln., and S. Courtenay Pkwy. (No assigned address. In the Merritt Island area.); 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 Brevard County Planning and Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be approved as SEU (Suburban Estate Use), and directed staff not to administratively grant any waivers of any development standards without the express approval of the Board of County Commissioners, and further directed staff to apply the most stringent, lawful standards in analyzing any such waiver proposal or proposals; now therefore,

**BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from AU to EU be approved as SEU, and directed staff not to administratively grant any waivers of any development standards without the express approval of the Board of County Commissioners, and further directed staff to apply the most stringent, lawful standards in analyzing any such waiver proposal or proposals. 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 October 1, 2020.

BOARD OF COUNTY COMMISSIONERS

Brevard County, Florida

*Bryan Andrew Lober*

Bryan Andrew Lober, Chair

Brevard County Commission

As approved by the Board on October 1, 2020.

ATTEST

*Scott Ellis*

SCOTT ELLIS, CLERK

(SEAL)

Planning and Zoning Board Hearing – September 14, 2020

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

expires if a final development plan is not filed within three years. **The granting of this zoning does not guarantee physical development of the property. At the time of development, said development must be in accordance with the criteria of the Brevard County Comprehensive Plan and other applicable laws and ordinances.**

**From:** Woodard, Patrick  
**To:** Jones, Jennifer  
**Cc:** Schmadeke, Adrienne; Bellak, Christine  
**Subject:** FW: Land Usage Change Request - Curry Dell  
**Date:** Wednesday, September 30, 2020 11:23:00 AM

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Jennifer,

Here is another ex parte communication in agenda item H1 for tomorrow's meeting.

Regards,

*Pat Woodard*



Pat Woodard  
Chief Legislative Aide to Commissioner  
Smith  
Brevard County, District 4  
[321 633 2044](tel:3216332044) | [Patrick.Woodard@brevardfl.gov](mailto:Patrick.Woodard@brevardfl.gov)  
2725 Judge Fran Jamieson Way, Bldg. C - Suite  
214,  
Viera, FL 32940

**Please note:**

*Florida has a very broad public records law. Most written communications to or from the offices of elected officials are public records available to the public and media upon request. Your email communications may, therefore, be subject to public disclosure.*

**From:** Robin Silvea <thesilvea5@gmail.com>  
**Sent:** Wednesday, September 30, 2020 11:02 AM  
**To:** Commissioner, D2 <D2.Commissioner@brevardfl.gov>  
**Cc:** Commissioner, D1 <D1.Commissioner@brevardfl.gov>; Commissioner, D3 <d3.commissioner@brevardfl.gov>; Commissioner, D4 <D4.Commissioner@brevardfl.gov>; Commissioner, D5 <D5.Commissioner@brevardfl.gov>  
**Subject:** Re: Land Usage Change Request - Curry Dell

**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Mr. Lober,

I am heartened to hear that the HOA attorney was able to meet with you yesterday and give you some background. I do, however, have a few follow-up questions pertaining to the rezoning itself, especially regarding your statement of legality.

First, does the developer and out-of-state property owner have more legal standing in a court of law to have their status changed and therefore can sue the county for lost revenue, than a collective group of homeowners does to have it *not* changed and therefore sue for their losses, specifically the major impact this will have over the next several years in lost property value and other hardships. Or is it just less likely.

If the property was the last remaining agricultural plat of land in close proximity, I could understand that the rights would swing in that direction. However, looking at Brevard County's own property appraiser website, there are numerous large acreage fruit farms still in existence from Pineda northward, including a large farm one parcel to the south. Knowing this, I don't understand why this particular property has more claim to EU status for monetary gain, than homeowners can claim it should remain agricultural for their own monetary protection.

Secondly, if the Board of Commissioners approves this status change and this proceeds to the site planning process, which is closed to the public, who will guarantee that the homeowner's concerns will be addressed. Will the board get a chance to review the plans? Will you personally commit to following up on this?

Again, thank you for your time.

Robin Silvea

On Sep 29, 2020, at 3:32 PM, Commissioner, D2 <[D2.Commissioner@brevardfl.gov](mailto:D2.Commissioner@brevardfl.gov)> wrote:

Ms. Silvea,

I met, in-person, for nearly two hours, yesterday with counsel for the HOA to the N of Curry Dell Ln and received an immense amount of background information from the perspective of the nearby residents he (albeit indirectly) represents by virtue of representing their HOA.

In short, I empathize with your concerns and while you raise some valid points, some of them may not lawfully be considered in deciding the rezoning application. Many apply to the site development process, not to the rezoning. Were I to ignore the factors I am entitled and required to consider in favor of those I am not, the County would likely be successfully sued, needlessly costing taxpayer funds and only delaying what eventually takes place.

I am set to speak, with their attorney's "blessing," with some of the property owners this afternoon about the rezoning application.

Please understand that I must largely disregard my personal feelings in considering the proposed rezoning. To be blunt, I do not realistically see any outcome in which the developer is not allowed to build **some number** of lots on that property. I would greatly prefer that number be far less than eleven and if there is an opportunity to limit the number of lots, I would be inclined to pursue it.

Based upon the factors I am entitled to consider and given that it is unquestionable that the proposed zoning is consistent with the area, the chance of the rezoning, itself, being shot down is low.

Again, though, many of the concerns you raised apply to site development and plan approval, not to the rezoning, itself. The rezoning being passed does not mean they may build whatever they would like to build. They must still go through the site development process as required under the County's Code. Without being able to access Curry Dell Ln, I don't see any readily apparent way in which they could get eleven lots in the space they have. Thus, they may get their rezoning and still be stuck with three or four homesites, not eleven as they'd apparently like to see.

Kind regards,

Bryan

cc: JG, D2

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**From:** Robin Silvea <[thesilvea5@gmail.com](mailto:thesilvea5@gmail.com)>

**Sent:** Tuesday, September 29, 2020 1:06 PM

**To:** Commissioner, D2 <[D2.Commissioner@brevardfl.gov](mailto:D2.Commissioner@brevardfl.gov)>

**Cc:** Commissioner, D1 <[D1.Commissioner@brevardfl.gov](mailto:D1.Commissioner@brevardfl.gov)>; Commissioner, D3 <[d3.commissioner@brevardfl.gov](mailto:d3.commissioner@brevardfl.gov)>;

Commissioner, D4 <[D4.Commissioner@brevardfl.gov](mailto:D4.Commissioner@brevardfl.gov)>; Commissioner, D5 <[D5.Commissioner@brevardfl.gov](mailto:D5.Commissioner@brevardfl.gov)>

**Subject:** Land Usage Change Request - Curry Dell

**[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.**

Good Morning Commissioner Lober,

I reside at 3800 S. Courtenay Parkway, adjacent to the property owned by Carmen Franzi, which is requesting a land status change from agricultural to estate use for the purposes of an 11-home subdivision (his preferred plan). I'm writing to express my opposition to the proposal, as it will not conform to the surrounding area's agricultural usage and large estate home use.

This narrow sliver of land is much different than what has been approved in the past, such as Georgianna Reserve or other neighborhoods off of S. Tropical Trail and Courtenay Parkway, in that it is not even wide enough to sustain a dedicated road for the 11-homesite plan the developer would prefer to propose. Clark Development first sought the approval from the HOA on Curry Dell Lane to use their existing roadway, and was denied. The HOA has been maintaining the private road for approximately 15 years and has had to hire an attorney to legally defend the right to their own roadway. Brevard County has also recognized Curry Dell Lane as privately owned by the HOA in their records as well.

Furthermore, the land does not have a barrier to other homes, natural or man-made that would lessen the impact to the surrounding homes. It is literally crammed in between a private access road on one side and estate homes on the other, creating I believe, a massive safety issue. The land is also unique in that it was not previously leveled and has many old and established live oak trees, buttonwoods and white mangroves, as well as emerging wetlands. As a lifelong resident of Brevard County, it is what all of South Merritt Island used to look like and is absolutely beautiful.

The developer's site plan proposals also directly contradict Brevard County's own ordinance regarding wetland restrictions.

Sec. 62-3694, of Permitted uses

*Residential land uses within wetlands shall be limited to not more than one dwelling unit per five acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five acres, as unbuildable. The preceding limitation of one dwelling unit per five acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than one and eight-tenths percent of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in section 65-3694(c)(6).*

His plans would include building on a 2-acre lot east of Courtenay Parkway on the Banana River, which is deemed 100% wetlands. Because this plat was not subdivided prior to September 1988, and is not part of a five acre parcel, it is unbuildable even with mitigation. If he maintains the entire acreage as a whole, he will need to build on less intrusive land, on the west side of the street, where there is also substantial evidence of emergent wetlands. There are a lot of issues here.

We tried at the committee meeting hearing to discuss many of our concerns: access roads, traffic and school impacts, drainage, density of homes etc., but we were told that those were site plan issues. However, the site plan approval process is closed to the public. So, this is our only avenue to address our concerns. It is a massive catch-22.

I think there would be some sort of support for the homeowner to change status if this was for a single-family residence or even two or three estate homes, but not for an 11-home subdivision with minimal lot lines, setback issues and wetland concerns on the riverfront. I would only ask that if you feel that development is necessary, then please come to the site and view it for yourself. Or commit to limiting home density, having only large acreage estate use on the front end, as a contingency of approval - that the developer would have to come before you again and the public so that this process is not hidden from those most impacted.

Simply, the developer, who does not own the property, should not have more rights to request the status change than the tax-paying voters have to oppose it.

It was asked in the committee meeting, "What did people expect when they bought their homes?" They expected that the land usage would remain the same, agricultural, as it had been for many years. I implore you to advocate for your citizens and oppose this.

Thank you for your time and serious consideration,

Robin Silvea



## **ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT**

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

### **Administrative Policy 1**

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

### **Administrative Policy 2**

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

#### **Criteria:**

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

### **Administrative Policy 3**

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

#### **Criteria:**

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use.
- B. Whether the proposed use(s) would cause a material reduction (five percent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through analysis of:

1. historical land use patterns;
  2. actual development over the immediately preceding three years; and
  3. development approved within the past three years but not yet constructed.
- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

#### **Administrative Policy 4**

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

**Criteria:**

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

#### **Administrative Policy 5**

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

**Criteria:**

- A. Whether adopted levels of services will be compromised;
- B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;

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

#### **Administrative Policy 6**

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

#### **Administrative Policy 7**

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

#### **Administrative Policy 8**

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

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

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.

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

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

#### **CONDITIONAL USE PERMITS (CUPs)**

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

- (b) Approval procedure. An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in Section 62-1151. The approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved. If the applicant meets its initial burden, then the Board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the Board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use. In stating grounds in support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odors, glare and noise, particulates, smoke, fumes, and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.

#### **(c) General Standards of Review.**

- (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon

a consideration of the factors specified in Section 62-1151(c) plus a determination whether an application meets the intent of this section.

- a. The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1), the number of persons anticipated to be using, residing or working under the conditional use; (2), noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3), the increase of traffic within the vicinity caused by the proposed conditional use.
  - b. The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.
  - c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an M A I certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.
- (2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:
- a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1), adequate to serve the proposed use without burdening adjacent and nearby uses, and (2), built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at Level of Service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable Brevard County standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.
  - b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.
  - c. Noise levels for a conditional use are governed by Section 62-2271.

- d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
- e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
- f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.
- g. Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.
- h. Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.
- i. The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.
- j. Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

#### **FACTORS TO CONSIDER FOR A REZONING REQUEST**

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

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

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.

- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.”

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

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

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

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

## DEFINITIONS OF CONCURRENCY TERMS

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

**Current Volume:** Building permit related trips added to the latest TPO (Transportation Planning Organization) traffic counts.

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

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

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

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

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



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

2725 Judge Fran Jamieson Way

Building A, Room 114

Viera, Florida 32940

(321)633-2070 Phone / (321)633-2074 Fax

<https://www.brevardfl.gov/PlanningDev>

**STAFF COMMENTS**

**20Z00013**

**Carmen Fanczi**

**AU (Agricultural Residential) to EU (Estate Use Residential)**

Tax Account Number: 2511450  
Parcel I.D.: 25-36-24-00-31  
Location: SW corner of Curry Dell Lane and S. Courtenay Parkway (District 2)  
Acreage: 6.33 acre

Planning and Zoning Board: 09/14/2020

Board of County Commissioners: 10/01/2020

**Consistency with Land Use Regulations**

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

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	AU	EU
<b>Potential*</b>	2-Single Family Units	12-Single Family Units
<b>Can be Considered under the Future Land Use Map</b>	Yes RES 3 Directive	Yes RES 3 Directive

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

**Background and Purpose of Request**

The applicant is seeking a change of zoning classification from AU (Agricultural Residential) to EU (Estate Use Residential) for the purpose of creating an 11-unit subdivision. The applicant did not provide staff with a proposed development plan submitted with this application.

The subject parcel was originally zoned EU from 1958 to September 10, 1959. Since that time it has been zoned AU per zoning action **Z-0237**.

**Land Use**

The subject property retains the Residential 3 Directive FLU designation. This parcel is located within the Central and South Merritt Island Study area where only the following classifications can be requested: EU, SR, SEU, RR-1, REU, AU, PA, GU, AGR, RRMH-1, RRMH-2.5, RRMH-5 and TR-2. The current zoning of AU as well as the proposed EU zoning classifications may be considered to be consistent with this FLU designation.



## **Environmental Constraints**

The subject parcel contains mapped NWI and SJRWMD wetlands, and hydric soils. 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. For subdivisions greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65 3694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) including avoidance of impacts, and 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design or permit submittal. A wetland delineation will be required prior to any site plan design, land clearing activities, or building permit submittal.

The majority of the property located on the east side of S. Courtenay Parkway is located within the Coastal High Hazard Area (CHHA) 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 Coastal Management Element of the Comprehensive Plan, Objective 7.0, limits densities within the coastal high hazard zone and directs development outside of this area. Objective 7.0, Policy 7.6 states that existence of sewer, water, roadways or other public infrastructure shall not be considered adequate rationale for an increase in zoning density or intensity within the coastal high hazard area.

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 alternative septic systems designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required.

## **Preliminary Concurrency**

The closest concurrency management segment to the subject property is S. Courtenay Parkway, between Pineda Causeway to Banana Boulevard, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of E, and currently operates at 60.83% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.73%. With the maximum development potential from the proposed rezoning, the corridor is anticipated to operate at 61.56% of capacity daily (LOS D). The proposal is not anticipated to create a deficiency in LOS.

At this time, Tropical Elementary School, Jefferson Middle School and Merritt Island High School are projected to have enough capacity for the total of projected and potential students from the South Curry Dell development.

The parcel can be serviced by City of Cocoa water. There is no sewer service in the area. The closest Brevard County sewer connection is 3.125 miles to the north.

## **Applicable Land Use Policies**

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

**Analysis of Administrative Policy #4 - Character of a neighborhood or area.** The subject parcel is a remnant undeveloped AU parcel surrounded by AU, EU and SEU (Suburban Estate Residential Use) zoning classifications. The abutting developed parcel to the west is also zoned AU.

The current AU classification permits single-family residences and agricultural pursuits on 2 ½ acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing of animals, fowl and beekeeping.

The EU zoning classification is an estate single family residential zoning classification. The minimum lot size is 15,000 square feet with a minimum lot width and depth of 100 feet. The minimum living area is 2,000 square feet.

The SEU zoning permits suburban estate residential uses on lots of one acre (minimum) with a width of 125 feet and a depth of 200 feet. It also requires a minimum floor area is 2,000 square feet of living area.

Most of the subject property lies between S. Tropical Trail and S. Courtenay Parkway. This portion of the property is proposed to be split into two segments. The portion accessed by S. Tropical Trail will be developed as a 1.0+ acre flag lot. The portion accessing S. Courtenay Parkway is proposed to be developed as multiple EU zoned lots. There is also a portion lying east of S. Courtenay Parkway extending to the Banana River which contains an estimated 1.24 acres. Most of the abutting residential lots are developed.

## **Surrounding Properties**

The developed character of the surrounding area is residential. The abutting parcels to the north are zoned EU. The abutting parcel to the east is also part of this application request. The abutting parcels to the south are EU except for that portion lying east of S. Courtenay Parkway which is zoned SEU. The abutting developed parcel to the west is zoned AU.

There have been no recent zoning actions within a half-mile of the subject property within the last three years.

## **For Board Consideration**

The Board may wish to consider whether the request is consistent and compatible with the surrounding area. This area is within the Indian River Lagoon Nitrogen Reduction Overlay and if not connected to sewer facilities will need to utilize alternative septic systems designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes.

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

**Item # 20Z00013**

**Applicant:** Michael Maguire for Carmen Fanczi

**Zoning Request:** AU to EU

**Note:** Applicant wants to develop subdivision with 11 single-family lots on 6.33 acres.

**P&Z Hearing Date:** 09/14/20; **BCC Hearing Date:** 10/01/20

**Tax ID No:** 2511450

- 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:**

- NWI Wetlands
- SJRWMD Wetlands
- Hydric Soils
- Aquifer Recharge Soils
- Coastal High Hazard Area
- Floodplain
- Indian River Lagoon Nitrogen Reduction Overlay
- Protected and Specimen Trees
- Protected Species

The subject parcel contains mapped NWI and SJRWMD wetlands, and hydric soils. 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. For subdivisions greater than

five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) including avoidance of impacts, and 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design or permit submittal.

A wetland delineation will be required prior to any site plan design, land clearing activities, or building permit submittal.

The majority of the property located on the east side of S. Courtenay Parkway is located within the Coastal High Hazard Area (CHHA) 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 Coastal Management Element of the Comprehensive Plan, Objective 7.0, limits densities within the coastal high hazard zone and directs development outside of this area. Objective 7.0, Policy 7.6 states that existence of sewer, water, roadways or other public infrastructure shall not be considered adequate rationale for an increase in zoning density or intensity within the coastal high hazard area.

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 alternative septic systems designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required.

### **Land Use Comments:**

#### **Wetlands**

The subject parcel contains mapped NWI (Freshwater forested shrub wetlands), SJRWMD (Mixed scrub-shrub wetlands), and hydric soils (Anclothe sand – frequently flooded, and St. Johns sand) as shown on the NWI Wetlands, SJRWMD Florida Land Use & Cover Codes, and USDA Soil Conservation Service Soils Survey maps, respectively. All are indicators that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities.

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. For subdivisions greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) including avoidance of impacts, and 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design or permit submittal.

### **Aquifer Recharge Soils**

A large area of the subject parcel, located on the west of S. Courtenay Parkway, contains mapped aquifer recharge soils (Paola fine sand and Orsino fine sand) as shown on the USDA Soil Conservation Service Soils Survey map. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

### **Coastal High Hazard Area**

The majority of the property located in the east side of S. Courtenay Parkway is located within the CHHA 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 Coastal Management Element of the Comprehensive Plan, Objective 7.0, limits densities within the coastal high hazard zone and directs development outside of this area. Objective 7.0, Policy 7.6 states that existence of sewer, water, roadways or other public infrastructure shall not be considered adequate rationale for an increase in zoning density or intensity within the coastal high hazard area.

### **Floodplain**

A large portion of the property located on the east side of S. Courtenay Parkway is mapped as being within the floodplain as identified by the Federal Emergency Management Agency as shown on the FEMA Flood Zones Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Additional impervious area increases stormwater runoff that can adversely impact nearby properties unless addressed on-site. 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."

### **Surface Waters of the State**

The property is located on Class II surface waters designated by the State as Outstanding Florida Waters and an Aquatic Preserve. A 50-foot surface water protection buffer (buffer) is required. Except as allowable under Section 62-3668 (7), primary structures shall be located outside the buffer. Alteration or construction other than that which is allowed under this division shall be prohibited, unless it is shown to be in the public interest and does not adversely impact water quality and natural habitat. All alteration shall demonstrate avoidance and minimization of surface water protection buffer impacts, including the location of the alteration within the most landward portion of the buffer, as practicable. The remainder of the surface water protection buffer shall be maintained in unaltered vegetation, except for non-native invasive plants.

### **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 alternative septic systems designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required. Per Section 62-3666 (14), all onsite sewage treatment and disposal systems (OSTDS) shall be set back at least 100 feet from the buffer establishment line, the safe upland line, mean high water line or ordinary high-water line.

### **Protected and Specimen Trees**

Aerials indicate that Protected (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) may reside on subject property. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4341(18), Protected and Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for tree preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.

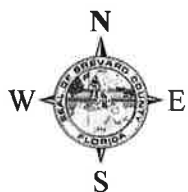
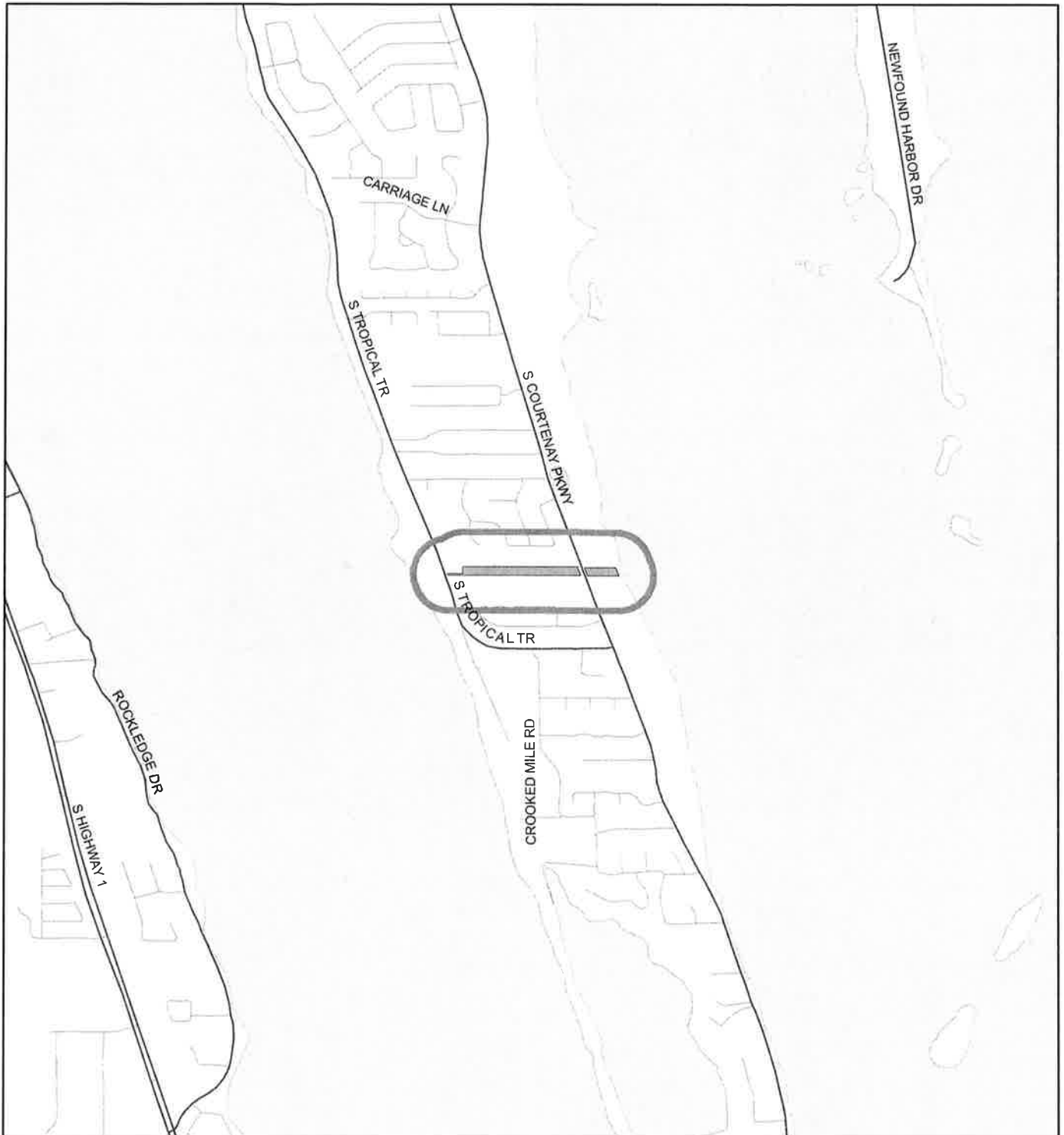
### **Protected Species**

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.

# LOCATION MAP

FANCZI, CARMEN

20Z00013



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.

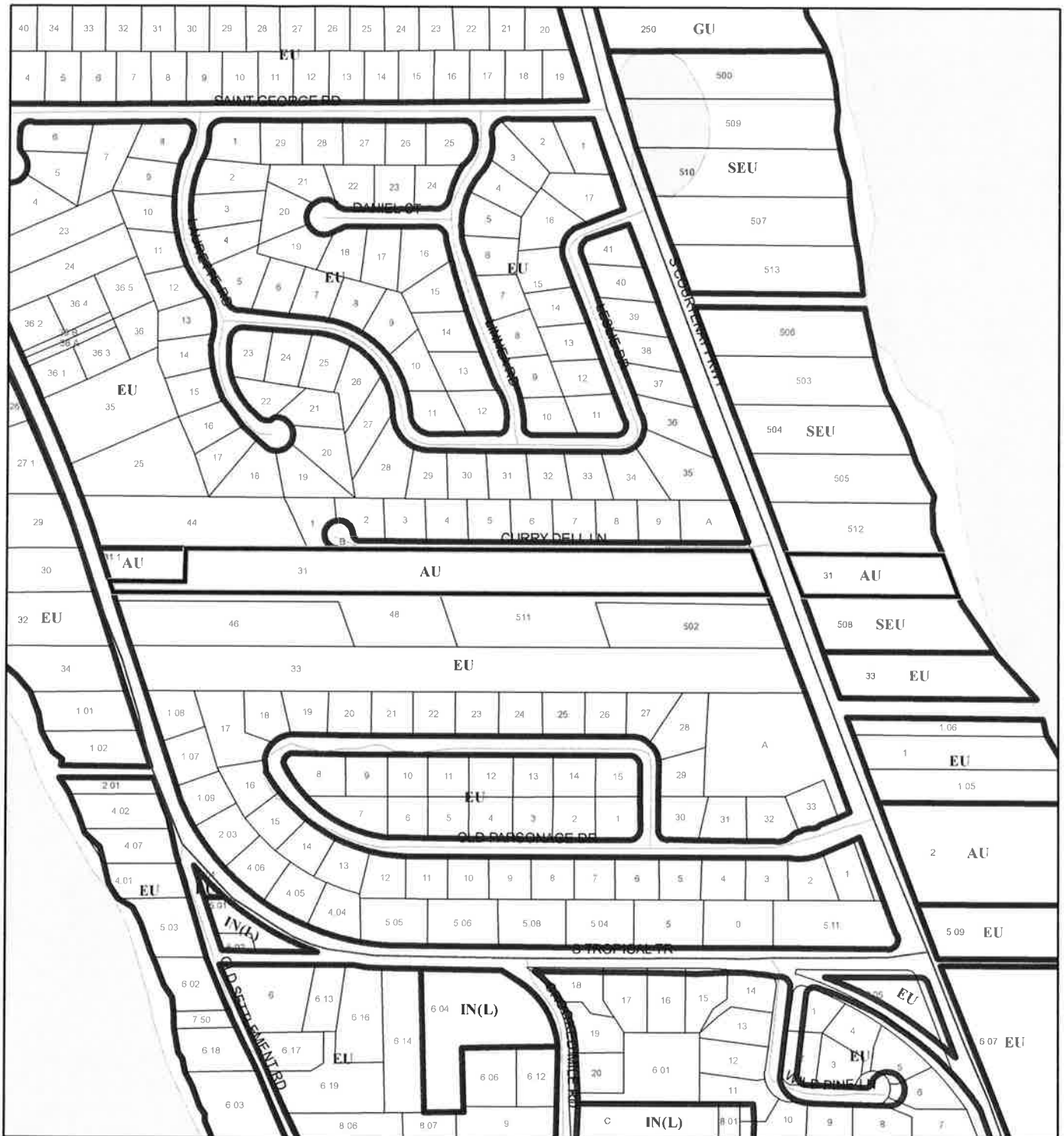
Produced by BoCC - GIS Date: 7/2/2020

— Buffer  
■ Subject Property

# ZONING MAP

FANCZI, CARMEN

20Z00013



1:4,800 or 1 inch = 400 feet

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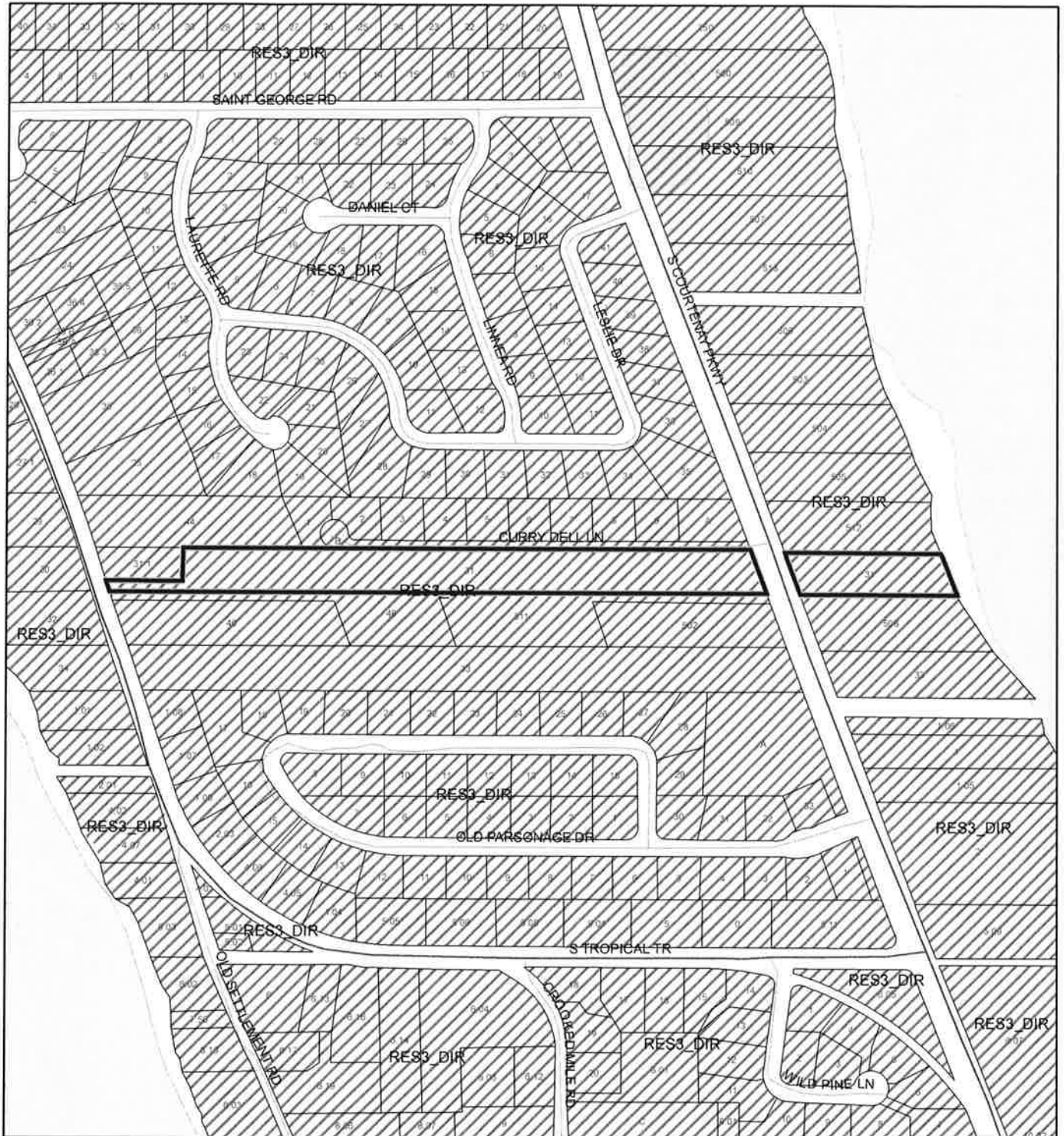
- Subject Property
- Parcels
- Zoning



# FUTURE LAND USE MAP

FANCZI, CARMEN

20Z00013



1:4,800 or 1 inch = 400 feet

— Subject Property  
 □ Parcels

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# AERIAL MAP

FANCZI, CARMEN

20Z00013




1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2020

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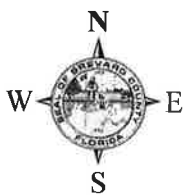
 Subject Property

 Parcels

# NWI WETLANDS MAP

FANCZI, CARMEN

20Z00013



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 7/2/2020

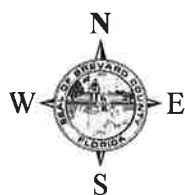
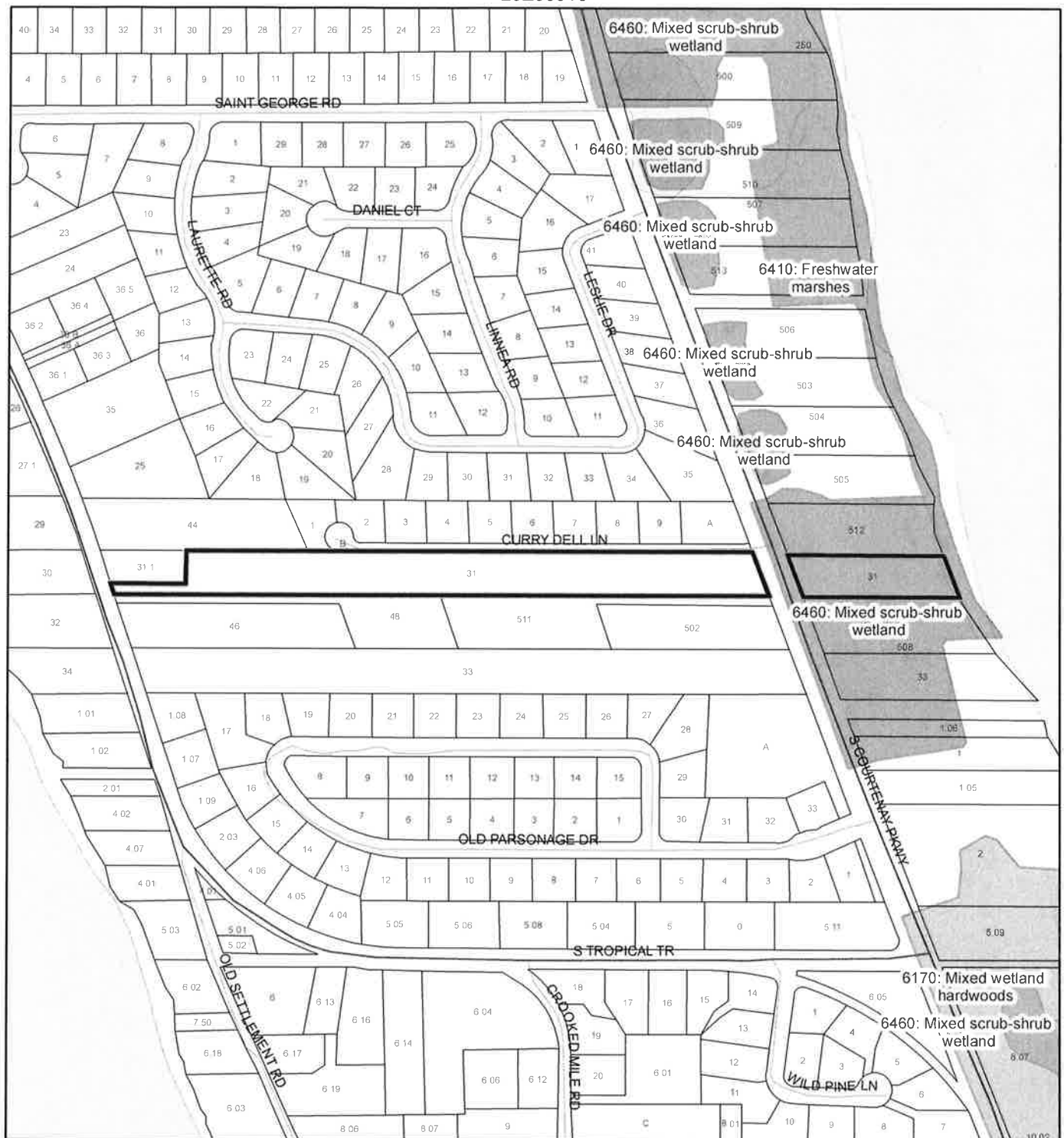
## National Wetlands Inventory (NWI)

	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

FANCZI, CARMEN

20Z00013



1:4,800 or 1 inch = 400 feet

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## SJRWMD FLUCCS WETLANDS

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

Subject Property

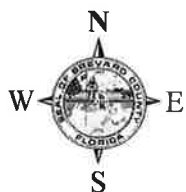
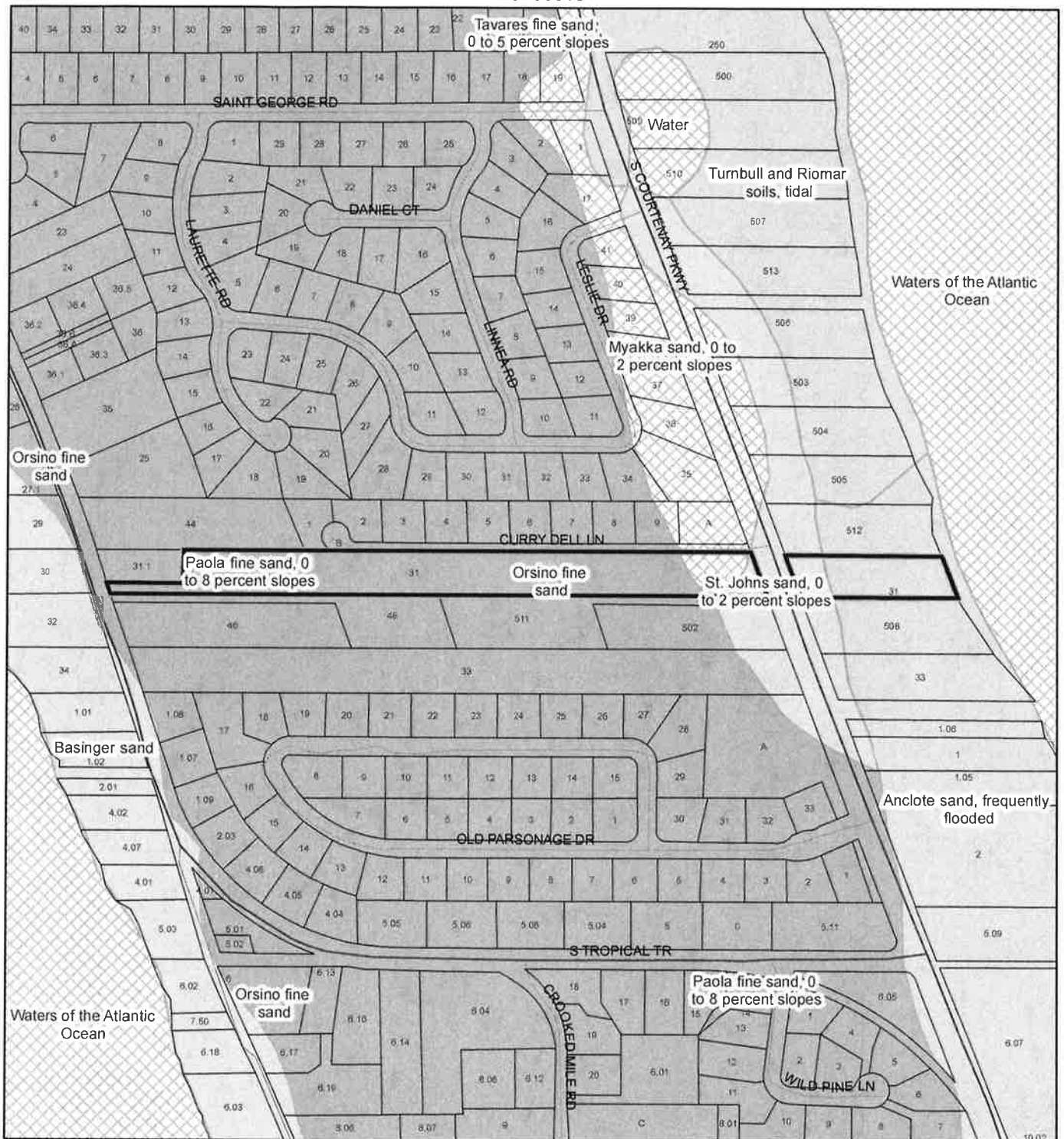
Parcels



# USDA SCSSS SOILS MAP

FANCZI, CARMEN

20Z00013



1:4,800 or 1 inch = 400 feet

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## USDA SCSSS Soils

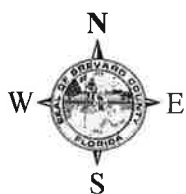
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

# FEMA FLOOD ZONES MAP

FANCZI, CARMEN

20Z00013



1:4,800 or 1 inch = 400 feet

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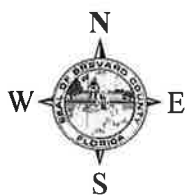
## FEMA Flood Zones

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

# COASTAL HIGH HAZARD AREA MAP

FANCZI, CARMEN

20Z00013



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

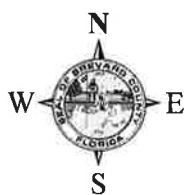
**Coastal High Hazard Area**

 SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

FANCZI, CARMEN

20Z00013



1:4,800 or 1 inch = 400 feet

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— Subject Property

□ Parcels

**Septic Overlay**

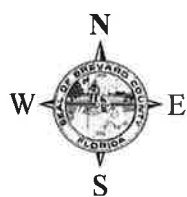
■ 40 Meters

■ 60 Meters

■ All Distances



20Z00013



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.

Eagle Nests  
FWS 2010

# SCRUB JAY OCCUPANCY MAP

FANCZI, CARMEN




20Z00013



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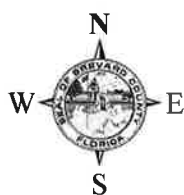
Produced by BoCC - GIS Date: 7/2/2020

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

FANCZI, CARMEN

20Z00013







1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 7/2/2020

## 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



## School Board of Brevard County

2700 Judge Fran Jamieson Way • Viera, FL 32940-6699  
Mark W. Mullins, Ed.D., Superintendent

July 24, 2020

Mr. George Ritchie  
Planning & Development Department  
Brevard County Board of County Commissioners  
2726 Judge Fran Jamieson Way  
Viera, Florida 32940

**RE: Proposed South Curry Dell Development  
School Impact Analysis – Capacity Determination CD-2020-07**

Dear Mr. Ritchie,

We received a completed *School Facility Planning & Concurrency Application* for the referenced development. The subject property is Tax Account 2511450 (Parcel ID: 25-36-24-00-31) containing approximately 6.33 acres in Brevard County, Florida. The proposed single-family development includes 12 homes. The School Impact Analysis of this proposed development has been undertaken and the following information is provided for your use.

The calculations used to analyze the prospective student impact are consistent with the methodology outlined in Section 13.2 of the *Interlocal Agreement for Public School Facility Planning & School Concurrency (ILA-2014)*. The following capacity analysis is performed using capacities/projected students as shown in years 2019-20 to 2024-25 of the *Brevard County Public Schools Financially Feasible Plan for School Years 2019-2020 to 2024-25* which is attached for reference.

Single-Family Homes	12		
Students Generated	Student Generation Rates	Calculated Students Generated	Rounded Number of Students
Elementary	0.28	3.36	3
Middle	0.08	0.96	1
High	0.16	1.92	2
<b>Total</b>	<b>0.52</b>		<b>6</b>

Planning & Project Management  
Facilities Services  
Phone: (321) 633-1000 x11418 • FAX: (321) 633-4646



An Equal Opportunity Employer

**FISH Capacity (including relocatables) from the  
Financially Feasible Plan Data and Analysis for School Years 2019-20 to 2024-25**

School	2020-21	2021-22	2022-23	2023-24	2024-25
Tropical	910	910	910	910	910
Jefferson	854	854	854	854	854
Merritt Island	1,915	1,915	1,915	1,915	1,915

**Projected Student Membership**

School	2020-21	2021-22	2022-23	2023-24	2024-25
Tropical	803	792	757	745	708
Jefferson	664	630	616	576	580
Merritt Island	1,567	1,553	1,499	1,437	1,388

**Students Generated by Previously Issued SCADL Reservations**

School	2020-21	2021-22	2022-23	2023-24	2024-25
Tropical	21	21	21	21	21
Jefferson	61	65	73	73	73
Merritt Island	122	135	143	150	150

**Cumulative Students Generated by  
Proposed Development**

School	2020-21	2021-22	2022-23	2023-24	2024-25
Tropical	-	1	3	3	3
Jefferson	-	0	1	1	1
Merritt Island	-	1	2	2	2

**Total Projected Student Membership (includes  
Cumulative Impact of Proposed Development)**

School	2020-21	2021-22	2022-23	2023-24	2024-25
Tropical	824	814	781	769	732
Jefferson	725	695	690	650	654
Merritt Island	1,689	1,689	1,644	1,589	1,540

**Projected Available Capacity =  
FISH Capacity - Total Projected Student Membership**

School	2020-21	2021-22	2022-23	2023-24	2024-25
Tropical	86	96	129	141	178
Jefferson	129	159	164	204	200
Merritt Island	226	226	271	326	375

At this time, Tropical Elementary School, Jefferson Middle School and Merritt Island High School are projected to have enough capacity for the total of projected and potential students from the South Curry Dell development.

This is a non-binding review; a *Concurrency Determination* must be performed by the School District prior to a Final Development Order and the issuance of a Concurrency Evaluation Finding of Nondeficiency by the Local Government.

We appreciate the opportunity to review this proposed project. Please let us know if you require additional information.

Sincerely,



Karen M. Black, AICP Candidate  
Manager – Facilities Planning & Intergovernmental Coordination  
Planning & Project Management, Facilities Services

Enclosure: *Brevard County Public Schools Financially Feasible Plan for School Years 2019-2020 to 2024-25*

Copy: Susan Hann, Assistant Superintendent of Facility Services  
File CD-2020-07

David G. Lindemann, AICP, Director of Planning & Project Management,  
Facilities Services  
File CD-2020-07

**Brevard County Public Schools**  
**Financially Feasible Plan To Maintain Utilization Rates Lower than the 100% Level of Service**  
**Data and Analysis for School Years 2019-20 to 2024-25**



Summary		2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
Highest Utilization Elementary Schools:	104%	99%	100%	99%	100%	100%	
Highest Utilization Middle Schools:	90%	93%	93%	90%	94%	94%	
Highest Utilization Jr / Sr High Schools:	85%	85%	86%	88%	89%	93%	
Highest Utilization High Schools:	95%	98%	99%	99%	97%	100%	

School	Type	Grades	Utilization Factor	School Year 2019-20			School Year 2020-21			School Year 2021-22			School Year 2022-23			School Year 2023-24			School Year 2024-25		
				FISH Capacity	10/11/18 Member-ship	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization
Elementary School Concurrency Service Areas																					
New Viera	Elementary	K-6	100%	-	-	0%	970	400	41%	970	440	45%	970	479	49%	970	516	53%	970	547	56%
Allen	Elementary	PK-K	100%	751	733	98%	751	741	99%	773	780	101%	795	786	99%	817	815	100%	839	835	99%
Andersen	Elementary	K-6	100%	884	718	81%	884	867	98%	884	849	96%	884	863	98%	884	857	97%	884	844	96%
Apollo	Elementary	K-6	100%	902	836	93%	902	878	97%	924	920	100%	945	936	99%	968	955	99%	990	980	99%
Atlanta	Elementary	PK-K	100%	739	670	91%	739	681	92%	739	720	97%	739	722	98%	739	733	99%	739	735	99%
Audubon	Elementary	PK-K	100%	761	533	70%	761	469	62%	761	477	63%	761	476	63%	761	465	61%	761	458	60%
Cambridge	Elementary	PK-K	100%	765	632	83%	765	601	79%	765	598	78%	765	591	77%	765	597	78%	765	598	78%
Cape View	Elementary	PK-K	100%	570	360	63%	570	343	60%	570	334	59%	570	347	61%	570	344	60%	570	346	61%
Carroll	Elementary	K-6	100%	751	670	89%	751	710	95%	751	695	93%	751	707	94%	751	727	97%	773	771	100%
Challenger 7	Elementary	PK-K	100%	573	543	95%	573	544	95%	573	550	96%	573	566	99%	565	576	101%	565	586	103%
Columbia	Elementary	PK-K	100%	751	432	58%	751	407	54%	751	430	57%	751	453	60%	751	466	62%	751	476	63%
Cocquina	Elementary	K-6	100%	711	520	73%	711	564	79%	711	571	80%	711	576	81%	711	581	82%	711	580	82%
Creel	Elementary	PK-K	100%	1,154	825	71%	1,154	843	73%	1,154	829	72%	1,154	831	72%	1,154	813	70%	1,154	815	71%
Crofton	Elementary	PK-K	100%	795	523	66%	795	494	62%	795	525	66%	795	519	65%	795	519	65%	795	532	67%
Discovery	Elementary	PK-K	100%	990	846	86%	990	839	85%	990	841	85%	990	852	86%	990	852	86%	990	862	87%
Endeavour	Elementary	PK-K	100%	990	852	86%	990	840	85%	990	817	83%	990	822	83%	990	885	89%	990	947	96%
Enterprise	Elementary	K-6	100%	729	607	83%	729	598	82%	729	611	84%	729	609	84%	729	614	84%	729	615	84%
Faiglen	Elementary	PK-K	100%	789	667	85%	789	625	79%	789	655	83%	789	675	86%	789	671	85%	789	694	88%
Gemini	Elementary	K-6	100%	711	475	67%	711	502	71%	711	461	65%	711	489	69%	711	497	70%	711	510	72%
Goldview	Elementary	PK-K	100%	777	508	65%	777	473	61%	777	470	61%	777	548	71%	777	542	70%	777	554	71%
Harbor City	Elementary	PK-K	100%	629	368	59%	629	361	57%	629	379	60%	629	403	64%	629	405	64%	629	388	62%
Holland	Elementary	PK-K	100%	605	502	83%	605	502	83%	605	501	83%	605	495	82%	605	484	80%	605	482	79%
Imperial Estates	Elementary	K-6	100%	729	629	86%	729	610	84%	729	604	83%	729	618	85%	729	625	86%	729	636	87%
Indianapolis	Elementary	K-6	100%	798	732	92%	798	728	91%	798	714	89%	798	709	89%	798	702	88%	798	694	87%
Jupiter	Elementary	PK-K	100%	930	722	78%	930	699	76%	930	708	76%	930	721	78%	930	725	78%	930	732	79%
Lockmar	Elementary	PK-K	100%	892	692	78%	892	672	76%	892	645	72%	892	652	73%	892	668	75%	892	689	78%
Longleaf	Elementary	PK-K	100%	790	646	82%	790	582	74%	790	584	74%	790	576	73%	790	581	74%	790	581	74%
Manatee	Elementary	K-6	100%	998	995	100%	998	995	100%	998	997	100%	998	997	100%	998	997	100%	998	997	100%
McAuliffe	Elementary	PK-K	100%	918	740	81%	918	719	78%	918	731	80%	918	709	77%	918	710	77%	918	698	76%
Meadowlane Intermediate	Elementary	3-5	100%	1,114	836	75%	1,114	834	75%	1,114	810	72%	1,114	868	78%	1,135	1,070	94%	1,160	1,165	100%
Meadowlane Primary	Elementary	K-6	100%	824	680	83%	824	739	90%	824	754	91%	824	707	86%	846	812	96%	868	850	98%
Mia	Elementary	PK-K	100%	707	463	66%	707	458	65%	707	458	65%	707	467	66%	707	500	71%	707	509	72%
Mims	Elementary	PK-K	100%	725	457	63%	725	463	64%	725	500	69%	725	523	72%	725	538	74%	725	550	76%
Oak Park	Elementary	PK-K	100%	968	542	56%	968	537	56%	968	502	52%	968	555	57%	968	561	58%	968	571	59%
Ocean Breeze	Elementary	PK-K	100%	654	559	85%	654	546	83%	654	579	89%	654	585	89%	654	595	91%	654	600	92%
Palm Bay	Elementary	PK-K	100%	983	841	86%	983	827	84%	983	844	86%	983	858	87%	983	871	89%	983	886	90%
Pinewood	Elementary	PK-K	100%	589	496	84%	589	501	85%	589	517	88%	589	533	91%	589	548	93%	589	552	94%
Port Malabar	Elementary	PK-K	100%	852	713	84%	852	680	80%	852	684	80%	852	696	82%	852	777	91%	852	802	94%
Quest	Elementary	PK-K	100%	1,152	1,186	103%	1,152	969	84%	1,152	960	83%	1,152	945	82%	1,152	1,021	89%	1,152	1,037	91%
Riviera	Elementary	PK-K	100%	777	699	90%	777	707	91%	777	725	93%	777	785	101%	777	1,019	131%	777	1,085	139%
Rosevelt	Elementary	K-6	100%	599	345	58%	599	317	53%	599	311	52%	599	287	48%	599	275	46%	599	253	42%
Sabal	Elementary	PK-K	100%	785	563	72%	785	557	71%	785	560	71%	785	584	74%	785	592	75%	785	591	75%
Sabum	Elementary	PK-K	100%	976	845	87%	976	845	87%	976	855	88%	976	857	88%	976	905	93%	976	976	100%
Sea Park	Elementary	PK-K	100%	461	338	73%	461	308	67%	461	319	69%	461	341	74%	461	342	74%	461	317	69%
Shanwood	Elementary	PK-K	100%	909	461	51%	909	435	48%	909	423	47%	909	421	46%	909	427	47%	909	435	48%
South Lake	Elementary	K-6	100%	481	351	73%	481	372	77%	481	372	77%	481	372	77%	481	372	77%	481	372	77%
Sunrise	Elementary	PK-K	100%	913	798	87%	913	746	82%	913	723	79%	913	791	87%	913	817	89%	913	835	91%
Sunrise	Elementary	K-6	100%	755	675	89%	755	619	82%	755	580	77%	755	562	74%	755	586	78%	755	607	80%
Surfside	Elementary	K-6	100%	541	461	85%	541	450	83%	541	442	82%	541	450	83%	541	436	81%	541	424	79%
Tropical	Elementary	K-6	100%	910	804	88%	910	803	88%	910	792	87%	910	757	83%	910	745	82%	910	708	78%
Turner	Elementary	PK-K	100%	874	595	68%	874	577	66%	874	558	64%	874	538	62%	874	528	60%	874	543	62%
University Park	Elementary	PK-K	100%	811	479	59%	811	454	56%	811	553	68%	811	635	78%	811	644	79%	811	661	82%
Westside	Elementary	K-6	100%	857	773	90%	857	734	86%	857	686	80%	857	702	82%	857	709	83%	857	750	88%
Williams	Elementary	PK-K	100%	715	574	80%	715	469	66%	715	501	70%	715	494	69%	715	480	67%	715	474	66%
<b>Elementary Totals</b>				<b>41,994</b>	<b>33,013</b>		<b>43,666</b>	<b>32,576</b>		<b>42,964</b>	<b>32,793</b>		<b>43,198</b>	<b>33,238</b>		<b>43,396</b>	<b>34,093</b>		<b>43,604</b>	<b>34,669</b>	

Middle School Concurrency Service Areas																					
Central	Middle	7-8	90%	1,505	1,181	79%	1,505	1,184	79%	1,505	1,075	71%	1,505	1,042	69%	1,505	1,138	76%	1,505	1,170	78%
DeLaura	Middle	7-8	90%	939	844	90%	939	872	93%	939	873	93%	939	882	94%	939	816	87%	939	884	94%
Hoover	Middle	7-8	90%	659	484	75%	659	500	76%	659	509	77%	659	504	76%	659	475	72%	659	500	76%
Jackson	Middle	7-8	90%	854	537	63%	854	570	67%	854	571	67%	854	558	65%	854	588	69%	854	594	69%
Jefferson	Middle	7-8	90%	854	688	81%	854	664	78%	854	630	74%	854	618	72%	854	576	67%	854	580	68%
Johnson	Middle	7-8	90%	997	744	75%	997	747	75%	997	723	73%	997	680	68%	997	684	69%	997	714	72%
Kennedy	Middle	7-8	90%	813	657	81%	813	713	88%	813	806	99%	813	709	87%	813	684	84%	813	683	84%
Madison	Middle	7-8	90%	743	528	71%	743	518	70%	743	484	65%	743	474	64%	743	480	65%	743	527	71%
McNair	Middle	7-8	90%	611	486	80%	611	461	76%	611	478	78%	611	514	84%	611	545	89%	611	533	87%
Southwest	Middle	7-8	90%	1,177	898	76%	1,177	900	77%	1,177	890	76%	1,177	770	66%	1,177	780	66%	1,177	781	66%
Stone	Middle	7-8	90%	1,024	769	75%	1,024	782	77%	1,024	854	83%	1,024	760	74%	1,024	813	79%	1,024	898	88%
Middle Totals				8,976	7,830		8,976	7,841		8,976	7,787		8,976	7,499		8,976	7,678		8,976	7,884	
Junior / Senior High School Concurrency Service Areas																					
Cocoa	Jr / Sr High	PK, 7-12	90%	2,087	1,810	87%	2,087	1,832	88%	2,087	1,783	85%	2,087	1,822	88%	2,087	1,841	89%	2,087	1,913	92%
Cocoa Beach	Jr / Sr High	7-12	90%	1,466	1,003	68%	1,466	1,002	68%	1,466	988	67%	1,466	951	65%	1,466	921	63%	1,466	885	60%
Space Coast	Jr / Sr High	7-12	90%	1,857	1,584	85%	1,857	1,577	85%	1,857	1,586	86%	1,857	1,552	84%	1,857	1,503	81%	1,857	1,513	81%
Jr / Sr High Totals				5,399	4,397		5,399	4,411		5,399	4,347		5,399	4,328		5,399	4,268		5,399	4,315	
Senior High School Concurrency Service Areas																					
Astronaut	High	9-12	95%	1,446	1,055	73%	1,446	1,111	77%	1,446	1,153	80%	1,446	1,143	79%	1,446	1,105	76%	1,446	1,091	75%
Bayside	High	9-12	95%	2,257	1,646	73%	2,257	1,654	73%	2,257	1,755	78%	2,257	1,765	78%	2,257	1,789	79%	2,257	1,778	79%
Eau Gallie	High	PK, 9-12	95%	2,232	1,689	76%	2,232	1,650	74%	2,232	1,718	77%	2,232	1,682	75%	2,232	1,688	76%	2,232	1,723	77%
Heritage	High	9-12	95%	2,314	1,889	82%	2,314	1,927	84%	2,314	1,899	82%	2,314	1,955	84%	2,314	1,957	85%	2,314	2,005	87%
McBourne	High	9-12	95%	2,356	2,140	91%	2,356	2,112	90%	2,356	2,231	95%	2,356	2,263	97%	2,356	2,291	97%	2,356	2,348	100%
Meritt Island	High	PK, 9-12	95%	1,915	1,527	80%	1,915	1,567	82%	1,915	1,553	81%	1,915	1,499	78%	1,915	1,437	75%	1,915	1,388	72%
Palm Bay	High	PK, 9-12	95%	2,602	1,413	54%	2,602	1,369	53%	2,602	1,537	59%	2,602	1,629	63%	2,602	1,771	68%	2,602	1,838	71%
Rockledge	High	9-12	95%	1,701	1,516	89%	1,701	1,540	90%	1,701	1,546	90%	1,701	1,530	90%	1,701	1,543	91%	1,701	1,600	94%
Satellite	High	PK, 9-12	95%	1,516	1,422	94%	1,516	1,489	98%	1,516	1,520	100%	1,516	1,484	98%	1,516	1,475	98%	1,516	1,390	92%
Titusville	High	9-12	95%	1,848	1,310	71%	1,848	1,285	70%	1,848	1,299	70%	1,848	1,321	71%	1,848	1,300	70%	1,848	1,320	72%
Viera	High	PK, 9-12	95%	2,277	2,154	95%	2,277	2,138	94%	2,277	2,107	93%	2,277	2,195	97%	2,277	2,249	99%	2,277	2,395	105%
High Totals				22,464	17,763		22,464	17,860		22,464	18,494		22,464	18,468		22,464	18,587		22,464	18,881	
Schools of Choice (Not Concurrency Service Areas)																					
Freedom 7	Elementary	K-6	100%	475	404	85%	475	414	87%	475	414	87%	475	414	87%	475	414	87%	475	414	87%
Stevenson	Elementary	K-6	100%	569	504	89%	569	508	89%	569	508	89%	569	508	89%	569	508	89%	569	508	89%
West Melbourne	Elementary	K-6	100%	618	548	89%	618	552	89%	618	552	89%	618	552	89%	618	552	89%	618	552	89%
Edgewood	Jr / Sr High	7-12	90%	1,072	942	88%	1,072	950	89%	1,072	950	89%	1,072	950	89%	1,072	950	89%	1,072	950	89%
West Shore	Jr / Sr High	7-12	90%	1,264	951	75%	1,264	955	76%	1,264	955	76%	1,264	955	76%	1,264	955	76%	1,264	955	76%
Schools of Choice				3,998	3,349		3,998	3,380		3,998	3,380		3,998	3,380		3,998	3,380		3,998	3,380	
Brevard Totals				83,812	68,182		84,084	68,968		84,084	68,831		84,084	68,908		84,084	69,904		84,084	69,904	

# Notes

- FISH Capacity is the sum of the factored permanent capacity and the factored relocatable capacity. Permanent and relocatable capacities for 2019-20 are reported from the FISH database as of October 9, 2019.
- Student Membership is reported from the Fall Final Membership Count (10/1/19).
- Davis Demographics SchoolSite Enrollment Forecasting Extension for ArcGIS estimates future student populations by analyzing the following data:
  - Development Projections from Brevard County Local Government Jurisdictions
  - Brevard County School Concurrency Student Generation Multipliers (SGM)
  - Fall Membership student addresses and corresponding concurrency service areas
  - Student Mobility Rates / Cohort Survival Rates
  - Brevard County Birth rates by zip code
- Davis Demographics estimates are then adjusted using the following factors:
  - PK (Pre-Kindergarten) and AH (daycare for students with infants) enrollment number are assumed to be constant
  - Current From/To attendance patterns are assumed to remain constant
  - Nonrecorded student addresses are assumed to continue in their attendance schools
  - Charter School Growth
- In order to maintain utilization rates lower than the 100% Level of Service, Permanent Capacity and Relocatable Classrooms are assumed to add future student stations as necessary.
- Relocatable Classrooms are assumed to add future student stations as listed below:
  - Primary relocatable classrooms (Grades K-3) = 18 student stations, Intermediate (Grades 4-8) relocatable classrooms = 22 student stations, and High School (Grades 9-12) relocatable classrooms = 25 student stations
  - Intermediate relocatable classrooms are proposed to be added at Apollo Elementary, Challenger 7 Elementary, Coquina Elementary, Imperial Estates Elementary, Pinewood Elementary, Quest Elementary, Saturn Elementary, Sunrise Elementary, DeLaura Middle School, Jackson Middle School and Kennedy Middle (Total of 42 Classrooms)
  - High school relocatable classrooms are proposed to be added at Viera High (Total of 8 Classrooms)
- Redistricting was approved for the 2020-21 school year and the projected enrollment for 2020-21 is adjusted for those areas. Future redistricting is planned for a new central area elementary school in 2020-21.
- The following proposals for additional permanent capacity are included in this analysis:
  - A new central area elementary is assumed to add 670 student stations starting in 2020-21. Student enrollment projections were adjusted for the 2020-21 school year.





## Sykes Creek

# South Merritt Island

South Curry Dell  
Development  
12 Units

## Rockwell

## Georgiana

## Banana River

## Indian River

Schools Affected by Development:  
Tropical Elementary  
Jefferson Middle School  
Merritt Island High School

Drawn By:  
Blake Stinson  
07/23/2020  
Facility Services

2,300	1,150	0	2,300 Feet
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Daniel and Nancy Barnett  
3855 South Courtenay Parkway  
Merritt Island, FL 32952

Brevard County Board of County Commissioners  
Planning and Development Department  
2725 Judge Fran Jamieson Way, Bldg A  
Viera, FL 32940

September 9, 2020

Re: ID #20Z00013 – rezoning request

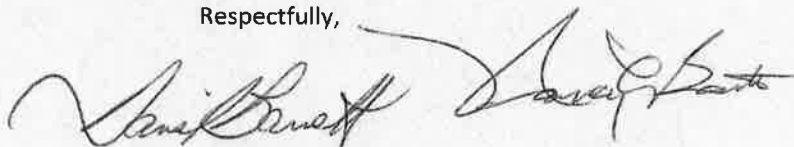
To Whom It May Concern:

Please be aware, we are the undersigned are owners of property adjacent to the Curry Dell acreage being considered for rezoning from AU (Agricultural Residential) to EU (Estate Use Residential) on September 14. Our concerns are as follows (we will be in attendance at the September 14 meeting):

- Will the developer install a swale/berm along its south property line to prevent any drainage or run-off onto our property?
- Will the developer add a fence and landscape on the berm for visual and physical control with the development responsible for maintenance in perpetuity?
- We have reviewed our property elevation. We would like to know the finished floor elevation (FFE) of the new lots and its possible effects on our property.
- How will water be retained on site for the new lots (retention ponds) and request "sheet flow" be directed to go north into Curry Dell Lane storm drains.
- Where will new utilities be placed? Will they impact our property? If so, request our electric line be placed underground going from east to west along the south property line of the new development.
- What sort of septic system will be required since there is no sewer available in the area? Should an AEROBIC system be required to minimize impact on the lagoon since there are so many Anaerobic systems already in the area?
- Is there a moratorium on septic tanks at the present time?

Thank you for your consideration.

Respectfully,

Handwritten signatures of Daniel and Nancy Barnett in cursive script.

Daniel and Nancy Barnett

September 8, 2020

Brevard County Board of County Commissioners  
Planning and Development Department  
2725 Judge Fran Jamieson Way, Bldg. A  
Viera, FL 32940

RE: ID #20Z00013 – rezoning request

TO WHOM IT MAY CONCERN:

Please be advised that we the undersigned, are owners of the property adjacent to the Curry Dell acreage being considered for rezoning on September 14. Our concerns are as follows, and we will attend the September 14 meeting to discuss these issues.

1. Developer – will there be swale/berm along your south property line to stop any drainage or run-off on your property?
2. Developer – add a fence and landscape on the berm for visual and physical control with the development responsible for maintenance in perpetuity.
3. Developer – we will compare our lot elevation to the elevations the county will require on the development property. We want to know the finished floor elevation (FFE) of the new lots. We will also look at our survey and compare our lot elevation to the new project.
4. Developer – where and how will water be retained on site for the new lots (retention ponds), and sheet flow should be directed north into Curry Dell Lane storm drains.
5. Developer – where will new utilities be placed, and will they impact our property? If so, we would like our electric buried going east to west along the south property line of the new development.
6. Developer – what sort of septic system will be required since there is no sewer available in the area? Should an Aerobic system be required to minimize impact on the lagoon since there are so many Anaerobic systems in the area already?
7. Developer – is there a moratorium on septic tanks at the present time?

Thank you for your attention to this matter.

Very truly yours,

David & Brenda Earhart

3865 South Courtenay Parkway  
Merritt Island, FL 32952  
321-506-0050 cell phone (David)

**From:** Scott Price  
**To:** Jones, Jennifer  
**Cc:** Scott Price; suttonaw0@gmail.com; chasityhenson9@gmail.com; Llovelett@icloud.com; Robert Freche; doucet274@gmail.com; Jim Drake; laurensca@yahoo.com  
**Subject:** ID #20Z00013 Zoning Meeting  
**Date:** Monday, September 14, 2020 11:16:07 AM  
**Attachments:** Rockwell South Covenants.pdf

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**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Jennifer,

I am writing to you referencing the above planned zoning meeting that is to occur today in Viera. I am the President of the Rockwell South Homeowners Association (HOA). Our property lies directly to the north of the property in question for today's zoning board. I am unable to attend but we should have a representative there. We have reviewed the filed document and take exception to the following:

- the road to which the owner & any potential future developer wishes to access for this planned 11 units/homes is Curry Dell Ln which is a private road owned by the HOA.
- The Rockwell South HOA has conducted multiple meetings with all homeowners and a vote has taken place with respect to entertaining any request owner/developer accessing our property or providing access. The result of this vote was 100% NO in allowing anyone access for any reason.
- Curry Dell Ln, the road, was to transfer to the Homeowners in Jan. 2003 per the attached covenants that never formally occurred. There is current litigation on this currently with the developer of Curry Dell Ln (Tom Curry (estate)). We are represented by Kevin McCann, Attorney at Law in Merritt Island.
- the potential developer, The Coy A. Clark Company (Mr. Michael Maguire), has been verbally told that the Rockwell South HOA is not interested in any negotiation with respect to any develop plans that includes any access to Curry Dell Ln.
- Rockwell South HOA also takes exception to the reference, in the supplied notice, about "South Curry Dell" location and all references that includes or assumes that this planned change that rights will ever provided via our HOA-they will not.

We just wanted to insure that the Board understand that the Rockwell South HOA and all its residents that Curry Dell Ln is a private road that has been maintained by the HOA for the last 23 years and we have no plans on allowing access, using or accessing our road, for any development to our immediate south. Although we do understand that this meeting may be primarily regarding zoning changes we wanted to insure the Board be aware of our issues/concerns.

Thanks for you time.

Scott Price  
1262 Curry Dell Ln  
Merritt Island, FL 32952  
Rockwell South HOA President

99193380  
RETURN TO  
FIDELITY NATIONAL TITLE INSURANCE CO  
1135B S. WASHINGTON AVE.  
TITUSVILLE, FL 32780



CFN 97202223

11-20-97 09:24 am

OR Book/Page: 3730 / 0252

**RESTRICTIVE COVENANTS FOR  
ROCKWELL SOUTH, MERRITT ISLAND, FLORIDA**

KNOW ALL MEN BY THESE PRESENTS, That Whereas the undersigned  
T. BRADLEY CURRY, JR. and LOUISE C. CURRY are the owners in fee simple of the  
following described real estate in Brevard County, Florida:

All that tract of land known as ROCKWELL SOUTH, Merritt  
Island, Brevard County Florida, as shown on plat recorded  
in Plat Book 39, Page 55, of the Public records of Brevard  
County, Florida, and

WHEREAS, the said owners are desirous of placing certain covenants and  
restrictions upon the use of the aforementioned property, which said covenants and  
restrictions are to run with the title to said lots; and

NOW THEREFORE, for and in consideration of the premises and other valuable  
considerations, the said owners for themselves, their successors, legal representatives  
and assigns, hereby restrict the use, as hereinafter provided, of all the hereinabove  
described property as follows, to wit:

1. **DURATION OF RESTRICTIONS:** These covenants are to run with  
the land and shall be binding on all parties and all persons claiming under them until  
January 31, 2003, at which time said covenants shall be automatically extended for  
successive periods of ten years unless by vote of a majority of the Rockwell South  
Homeowners Association, Inc., it is agreed to terminate said covenants in whole or in  
part.
2. **INVALIDITY:** Invalidation of any of these covenants by judgment  
or court order shall in no wise affect any of the other provisions which shall remain in  
full force and effect.
3. **CONTRACT:** For the purpose of assuring the development of the  
lands platted as ROCKWELL SOUTH as an area of high standards, the owners, T.  
BRADLEY CURRY, JR. and LOUISE C. CURRY, reserve the power to control the  
buildings, structures, and other improvements placed on each lot. This control shall be  
carried out through the REVIEW COMMITTEE which shall be composed of the above  
listed owners. In the event either of said members shall resign or be unable to act, a  
successor may be appointed by the remaining member of the Review Committee, if so  
desired. At any time after January 31, 2003, or after the owners have sold all the lots  
in said subdivision, whichever date is later, or if the Review Committee has ceased to  
function, or at such earlier date as the said owners, T. Bradley Curry, Jr. and Louise C.  
Curry shall elect, then in such event, all privileges, powers, rights and authority shall  
be exercised by and vested in the Rockwell South Homeowners Association, Inc.
4. **APPROVAL BY REVIEW COMMITTEE:** Whether or not provision  
therefor is specifically stated in any conveyance of a lot, the owner or occupant of each  
and every lot, by acceptance of title thereto, or by taking possession thereof, covenants  
and agrees, for himself, his heirs, administrators, executors, successors or assigns,  
that no building permit shall be applied for unless prior to that time the owner has

**Sandy Crawford**

Clerk Of Courts, Brevard County

#Pgs: 8	#Names: 3	
Trust: 4.50	Rec: 33.00	Serv 0.00
Deed: 0.00		Excise: 0.00
Mtg: 0.00		nt Tax: 0.00

submitted to the Review Committee a plot plan of his lot, showing the location of the building, the front and rear setbacks, side yards and location of any auxiliary buildings; also plans and specifications of the house to be erected, together with an architect's statement as to the square foot coverage of the first story of the house. The Review Committee shall, within ten (10) days, give its approval of plot plan and plans and specifications, in writing, or failing to do so, such approval shall be deemed to have been given. If the Review Committee rejects the plot plan, or house plans, or specifications, the owner may confer with the Committee on its suggested changes in order to expedite the approval. Such approval shall be a condition precedent to obtaining the permit and proceeding with the approved plot plan and building plans. Refusal of approval of plans and specifications may be based on any grounds which the Review Committee shall deem sufficient, but such approval shall not be unreasonably withheld.

5. **RESIDENTIAL USE:** All lots in the subdivision shall be known, and described as residential lots. No structure shall be erected, altered, placed or permitted to remain on any residential building lot other than one detached, single family dwelling, not to exceed two stories in height, a private garage for not more than three cars, a guest cottage not for rental, a personal work or hobby shop for non-commercial purposes, or patio, tool or game room, exclusively for the use of the lot owner and his guests. No temporary residence shall be constructed, except that a construction shed of a temporary nature shall be permitted on a lot during the course of construction on said lot; provided however, that such construction shed shall not remain on any lot for a period of more than 150 days, and no garage or other permitted structure shall be constructed except as an integral part of the residence it is intended to serve, or if detached, simultaneously with or after the main dwelling.

6. **SET BACK RESTRICTIONS:** Except for Lots 1 and 2 on the cul-de-sac at the West end of the access road, no building, garage, porch, or other outbuilding shall be erected on any lot nearer than twenty-five (25') feet to the front lot line (i.e. the bordering edge of the access road to all lots) or nearer than fifteen (15') feet to either side lot line, or nearer than twenty (20') feet to the rear lot line. Eaves, roofs, unroofed terraces, or other projections may be erected nearer the front, side and rear setback lines herein established, but in no event shall eaves, roofs, unroofed terraces and other projections extend more than three (3) feet into the minimum front, side and rear setback lines. Where there are two or more lots acquired as a single building site, the side lot lines shall refer only to the lot lines bordering the adjoining property owners, provided, however, that thereafter such lots shall not again be separated. In the discretion of the Review Committee, the house may be erected so that one corner may come within thirty (25) feet of one street lot line. No accessory structures shall be located nearer than the residence to the front lot line. In the event it is difficult to ascertain what set back applies because of the lot configuration, the set back determination shall be made by the Review Committee in its uncontrolled discretion.

7. **SET BACK MODIFICATIONS:** The Review Committee, in its discretion, shall have the power to modify the set back regulations contained in paragraph #6 hereof on corner lots, cul-de-sac lots and other lots in the subdivision having site location problems and may further modify the regulations and restrictions contained herein whenever, in its discretion, it is determined that such a modification





would eliminate hardship or, in said Committee's judgment, will be beneficial to the site or sites affected by the modification and to the immediate area thereof. In any case, the County set back requirements must be met. Where matters within these restrictive covenants are left to the discretion and judgment of the Review Committee, it is intended that such Review Committee will exercise its judgment and discretion in order to maintain the high standards of a first class residential subdivision. Consequently, said Committee shall make its determinations in light of this standard. In addition, as hereinbefore set out, the Review Committee may make minor adjustments in those cases where a hardship exists as a result of the particular location or design or the individual lots, so long as such approved modifications shall comply with Brevard County zoning requirements.

8. **SWIMMING POOLS:** The construction and use of swimming pools having an elevation of not exceeding four (4) feet above normal grade are permitted provided that no excavations for swimming pools shall be nearer than ten (10) feet to any side or rear lot lines or easements of record or nearer than thirty five (35) feet to the front lot line, provided further that screens for pools, decks or patios shall conform to the building setback limitations.

9. **TRAILERS PROHIBITED:** No trailer or unlicensed motor vehicle may be parked on any lot at any time. No truck, bus, or similar vehicle shall be parked on any lot except when rendering a service or making a delivery. Nor shall any motor vehicle be parked overnight on the street. Notwithstanding the foregoing, a trailer or construction shack shall be permitted on the premises after the issuance of a building permit, and for 150 days thereafter, provided, however, that at no time shall such trailer or shack be used for dwelling purposes. A recreational vehicle owned by the lot owner may be parked on the property so long as its presence on the property shall not constitute a nuisance and shall be concealed from view by the general public by a fence of appropriate material and height so as to conceal the vehicle.

10. **REGULATION OF SIGNS:** No sign of any character shall be displayed on any lot, except that the owner or his agent may display on the premises a "For Sale" or "For Rent" sign referring only to the premises on which displayed, provided such sign shall not exceed six (6) feet in length by four (4) feet in height.

11. **MINIMUM SIZE OF RESIDENCE:** No residence shall be erected on any lot containing a floor area of less than two thousand (2,000) square feet. In a one-and-a-half or two story residence, the first floor area shall not contain less than one thousand (1000) square feet. The method of determining the square foot area of proposed buildings, structures, or additions or alterations to existing buildings, shall be by multiplying the outside horizontal dimensions of the building or structures at each floor level. Garages, carports, unglazed porches, utility rooms, patios and terraces shall not be taken into account in calculating the sizes of building.

12. **REGULATIONS OF WALLS AND FENCES:** No boundary wall or fence shall be constructed with a height of more than six (6) feet. No wall or fence of any type or height shall be erected on any lot until the type, height, materials, design and location has been approved by the Review Committee. The elevation of any wall or fence shall be measured from the existing elevations of the property along the

applicable points or lines. Any questions as to the height and/or location shall be conclusively determined by the Committee aforesaid.

13. **NO SUBDIVISION OF LOTS:** No lot as shown on the plat shall be subdivided except that a lot between two (2) other lots may be subdivided to increase the size of such lots, and such lots of increased size shall each remain as one building site.

14. **NUISANCES:** Nothing shall be done on any lot which may be or become an annoyance or nuisance to the neighborhood. No horses, cattle, swine, goats, poultry or fowl shall be kept on any lot. Household pets, exclusive of birds, shall not exceed two in number and shall not be bred for commercial purposes. Clothes lines shall be located in the rear of the residence and screened from the view of streets. Garbage cans shall be of the underground type or completely concealed by hedges, lattice work or screening acceptable to the Review Committee.

15. **WASTE:** No sewage, overflow from septic tanks, waste water, garbage, trash or other refuse from the premises shall be placed or emptied upon any lot.

16. **RESERVED EASEMENT:** T. BRADLEY CURRY, JR. and LOUISE C. CURRY, their successors and assigns other than individual lot owners, hereby reserves unto themselves a perpetual, alienable and releasable privilege and right, on, over and under the ground to erect, maintain and use electric or telephone poles, wires, cables, conduits, sewers (storm or sanitary), water mains and other equipment for the conveyance and use of electricity, telephone, television transmission cable, gas, water, or other public conveniences, utilities or drainage on, in or over the easements reserved as shown on the plat and on or over a strip ten (10') feet in the rear of each lot and twenty-four (24') feet in the front of each lot for utilities or other purposes and on or over a five (5') foot strip along the side line of each and every lot, (but side easements will be used only if required by utility providers or governmental entity) and the said T. BRADLEY CURRY, JR. and LOUISE C. CURRY, their successors and assigns other than individual lot owners, shall have the unrestricted right and power to release said easement.

In the event that more than one lot shall be included as one building site, the aforesaid 5-foot easement along each lot side line shall instead be reserved along the side line of said building site.

17. **IRON, TIN, ETC., PROHIBITED:** Except when used for the construction of the roof structure, no corrugated iron, rolled siding, tin, or aluminum shall be used in the construction of any building in said subdivision except that aluminum may be used for trim, flashing, valleys, gutters, or downspouts, however, pre-finished aluminum, plastic, and other modern materials may be used in the construction of any building when specifically approved by the Review Committee.



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**18. ROOFS, BUILDING MATERIAL, OR DAMAGE TO STREET DURING CONSTRUCTION:**

(a) Roofs shall be of a permanent construction and shall be constructed of fiberglass, cement tile, clay tile, or poured masonry or, subject to the Review Committee's approval, other materials, provided that on outdoor patios, pool roofs, and auxiliary structures the roofing may be of other materials to be approved in writing by the Committee in its uncontrolled discretion.

(b) All single story residential dwellings, garages, guest cottages and hobby shops shall be constructed of concrete block, and shall comply with all State and County building requirements or codes, and all State or County hurricane standards or codes. Two story structures may be frame construction for the second level.

(c) If any damage occurs to the subdivision street in any way caused by the construction process of any lot owner, the said lot owner shall cause said street to be repaired and restored to the same condition it was at the commencement of his construction, at his own cost and expense.

**19. BOATS OR BOAT TRAILERS:** No boats or boat trailers shall be stored or parked within the front setback area except for immediate (i.e., twenty-four hours or less) preparations for recreational purposes.

**20. HOMEOWNER ASSOCIATION:** The developer shall cause to be formed a Florida not-for-profit corporation, Rockwell South Homeowners' Association, Inc., herein called "Association", for the purpose of exercising the functions set forth herein to be exercised by said association. All owners of lots in the development shall become a member of the association upon the recording of their deed and shall have all of the rights, powers, obligations and duties of membership as provided herein and in the certificate of incorporation or bylaws of the said association. The association shall have the right to entry upon any lot in the development to make emergency repairs or other work prescribed in this Declaration, at reasonable times and with reasonable advance notice. Until such time as the said homeowners' association is formed, the owners, T. BRADLEY CURRY, JR., and LOUIS C. CURRY, shall perform the duties and obligations of the association as set forth herein at their personal expense. Formation of the Rockwell South Homeowners Association, Inc., shall automatically result in a transfer of responsibility for such obligation to the Rockwell South Homeowners Association, Inc.

**21. ASSESSMENTS:** Each owner of a lot in the development shall by acceptance of the deed to a lot or any other instrument of conveyance of a lot, whether or expressed therein or not, be deemed to covenant and agree to all the terms, covenants, conditions, restrictions and other provisions of this Declaration and to agree to promptly pay to the association, or its successors and assigns any and all assessments or charges for the lawful purposes of the association as may be set forth herein, including, but not limited to, maintenance, operation and repair of subdivision streets and surface water or stormwater management systems, administrative expenses, enforcement costs and, as to individual lot owners, repair of damaged streets during construction. Said assessments shall be a charge and continuing lien



on the real property and improvements on each lot against which each such assessments are made. Any assessment which is not paid on or before the date the same becomes due, shall be delinquent and the association may file a claim of lien against any lot for which any assessment payment is delinquent. Said lien as herein established may be foreclosed in the same manner as a mortgage or other lien on real property may be foreclosed in the State of Florida, or in the alternative, may be collected by any other available legal action. Said assessment shall also be a personal obligation of the owner of the lot at the time of the assessment and shall remain a lien on said property even though said property is conveyed to a new owner. The claim of lien filed by the association in the public records of Brevard County, Florida shall state the name of the owner of the property, the amount due and a description of the property encumbered by the lien. It shall be signed and verified by the president or the vice-president or other officer of the association. The lien shall secure the amount of the assessment, plus interest at the rate of 10% per annum on the assessment from its due date, plus court costs plus reasonable attorney's fees of the association in connection with the preparation of the lien, its collection, or its foreclosure.

22. DEFINITION: "Surface Water or Stormwater Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or re-use water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, F.A.C.

23. USE OF PROPERTY: Surface Water or Stormwater Management System. The Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system(s) shall mean the exercise of the practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. Johns River Water Management District. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted, or if modified as approved by the St. Johns River Water Management District.

24. COMMON AREA; ROAD; INGRESS AND EGRESS EASEMENTS; ADDITIONAL LOTS IN SUBDIVISION: Certain drainage/swale areas are located within Tract A, a common area, of the property. There shall be no blockage or construction within the drainage/swale areas. That portion of Tract "A" containing the drainage/swale area shall be deeded to and owned by the Association. The roadway located by the plat from State Route 3 (Courtenay Parkway) to and including the cul-de-sac shall be retained by and owned by the owners, T. BRADLEY CURRY, JR., and LOUISE C. CURRY until all lots are sold, or until January 31, 2003, whichever is later, or at such earlier date as the said owners, T. Bradley Curry, Jr. and Louise C. Curry, may elect, at which time it shall be deeded to and owned by the Association. The owners, T. BRADLEY CURRY, JR. and LOUISE C. CURRY, shall and hereby do grant to each lot owner a perpetual, non-exclusive, easement for ingress and egress by vehicular or pedestrian means, over and across the road described above being



approximately 24.5 feet in width and running in a westerly direction from South Courtenay Parkway (State Route #3) to a cul-de-sac. The owners also reserve the right to use of said road in common with the lot owners, and, in addition, reserve the right to add additional lots to the subdivision, in the future. If additional lots are added to the subdivision, then such additional lot owners shall also become members of the Association, and shall enjoy the use of the roadway for ingress and egress in common with those specified herein. The Association shall maintain and keep trim the drainage/swale areas so that the drainage/swale areas are neat orderly, and function as is required by governmental authority. The Association shall also maintain the roadway providing ingress and egress to the individual lots. All expenses thereof shall be charged as an assessment by the association against the owners of lots in accordance with the provisions herein for liens against lots for such assessments.

25. **AMENDMENTS BY OWNER:** The owner hereby reserves the right to amend, modify or rescind such part of these restrictions as it in its sole discretion deems necessary or desirable so long as it is (a) the sole owner of the property to which these restrictions apply, and (b) such amendment or modification does not substantially change the character, nature or general scheme of the development, provided, however, any amendment to the covenants and restrictions which alter the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior approval of the St. Johns River Water Management District.

26. **AMENDMENTS:** For purposes of amending these restrictive covenants the combined owners of each lot shall have one vote. This declaration may be amended at a duly called meeting of the property owners association by a vote of a two-thirds (2/3) majority of the lot owners, provided, however, any amendment to the covenants and restrictions which alter the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior approval of the St. Johns River Water Management District. Any amendment must be recorded in the public records of Brevard County, Florida, before it shall become effective.

27. **REMEDIES FOR VIOLATION:** For a violation or a breach of any of these restrictions by any person claiming by, through or under the Owners, or by virtue of any judicial proceedings, the Owners, T. BRADLEY CURRY, JR. and LOUISE C. CURRY, or the lot owners, or any of them severally or the Association, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof, or to prevent the violation or breach of any of them. The failure promptly to enforce any of the restrictions shall not bar their enforcement. The invalidation of any one or more of the restrictions by any court of competent jurisdiction in no wise shall effect any of the other restrictions, but they shall remain in full force and effect. Additionally, the St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this declaration which relate to the maintenance, operation and repair of the surface water or stormwater management system.



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IN WITNESS WHEREOF, T. BRADLEY CURRY, JR. and LOUISE C. CURRY have caused their individual names to be signed hereto and their seals affixed hereto by their duly authorized officers on this 17 th day of NOVEMBER, A. D. 1997.

Desiree B. Sarosi  
Notary Public  
(Witnesses)

T. Bradley Curry Jr.  
T. BRADLEY CURRY  
Louise C. Curry  
LOUISE C. CURRY

STATE OF FLORIDA  
COUNTY OF BREVARD

BEFORE ME, the undersigned Notary Public, duly authorized to take acknowledgments, personally appeared T. BRADLEY CURRY, JR. and LOUISE C. CURRY, who are personally known to me and who did take an oath, and they acknowledged to me that they signed the foregoing Declaration of Restrictions freely and voluntarily for the purposes therein expressed.

WITNESS, my hand and seal this 17 day of November, 1997.

Desiree B. Sarosi  
Notary Public, State of Florida

My Commission Expires:



Desiree B. Sarosi  
MY COMMISSION # CC687408 EXPIRES  
November 5, 2001  
BONDED THRU TROY FAIN INSURANCE, INC.



CFN 97202223  
OR Book/Page: 3730 / 0259

**From:** Doucet, Russell J. (KSC-SMASS-D)[Safety & Mission Assurance Support Services APT]  
**To:** Jones, Jennifer  
**Subject:** Zoning meeting today for ID#20Z00013  
**Date:** Monday, September 14, 2020 11:19:07 AM

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**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Good morning Mrs. Jones,  
Email is in response to concerns on the subject zoning property.

I am currently the Treasurer for Rockwell South (RS) Home Owners association (you may get another email from a Mr. Scott Price, RS HOA President). Our concern with this zoning request is not the request itself but the access road of Curry Dell Lane, which is currently a private, cul de sak road maintained by the RS HOA. It is in litigation to have the Deed signed over to our HOA. Our HOA is 100% certain we do not want any new tenants using our road. The developer is well aware of this position we have for Curry Dell Lane.

I plan on attending the zoning meeting today along with homeowners on either side of the subject property to voice our concerns.

**Russell Doucet**  
Mission Assurance Engineer  
*APT Research, Inc.*  
O&C 2127F  
Office 861-4428, Cell 321-432-7632



**From:** Robin Silvea  
**To:** Jones, Jennifer  
**Subject:** ID#20Z00013 - Questions on Today's Mtg  
**Date:** Monday, September 14, 2020 1:00:28 PM

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**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Good Afternoon Jennifer,

I apologize for this email being so late. I'm planning on attending the rezoning meeting scheduled for 3:00 pm today to voice my concerns over the proposal - ID #20Z00013. I live at 3800 S Courtenay Parkway, adjacent to the plat on the northeast side. Do I need to be formally included in the agenda or will there be a section reserved for public comments? Also, I am not familiar with where to go once I get to the government center. Thank you for any information you can lend!

Also, I know that this is a rezoning meeting primarily to change land use from agricultural to estate, but will homeowners be allowed to address hardship issues such as traffic and school impacts, property value loss, environmental impacts, etc. I have spoken with several Brevard County staff members that have expressed to me their concerns as well regarding this project, as the end result will likely be in violation of Brevard's own ordinance regarding wetland impact.

***Sec. 62-3694. - Permitted uses.***

*Residential land uses within wetlands shall be limited to not more than one dwelling unit per five acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five acres, as unbuildable. The preceding limitation of one dwelling unit per five acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than one and eight-tenths percent of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in section 65-3694(c)(6).*

One of the site plan proposals from the developer, Coy A. Clark Co., includes building on a 2-acre lot east of Courtenay Parkway on the Banana River, which is deemed 100% wetlands. Because this plat was not subdivided prior to September 1988, and not part of a five acre parcel, it is unbuildable even with mitigation. If he maintains the entire acreage as a whole, he will need to build on less intrusive land, on the west side of the street, where there is also evidence of emergent wetlands.

The second site plan proposal includes 11 homesites. This does not impact the Banana River wetland, however, it requires access to Curry-Dell Rd which the HOA maintains is privately owned by the neighborhood and has been maintained by them for many years. So, this is currently being legally disputed.

I would just ask that before the rezoning is decided that some of these outstanding issues are resolved. We were told by the developer that he does not plan to show his site plans or discuss any of these issues at the meeting because it does not require him to. But, I think it is important for you all to know that there is no community support for this. This is being driven by the developer which has a contingency offer on the land based on the outcomes of today's meeting.

In my opinion, this sliver of land is not ideal for doubling the amount of houses in such a limited space. I fear that if the process is kicked down the road, the developer will prevail and it will severely impact the tax-paying homeowners that are already in place.

Thank you for your time and any feedback.

Robin Silva

**From:** [Judy Gustafson](#)  
**To:** [Jones, Jennifer](#)  
**Subject:** ID# 20Z00013  
**Date:** Tuesday, September 22, 2020 10:14:38 AM

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**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

To: the attention of Jennifer Jones,

I am writing in regards to the Planning and Zoning reclassification ID# 20Z00013.

Among the other major concerns already expressed at the meeting September 14 at 3:00pm, there are additional concerns regarding what appears to be an exit onto Tropical Trail. If this is a plan to exit at this point, there are safety problems with this point of exit.

1. This exits directly by/in front of two driveways across the street on Tropical Trail.
2. Tropical is a narrow, winding road. On both the north and south of this exit there are large curves that hinder vision approaching that area,
3. There is a church just  $\frac{1}{4}$  mile south that has a large congregation and the traffic in this area can be very busy.
4. If this plan succeeds and twelve houses are built, that could be a minimum of 24 cars using that exit. This is an unattenable situation.

Please take this under serious consideration in addition to the concerns regarding the wildlife and unique ecosystem in this area as well as the possible impact of 12 more septic systems on the underlying aquifer.

I highly recommend that this project NOT be permitted!

Respectfully,

Judy Gustafson  
3755 South Tropical Trail  
Merritt Island, FL



## **PLANNING AND ZONING BOARD MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, September 14, 2020, 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: Ron Bartcher; Brian Hodgers; Harry Carswell; Mark Wadsworth, Chair; Joe Buchanan; Peter Filiberto, Vice Chair; and Bruce Moia.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Abigail Jorandby, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

### **Excerpt of Complete Minutes**

#### **Carmen Fanczi (Michael Maguire)**

A change of zoning classification from AU (Agricultural Residential) to EU (Estate Use Residential). The property is 6.33 acres, located on the southwest corner of Curry Dell Ln., and S. Courtenay Pkwy. (No assigned address. In the Merritt Island area.) (20Z00013) (Tax Account 2511450) (District 2)

Michael Maguire, 330 N. Babcock St., Melbourne, stated the subject property is six acres that is split by N. Courtenay, on the south side of Curry Dell Lane. He said he had hopes of connecting onto Curry Dell Lane, but that seems highly unlikely now. The property only has 140 ft. of frontage, and 150 feet is required for AU, which is why he is requesting to rezone it to EU.

Mark Wadsworth asked staff to address some of the concerns in the public comment letters.

Jeffrey Ball stated in regards to installing a swale or berm along the south property line to prevent any drainage runoff, any concerns with drainage, stormwater, or retention, will be addressed during the site plan process, which is a staff review with no public hearing. He said another concern is if the developer will add a fence or landscape berm for visual and physical control with the developer being responsible for maintenance in perpetuity. Typically, between residential and residential, there is no requirement to have a visual buffer like that; it's up to the board to decide whether the request will warrant having such visual buffer. Another question is about utilities, but at this point staff doesn't know where the utilities will be located; it's up to the utility providers, but County staff will review and ensure compliance with County regulations. In regard to septic systems, the property is located in the Indian River Lagoon Advanced Septic System Overlay, so that is required by Code, and there is not currently a moratorium on septic tanks. He noted there are deed restrictions and covenants on the property, which is a private matter between the parties involved; it's not a County matter that can be addressed during the board meeting. The Planning and Zoning Board looks at the Comprehensive Plan and the surrounding area when it makes its decisions.

#### **Public Comment:**

Dave Earhardt, 3865 S. Courtenay Parkway, stated Mr. Ball mentioned that the swale/berm issue and concerns about runoff would be settled at a meeting that is not open to the public. Mr. Ball replied that is correct, it is a site plan concern that is addressed through Public Works at the site plan stage.

Mr. Earhardt asked how the local residents who might be affected by the issue find out the results.

Mr. Ball replied it is not a public hearing process. By code, the developer is not allowed to have stormwater runoff go off of their property; the site will have to be engineered to accommodate the runoff.

Robin Silvea, 3800 S. Courtenay Parkway, stated she is concerned that the board is speaking in terms of a foregone conclusion about the approval of a site plan in advance, and the neighbor's voices do not have any impact.

Mr. Ball stated the Planning and Zoning Board is an advisory board that makes recommendations to the Board of County Commissioners who will make the final determination. Whether this board recommends approval or denial, the request has to go to the Board of County Commissioners for the final decision.

Ms. Silvea stated her primary concern is the negative impact the project will have on the current homeowners in the area. If the development is approved it will double the amount of homes given his primary plan of 11 homes, and the effects will be felt immediately with the loss of natural habitat, impacts to pedestrian safety, increased construction traffic, and loss of property value due to years of potential construction. In the long term, it will increase the overall traffic on S. Courtenay Parkway, potentially overcrowd the local elementary school, which has just picked up new homes because of Georgiana Reserve to the north, which is a large neighborhood, so there is not exactly a need for additional homesites. Unlike that neighborhood, this property is a fraction of the size and is nestled between existing, established homes without clear delineation or fencing, or even the room to have a barrier, or its own road. She said the property is not wide enough to have both a house and a road, and the road needed for the developer's site plan is currently in litigation with the HOA, which has maintained private use of that road for many years and has been categorized as private by the County. She stated the proposed site plan is in direct contradiction to the County's own ordinance. Section 62-3694, Permitted Wetland Uses, deems that residential lands within a wetland have to be at least five acres if not subdivided prior to September 1988. The Fanczi property was not subdivided; Mr. Curry subdivided his property prior to 1988 which allowed him to do his development. This particular property was not subdivided prior to September 1988, which deems a huge portion of the six acres 100% wetlands. If he decides to increase his acreage and not subdivide, then the EPA and Army Corps of Engineers are going to require that he build on the least intrusive land, which is a portion to the west. The property to the west of Courtenay also has emerging wetlands; the property east of Courtenay on the Banana River side is 100% wetlands. The developer has a contingency offer to the Fanczi's based on the decisions being made by the board's recommendations. She asked if a traffic study has been done, and what impact there will be on the school system. She requested the board postpone a recommendation until a traffic study is complete and until environmental impacts are reviewed by staff. She noted she has spoken to staff from the Natural Resources Department, many of whom have serious and grave concerns regarding this project because of its impact on the wetlands. There is zero community support for this project; it is not needed; it is not wanted; there is a brand new development nearby; and she would ask that the board not approve it.

Bill Jefferson, 3750 S. Tropical Trail, stated the area is unique in the fact that there are three different gopher tortoises nesting in his yard, there are barn owls, red-shouldered hawks, and quite a few Florida scrub jays, which are protected. Given the unique situation and the unique location of the property, developing it would be detrimental to the area. He said he hopes the board takes that into consideration.

Ron Bartcher asked if the depth of the property is 150 feet deep. Mr. Maguire replied it is 139 feet deep, from north to south.

Mr. Bartcher stated EU zoning requires a minimum of 100 feet, and asked staff if it would be possible for the developer to put in a roadway with 39 feet. Mr. Ball replied the road access is a separate issue that will be dealt with at the site plan stage. There are different things the developer can do, whether it is a private roadway dedicated to the County, or a private roadway that the HOA or another entity other than the County would maintain, and there are different standards for those.

Mr. Bartcher asked how the property on the east side would be developed. Mr. Maguire replied he has a consultant who has been looking into whether or not it can be impacted at all, and if it can't, then he will probably develop a walkway to the river.

Joe Buchanan asked where the stormwater drainage finishes. Mr. Maguire replied there is a structure that goes across the ditch to S. Courtenay Parkway, and when it fills up to a certain point, it overflows onto S. Courtenay.

Mr. Maguire asked staff if there is concurrency with Brevard Public Schools, as far as Tropical Elementary. Mr. Ball replied yes, and the board members have that information. Mr. Maguire asked if there has been a traffic study done for S. Courtenay. Mr. Ball replied there was no traffic study, but the concurrency analysis is provided in the staff comments.

Mr. Buchanan asked if there is supposed to be a 50-foot barrier for surface water.

Jeanne Allen, Natural Resources Management, confirmed there is a 50-foot surface water protection buffer, which means there cannot be a primary residence within that buffer. There could be an accessory structure within the buffer, but the stormwater runoff would have to be maintained.

Peter Filiberto asked if a portion of the property is within the floodplain. Mr. Maguire replied yes. Mr. Filiberto asked if there are wetlands on the property as well. Mr. Maguire replied yes, on the east side, and about 20 feet on the west side along S. Courtenay. Mr. Filiberto asked if he has considered the nitrogen reduction septic system. Mr. Maguire replied yes. Mr. Filiberto asked about protected and specimen trees. Mr. Maguire replied he has not done a tree survey yet; he would like to get the zoning before he does a tree survey.

Mr. Filiberto stated there are no scrub jays on the property, but there are some environmental constraints, wetlands in question, and the fact that the property has not been properly surveyed. He stated he will be voting against the request.

Mr. Maguire stated the property has been properly surveyed and the wetlands have been located, but whether or not the County will allow him to do anything on the east side of S. Courtenay, he doesn't know.

Harry Carswell asked the size of the proposed lots. Mr. Maguire replied if he is allowed to attach onto Curry Dell Lane, they would be 110 feet x 139 feet; if he goes the other way, he could possibly do a couple of 1.5-acre lots that go east to west, or he could just sell off one parcel with one house.

Bruce Moia stated the applicant has a lot of hurdles to overcome. He's going to have to deal with the State and County codes, and regulations are in place to address a lot of the concerns. The County

cannot mandate connecting his property to any other private property; that will be up to the neighbors if they want to include him and give him access, and he doesn't see that happening, so he isn't sure how the property is going to be developed. He stated the applicant has met the school concurrency, and the traffic is going to be minimum. Looking at it as a zoning issue, this area is zoned EU, and he doesn't want to get off track with the development issues because those are things the County, State, and Federal agencies will dictate.

Motion by Bruce Moia, seconded by Joe Buchanan, to approve the requested change of zoning classification from AU to EU. The motion passed 6:1, with Peter Filiberto voting nay.