



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.4.

9/1/2022

Subject:

Daren T. and Regina M. Dempsey request a change of zoning classification from AU to RU-1-13. (22Z00033)
(Tax Account 2318342) (District 2)

Fiscal Impact:

None

Dept/Office:

Planning & Development

Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a change of zoning classification from AU (Agricultural Residential) to RU-1-13 (Single-Family Residential).

Summary Explanation and Background:

The applicants are seeking a change of zoning classification from AU to RU-1-13 in order to split their 1.41-acre property into 2-lots. The current Future Land Use designation of RES 4, will allow up to 5 dwelling units on the property. The RU-1-13 zoning classification permits single-family residences on minimum 7,500 square foot lots, with minimum widths and depths of 75 feet, and a minimum house size of 1,300 square feet. RU-1-13 does not permit horses, barns or horticulture.

There is an existing pattern of agricultural residential zoning and estate use residential zoning on lots ranging from 0.34 acres to 3.04 acres surrounding the subject property. To the north of the subject property is a single-family residence on a 2.74-acre lot zoned AU; to the south is an HOA-owned tennis court on a 0.56-acre lot zoned EU-2; to the east is a single-family residence on 3.04 acres zoned AU. To the west, across N. Tropical Trail, are two (2) single-family residences, each on 1.25 acres lots zoned EU.

The existing house is 1,379 sq. ft. that was built in the 1950's, which is less than the minimum size for either EU or EU-2 zoning classification. In comparison to EU and EU-2, RU-1-13 has the smallest square feet of minimum living area; least setbacks for principal and accessory structures; and least square footage of minimum lot size.

The request can be considered an introduction of RU-1-13 zoning classification into an area developed mostly as single-family residences on lots of spacious character with agricultural uses.

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

On August 11, 2022, the North Merritt Island Dependent Special District Board heard the request and voted

4:2 to recommend SR (Suburban Residential), and further requested the Board of County Commissioners not take final action on the request until there is a District 2 commissioner in place.

On August 15, 2022, the Planning and Zoning Board heard the request and unanimously recommended denial.

Clerk to the Board Instructions:

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

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

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

Administrative Policy 2

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

Criteria:

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

Administrative Policy 3

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

Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use.

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

Administrative Policy 4

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

Criteria:

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

Administrative Policy 5

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the

use(s) shall be considered. In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following:

Criteria:

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

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

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

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

CONDITIONAL USE PERMITS (CUPs)

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

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

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

(c) General Standards of Review.

- (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon a consideration of the factors specified in Section 62-1151(c) plus a determination whether an application meets the intent of this section.
 - a. The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1), the number of persons anticipated to be using, residing or working under the conditional use; (2), noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3), the increase of traffic within the vicinity caused by the proposed conditional use.
 - b. The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.
 - c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an M A I certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.
- (2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:

- a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1), adequate to serve the proposed use without burdening adjacent and nearby uses, and (2), built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at Level of Service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable Brevard County standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.
- b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.
- c. Noise levels for a conditional use are governed by Section 62-2271.
- d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
- e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
- f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.
- g. Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.
- h. Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.
- i. The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.

- j. Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

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

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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

22Z00033

Daren and Regina Dempsey

AU (Agricultural Residential) to RU-1-13 (Single-Family Residential)

Tax Account Number: 2318342
Parcel I.D.s: 23-36-34-00-8
Location: 4850 N. Tropical Trail, Merritt Island, FL 32953 (District 2)
Acreage: 1.41 acres

North Merritt Island Board: 8/11/2022
Planning & Zoning Board: 8/15/2022
Board of County Commissioners: 9/01/2022

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	AU	RU-1-13
Potential*	1 SF lot	5 SF lots
Can be Considered under the Future Land Use Map	YES RES 4	YES RES 4

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

Background and Purpose of Request

The applicants are seeking a change of zoning classification from AU (Agricultural Residential) to RU-1-13 (Single-family Residential) in order to split their 1.41-acre property into 2-lots. The current Future Land Use designation of RES 4 will allow up to 5 dwelling units on the property.

The original zoning on the property was AU. The existing residence is 1,379 sq. ft. in size and was built in 1950 according to the Brevard County Property Appraiser website. Brevard County Code of Ordinance, Section 62-1340(1)(a) allows one single-family detached dwelling per lot. In comparison, EU or EU-2 requires a larger house size than what is currently on the property.

In comparison to EU and EU-2, RU-1-13 has the smallest square feet of minimum living area; least setbacks for principal and accessory structures; least square footage of minimum lot size. All three zoning classifications are devoted to single-family residential development of spacious character with the same permitted uses.

The subject property is located within the 2019 North Merritt Island Small Area Study boundary. A recommendation from the 2019 North Merritt Island SAS was for all parcels ≥ 2.5 acres in size designated as RES 1 Future Land Use and AU zoning classification, to be amended on the Future Land Use Map to RES 1:2.5. The subject property would have not been subject to this recommendation. The Board of County Commissioners acknowledged the recommendations of the 2019 North Merritt Island SAS, but did not direct staff to implement this recommendation.

Land Use

The subject property is currently designated Residential 4 (RES 4). Both the AU and RU-1-13 zoning classifications can be considered consistent with the Residential 4 FLU designation.

Applicable Land Use Policies

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

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

Compatibility shall be evaluated by considering the following factors, at a minimum:

Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use;

Regarding the hours of operation, lighting, odor, noise levels, traffic or site activity. The proposed rezoning is not anticipated to diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area. Residential uses will need to comply with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272.

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

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

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

1. historical land use patterns;

The subject property has been developed as a single-family residence since 1950. The area immediately surrounding the subject site has been developed as single-family residences with the exception of the Citrus Club HOA tennis court abutting the property to the south. Across N. Tropical Trail northwest of the subject property is a 24.27-acre County-owned park that features an equestrian facility and riverfront launch site for canoes.

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

There has not been any actual development within this area in the preceding three (3) years.

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

There has not been any development approved but not yet constructed within a half mile in the preceding three (3) years.

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

No material violation of relevant policies has been identified.

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

There is an existing pattern of agricultural residential zoning and estate use residential zoning on lots ranging from 0.34 acres to 3.04 acres surrounding the subject property.

The request can be considered an introduction of RU-1-13 zoning classification into an area developed mostly as single-family residences on lots of spacious character with agricultural uses.

Surrounding Area

	Existing Use	Zoning	Future Land Use
North	Single-Family	AU	RES 2
South	Tennis Court	EU-2	RES 4
East	Single-Family	AU	RES 4
West	Single-Family	EU – across N. Tropical Trail	RES 4

To the north of the subject property is a single-family residence on a 2.74-acre lot zoned AU; to the south is an HOA-owned tennis court on a 0.56-acre lot zoned EU-2; to the east is a single-family

residence on 3.04 acres zoned AU. To the west, across N. Tropical Trail, are two (2) single-family residences, each on 1.25 acres lots zoned EU.

The AU zoning classification permits single-family residences and agricultural uses on 2.5 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 and plants nurseries. Conditional uses in AU include hog farms, zoological parks, and land alteration.

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.

EU-2 zoning classification is an estate single family residential zoning classification. The minimum lot size is 9,000 square feet with a minimum lot width of 90 feet and depth of 100 feet. The minimum living area is 1,500 square feet.

The proposed RU-1-13 permits single-family residences on minimum 7,500 square foot lots, with minimum widths and depths of 75 feet. The minimum house size is 1,300 square feet. RU-1-13 does not permit horses, barns or horticulture.

There has been one (1) zoning action within a half-mile radius of the subject property within the last three years. **21Z00042, approved** May 31, 2022, was a request to change AU (Agricultural Residential) to RU-2-4 (Low-density Multiple-family Residential) with a BDP on 2.79 acres located 1,757 feet southeast of the subject property.

Preliminary Concurrency

The closest concurrency management segment to the subject property is N. Tropical Trail, between Hall Road to W. Crisafulli Rd., which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of C, and currently operates at 10.01% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.24%. The corridor is anticipated to operate at 10.25% of capacity daily. The request is not anticipated to create a deficiency in LOS.

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

The parcel is within the City of Cocoa utilities service area for public water. The closest Brevard County sewer line and water line is approximately 0.4 miles east on N. Courtenay Pkwy.

Environmental Constraints

- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected and Specimen Trees
- Protected Species

Natural Resources Management (NRM) reserves the right to assess consistency with environmental ordinances at all applicable future stages of development, including any land alteration permits or landscape restoration plans.

For Board Consideration

The Board may wish to consider whether the introduction of RU-1-13 is consistent and compatible with the surrounding area.

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

Item #22Z00033

Applicant: Regina Dempsey

Zoning Request: AU to RU-1-13

Note: Applicant wants to split lot

NMI Hearing Date: 8/11/22; **P&Z Hearing Date:** 8/15/22; **BCC Hearing Date:** 9/1/22

Tax ID No: 2318342

- 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:

- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected and Specimen Trees
- Protected Species

Land Use Comments:

Aquifer Recharge Soils

The subject parcel contains mapped aquifer recharge soils (Pomello 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.

Indian River Lagoon Nitrogen Reduction Overlay

The parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If no sewer is available, then use of an alternative

septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

Protected and Specimen Trees

Section 62-4341(18), Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. A tree survey will be required at time of site plan submittal, and is recommended prior to any site plan design. 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.

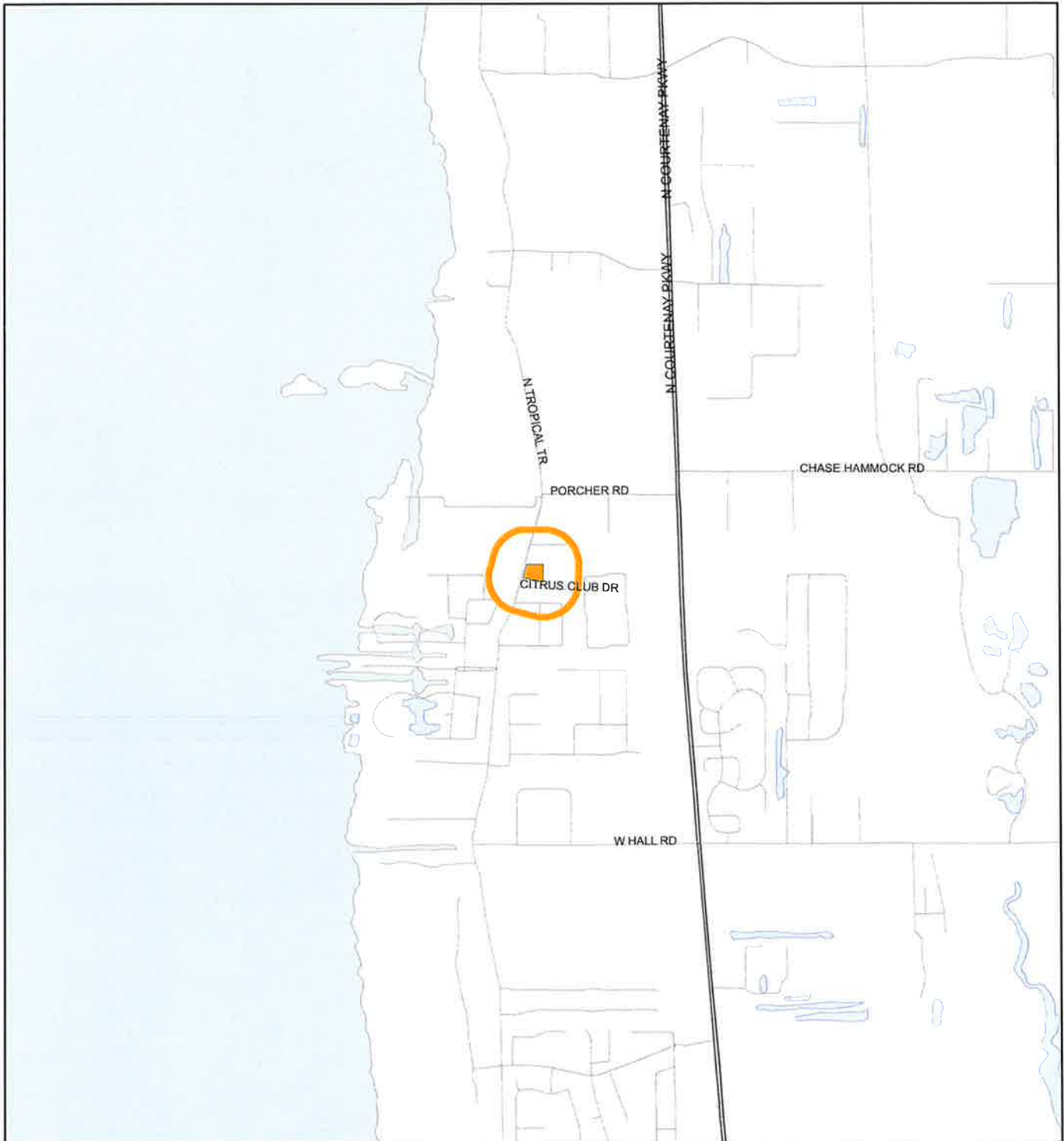
Protected Species

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

LOCATION MAP

DEMPSEY, DAREN T

22Z00033



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.

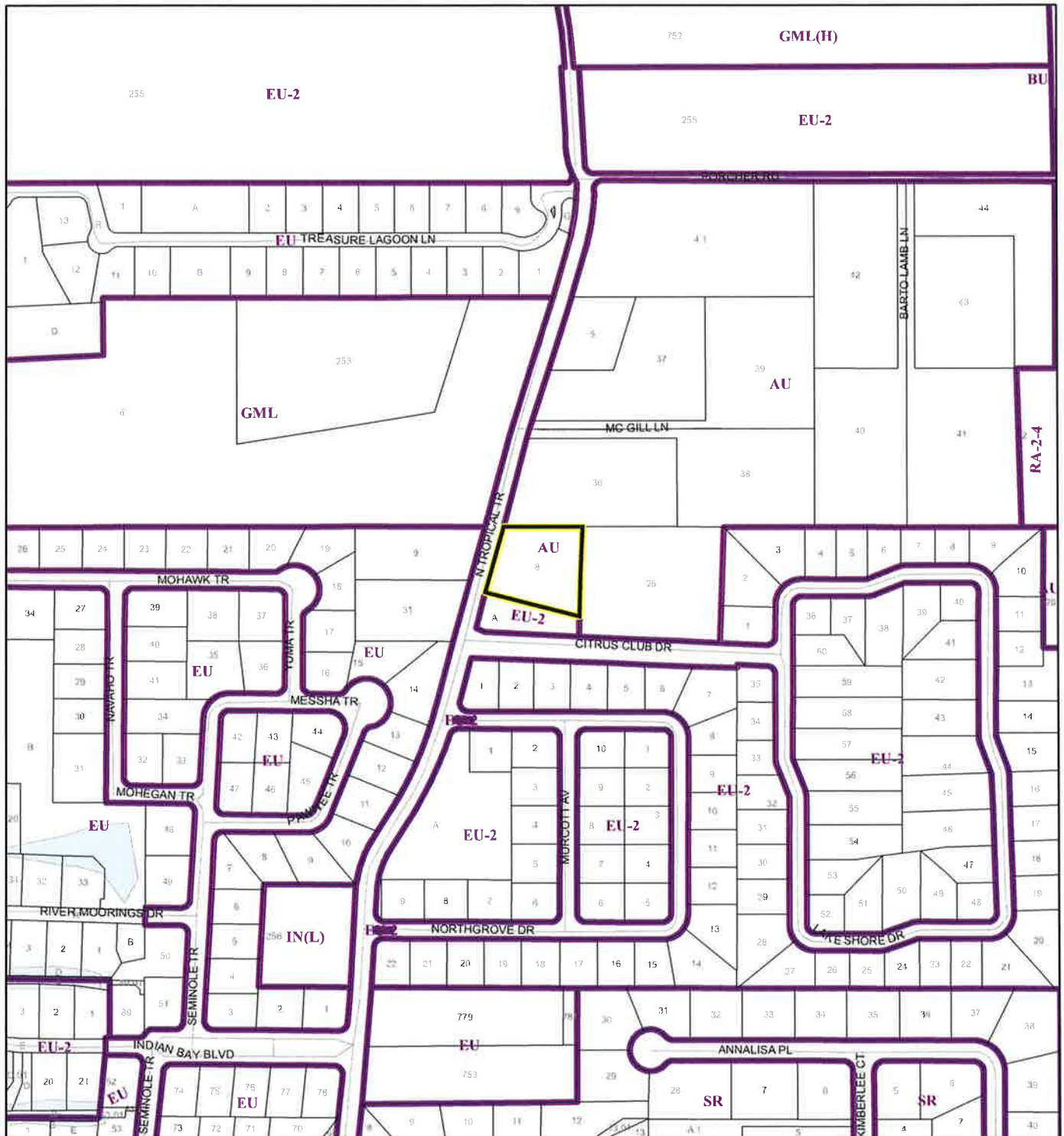
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- Buffer
- Subject Property

ZONING MAP

DEMPSEY, DAREN T

22Z00033



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 6/17/2022

— Subject Property

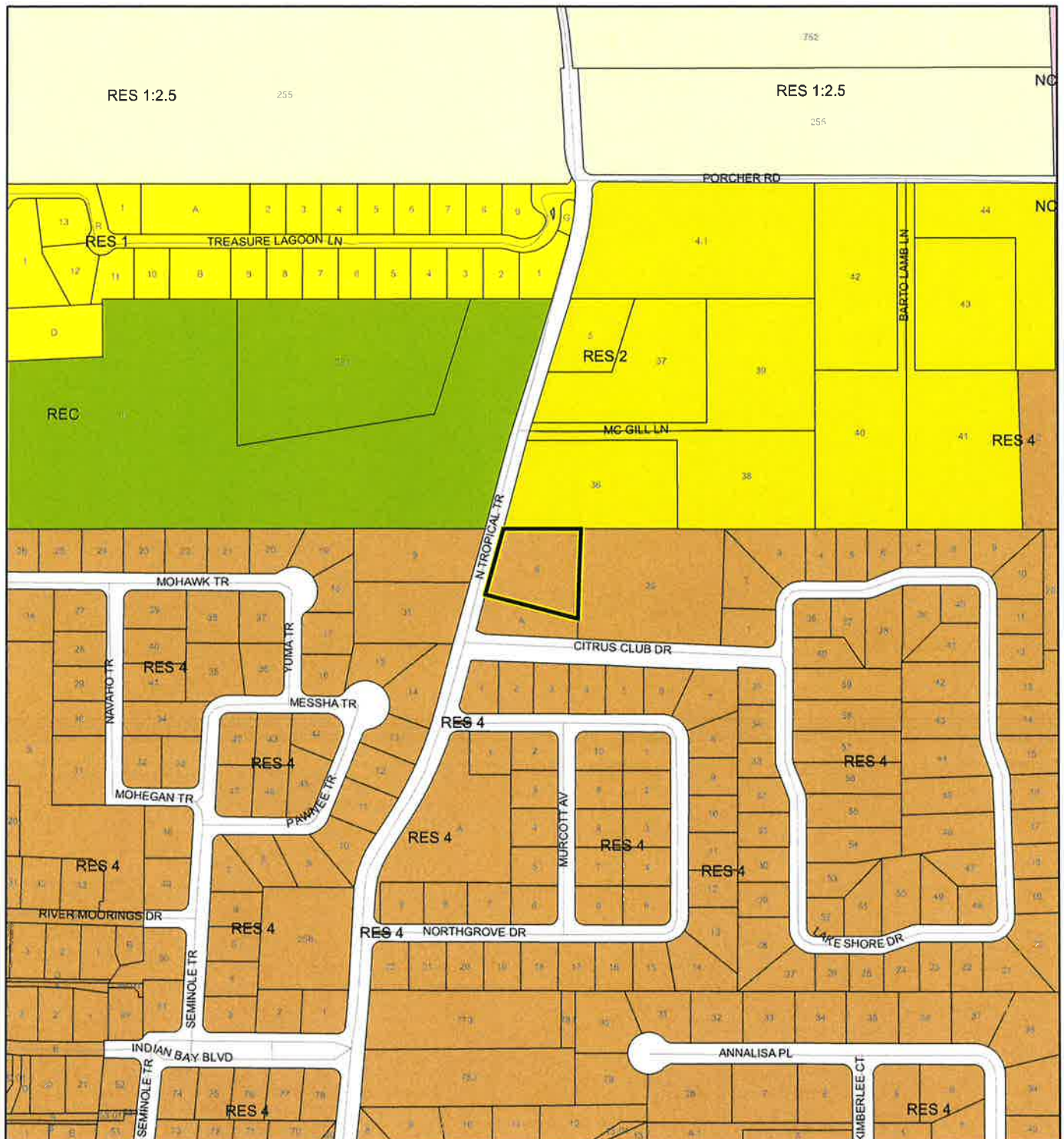
□ Parcels

□ Zoning

FUTURE LAND USE MAP

DEMPSEY, DAREN T

22Z00033



1:4,800 or 1 inch = 400 feet

— Subject Property
 □ Parcels

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

Produced by BoCC - GIS Date: 6/17/2022

AERIAL MAP

DEMPSEY, DAREN T

22Z00033



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2021

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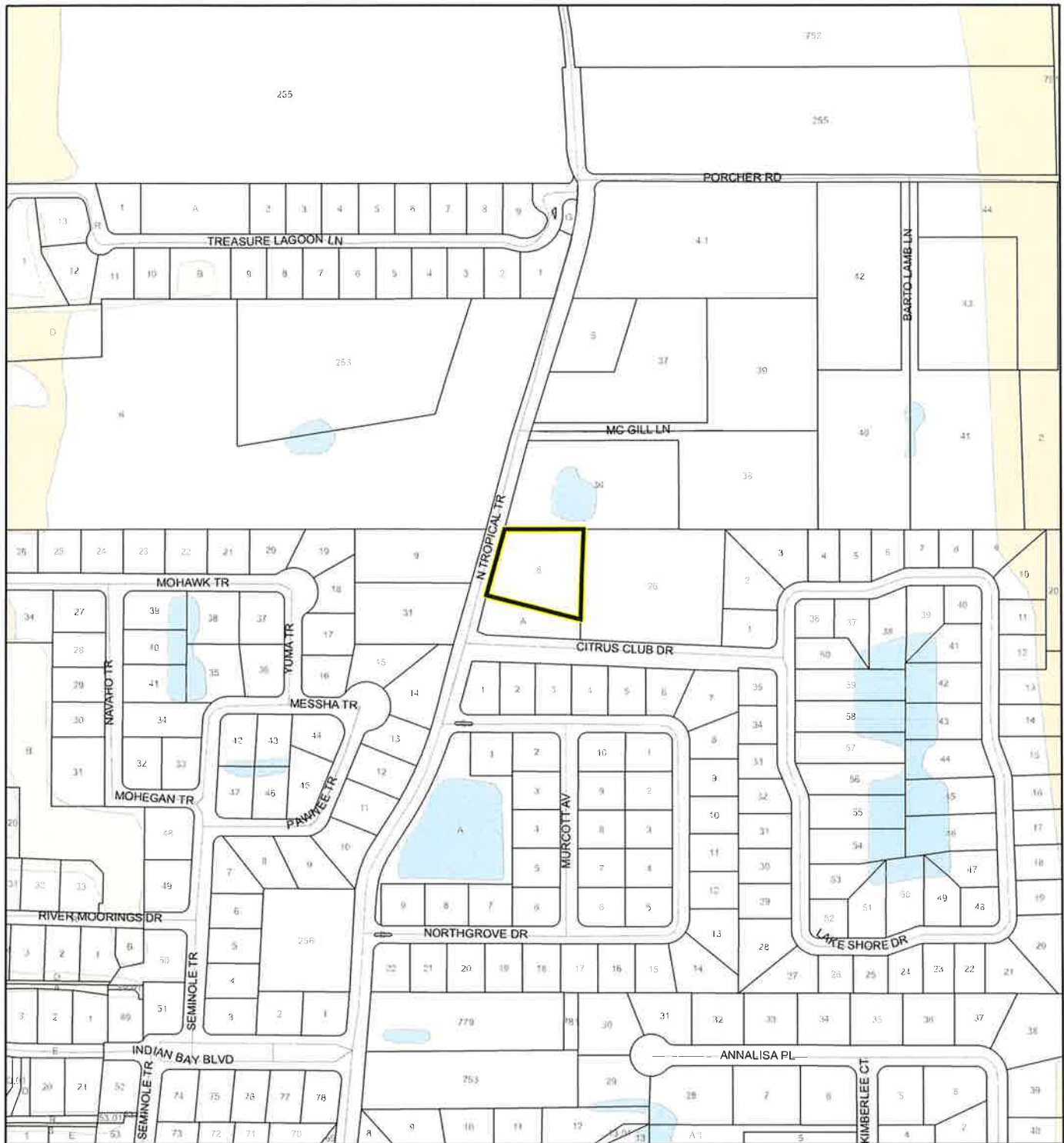
Produced by BoCC - GIS Date: 6/17/2022

— Subject Property
□ Parcels

NWI WETLANDS MAP

DEMPSEY, DAREN T

22Z00033



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/17/2022

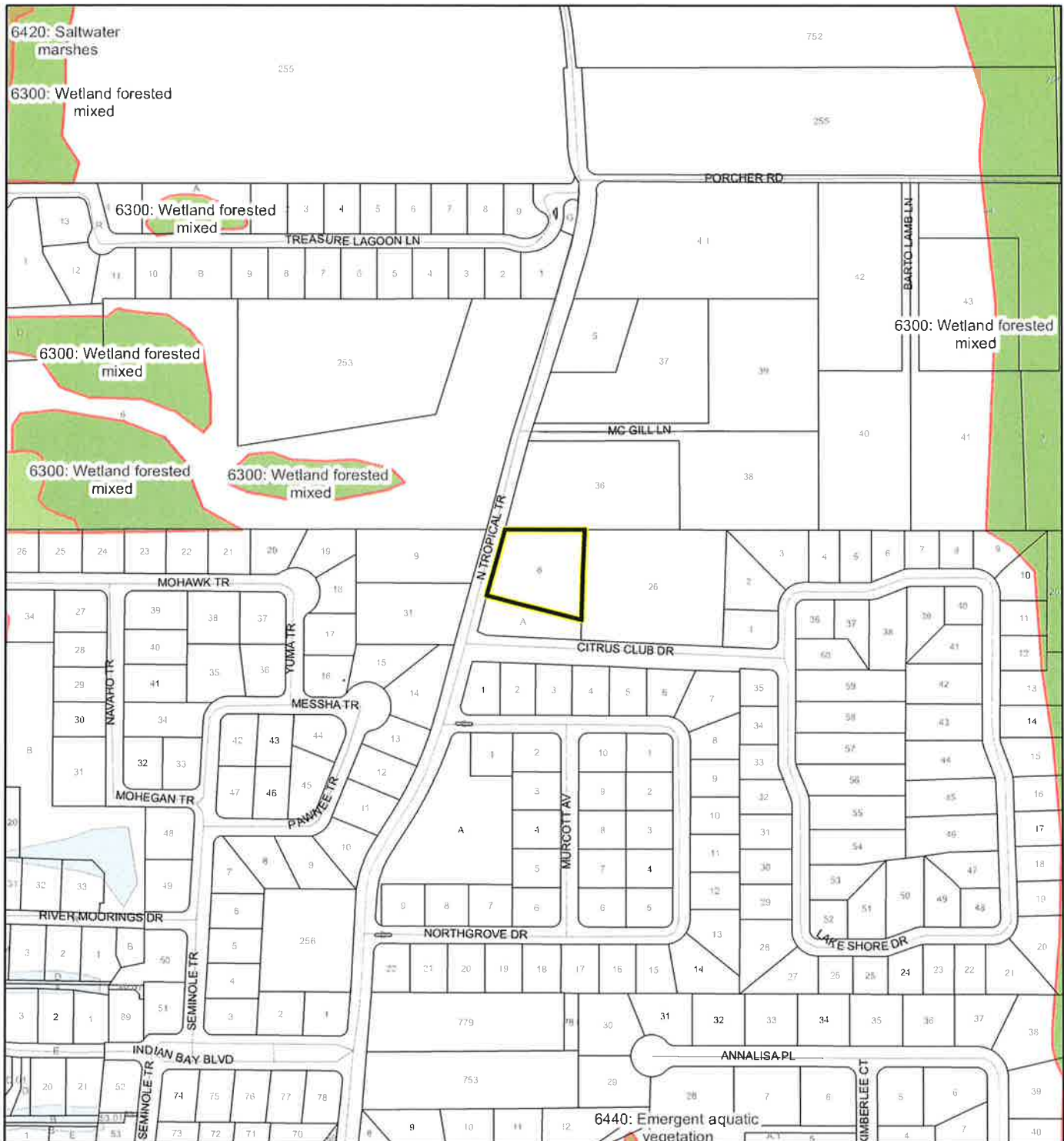
National Wetlands Inventory (NWI)

- | | |
|-----------------------------------|------------------|
| 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

DEMPSEY, DAREN T

22Z00033



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/17/2022

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

22Z00033



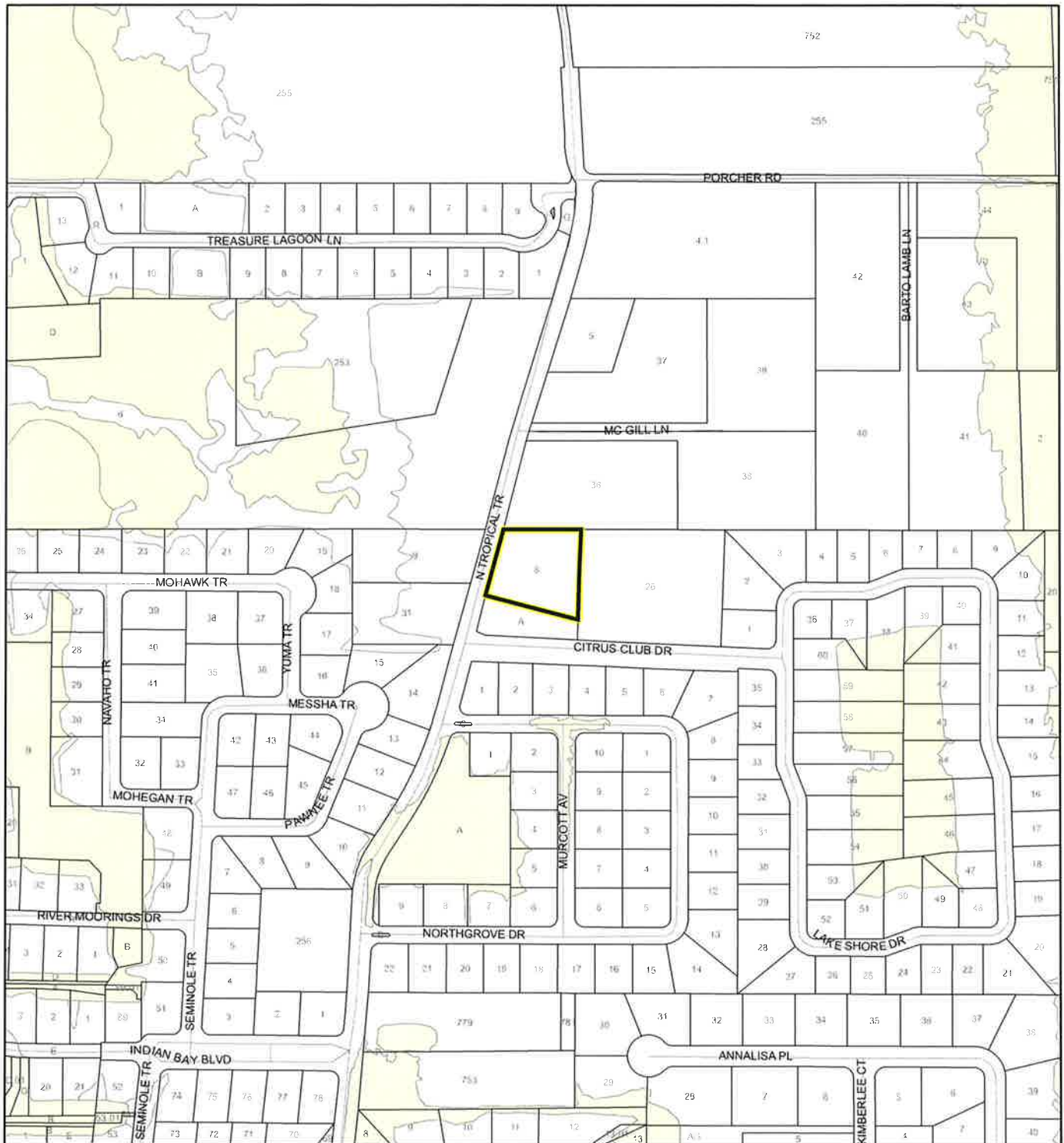
Produced by BoCC - GIS Date: 6/17/2022

☐ Parcels

FEMA FLOOD ZONES MAP

DEMPSEY, DAREN T

22Z00033



1:4,800 or 1 inch = 400 feet

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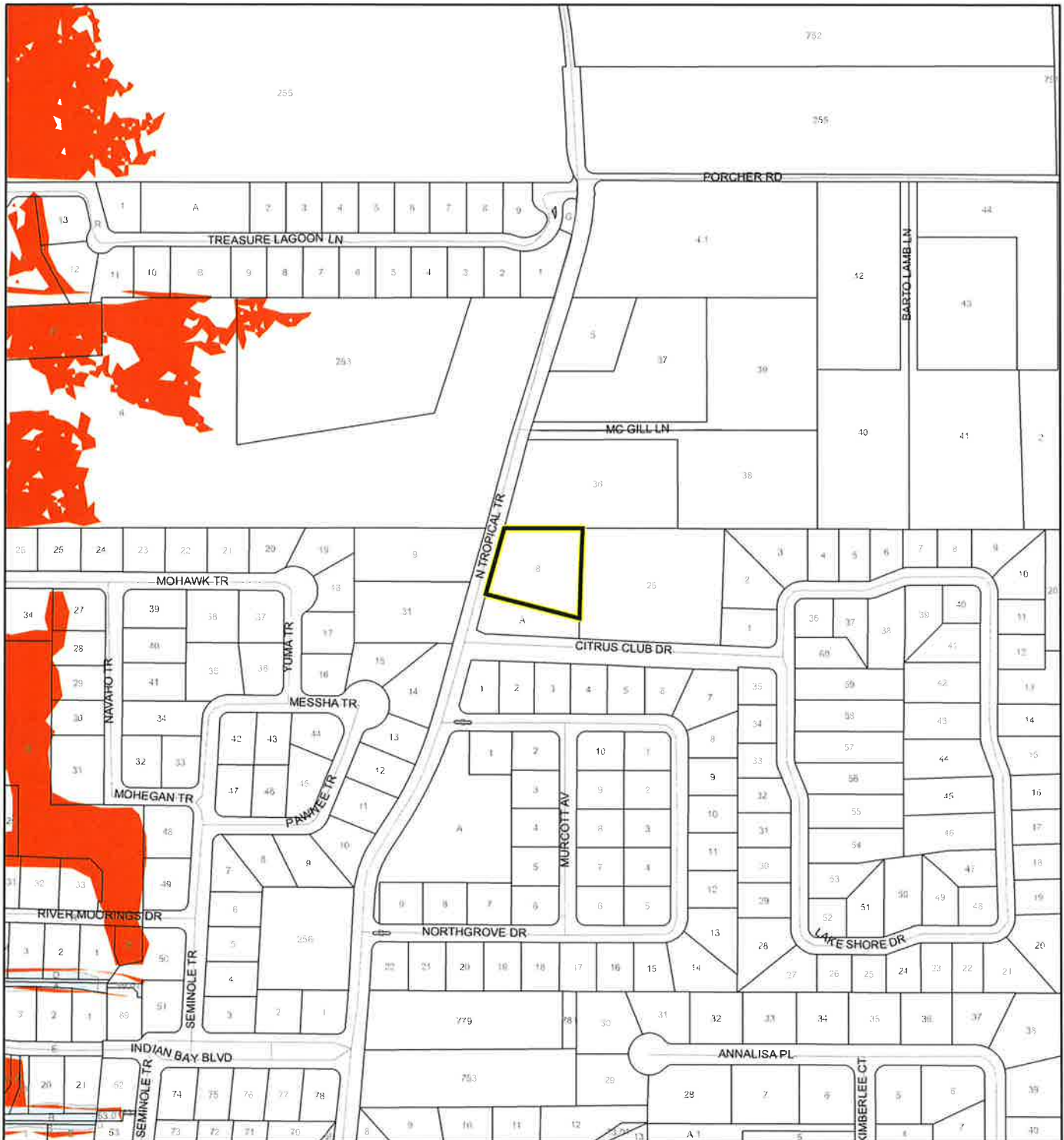
FEMA Flood Zones



COASTAL HIGH HAZARD AREA MAP

DEMPSEY, DAREN T

22Z00033



1:4,800 or 1 inch = 400 feet


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Produced by BoCC - GIS Date: 6/17/2022

 Subject Property

 Parcels

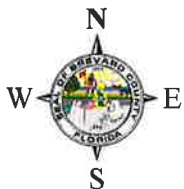
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

DEMPSEY, DAREN T

22Z00033



1:4,800 or 1 inch = 400 feet

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— Subject Property

□ Parcels

Septic Overlay

■ 40 Meters

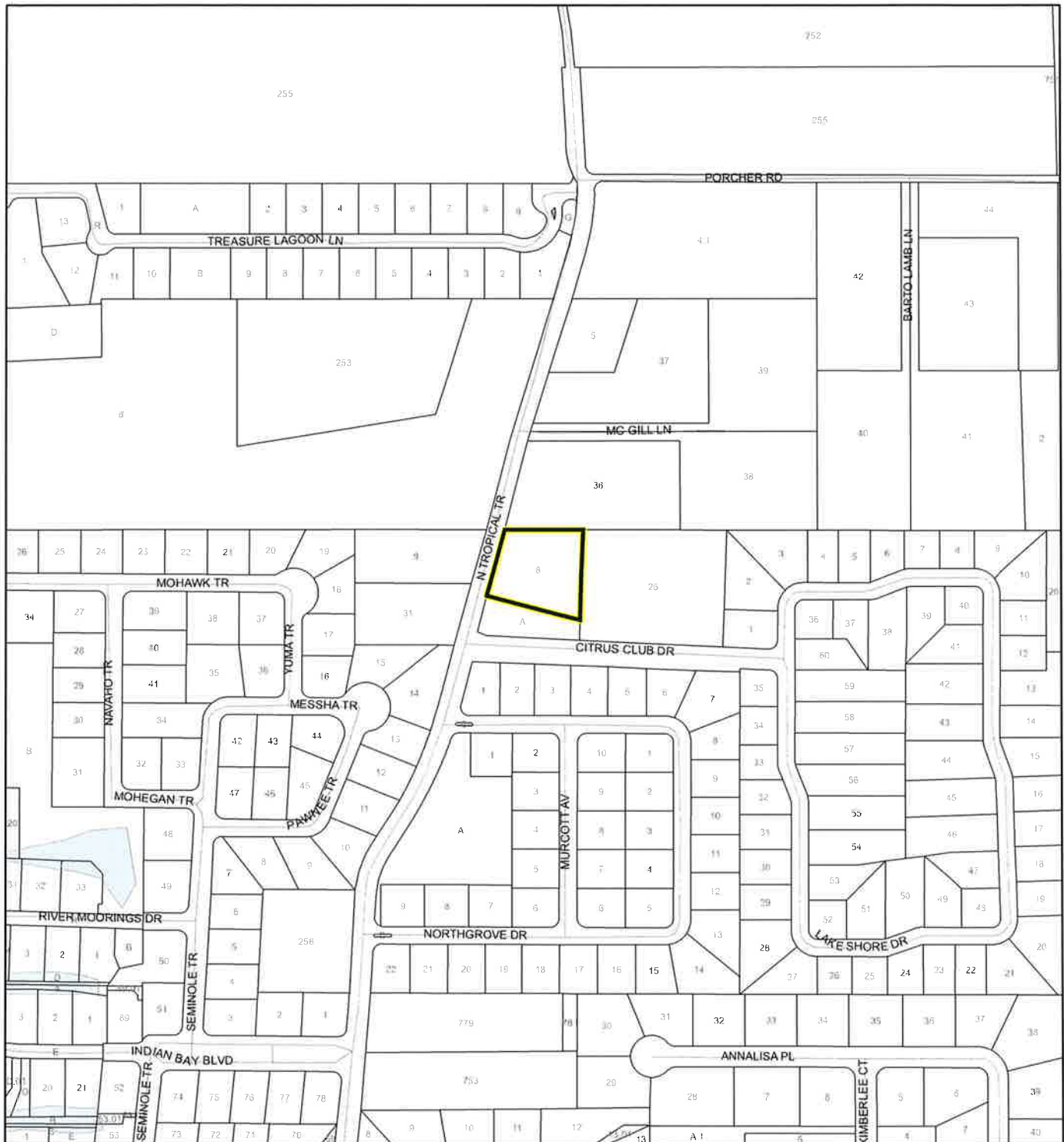
■ 60 Meters

■ All Distances

EAGLE NESTS MAP

DEMPSEY, DAREN T

22Z00033



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/17/2022

 Subject Property

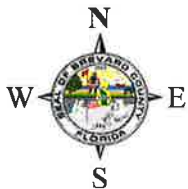
 Parcels

 Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

DEMPSEY, DAREN T

22Z00033




1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/17/2022

 Subject Property

 Parcels

 Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

DEMPSEY, DAREN T

22Z00033



1:4,800 or 1 inch = 400 feet

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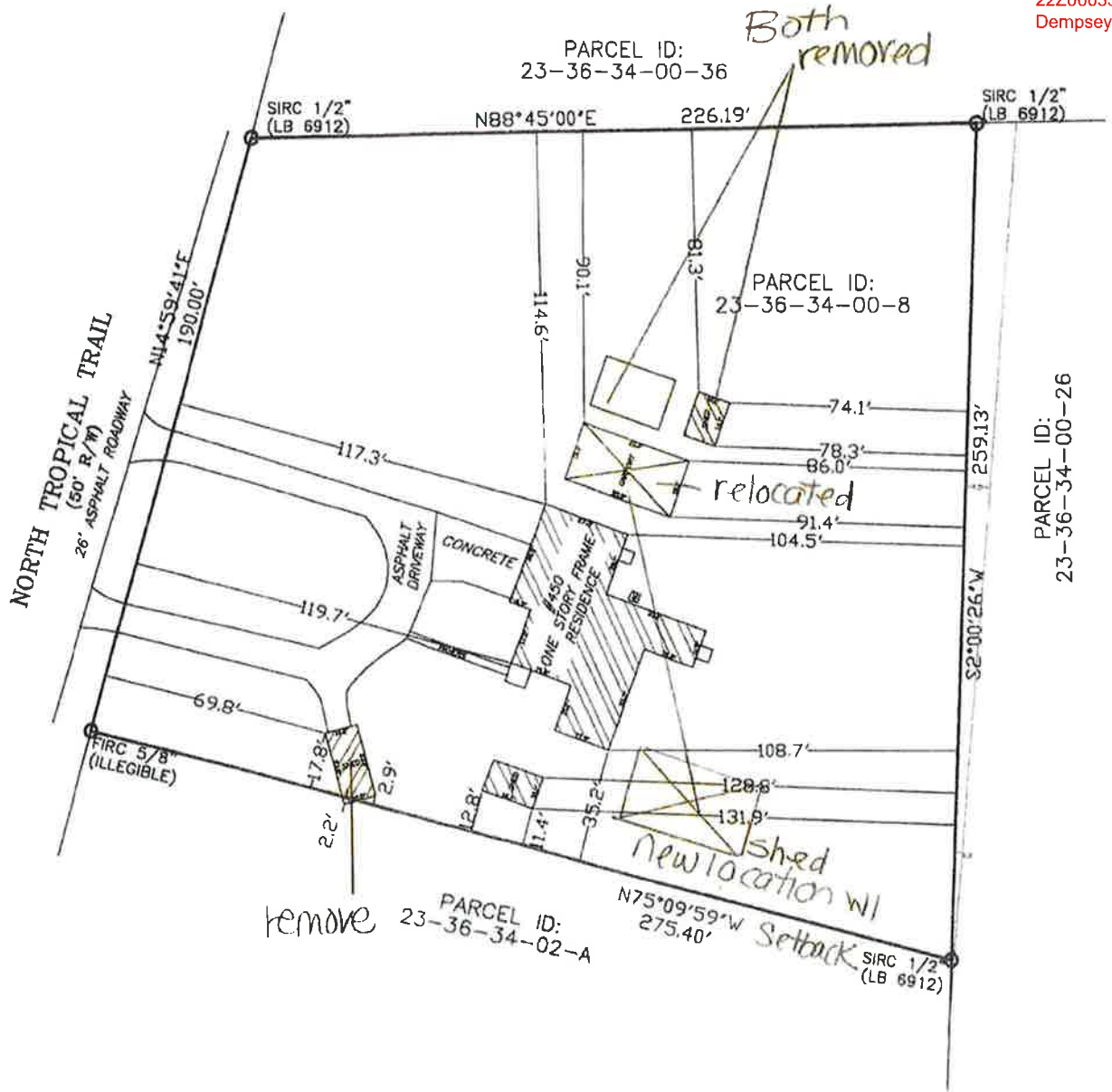
Produced by BoCC - GIS Date: 6/17/2022

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



Permit applied for (5/26/22)
relocation of shed
22BC10813

NOTABLE CONDITIONS:

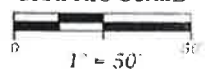
A FRAME SHED ENCROACHES 2.2' OVER THE SOUTHERLY PROPERTY LINE.

NOTES:

ALL BEARINGS AND DISTANCES SHOWN ARE RECORD AND MEASURED, UNLESS OTHERWISE SHOWN. BEARINGS ARE BASED UPON THE RECORD BEARING FOR THE SOUTHERLY LOT LINE.



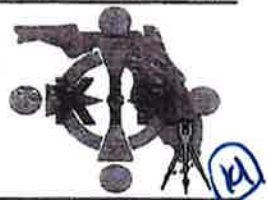
NORTH ARROW & GRAPHIC SCALE



JOB # - 2202-287	REVISION
FIELD DATE - 03/16/2022	REVISION
DRAWN BY - D.B.	REVISION
REVISION	REVISION
REVISION	REVISION
REVISION	REVISION

FLORIDA BUSINESS CERTIFICATE OF AUTHORIZATION NUMBER LB 6912

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Photos for MLS # 911075

580 S Tropical Trail, Merritt Island, FL 32952

\$415,000

580 S Tropical



South Merritt Island



Covered Front Entry



Stunning Decor



Open Layout



Island Kitchen



Wet Bar



Great Room



Great Room



Master Suite



Master Bedroom



Master Bath



NORTH MERRITT ISLAND

DEPENDENT SPECIAL DISTRICT BOARD MINUTES

The North Merritt Island Dependent Special District Board met in regular session on **Thursday, August 11, 2022**, at 6:00 p.m., at the Merritt Island Service Complex, 2575 N. Courtenay Parkway, 2nd Floor, Merritt Island, Florida.

Board members present were: Mary Hillberg, Chair; Gina Lindhorst; Jack Ratterman, Vice Chair; Jim Carbonneau; Chris Cook; and Ted Balke.

Planning and Development staff present were: Jeffrey Ball, Planning and Zoning Manager; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Agenda

(22Z00033) Daren T. and Regina M. Dempsey

A change of zoning classification from AU (Agricultural Residential) to RU-1-13 (Single-Family Residential). The property is 1.41 acres, located on the east side of N. Tropical Trail, approx. 120 ft. north of Citrus Club Dr. (4850 N. Tropical Trail, Merritt Island) (Tax Account 2318342) (District 2)

Regina Dempsey, 1385 Bishop Rd., Merritt Island - There is currently a beautiful, older home on the property and we would like to subdivide off a lot, and RU-1-13 is in compliance with the 1,300 square-foot home that is already on the property, and we would like to keep that home. We met with George Ritchie to go over the entire application. Thank you.

Public comment.

Jeff Duncan, 4855 N. Tropical Trail, Merritt Island - Using the Brevard County zoning and future land use maps to determine the actual zoning of pieces of land on Merritt Island, if you look at S.R. 528 for a southern border, going north all the way to NASA Causeway, and from S.R. 3 west to the Indian River, the subject property is the only instance of RU-1-13 in that entire section, except for the development of River Island Estates development, 2.3 miles away from the subject property. Aside from the River Estates development, there is not a single example of the RU-1-13 zoning being utilized in that section, so this would set a precedent as it is not something that has been done numerous times before. The actions of the RU-1-13 zoning being utilized as a standalone property as mentioned demonstrates the unprecedented and out of character nature of the requested zoning change. I hope you will give this information due consideration and disapprove this one zoning change because proof is clearly demonstrated that the requested zoning change is not appropriate for this part of North Merritt Island. Thank you.

Chris Minerva, North Merritt Island Homeowners Association (NMIHOA) - Regarding the rezoning request from AU to RU-1-13 at 4850 N. Tropical Trail, the NMIHOA voted to ask you to deny this request based on the following information and County policies. The owners purchased the property with AU zoning in March 2022; in June they applied for a change of zoning; and they are renting out the existing house and have stated they wish to build another rental house on the lot, or to split the lot. The lowest density zoning category that can be placed on this property and allow the changes the owners want, is RU-1-13. This is unfortunate because this is not a zoning used in this area; there is not one property of RU-1-13 in this large, rural, suburban area. The NMIHOA disapproves the RU-1-13 zoning, even with a binding development plan restricting development to two houses. The existing house can be removed in the future allowing five houses on this lot, unlike the hundreds of single-house lots that surround it, even just two rental houses on one lot is inappropriate in this area. The

County's own analysis describes the character of this community as single-family residences on lots of spacious character for agricultural uses. As listed in Administrative Policy 3a, the zoning of this property to RU-1-13 would result in a reduction of the neighboring property values, and would be completely inconsistent with historical land use patterns and inconsistent with the actual surrounding development in the preceding three years, and also inconsistent with any surrounding development approved but not yet constructed in the past three years. In Administrative Policy 4, the request is completely inconsistent with past and current character of the neighborhood, and as stated in Administrative Policy 8, the request should be denied based on a consideration of character of the surrounding properties and land use, the impact of the proposed zoning on the established character of the surrounding properties, and how incompatible this zoning would be with the existing land use, and how inappropriate this zoning would be based on applicable conditions defined in the Administrative Policies. The owners might consider another option, such as increasing the size of the existing house, making it more desirable if they wish to rent it out, and thus increasing the rental income, or to increase the desirability for future use and/or resale.

Mary Gonzalez, 4990 N. Tropical Trail, Merritt Island - I'm opposed to the zoning change at 4850 N. Tropical Trail. The request from AU-1 [sic], which is one house per acre [sic], to RU-1-13, which is five houses per acre introduces an entirely new zoning and isn't consistent with any in the area. We all moved to North Merritt Island for the rural and large lots. Most of the lots only have one house per acre, yet the zoning being requested is five homes, not anywhere close to what is currently there. It would change the whole character of this area, making it much more crowded and no longer rural, because you're bringing a whole new zoning and that means that anybody who wants to buy a house can go ahead and buy the house with whatever the existing zoning is and request it to be changed so they can also have five houses per acre. There is a three-acre property directly east that used to be a grove, and then someone else took it over and had a couple of horses there, it's currently for sale, and one of the selling points is that it can be subdivided. So, if you have a zoning on an adjacent property, five houses per one acre, then that adjacent three acres is potentially 15 houses. Once you set the precedent anyone can rezone, all they have to do is ask. If I want to sell my house I can sell it as agricultural and then have the next people turn around and say that isn't what they want, they want five houses per acre because two properties down, they've already got that, and the three acres behind it have that. I don't see that this is at all consistent with what is here, the future land use map says it's supposed to be four residences per acre, and this exceeds that. Everything about it, even the subdivisions around it, they are all an acre or more. There is nothing in our area that would be as dense as this. We don't want it, it will change the whole character of the area, it's not going to be rural with single-family homes on large lots, it's going to diminish the enjoyment and quality of life for all of the residents on North Merritt Island and I think it should be denied.

Brian Sorensen, 4835 N. Tropical Trail, Merritt Island - I live across the street from the property in question. My main concerns are what was just brought up by the last two speakers, and I don't want to see this become a multi-family property with one to five properties on that one little piece. I bought in the area because of the environment and if you start breaking them down to two-tenths of a property per each lot, it will completely destroy the lifestyle that we have created out there. I have no problem subdividing it and making it single-family, the one that's there and building on the other side, but not to make it RU-1-13 with five houses on that one property. I think it needs to be zoned for a single house and not for multiple houses.

Jeffrey Ball - The RU-1-13 is a single-family residential zoning classification and it does not allow for a multi-family product, such as apartments. RU-1-13 is one house per lot and it would allow up to five

lots, but it would have to go through the subdivision process to do that. The land use is RES 4, which is four units per acre, it's not four units all together, it's based on the size of the property.

Mary Hillberg - That's the future land use.

Jeffrey Ball - Yes, that's the future land use. Right now, it's AU, which requires a minimum of 2.5 acres.

Gina Lindhorst - It's not compliant with that.

Jeffrey Ball - Correct.

Regina Dempsey - It's 1.4 acres.

Mary Hillberg - The future land use gives it four units per acre. There is property across the street that is about the same size. There are larger pieces of property around the subject property.

Regina Dempsey - We didn't buy the property to rent it. We don't want to build a house to rent it out. We had some friends move into the house because it has some nice character and it has old Merritt Island floors in it, so we rented that part of the house out. There are some fruit trees on the property, which we appreciate. I don't know where that information came from but we don't plan on renting any properties out, it would be single-family ownership. There is a plan here that we built at 580 S. Tropical Trail, and some pictures of the house, and what we plan to do here would do nothing but increase the value of the properties. We've checked with the City of Cocoa and the water meter is right there, so there is no issue with water. There are townhomes being built on S.R. 3, and we live on Bishop Road which has 110 houses being built at the end of our property, and we are going to be driving every day on Crisafulli Road to get there. I'm a local builder and build custom homes only. If you divided 1.4 into 6 homes, that's 0.23 an acre, and it's probably going to be a lot less than that, but across from the tennis court, there's the 1.4 acres, and then the neighborhood adjacent to it is 0.23 to 0.22 lots.

Ted Balke - I'm looking at the map and my question is, you already have trees and shrubs on the lot, and you admitted you have fruit trees.

Regina Dempsey - We have fruit trees, but I don't think they will be damaged in any way.

Ted Balke - I don't know when Natural Resources Management comes out and looks at property before anybody does any changes, but I would think at some point.....

Regina Dempsey - They have come out to look at the property.

Ted Balke - Have they approved this?

Regina Dempsey - They haven't denied it. There are fruit trees on it, but I don't think they will be an issue.

Jeffrey Ball - Natural Resources provided comments as far as environmental impacts of what they see. If the applicant is successful in getting the zoning change and she applies for a building permit,

Natural Resources will review the building permit for any environmental impacts that need to be addressed.

Ted Balke - Is there a way to get a copy of what Natural Resources has reviewed?

Jeffrey Ball - It is in the staff comments provided to the board.

Ted Balke - I constantly see complete liquidation of every tree on a piece of property without any hesitation and they become large vacant lots, and I know there are endangered species of trees and shrubs on those properties before anything even happens. I don't understand how we came to an RU-4 in our area. The North Merritt Island Tropical Trail Study at 2.5 acres per house, and the small area study which wasn't approved, made it one acre per house and now all of a sudden we have a one-quarter acre per house. When did that change, and who changed it?

Jeffrey Ball - Natural Resources does list the property as having protected specimen trees, so that is an environmental constraint. It's my understanding that when the building permit comes in, they will look at what trees are being preserved and what are not.

Ted Balke - When do they come back and re-visit what's going on in the area? I have watched the devastation that goes on every day up there on empty lots. One day it is all of a sudden completely excavated. When I look at the development plans I see that there are preserves shown to be in existence after whatever development is done, and there are no trees left to even be a preserve.

Jeffrey Ball - When talking about large developments with a subdivision plan, Natural Resources reviews those plans as well, and reviews them for tree protection zones. I think we are getting too far in the weeds, but Natural Resources reviews landscaping plans and plans that protect the trees on every project that comes through the subdivision process. Now, building plans for a single-family home is a different process and they review that in accordance with our codes and regulations.

Ted Balke - There are so many violations going on, on North Merritt Island, I have no idea when someone comes up to even review the processes that are taking place.

Jeffrey Ball - If it's a subdivision, County staff reviews it to make sure they comply with codes and ordinances.

Mary Hillberg - We need to focus on the subject property right now and not all of North Merritt Island.

Ted Balke - I don't understand how we became an RU-4, when did that happen?

Mary Hillberg - It was a future land use change that was voted by the commission and this is what it turned into.

Ted Balke - Every study that was ever made has been more than that.

Mary Hillberg - I know, all the small area studies didn't recommend that at all, but that's what we have. It's unfortunate in those aspects, but that's what we have.

Gina Lindhorst - The next step down from AU is not RU-1-13, that is several steps away from AU.

Mary Hillberg - Why is the request for RU-1-13?

Jeffrey Ball - AU requires a 2.5-acre lot, and RU-1-13 is a 7,500 square-foot lot. There are multiple zoning classifications that require more land area. For example, SR requires a half-acre; EU requires a half-acre lot; and EU-2 is along those same parameters. EU and EU-2 are already in the area.

Mary Hillberg - I don't see any SR.

Gina Lindhorst - What is the next step down from AU?

Jeffrey Ball - SR is a half-acre lot. There is also RR-1, which is a one acre lot, but there is no RR-1 in the area. From a planning perspective, you look at what zoning classifications are already in the area, so any time you introduce a zoning classification there are concerns about setting a precedent. I would say that the next zoning would be RR-1.

Gina Lindhorst - The subject property is 1.4 acres, so RR-1 would only allow for one home. The SR zoning is the next level down at a half-acre minimum. EU is a minimum lot size of 15,000 square feet and a minimum living area of 2,000 square feet; EU-2 is a minimum lot size of 9,000 square feet and a minimum living area of 1,500 square feet; and RU-1-13 is much smaller.

Mary Hillberg - Why is this request for RU-1-13? Can it go differently? Can it go less intense?

Jeffrey Ball - Part of your duties is to review the staff comments, take public testimony, and make a recommendation. If you don't see fit that RU-1-13 is appropriate you can recommend a different zoning classification that is more appropriate.

Mary Hillberg - What would be the next zoning category that would be applicable for this property?

Jeffrey Ball - I would say either EU or EU-2 would be appropriate.

Gina Lindhorst - SR is half-acre lots.

Jeffrey Ball - Yes, SR would also be appropriate.

Mary Hillberg - The Future Land Use is RES 4.

Jeffrey Ball - SR and RES 4 are consistent. Ms. Dempsey will probably tell you that the SR zoning classification requires a larger house size than what is currently on the property, which is the reason they are requesting RU-1-13.

Mary Hillberg - They are going to build a house.

Jeffrey Ball - There is a house on the property already that does not meet the square footage for the other zoning classifications.

Mary Hillberg - But they are going to be building houses.

Jeffrey Ball - As far as I know they are going to build one other house.

Mary Hillberg - If you're building another house, then EU-2 would be applicable?

Jeffrey Ball - EU-2 would be appropriate.

Mary Hillberg - Can we ask the applicant to step up and tell us why EU-2 would not be appropriate?

Regina Dempsey - Because we are trying to stay in compliance with the existing house on the property, which is a little over 1,300 square feet. When I met with George Ritchie we had to go with that zoning because the other ones weren't in compliance.

Mary Hillberg - You have a smaller house, so you need to go with a more dense zoning.

Regina Dempsey - You have to go with square footage, you can't go with a house that is bigger than the existing home that is on site.

Gina Lindhorst - She's trying to comply with the numbers.

Regina Dempsey - We have to comply with the square footage on the existing home.

Mary Hillberg - You're leaving the existing home there

Regina Dempsey - Yes. I was told by George Ritchie that that's the way to stay in compliance, so I went with his recommendation.

Jeffrey Ball - Staff does not provide recommendations to applicants, we tell them what the code allows for and what it doesn't. When someone asks for a rezoning, we do not want to create a non-conforming, or substandard issue, where the zoning classification that is applied and now there is a non-conforming structure on the property that would now require it to be either torn down, or a variance is granted.

Gina Lindhorst - Right now, it is zoned AU, which doesn't comply with the minimum requirement of 2.5 acres.

Jeffrey Ball - It doesn't. I don't know when that lot was created, if it was split out from the tennis court property, we'd have to do the research to find out.

Chris Cook - To simplify, the house currently doesn't comply, and they want to bring it to RU-1-13, which is a very high density so they can either put a bunch of other houses on there, or tear that one down. What we have to look at is not this applicant and her plan, we need to focus on the zoning itself. Either we take it to the zoning you feel comfortable with and just go with that.....

Gina Lindhorst - Or recommend a variance for the house that is on it.

Chris Cook - What we can do is get a variance for the house that is on it and take the less dense zoning.

Mary Hillberg - What would be your recommendation?

Chris Cook - That would be my recommendation.

Mary Hillberg - Which zoning?

Chris Cook - I think the SR would be good.

Mary Hillberg - And you think getting a variance for the home that is there.

Chris Cook - Yes, because whatever they do, they are not going to be in compliance. You're either going to have a bunch of little houses there, or the house there on the big lot that is out of compliance. Whatever happens, they can turn around tomorrow and sell it, but the zoning stays with it. In all probability, what will most likely happen is the house will go away because it was built in the 1950's and it's a small house.

Gina Lindhorst - The zoning around it is EU and AU, and that's it. The Citrus Club is EU-2. I would recommend SR or EU.

Chris Cook - I agree.

Jim Carbonneau - I don't like it. I think we've heard all these stories before. Bud Crisafulli somehow got his 48 townhouses approved, and in the last few days that land has been leveled. In my opinion, I would vote to disapprove, period.

Gina Lindhorst - We should give them an option.

Mary Hillberg - If you are recommending to disapprove it, what would you recommend the zoning be changed to?

Jim Carbonneau - I don't think we need to get into that, I think that is up to the applicant and the County, but as presented, I don't like this plan at all.

Ted Balke - If we ask her to change the plan and come back with a new plan, then at least we can see it, because if we vote it down here, the only thing that's going to happen is that it is going to be passed on to the next group who is going to approve it.

Mary Hillberg - It's hard for us to stop the process here and tell her she has to come back with another idea, we really can't do that because it stops the process.

Jim Carbonneau - The current property and the current house, as Chris mentioned, is an older home, but it sits right in the middle of the property, no matter which way you slice it, I'd have to look at the new layout of the proposed houses with the setbacks that would be required to see if they will even fit on the property.

Gina Lindhorst - The houses around it are newer and larger and you wouldn't want to have a bunch of tiny places on that small piece of property.

Mary Hillberg - It will start a compatibility change, and then it moves from there.

Jeffrey Ball - You can outright deny the application and move forward to P&Z and the Commission, or you can recommend a different zoning classification that you believe is more appropriate. You can also ask the applicant to table the request in order for her to go back and take your comments and revise her plan, and then come back with something different, but it would be up to the applicant to do that.

Mary Hillberg - Having someone come back is difficult because it stops the process.

Jeffrey Ball - That would be up to the applicant to decide to do that.

Mary Hillberg - I have some difficulty with that, although if they are denied, they can come back and ask for a different zoning. Do we have a motion?

Gina Lindhorst - I suggest we deny the current request for RU-1-13 and suggest it be rezoned to SR or EU zoning. If there is a noncompliance because of the current house size, then a variance can be provided for that one house.

Jeffrey Ball - It would be better for the board to choose one zoning classification, because then P&Z has to try to interpret what you meant.

Gina Lindhorst - I recommend SR zoning.

Ted Balke - I recommend tabling it and changing to SR; otherwise, it's just going to be passed on to the next step and we mean nothing, and you know the next step is going to approve it as RU-1-3.

Mary Hillberg - We can't assume what other people will do.

Ted Balke - I understand that, but you know what has happened in the past. If you want to stop it here, then you have to table it and ask her to come back again.

Mary Hillberg - Gina has made a motion to deny the RU-1-13 and recommend SR zoning instead.

Gina Lindhorst - With a variance for the current house size.

Jeffrey Ball - A variance is outside of this board's purview.

Mary Hillberg - Is there a second?

Chris Cook - I'll second it.

Mary Hillberg called for a vote on the motion as stated, and it passed 4:2, with Ted Balke and Jim Carbonneau voting nay.

Chris Cook - Is there any way that I can get on the record that moving forward, the Commission not vote on this request until we have a District 2 commissioner representing us? It's not fair, it's taxation without representation, and it's borderline unethical in my opinion.

Jeffrey Ball - I would suggest that you re-open the public hearing and amend the motion to include what Chris suggested.

Upon consensus, the board re-opened the public hearing.

Gina Lindhorst - I amend my motion to deny the RU-1-13 and recommend SR zoning, and request that the Board of County Commissioners not take action on the request until a District 2 commissioner is in place.

Chris Cook - I'll second.

Mary Hillberg called for a vote on the motion as stated, and it passed 4:2, with Ted Balke and Jim Carbonneau voting nay.

From: [Jeff Duncan](#)
To: [Jones, Jennifer](#)
Subject: Rezoning notice number 22Z00033 comments for planning and zoning board meeting on Aug.-15
Date: Friday, August 12, 2022 1:24:46 PM

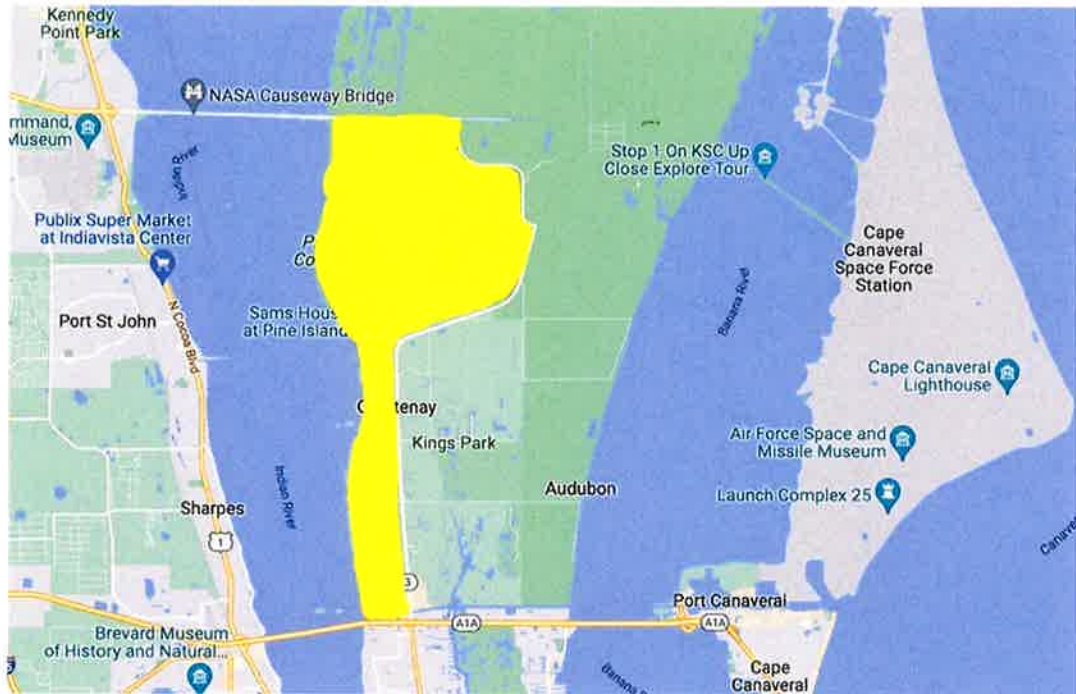
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Jennifer,

In response to rezoning notice number 22Z00033 I would like to submit the below listed comments:

Issue No. 1

- Using the Brevard County Zoning & Future Land Use Web App site to determine the actual zoning for each parcel of land, if you look at Merritt Island from SR-528 north to the Nasa Causeway and Courtenay Parkway (SR-3) west to the Indian river (yellow highlighted area) the only instance of the RU-1-13 zoning being employed is for the entire River Island Estates development which is 2.3 miles away from the 4850 N Tropical trail property. Aside from the River Island Estates development there are no examples of the RU-1-13 zoning being utilized in the yellow highlighted section of Merritt Island which encompasses the property in question.
- The absence of any RU-1-13 zoning being utilized for a stand-alone property as mentioned above, demonstrates the unprecedented and out-of-character nature for the requested zoning change.
- I hope that you will give this information due consideration and disapprove this one zoning change because it is proof and clearly demonstrates that the requested zoning change is not appropriate for this part of Merritt Island.



Issue No. 2

- In addition, although we appreciate all the County Commissioners, we would like this zoning request to be put on hold until after the elections and we have a District 2 County Commissioner in place.

Thank you

Jeff and Kathy Duncan

From: [Mary Gonzales](#)
To: [Jones, Jennifer](#)
Subject: Rezoning request for 8/15 meeting, agenda item H.3
Date: Friday, August 12, 2022 5:16:43 PM

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Dear Ms Jones:

RE: agenda item H.3 Daren T. and Regina M. Dempsey request a change of zoning classification from AU (22Z00033) (Tax Account 2318342)(District 2) File #4879

I live at 4990 N. Tropical Trail, Merritt Island 3 properties north of 4850 N. Tropical Trail which has requested their property to be rezoned from AU to RU-1-13 which allows for 5 single family homes per acre. I am asking that this request be denied for the following reasons:

- the requested zoning is unnecessary. The applicant says that she only wants to build one additional home on the property and preserve the existing home. This property could be rezoned SR to accommodate her. According to the published zoning codes, SR requires 1300 sq ft of living space on a 1/2 acre lot. The existing house is 1379 sq ft. The lot is 1.41 acres and could be split to accommodate a second home of equal size
- the existing pattern of housing in the surrounding area is agricultural residential zoning and estate zoning on lots ranging in size of 0.34 to 3+ acres. To the north are 4 properties that are a minimum 2.5 acres. There are no lots with 5 houses per acre in existence currently. Introduction of a new zoning code of RU 1-13 is inconsistent with the current and historical land use of the area.
- the requested zoning of RU 1-13 (5 houses per acre) is not only inconsistent with the area but is far too dense.
- introduction of a new zoning code in this area will set a precedent for future property sales in the area and open it to very dense housing.
- North Merritt Island is a rural area with large lots and the residents would like it to stay that way
- There has not been any actual development in the area in the last 3 years
- there has not been any development approved but not yet constructed in the last 3 years
- the Future Land Use for the property and surrounding lots is RES 4 . 4 homes per lot is already more dense than anything in this area so allowing even more houses is unnecessary and unwanted.
- the NMISDS recommended that the current zoning request be denied and proposed the SR zoning as an alternative that we as neighbors can agree with
- the applicant wanted the townhouse development on Courtney Parkway that is being built by Crisafulli to be considered for her increased density zoning request. That development should not be considered because it is being built on Courtney Parkway which is a commercial/residential corridor. North Tropical Trail is strictly a residential area with NO commercial property. The two areas are dissimilar in all ways

- Finally, we would like to have this issue delayed until we can have a District 2 commissioner appointed or elected. It is unfair to all of us that we are not represented on an issue that so greatly affects our community and sets a precedent for the future.

Thank you for your consideration,
Mary Gonzales

From: [Pam Felski Gmail](#)
To: [Jones, Jennifer](#)
Subject: public comment for P&Z/LPA meeting 8/15/22
Date: Friday, August 12, 2022 7:23:38 PM

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Re: File# 4879
Parcel ID: 23-36-34-00-8
Address: 4850 N. Tropical Trail, Merritt Island, FL 32953 (District 2)

Public Hearings H.3. Darren T. and Regina Dempsey requests a change of zoning classification from AU to RU-1-13.

(22Z00033) (Tax Account 2318342) (District 2)

I would like to make a public comment opposing the above change of zoning classification request. As a 20 year plus homeowner in this immediate area, the RU-1-13 classification is completely out of character with the existing neighborhood and area. It would negatively impact the value of the adjacent AU properties, as well as, the EU properties across the street. The change to RU-1-13 is inconsistent with the historical land use patterns in the area and is incompatible with the surrounding area.

I would like to suggest that since the owner has stated their desire to have 2 residences on the 1.41 acre lot, a more appropriate change of zoning classification for this area would be to Suburban Residential. With a minimum lot size of ½ acre and a minimum floor area of 1300 sf living area, the SR zone classification would provide what the owners are asking for and be compatible with the surrounding area. In fact, 3 neighborhoods south on Tropical Trail is a neighborhood with that designation. Anything denser than that is simply not consistent with this area.

Given the impact that this decision will have to this area, it would be greatly appreciated if this could be tabled until we have a District 2 representative.

Thank you for your consideration,

Pam Felski

361 Treasure Lagoon Lane, Merritt Island 32953

From: mlyoung@netzero.net
To: [Jones, Jennifer](#)
Subject: Strongly disagree with zoning change request ID# 22Z00033
Date: Monday, August 15, 2022 10:23:40 AM

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Jennifer Jones

I strongly disagree with allowing the parcel of land to be rezoned from AU to RU-1-13. The area is a small parcel in the middle of properties zoned AU that are scheduled to be considered EU. Lots are consistently 1/3 of an acre or larger per homestead consistent with an EU classification. Homes in this area are large.

The RU-1-13 would allow significantly smaller homesteads into the area which will hurt the property values in our neighborhood, significantly increase the density, and would be inconsistent with the area. RU-1-13 allows 7500 sq ft or a 1/6 of an acre and homes of 1300 sq ft. Our neighborhood consists of homes >2000 sq ft on 1/3 (15000 sq ft) or larger lots.

To allow this is not in the best interests of well over 100 surrounding homesteads.

Please do not allow this zoning change.

Thank you

Mary Young

Mary Louise E Young, CPA CMA
1353 N Courtenay Parkway, Suite O
Merritt Island, FL 32953
321.454.4480

The information in this email and subsequent attachments may contain confidential information that is intended solely for the attention and use of the named addressee(s). This message or any part thereof must not be disclosed, copied, distributed or retained by any person without authorization from Mary Louise E. Young, CPA CMA.

From: [Denise Bailey](#)
To: [Jones, Jennifer](#)
Cc: [Denise Bailey](#)
Subject: 4850 Tropical Trail
Date: Tuesday, August 23, 2022 8:49:10 AM

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

Hello Jennifer,

I am writing in regard to the notice I received about rezoning this property to allow for multiple homes to be constructed on the 1.41 acres. This is inconsistent with how the property up in this area was zoned, and, why I purchased the almost 3 acres I currently own, which is close to this property. I am very much against changing the zoning as it will change the density here, and, once one person does it, it opens the doors for others with large parcels to do the same, diminishing our rural lifestyle. There are many large lots in this area and if rezoning became a trend for property owners up here it would be like a city being built around those of us who opted to live on the last large parcels of land giving us the open and rural lifestyle we wanted. My vote is to NOT allow the zoning change to happen and ruin the little "country" living we have left. If someone wants to develop land to create a subdivision, let them start with an area that doesn't back up to or surround properties on large parcels of land with estates built for that open, country atmosphere.

We are already being inundated with townhomes on the corner of Porcher and Courtney and I would hate to have this sort of density all around me, boxing me in, not to mention the roads are not built to support so much traffic.

Please keep me posted on this situation if at all possible.

Respectfully,
Denise L. Bailey
290 McGill Lane

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, August 15, 2022**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order at 3:00 p.m.

Board members present were: Board members present were: Henry Minneboo (D1); Brian Rodgers (D2); Robert Sullivan (D2); Lorraine Koss (Alt. D2); Mark Wadsworth, Chair (D4); Liz Alward (D4); Logan Luse (Alt. D4); Bruce Moia (D5); Peter Filiberto (D5); and John Hopengarten (BPS).

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

Excerpt of Complete Agenda

Daren T. and Regina M. Dempsey

A change of zoning classification from AU (Agricultural Residential) to RU-1-13 (Single-Family Residential). The property is 1.41 acres, located on the east side of N. Tropical Trail, approx. 120 ft. north of Citrus Club Dr. (4850 N. Tropical Trail, Merritt Island) (22Z00033) (Tax Account 2318342) (District 2)

Jeffrey Ball stated the North Merritt Island Dependent Special District Board heard the request on August 11th and recommended the SR (Suburban Residential) zoning classification, citing density and lot size issues with the surrounding area. Also, part of the recommendation was that the Board of County Commissioners not take action on the request until there is a district 2 commissioner in office.

Regina Dempsey, 1385 Bishop Road, Merritt Island, stated the property is currently non-conforming, and RU-1-13 is the zoning that will assist in making it conforming.

Bruce Moia stated the property is non-conforming to the existing zoning of AU, and asked why Ms. Dempsey chose RU-1-13 when there are other zoning classifications that would qualify.

Ms. Dempsey replied the current house on the property is 1,359 square feet, and RU-1-13 is the classification that changes the non-conforming status.

Public comment.

Jeff Duncan, 4855 N. Tropical Trail, Merritt Island, stated the crux of his objection is that the zoning change being requested isn't going from the existing house to two houses, but up to five houses, per the RU-1-13. He said he would not object if they wanted to go to a zoning that would allow for one additional house, for a total of two houses on the property. He said he used the Brevard County zoning and Future Land Use web application site map to determine the actual zoning for each parcel of land in the area. On North Merritt Island, from S.R. 528 north to NASA Causeway, and S.R. 3 west to the Indian River, the only existence of RU-1-13 is the River Island Estates development, which is 2.3 miles away from the subject property. There are no standalone examples of RU-1-13 in the large section of Merritt Island, which demonstrates the unprecedented and out of character nature for the requested zoning change. He stated his second concern is that because district 2 doesn't currently have a county commissioner in office, he asks that the zoning request be put on hold until after the election and there is a district 2 commissioner in place.

Mary Gonzalez, 4990 N. Tropical Trail, Merritt Island, stated she is three properties north of the subject property. North Merritt Island is rural and has been rural, and almost everybody there has an acre or more, even the smallest subdivisions are .34-acre lots, but the requested zoning will allow five houses per acre. The Future Land Use Map is RES 4, but apparently it can be five houses per acre instead of four, but that is too dense, and even four houses per acre doesn't exist on North Merritt Island. She said RU-1-13 is inconsistent because it is too dense and not necessary because it could be zoned SR, which would allow for one house per half-acre with a minimum house size of 1,300 square feet. There has not been any other development in the area for the last three years, and there is also no development approved but not yet constructed in that time period.

Pam Felski, 361 Treasure Lagoon Lane, Merritt Island, stated she is opposed to the change of zoning classification as a 20+-year homeowner in the area. She said RU-1-13 is out of character with the existing neighborhood and area, and it would negatively impact the value of the adjacent AU properties that are there, as well as the EU-zoned properties across the street. The change to RU-1-13 is inconsistent with the historical land use patterns in the area and is incompatible with the surrounding area. She stated since the owner has stated her desire to have two residences on the 1.41-acre lot, a more appropriate change would be to the SR classification with a minimum lot size of a half-acre and a minimum living area of 1,300 square feet, which takes into account the current home at 1,359 square feet. She concluded, given the impact of what the decision would have in the area, it would be greatly appreciated if the request could be tabled until there is a district 2 commissioner.

Mr. Moia asked if Ms. Dempsey has a plan.

Ms. Dempsey replied she doesn't have a firm plan at this time, but she was considering maybe subdividing off and building a home next to the home already on the property. She said she doesn't want to demo the house in order to build two houses. She noted she is in the process of getting a building permit to move a shed to help with the conforming, and that is tabled until the rezoning is completed.

Mr. Moia noted there is no RU-1-13 zoning in the area. Ms. Dempsey replied there are townhomes being built within one mile.

Mr. Moia asked if Ms. Dempsey would want five houses on the property. Ms. Dempsey replied maybe in the future, but maybe not five, maybe three or four. She said she might just build one and leave the house that is there.

Robert Sullivan asked if Ms. Dempsey would be amenable to the SR zoning. Ms. Dempsey replied SR doesn't conform with the zoning.

Mr. Moia asked if she believes the SR would not conform. Ms. Dempsey replied she was told in the meeting that she would have to demo the other house and just build two houses.

Mr. Ball stated the minimum living area for SR is 1,300 square feet, so the existing house would be okay; however, there is a problem with the lot width, so if Ms. Dempsey wants to split the lot, the minimum size for an SR lot is 100 feet, and according to the survey it is 195 feet, so in order to split the lot she would need a variance. As of right now, the lot conforms to RU-1-13.

Ms. Dempsey asked if the current house on the property is in compliance.

Mr. Sullivan replied yes, it is in compliance. He stated the alternative that was recommended at the North Merritt Island meeting was SR, and asked Ms. Dempsey if she is amenable to that.

Mr. Moia stated SR means she would have to get a variance to build a second home, or agree to a BDP to limit the density to two units.

Ms. Dempsey stated there is a subdivision next to the property that has quarter-acre lots.

Liz Alward asked Ms. Dempsey when she bought the property. She said she is interested if she bought a piece of property with a non-conforming home on it without knowing what she's going to be doing with it. Typically, when someone makes that kind of an investment they have an idea how to get a return on the investment.

Mr. Wadsworth stated Ms. Dempsey purchased the property in March 2022.

Henry Minneboo stated whatever is approved, the board has to be careful because it will be opening the door for many issues. He said the request is not conducive to this particular area, and there will be a lot more people asking for the same thing.

Ms. Dempsey stated the house that is on the property was built in 1950 and she appreciates that house. She said she was considering, maybe in three or more years, putting another house on the property and just based on the square footage of the existing home she thought this is what was necessary to stop it from being non-conforming. She said at the end of her street 110 houses are being built, and around the corner multi-family is being built.

Motion by Robert Sullivan, seconded by Henry Minneboo, to recommend denial of a change of zoning classification from AU to RU-1-13. The motion passed unanimously.

Ms. Dempsey asked if she can agree to a BDP (Binding Development Plan) and split the lot for one more house, and keep the current house.

Mr. Moia stated she can propose a BDP at the County Commission meeting if she chooses.