



AGENDA REPORT
December 6, 2018

Public Hearing, Re: Jessica R. and Stephen F. Paglialonga request a change of zoning classification from AU and EU, to all EU. (18PZ00102) (District 2)

SUBJECT:

Public Hearing, Re: Jessica R. and Stephen F. Paglialonga request a change of zoning classification from AU (Agricultural Residential) and EU (Estate Use Residential), to all EU. The property is 1.33 acres, located on the north side of Gails Way, approximately 0.20 miles west of North Tropical Trail. (470 Gails Way, Merritt Island) (18PZ00102) (District 2)

FISCAL IMPACT:

None.

DEPT/OFFICE:

Planning and Development

REQUESTED ACTION:

It is requested that the Board of County Commissioners conduct a public hearing to consider the requested change of zoning classification from AU and EU to all EU.

SUMMARY EXPLANATION and BACKGROUND:

The applicants are seeking a change of Zoning classification from AU & EU to all EU for the purpose of constructing a detached guesthouse with a kitchen. The portion of the 1.33 acre parcel that currently retains the EU zoning is 0.9 acres in size.

A guesthouse without a kitchen could be constructed with the existing zoning on the EU portion of the property if a Conditional Use Permit were obtained, but the code allows for both the construction of a guesthouse with a kitchen and eliminates the need to obtain a CUP if the parcel is at least one acre in size. Rezoning the .43 acres of AU to EU will meet this criteria.

Guesthouses are not perceived within the zoning code as a separate residence and are subject to conditions within the zoning code that regulate that the guesthouse should not exceed 50 percent of the size of the principal structure; that the structure shall be used for the accommodation of family members, temporary guests (maximum six months), or servants only; and that the structure shall not be used for rental purposes.

The Board may wish to consider whether the proposed use is consistent and compatible

with surrounding development.

On November 8, 2018, the North Merritt Island Dependent Special District Board heard the request and recommended denial with a vote of 5:1.

ATTACHMENTS:

Description

- ▣ **Administrative Policies**
- ▣ **Staff Comments**
- ▣ **Revised Staff Comments 11-20-18**
- ▣ **Maps**
- ▣ **FYI Covenants and Restrictions**
- ▣ **NMI Minutes - November 8, 2018**

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

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

Administrative Policy 2

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

Criteria:

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

Administrative Policy 3

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

Criteria:

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

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

Administrative Policy 4

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

Criteria:

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

Administrative Policy 5

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

Criteria:

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

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

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

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

CONDITIONAL USE PERMITS (CUPs)

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

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

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

(c) *General standards of review.*

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

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

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

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

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

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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

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

RESOLUTION NO. 18PZ00102

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

WHEREAS, JESSICA R. AND STEPHEN F. PAGLIALONGA – request a change of classification from AU (Agricultural Residential) and EU (Estate Use Residential), to all EU, on property described as Tax Parcel 529, as recorded in ORB 8042, Pages 1024 – 1025, of the Public Records of Brevard County, Florida. (1.33 acres) Located on the north side of Gails Way, approx. 0.20 miles west of N. Tropical Trail. (470 Gails Way, Merritt Island); and

Section 34, Township 23 S, Range 36 E, and,

WHEREAS, a public hearing of the North Merritt Island Dependent Special District Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the North Merritt Island Dependent Special District Board recommended that the application be denied; and,

WHEREAS, the Board, after considering said application and the North Merritt Island Dependent Special District 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; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of classification from AU and EU, to all EU, be APPROVED, and that zoning classification relating to the above described property be changed to EU. The Planning & 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 December 6, 2018.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida



by Kristine Isnardi, Chair
Brevard County Commission

As approved by Brevard County Commission on December 6, 2018.

ATTEST:



SCOTT ELLIS, CLERK
(SEAL)

(NMI Hearing – November 8, 2018)

Please note: A Conditional Use Permit will generally expire on the three year anniversary of its approval if the use is not established prior to that date. Conditional Use Permits for Towers and Antennas shall expire if a site plan for the tower is not submitted within one (1) year of approval or if construction does not commence within two years of approval. A PUD 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.

REZONING REVIEW WORKSHEET

18PZ00102

Commission District # 2

Hearing Dates: NMI 11/08/18 BCC 12/06/18

Owner Name: JESSICA R. AND STEPHEN F. PAGLIALONGA

Request: AU and EU to all EU

Subject Property:

Parcel ID# 23-36-34-00-529
 Tax Acct.# 2318395
 Location: North side of Gails Way, approx. 0.20 mile west of N. Tropical Trail
 Address: 470 Gails Way, Merritt Island
 Acreage: 1.33

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	AU & EU	EU
Potential*	1 SF unit	1 SF unit
Can be Considered under FLU MAP	YES Residential 4	YES Residential 4

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

	ADT	PM PEAK		
Trips from Existing Zoning	10	1	Segment Number	349C
Trips from Proposed Zoning	10	1	Segment Name	N Tropical TR Hall - Crisaffuli
Maximum Acceptable Volume (MAV)	15,600	1,404	Acceptable LOS	E
Current Volume	1,796	162	Directional Split	0.5
Volume With Proposed Development	1,796	162	ITE CODE	
Current Volume / MAV	11.51%	11.51%	210	
Volume / MAV with Proposal	11.51%	11.51%		
Current LOS	C	C		
OS With Proposal	C	C		
Findings	<input checked="" type="checkbox"/> Non-Deficiency	<input type="checkbox"/> Deficiency		

Background & Purpose of Request

The owners are seeking a change of Zoning classification on their developed single-family lot from Agricultural Residential (AU) & Estate Use Residential (EU) to all EU Zoning classification for the purpose of developing a detached guesthouse with a kitchen. The AU portion of the lot is the original zoning from 1958. The EU zoning was approved under **Z-3382** on September 5, 1973. The parcel is over an acre in area and the zoning and Future Land Use (FLU) designation, once rezoned, allows the site to have a kitchen within the guesthouse pursuant to Section 62-1932 (c) of Brevard County Code. The code section states: A guesthouse or servants' quarters may contain kitchen facilities on parcels of at least one acre in size where the resulting density of the lot including the guesthouse or servants' quarters is consistent with the zoning regulation and comprehensive plan density designation.

If the zoning change is approved, a conditional use permit (CUP) request will not have to be heard at a public hearing and can be approved administratively, as the parcel is greater than 1 acre in size. Should the Board deny this request, the property owner would not be allowed to place a kitchen within the proposed guesthouse.

Land Use Compatibility

The subject property retains the Residential 4 (RES 4) Future Land Use (FLU) designation.

FLUE Policy 1.7 – addresses the Residential 4 land use designation affords an additional step down in density from more highly urbanized areas. This land use designation permits a maximum density of up to four (4) units per acre, except as otherwise may be provided for within this element. The existing AU and EU zoning classifications are both consistent with this land use designation.

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 - 8 of the Future Land Use Element, as outlined on pages 2 through 5 of the Administrative Policies.

Environmental Constraints

Please refer to comments provided by the Natural Resource Management Department.

Applicable Land Use Policies

There have been no zoning actions within the last eleven years within ½ mile of this site. The zoning within this part of North Merritt Island has been rather stable, consisting mostly of EU, EU-1, RR-1 and AU zonings in the area.

This property is one lot of a sixteen (16) lot unrecorded subdivision. Although this lot is not wide enough to subdivide, it appears at least one lot lying south of Gail's Way has been divided in order to create an extra parcel. The EU Zoning classification is an estate single-family residential zoning classification. The minimum lot size is 15,000 square feet with a minimum lot width and depth of 100 feet. The minimum living area is 2,000 square feet.

From a historical perspective, it appears that when this subdivision was proposed, the northern portion of the lot retained the original AU zoning. A letter was found in zoning file **Z-3382** signed by the then Planning and Zoning Director stating: "The Brevard County Planning & Zoning Department approves of the tentative plat of Country River Estates Unit #2, subject to the rezoning of the South 150 feet of the subdivision from the present AU classification to the desired EU classification." This letter is dated June 10, 1974. It appears that the intent was to leave the northern portion of the site under the original AU zoning. The AU Zoning classification permits single-family residences and agricultural pursuits on 2 ½ acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing

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of animals, fowl and beekeeping. This parcel abuts AU zoning to the north and to the east and west it abuts EU and AU zoning. To the south across the right-of-way of Gail's Way is EU zoning.

For Board Consideration

The applicants are seeking a change of Zoning classification from AU & EU to all EU for the purpose of constructing a detached guesthouse with a kitchen. The Board may wish to consider whether the proposed use is consistent and compatible with surrounding development.

If the zoning change is approved, a conditional use permit (CUP) request will not have to be heard at a public hearing and can be approved administratively, as the parcel is greater than 1 acre in size. Should the Board deny this request, the property owner would not be allowed to place a kitchen within the proposed guesthouse.

The Board may wish to consider as a future action the administrative rezoning of the adjacent properties located along the north side of Gail's Way to make the parcels retain a consistent Zoning classification east and west of this parcel from North Tropical Trail to the Indian River.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT
 Rezoning Review**

SUMMARY

Item #: 18PZ00102	Applicant: Stephen & Jessica Paglialonga
Zoning Request: AU & EU to EU	
NMI Hearing Date: 11/8/2018	BCC Hearing Date: 12/06/2018

This is a preliminary review based on environmental maps available to the Natural Resources Management Department (NRM) at the time of this review and does not include a site inspection to verify the accuracy of this information. This review does not ensure whether or not a proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations. In that this process is not the appropriate venue for site plan review, specific site designs that may be submitted with the rezoning will be deemed conceptual and any comments or omissions relative to specific site design do not provide vested rights or waivers from these regulations, unless specifically requested by the owner and approved by the Board of County Commissioners. If the owner has any questions regarding this information, he/she is encouraged to contact NRM prior to submittal of any development or construction plans.

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

Comments:

**This review relates to the following property: Twp. 23, Rng. 36, Sec. 34;
 Tax ID No. 2318395**

The subject parcel contains mapped hydric soils (Copeland-Bradenton-Wabasso complex limestone substratum), along the western portion of the property as shown on the USDA Soil Conservation Service Soils Survey Map; an indicator that the wetlands may be present on the property. Per Section 62-3694(c)(2), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. Application of the one-unit-per-five acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property as defined in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) and 62-3696 of the Wetland Protection ordinance. The applicant is encouraged to contact NRM at 321-633-2016 prior to any land clearing activities, site planning or permit submittal.

A portion of the property is mapped as being within the floodplain as identified by the Federal Emergency Management Agency, and 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."

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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.

The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Per Section 62-4331(3), the purpose and intent of the ordinance is to encourage the protection of heritage Specimen Trees. 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. Land clearing is not permitted without prior authorization by NRM. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

Due to septic moratorium, use of an alternative septic system designed to specifically provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required if applicable.

REZONING REVIEW WORKSHEET
Revised 11/20/18

18PZ00102

Commission District # 2

Hearing Dates: NMI 11/08/18 BCC 12/06/18

Owner Name: JESSICA R. AND STEPHEN F. PAGLIALONGA

Request: AU and EU to all EU

Subject Property:

Parcel ID# 23-36-34-00-529

Tax Acct.# 2318395

Location: North side of Gails Way, approx. 0.20 mile west of N. Tropical Trail

Address: 470 Gails Way, Merritt Island

Acreage: 1.33

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	AU & EU	EU
Potential*	1 SF unit	1 SF unit
Can be Considered under FLU MAP	YES Residential 4	YES Residential 4

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

	ADT	PM PEAK		
Trips from Existing Zoning	10	1	Segment Number	349C
Trips from Proposed Zoning	10	1	Segment Name	N Tropical TR Hall - Crisaffuli
Maximum Acceptable Volume (MAV)	15,600	1,404	Acceptable LOS	E
Current Volume	1,796	162	Directional Split	0.5
Volume With Proposed Development	1,796	162	ITE CODE	
Current Volume / MAV	11.51%	11.51%	210	
Volume / MAV with Proposal	11.51%	11.51%		
Current LOS	C	C		
OS With Proposal	C	C		
Findings	<input checked="" type="checkbox"/> Non-Deficiency		<input type="checkbox"/> Deficiency	

Background & Purpose of Request

The owners are seeking a change of Zoning classification on their developed single-family lot from Agricultural Residential (AU) & Estate Use Residential (EU) to all EU Zoning classification for the purpose of developing a detached guesthouse with a kitchen. The AU portion of the lot is the original zoning from 1958. The EU zoning was approved under **Z-3382** on September 5, 1973. The parcel is over an acre in area and the zoning and Future Land Use (FLU) designation, once rezoned, allows the site to have a kitchen within the guesthouse pursuant to Section 62-1932 (c) of Brevard County Code. The code section states: A guesthouse or servants' quarters may contain kitchen facilities on parcels of at least one acre in size where the resulting density of the lot including the guesthouse or servants' quarters is consistent with the zoning regulation and comprehensive plan density designation.

If the zoning change is approved, a conditional use permit (CUP) request will not have to be heard at a public hearing and can be approved administratively, as the parcel is greater than 1 acre in size. Should the Board deny this request, the property owner would not be allowed to place a kitchen within the proposed guesthouse.

Land Use Compatibility

The subject property retains the Residential 4 (RES 4) Future Land Use (FLU) designation.

FLUE Policy 1.7 – addresses the Residential 4 land use designation affords an additional step down in density from more highly urbanized areas. This land use designation permits a maximum density of up to four (4) units per acre, except as otherwise may be provided for within this element. The existing AU and EU zoning classifications are both consistent with this land use designation.

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 - 8 of the Future Land Use Element, as outlined on pages 2 through 5 of the Administrative Policies.

Environmental Constraints

Please refer to comments provided by the Natural Resource Management Department.

Applicable Land Use Policies

There have been no zoning actions within the last eleven years within ½ mile of this site. The zoning within this part of North Merritt Island has been rather stable, consisting mostly of EU, EU-1, RR-1 and AU zonings in the area.

This property is one lot of a sixteen (16) lot unrecorded subdivision. Although this lot is not wide enough to subdivide, it appears at least one lot lying south of Gail's Way has been divided in order to create an extra parcel. The EU Zoning classification is an estate single-family residential zoning classification. The minimum lot size is 15,000 square feet with a minimum lot width and depth of 100 feet. The minimum living area is 2,000 square feet.

From a historical perspective, it appears that when this subdivision was proposed, the northern portion of the lot retained the original AU zoning. A letter was found in zoning file **Z-3382** signed by the then Planning and Zoning Director stating: "The Brevard County Planning & Zoning Department approves of the tentative plat of Country River Estates Unit #2, subject to the rezoning of the South 150 feet of the subdivision from the present AU classification to the desired EU classification." This letter is dated June 10, 1974. It appears that the intent was to leave the northern portion of the site under the original AU zoning. The AU Zoning classification permits single-family residences and agricultural pursuits on 2 ½ acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing

of animals, fowl and beekeeping. This parcel abuts AU zoning to the north and to the east and west it abuts EU and AU zoning. To the south across the right-of-way of Gail's Way is EU zoning.

For Board Consideration

The applicants are seeking a change of Zoning classification from AU & EU to all EU for the purpose of constructing a detached guesthouse with a kitchen. The portion of the 1.33 acre parcel that currently retains the EU zoning is 0.9 acres in size. A guesthouse without a kitchen could be constructed with the existing zoning classifications on the EU portion of the property with a Conditional Use Permit, but the code allows for both the construction of a guesthouse with a kitchen and eliminates the need to obtain a CUP if the parcel is at least one acre in size. Rezoning the .43 acres of AU to EU will meet this criteria.

If the zoning change is approved, a conditional use permit (CUP) request will not have to be heard at a public hearing and can be approved administratively, as the parcel is greater than 1 acre in size. Should the Board deny this request, the property owner would not be allowed to place a kitchen within the proposed guesthouse.

Guesthouses are not perceived within the zoning code as a separate residence and are subject to the following minimum requirements:

- 1) The structure shall contain no kitchen facilities except where consistent with paragraph (c) below.
- 2) The structure shall be a detached accessory structure located to the rear of the principal structure and shall not be attached to any other accessory structure.
- 3) The structure shall not exceed the maximum size permitted for accessory structures in the applicable zoning classification. Where there is no maximum, the structure shall not exceed 50 percent of the size of the principal structure.
- 4) The structure shall be used for the accommodation of family members, temporary guests (maximum six months), or servants only.
- 5) The structure shall not be used for rental purposes.
- 6) The structure shall be set back a minimum of ten feet from the side and rear lot lines.

The Board may wish to consider whether the proposed use is consistent and compatible with surrounding development.

The Board may wish to consider as a future action the administrative rezoning of the adjacent properties located along the north side of Gail's Way to make the parcels retain a consistent Zoning classification east and west of this parcel from North Tropical Trail to the Indian River.

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Rezoning Review

SUMMARY

Item #: 18PZ00102	Applicant: Stephen & Jessica Paglialonga
Zoning Request: AU & EU to EU	
NMI Hearing Date: 11/8/2018	BCC Hearing Date: 12/06/2018

This is a preliminary review based on environmental maps available to the Natural Resources Management Department (NRM) at the time of this review and does not include a site inspection to verify the accuracy of this information. This review does not ensure whether or not a proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations. In that this process is not the appropriate venue for site plan review, specific site designs that may be submitted with the rezoning will be deemed conceptual and any comments or omissions relative to specific site design do not provide vested rights or waivers from these regulations, unless specifically requested by the owner and approved by the Board of County Commissioners. If the owner has any questions regarding this information, he/she is encouraged to contact NRM prior to submittal of any development or construction plans.

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

Comments:

**This review relates to the following property: Twp. 23, Rng. 36, Sec. 34;
Tax ID No. 2318395**

The subject parcel contains mapped hydric soils (Copeland-Bradenton-Wabasso complex limestone substratum), along the western portion of the property as shown on the USDA Soil Conservation Service Soils Survey Map; an indicator that the wetlands may be present on the property. Per Section 62-3694(c)(2), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. Application of the one-unit-per-five acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property as defined in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) and 62-3696 of the Wetland Protection ordinance. The applicant is encouraged to contact NRM at 321-633-2016 prior to any land clearing activities, site planning or permit submittal.

A portion of the property is mapped as being within the floodplain as identified by the Federal Emergency Management Agency, and 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."

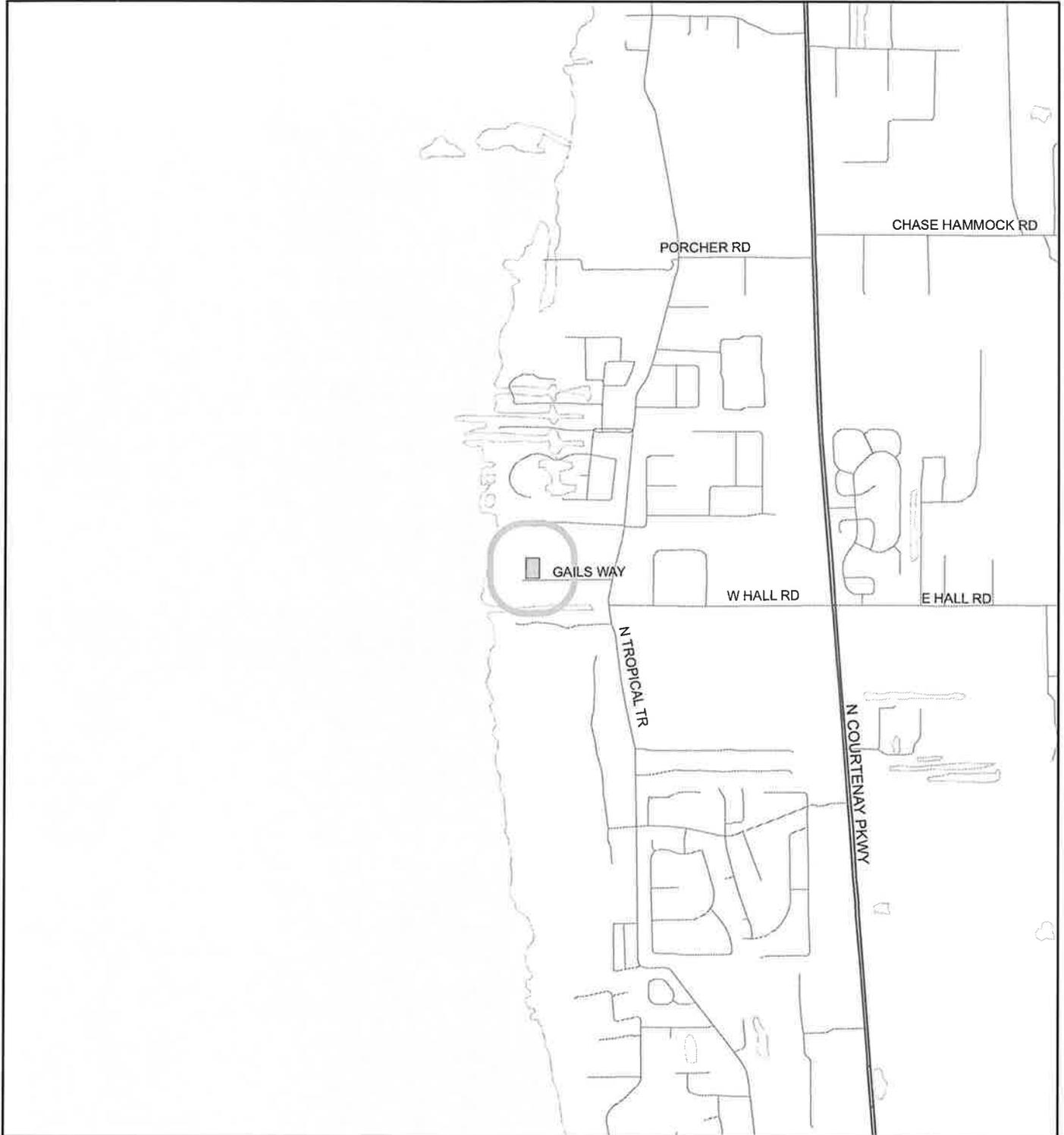
Staff Comments: Page 5
(18PZ00102)
07/12/18 NMI // 08/02/18 BCC

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.

The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Per Section 62-4331(3), the purpose and intent of the ordinance is to encourage the protection of heritage Specimen Trees. 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. Land clearing is not permitted without prior authorization by NRM. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

Due to septic moratorium, use of an alternative septic system designed to specifically provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required if applicable.

LOCATION MAP
PAGLIALONGA, JESSICA R. AND STEPHEN F.
18PZ00102



1:24,000 or 1 inch = 2,000 feet

Buffer Distance: 500 feet

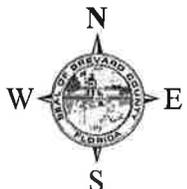
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 8/20/2018

-  Buffer
-  Subject Property

ZONING MAP

PAGLIALONGA, JESSICA R. AND STEPHEN F.
18PZ00102



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/20/2018

-  Subject Property
-  Parcels
-  Zoning

FUTURE LAND USE MAP

PAGLIALONGA, JESSICA R. AND STEPHEN F.

18PZ00102



1:4,800 or 1 inch = 400 feet

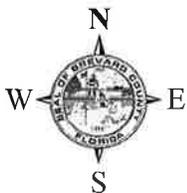
— Subject Property
 □ Parcels

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Produced by BoCC - GIS Date: 8/20/2018

AERIAL MAP

PAGLIALONGA, JESSICA R. AND STEPHEN F.
18PZ00102



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2018

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Produced by BoCC - GIS Date: 8/20/2018

— Subject Property
□ Parcels

NWI WETLANDS MAP

PAGLIALONGA, JESSICA R. AND STEPHEN F.
18PZ00102



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/20/2018

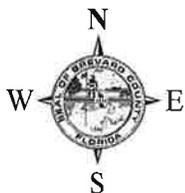
National Wetlands Inventory (NWI)

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

SJRWMD FLUCCS WETLANDS - 6000 Series MAP

PAGLIALONGA, JESSICA R. AND STEPHEN F.

18PZ00102



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/20/2018

SJRWMD FLUCCS WETLANDS

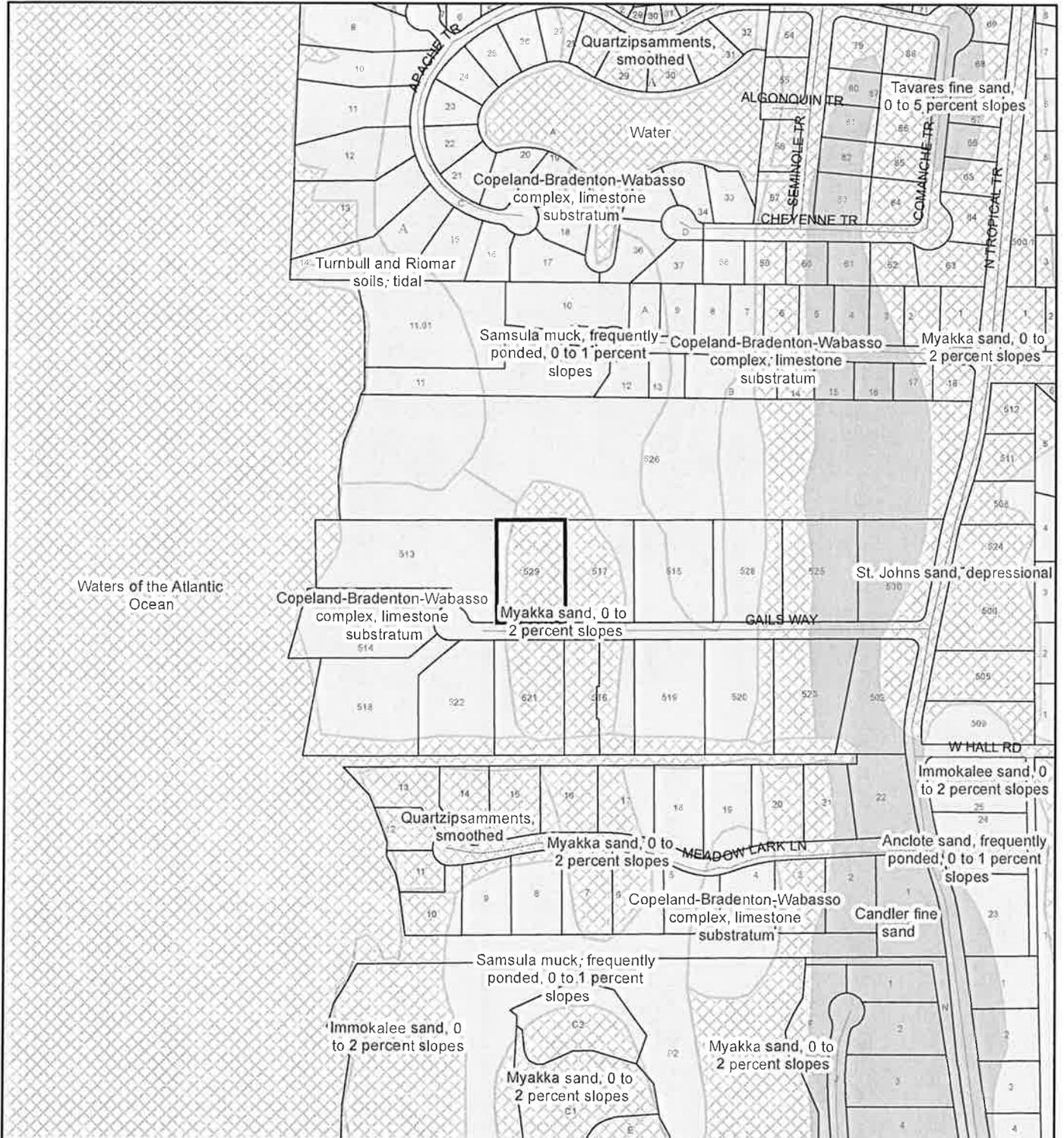
-  Wetland Hardwood Forests - Series 6100
-  Wetland Coniferous Forest - Series 6200
-  Wetland Forested Mixed - Series 6300
-  Vegetated Non-Forested Wetlands - Series 6400
-  Non-Vegetated Wetland - Series 6500

 Subject Property  Parcels

USDA SCSSS SOILS MAP

PAGLIALONGA, JESSICA R. AND STEPHEN F.

18PZ00102



Waters of the Atlantic Ocean



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/20/2018

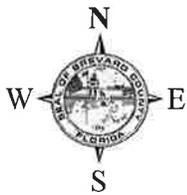
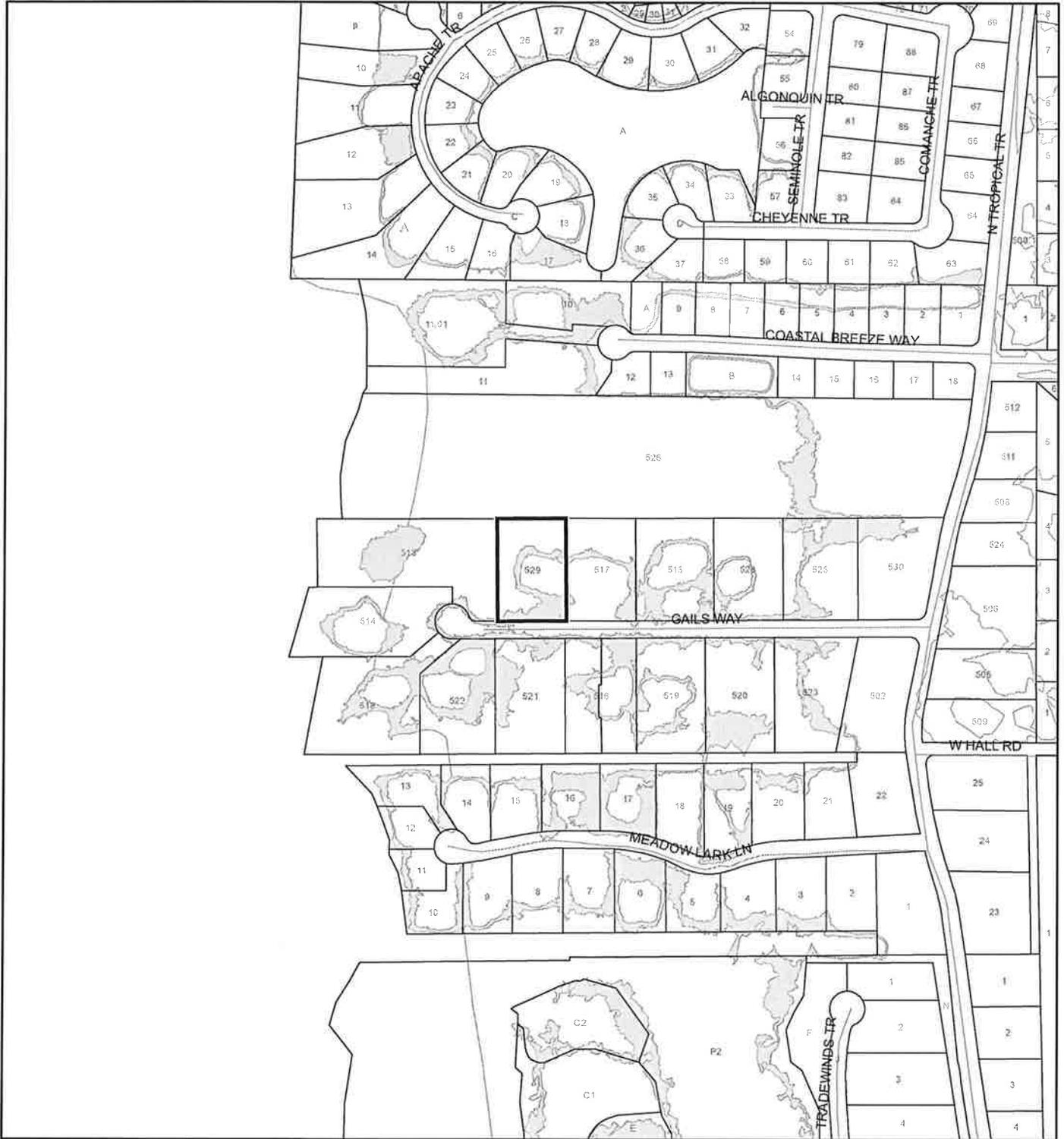
USDA SCSSS Soils

-  Aquifer and Hydric
-  Aquifer
-  Hydric
-  None
-  Subject Property
-  Parcels

FEMA FLOOD ZONES MAP

PAGLIALONGA, JESSICA R. AND STEPHEN F.

18PZ00102



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/20/2018

FEMA Flood Zones

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

EAGLE NESTS MAP

PAGLIALONGA, JESSICA R. AND STEPHEN F.
18PZ00102



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: 8/20/2018

-  Subject Property
-  Parcels
-  Eagle Nests FWS 2010

SCRUB JAY OCCUPANCY MAP

PAGLIALONGA, JESSICA R. AND STEPHEN F.

18PZ00102



1:4,800 or 1 inch = 400 feet

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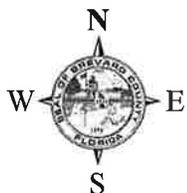
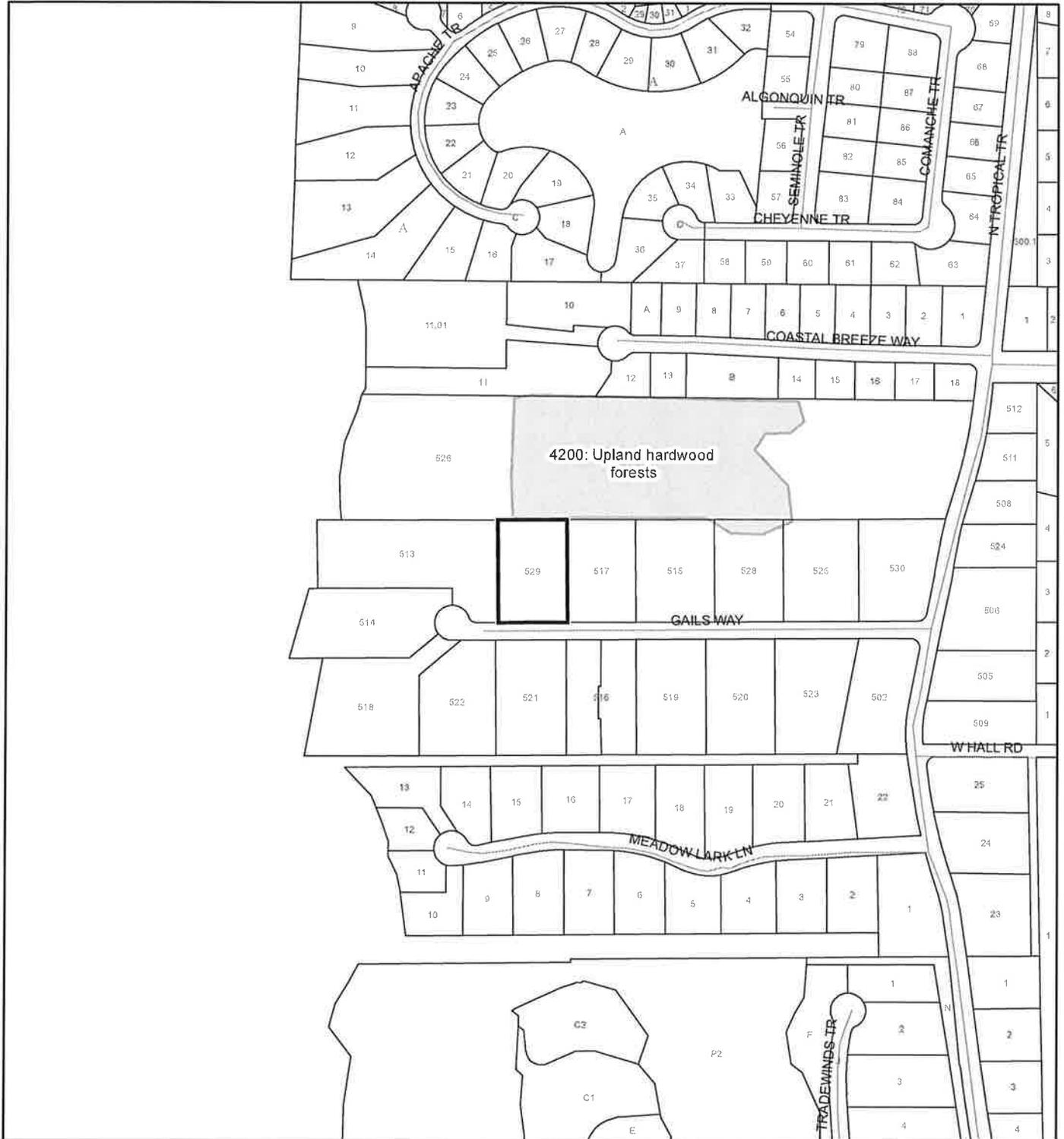
Produced by BoCC - GIS Date: 8/20/2018

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

PAGLIALONGA, JESSICA R. AND STEPHEN F.

18PZ00102



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: 8/20/2018

SJRWMD FLUCCS Upland Forests

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

 Subject Property

 Parcels

FYI Covenants & Restrictions
18PZ00102
Paglialonga
(Submitted by NMI board
member 11/08/18)

1609 068

NOTICE OF COVENANTS AND RESTRICTIONS
AND EASEMENTS

MERRITT ISLAND CITRUS ENTERPRISES, INC.,
a Florida Corporation

TO WHOM IT MAY CONCERN:

STATE OF FLORIDA)
COUNTY OF BREVARD)

KNOW ALL MEN BY THESE PRESENTS: that

WHEREAS, the undersigned, MERRITT ISLAND CITRUS ENTERPRISES, INC., a Florida Corporation, is the owner in fee simple of the following described real estate in Brevard County, Florida, to-wit:

Consisting of eight (8) tracts of land, as described in EXHIBIT "A", a copy of which is attached hereto and made a part hereof. Said tracts are also known as parcels.

and

WHEREAS, the said owner is desirous of placing certain covenants, restrictions and easements upon the use of the aforementioned lands, as above described; said covenants, restrictions and easements to run with the title to said land;

NOW, THEREFORE, for and in consideration of the premises and mutual promises herein made and other valuable considerations, the said owner for itself, its successors, legal representatives and assigns, hereby restricts the use, as hereinafter provided, of all the hereinabove described property, as follows, to-wit:

1. These covenants and restrictions are to run with the lands and shall be binding on all parties and all persons claiming under them until January 1, 2005, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless by vote of a majority of the then owners of the tracts described in Exhibit "A" it is agreed to change said covenants and restrictions in whole or in part.

2. If the parties hereto, or any of them, or their successors, legal representatives or assigns, shall violate or attempt to violate any of the covenants, restrictions and easements herein, it shall be lawful for any other person(s) having an ownership interest in the tracts as described in Exhibit "A" to prosecute any proceeding at law or in equity against the person(s) violating or attempting to violate any such covenants, restrictions and easements, either to prevent him or them from so doing or to recover damages or other dues for such violation.

3. Invalidation of any other of these covenants, restrictions or easements by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

4. The property described above must be used solely for single family residential construction and only one (1) residential structure shall be built on any tract as described in Exhibit "A".

*Miranda M. Stevens, Esq.
P80 N. Calanck Ave #730
Cocoa Beach, FL*

049647

SIS W3-2 M 3-22

REC-1609 969

5. No noxious or offensive trade or activity shall be carried on upon any tract as described in Exhibit "A", nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

6. No trailer, basement, tent, shack, garage, barn or other outbuilding erected on any tract shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence; except, a trailer may be used as a temporary residence if used in conjunction with the construction of a permanent residence.

7. (A) Further, said owner gives and grants an easement for ingress and egress, upon and across the South Twenty-Five (25.0) feet of the real property as described in said Exhibit "A", and a general maintenance easement thereon for the use and benefit of any person or persons holding any interest in the real property as described in said Exhibit "A", or any interest in any property contiguous thereto, and any person or entity, such as a governmental agency, that provides any benefit to the subject property of this easement.

(B) This easement shall be perpetual.

(C) The granting of the easement herein shall not preclude the undersigned from granting additional or like easements to other persons or entities on the land as described in this easement.

8. The undersigned may also assign all of its rights contained or reserved.

WITNESS the signature and seal of said Corporation, 25 day of March, 1976.

Witnesses:

[Handwritten signatures of witnesses]

MERRITT ISLAND CITRUS ENTERPRISES, INC.

BY: *[Signature]*
JOE G. FURNARI, President

ATTEST: *[Signature]*
CHARLES D. CRISAFULLI, Secretary

STATE OF FLORIDA)
COUNTY OF BREVARD)

I, the undersigned, a Notary Public in and for the State and County last aforesaid, do hereby certify that on this day personally appeared JOE G. FURNARI and CHARLES D. CRISAFULLI, as President and Secretary, respectively, of MERRITT ISLAND CITRUS ENTERPRISES, INC., a Florida corporation, to me well known, and known to me to be the persons who executed the foregoing Notice of Covenants and Restrictions and Easements, that they acknowledged before me that they signed and executed the same for the uses and purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 25 day of March, 1976.

My commission expires: 11/28/77

[Signature]
Notary Public, State of Florida, et al.



TRACT 1, also known as PARCEL 1

DESCRIPTION: A parcel of land lying in Government Lot 4, Section 34, Township 23 South, Range 36 East, Brevard County, Florida and being more particularly described as follows:

Commence at the Southeast corner of Government Lot 4 of said Section 34 and run S.89°54'05"W., along the South line of Government Lot 4, a distance of 374.40 feet to the Point-of-Beginning; thence continue S.89°54'05"W., along said South line, 175.0 feet; thence run N.11°02'39"E., 336.34 feet; thence run N.89°54'05"E., 123.31 feet to a point-of-curvature, of a curve to the right, having a radius of 25.0 feet; thence run Southwesterly, along an arc of said curve, thru a central angle of 101°34'51", an arc distance of 44.32 feet to a point-of-tangency, said point being 25.0 feet West, by right angle measurement, from the centerline of the existing pavement of North Tropical Trail; thence run S.11°25'26"W., parallel to and 25.0 feet West, by right angle measurement, from said centerline, 162.70 feet to a point-of-curvature of a 427.73 foot radius curve to the left; thence run Southerly, 25.0 feet West of said centerline, thru a central angle of 13°55'57", an arc distance of 141.33 feet to the Point-of-Beginning.

Containing 1.1 acres, more or less, and being subject to any easements and or rights-of-way of record.

TRACT 2, also known as PARCEL 2

DESCRIPTION: A parcel of land lying in Government Lot 4, Section 34, Township 23 South, Range 36 East, Brevard County, Florida and being more particularly described as follows:

Commence at the Southeast corner of said Government Lot 4 and run S.89°54'05"W., along the South line of said Government Lot 4, a distance of 549.40 feet to the Point-of-Beginning; thence continue S.89°54'05"W., along said South line, 200.0 feet; thence run N.00°05'55"W., 330.0 feet; thence run N.89°54'05"E., 265.0 feet; thence run S.11°02'39"W., 336.34 feet to the Point-of-Beginning.

Containing 1.76 acres, more or less and being subject to any easements and/or rights-of-way.

DESCRIPTION: TRACT 3, also known as PARCEL 3

A parcel of land lying in Government Lot 4 of Section 34, Township 23 South, Range 36 East, Brevard County, Florida, being more particularly described as follows:

Commence at the Southeast corner of said Government Lot 4 of Section 34, and run S.89°54'05"W., along the South line of said Government Lot 4, a distance of 749.40 feet, to the Point-of-Beginning; thence continue S.89°54'05"W., along said South line, a distance of 200.0 feet; thence run N.00°05'55"W., 330.0 feet; thence run N.89°54'05"E., 200.0 feet; thence run S.00°05'55"E., 330.0 feet, to the Point-of-Beginning; containing 1.5 acres, more or less. Being subject to any easements and/or rights-of-way of record.

DESCRIPTION: TRACT 4, also known as PARCEL 4

A parcel of land lying in Government Lot 4 of Section 34, Township 23 South, Range 36 East, Brevard County, Florida, being more particularly described as follows:

Commence at the Southeast corner of said Government Lot 4 of Section 34, and run S.89°54'05"W., along the South line of said Government Lot 4, a distance of 949.40 feet, to the Point-of-Beginning; thence continue S.89°54'05"W., along said South line, a distance of 200.0 feet; thence run N.00°05'55"W., 330.0 feet; thence run N.89°54'05"E., 200.0 feet; thence run S.00°05'55"E., 330.0 feet, to the Point-of-Beginning; containing 1.5 acres, more or less. Being subject to any easements and/or rights-of-way of record.

DESCRIPTION: TRACT 5, also known as PARCEL 5

A parcel of land lying in Government Lot 4 of Section 34, Township 23 South, Range 36 East, Brevard County, Florida, being more particularly described as follows:

Commence at the Southeast corner of said Government Lot 4 of Section 34, and run S.89°54'05"W., along the South line of said Government Lot 4, a distance of 1149.4 feet, to the Point-of-Beginning; thence continue S.59°54'05"W., along said South line, a distance of 200.0 feet; thence run N.00°05'55"W., 330.0 feet; thence run N.89°54'05"E., 200.0 feet; thence run S.00°05'55"E., 330.0 feet, to the Point-of-Beginning; containing 1.5 acres, more or less, being subject to any easements and/or rights-of-way of record.

DESCRIPTION: TRACT 6, also known as PARCEL 6

A parcel of land lying in Government Lot 4 of Section 34, Township 23 South, Range 36 East, Brevard County, Florida, being more particularly described as follows:

Commence at the Southeast corner of said Government Lot 4 of Section 34, and run S.89°54'05"W., along the South line of said Government Lot 4, a distance of 1149.4 feet, to the Point-of-Beginning; thence continue S.89°54'05"W., along said South line, a distance of 200.0 feet; thence run N.00°05'55"W., 330.0 feet; thence run N.89°54'05"E., 200.0 feet; thence run S.00°05'55"E., 330.0 feet, to the Point-of-Beginning; containing 1.5 acres, more or less, being subject to any easements and/or rights-of-way of record.

DESCRIPTION: TRACT 7, also known as PARCEL 7

A parcel of land lying in Government Lot 4 of Section 34, Township 23 South, Range 36 East, Brevard County, Florida, being more particularly described as follows:

Commence at the Southeast corner of Government Lot 4 of said Section 34, and run S.69°54'05"W., along the South line of said Government Lot 4, a distance of 1549.40 feet, to the Point-of-Beginning; thence continue S.69°54'05"W., along said South line, a distance of 220.0 feet; thence run N.00°05'55"W., 230.0 feet; thence run N.50°05'45"E., 156.21 feet; thence run N.89°54'05"E., 100.0 feet; thence run S.00°05'55"E., 330.0 feet, to the Point-of-Beginning; containing 1.5 acres, more or less, being subject to any easements and/or rights-of-way of record.

DESCRIPTION:

TRACT 8, also known as PARCEL 8

A parcel of land lying in Government Lot 4 of Section 34, Township 23 South, Range 36 East, Brevard County, Florida, being more particularly described as follows:

Commence at the Southeast corner of said Government Lot 4 of Section 34, and run S.89°54'05"W., along the South line of said Government Lot 4, a distance of 1769.40 feet, to the Point-of-Beginning, said point being in a Canal; thence continue S.89°54'05"W., along said South line, said line lying in a Canal, a distance of 330 feet, more or less, to an intersection with the shoreline of Indian River, extended Southerly; thence return to the Point-of-Beginning, and run N.00°05'55"W., 230.0 feet; thence run N.50°05'45"E., 156.21 feet; thence run S.89°54'05"W., 24.79 feet, to a point-of-curvature of a curve to the right having a radius of 50.0 feet; thence run along the arc of said curve, thru a central angle of 51°42'30" an arc distance of 45.21 feet; thence run S.50°05'45"W., 107.91 feet; thence run S.89°54'05"W., 250 feet, more or less, to an into the waters of Indian River; thence run Southerly, meandering said waters of the Indian River and shoreline extension, to an intersection with the first described course of this parcel; containing 2.0 acres, more or less, being subject to any easements and/or rights-of-way of record.

**NORTH MERRITT ISLAND
DEPENDENT SPECIAL DISTRICT BOARD MINUTES**

The North Merritt Island Dependent Special District Board met in regular session on **Thursday, November 8, 2018**, at 6:00 p.m., at the Merritt Island Service Complex, 2575 N. Courtenay Parkway, Merritt Island.

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

Planning and Development staff present were: Erin Sterk, Planning and Zoning Manager; and Jennifer Jones, Special Projects Coordinator II.

Excerpt from complete agenda.

7. Jessica R. and Stephen F. Paglialonga request a change of zoning classification from AU (Agricultural Residential) and EU (Estate Use Residential) to all EU. The property is 1.33 acres, located on the north side of Gails Way, approximately 0.20 miles west of North Tropical Trail. (470 Gails Way, Merritt Island Area) (18PZ00102)

Nick Paglialonga – My son is offering to do a guesthouse on his property for us; my wife, Donna, and myself. We hope to reside there in the summer at least – I mean, in the winter. The address is listed there, and he's authorized me to represent him here today.

Erin Sterk – If you guys have questions I can answer a lot of the Zoning Code stuff.

Jack Ratterman – How many square feet has he got?

Nick Paglialonga – It's going to be about 1,400 square feet.

Donna Paglialonga – No, it will be whatever the County's maximum is, 1,175 square feet, I believe.

Nick Paglialonga – They had a specified amount that we can have, I think it was somewhere around 1,400 square feet.

Donna Paglialonga – No, 1,175 square feet.

Ted Balke – And this is only for that first portion that's AU? Not for the forest area?

Nick Paglialonga – No.

Ted Balke – The back section is Hardwood Forest.

Nick Paglialonga – Right.

Ted Balke – He's only building on the road?

Nick Paglialonga – Back from the road, yes.

Gina Lindhorst – Is there a building on the property now?

Nick Paglialonga – No, just his residence.

Gina Lindhorst – So, there is a building, one house, on it now?

Nick Paglialonga – Yes.

Gina Lindhorst – What size is that? Is it written anywhere here? That's in the middle of the property, though.

Nick Paglialonga – No, his is kind of in the middle, but then it goes way back to the rear.

Gina Lindhorst – So, it's all the wooded area.

Ted Balke – The problem here is the Hardwood forest, that's the category that the center section is listed as.

Donna Paglialonga – May I speak, too?

Gina Lindhorst – Not yet.

Erin Sterk – Just to go back to that, really quickly, I was looking at the map where we map the Hardwood forest.....

Jack Ratterman – Is it this one, the photo?

Gina Lindhorst – This one here says Hardwood.

Ted Balke – It's Hardwood forest and it's all the way back to the water, almost to the water.

Erin Sterk – That's on the parcel.....

Ted Balke – One-third of the lot, or a quarter of the lot.

Donna Paglialonga – That property is not theirs.

Gina Lindhorst – We only let one person speak at a time. Is it okay, or should we.....

Jack Ratterman – Go ahead.

Donna Paglialonga – I used to be on zoning, but it's been so long ago I don't remember what you all do, exactly.

Erin Sterk – I don't find any on the map of the Upland Forest map, any of that polygon of Hardwood forest on the subject property.

Donna Paglialonga – None is on the property, it's in the back belonging to someone else. This particular piece of property where they have their house, adjacent to it is the same size lot that has a guesthouse, so guesthouses are in that neighborhood.

Jack Ratterman – Is that the whole lot there, in the yellow area? Or does it extend beyond that?

Erin Sterk – No, the zoning line splits the parcel, it's about the northern one-third that retains the AU.

Gina Lindhorst – If you look here you can see it's in line with all the other ones there.

Jack Ratterman – This is the line that goes all the way across.

Gina Lindhorst – To the edge of the house must be AU, and the EU starts there.

Jack Ratterman – Where does the AU start?

Erin Sterk – Just look on the zoning map layer in your package; it's easier just to see it than describe it, just on the very first map in the series is the zoning map, and you can see on the parcel it's about two-fifths of it, maybe. It's very unusual, the whole subdivision seems to have retained that mixed zoning.

Gina Lindhorst – Are they all that way?

Erin Sterk – Yes.

Gina Lindhorst – It looks like it's at the edge of the building, practically, where they have built already.

Ted Balke – The next to the last page shows you where the Upland Hardwood forest is, in green. According to Blickley, the tax assessor, this whole section is zoned as 2600.

Erin Sterk – You're looking at the Genoni item; you're on the wrong item.

Ted Balke – Right, that's shown as 755 on this map.

Erin Sterk – You're on the map series for the next item.

Ted Balke – Okay.

(several speakers at once were inaudible)

Erin Sterk – There's only a few trees on their property.

Jim Carbonneau – Which is the property that has the other guesthouse?

Donna Paglialonga – Right adjacent to it, when you face the house it's to the right.

Jim Carbonneau – Thank you.

Chris Cook – My question is how did that guesthouse get be constructed and still retain that AU zoning on it, the one next door.

Gina Lindhorst – Maybe it's not a whole guesthouse.

Catherine Testa – It might be a pool house or something.

Chris Cook – But if there's no kitchen in it, I guess it wouldn't be (inaudible) if there's not a kitchen.

Ted Balke – They put a kitchen in it, then it's a guesthouse?

Gina Lindhorst – It's not connected, so that's a big deal.

(several members of the board spoke at once and the comments were inaudible)

Gina Lindhorst – This one here is pretty significant, but I don't know how big it is.

Jack Ratterman – You said yours was going to be 1,175 square feet?

Donna Paglialonga – That's what my son said. I think it was the maximum. We don't have a floor plan yet, we're waiting for approval, and then we'll go from there. We actually live in North Carolina half of the year.

Gina Lindhorst – What size is the other house on the lot, do you know?

Donna Paglialonga – The house that my son owns?

Gina Lindhorst – Yes.

Donna Paglialonga – I would say it's around 2,000 square feet maximum.

Jack Ratterman – The guesthouse will be detached also, right?

Donna Paglialonga – Right, at the end of the driveway.

Jack Ratterman – On the lot, where will it be?

Donna Paglialonga – Does the driveway show up on your plans?

Jack Ratterman – Yes.

Donna Paglialonga – The driveway will just extend out to the house.

Jack Ratterman – Okay, that makes sense, because you can go from the driveway to the house. One story, correct?

Nick Paglialonga – Yes.

Jim Carbonneau – How long has your son been in his current home?

Donna Paglialonga – How long has he been on the property?

Jim Carbonneau – Yes

Donna Paglialonga – Less than a year. They bought the house and have been restoring it.

Jack Ratterman – Any other questions?

Jim Carbonneau – I do. Jack, you've got a copy of this. Some friends of mine who lived previously down at 430 Gails Way had talked to me several months ago regarding the homeowners and the covenants that were put into effect back in the early '70's when those homes were constructed, and I don't know if you've seen this, but I have a copy if you'd like it. I'll give this to the applicant. This basically says that none of the parcels in that tract of land can have more than one residence per parcel.

Donna Paglialonga – So what are we going to do about the guesthouse that's on the property next to theirs?

Erin Sterk – We don't perceive it as a second residence.

Jim Carbonneau – I'm just saying I'm aware of this document and I wanted to present it.

Donna Paglialonga – This is all.....our son was taking care of this and he had to go out of town and asked us to take care of it.

Jim Carbonneau – I understand, but this says that this goes into effect and expires January 1, 2005, 'automatically reconvene unless there's a majority vote of the local homeowners,' and as far as I know, that vote in that meeting has never happened, so the deeds and covenants are current. I know zoning doesn't monitor or control what's going on, but I just wanted to bring it to everyone's attention.

Gina Lindhorst – You're going to use a septic system, correct?

Donna Paglialonga – Yes.

Gina Lindhorst – New septic, in addition to the one? Where would you put that?

Donna Paglialonga – That hasn't been planned yet, either. We're waiting for an 'okay' before we spend any more money. We will have a plan once it's approved.

Jack Ratterman – There were notices sent out, right?

Jennifer Jones – Yes.

Jack Ratterman – Did anybody respond?

Jennifer Jones – No, sir.

Audience member – We're here.

Jack Ratterman – Are there any more questions for the applicant?

Gina Lindhorst – Not right now.

Jack Ratterman – If you'll have a seat we'll let the public speak.

Richard Corsillo – My name is Richard, or Rick, Corsillo, I live at 405 Gails Way, which is the first house on the left, and I also own the second house on the left, 425 Gails Way. We've been at our property for over 30 years, and when we bought the property, the main reason we bought the property was because we knew that the density would never change. At least, we thought we knew that. We wanted to be on a street that there were one residence per lot. Well, we can see a trend starting; it started with the house on the left-hand side, where they took a lot and split it, which according to that there, they never should have been able to do that, but evidently the County didn't stop them. So, already now on our street the density is doubling. Now, with this residence here – and I appreciate the fact that you want to come down for six months a year, and I think that's great, I don't have any problem with that, but my concern is what is going to happen down the road. At some point that property is probably going to turn into a rental and then it's going to be another residence on the street. It's basically doubling the residences on that one piece of property. I can also foresee them trying to split that lot like they did across the street, and double-up the density. So, I can speak for everybody on the street, because we've had numerous meetings on the street about this, that we're very concerned about increasing density. It's not what we all bargained for and we're not very happy with it.

Chris Cook – Is there a homeowners association, or what was mentioned in here, or anything like that?

Richard Corsillo – No, there's no homeowners association.

Jack Ratterman – This is just the covenants that you have?

Richard Corsillo – Right.

Chris Cook – Do you know when that other property across the street, on the left-hand side, got subdivided?

Richard Corsillo – Within the last year.

Jack Ratterman – In the last year?

Richard Corsillo – Probably less than a year, probably six months ago.

Ted Balke – So, it never came before the board?

Jack Ratterman – No.

Ted Balke – But again, it's like the rest of the construction that goes on on North Merritt Island, they just do what they want up there because nobody's investigating it.

Erin Sterk – That property, when you go to the Clerk of Court, you don't need to come to the Planning and Zoning Office to subdivide off a parcel. If you wanted to break off a little piece, the Clerk of Court would let you. What we do is confirm that you have the right to build on it once you do that. So, that property may have been subdivided out of compliance with the Zoning Code, but because of the deed restrictions on the property they can't build a house on that lot, so they may have split it, and you may perceive that it has the ability to be built on.....

Richard Corsillo – I've been told construction is going to start very soon.

Erin Sterk – The deed restrictions should prohibit that if that wasn't part of the original plat. I haven't researched that one, specifically, the original plat's covenants on that parcel.

Ted Balke – But to do that wouldn't they need to go before the tax assessor and split the property?

Erin Sterk – It looks like they already have split the property.

Gina Lindhorst – If it's happening on this, then...

Ted Balke – The taxes show that as separate?

Jim Carbonneau – It's two separate street addresses.

Chris Cook – I was looking at the property to the east of the applicant's property with that large... looks like there's a guesthouse in the back, but there's absolutely no record of that on the tax rolls at all. It doesn't show it as a separate building.

Gina Lindhorst – On the river?

Chris Cook – No, to the east.

Jack Ratterman – It's a separate house.

Chris Cook – There's nothing on the Property Appraiser's site that says there's even another building on that property.

Ted Balke – That's lot 517?

Chris Cook – Yes.

Richard Corsillo – One other concern that I have is that there's still two vacant lots on that street, and I can see with the trend that's going, those lots are going to end up being split, and it's going to increase the density that much further with this continuing trend.

Chris Cook – Why do you think that AU was left across the north of all those properties?

Erin Sterk – We really could not understand why it was left in that condition. That's why the staff comments include a section in the 'For Board Consideration' section that the Board may consider directing staff to administratively rezone and make consistent zoning across the entire street.

Chris Cook – The thing that I thought of, in the way my strange engineering mind works, is that that way they could keep some AU pursuits on those properties, if they wanted to keep a goat, or chickens, or whatever they wanted to do, they could still do it because that part is AU. If you get rid of that AU part, and the guy next door wants to put some goats back there, or a chicken, he won't be able to, there will be all kinds of conflict there because it will be right next to each other.

Erin Sterk – I thought maybe the Hardwoods used to encroach into that. That's not clear to me.

Chris Cook – It's a mess.

Erin Sterk – I don't know if you want me to respond to some of those questions, or just proceed through the public comment, and then I'll go back to some of those ideas.

Jack Ratterman – We'll ask for public comment, and then we'll let you go.

Ted Balke – Do you have water problems there?

Richard Corsillo – Water problems, as in drainage?

Ted Balke – Yes.

Richard Corsillo – Yes. In fact, I'll let my daughter speak to that.

Ted Balke – I'm just looking at your soil here, and I can see right away that you have....

Richard Corsillo – We used to have....you mentioned Lot 430, and my daughter actually owns that lot, and I've known the previous owner – like I said, we've been there for 30 years – and he never had water back-up in his yard ever, and now when there's a storm he's got six inches of water in his backyard. And that started happening when they developed that other guesthouse that you're talking about, to the right of this one.

Jack Ratterman – Any more questions? Next?

Candace – My name is Candace, 430 Gails Way. As he mentioned, I grew up on the street as well, I lived at 405 Gails Way, and I actually moved to 425, the one next to it, and then now purchased 430 Gails Way, so I've lived in three houses on the street. I can tell you I absolutely loved growing up there and the street is a nice, quiet, community where you feel safe. I very much appreciate you coming and doing the right thing and putting it through to the committee, thank you, because as you mentioned, the other ones did not do that.

Jack Ratterman – You have to talk to the board, not to them.

Candace – With that, similar to what my father mentioned with the concerns of the increased density of the street, raises a lot of concerns. My husband and I are going to be starting a family and I just could see that trend going and I don't want it to continue. Also, the standing water is a large concern. I would say almost one-third of the back portion of my property, as he mentioned, has standing water almost at all times now; it didn't have that previously. So, that is a major concern, which also increases the pests that come inside the house, the standing water, the usability of my property, which now I can't touch, it's unusable. That's a concern as well. I think he touched on most of the points I was going to talk about. Thank you.

Jack Ratterman – You say you have three properties on Gails Way?

Candace – I only own one. I have lived on three.

Gina Lindhorst – How far away are you from the one that's in question?

Candace – I'm three houses down.

Richard Corsillo – Two houses.

Candace – There's two houses between our homes.

Gina Lindhorst – Two houses between yours? The one with the little lake in front.

Candace – Correct.

Gina Lindhorst – That's not yours?

Candace – The one with the lake is mine.

Gina Lindhorst – Okay, so you're two houses away. There's several lakes, there's a lake in front of one house.

Candace – Mine is the side.

Gina Lindhorst – So, yours is on the back side of your house. Okay, so you are two houses away.

Jack Ratterman – And how long have you lived there?

Candace – I actually just purchased the property, so I've lived there a month or so, but previously I mentioned I lived in the other house over a year, and then the majority of my childhood at the other house.

Jack Ratterman – Any questions from the board? Thank you. Kim?

Kim Smith – I'm Kim Smith, I'm speaking for the North Merritt Island Homeowners Association, and their address is PO Box 542372, Merritt Island, Florida, 32954. With the information given to the board and through their discussion they did not object to this request.

Jack Ratterman – Any questions of Kim? Okay, staff?

Erin Sterk – I'd just like to go back to the lot split, the renting it out, and the doubling the density concerns. The EU zoning classification allows for 15,000 square-foot lots, which is just a little bit over one-third of an acre in size, and it requires a 2,000 square-foot minimum house size. Currently, the lot sizes that are there, at 1.33

acres, can probably be subdivided close to four times if there were not any other restrictions on it, like a binding development plan condition prohibiting that, or a covenant and deed that would do the same function that the County wouldn't enforce, but still binds the property and prohibits it from being subdivided. The additional area of property proposed to have the EU zoning wouldn't create the conditions that would all of a sudden allow it to be subdivided. Since it was existing, it's always had the ability to be subdivided in the County's eyes, as far as lot width, depth; the lot dimension requirements are 100 feet wide and 100 feet deep; this property is 196.17 feet wide, so it's just a hair under being able to meet the lot width to be subdivided, so this action isn't creating those conditions, but I think the covenants and deeds have prohibited that from happening. As far as renting it out, the guesthouse, even when it has a kitchen, the County does not perceive that and does not allow for that to be rented out, so when we assess level of service impact we don't consider it like a full-time other family, we don't assess school impact fees, we don't double the trip counts when we assess roads, because it's considered an ancillary use to the primary structure.

Gina Lindhorst – So, not allowed to be rented out because it's supposed to be just the addition to the home.

Erin Sterk – Right. There's prohibitions in the Zoning Code, and if it were to be rented out in the future there could be a Code Enforcement action that could be called in and we would follow through in ensuring that didn't happen, or stopped happening if it started. The double density thing, all of these properties have had the opportunity on the EU portion of the lot to build a guesthouse the whole time, so if they could have squeezed it in on the front portion they wouldn't be before you today. I think they're here to rezone that back portion because that's the location where they want to put the guesthouse. Any other neighbors who had space in that little front part could build a guesthouse without coming before you.

Gina Lindhorst – A guesthouse would have to be a minimum living area of 2,000 square feet?

Erin Sterk – No, that's the primary house. There's a cap on the guesthouse size, which is where I think she's deriving that 1,100 square-foot number from, which is a maximum of 50% of the size of the primary residence. If they were the minimum in the zoning classification of a 2,000 square-foot house, they could build a 1,000 square-foot guesthouse. I'm assuming they have slightly more than 2,000 if they're getting to the 1,100 square-foot number.

Ted Balke – It was 1,100.

Jim Carbonneau – But there's nothing to prevent the applicant from putting an addition on the current home for a six-month use of the house.

Erin Sterk – No, if it was connected it would be considered part of the primary structure, and as long as they meet the minimums we don't have a maximum on expansion, as long as they fit within the setback.

Ted Balke – And use the same septic facility.

Catherine Testa – I thought you couldn't build in front of your current home line?

Erin Sterk – No, you can't.

Catherine Testa – You can put another building in front?

Erin Sterk – You can't, you're correct. Without a variance you can't put an accessory structure forward of the front line of the primary structure.

Chris Cook – I stand corrected on the property to the east of them, it is on the Property Appraiser's site that it's two residences, two buildings.

Erin Sterk – Two buildings, but we don't perceive it as two residences, because it's an ancillary use.

Ted Balke – But that's in violation of the North Tropical Trail Study. It's supposed to be 2.5 acres per home. This is in the North Tropical Trail Study that was approved.

Gina Lindhorst – It's not a home, though.

Ted Balke – So, I want to know how you're saying you can divide this into four lots.

Erin Sterk – This area has a land use designation of Residential 4, so four units per acre is the maximum that they could build to if the zoning classification would allow for that, but the zoning classification doesn't allow for it to be subdivided into four units per acre; it's 15,000 square feet, which is just a hair under 3 per acre. They're kind of capped in the covenants anyway. I looked into other options of even without the lot width, could they create a flag lot. With the flag lot requirement, if they were to build this separate kitchen facility, could they ever break it off in the future if there weren't covenants and deeds. They could create a flag lot condition that would require the flag portion of the lot, outside of the stem portion, to be a minimum of one acre, and that would leave them less than one-third of an acre left over. So, because the minimum square footage of the EU zoning classification.....if they bulldozed the house and put two new houses in, could they do that, and would this allow for that? It really wouldn't because if they met the criteria for the flag lot dimensions behind it, in area, it wouldn't leave enough in the front to build a second house. There's not really a way to get there, but if you were recommending that those deeds and covenants be memorialized in a binding development condition, that's another layer that the County does control and enforce. You'd have to ask the applicants if that is something that they were opposed to re-memorializing.

Catherine Testa – Do we know for a fact that there wasn't a vote by the majority to rescind this covenant?

Jim Carbonneau – To the best of my knowledge; I would have to default to the homeowners.

Erin Sterk – That's a private party matter, we don't.....

Richard Corsillo – There was no vote to rescind it.

Catherine Testa – This was dated.....

Chris Cook – 1976.

Jim Carbonneau – It goes through 2005, but automatically extends (inaudible). There was no vote.

Catherine Testa – I don't remember the gentleman's name, but before he owned his land, is it possible the majority rescinded this?

Gina Lindhorst – Thirty years ago? He said he's lived there for 30 years.

Catherine Testa – Right, and this was in '70-something.

Jim Carbonneau – But he's been here 30 years and it expired in 2005 automatically.....

Catherine Testa – But maybe it was rescinded before that.

Jim Carbonneau – He was here then, so he would have known.

Catherine Testa – When did he move in?

Jim Carbonneau – Thirty years ago.

Gina Lindhorst – But I don't think we're involved in this anyway.

Ted Balke – The FEMA flood map shows that one-third of that property is flood zone anyway.

Jim Carbonneau – He's been there at least 30 years, so he was here prior to '05.

Catherine Testa – But it may have been rescinded before 2005, we don't know.

Jack Ratterman – He's lived here 30 years, so if they rescinded it he would know. But that doesn't have bearing on the zoning, does it? The covenants, unless.....

Erin Sterk – It's a private party matter. If they were to do something the Zoning Code would allow for and the covenants didn't, they'd have to be sued outside of our control.

Gina Lindhorst – Is there anybody else who would like to speak?

Donna Paglialonga – May I, just for one second?

Erin Sterk – You definitely have another opportunity.

Gina Lindhorst – Hold on.

Jack Ratterman – Does anyone else from the public want to speak? Okay, you can come forward.

Donna Paglialonga – I'd just like to say that my son and his wife have two children and they're 8 and 10. They had a small place on the water and they had lived here once before and liked the neighborhood, but they moved for some reason, and they came back and said this is where they want to stay. They both work at the Cape, and this is the street they want their children to grow up on. We have a place in Titusville, but we're in North Carolina quite a bit, and so we just leave this house empty and I don't feel like it's in a great location – the one in Florida – and so they said to come hang out with them for the few months in the summer, so that's how this whole thing came about. We don't plan on being there all year long, but it would be a guesthouse for us, and if we kick the bucket maybe her parents would move in; it would still be family. I thank you for listening.

Jack Ratterman – You come down in the summer?

Donna Paglialonga – We came down a couple of weeks ago. We go back and forth.

Jack Ratterman – I was going to say, if you come in the summer you don't go outside the house very much, do you?

Donna Paglialonga – That's true, but we came down a couple of weeks ago.

Ted Balke – But we've heard good intentions before.

Gina Lindhorst – So, your son has not considered just adding onto the house; it wouldn't be an issue if he added onto the house and didn't have....

Ted Balke – Make it an in-laws suite.

Gina Lindhorst -a separate structure.

Donna Paglialonga – I don't think that was their plan.

Gina Lindhorst – It's not, but....

Donna Paglialonga – It's a very large lot; we're not handicapped, and so we kind of do our own thing, but we would be close to help with the children at certain times, particularly at Christmas, because she's going to be working at the Cape. We won't be here this Christmas, but we could be in the future.

Jack Ratterman – Okay, any discussion? Any comments on it?

Jim Carbonneau – Given the fact that I'm aware of the restrictions on the deed and their covenants has historically required one dwelling per area, I'd have to decline.

Chris Cook – Can I ask one question related to that? If this is still enforceable, even though other people have built on their lots, could the other residents of the neighborhood proceed with a lawsuit? I think that's what you said, Erin, correct?

Erin Sterk – I don't know whether or not that covenant applies. Are you talking about the two small lots that look like they were a larger lot and then split?

Chris Cook – Yes, and the other lot that's to the....that they already have two structures. That's right, they're not residences, they're structures.

Erin Sterk – We do not perceive this as a separate residence; it's not in violation of that.

Chris Cook – Irregardless [sic], could they proceed with a legal action based on these covenants?

Erin Sterk – Not if they built what they're proposing to.

Ted Balke – Not them, we're talking about the other property, the one that has the illegal structure on it now.

Chris Cook – No. If they want to put their residential structure on it, which this applicant wants to do, would the other homeowners in this area be able to proceed with a legal action against them based on these covenants?

Erin Sterk – If they were to build a guesthouse, which we do not perceive as a second residential structure; it's ancillary to the primary residence; if they were to try...because it's a large enough lot to allow a kitchen in it, I think the fear is that they could subdivide the lot and turn it into a whole separate residence on a whole separate parcel that wouldn't have the restrictions on it of renting it out to a whole new family, and if they were to do that, that's when they could be sued.

Chris Cook – Got it.

Gina Lindhorst – Essentially, we're just going to decide if it should be changed in zoning from AU to EU.

Erin Sterk – Really, what the basis of this is, is that the EU zoning classification already allows for them to build a guesthouse. What you're approving is additional area to be zoned EU so the guesthouse could be located further to the rear of the property than it could if it were to be built on the area zoned EU. They already have the right to build a guesthouse, but they are asking for the additional area to build it further to the rear. All of the properties on the street have the right to build a guesthouse, everybody.

Chris Cook – But we don't know how removing that AU will affect everybody else, though.

Erin Sterk – That's what you're here to consider.

Ted Balke – And in five years, the situation will be completely different because the kids won't be 10 years old anymore.

Erin Sterk – We don't even really have clarity about why the AU was there to begin with, so I really don't know how we can evaluate the loss of it if we don't know why it was there.

Chris Cook – That's what I'm struggling with.

Catherine Testa – If this originally came from....the land was originally owned by Merritt Island Citrus Enterprises, it was probably groves or something, or the intent to grove.

Ted Balke – The backyard is the Hardwood forest, and that's where they said there are water conditions.

Gina Lindhorst – Do you think they might have just purchased this strip to make it the same size as the other side, the other side of the road? I don't know, it's unusual.

Jack Ratterman – What's the pleasure of the board?

Chris Cook – Did you make a motion or not?

Jim Carbonneau – No.

Catherine Testa – I'll make a motion to approve.

Jack Ratterman – We have a motion to approve. Any discussion? There's a motion to approve, do I hear a second?

Gina Lindhorst – I'll second it.

Jack Ratterman called for a vote on the motion as stated, and it resulted in a tie vote, with Testa, Lindhorst, and Ratterman in favor; and Balke, Cook, and Carbonneau opposed.

Erin Sterk – What's Robert's Rules when there is a tie?

Jennifer Jones – They can try one more time, vote again, or they can table until the next meeting when maybe you'll have seven members so it won't end up in a tie.

Jack Ratterman – Do you want to table it? Is anyone going to change their vote?

Erin Sterk – Why don't we try a second motion?

Catherine Testa – Let's at least discuss it, maybe.

Jack Ratterman – Okay, do I hear a second motion? I can't motion anything.

Catherine Testa – Not another motion, maybe we should discuss what just happened and then maybe people might hear something that may change their mind.

Gina Lindhorst – If this one lot is all EU instead of AU and EU, it would not change the plan of their housing development because they would be allowed to make two houses on there anyway, according to EU zoning.

Chris Cook – Structures, not houses.

Catherine Testa – They can already build two structures, just not in that one particular corner of the property.

Ted Balke – That's a problem corner. If you look at your soil maps and your flood zones, the FEMA map, they all show that's a pruned area. I don't know why the code violation people haven't gone in there and affected something against the people next door that have that structure up.

Jack Ratterman – There has to be a complaint.

Ted Balke – Okay, they need a complaint.

Candace – There's been a complaint made (inaudible) act on it as well.

Ted Balke – They what?

Candace – To my knowledge there has been claims filed to have that property take down the wall that caused the issue with the flooding.

Gina Lindhorst – There's a retention wall somewhere?

Candace – They have a wall on the perimeter of the property, and so what they did is they filled in that land that was originally more of the wetland/wooded area, and they filled it and raised it up, which pushed all the extra water down, and by putting the wall there it also blocks the water from flowing down the street.

Erin Sterk – I'm looking at the aerial and I believe that wall is on the property to the east.

Candace – It is; it's not on their property.

Erin Sterk – So, we're talking about conditions that the property owner next to them.....

Ted Balke – What we're talking about is the one that has the illegal structure. Alleged illegal structure. Questionable structure.

Candace – What I was speaking to was more of the flooding issue, because I can definitely say right now it's really flooded and it's been that way for months, and it hasn't stopped. In speaking with the homeowners previously, they said that they don't know 100%, but that's why they also filed some sort of – I'm not sure exactly what they legally filed, but I know there they were working something out to try and have that investigated.

Chris Cook – I'm really on the fence on this, but whenever I'm on the fence like that, with my gut I go with the existing residents there, they know that place, they've lived there; if this wasn't going to be a problem, they'd say, "yes, go ahead, we don't care, that's fine." But they seem to have a real problem with it, and whenever I'm on the fence I usually go with the people who actually have to live with it every day. My other thing is, I just know how the County's resources are stretched, and whatnot, and I just know that there's going to be issues, and if they put another residence there, they're going to have to put a pad in to bring it up and it's going to raise all the land around there, and you're just asking for trouble.

Catherine Testa – If they put a pad up, won't they cause their own flooding?

Chris Cook – The water is going to have to go somewhere. I just don't see it as being a good thing for the neighborhood, and then with the rentals, people rent stuff out all the time and it's very hard to keep track of that and monitor it, and police it properly. It's just asking for more trouble. These people are probably very nice people, good people, but I can't really talk about....I don't consider the person, I just have to look at can they turn around and sell this property tomorrow to Bob from New York City who really doesn't care about the place at all.

Catherine Testa – What's wrong with people from New York City?

Chris Cook – I was using that as an example. People from New York likes lots of crowds and be real tight together, let's put it that way.

Catherine Testa – People from New York also like acreage. We love Merritt Island.

Chris Cook –That's my thought process.

Jack Ratterman – It's all closed.

Jim Carbonneau – And to the audience?

(Several speakers at once were inaudible.)

Erin Sterk – You've closed the public comment period.

Jack Ratterman – Do I hear a new motion?

Chris Cook – I motion that we table this until....Okay, I'll make a motion that we deny the request.

Jack Ratterman - I have a motion that we deny it. Do I heard a second?

Ted Balke – Second.

Jack Ratterman – Ted seconds. Any discussion? Okay, a vote.

Chris Cook, Ted Balke, Gina Lindhorst, Jim Carbonneau, and Jack Ratterman – Aye.

Catherine Testa – Nay.

Jack Ratterman – The motion passed 5:1, with Testa voting nay.

Donna Paglialonga – May I have a little clarification?

Jack Ratterman – Sure.

Donna Paglialonga – First, you tabled it, so did that not pass?

Erin Sterk – They discussed tabling it, they didn't make a motion.

Donna Paglialonga – Now you decided to deny it? May I ask you, have any of you been on that street, or in that area? have you been on Gails Way? I would ask you to go there and look at it so you'll know what you're talking about the next time, because I remember being on zoning and I remember going all over town and

reading all the rules and trying to understand to make fair judgement, and to make my own decision and not to listen to anyone else.

Ted Balke – We're no longer allowed to go to the properties.

Donna Paglialonga – Come visit, I'll be there.

Catherine Testa – Ted, we can go, we just can't.....

Ted Balke – You have to record that you went there.

Catherine Testa – Right, and you can't enter their property.

Jack Ratterman – Okay, next issue.

Erin Sterk – Procedurally, if this.....

(Several speakers at once were inaudible)

Erin Sterk – Because this item was not perceived as a residential density increase, because it's not a second structure – you can't subdivide the property – this item is only heard before this board and the Board of County Commissioners, so you will still proceed with the recommending body's recommendation to the Commission date on December 6th at 5:00 p.m., so this is not the end of the process.

Donna Paglialonga – At the County?

Erin Sterk – Yes, the Board of County Commissioners.

Donna Paglialonga – Will we be notified of that date?

Erin Sterk – Yes, and your son knows all of that because he got it when he gave us the application. They're just an advisory body to the Board of County Commissioners, and the item will be heard again, and the final judgement will be made by the Board of County Commissioners.

Nick Paglialonga – Thank you.

(Several speakers at once were inaudible)

Gina Lindhorst – Please take your discussion outside of the room. Thank you.