

Meeting Date
October 20, 2015



ADD ON	
AGENDA	
Section	New Business
Item No.	VI.D.1

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Board Approval to Take Legal Action Against Eric and Amanda Obloy		
DEPT/OFFICE:	County Attorney's Office		
Requested Action:	<p>It is requested that the Board of County Commissioners grant permission to the County Attorney to take necessary legal action against Eric and Amanda Obloy, property owners of 165 Gator Drive, Merritt Island, Florida 32953, for continuing violations of Brevard County Code Sec. 62-1334, unpermitted uses within an agricultural (AU) zoning Classification.</p>		
Summary Explanation & Background:	<p>Eric and Amanda Obloy are the record title owners of 165 Gator Drive, Merritt Island, Florida. This is an AU zoned property with its only access located through the back of a residential subdivision.</p> <p>At least six different neighbors have complained to Code Enforcement and the County Attorney's Office regarding the detrimental impact Eric's business has on their community. Complaints included: increased traffic, speeding cars, commercial semi-trucks, box trucks of various sizes, customer cars queueing in front of neighboring properties, taxis, and other disturbances in the neighborhood.</p> <p>Presently, the Obloys are using their AU zoned property to complete transactions for off-site ecotours. This typically involves selling tickets online to tourists – usually via Groupon or Living Social – and then directing customers to their property to sign liability waivers, pay additional fees, and sell them products like towels, suntan lotion, and beverages. The Obloys then direct their customers to drive themselves to a public park to participate in a variety of off-site ecotours. This causes the constant car traffic that the neighbors have filed complaints regarding. Furthermore, there is no existing business tax receipt for this property.</p> <p>The Obloys argue that their property is a "farm" and therefore cannot be locally regulated. Even if it was a farm, the off-site ecotour business is not a farm-related activity – nor is the sale of concession items that are not "raised and grazed" on the farm itself. Both are unpermitted uses that are not protected by state Statute.</p> <p>A memo summary going further into the issues is attached as an exhibit to this Agenda.</p> <p>It is unlikely that the Obloys will cease conducting commercial activity on their property as they have, in the past, been uncooperative with County staff. They have refused to allow building inspectors, code inspectors, and Environmental Health inspectors onto his property to investigate complaints. They have also refused to participate in the voluntary permitting process at the County parks from which he uses for the off-site ecotour business.</p> <p>Consequently, the County Attorney's Office is requesting permission to take necessary legal action against Eric and Amanda Obloy so that they cease the unpermitted use of their property.</p> <p>Contact: Cristina Berrios & Diana Yuan, Assistant County Attorneys Phone/e-mail: cristina.berrios@brevardcounty.us / diana.yuan@brevardcounty.us</p>		
Clerk to the Board Instructions:			
Exhibits Attached:	Summary of Memorandum of Law		
Contract /Agreement (If attached):	Reviewed by County Attorney	Yes <input type="checkbox"/>	No <input type="checkbox"/>
			PR <input type="checkbox"/>
County Manager	Assistant County Manager	Department Director / Extension	
Stockton Whitten	Assistant County Manager		



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
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October 21, 2015

MEMORANDUM

TO: Scott Knox, County Attorney Attn: Cristina Berrios

RE: Item VI.D.1., Approval of Legal Action Against Eric and Amanda Obloy

The Board of County Commissioners, in regular session on October 20, 2015, granted permission for you to take the necessary legal action against Eric and Amanda Obloy, property owners of 165 Gator Drive, Merritt Island, for continuing violations of Brevard County Code Section 62-1334, unpermitted uses within an Agricultural (AU) zoning classification.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

for: Donna Scott
for: Tammy Etheridge, Deputy Clerk

/ds

cc: Planning and Development Director
Finance
Budget

**SUMMARY OF COUNTY'S MEMORANDUM OF LAW ON
COMMERCIAL ACTIVITY ON AGRICULTURALLY-ZONED PROPERTY**

Case Number 15CE-00796 is a matter in which a property owner of agriculturally-zoned property that is located directly behind a residential subdivision is partaking in commercial activity on stated property that is in violation of Brevard County zoning laws. There is an additional violation for unpermitted structures.

Because the property owner has made a claim that the property is a "farm," and therefore exempt from local regulation pursuant to a number of State statutes that preempt local regulation on farms, this memorandum of law is being presented.

While it is true that State law preempts local regulation of agritourism activity and bona fide farm operations, it only does so when specific statutory requirements are satisfied. Those requirements are found in Section 823.14, Florida Statutes, known as the "Right to Farm Act," and Section 570.85, Florida Statutes, which protects agritourism activity throughout the state.

In the matter at hand, the property owner fails to meet any of the requirements listed in either statute. Consequently, and despite the property owner's claims to the contrary, local regulations are still in force and he is in violation of them.

I. VIOLATION OF SECTION 62-1334, BREVARD COUNTY CODE OF ORDINANCES: UNPERMITTED USES WITHIN AN AGRICULTURAL (AU) ZONING CLASSIFICATION

First and foremost, it is important to note that both the "Right to Farm Act" and the agritourism statute share the same basic requirement - that the property be classified as agricultural pursuant to Section 193.461, Florida Statutes, which requires a determination from the Property Appraiser.

In the matter at hand, an application for a determination of agricultural classification has been submitted to the Property Appraiser, however, said determination has not yet been granted, nor is there any evidence that it will be granted in the near future. Accordingly, as it stands, the property in question is not subject to either statute and therefore, even absent the analysis below, does not qualify for the State preemption from local regulation. Fla. Stat. § 823.14(6) and Fla. Stat. § 570.85.

Nevertheless, there are additional requirements for each statute, which also are not met by the property owner. The "Right to Farm Act," which protects farm operations from County regulations, requires that activity occurring on the property is that of a "bona fide farm operation," which is defined as any activity that produces or derives a product from any animal, plant, or insect that is useful to humans. On the other hand, the agritourism statute protects "agritourism," which is defined as any agricultural related activity consistent with a bona fide farm which allows members of the general public to view or enjoy farming activities.

In the matter at hand, the property owner was cited for unpermitted commercial activity in AU-zoned property. Specifically, he is selling offsite ecotour tickets for events like kayaking and swimming with the dolphins and manatee that occur at public parks not associated with the property. He is also selling beverages, hats, sunscreen, towels, and other products that have nothing to do with any bona fide farm operation. The owner does have a number of animals on the property, but those animals and the "petting farm" are not the subject of this citation nor are they related to his sale of ecotour tickets and convenience items.

Due to the property not meeting the requirements of the "Right to Farm Act," or the agritourism statute, the property in question is not protected by either State statute and is therefore subject to local regulation. At the County level, commercial use of agriculturally-zoned property is limited only to the packaging and selling of products raised on the premises. Section 62-1334, Brevard County Code of Ordinances. No other commercial activity is permitted. Accordingly, all commercial use of the property not limited to the packaging and selling of products raised on the premises must cease.

II. VIOLATION OF SECTION 22-278(c), BREVARD COUNTY BUILDING CODE: PERMIT REQUIRED

State law requires every building to be inspected and permitted by the local government. Relevant to the matter at hand – where the property owner is claiming that the property in question is a "farm" – is the exemption for "nonresidential farm buildings," found in both Section 555.73(10)(c) and Section 604.50, Florida Statutes.

Of note, Section 553.73(10)(c), Florida Statutes, exempts "all nonresidential farm buildings on farms" from the Florida Building Code and County Code. No other definitions are provided. On the other hand, Section 604.50, Florida Statutes, similarly exempts "nonresidential farm buildings on land that is an integral part of a farm operation or is classified as agricultural under § 193.461."

As the rules of statutory interpretation require related provisions to be read together to determine legislative intent. Accordingly, both Section 553.73(10)(c) and Section 604.50, should be read together. Furthermore, the legislative history of 604.50, Florida Statutes, which was enacted subsequent to Section 553.73(10)(c), supports a reading for the more narrow, clearer, Section 604.50.

Specifically, the 2013 amendment to Section 604.50, the House of Representatives Final Bill Analysis stated that "[s]ome local governments have reported, that due to the broadness of current statutory language, 'weekend' farmers are claiming the exemption" and that Section 604.50, Florida Statutes, "provide[s] that the exemption from the Florida Building Code and any county or municipal code of fee applies only to nonresidential farm buildings, farm fences, or farm signs that are located on lands used for bona fide agricultural purposes. The bill also provides a definition for bona fide agricultural, which has the same meaning as provided in s. 193.461(3)(b), F.S." HB 203, Final Bill Analysis, July 2, 2013.

Consequently, Section 604.50, Florida Statutes, applies since it is narrower and intended to better define when the exemption applies. The exemption is not meant to be a loophole for individuals escape permitting requirements but to help farmers keep and maintain their farms in a developing society. Pursuant to Section 604.50, Florida Statutes, a “nonresidential farm building” means any temporary or permanent building or support structure that (1) is classified as a nonresidential farm building on a farm under s. 553.73(10)(c); or (2) that is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation; or (3) is classified as agricultural land under s. 193.461, and (4) is not intended to be used as a residential dwelling.

It is important to note here that within Section 604.50, Florida Statutes, there are actual definitions of the words “farm” and “bona fide agricultural purpose.” This was, again, intended to prevent abuse of the exemption.

“Farm,” according to Section 604.50, Florida Statutes, is to be defined as it is in the “Right to Farm Act” which is Section 823.14, Florida Statutes. There, the word “farm” is defined as “the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products.” As for “bona fide agricultural purpose,” Section 604.50, Florida Statutes, states that it is to be defined as it is in Section 193.461, Florida Statutes, which defines the term as meaning a “good faith commercial agricultural use of the land.”

While there is a petting zoo and a few other animals on the property – animals alone do not make a property a “farm” being used for a “bona fide agricultural purpose.” As the definitions above show, there must be “farm or aquaculture products” and a “good faith commercial agricultural use of the land.” Accordingly, it is the County’s position that the property in question is not a farm, and therefore none of the buildings on the property can be considered “nonresidential farm buildings.”

In the matter at hand, the following structures are unpermitted: (1) a store building, (2) a single-wide mobile home, (3) a double-wide mobile home; and (4) a prefabricated structure that was moved from another location to the property.

Unpermitted Store Building: The unpermitted store building is a structure from which the property owner is selling offsite ecotour tickets, beverages, sunscreen, hats, etc. is not being used primarily for agricultural purposes, it is being used primarily for unrelated commercial purposes, most of which happens not on the farm, but via the use of offsite public parks. The public is being invited to this structure, and animals are kept in small cages and pens within it.

Unpermitted Single-Wide: Because the property owner has denied entry to our inspectors, the primary purpose of this building has not been determined.

Unpermitted Double-Wide: The double-wide mobile home is being used as a residential dwelling and does not qualify for the exemption. The property owner has claimed that the contractor failed to pull the permit, but that is a matter for the contractor and the property owner to sort out.

Unpermitted Prefabricated Structure: This building contains more beverages than hay. As such, its primary use is as storage for the store and not for agricultural purposes.

The County Code adopts the Florida Building Code and requires all buildings to be permitted. There is an exception similar to the state exceptions. Section 22-47 subpart 101.4.2(c), Brevard County Code of Ordinances, provides that nonresidential farm buildings on farms are exempt from the County building code. No other definitions are provided. However, that same section, subpart 101.4.14, provides that words not defined in this section shall have the meaning stated in the Florida Statutes. This returns us to the Section 604.50, Florida Statutes, definition of "nonresidential farm building," "farm," and "bona fide agricultural purpose," as well as the same analysis performed above.

III. CONCLUSION

For the foregoing reasons, the County requests that the Special Magistrate uphold the violations against the property owner.

To whom it concerns:

IV.D.1

My name is Martin Casleton and I live at 3995 Dundee Dr. on Merritt Island. I live here along with my wife and two children. We searched and found this location to build our home 12 years ago due to its private location in the back of a neighborhood on a cul-de-sac. The neighborhood was especially attractive because of the one entrance and exit which provided my family security and low traffic.

Earlier this year we had noticed that the real estate sign was down on the acreage behind our home and that heavy equipment had started to operate daily. I had fully expected one day that a home or two would be built back there. It wasn't until I came home from work one Friday afternoon that we were shocked to see a large business sign up in the middle of our neighborhood. Literally in the middle of the neighborhood! After a firestorm of panic and inquiring we found out it was a tour business operating dolphin and manatee boat tours, fishing trips, kayak excursions and paddle boarding. Our neighbor went back and came back with pictures of a completely operational concession stand selling drinks, ice, snacks, snorkeling equipment and other items.

The following Saturday I had a heated conversation with Eric Obloy in the driveway of a neighbor. I asked him why he opened a tourist business in the back of our neighborhood and why he hadn't gone around and communicated this to everyone before he did it. He stated to me that it was his property and he could do what he wanted with it and we had no say in it. I pointed out that we have families with kids and pets that walk the street daily and it would endanger them. He just shrugged his shoulders with no care at all. While we were having our talk a Pepsi company van and Pepsi company semi drove through our neighborhood pulled into his property. I stated this was unacceptable and he said it's just part of business. He told me he would ask them to unload out on Courtenay Pkwy from now on. The trucks have never stopped to this day driving through the neighborhood into his business. He also told me he was going to acquire access to his business thorough the land behind the neighborhood and he has not done that either. He advertises by signs on Courtenay Pkwy in front of the neighborhood, he advertises on Craigslist, Group On and flyers throughout the cruise ship area. And I'm sure in many other places.

The traffic in our neighborhood had been ridiculous, in a one hour period on any Saturday morning I would count twenty to thirty cars and trucks entering his business. His business is open 9:00 AM to 6:00 PM six days a week. These vehicles all drive through the neighborhood, some missing his driveway, parking in neighbors yards, turning around in the yards, knocking on doors, speeding, throwing trash. I've stopped people walking towards the back of our cul-de-sac and asked them who they are and they state they're just checking out the neighborhood while waiting for their tour time. I had to ask five men with backpacks to leave the neighborhood or go back onto the business property after I found them lying in my neighbors front yard under her tree. They stated they had been dropped off by a taxi and were also waiting on their tour time. They were rude to the point I had to threaten to call the police. We now have a large oil stain in the road leading out of Paradise in Adventures to Courtenay Pkwy. There was no attempt by them to clean the spill up. The problems go on and on. Neighbors have stopped walking their pets; kids aren't playing in their yards as much.

I don't see how a business can do so many things without permits, run in an area not zoned for the type of business and blatantly have no care for a neighborhood's safety and right to peace. It's for money and money only. Look at this family's history in our county and the Daytona area and that alone will answer

a lot of questions. They continue to change their business names and open other business's. Please drive into our neighborhood and see for yourself if a tourist business should be located in the middle of it. I know without a doubt that if you lived here you would definitely say this is totally wrong. The petting farm/refuge is a second thought after realizing they would be challenged due to zoning. KARS Park a government owned park is allowing them to operate out of their marina. This is wrong and also needs to be brought up to their leadership letting them know of the legal issues. They also should not be allowed to be involved with our schools as a registered business. It again is all about the money while offering kickbacks for the business. They are in no way a benefit to our community.

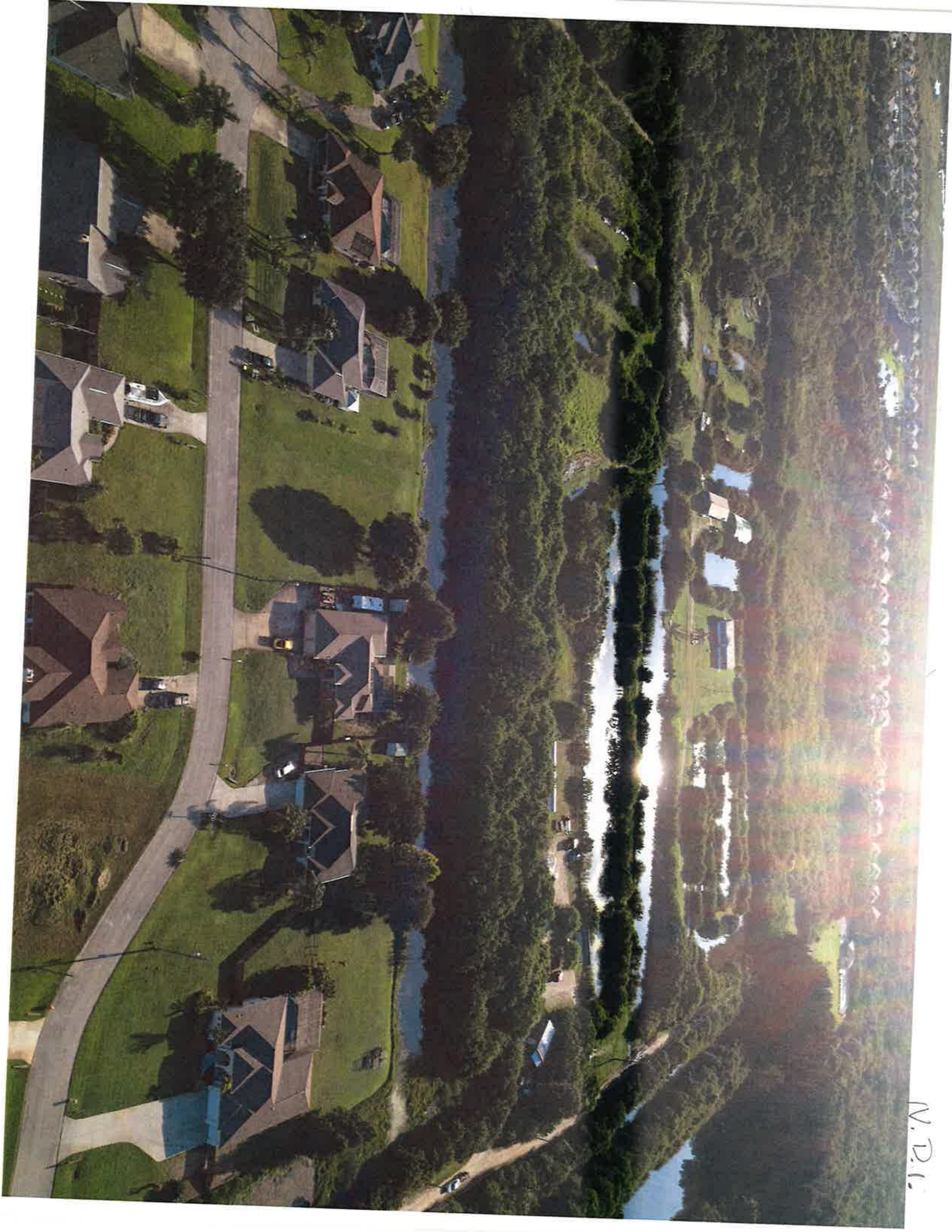
Our paradise has now been turned into hell due to an un-ethical business man and wife. We as a neighborhood are asking you our elected leaders to help protect us when it is really needed. There is much more to say but this is enough for now. I don't just go to work and come home, I am actively involved in our community and take pride for what is right for it. I'm president of a Merritt Island recreational league which averages 400 - 600 kids yearly and I currently sit on the Parks and Recreation Advisory board. I care for this community and will continue to fight for it!

Thank you for your time and help,

Martin Casleton & Family

3995 Dundee Dr.

Merritt Island, FL 32953



N. D. I.



11.20.17

TOWNSHIP 24, RANGE 36, SECTION 02

ZONING MAP

Citizen Complaints

1. Siddall
2. Casleton
3. Laissle
4. Laissle
5. Winn
6. Jackson
7. Stevens
8. Giles



Legend

- Subject Property
- TwnRng_Lines
- Sections
- Parcels
- Streets
- Zoning Easements
- Zoning Actions
- Municipality

DISCLAIMER AND TERMS OF USE:

The official version of the Brevard County Zoning Map and Future Land Use Map can be reviewed during regular business hours at the Brevard County Planning and Zoning Office, 321-631-2070, 2725 Judge Fran Jamieson Way, Bldg. A-114, Viera, FL 32940.

Data is provided "as is" without any warranty or representation that the data is accurate, timely or complete. The County makes no warranty, express or implied, that the data, graphics and maps presented are up-to-date or that the information shown is reliable for the viewer's intended purposes or uses. The viewer acknowledges and accepts the above limitations on the data portrayal and acknowledges that the data shown is dynamic and is in a constant state of maintenance, correction and update.

Though this map purports to depict properties within the unincorporated area of Brevard County, Florida, the County does not warrant or represent that the map has been updated to show properties that may have been annexed or included within the boundaries of one or more municipalities.

This map is for display and informational purposes only. The viewer must consult the official Zoning Map or Future Land Use Map on file in the Brevard County Planning and Zoning Office for official and precise Zoning or Future Land Use configurations.

MAPS MAY NOT BE RESOLD: Data, maps or digital files are prepared by employees of Brevard County and may not be resold without prior consent from the Brevard County Board of County Commission.



1 Inch = 300 Feet

Date: 10/19/2015

