



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

G.9.

2/1/2024

Subject:

John L. Hearton requests a changes of zoning classification from EU to SEU. (23Z00077) (Tax Account 2633100) (District 4)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

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

Summary Explanation and Background:

The applicant is requesting to rezone the property from EU (Estate Residential) to SEU (Suburban Residential Use) to have the zoning classification consistent and compatible with the Residential 1 (RES 1) Future Land Use Map designation. This will allow for future development of one single family residence. Currently, the existing EU zoning classification is not consistent with the RES 1 (FLUM) designation per #62-1255. Rezoning this property will correct this inconsistency.

The subject property is currently a vacant lot. It was originally platted as of 09/15/1881 as a 4-acre parcel. The parcel was divided to its' current configuration in 02/27/2015 and the lot is part of "JW Stewarts" lots 3 & 4 as described in ORB 7341 Pg 499. This lot split caused the lot to lose its' nonconforming status.

Additionally, the applicant applied for variance to Sec. 62-1337(4), for the lot width in a SEU zoning classification. The variance was approved on November 20, 2023, by the Board of Adjustment (BOA).

Staff analysis indicates the property is located within a residential area with the closest parcel zoned SEU located approximately 2,065 feet to the north. The majority of the properties within the immediate area are zoned EU to the north and RU-1-13 to the south.

The Board may wish to consider if the request is consistent and compatible with the surrounding area. The Board may also wish to consider the development, given the environmental constraints identified with the property.

On January 8, 2024, the Planning and Zoning Board heard the request and unanimously recommended

approval.

Clerk to the Board Instructions:

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

Resolution 23Z00077

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

WHEREAS, John Lenard Hearton (Dave Andrew Okonsky) requests a change of zoning classification from EU (Estate Use Residential) to SEU (Suburban Estate Use Residential) on property described as Lot 3.03, Subdivision of Isreal Stewart Homestead, as recorded in ORB 8863, Pages 2906 - 2907, of the Public Records of Brevard County, Florida. **Section 34, Township 26, Range 37.** (1.17 acres) Located on the east side of S. Tropical Trail, approx. 0.36 mile south of Stockton Dr. (10190 S. Tropical Trail, Merritt Island); and

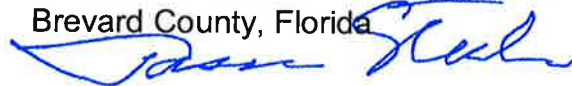
WHEREAS, a public hearing of the Brevard County Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning and Zoning Board recommended that the application be approved; and

WHEREAS, the Board, after considering said application and the Planning and Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be approved as recommended; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from AU and BU-2 to all BU-2, be approved. The Planning and Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of February 1, 2024.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida



Jason Steele, Chair

Brevard County Commission

As approved by the Board on February 1, 2024.

ATTEST:



RACHEL SADOFF, CLERK

(SEAL)

P&Z Board Hearing - January 8, 2024

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.**

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

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

Administrative Policy 2

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

Criteria:

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

Administrative Policy 3

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

Criteria:

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

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

Administrative Policy 4

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

Criteria:

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

Administrative Policy 5

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

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

Criteria:

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

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

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

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

CONDITIONAL USE PERMITS (CUPs)

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

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

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

(c) General Standards of Review.

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

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

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

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

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

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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Viera, Florida 32940
(321)633-2070 Phone / (321)633-2074 Fax
<https://www.brevardfl.gov/PlanningDev>

**STAFF COMMENTS
23Z00077**

John L Hearton

EU (Estate Residential) to SEU(Suburban Estate Residential)

Tax Account Number: 2633100
Parcel I.D.: 26-37-34-DW-*-3.03
Location: East and west side of S Tropical Trail, 1,750 ft south of Stockton
(District 4)
Acreage: 1.17 acres

Planning & Zoning Board: 01/08/2024
Board of County Commissioners: 02/01/2024

Consistency with Land Use Regulations

- Current zoning cannot 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	EU	SEU
Potential*	1 Single-family unit	1 Single-family units
Can be Considered under the Future Land Use Map	NO RES 1	YES RES 1

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

Background and Purpose of Request

The applicant is requesting to rezone the property from EU (Estate Residential) to SEU (Suburban Residential Use) to have the zoning classification consistent and compatible with the Residential 1 (RES 1) Future Land Use Map designation. This will allow for future development of one single family residence. Currently, the existing EU zoning classification is not consistent with the RES 1 (FLUM) designation per #62-1255. Rezoning this property will correct this inconsistency.

The subject property is currently a vacant lot. It was originally platted as of 09/15/1881 as a

4 acre parcel. The parcel was divided to its' current configuration in 02/27/2015 and the lot is part of "JW Stewarts" lots 3 & 4 as described in ORB 7341 Pg 499. This lot split caused the lot to lose its' nonconforming status. The current EU (Estate Use) is inconsistent with the RES 1 FLU as well. Additionally, the applicant applied for variance to Sec. 62-1337(4), to permit a 9% deviation for the lot width in a SEU zoning classification. The variance was approved on November 20, 2023 by the Board of Adjustment.

The subject property is located on the east and west side of S. Tropical Tr. The primary site is on the east side of the roadway with a small sliver of land on the west side. Both portions front on a water body. The majority of the land area is located on the east side of S. Tropical Tr.

Sec 62-2116(2) Where the land area on either side of the public or private right-of-way fails to meet the minimum requirements for lot size in the designated zoning classification, then the land owner shall be deemed the owner of one lot, plot, tract or parcel for the purposes of this chapter, and the principal structure or dwelling unit shall be located on the side or part having the greater land area.

There are no current code enforcement cases applicable to the subject property.

Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	Single-family residence	EU	RES 1
South	Single-family residence	EU	RES 1
East	Water body	N/A	N/A
West	Water body	N/A	N/A

The current EU classification permits single family residential development on lots of 15,000 square feet (minimum) with a minimum width of 100 feet and depth of 100 feet. The minimum house size is 2,000 square feet. Although the subject site could comply with these minimum requirements, the EU (Estate Residential) is not in compliance with the FLU of RES 1.

The proposed SEU classification permits single family residences on minimum 1 acre (43,560 sf) with a minimum width and depth of 125 feet and a minimum depth of 200 feet. The minimum house size is 2,000 square feet. The subject property would meet these standards.

Future Land Use

The subject property is currently designated as Residential 1 (RES 1) Future Land Use Map (FLUM) Designation. The current EU zoning is not consistent with the existing RES 1 FLUM

Designation. The proposed SEU zoning is consistent with the existing RES 1 FLUM Designation.

FLUM Policy 1.7 – The RES 1 FLU 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 one (1) unit per acre, except as otherwise may be provided for within the Future Land Use Element.

The applicant's request can be considered consistent with the existing Future Land Use. The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 of the Future Land Use Element.

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

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

Criteria:

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

Since SEU zoning has a larger lot size requirement and similar uses to EU zoning, it is not anticipated to diminish the enjoyment of safety or quality of life in existing neighborhood within the area.

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

Only a certified MAI (Master Appraiser Institute) 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 historical land use patterns can be characterized as single-family residences on properties ranging in size from .23 acres to 8 acres in size.

To the north of the subject property is a single-family home and to the south is a vacant residential lot. This area is all within the RES 1 FLUM designation. The 0.50 mile radius is predominantly residential development and use.

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

There have been no FLU changes within 0.5 miles.

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

There has been no development approved within the past three 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.

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

Criteria:

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

Staff analysis indicates the property is located within a residential area not a neighborhood. The closest parcel with SEU zoning is located north 2,065 feet approximately. The majority of sites within the subjects' immediate area are zoned EU to the north and RU-1-13 to the south.

The request is not anticipated to materially or adversely impact the surrounding area.

- 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.

The property is located in an existing platted residential area. There are clearly established roads and residential lot boundaries as well as rivers to the east and west bounding the subject property.

2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.

The request is not for commercial use. It is located in an existing single-family residential neighborhood.

3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

The area is primarily single-family residential with no commercial zoning nearby.

Analysis of Administration Policy 7

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

Based on the summary of mapped resources and noteworthy land use issues. These include wetlands and hydric soils, Coastal High Hazard Area, floodplain, and the Indian River Lagoon Nitrogen Reduction Overlay. These issues may limit the development of the property.

Preliminary Concurrency

The closest concurrency management segment to the subject property is S Tropical Trail between Mathers Bridge to Pineda Causeway, which has a Maximum Acceptable Volume (MAV) of 12,480 trips per day, a Level of Service (LOS) of E, and currently operates at 11.67% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.00%. The corridor is anticipated to operate at 11.67% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

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

Water is provided by the city of Cocoa. No central sewer is available and the applicant will need a septic system. The entire property is mapped within the Indian River Lagoon Nitrogen Reduction Overlay. Per Chapter 46, Article II, Division IV – Nitrogen Reduction Overlay, if adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required. The NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

Environmental Constraints

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands and Hydric Soils
- Aquifer Recharge Soils
- Coastal High Hazard Area
- Floodplain Protection
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Surface Waters of the State
- Protected and Specimen Trees
- Protected Species

The eastern portion of the subject parcel contains mapped National Wetlands Inventory (NWI) wetlands. **A wetland delineation will be required prior to any land clearing activities, site plan design, or building permit submittal.**

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. **This density may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total residential acreage as set forth in Section 65-3694(c)(6).** Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts and will require mitigation in accordance with Section 62-3696. **The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal.**

The subject property is located on the Indian River Lagoon (IRL), designated as an Impaired Water (as defined in 62-303.200 F.A.C.), a Class II Water, an Outstanding Florida Water (OFW), and an Aquatic Preserve in this location. **A 50-foot Surface Water Protection Buffer is required.** The removal of native vegetation located within the Buffer is prohibited. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

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

Both the east and west sides of this property are mapped as being within estuarine floodplain as identified by FEMA and as shown on the FEMA SFHA Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the

Floodplain Ordinance. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

Information available to NRM indicates that unpermitted land clearing activities occurred on the parcel and within the Surface Water Protection Buffer. As a result, the parcel is experiencing erosion. Both the east and west shorelines are within the CHHA, FEMA floodplain and potentially contain wetlands. This activity may result in code enforcement action and/or require shoreline restoration to protect S. Tropical Trail and water quality of the Indian River Lagoon.

For Board Consideration

The Board may wish to consider if the request is consistent and compatible with the surrounding area. The Board may also wish to consider the development, given the environmental constraints identified with the property.

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

Item No. 23Z00077

Applicant: Dave Andrew Okonsky (Owner: John L. Hearnton)

Zoning Request: EU to SEU

Note: to be consistent with RES 1 FLU to build SFR

Zoning Hearing: 01/08/2024; **BCC Hearing:** 02/01/2024

Tax ID No.: 2633100

- 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:

- Wetlands and Hydric Soils
- Aquifer Recharge Soils
- Coastal High Hazard Area
- Floodplain Protection
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Surface Waters of the State
- Protected and Specimen Trees
- Protected Species

The eastern portion of the subject parcel contains mapped National Wetlands Inventory (NWI) wetlands. **A wetland delineation will be required prior to any land clearing activities, site plan design, or building permit submittal.**

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. **This density may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total residential acreage as set forth in Section 65-3694(c)(6).** Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts and will require mitigation in accordance with Section 62-3696. **The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal.**

The subject property is located on the Indian River Lagoon (IRL), designated as an Impaired Water (as defined in 62-303.200 F.A.C.), a Class II Water, an Outstanding Florida Water (OFW), and an Aquatic Preserve in this location. **A 50-foot Surface Water Protection Buffer is required.** The removal of native vegetation located within the Buffer is prohibited. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

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

Both the east and west sides of this property are mapped as being within estuarine floodplain as identified by FEMA and as shown on the FEMA SFHA Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

Information available to NRM indicates that unpermitted land clearing activities occurred on the parcel and within the Surface Water Protection Buffer. As a result, the parcel is experiencing erosion. Both the east and west shorelines are within the CHHA, FEMA floodplain and potentially contain wetlands. This activity may result in code enforcement action and/or require shoreline restoration to protect S. Tropical Trail and water quality of the Indian River Lagoon.

Land Use Comments:

Wetlands and Hydric Soils

The eastern portion of the subject parcel contains mapped National Wetlands Inventory (NWI) wetlands. A wetland delineation will be required prior to any land clearing activities, site plan design, or building permit submittal.

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. This density may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total residential acreage as set forth in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal.

Aquifer Recharge Soils

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

Coastal High Hazard Area

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

Floodplain Protection

Both the east and west sides of this property are mapped as being within estuarine floodplain as identified by FEMA and as shown on the FEMA SFHA Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Chapter 62, Article X, Division 6 states, "No site alteration shall

adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

Indian River Lagoon Nitrogen Reduction Septic Overlay

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

Surface Waters of the State

The subject property is located on the Indian River Lagoon, designated as an Impaired Water (as defined in 62-303.200 F.A.C.), a Class II Water, an Outstanding Florida Water (OFW), and an Aquatic Preserve in this location. A 50-foot Surface Water Protection Buffer is required. Primary structures shall be located outside the Surface Water Protection Buffer. Accessory structures are permissible within the Buffer with conditions (e.g., storm water management is provided, avoidance/minimization of impacts, and maximum 30% impervious). The removal of native vegetation located within the Buffer is prohibited unless approved through an active development order. **Information available to NRM indicates that unpermitted land clearing activities occurred on the parcel within the Surface Water Protection Buffer, and as a result, the parcel is experiencing erosion on both the east and west shorelines.** The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

Protected and Specimen Trees

Protected and Specimen Trees may exist on the parcel. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), encourages the protection of Specimen Trees. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

Protected Species

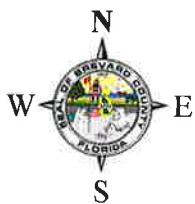
Federally and/or state protected species may be present on properties with aquifer recharge soils. Specifically, there is potential for existence of Gopher Tortoises on site. The applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife

Conservation Commission and/or U.S. Fish and Wildlife Service prior to any plan, permit submittal, or development activity, including land clearing, as applicable.

LOCATION MAP

HEARTON, JOHN LENARD

23Z00077



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: 10/25/2023



Buffer

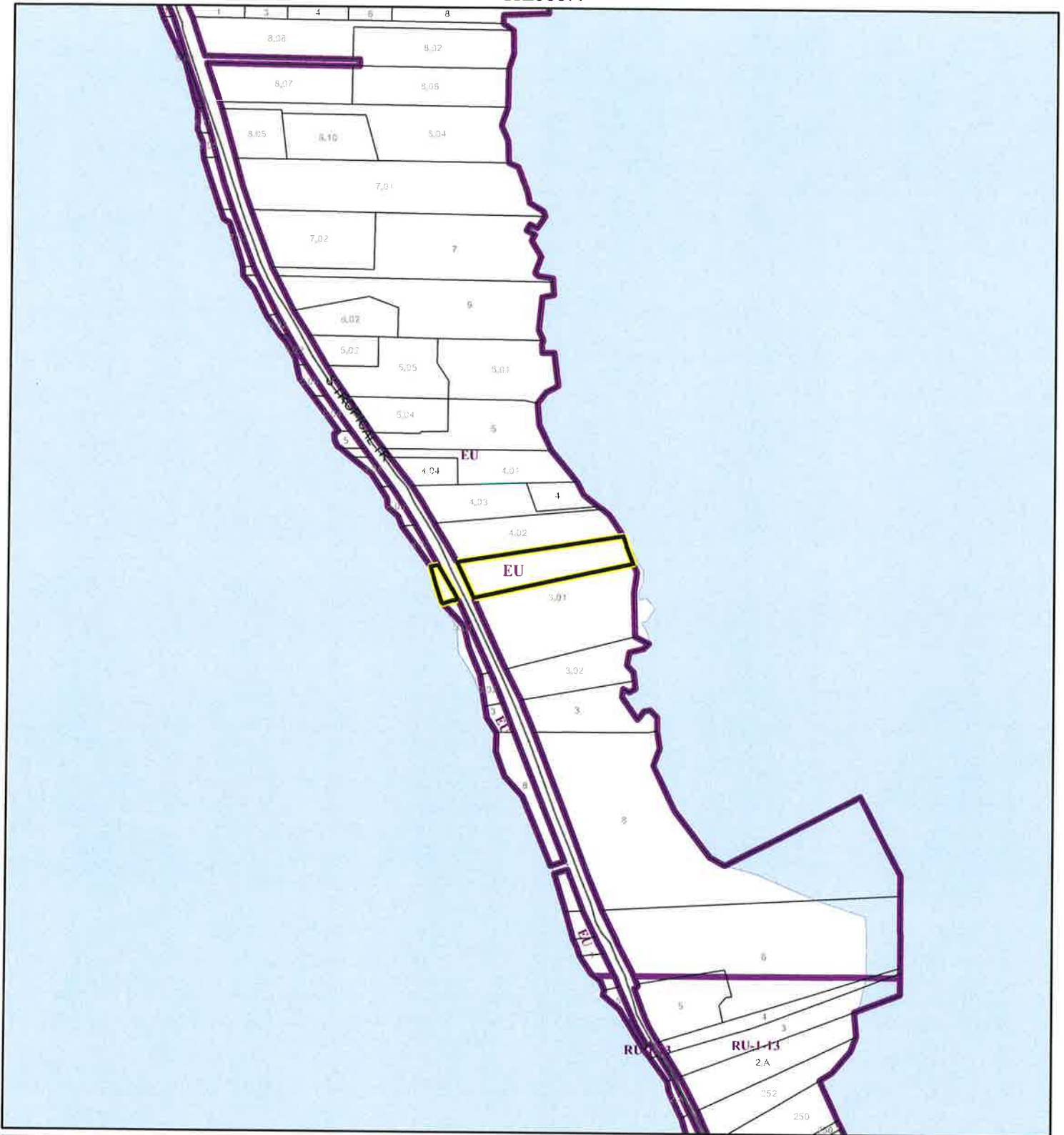


Subject Property

ZONING MAP

HEARTON, JOHN LENARD

23Z00077



1:4,800 or 1 inch = 400 feet

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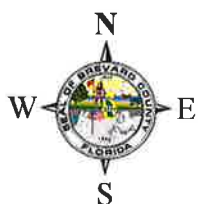
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Subject Property

Parcels

Zoning

23Z00077



Parcels

Produced by BoCC - GIS Date: 10/25/2023

AERIAL MAP

HEARTON, JOHN LENARD

23Z00077



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2023

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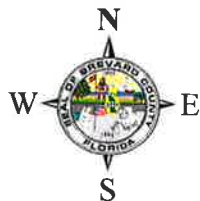
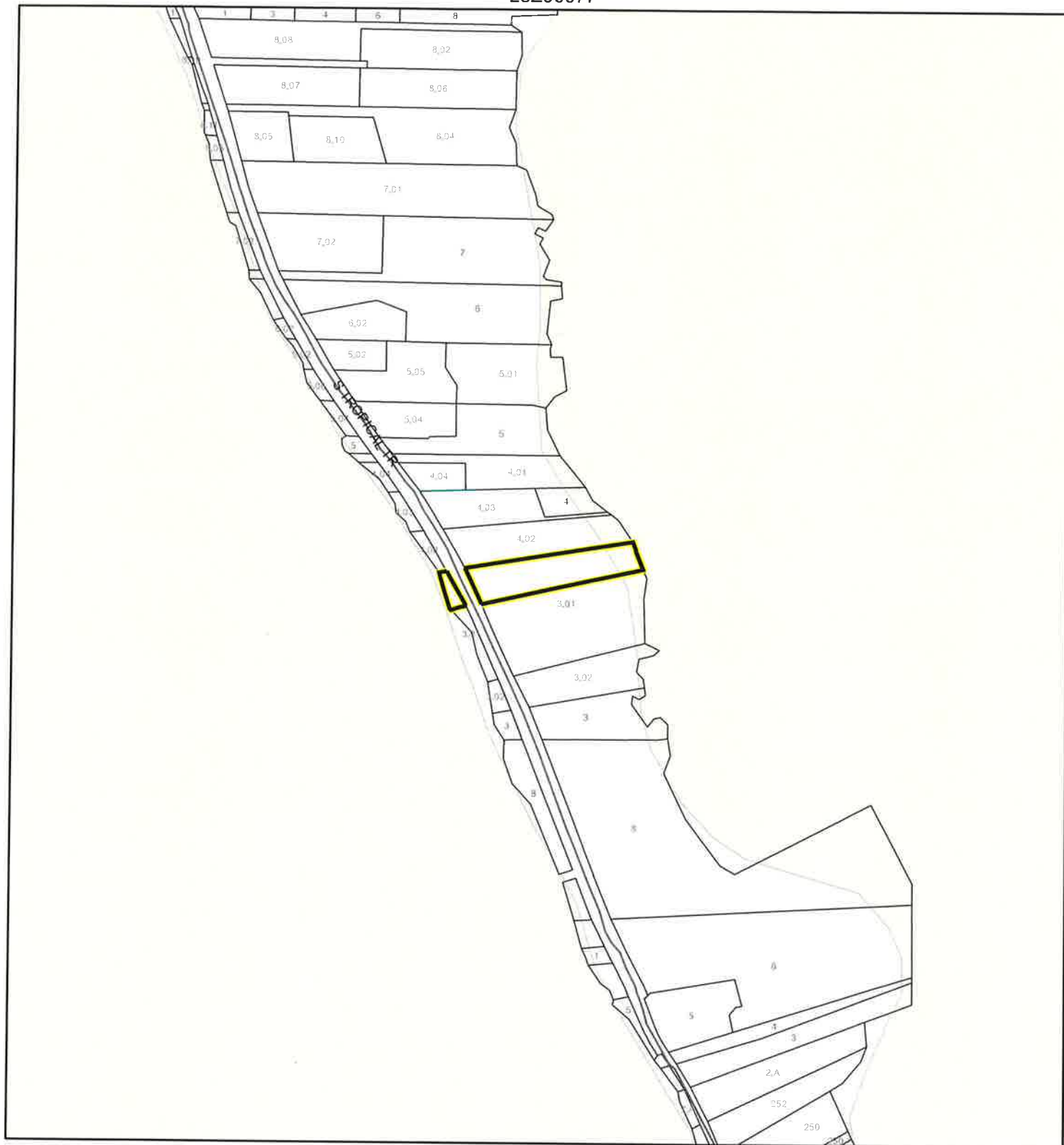
 Subject Property

 Parcels

NWI WETLANDS MAP

HEARTON, JOHN LENARD

23Z00077



1:4,800 or 1 inch = 400 feet

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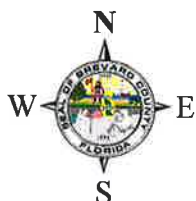
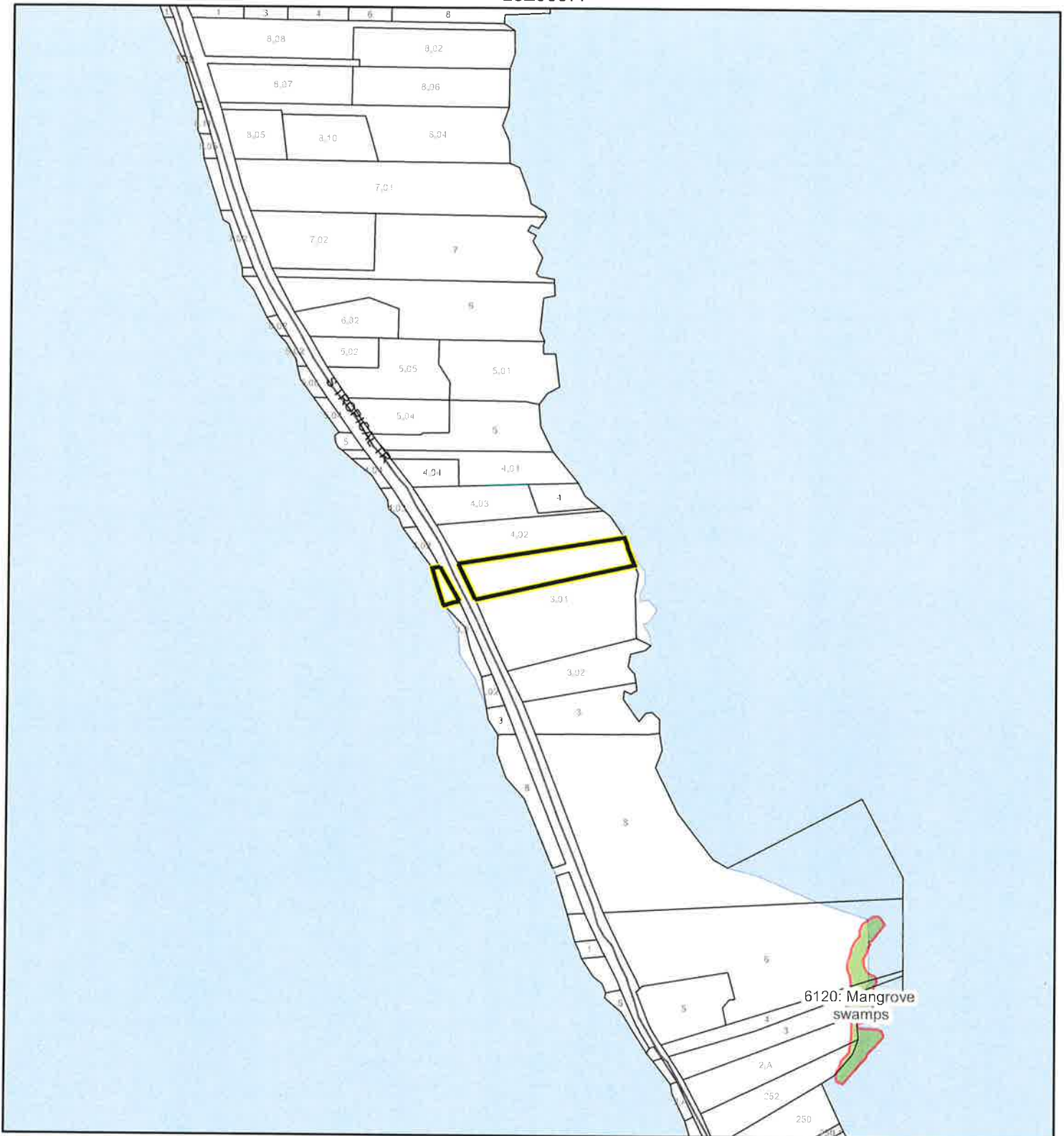
National Wetlands Inventory (NWI)

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

HEARTON, JOHN LENARD

23Z00077



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

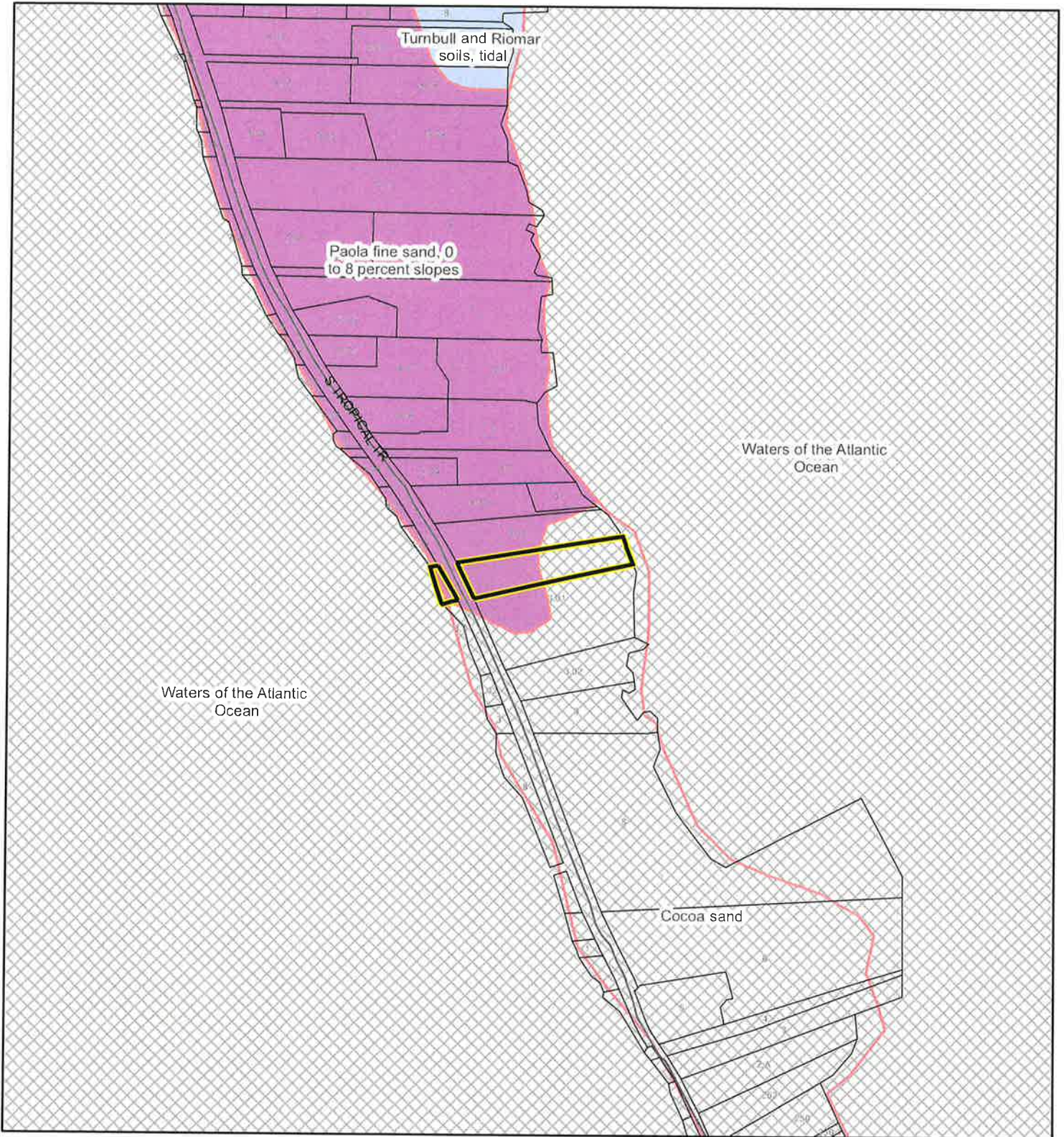
Subject Property

Parcels

USDA SCSSS SOILS MAP

HEARTON, JOHN LENARD

23Z00077



1:4,800 or 1 inch = 400 feet

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USDA SCSSS Soils

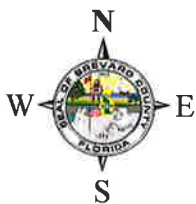
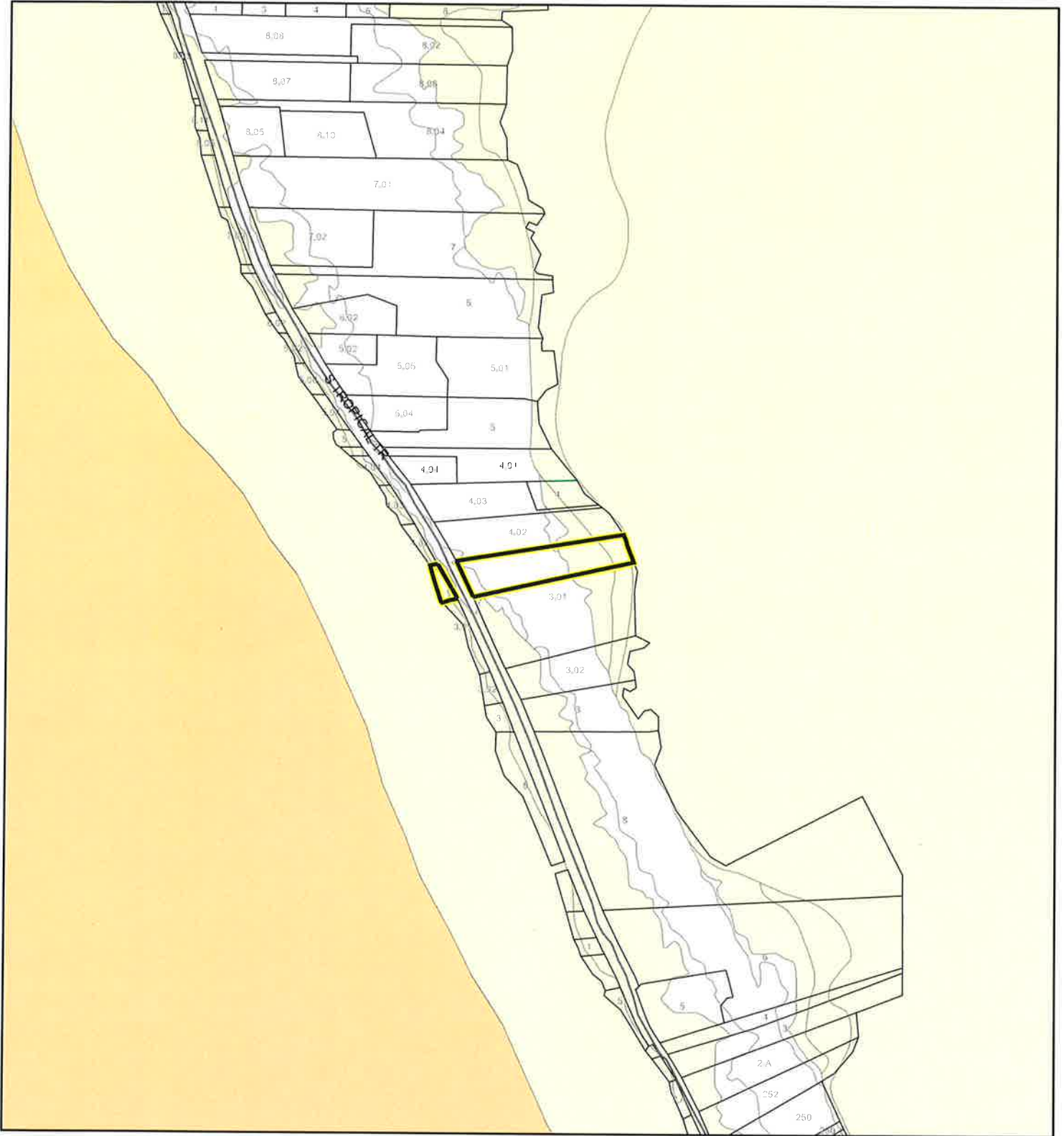
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

FEMA FLOOD ZONES MAP

HEARTON, JOHN LENARD

23Z00077



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 10/25/2023

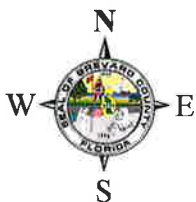
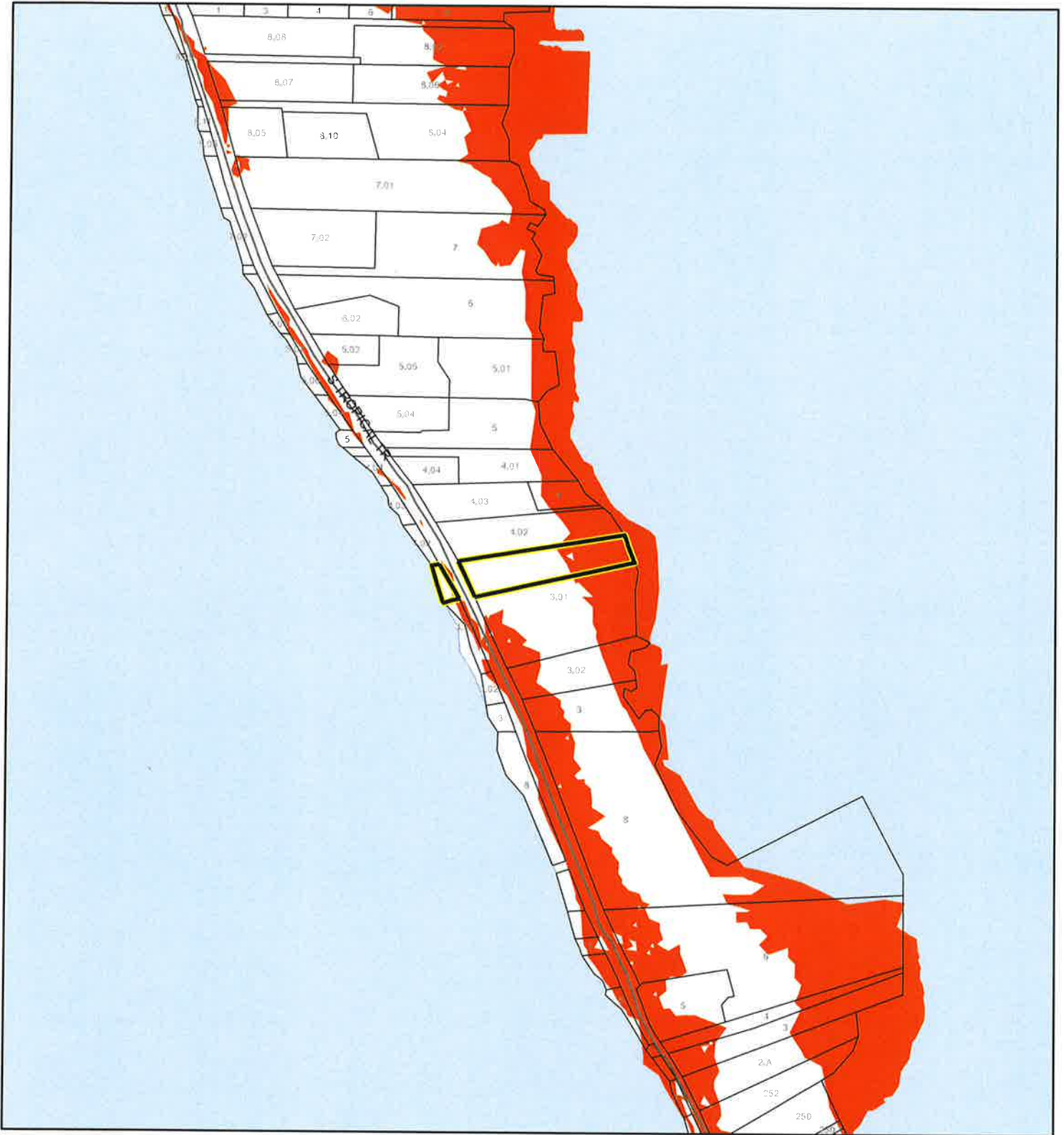
FEMA Flood Zones

A	AO	X
AE	Open Water	
AH	VE	
Subject Property	Parcels	

COASTAL HIGH HAZARD AREA MAP

HEARTON, JOHN LENARD

23Z00077



1:4,800 or 1 inch = 400 feet


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 Subject Property

 Parcels

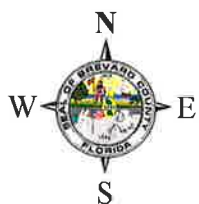
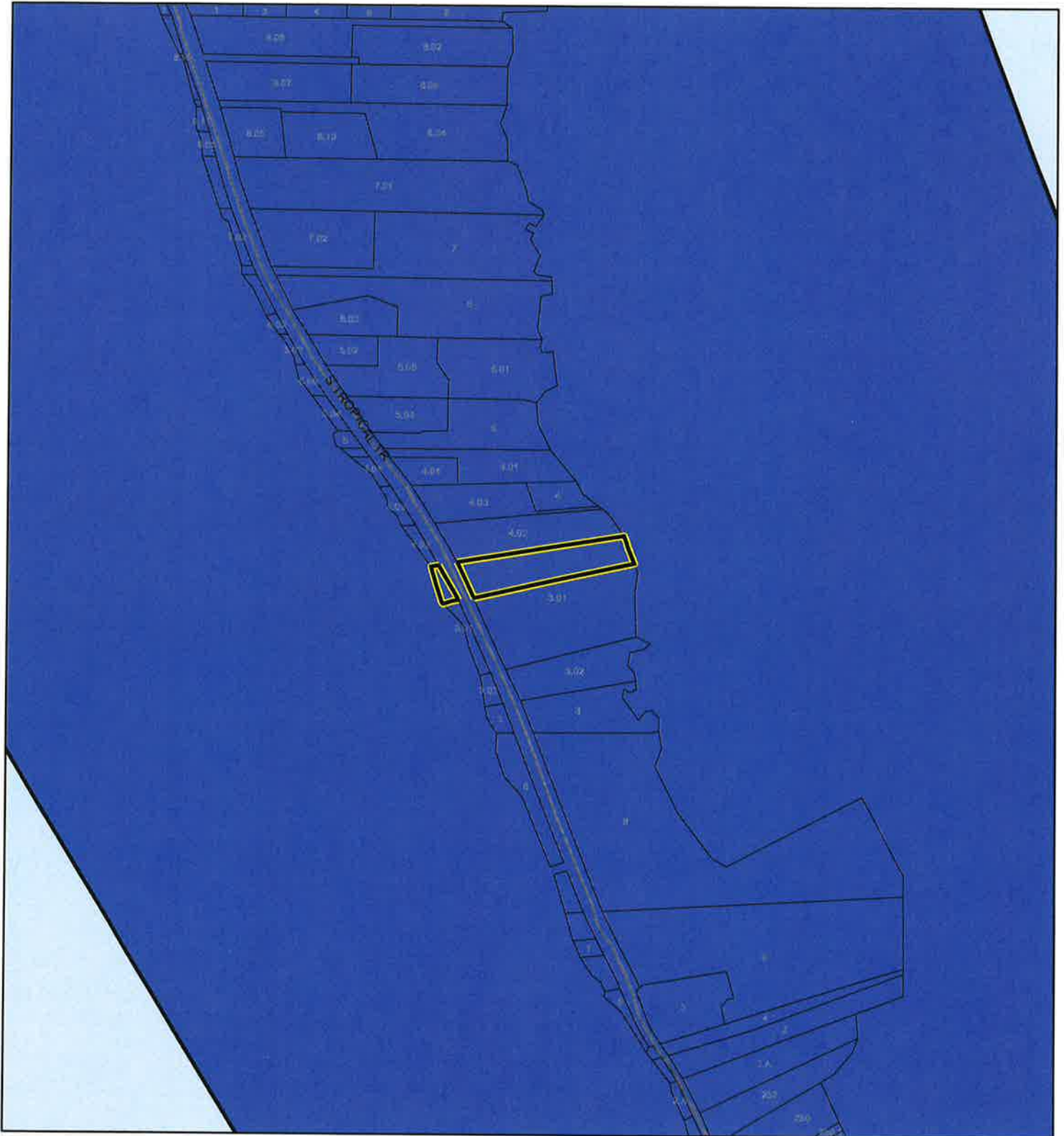
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

HEARTON, JOHN LENARD

23Z00077



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

Septic Overlay

 40 Meters

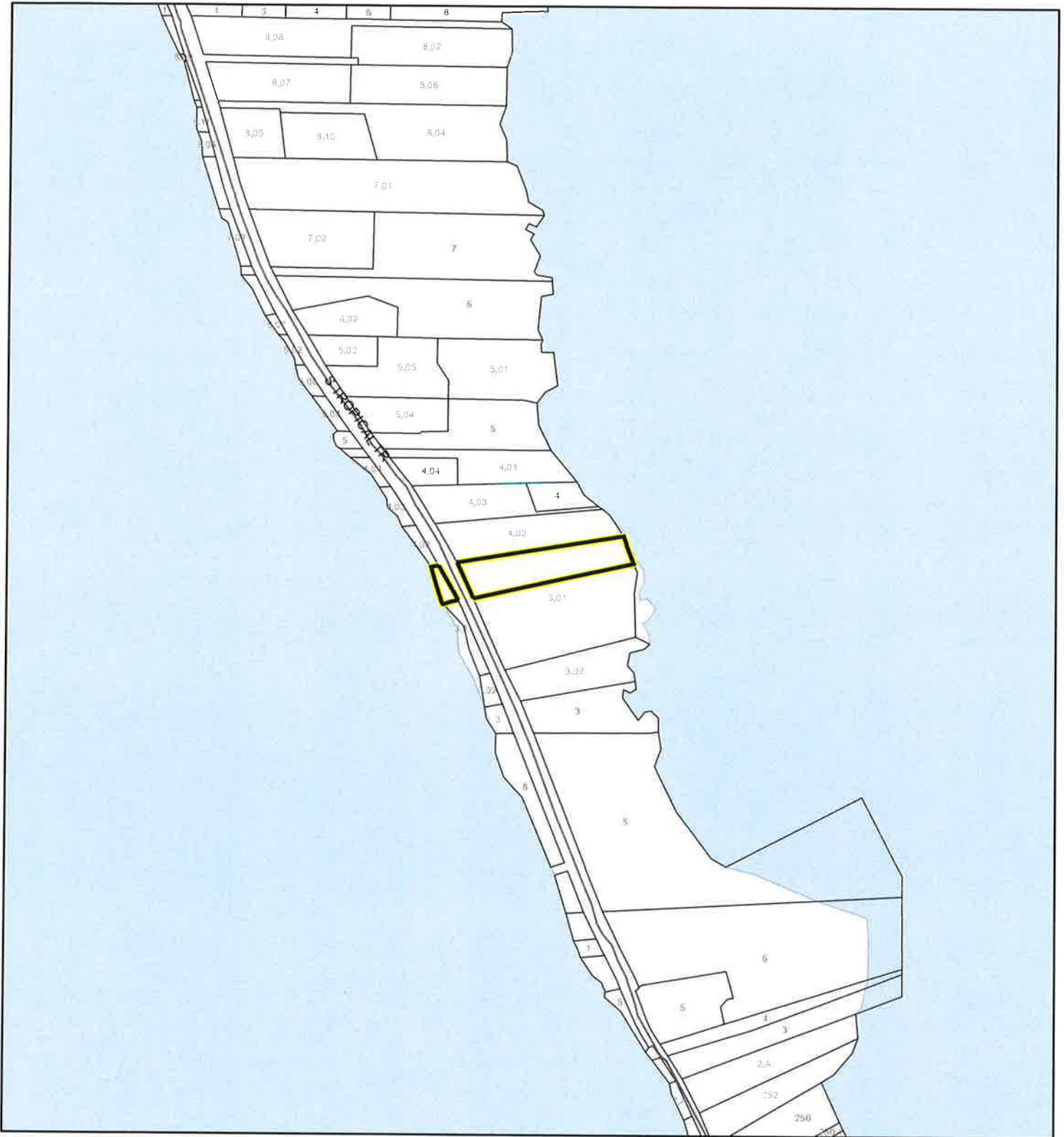
 60 Meters

 All Distances

EAGLE NESTS MAP

HEARTON, JOHN LENARD

23Z00077



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 10/25/2023

 Subject Property

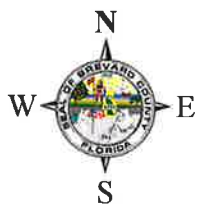
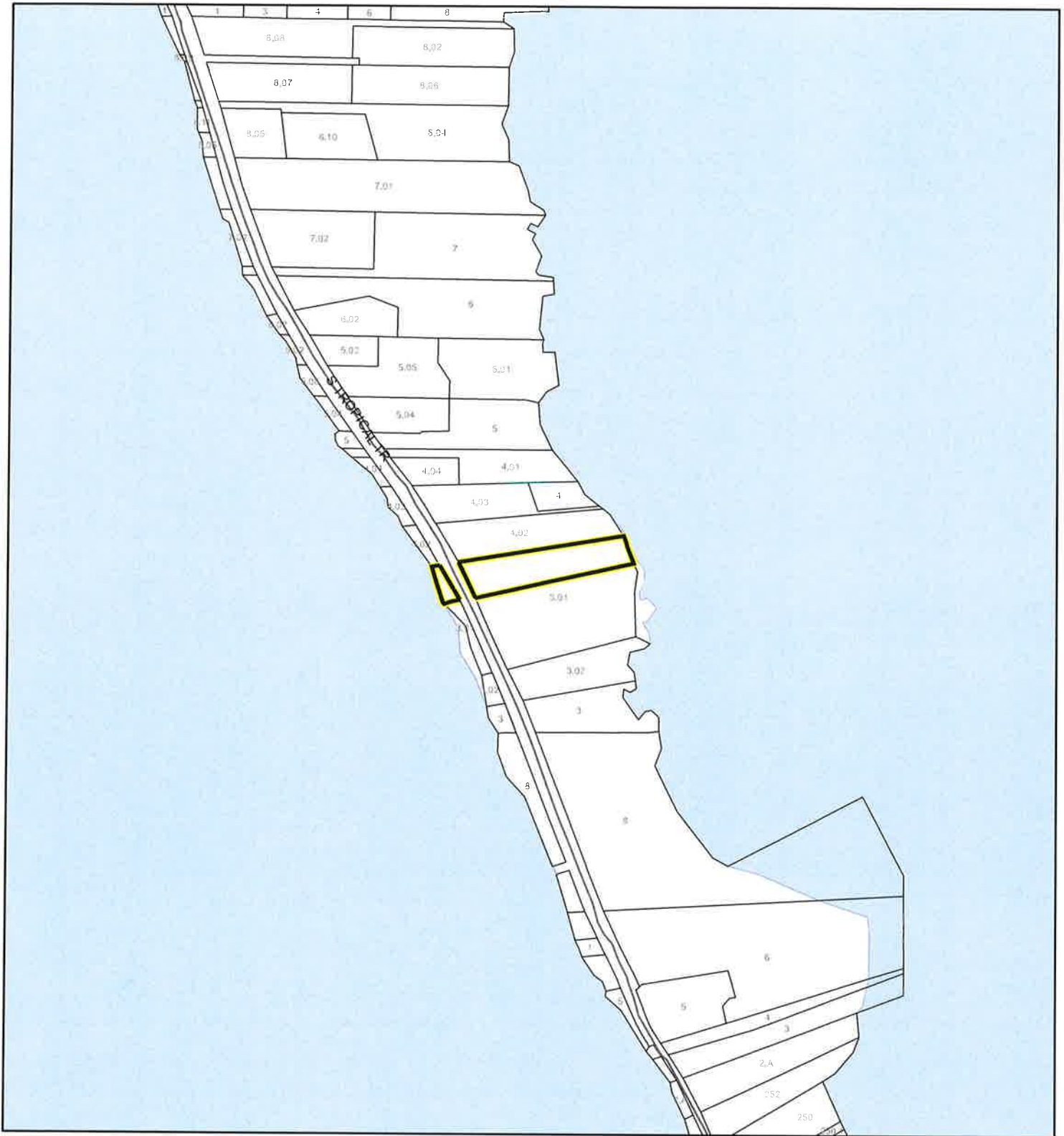
 Parcels

 Eagle Nests
FWS

SCRUB JAY OCCUPANCY MAP

HEARTON, JOHN LENARD

23Z00077




1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 10/25/2023

 Subject Property

 Parcels

 Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

HEARTON, JOHN LENARD

23Z00077



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 10/25/2023

SJRWMD FLUCCS Upland Forests

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

Subject Property

Parcels

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, January 8, 2024**, 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: Ron Bartcher (D1); Robert Sullivan (D2); Brian Hodgers (D2); Ben Glover (D3); Debbie Thomas (D4); Mark Wadsworth, Chair (D4); Logan Luse (D4 Alt); David Bassford (D5 Alt); and John Hopengarten (BPS).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Alex Esseesse, Deputy County Attorney; Billy Prasad, Deputy Director, Planning & Development; Paul Body, Senior Planner; and Kristen Champion, Special Projects Coordinator.

Excerpt of Complete Agenda

John Lenard Hearton (Dave Andrew Okonsky)

A change of zoning classification from EU (Estate Use Residential) to SEU (Suburban Estate Use Residential). The property is 1.17 acres located on the east side of S. Tropical Trail, approx. 0.36 mile south of Stockton Dr. (10190 S. Tropical Trail, Merritt Island) (23Z00077) (Tax Account 2633100) (District 4)

David Okonsky, 4285 Randon Lane, Merritt Island, stated his client, John Hearton, would like to rezone in order to build a single-family residence.

No public comment.

Motion by Ron Bartcher, seconded by Robert Sullivan to recommend approval of the change of zoning classification from EU to SEU. The motion passed unanimously.