



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.9.

8/5/2021

Subject:

395 East, LLC (Alex Berkovich) requests a change of zoning classification from SEU to EU. (21Z00018) (Tax Account 2511450) (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 SEU (Suburban Estate Use) to EU (Estate Use Residential).

Summary Explanation and Background:

The applicant is seeking a change of zoning classification from SEU (Suburban Estate Residential) to EU (Estate Use Residential) for the purpose of creating a 4-lot subdivision. The applicant has provided a conceptual nonbinding development plan containing 4-lots plus a remnant on the east side of South Courtney Parkway. The proposed subdivision does not depict access thru Curry Dell Lane. The proposed subdivision represents one lot accessing South Tropical Trail and the remainder of the lots accessing South Courtenay Parkway. While staff preliminarily reviewed the proposed plan, it shows that several waivers would be required by the Board. No formal binding review was performed.

In 2020 the previous owner applied for rezoning from AU to EU for a proposed 11-lot subdivision. The Board modified and approved the request as SEU in October 2020, which only permits three-lots.

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

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

The parcel can be serviced by City of Cocoa water. There is no sewer service in the area. The closest Brevard County sewer connection is 3.13 miles to the north. This area is within the Indian River Lagoon Nitrogen

Reduction Overlay and if not connected to sewer facilities will need to utilize advanced septic systems designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes.

On July 12, 2021, the Planning and Zoning Board heard the request and recommended 5:1 to approve the request with a BDP (Binding Development Plan) containing the following conditions: no more than four single-family residences; residences not to exceed two stories; no ingress/egress to Curry Dell Lane; utilization of the advanced septic systems; and a maximum height of structures not to exceed 35 feet.

The Board may wish to consider whether the request is consistent and compatible with the surrounding area and if the proposed BDP conditions mitigate the potential impacts of the request.

Clerk to the Board Instructions:

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

D.2. H.9.
new

District 2 Disclosures 08/05/21 BOCC Zoning Meeting

H.9. 395 East, LLC (Alex Berkovich) requests a change of zoning classification from SEU to EU (21Z00018) (Tax Account 2511450)

- 06/14/21 – Email received from Cristina Rosa (Non-Attorney Paralegal) requesting meeting on behalf of applicant
- 06/15/21 – Email from my office (Fritz) to Cristina Rosa (Non-Attorney Paralegal) requesting more information
- 06/16/21 – Email received from Alex Berkovich responding to my office's email from 6/15/21
- 06/16/21 – Email from Commissioner Lober to Alex Berkovich requesting clarification on a number of points raised by prior emails regarding this agenda item
- 06/17/21 – Email received from Alex Berkovich responding to my email from earlier that same day
- 06/17/21 – Email from Commissioner Lober to Alex Berkovich agreeing to set up meeting regarding this agenda item
- 06/17/21 – Email from Commissioner Lober to Attorney Kevin McCann requesting clarification on HOA / adjoining property owner position(s)
- 06/17/21 – Email from Attorney Kevin McCann to Commissioner Lober replying to his email from earlier that same date
- 06/18/21 – Email received from Alex Berkovich thanking Commissioner Lober for agreeing to meet
- 06/18/21 – Email from Commissioner Lober to Alex Berkovich acknowledging receipt of prior email and exchanging pleasantries
- 06/25/21 – Local resident (District 2) Robin Silvea emailed the D2 office expressing concerns about the rezoning proposal. Commissioner Lober responded the same day.
- 06/25/21 – Email from Commissioner Lober to local resident (District 2) Robin Silvea providing information in furtherance of her email from earlier that date

- 06/29/21 – Commissioner Lober and county staff met with applicant Alex Berkovich to discuss the proposal.
- 06/29/21 – Commissioner Lober sent an e-mail to Alex Berkovich, the contents of which addressed BDP conditions. Commissioner Lober shared this email with Kevin McCann.
- 06/30/21 – The D2 office received an e-mail from Kevin McCann indicating approval of proposed conditions. Commissioner Lober responded to Mr. McCann's email the same day.
- 07/08/21 – Local resident Scott Price emailed the D2 office expressing his concerns about the proposal. On 07/11/21, Commissioner Lober sent proposed BDP conditions to Mr. Price.
- 07/09/21 – Local resident D2 Robin Silvea emailed the D2 office expressing concerns about the proposal.
- 07/11/21 – On or about this date local resident Phil Barnes met with D2 commission staff to express his concern about the proposal.
- 07/27/21 – Local resident Scott Price emailed the D2 office expressing his concerns about the proposal.
- 08/02/21 – The D2 office received an e-mail from Alex Berkovich asking for any updates.
- 08/04/21 – Local resident Scott Price emailed the D2 office expressing his opinion about conditions needed for rezoning.
- 08/05/21 - Local resident (District 2) Robin Silvea emailed the D2 office (and all other commissioners) expressing concerns about the rezoning proposal. Commissioner Lober twice responded the same day.
- 08/05/21 - Immediately prior to the zoning meeting, Commissioner Lober spoke with Alex Berkovich regarding what to expect at the meeting.

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

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

Administrative Policy 2

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

Criteria:

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

Administrative Policy 3

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

Criteria:

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

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

Administrative Policy 4

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

Criteria:

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

Administrative Policy 5

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

Criteria:

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

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

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

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

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

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

CONDITIONAL USE PERMITS (CUPs)

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

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

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

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

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

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

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

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

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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Building A, Room 114
Viera, Florida 32940
(321)633-2070 Phone / (321)633-2074 Fax
<https://www.brevardfl.gov/PlanningDev>

STAFF COMMENTS

21Z00018

395 East LLC (Michael E. Maguire)

SEU (Agricultural Residential) to EU (Estate Use Residential)

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

Planning and Zoning Board: 07/12/2021

Board of County Commissioners: 8/05/2021

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	SEU	EU
Potential*	3-Single Family Units	4-Single Family Units
Can be Considered under the Future Land Use Map	Yes RES 3 Directive	Yes RES 3 Directive

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

Background and Purpose of Request

The applicant is seeking a change of zoning classification from SEU (Suburban Estate Residential) to EU (Estate Use Residential) for the purpose of creating a 4-unit subdivision. The proposed subdivision will consist of two flag lots; one located off South Tropical Trail and one located off S. Courtenay Parkway, along with two lots, one abutting the east side of S. Courtenay Parkway and one abutting the west side of S. Courtenay Parkway. The proposed subdivision will not have access thru Curry Dell Lane. The applicant did not provide staff with a proposed development plan or a Binding Development Plan (BDP) that would limit the development potential or offer other mitigations with this application.

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

In 2020 the previous property owner had applied for rezoning from AU to EU per zoning action **20Z00013**. This previous rezoning request to EU was for a proposed 11-unit subdivision. However, The Brevard County Commission modified and approved the zoning change from AU to SEU on October 1, 2020, which will only permit three-units.

Land Use

The subject property retains the Residential 3 Directive (RES 3 DIR) FLU designation. RES 3 DIR is a Future land Use the Board approved in the Central and South Merritt Island Study. The RES 3 DIR permits a density of three units per acre.

Applicable Land Use Policies

The parcel is located in the RES 3 DIR (Residential 3 Directive) of the Central and South Merritt Island Directive

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

The Board should evaluate the compatibility of this application within the context of the Board's Directive of the Future Land Use Element, outlined in the Central and South Merritt Island Study Area.

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

The subject property is vacant land and lies within the RES 3 DIR (Residential 3 Directive) Future Land Use designation. The abutting parcels and the surrounding parcels lie within the RES 3 DIR Future Land Use designation. The RES 3 DIR Future Land Use designation is compatible with the current SEU zoning. The proposed EU zoning is also considered consistent with the RES 3 DIR Future Land Use designation.

There has been no FLU change in the RES 3 DIR designation of the Central and South Merritt Island Study Area in the past 10 years. Existing development of the surrounding area is generally described as single-family homes on lots that are 0.33 acre or larger. There has been one new subdivision, Georgiana Reserve Subdivision, Plat Book 68, Page 90, approved in the immediate area on December 08, 2020.

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

The subject parcel is a remnant undeveloped SEU parcel surrounded by EU west of S. Courtenay Parkway and SEU (Suburban Estate Residential Use) zoning classification east of S. Courtenay Parkway.

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

The proposed 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. (A smaller lot size with the same living area requirement as SR)

Most of the subject property lies between South Tropical Trail and South Courtenay Parkway. This portion of the property is proposed to be split into three parcels. The portion accessed by S. Tropical Trail will be developed as a 1.0+ acre flag lot. The portion accessing S. Courtenay Parkway is proposed to be developed as two parcels, one a 1.0+ acre flag lot and one parcel abutting S. Courtenay Parkway. There is also a portion lying east of S. Courtenay Parkway extending to the Banana River which contains an estimated 1.24 acres. Most of the abutting residential lots are developed with single-family houses.

Surrounding Properties

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

There has been one recent zoning action within a half-mile of the subject property within the last three years.

On July 09, 2020, application **20PZ00015** changed the zoning classification from AU to EU. This parcel is located on the east side of South Tropical Trail abutting the subject parcel on the northwest of the parcel.

Environmental Constraints

Summary of Mapped Resources and Noteworthy Land Use Issues:

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

The subject parcel contains mapped NWI and SJRWMD wetlands, and hydric soils. Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For subdivisions greater than

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

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

The majority of the property located on the east side of S. Courtenay Parkway is located within the Coastal High Hazard Area (CHHA) as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates coastal high hazard areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute. The Coastal Management Element of the Comprehensive Plan, Objective 7.0, limits densities within the coastal high hazard zone and directs development outside of this area. Objective 7.0, Policy 7.6 states that existence of sewer, water, roadways or other public infrastructure shall not be considered adequate rationale for an increase in zoning density or intensity within the coastal high hazard area.

The entire parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If adequate sewer for the development is not available, then the use of alternative septic systems designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required.

Preliminary Concurrency

The closest concurrency management segment to the subject property is S. Courtenay Parkway, between S. Tropical Trail to Banana Boulevard, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of D, and currently operates at 62.05% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.07%. With the maximum development potential from the proposed rezoning, the corridor is anticipated to operate at 62.12% of capacity daily (LOS D). The proposal is not anticipated to create a deficiency in LOS.

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

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

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

For Board Consideration

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

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

Item # 21Z00018

Applicant: Berkovich for Maguire

Zoning Request: SEU to EU

Note: Applicant wants to develop a 4-lot subdivision

P&Z Hearing Date: 07/12/21; **BCC Hearing Date:** 08/05/21

Tax ID No: 2511450

- This is a preliminary review based on best available data maps reviewed by the Natural Resources Management Department (NRM) and does not include a site inspection to verify the accuracy of the mapped information.
- In that the rezoning process is not the appropriate venue for site plan review, specific site designs submitted with the rezoning request will be deemed conceptual. Board comments relative to specific site design do not provide vested rights or waivers from Federal, State or County regulations.
- **This review does not guarantee whether or not the proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations.**

Summary of Mapped Resources and Noteworthy Land Use Issues:

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

The subject parcel contains mapped NWI and SJRWMD wetlands, and hydric soils. Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For subdivisions greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) including avoidance of impacts, and 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design or permit submittal.

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

The majority of the property located on the east side of S. Courtenay Parkway is located within the Coastal High Hazard Area (CHHA) as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates coastal high hazard areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute. The Coastal Management Element of the Comprehensive Plan, Objective 7.0, limits densities within the coastal high hazard zone and directs development outside of this area. Objective 7.0, Policy 7.6 states that existence of sewer, water, roadways or other public infrastructure shall not be considered adequate rationale for an increase in zoning density or intensity within the coastal high hazard area.

The entire parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If adequate sewer for the development is not available, then the use of alternative septic systems designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required.

Land Use Comments:

Wetlands

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

Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For subdivisions greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 62-3694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) including avoidance of impacts, and 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design or permit submittal.

Aquifer Recharge Soils

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

Coastal High Hazard Area

The majority of the property located in the east side of S. Courtenay Parkway is located within the CHHA as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates coastal high hazard areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute. The Coastal Management Element of the Comprehensive Plan, Objective 7.0, limits densities within the coastal

high hazard zone and directs development outside of this area. Objective 7.0, Policy 7.6 states that existence of sewer, water, roadways or other public infrastructure shall not be considered adequate rationale for an increase in zoning density or intensity within the coastal high hazard area.

Floodplain

A large portion of the property located on the east side of S. Courtenay Parkway is mapped as being within the floodplain as identified by the Federal Emergency Management Agency as shown on the FEMA Flood Zones Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Additional impervious area increases stormwater runoff that can adversely impact nearby properties unless addressed on-site. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

Surface Waters of the State

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

Indian River Lagoon Nitrogen Reduction Overlay

The entire parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If adequate sewer for the development is not available, then the use of alternative septic systems designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required. Per Section 62-3666 (14), all onsite sewage treatment and disposal systems (OSTDS) shall be set back at least 100 feet from the buffer establishment line, the safe upland line, mean high water line or ordinary high-water line.

Protected and Specimen Trees

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

Protected Species

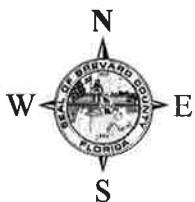
Information available to NRM indicates that federally and/or state protected species may be present on the property. Prior to any plan, permit submittal, or development activity, including land clearing,

the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service, as applicable.

LOCATION MAP

395 EAST, LLC

21Z00018



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.

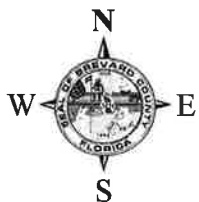
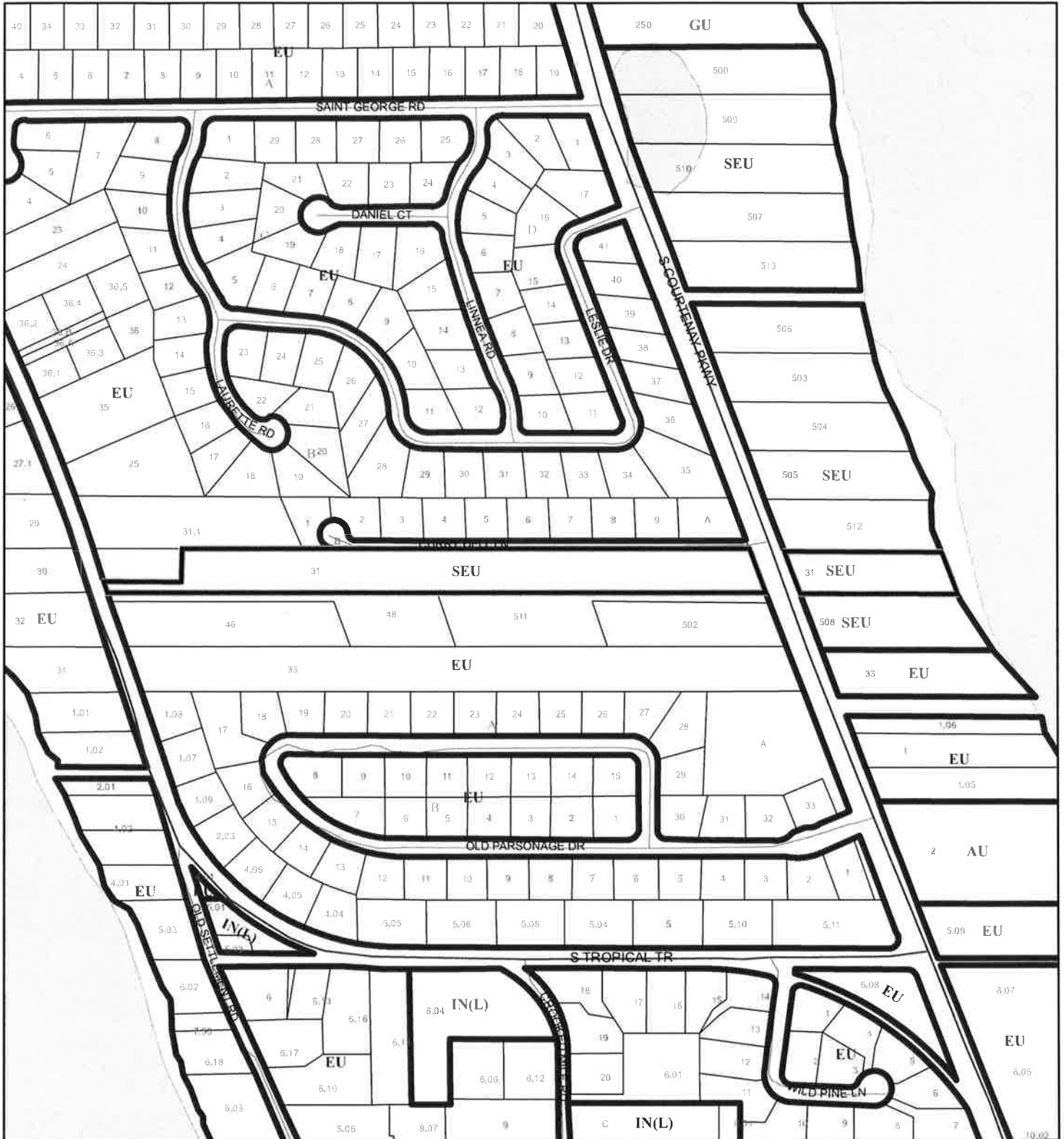
Produced by BoCC - GIS Date: 5/10/2021

Buffer
Subject Property

ZONING MAP

395 EAST, LLC

21Z00018



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: 5/10/2021

— Subject Property

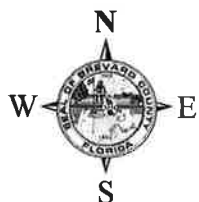
□ Parcels

□ Zoning

FUTURE LAND USE MAP

395 EAST, LLC

21Z00018



1:4,800 or 1 inch = 400 feet

Subject Property

Parcels

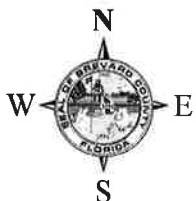
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 5/10/2021

AERIAL MAP

395 EAST, LLC

21Z00018



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2020

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Produced by BoCC - GIS Date: 5/10/2021

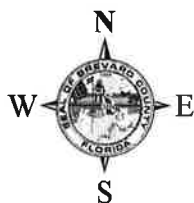
 Subject Property

 Parcels

NWI WETLANDS MAP

395 EAST, LLC

21Z00018



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/10/2021

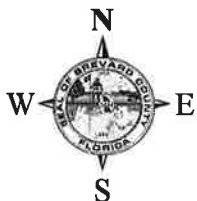
National Wetlands Inventory (NWI)

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

395 EAST, LLC

21Z00018



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/10/2021

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

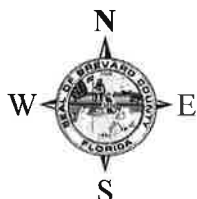
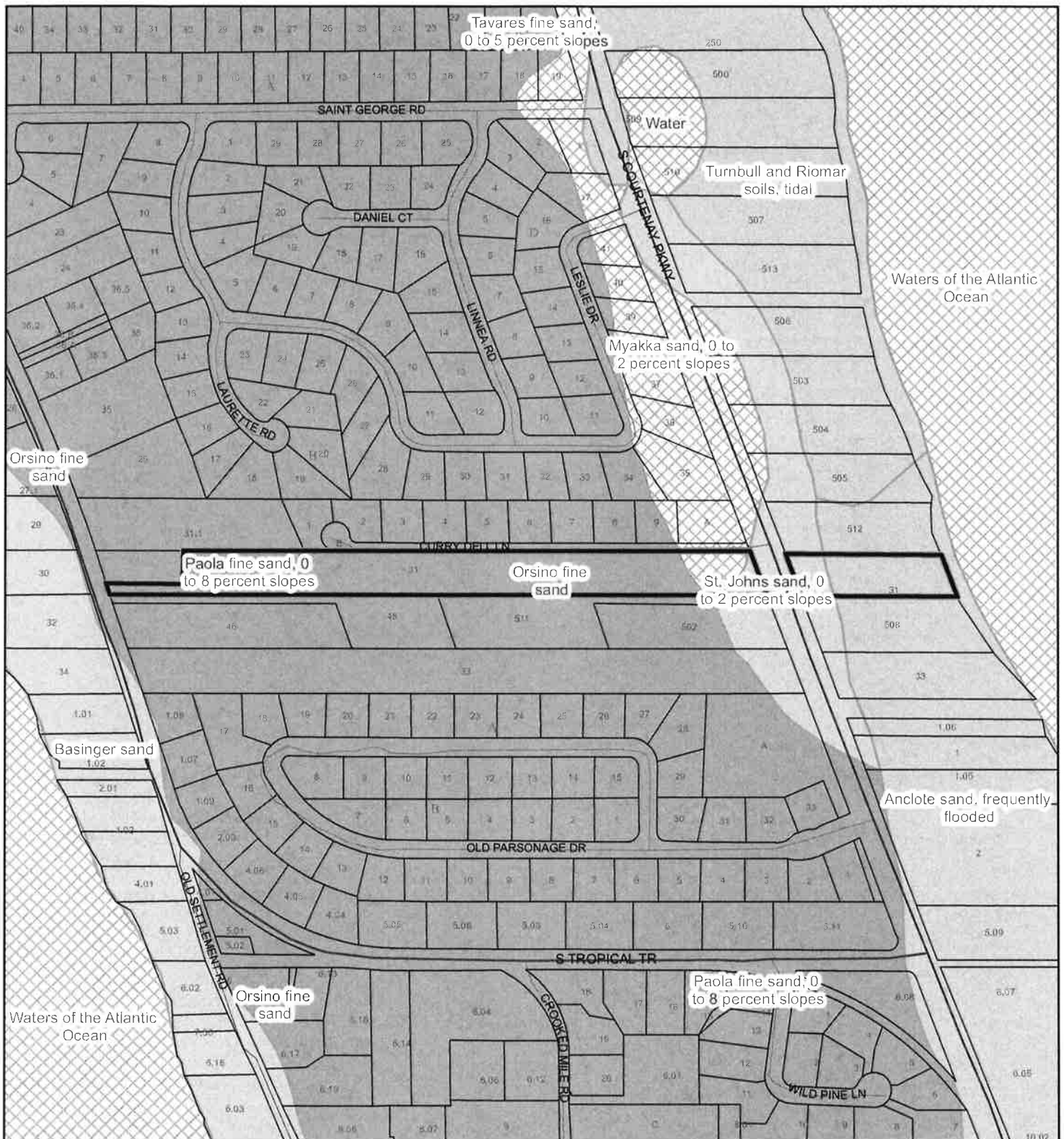
Subject Property

Parcels

USDA SCSSS SOILS MAP

395 EAST, LLC

21Z00018



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/10/2021

USDA SCSSS Soils

	Aquifer and Hydric
	Aquifer
	Hydric
	None

Subject Property

Parcels

FEMA FLOOD ZONES MAP

395 EAST, LLC

21Z00018



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/10/2021

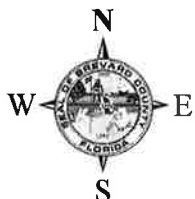
FEMA Flood Zones

A	AO	X
AE	Open Water	
AH	VE	
Subject Property	Parcels	

COASTAL HIGH HAZARD AREA MAP

395 EAST, LLC

21Z00018



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/10/2021

— Subject Property

□ Parcels

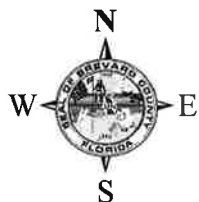
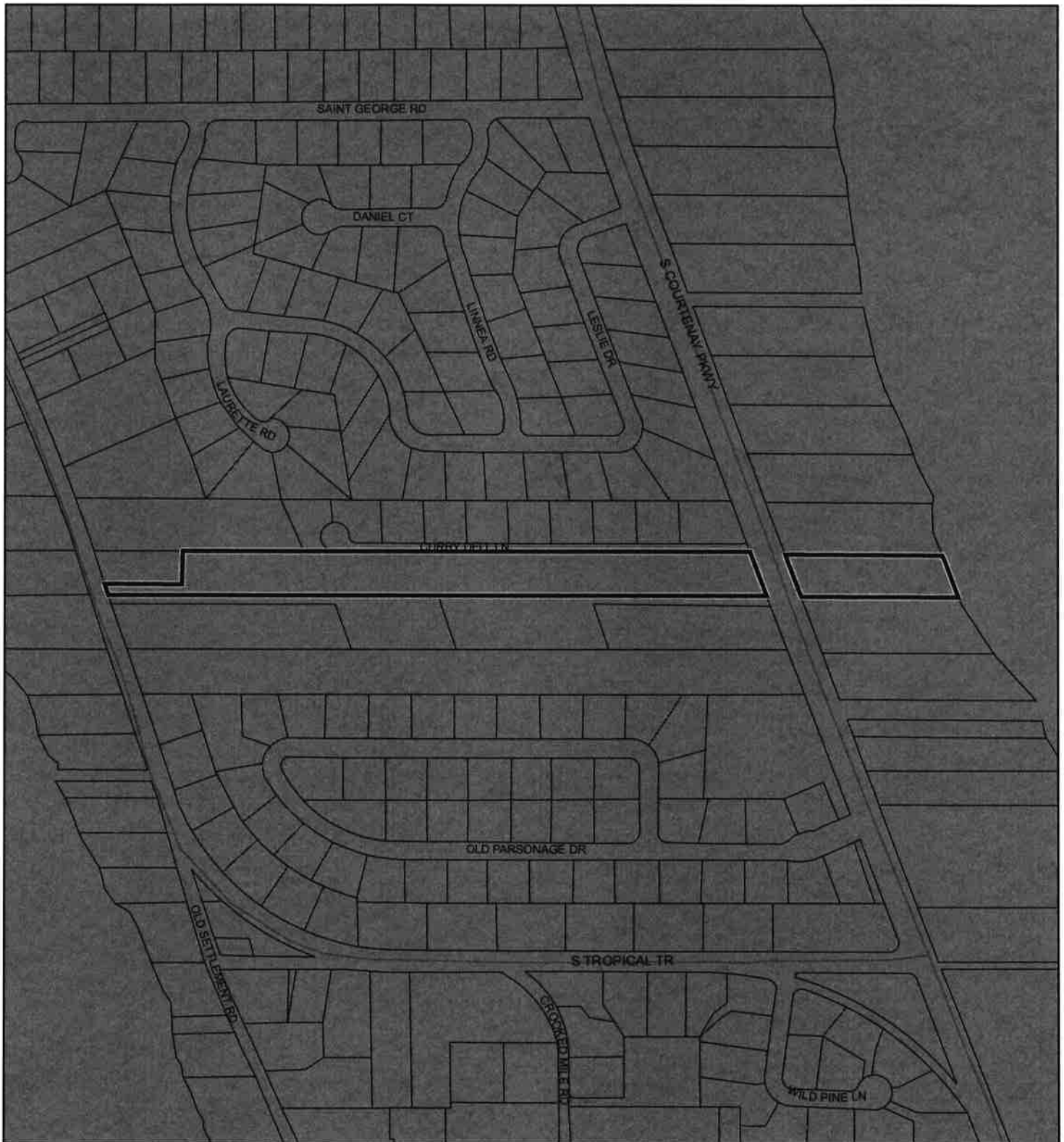
Coastal High Hazard Area

■ SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

395 EAST, LLC

21Z00018



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/10/2021

 Subject Property

 Parcels

Septic Overlay

 40 Meters

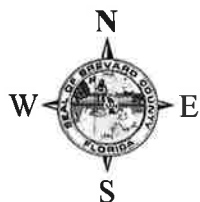
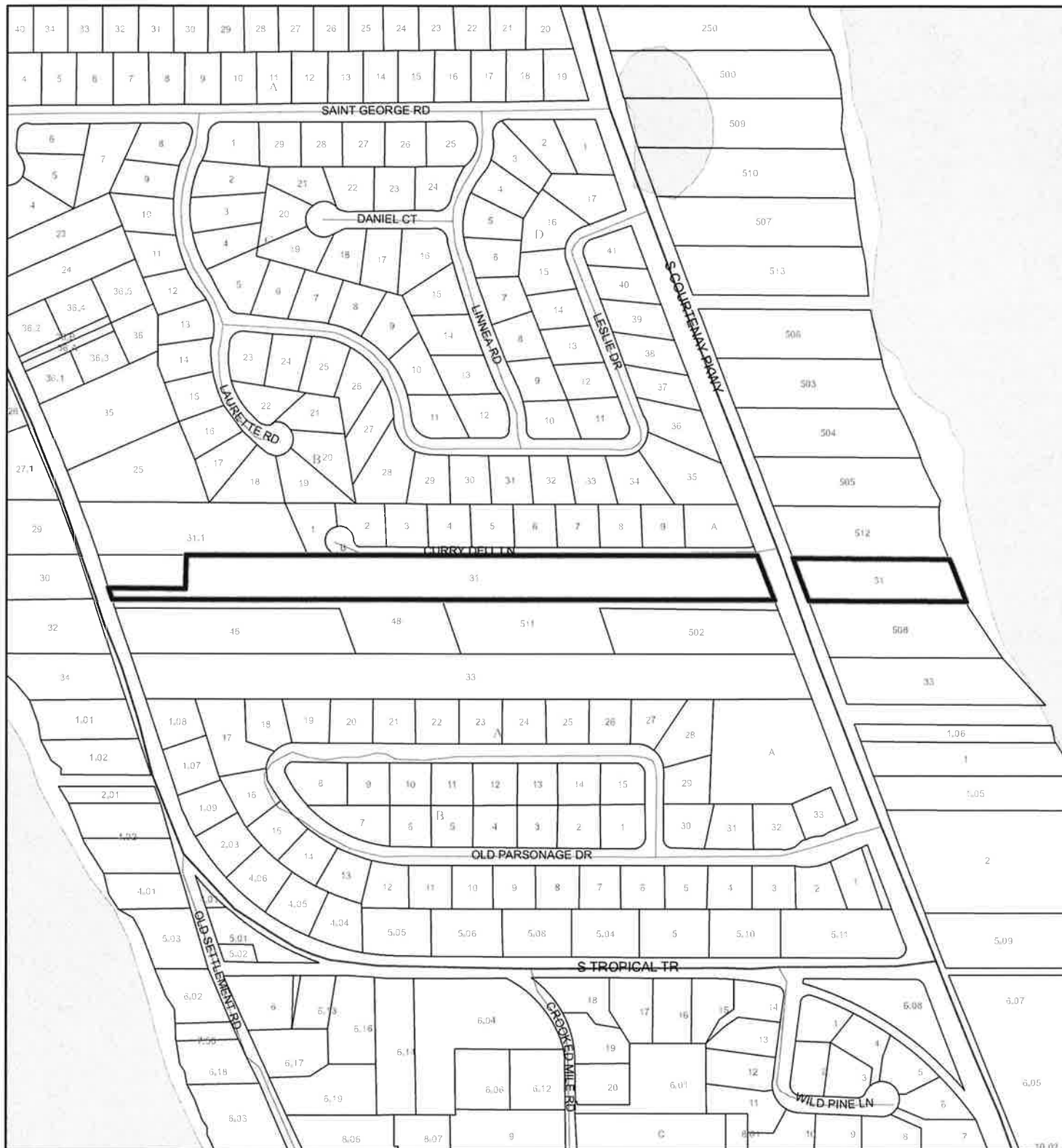
 60 Meters

 All Distances

EAGLE NESTS MAP

395 EAST, LLC

21Z00018



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/10/2021

 Subject Property

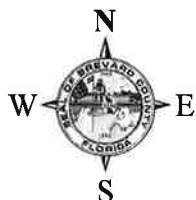
 Parcels

 Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

395 EAST, LLC




21Z00018



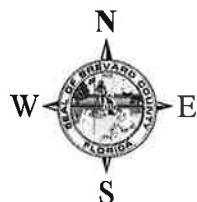
1:4,800 or 1 inch = 400 feet

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: 5/10/2021

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

21Z00018



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.

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

— Subject Property Parcels



BOARD OF COUNTY COMMISSIONERS

Planning and Development

2725 Judge Fran Jamieson Way

Building A, Room 114

Viera, Florida 32940

321-633-2070

Application for Zoning Action, Comprehensive Plan Amendment, or Variance

Applications must be submitted in person. Please call 321-633-2070 for an appointment at least 24 hours in advance. Mailed, emailed, or couriered applications will not be accepted.

PZ # 21Z00018Existing FLU: RES3 DIR Existing Zoning: SEUProposed FLU: NA Proposed Zoning: EU**PROPERTY OWNER INFORMATION**

If the owner is an LLC, include a copy of the operating agreement.

MAGUIRE, MICHAEL E 395 EAST, LLC

Name(s)

Company

18 Marina Isles Blvd 304

Indian Harbour Bch

FL

32937

Street

City

State

Zip Code

3216268186

Email

Phone

Cell

APPLICANT INFORMATION IF DIFFERENT FROM OWNER:☐

Attorney

☐

Agent

☒

Contract Purchaser

☐

Other

Alex Berkovich

Name(s)

Company

6065 S. Tropical Trail Merritt Island

FL

32952

Street

City

State

Zip Code

alex@drberkovich.com

9544481919

Email

Phone

Cell

APPLICATION NAME

- ☐ Large Scale Comprehensive Plan Amendment (CP) (greater than 10 acres)
- ☐ Small Scale Comprehensive Plan Amendment (CP) (less than 10 acres)
- ☐ Text Amendment (CP): Element _____
- ☐ Other Amendment (CP): _____
- ☒ Rezoning Without CUP (RWOC)
- ☐ Combination Rezoning and CUP (CORC)
- ☐ Conditional Use Permit (CUP)
- ☐ Binding Development Plan (BDP)
- ☐ Binding Development Plan (BDP) (Amendment)
- ☐ Binding Development Plan (BDP) (Removal)
- ☐ Variance(s) (V) (building permits will not be approved until 30 days after the date the order is signed)
- ☐ Administrative Approval of Setbacks, Lot Size, or Accessory Structures
- ☐ Administrative Approval of Flag Lot or Easement
- ☐ Administrative Approval of On-Premises Consumption of Alcoholic Beverages for Restaurants / Snack Bars
- ☐ Other Action: _____

Acreage of Request: 6.33

Reason for Request:

Re-zone the property from SEU to EU

The undersigned understands this application must be complete and accurate prior to advertising a public hearing:

- ☐ I am the owner of the subject property, or if corporation, I am the officer of the corporation authorized to act on this request.
- ☒ I am the legal representative of the owner of the subject property of this application. (Notarized Authorization to Act must be submitted with application)
- ☐ An approval of this application does not entitle the owner to a development permit.
- ☐ For Variances, I understand that building permits will not be approved until 30 days after the date the order is signed, in order to comply with the appeal procedure.
- ☐ I certify that the information in this application and all sketches and data attached to and made part hereof are true and accurate to the best of my knowledge.

[Signature]
Signature of Property Owner or
Authorized Representative

5/15/21
Date

State of Florida

County of Brevard

Subscribed and sworn before me, by ☒ physical presence or ☐ online notarization,

this 5th day of, May, 20 21, personally appeared

Alex Berkovich, who is personally known to me or produced

DLB621000691880 as identification, and who did / did not take an oath.

Carrie Sue Martin
Notary Public Signature

Seal



Office Use Only:

Accela No. 20Z 06018 Fee: 1,197.00 Date Filed: 5-5-2021 District No. 2

Tax Account No. (list all that apply) 2511450

Parcel I.D. No.

25 36 24 00 31
Twp Rng Sec Sub Block Lot/Parcel

Planner: PB Sign Issued to: Code Enforcement Notification Radius: 500

MEETINGS

DATE

TIME

☒ P&Z

July 12, 2021

3:00 p.m.

☐ PSJ Board

☐ NMI Board

☐ LPA

☐ BOA

☒ BCC

August 5, 2021

5:00

Wetland survey required by Natural Resources ☐ Yes ☒ No Initials P.B.

Is the subject property located in a JPA, MIRA, or 500 feet of the Palm Bay Extension?

☐ Yes ☒ No

If yes, list _____

Location of subject property: Southwest corner of South Courtenay Parkway and Curry Dell Lane.

Description of Request: Rezone from SEU to EU

Notice to Applicants for Change of Land Use

The Planning and Zoning Office staff will be preparing a package of written comments concerning your request. These comments will be provided to the Planning and Zoning Board and Board of County Commissioners. The comments will address the following:

The current zoning of the property along with its current development potential and consistency with the Brevard County Comprehensive Plan use and density restrictions.

The proposed zoning of the property along with its development potential and Consistency with the Board County Comprehensive Plan use and density restrictions.

The proposal's impact on services, such as roads and schools.

The proposal's impact upon hurricane evacuation, if applicable.

Environmental factors.

Compatibility with surrounding land uses.

Consistency with the character of the area.

You may place your own written comments regarding these items into the record. Up to two typewritten pages can be included in the package if received 10 working days prior to the Planning and Zoning Board hearing. You are not required to provide written comments. *An Applicant presentation to the Planning and Zoning Board is required regardless of written submittals.* The board may approve the requested classification or a classification which is more intensive than the existing classification, but less intensive than the requested classification.

Staff comments will be available approximately one week prior to the Planning and Zoning Board hearing. These comments will be made available to you at that time. In order to expedite receipt of staff's comments, please provide an e-mail address or fax number below. Alternatively, a copy of staff's comments will be mailed via the U.S. Postal Service.

NOTES:

- ☐ If your application generates public opposition, as may be expressed in letters, petitions, phone calls, testimony, etc., you are advised to meet with concerned parties in an effort to resolve differences prior to the BCC taking final action on the request; therefore, you are encouraged to meet with affected property owners prior to the public hearing by the Planning & Zoning Board/Local Planning Agency (P&Z/LPA). During the course of conducting the public hearing, if the P&Z/LPA finds the application is controversial, and the applicant has not met with affected property owners, the item shall be tabled to the next agenda to allow such a meeting to take place. If the item is controversial, despite the applicant's efforts to meet with affected property owners, the P&Z/LPA may include, in their motion, a requirement to meet with interested parties again prior to the BCC public hearing. The BCC may also table your request in order for you to meet with interested parties, if this has not occurred prior to the public hearing before the BCC. If you need assistance to identify these parties, please contact the Planning & Zoning Office.
- ☐ BCC approval of a zoning application does not vest a project nor ensure issuance of a permit. At the time of permit application, land development regulations and concurrency-related level of service standards must be met.

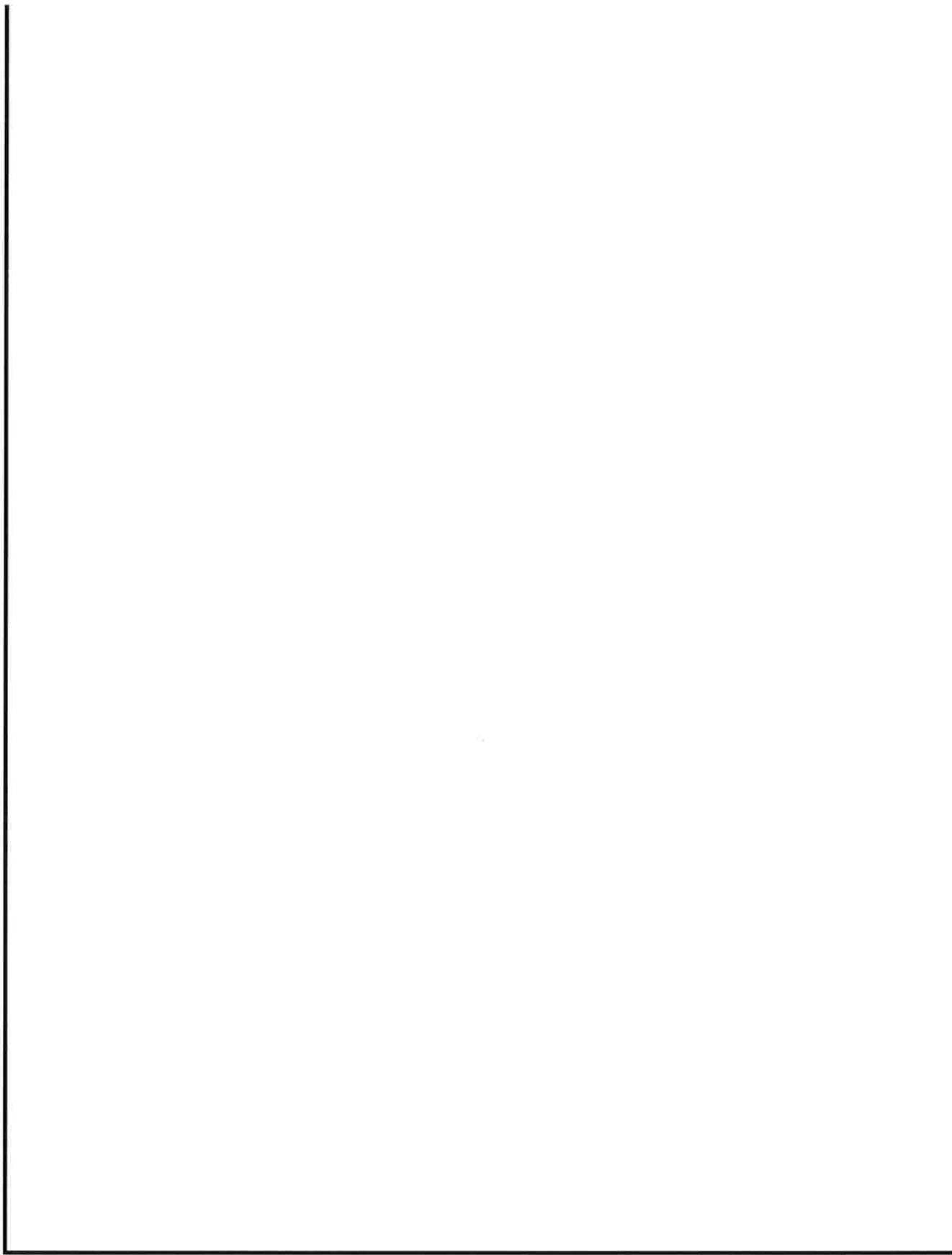
Please transmit staff's comments via:

Alexa.DaBERKOVICH@com or () or U.S. Mail
e-mail address fax number

Yes/No

I have received a copy of this notice:


(APPLICANT SIGNATURE)



From: [Calkins, Tad](#)
To: alex@drberkovich.com
Cc: [Ball, Jeffrey](#); [Commissioner, D2](#); [Van, Fritz](#); [Jones, Jennifer](#)
Subject: FW: Alex Berkovich 21Z00018 Proposed Concept Plan
Date: Wednesday, July 14, 2021 2:08:51 PM
Attachments: [6-3 LOT.pdf](#)
[image001.png](#)

Mr. Berkovich,

Below are staff's comments on the concept plan depicting the proposed lot layout which will require numerous waivers. The waivers are beyond staff's administrative authority and will need the Board of County Commissioners' approval.

If I can be of further assistance please let me know.

Tad

From: Ball, Jeffrey
Sent: Tuesday, July 13, 2021 4:10 PM
To: Calkins, Tad <tad.calkins@brevardfl.gov>
Subject: Alex Berkovich 21Z00018 Proposed Concept Plan

Tad, zoning staff and fire staff has reviewed the above referenced concept plan and offer the following comments:

- Section 62-2805(c)(3) requires all lots in a minor subdivision to have fee simple access on a public or private street. How will the access easement through Lots 1 and 2 be used? Lot 3 appears to be a corridor lot, so maybe this easement is not necessary.
Waiver would be required.
- Section 62-2887(b) requires all lots to front on a public or private street dedicated and/or accepted by the board.
Waiver would be required.
- Section 62-2887(d) allows two corridor lots in a minor subdivision. The proposed plan shows three.
Waiver would be required.
- Section 62-2887(d) requires each lot to have a minimum area of one acre, excluding the access corridor.
Waiver would be required.
- Section 62-2887(d) requires each requires each access corridor to be 25 feet in width.

The corridors for Lots 2 and 3 are 19.75 feet wide.

Waiver would be required.

- Section 62-2887(d) allows no more than two access corridors side by side. Would Public Works require a separation between the two corridors and Curry Dell Lane?

Waiver would be required.

- At a minimum the plan must comply with the Florida Fire Prevention Code 1:18. Including, but not limited to, providing roadways that are a minimum 20 feet wide. Roadways over 150 feet long require adequate area for fire apparatus to turn around. A water supply for firefighting of at least 1,000 gallons per minute within 750 feet of each home, measured as a truck would drive. Homes over 5,000 square feet under roof may require additional water supply and/or fire sprinkler systems in accordance with NFPA 13D.



Jeffrey Ball, AICP
PLANNING & DEVELOPMENT DEPARTMENT
Planning and Zoning Manager
2725 Judge Fran Jamieson Way, Building A-114
Viera, Florida 32940
Direct Line: (321) 350-8273
Office Line: (321) 633-2070
e-mail: Jeffrey.Ball@brevardfl.gov

County web site: [Brevard County Planning and Development \(brevardfl.gov\)](http://BrevardCountyPlanningandDevelopment(brevardfl.gov))

Disclaimer:

This office can only provide zoning and comprehensive plan information. You may wish to contact other County agencies to fully determine the development potential of this property. This letter does not establish a right to develop or redevelop the property and does not constitute a waiver to any other applicable land development regulations. At the time of development, this property will be subject to all such regulations. Under Florida law, e-mail addresses are public records. If you do not

want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, July 12, 2021**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

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

Board members present were: Ron Bartcher (D1); Brian Hodgess (D2); Mark Wadsworth, Chair (D4); Joe Buchanan (D4 Alt); Peter Filiberto (D5); and David Bassford (D5 Alt).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; George Ritchie, Planner III; Paul Body, Planner II; Kyle Harris, Planner I; Abigail Jorandby, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

At the outset of the meeting, David Bassford announced he had a conflict of interest on Items H.1., H.7., and H.8., and would need to abstain from voting.

Excerpt of Complete Minutes

395 East, LLC (Alex Berkovich)

A change of zoning classification from SEU (Suburban Estate Use) to EU (Estate Use Residential). The property is 6.33 acres, located on the southwest corner of Curry Dell Lane and S. Courtenay Pkwy. (No assigned address. In the Merritt Island area.) (21Z00018) (Tax Account 2511450) (District 2)

Alex Berkovich, 6065 S. Tropical Trail, Merritt Island, stated the board saw this property approximately one year ago and the request was approved with only one member in opposition. The request a year ago was AU to EU. Unfortunately, at the County Commission meeting there were many neighbors who were opposed to the change because Mr. McGuire wanted to develop an 11-lot subdivision, and although he was allowed to do that, the neighbors came out in large numbers and stated they believed it would be a construction nightmare. He said Mr. McGuire wanted to use the neighbors' private street to access the property. He said he's met with the HOA president and vice president on two occasions, and their biggest contention was they would not allow their private street to be used as access points. He stated he assured the HOA president that he will not use the private street as an entrance point; he will use S. Tropical Trail from one end, and S. Courtenay Parkway from the other. He said he also assured the HOA he will not build more than four homes on the property. He explained that his goal is to have two properties for his parents and kids, and then sell the two others on S. Tropical Trail and S. Courtenay Pkwy. He stated the board will probably hear people say they do not want development, but he's not building 11 homes, he's building four homes, if even possible based on certain situations. He stated he is asking the board to allow him to go to the zoning that was requested a year ago. He noted he met with the County Attorney, the District 2 Commissioner, and staff two weeks ago and they are all in agreement that 11 homes is not a reasonable number, but he believes four homes is a number that is manageable if it can be done, and that is his request today.

Mark Wadsworth asked if he owns the property across the street on S. Courtenay Parkway. Mr. Berkovich replied he is still negotiating that property.

Mr. Wadsworth asked if he wants four lots total, or four lots between the S. Tropical Trail and S. Courtenay Parkway. Mr. Berkovich replied the S. Courtenay Parkway lot that is on the water is not in consideration, and he wants four lots on the dry side, which would be west of S. Courtenay. Mr. Berkovich continued that the District 2 Commissioner suggested that he would be comfortable, if he

does buy the lot on the east side of S. Courtenay, that it not be developed, and it would stay zoned SEU. He reiterated that he is only asking for the rezoning on the dry portion, which is between S. Tropical Trail and S. Courtenay Parkway.

Paul Body stated the lot on the east side of S. Courtenay Parkway is included with the application to change the zoning from SEU to EU, and it is part of the same tax account number.

Mr. Berkovich stated when he met with the County Attorney and the Commissioner, they felt it better to keep that lot SEU and develop it because the lot cannot be expanded. He noted he is not in contract yet on that property; he is only in contract with Mr. McGuire on the dry portion of 5.5 acres.

Mr. Body clarified the property was advertised to include the portion east of S. Courtenay Parkway, and whether it is buildable or not, it was advertised with the property under consideration today. Mr. Berkovich replied in that case, his request for EU would be for the whole property, including the piece on the east side of S. Courtenay Parkway.

Jeffrey Ball suggested the board table the request to allow staff to make sure the legal description submitted by the applicant included the piece on the east side of S. Courtenay Parkway, and if it wasn't, the maps need to be amended. He said staff's understanding is that the piece on the east side of S. Courtenay Parkway was included in the overall property, and if Mr. Berkovich does not have owner authorization for that piece, that would be something staff needs to look at in further detail.

Peter Filiberto stated if it is all under one tax number, it would be all one property. Mr. Body replied yes, it is one legal description that includes the portion on the east side of S. Courtenay Parkway.

Mr. Ball stated staff needs to look at the documentation that Mr. Berkovich submitted with his application to see if there is a difference in what he is allowed to do on one side of the street versus the other.

Mr. Filiberto confirmed that if Mr. Berkovich was to purchase the property it would be the total property highlighted on the map. Mr. Ball replied yes, the way the request was advertised, it is staff's understanding that the whole property depicted on the map is part of this application.

Mr. Hodgers asked staff if it is possible Mr. Berkovich is mistaken and doesn't understand the way his contract is written. Mr. Ball replied possibly, but without having more time outside of this meeting, staff can't verify if those statements are accurate or not, and he doesn't feel comfortable moving forward without having sufficient time to review that part of the application.

Mr. Hodgers stated he understands, but if he's under contract to buy this and it already is just one single lot, then it could be that he is just making a mistake and he doesn't realize that lot is tied to it. Mr. Ball stated the issue is owner authorization for the property.

Public comment.

Phillip Barnes, 3700 S. Tropical Trail, stated his property is next to the subject property, and he also owns and lives in 1245 Leslie Drive, Merritt Island, which is next to Tom Curry's property, who used to own Curry Dell Lane. He stated he is opposed to the request because the Commissioners already voted on it and approved it as SEU. He said he is okay with two houses being built, but now the applicant wants four houses, and six houses might be next. He said when the property was originally

up for sale by the original owner, he tried to buy it because he wanted to save it because there is nothing left on South Merritt Island. He said he wrote four letters and the owner never responded.

Mr. Wadsworth asked if Mr. Barnes would you be okay with four houses. Mr. Barnes replied no, he would not, because the applicant told the original owner that it was unbuildable, which is how he bought it for \$150,000. He said the people who live there need to be respected, and two houses are fine, but four houses is not. He said how dare the Commissioner do little things on the side, and he's tried to talk to him, but he won't talk. He noted there are gopher turtles on the property that are having hatchlings right now, 65 years old or older. He said there is enough animal life on the property that development will be stopped by the State.

Mr. Wadsworth pointed out that even if the zoning was approved the owner still has to jump through major hoops.

Mr. Barnes stated he has already stopped surveyors because they took his survey stakes and moved them three feet onto his property, and he told them the next time he sees them there he's going to shoot them. He said he's done it twice at two different surveyors. He noted that John Campbell was the last surveyor who surveyed it, so he knows that is right.

Mr. Ball stated staff has reviewed the application submitted by Mr. Berkovich and it includes both the east and west sides of S. Courtenay Parkway.

Robin Silvea, 3800 S. Courtenay Parkway, Merritt Island, stated in reference to the lot on the east side of S. Courtenay, she knows something about that because she had to research it when she bought her lot. She said Mr. Curry subdivided the neighborhood in 1988 and there is an ordinance that says if anything contained wetlands, or big portions of wetlands, if it was not subdivided prior to 1988, it has to be at least five acres to build. If the board makes the decision today to all of a sudden allow subdividing, he can say he doesn't want that piece of property, and then it's its own parcel, and if it's its own parcel and under five acres and it's not subdivided, that is leaving the door open for something in the future. She stated as far as subdividing, there are ordinances in place for this specific reason, to protect the wetlands. She said her property was subdivided prior to 1988, under five acres, but it was before '88 so she was able to mitigate the wetlands. After 1988 any building must be done on the least intrusive land, which would be on the west side, so it has to stick together. She mentioned Curry Dell Lane, which is the HOA road currently in litigation. She asked the board to table the request until the court ruling on the road is secure, and then make a sensible decision.

Bill Jefferson, 3750 S. Tropical Trail, Merritt Island, stated he has two acres that directly abut the subject property. At the last Commission meeting the determining factor was that more septic tanks between the two rivers were not needed.

Motion by Joe Buchanan to table the request for further investigation and clarification. The motion died for lack of a second.

Mr. Ball advised that before the board is a rezoning application, and its recommendation should be based on two things: consistency with the comprehensive plan and compatibility with the surrounding area. He said today's meeting is not the process for subdividing property.

Mr. Berkovich stated all he is asking for today is a zoning change that was before this same board and approved a year ago. As far as going through hoops, he will do whatever he has to, and it will give him a chance to work with the neighbors to deal with the turtles and the roadway.

Mr. Wadsworth asked Mr. Berkovich to confirm he wants four units on the entire subject property. Mr. Berkovich replied yes, and he doesn't want any more. Mr. Wadsworth asked if he wanted three units on one side and one on the other side. Mr. Berkovich replied four units on one side.

Ron Bartcher stated the board needs to essentially insist on a BDP because otherwise it is approving the same thing that it approved the last time and was rejected by the County Commission. If the board doesn't include a BDP to limit the development, it is a waste of time.

Mr. Hodgers asked, if the request was approved with a BDP for four lots on the portion of property between S. Tropical Trail and S. Courtenay Parkway, and in the future he wants to build on the east side, he would have to come back before the board. Mr. Ball replied yes, he would have to come back to the board amend the BDP.

Mr. Hodgers explained to Mr. Berkovich that he would be agreeing to four on one side, or three with one on the other side, and once he agrees to it it's binding, so he won't be able to change it without going through this process again.

Mr. Berkovich stated he understands that.

Mr. Wadsworth asked if Mr. Berkovich wants to put a unit on the portion of the property east of S. Courtenay Parkway. Mr. Berkovich replied he would prefer not to, he would rather leave it for the residents to enjoy, his family and whomever buys the other two lots.

Robert Robb, engineer for the applicant, stated today they are only asking for a change of zoning. There are a lot of issues that need to be dealt with as far as wetlands. He said Mr. Berkovich would like a maximum of four units, but once they get through County Code, FDEP, and St. John's, it might end up being three units or two units. He believes the property that fronts the water is 100% wetlands and would end up going with one of the lots on the center portion of the property. He said regarding the Curry Dell Lane litigation, it is his understanding that once a subdivision reaches approximately 70% ownership of residents, the HOA takes over and all of the land is switched over to the HOA. In this case, he believes the road right-of-way never got switched over and the owner has passed away, so now there are legal issues with how to transfer.

Mr. Berkovich stated he is not involved in any litigation with anyone, and he has no problem ensuring that he will never use Curry Dell Lane for any kind of ingress/egress. He said he respects everyone who attended the meeting today and he's sure they want to see a nice park, but this is land that is allowed to be subdivided in the future.

Mr. Wadsworth stated approval would be with a BDP possibly to also include the ingress/egress.

Abby Jorandby noted that under the Code, a BDP is supposed to be voluntary from the applicant. She mentioned the prior meeting with Mr. Berkovich and the Commissioner.

Mr. Berkovich stated he agreed to everything that was requested, no entrance from Curry Dell Lane.

Ms. Jorandby stated in the prior discussion with the Commissioner, the concerns were that there would be no more than four single-family residences, no more than two stories, and no roadway access to the north of the property. She asked Mr. Berkovich if he recalls agreeing to that. Mr. Berkovich replied yes, Curry Dell Lane would be a private street and he would not have access.

Ms. Jorandby pointed out that he would be in a septic overlay, so he would have to have the advanced septic system. Mr. Berkovich replied yes, and he believes the Commissioner did not want any attached homes, or additional living quarters.

Ms. Jorandby stated the other condition is a maximum of 35 feet in height for the homes, which is per Code, but that is what was discussed with the Commissioner at the prior meeting with staff.

Mr. Wadsworth asked Mr. Berkovich if he agrees with all of those items. Mr. Berkovich replied yes, he agrees.

Mr. Bartcher asked if the parcel is going to be subdivided so that the property can be sold as individual lots, or is Mr. Berkovich going to retain ownership of the entire thing when he builds the four houses. Mr. Berkovich replies he does not know yet, but he thinks he will have to subdivide it at some point.

Mr. Body advised the board that if he is subdividing the property into more than two lots he has to go through the site planning process.

Mr. Bartcher stated if subdivided, he would assume two of the lots would have to be flag lots. Mr. Berkovich replied yes, that's correct.

Mr. Bartcher asked staff how wide the flag stem has to be.

Mr. Berkovich stated he believes he will need to request waivers, and he will have to go down to 20 feet for the flag stem, but he believes the requirement is 25 feet.

Mr. Bartcher asked staff if the waivers would be part of the BDP, or would that be the other board that grants the waivers. Mr. Body replied he would have to get the waivers through site planning when he goes through the platting process. Mr. Bartcher stated if the property is 140 feet wide, then the two stems could each be 20 feet, for which he would have to get an exception.

Mr. Body noted the Code calls for a corridor lot to have a 25-foot access stem. Mr. Bartcher stated if it's 25 feet, then that would mean the lots would be too small because the lots need to be 100 feet wide. Mr. Body advised Mr. Berkovich would have to go through site planning to be able to get everything he is requesting.

Mr. Robb stated that is why they are asking for a maximum of four lots, because they have to go through the process to see if they can get four; it may only be three lots.

Mr. Body pointed out that another requirement is that a corridor lot has to have at least an acre of land, less the flag stem portion.

Mr. Bartcher stated he is not comfortable with four lots in the center section, but three lots seems to be a reasonable compromise.

Mr. Wadsworth asked Mr. Berkovich if he would be interested in three lots. Mr. Berkovich replied if he owns the other portion of the lot, which he doesn't know if he does or doesn't, then he will have the option to build the fourth home there in the future if possible. He said he doesn't know if the zoning is the right avenue to discuss how many lots he can put on the property.

Ms. Jorandby advised the board that this is a rezoning application, so if the applicant voluntarily brings forward a BDP, that would be something to consider, but the motion will either be to recommend approval or denial to the Board of County Commissioners. Right now, the applicant is requesting the rezoning with a BDP with those four conditions. It is something voluntary from the applicant, so if he's not willing to drop it down to three lots, that is something to take into consideration, but it's not the actual motion that this board will make.

Mr. Hodggers asked, if he decides to build on the east side and make that one of the lots, would the BDP have to include that language, or is it just strictly four lots for the entire parcel. Ms. Jorandby replied, what was discussed was four lots for the entire parcel, since it is an application for the entire parcel.

Mr. Berkovich stated originally, he was going to build four on the center portion. He said he cannot imagine building on wetlands on the east portion. He stated he is willing to work with staff and the board, but this board approved the same request a year ago with the potential for 11 lots. As for how the lots get split, staff and his engineer will work it out. He said he doesn't think it's fair for the residents to come and discuss a different subject matter and change the board's mind the way they did with the Commission because from what he understands from a legal point of view he cannot see this not being approved as the EU zoning that was requested and approved by this board last year. He stated if staff and himself cannot work out a reasonable way with four lots, then he will be stuck with three lots.

Mr. Hodggers stated in light of what was just discussed, with the east side property in play, he would vote to approve it with a BDP for four units.

Mr. Berkovich stated if he is able to put for units in the center portion, he will not be able to put anything on the east side of S. Courtenay Parkway, but it will depend on if it's actually feasible and if waivers will reduce the flag lots to 20 feet as opposed to 25 feet. He said the subject has become less of a zoning hearing and more of a political hearing; not on the board's side, but on his neighbors' side.

Mr. Ball noted it's not whether staff and Mr. Berkovich can work out whether he can build four lots or not, it is whether Mr. Berkovich can demonstrate to staff that he complies with the Code requirements. He stated there is a Code that regulates development and he has to meet that, and if he doesn't, then there are some provisions that allow for him to request a waiver from the Code, and that is granted by the Board of County Commissioners. He said approval of waivers depends on the section of Code; if it is the Subdivision Code, a waiver would be determined by the Board of County Commissioners; there are some zoning provisions that would go to the Board of Adjustment, but those would relate to zoning setbacks, lot width, and lot depth. Depending on what waiver Mr. Berkovich would be requesting determines which board he goes to.

Mr. Bassford stated Mr. Berkovich has said he will agree to a BDP, but there is not a BDP in the agenda package.

Mr. Ball stated at this stage a BDP is kind of a work in progress, so a BDP is not required to be submitted at this point. The advisory board can recommend that Mr. Berkovich submit a BDP and list the conditions, and then it's up to the Board of County Commissioners to acknowledge that and make that part of its motion.

Ms. Jorandby stated she would like to make sure the applicant agrees that it would be a BDP with the following conditions: No more than four single-family residences; the residences will not exceed two stories; there will be no roadway access to the north, only access from S. Courtenay Parkway and S. Tropical Trail; will utilize the advanced septic systems; and a maximum height structures of 35 feet. Those are the conditions we discussed with the Commissioner at the prior meeting.

Mr. Berkovich stated he agrees to the conditions.

Motion by Brian Rodgers, seconded by Ron Bartcher, to approve the requested change of zoning classification from SEU to EU, with a BDP containing the following conditions: no more than four single-family residences; the residences will not exceed two stories; no ingress/egress to Curry Dell Lane; developer/owner will utilize the advanced septic systems; and a maximum height of structures not to exceed 35 feet. The motion passed 5:1, with Peter Filiberto voting nay.

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

James and Cynthia Gregg
1235 Old Parsonage Dr.
Merritt Island FL 32952
Subject: Zoning ID #21Z00018

We have read the subject notice requesting a change in Current zoning from Suburban Estate Residential to Estate Use Residential. Although you do not describe the difference, I'm sure the developer wants to pack the 6.33 acres with most homes possible with the zoning change. We are **OPPOSED** to the proposed change since the infrastructure is already over built. Courtenay Parkway a single lane Rd, and the only viable method to travel North to 520 or South to Pineda is already maxed out. At times there's long waits to pull out of our subdivision and others due to bumper to bumper traffic. Heaven help us if a resident needs emergency fire/ambulance since Courtenay Pkwy has no shoulders for cars to make way. The original zoning was appropriate when it was established and especially appropriate now. Please Do your job and keep existing zoning regardless of the pressure that maybe placed upon you.

Very respectfully,

Handwritten signatures of James and Cynthia Gregg in black ink. The signature of James is on top and Cynthia is below it.

James and Cynthia Gregg