Agenda Report

2725 Judge Fran Jamieson Way
Viera, FL 32940

Public Hearing

H.6. 12/5/2019

Subject:

Ray L. Colgin (Chad Genoni) requests a change of zoning classification from AU to RU-1-7, with a BDP limited to two units per acre. (19PZ00118) (Tax Account 2441237) (District 1)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a change of zoning classification from AU (Agricultural Residential) to RU-1-7 (Single-Family Residential), with a BDP (Binding Development Plan) limited to two units per acre.

Summary Explanation and Background:

The applicant is seeking a change of zoning classification from AU (Agricultural Residential) to RU-1-7 (Single-Family Residential) in order to develop a residential subdivision of up to 105 single-family lots, on property located at 6500 S.R. 524, Cocoa. The request is accompanied by a BDP (Binding Development Plan) limiting "the project density to the Future Land Use Designation at the time of the adoption of the zoning request."

This proposed change of zoning classification is accompanied by **19PZ00075**, a request for a Large Scale Comprehensive Plan Amendment (LSCPA) from Residential 1 (RES 1) to Residential 2 (RES 2). If **19PZ00075** is approved, then the subject property has the potential to be developed with 105 single-family units with the BDP. The RU-1-7 zoning classification allows for a minimum 5,000 sq.ft. lot. If **19PZ00075** is denied, then the development potential of the subject property will be limited to 52 single-family units (one acre lots).

This area consists primarily of AU, GU, ARR, RRMH-1, and PUD zoning classifications, and there have been no zoning actions within ½ mile of the subject property within the last three years. In addition, there is no RU-1-7 zoning within the surrounding area. The RU-1-7 zoning classification provides for a 5,000 square-foot lot, as neighboring lots are at least one acre in size.

Although the required BDP limits the potential density to 105 single-family lots, depending upon the outcome of the Large-Scale Comprehensive Plan request, the Board may wish to consider whether the requested RU-1-7 is compatible with the surrounding AU, GU, ARR, RRMH-1, and PUD zoning classification. The Board may also wish to consider if the BDP adequately mitigates for the potential of the property with the RU-1-7 zoning classification.

On November 18, 2019, the Planning and Zoning Board heard the request and unanimously recommended approval.

Clerk to the Board Instructions:

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

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

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

Administrative Policy 2

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

Criteria:

A. Staff shall analyze an application for consistency or compliance with comprehensive plan policies, zoning approval criteria and other applicable written standards.

B. Staff shall conduct site visits of property which are the subject of analysis and recommendation. As part of the site visit, the staff shall take a videotape or photographs where helpful to the analysis and conduct an inventory of surrounding existing uses. Aerial photographs shall also be used where they would aid in an understanding of the issues of the case.

C. In cases where staff analysis is required, both the applicant and the staff shall present proposed findings of fact for consideration by the Board.

D. For re-zoning applications where a specific use has not been proposed, the worst case adverse impacts of potential uses available under the applicable land use classification shall be evaluated by the staff.

Administrative Policy 3

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

Criteria:

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

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

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

1. historical land use patterns;

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

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

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

Administrative Policy 4

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

Criteria:

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

B. In determining whether an established residential neighborhood exists, the following factors must be present:

1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.

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

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

Administrative Policy 5

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

Criteria:

A. Whether adopted levels of services will be compromised;

B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;

C. Whether the surrounding existing road system is of sufficient width and construction quality to serve the proposed use(s) without the need for substantial public improvements;

D. Whether the surrounding existing road system is of such width and construction quality that the proposed use(s) would realistically pose a potential for material danger to public safety in the surrounding area;

E. Whether the proposed use(s) would be likely to result in such a material and adverse change in traffic capacity of a road or roads in the surrounding area such that either design capacities would be significantly exceeded or a de facto change in functional classification would result;

F. Whether the proposed use(s) would cause such material and adverse changes in the types of traffic that would be generated on the surrounding road system, that physical deterioration of the surrounding road system would be likely;

G. Whether projected traffic impacts of the proposed use(s) would materially and adversely impact the safety or welfare of residents in existing residential neighborhoods.

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

(1) The character of the land use of the property surrounding the property being considered.

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

(3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.

(4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.

(5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.

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

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

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

(c) General Standards of Review.

(1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon

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

a. The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1), the number of persons anticipated to be using, residing or working under the conditional use; (2), noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3), the increase of traffic within the vicinity caused by the proposed conditional use.

b. The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.

c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an M A I certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.

(2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:

a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1), adequate to serve the proposed use without burdening adjacent and nearby uses, and (2), built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at Level of Service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable Brevard County standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.

b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.

c. Noise levels for a conditional use are governed by Section 62-2271.

d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.

e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.

f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.

g. Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.

h. Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.

i. The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.

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

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

(1) The character of the land use of the property surrounding the property being considered.

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

(3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.

(4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.

(5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare."

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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

H.6

19PZ00118
Colgin

From: Ball, Jeffrey
To: Jones, Jennifer
Subject: FW: NEW INFO Fwd: RE: Septage Disposal Questions - Thank you
Date: Thursday, December 5, 2019 10:42:50 AM
Attachments: image002.png

Fyi

From: Douglas and Mary Sphar <canoe2@digital.net>
Sent: Thursday, December 5, 2019 10:34 AM
To: Mcgee, Darcie A <Darcie.Mcgee@brevardfl.gov>; Commissioner, D1 <D1.Commissioner@brevardfl.gov>; Ball, Jeffrey <Jeffrey.Ball@brevardfl.gov>
Subject: NEW INFO Fwd: RE: Septage Disposal Questions - Thank you

Hi Darcie, Commissioner Pritchett, and Mr. Ball,

Below is an email from DEP we received this morning from DEP. It contains some new info relating to items D.5 and D.6 on tonight's agenda. As you know, we like to double and triple check. Best to be very careful.

1. Mr. Colgin did get a permit extension that carried him through the end of 2017, even though septage spreading on land was forbidden by state law beginning on January 1, 2016. This means he was spreading septage legally on Dec. 9, the date of the Mr. Dana's email complaint to D1 Commissioner, Code Enforcement and the County Manager. This complaint is documented in the agenda packet for H.6 as Correspondence.

2. Mr. Colgin had multiple challenges to fixing up his operation, as he stated in his email to DEP dated Dec. 2, 2017. This email is at the end of the paperwork supplied by DEP that you can reference with the link Ashley Gardner provided. (Obviously Mr. Colgin did not get along too well with Mr. Dana.)

> From: Mel Colgin
> To: Parker, Wanda; LeGros, Charles; john@dillard-eng.com
> Subject: DEP Permit RAI
> Date: Saturday, December 02, 2017 12:47:20 AM
> I am working on three problems:
> 1.The phosphates were to high in field #1, but the hurricane put me under two feet of water,
> the USDA Rep Joe Walter is going to test all of our fields within the next ten days.
> 2. The D.E.P. calls for me to move my plant. I cannot move my plant it is to big and has pipes
> running under ground as over flow pipes. I have an 8,000 gallon in-ground water tank and
> three phase power I cannot move.
> 3. I cannot get into my #1 field because my neighbor has dug huge canals to drain his wetlands
> into our pastures and so far no one has stopped him, so I must build a berm to stop his

Thank you,

Ashley Gardner
Ombudsman/Media & External Affairs
Florida Department of Environmental Protection
Central District
ashley.gardner@dep.state.fl.us
Office: 407-897-2914

Looking to file a Notice, Registration, or Self-certification? Need a permit determination fast? You can even submit a permit application and make a payment!
Try DEP's Business Portal. It's easy and quick. Just click the button below.

FYI
19PZ00118
Colgin

Commissioner, D1

From: Douglas and Mary Sphar <canoe2@digital.net>
Sent: Wednesday, December 4, 2019 9:31 PM
To: Commissioner, D1; Newell, Marcia
Subject: District 1 item on Thursday's agenda

Categories: MARCIA

Dear Commissioner Pritchett,

Tomorrow you will be considering a Comprehensive Plan Amendment and a rezoning for a 52+ acre property on SR 520, owned by Ray Colgin. This is the property where septage (septic tank pumpout) was processed and spread for at least 25 years.

Before any density changes are granted, we would like the damage resulting from the unpermitted wetland impacts to be fixed. We would also like the property to be evaluated for health concerns and cleaned up as appropriate.

The adoption decision does not need to be made on December 5th. The State of Florida requires that the adoption hearing take place within 180 days of receipt of agency comments. That would put the deadline around the middle of April. This means there is time for the wetlands to be repaired and the property to be assessed for health risks and cleaned up as necessary.

We would like to highlight some information in your agenda packet. According to Natural Resources Management Department comments in your packet:

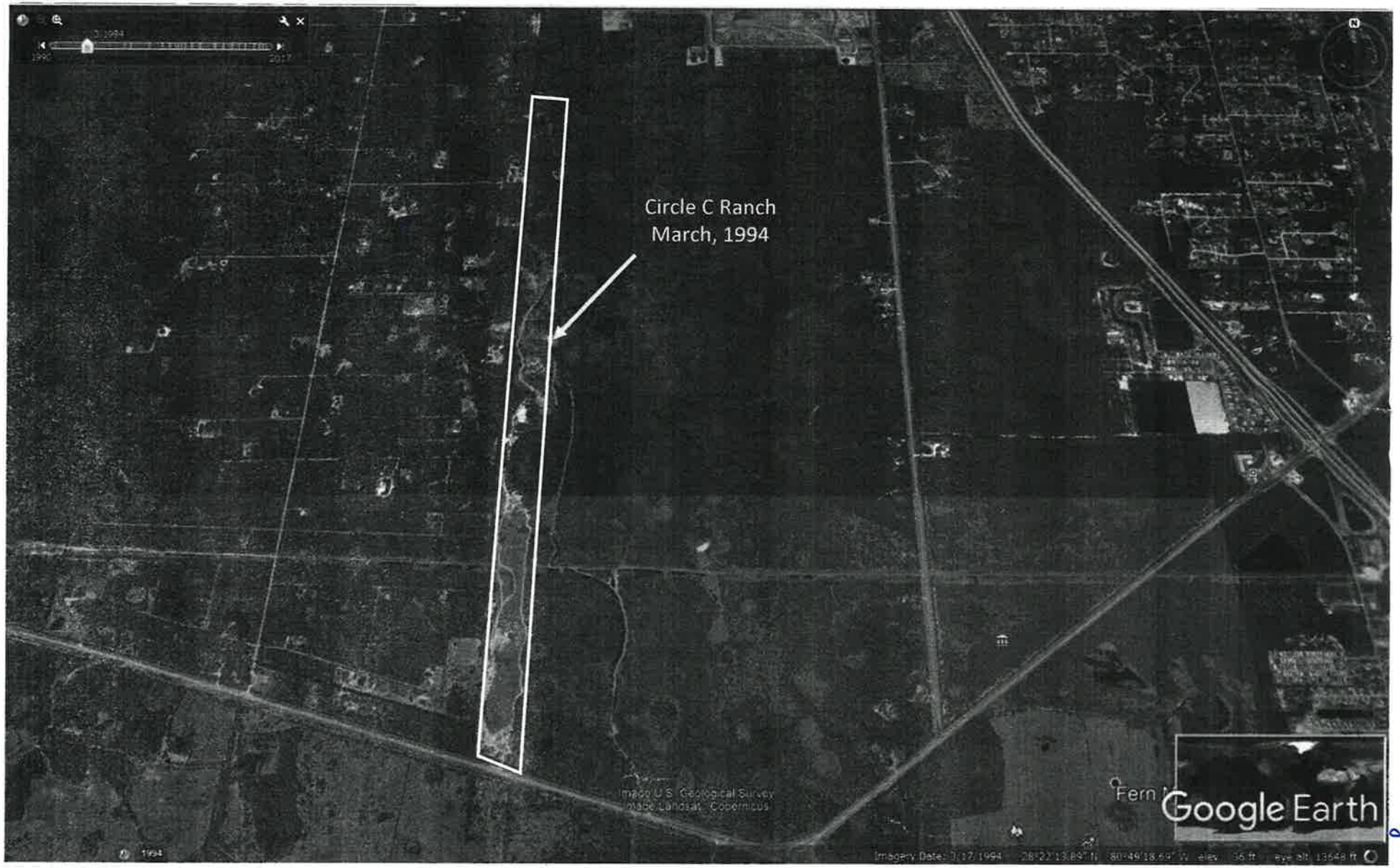
> The current site owner has been processing septic tank waste with lime, and spreading the resulting biosolids on the property for approximately 20-30 years. Biosolids have been deposited in on-site wetlands. SJRWMD determined that impacts to two of the wetlands were unpermitted, and will require restoration or mitigation for the loss of wetland function. Please note that the wetland impacts are not consistent with Brevard County Chapter 62, Article X, Division 4, entitled Wetlands Protection. Impacted wetlands are required to be restored.

The extent to which the residual effects from biosolids processing and spreading might be harmful to the health of any new occupants of the property needs to be determined. The 2019 aerial photo of the property in your agenda packet appears to show piles of lime, which is required for septage processing. In addition, your agenda packet's Correspondence section contains an email chain that began with an email addressed to you, as one of three recipients. Considering these two pieces of information from the agenda packet, we believe that to ensure the health and safety of future residents, the property should be evaluated for health risks before any density changes are granted.

Thank you for considering our opinion.

Sincerely,

Doug and Mary Sphar



H(5) and (6) GOLGIN (Chad Genoni) Comp Plan Amendment and rezoning 12/5/19

AERIAL MAP

COLGIN, RAY L.
19PZ00118

N
W E
S

1:12,000 or 1 inch = 1,000 feet

PHOTO YEAR: 2019

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: 9/20/2019

Subject Property

Parcels


RESEARCH
EXEMPTIONS
TANGIBLE
FORMS
GENERAL
CONTACTS
MapView
EagleView
01/21/2019
2 of 50
Select Date
Some substance stored on the site
O1/21/2019
BARCELONA AV
ORICK WAY
Account: 2441237
BCPAO
Account:
2441237
Instructions
Disclaimer

BOARD OF COUNTY COMMISSIONERS

Planning and Development Department
2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940
(321)633-2070 Phone / (321)633-2074 Fax
https://www.brevardfl.gov/PlanningDev

STAFF COMMENTS
19PZ00118
Ray L. Colgin

AU (Agricultural Residential) to RU-1-7 (Single-Family Residential) with a BDP (Binding Development Plan) limited to two units per acre

Tax Account Number: 2441237
Parcel I.D.: 24-35-21-00-501
Location: North side of State Road 520, approximately 0.64 mile west of the intersection of State Road 520 and State Road 524 (6500 State Road 520, Cocoa) (District 1)
Acreage: 52.53 acres

Planning and Zoning Board: 11/18/19
Board of County Commissioners: 12/05/19

Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal can be considered under the Future Land Use Designation, Section 62-1255 with a BDP limiting single-family density to the Future Land Use Designation density.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	AU	RU-1-7 With BDP
Potential*	21 Single-Family Units	105 Single-Family Units
Can be Considered under the Future Land Use Map **	YES RES 1	YES RES 2

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. ** A BDP limiting the density of the property to that of the approved Future Land Use Map designation at the time this action is approved is required for this action to establish consistency with the Future Land Use Map.

Background and Purpose of Request

The applicant is seeking a change of zoning classification from Agricultural Residential (AU) to Single-Family Residential (RU-1-7) in order to develop a residential subdivision of up to 105 single-family lots. The request is accompanied by a Binding Development Plan (BDP) limiting "the project density to the Future Land Use Designation at the time of the adoption of the zoning request."

This proposed change of zoning classification is accompanied by **19PZ00075**, a request for a Large Scale Comprehensive Plan Amendment (LSCPA) from Residential 1 (RES 1) to Residential 2 (RES

2). If **19PZ00075** is approved, then the subject property has the potential to be developed with 105 single-family units. If **19PZ00075** is denied, then the development potential of the subject property will be limited to 52 single-family units.

The original zoning classification of the subject property changed from General Use (GU) to AU via **Z-2218** approved on February 26, 1968. A conditional Use Permit (CUP) for a Tenant Dwelling Mobile Home approved under **Z-8163** was removed via **Z-10800(41)** adopted on May 1, 2003.

Land Use Compatibility

This site retains the RES 1 Future Land Use (FLU) designation which allows residential development with a maximum density of up to one (1) unit per acre. A companion request for a LSCPA amendment from RES 1 to RES 2, which allows residential development with a maximum density of up to two (2) units per acre was transmitted by the Board to the State of Florida on September 5, 2019. This application is scheduled for an adoption hearing on December 5, 2019, immediately prior to the hearing for the subject zoning action. The requested change of zoning classification is consistent with both the existing and proposed FLU via the voluntarily submitted BDP by the applicant that limits development of the site to the density of the approved FLU at the time of adoption of the change of zoning classification. Therefore, if the LSCPA is adopted, the development potential would be limited to 105 single-family units. If the LSCPA is denied and the FLU remains RES 1, the development potential would be limited to 52 single-family dwelling units.

Environmental Constraints

As detailed below, the subject site has areas of mapped SJRWMD and NWI wetlands. Per SJRWMD, there have been unpermitted wetland impacts at the site; resulting from the spreading of biosolids. Development of the property may afford the applicant an opportunity to mitigate wetlands. However, it is unknown at this time the amount of wetlands that may be mitigated, and the amount that will be required to be restored.

In addition, portions of the parcel are also located within a mapped Special Flood Hazard Area (SFHA) within the riverine floodplain. NRM recommends that applicant delineate potential wetlands and determine riverine floodplain profile prior to any planning as these features may affect site plan design. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development. Applicant is encouraged to contact NRM at 321-633-2016.

Preliminary Transportation Concurrency

The closest concurrency management segment to the subject property is State Road 520, between the Orange County Line and State Road 524, which has a Maximum Acceptable Volume (MAV) of 40,300 trips per day, a Level of Service (LOS) of C, and currently operates at 30.37% of capacity daily. The maximum development potential from the proposed rezoning does increase the proposed trip generation by 2.25 percentage points. The corridor is anticipated to continue to operate at 32.62% of capacity daily (LOS C). The proposal is not anticipated to create a deficiency in LOS.

Fairglen Elementary School is not projected to have enough capacity for the total of projected and potential students from the proposed 52 acre development. Therefore, the capacity of adjacent

concurrency service areas must be considered for elementary school capacity. Those adjacent schools include Saturn Elementary School, Cambridge Elementary School, Enterprise Elementary School, Challenger 7 Elementary School and Atlantis Elementary School. Considering the adjacent elementary school concurrency service areas, there is sufficient capacity for the total projected student membership to accommodate the SR520 52 acre development. At this time, Cocoa Junior/Senior High School has sufficient capacity for the total projected junior and senior projected student membership to accommodate the SR520 52 acre development.

The subject property is served by municipal potable water. The provider is the City of Cocoa Utilities Department. The nearest sanitary sewer is provided by Brevard County Utilities and is located at the intersection of State Roads 520 and 524 approximately 3,600 feet to the east; site is currently not connected to sewer.

Applicable Land Use Policies

The applicant is seeking a change of zoning classification from Agricultural Residential (AU) to Single-Family Residential (RU-1-7) in order to develop a residential subdivision of up to 105 single-family lots. The request is accompanied by a Binding Development Plan (BDP) limiting "the project density to the Future Land Use Designation at the time of the adoption of the zoning request."

This proposed change of zoning classification is accompanied by **19PZ00075**, a request for a Large Scale Comprehensive Plan Amendment (LSCPA) from Residential 1 (RES 1) to Residential 2 (RES 2). If **19PZ00075** is approved, then the subject property has the potential to be developed with 105 single-family units. If **19PZ00075** is denied, then the development potential of the subject property will be limited to 52 single-family units.

The original zoning classification of the subject property changed from General Use (GU) to AU via **Z-2218** approved on February 26, 1968. A conditional Use Permit (CUP) for a Tenant Dwelling Mobile Home approved under **Z-8163** was removed via **Z-10800(41)** adopted on May 1, 2003.

The AU zoning classification permits single-family residences and agricultural uses on 2.5 acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing of animals, fowl and beekeeping.

The RU-1-7 classification permits single family residences on minimum 5,000 square foot lots with minimum widths of 50 feet and depth of 100 feet. The minimum house size is 700 square feet.

The abutting property to the north retains AU zoning. The adjacent property to the south across State Road 520 retains Planned Unit Development (PUD) zoning. The abutting property to the east retains AU zoning. The abutting property to the west functions as a draining corridor (existing canal) and has the AU zoning designation. Beyond this strip (100 foot width) to the west are a variety of properties that retain mostly AU, but also GU, Agricultural Rural Residential (ARR), and Rural Residential Mobile Home (RRMH-1) zoning classifications. These lots are mostly non-conforming lots due to their size and average a little over one acre in size.

The GU classification is a holding category, allowing single-family residences on five acre lots with a minimum width and depth of 300 feet. The minimum house size in GU is 750 square feet.

ARR requires minimum lot size of 1 acre, with minimum width of 125 feet and depth of 200 feet. This classification permits single-family residences and mobile homes as well as agricultural pursuits. This property is located within the area addressed by the West Canaveral Groves Ordinance. The ARR zoning classification was created for the area covered by the West Canaveral Groves Ordinance.

The RRMH-1 classification permits single-family mobile homes and detached single-family residential land uses on minimum one acre lots, with a minimum width and depth of 125 feet. This classification permits horses, barns and horticulture as accessory uses. The minimum house size is 600 square feet.

In review of Administrative Policy 3 (c), concerning the character of the historical land use patterns and the fact that there have been no zoning actions within ½ mile of the subject property within the last three years, the RU-1-7 zoning classification is not an established zoning classification within the surrounding area, as neighboring lots are at least one acre in size and have a rural character. Although the required BDP limits the potential density from 52-105 single-family lots, depending upon the outcome of the Large-Scale Comprehensive Plan request, the Board may also desire to require a larger minimum lot size to provide for improved compatibility with existing lot sizes. Compatibility may be achieved by increasing the minimum lot size to ½ acre or one acre. The RU-1-7 minimum lot size is 5,000 square feet (0.115 acres).

For Board Consideration

The applicant is seeking a change of zoning classification from Agricultural Residential (AU) to Single-Family Residential (RU-1-7) in order to develop a residential subdivision of up to 105 single-family lots. The request is accompanied by a Binding Development Plan (BDP) limiting "the project density to the Future Land Use Designation at the time of the adoption of the zoning request."

This proposed change of zoning classification is accompanied by **19PZ00075**, a request for a Large Scale Comprehensive Plan Amendment (LSCPA) from Residential 1 (RES 1) to Residential 2 (RES 2). If **19PZ00075** is approved, then the subject property has the potential to be developed with 105 single-family units. If **19PZ00075** is denied, then the development potential of the subject property will be limited to 52 single-family units.

In review of Administrative Policy 3 (c), concerning the character of the historical land use patterns and the fact that there have been no zoning actions within ½ mile of the subject property within the last three years, the RU-1-7 zoning classification provides for a 5,000 sq. ft lot, as neighboring lots are at least one acre in size. There is no RU-1-7 zoning within the surrounding area. Although the required BDP limits the potential density from 52-105 single-family lots, depending upon the outcome of the Large-Scale Comprehensive Plan request, the Board may wish to consider whether the requested RU-1-7 is compatible with the surrounding AU, GU, ARR, RRMH-1, and PUD zoning classification. Additionally, does the BDP adequately mitigate for the development potential of the property with the RU-1-7 zoning classification.

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Zoning Review & Summary

Item # 19PZ00118

Applicant: Ray Colgin; Chad Genoni

Zoning Request: AU to RU-1-7

Note: Applicant wants to develop single family subdivision; BDP limiting density to 2 units/acre

LPA Hearing Date: 08/19/19; **BCC Hearing Date**: 09/05/19

LPA Hearing Date: 11/18/19; **BCC Hearing Date**: 12/05/19

Tax ID No: 2441237

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

Substantial Natural Resources Land Use Issues:

As detailed below, the subject site has areas of mapped SJRWMD and NWI wetlands. Per SJRWMD, there have been unpermitted wetland impacts at the site; resulting from the spreading of biosolids. Development of the property may afford the applicant an opportunity to mitigate wetlands. However, it is unknown at this time the amount of wetlands that may be mitigated, and the amount that will be required to be restored.

In addition, portions of the parcel are also located within a mapped Special Flood Hazard Area (SFHA) within the riverine floodplain. NRM recommends that applicant delineate potential wetlands and determine riverine floodplain profile prior to any planning as these features may affect site plan design. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development. Applicant is encouraged to contact NRM at 321-633-2016.

Summary of Mapped Natural Resources Present on the Subject Property:

- NWI Wetlands
- SJRWMD Wetlands
- Hydric Soils
- Floodplain
- Wildfire Mitigation Plan

Land Use Comments:

Wetlands and Hydric Soils

The subject parcel contains mapped areas of NWI and SJRWMD wetlands, and hydric soils (Anclote sand – frequently ponded, Malabar sand, and Holopaw sand) as shown on the NWI Wetlands, SJRWMD Florida Land Use & Cover Codes and USDA Soil Conservation Service Soils Survey maps, respectively; indicators that hydric soils and wetlands may be present. Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For subdivisions greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) and 62-3696. A wetland determination/delineation will be required prior to any land clearing activities, plan or permit submittal, and applicant is encouraged to contact NRM at (321) 633-2016.

The current site owner has been processing septic tank waste with lime, and spreading the resulting biosolids on the property for approximately 20-30 years. Biosolids have been deposited in on-site wetlands. SJRWMD determined that impacts to two of the wetlands were unpermitted, and will require restoration or mitigation for the loss of wetland function. Please note that the wetland impacts are not consistent with Brevard County Chapter 62, Article X, Division 4, entitled Wetlands Protection. Impacted wetlands are required to be restored. Development of the property may afford the applicant an opportunity to mitigate wetlands. However, it is unknown at this time the amount of wetlands that may be mitigated, and the amount that will be required to be restored. Please see the **Land Alteration** section of this report for additional information.

Floodplain

Portions of the western and southern areas of the parcel are mapped as being within a Special Flood Hazard Area (riverine floodplain) as identified by the Federal Emergency Management Agency and as shown on the FEMA Flood Map. 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." The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance.

Per Section 62-3724(1), there shall be no net change in the rate and volume of floodwater discharged from the pre-development 100-year, 25-year, 10-year or mean annual riverine floodplain. Residential density within the riverine floodplain is based on whether floodplain is designated 100-year, 25-year, 10-year or mean annual riverine floodplain. Depending on riverine floodplain designation, compensatory storage may be required. Additional detailed flood modeling has been performed for the West Cocoa area by Brevard County and shall also be used for floodplain, compensatory storage, and density determinations. The modeling and/or elevation information as well as topographic LiDAR are available upon request. Applicant is encouraged to contact Natural Resources Stormwater Department at 321-633-2016 for floodplain modeling information available for this area.

Landscape requirements

Aerials indicate Heritage/Specimen Trees and/or Protected trees may reside on the parcel. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), the purpose and intent of the ordinance is to encourage the protection of Heritage Specimen Trees. In addition, per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

Land Alteration

The current site owner has been processing septic tank waste with lime for approximately 20-30 years. The resulting biosolids were spread on the property. The activity was permitted under a Florida Department of Environmental Protection (FDEP) permit. However, FDEP denied additional permits in 2018, as the property could no longer support the activity.

Biosolids were deposited in on-site wetlands. SJRWMD determined that impacts to two of the wetlands were unpermitted, and will require restoration or mitigation for the loss of wetland function. Please note that the wetland impacts are not consistent with Brevard County Chapter 62, Article X, Division 4, entitled Wetlands Protection. Impacted wetlands are required to be restored. Development of the property may afford the applicant an opportunity to mitigate wetlands. However, it is unknown at this time the amount of wetlands that may be mitigated, and the amount that will be required to be restored.

Protected Species

Federally and/or state protected species may be present on properties with aquifer recharge soils. Should any protected species be present, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and

Wildlife Service prior to any plan, permit submittal, or development activity, including land clearing, as applicable.

Wildfire Mitigation Plan

NRM does not regulate wildfire planning, but applicant should consider the comment provided by the Florida Department of Agriculture and Consumer Services in their letter dated October 22, 2019 to the Brevard County Planning and Development Department regarding the Large-Scale Comprehensive Plan Amendment as follows: Areas in and proximate to the subject site should be encouraged to address issues of Fire-wise Communities prior to construction. Access points to allow equipment into areas to suppress wildfires can be incorporated as safety, natural resource and habitat preservation. Please contact Ronda Sutphen at FFS for additional information regarding the FireWise program at 850-681-5929.

LOCATION MAP

COLGIN, RAY L.
19PZ00118

N
W E
S

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: 9/20/2019

Buffer

Subject Property

ZONING MAP

COLGIN, RAY L.

19PZ00118

1:12,000 or 1 inch = 1,000 feet

Subject Property

Parcels

Zoning

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: 9/20/2019

FUTURE LAND USE MAP

COLGIN, RAY L.

19PZ00118

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1:12,000 or 1 inch = 1,000 feet

Subject Property

Parcels

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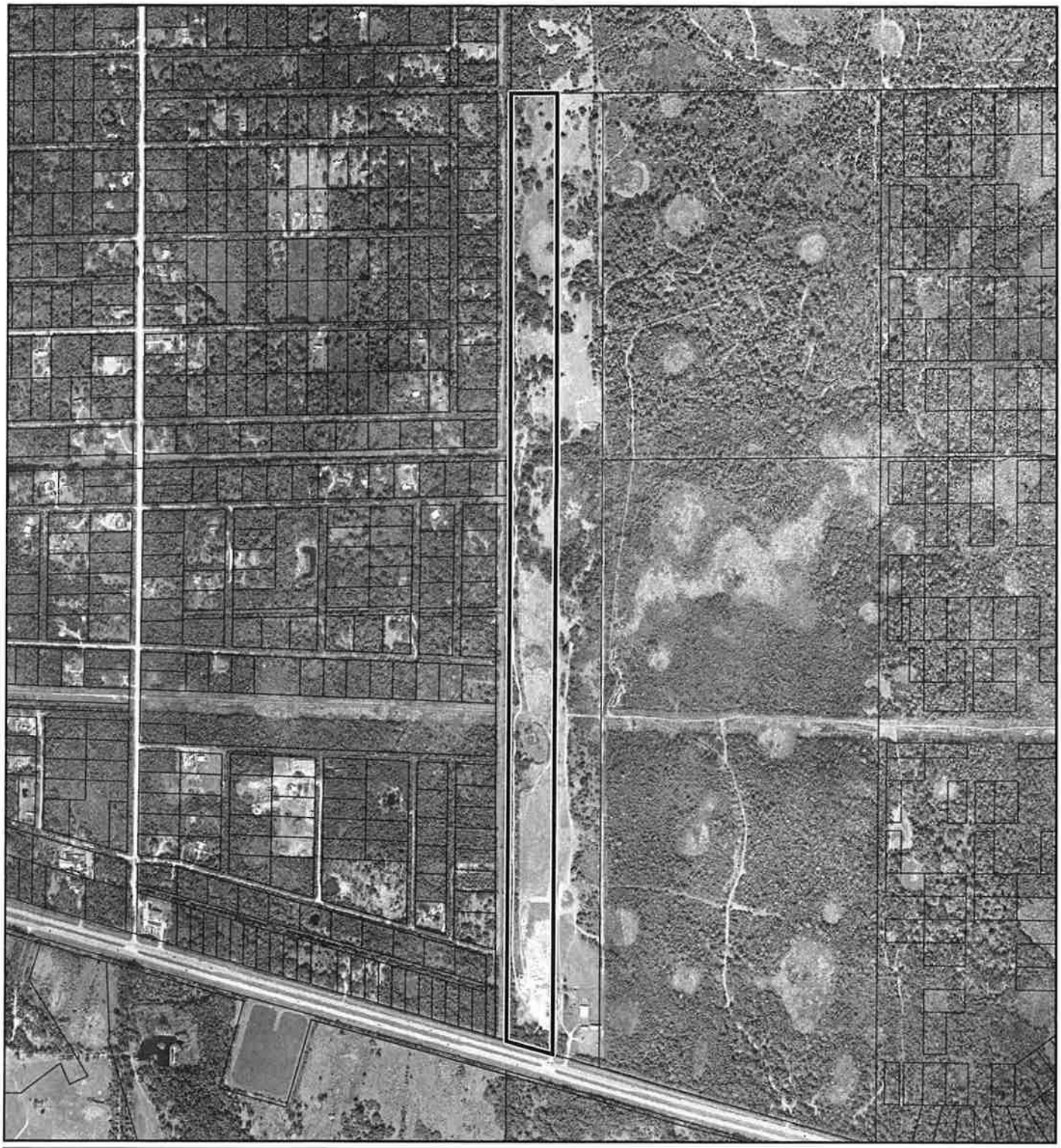
Produced by BoCC - GIS Date: 9/20/2019

AERIAL MAP

COLGIN, RAY L.

19PZ00118



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1:12,000 or 1 inch = 1,000 feet

PHOTO YEAR: 2019

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Produced by BoCC - GIS Date: 9/20/2019

Subject Property

Parcels

NWI WETLANDS MAP

COLGIN, RAY L.

19PZ00118

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1:12,000 or 1 inch = 1,000 feet

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Produced by BoCC - GIS Date: 9/20/2019

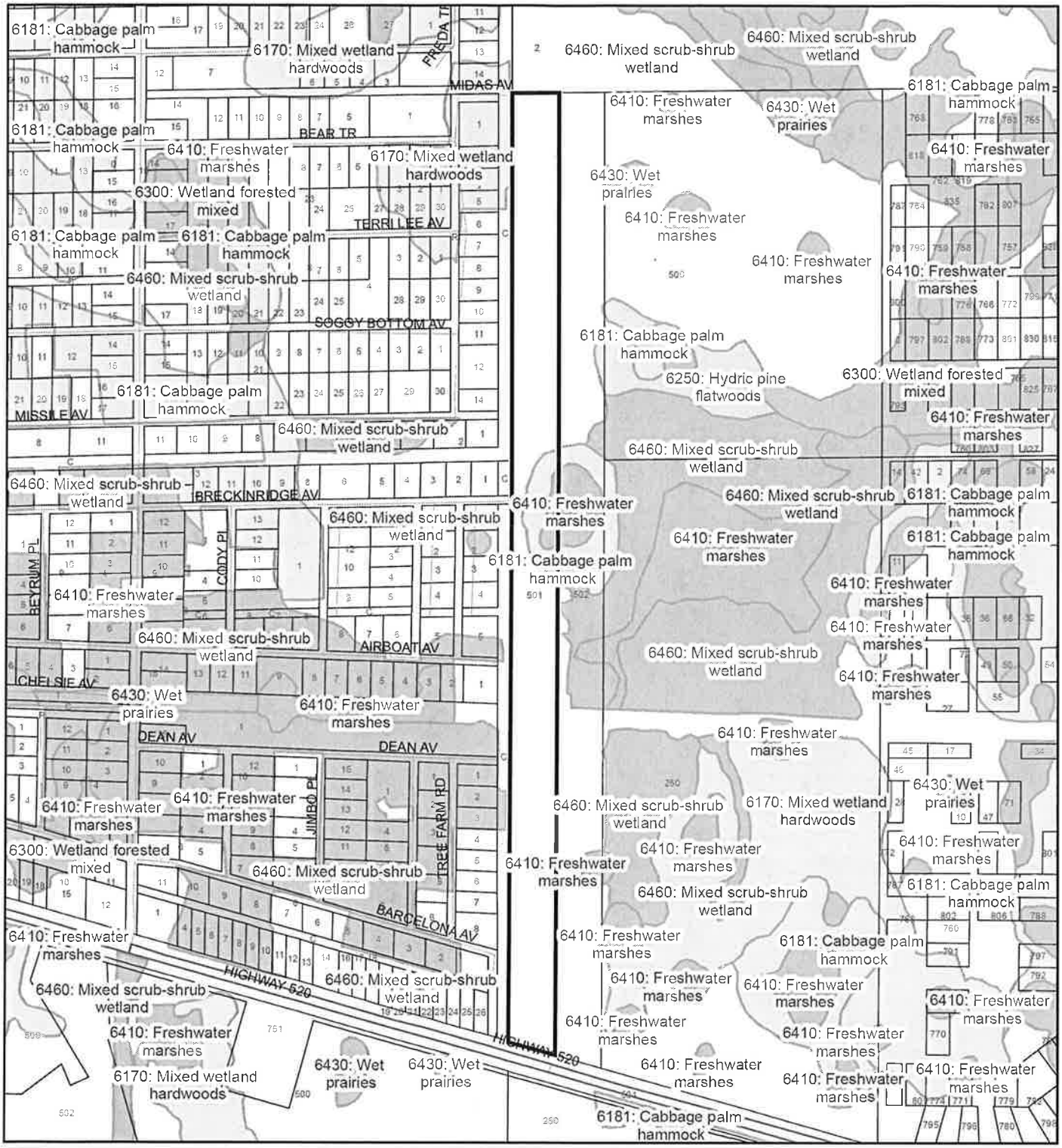
National Wetlands Inventory (NWI)

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

SJRWMD FLUCCS WETLANDS - 6000 Series MAP

COLGIN, RAY L.

19PZ00118



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1:12,000 or 1 inch = 1,000 feet

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Produced by BoCC - GIS Date: 9/20/2019

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

COLGIN, RAY L.

19PZ00118

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1:12,000 or 1 inch = 1,000 feet

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Produced by BoCC - GIS Date: 9/20/2019

USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

Subject Property

Parcels

FEMA FLOOD ZONES MAP

COLGIN, RAY L.

19PZ00118

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1:12,000 or 1 inch = 1,000 feet

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Produced by BoCC - GIS Date: 9/20/2019

FEMA Flood Zones

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

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

COLGIN, RAY L.

19PZ00118

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1:12,000 or 1 inch = 1,000 feet

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Produced by BoCC - GIS Date: 9/20/2019

Subject Property

Parcels

Septic Overlay

40 Meters

60 Meters

All Distances

EAGLE NESTS MAP

COLGIN, RAY L.

19PZ00118

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1:12,000 or 1 inch = 1,000 feet

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Produced by BoCC - GIS Date: 9/20/2019

Subject Property

Parcels

Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

COLGIN, RAY L.

19PZ00118

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1:12,000 or 1 inch = 1,000 feet

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Produced by BoCC - GIS Date: 9/20/2019

Subject Property

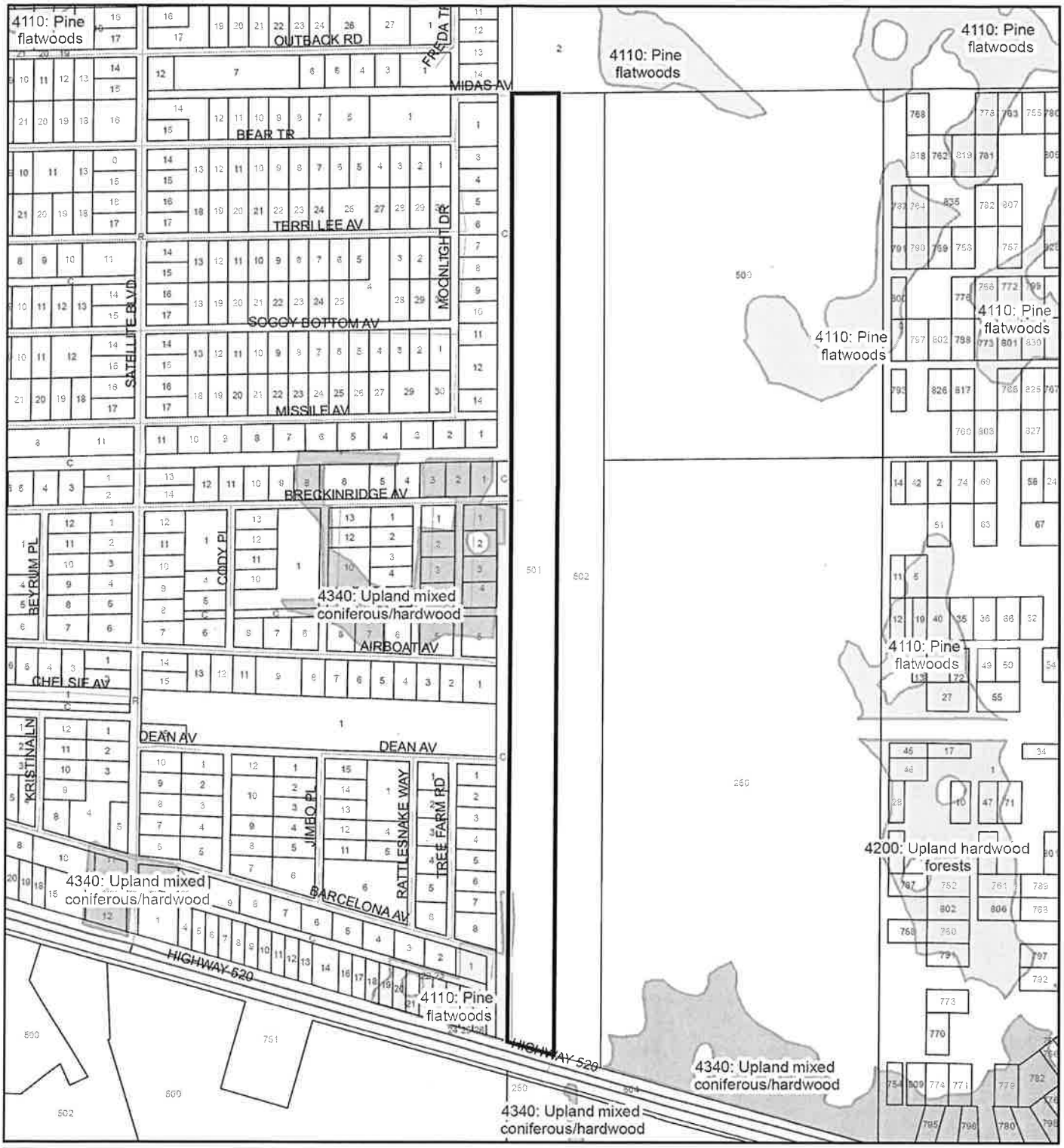
Parcels

Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

COLGIN, RAY L.

19PZ00118



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Produced by BoCC - GIS Date: 9/20/2019

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

Echevarria, Dail

From: Argo, Kerry
Sent: Thursday, December 14, 2017 1:13 PM
To: Echevarria, Dail
Subject: RE: 17CE-02290

Hi Dail,

When I verified with Environmental Health that they had been notified, I was told that Director Cynthia Leckey and Supervisor Christy McNamara were there on scene and that the location would be monitored by DEP from now on.

Thank you,
Kim

From: Echevarria, Dail
Sent: Thursday, December 14, 2017 8:50 AM
To: Argo, Kerry
Subject: 17CE-02290

Kim
Please send me an email in reference to what you were told and by whom about this case. Thanks.

Dail Echevarria, Jr.
Code Enforcement Officer
Code Enforcement Division
Planning & Development Department
Brevard County Government
2725 Judge Fran Jamieson Way, #A114
Viera, FL 32940
(321) 633-2086 x-52598
Dail.Echevarria@brevardfl.gov

Argo, Kerry

From: Argo, Kerry
Sent: Wednesday, December 13, 2017 10:12 AM
To: Commissioner, D1
Cc: Newell, Marcia; Mascellino, Carol; Pritchett, Rita; Echevarria, Dail
Subject: RE: 6500 Hwy 520, Cocoa - Circle C Ranch - Odor Complaint - PRR 8384

Hello,

I have assigned this case to CEO Dail Echevarria, case number 17CE-02290. I will also forward this email to CEO Echevarria for his information. Thank you!

Kim Argo, Administrative Secretary
Brevard County Code Enforcement
321-633-2086, ext. 52770

From: Commissioner, D1
Sent: Wednesday, December 13, 2017 9:15 AM
To: Argo, Kerry
Cc: Newell, Marcia; Mascellino, Carol; Pritchett, Rita
Subject: FW: 6500 Hwy 520, Cocoa - Circle C Ranch - Odor Complaint - PRR 8384

Good Morning,

Our office received the below information regarding the property at 6500 Hwy 520 in Cocoa and wanted to forward on to you.

Sincerely,

Steven Tagye
Legislative Aide to Commissioner Rita Pritchett
Steven.Tagye@Brevardfl.gov

Brevard

District 1 Commission Office
2000 South Washington Ave
Titusville, Florida 32780-7030
321-607-6901

From: Ritchie, George C
Sent: Wednesday, December 13, 2017 8:21 AM
To: Lyons, Rose A; Grivas-Pereno, Bessie; Ritchie, George C; Damm-Martling, Angela R
Cc: gdocdana@gmail.com; Ray, Brittany; Abbate, Frank B; Commissioner, D1
Subject: FW: 6500 Hwy 520, Cocoa - Circle C Ranch - Odor Complaint - PRR 8384

I received the following message from Solid Waste.

From: Lugar, Deborah L
Sent: Tuesday, December 12, 2017 3:58 PM
To: Ritchie, George C
Subject: RE: 6500 Hwy 520, Cocoa - Circle C Ranch - Odor Complaint - PRR 8384

Solid Waste does not regulate this activity. Circle C Ranch has a State permit under review according to FDEP Website. They can reach the FDEP Central District at 407-897-4100.

Permit Application Under Review	
Site Name:	Circle C Ranch
FDEP Office:	CENTRAL DISTRICT
Florida County:	Brevard
Permit Type:	Water - Domestic Wastewater Type III Residuals/Septage Management Facility Permit
Application Number:	FLA994413-001
Applicant Name:	Melvin Colgin
Applicant Company:	Circle C Ranch
Application Received:	JUN-23-2017

Deborah Lugar
Assistant Director
Brevard County Solid Waste Management Dept.
2725 Judge Fran Jamieson Way, A-114
Viera FL 32940
Phone: 321-633-2043
FAX: 321-633-2044
Email: deborah.lugar@brevardfl.gov

From: Ritchie, George C
Sent: Tuesday, December 12, 2017 11:21 AM
To: Lugar, Deborah L
Cc: Sterk, Erin; Grivas-Pereno, Bessie
Subject: FW: 6500 Hwy 520, Cocoa - Circle C Ranch - Odor Complaint - PRR 8384

Can this lot zoned AU have sewage spread across the property. Do they have any approval from your department?

Account: 2441237

Owners:
Colgin, Ray L
Mail Address:
6500 Highway 520 Cocoa FL 32926
Site Address:
6500 Highway 520 Cocoa FL 32926
Parcel ID:
24-35-21-00-501
Taxing District:
1800 - Unincorp District 1
Exemptions:
None
Property Use:
6110 - Grazing Land - Soil Capability Class II- With Res
Total Acres:
52.53
Site Code:
0001 - No Other Code Appl.
Plat Book/Page:
N/A
Subdivision Name:
N/A
Land Description:
W 1/2 Of W 1/2 Of W 1/2 Of SW 1/4 & That Part Of W 1/2 Of W 1/2 Of W 1/2 Of W 1/2 Lying N Of St Rd 520 In Sec 28 Par's 251 & 501 In Sec 28

From: Ray, Brittany
Sent: Tuesday, December 12, 2017 9:35 AM
To: gdocdana@gmail.com
Cc: Lyons, Rose A; Grivas-Pereno, Bessie; Ritchie, George C; Damm-Martling, Angela R
Subject: Re: 6500 Hwy 520, Cocoa - Circle C Ranch - Odor Complaint - PRR 8384

Mr. Dana,

Brevard County is in receipt of your below public records request and your request has been forwarded to the appropriate departments and/or personnel to research.

Please be advised that there may be costs associated with the County's response to your request. Per Brevard County AO-47, extensive staff time is defined as any time after the first one-half hour that it takes to research, gather or process the public records request, as well as the time spent with the requestor to review the records. We will provide you with a cost estimate prior to fulfilling your request and this estimate should include the cost of the time required for redacting any exempted information as well as the time spent reviewing emails generated through the IT department. Brevard County requires a deposit of 50% of the estimated duplication and staff time fees up front before starting the work to gather or research or duplicate records. Additionally the County will collect the remaining balance prior to release of the records, or reimburse any amount necessary

should the amount collected be more than the actual cost of resources used. A copy of AO-47 is attached for your review.

In the meantime, please do not hesitate to contact me by email or telephone if you have any questions or concerns.

Should you have any questions, please feel free to contact me.

Brittany Ray
Legal Secretary II
County Attorney's Office
2725 Judge Fran Jamieson Way, Bldg. C
Viera, Florida 32940
Telephone: (321) 633-2090
Facsimile: (321) 633-2096
Email: brittany.ray@brevardfl.gov

From: Gary Dana <gdocdana@gmail.com>
Sent: Sunday, December 10, 2017 11:53 PM
To: Enforcement, Code; Commissioner, D1; Abbate, Frank B
Subject: Odor Complaint

To Whom it may concern,

Ray (Mel) Colgin of Circle C Ranch at 6500 Highway 520, Cocoa, FL was accepting septic sewage with his septic treatment plant only 5 feet from my property line and there was an overwhelming smell of human feces at approximately 10:30 AM on Saturday, December 9, 2017. This has been an ongoing complaint for years. It stinks every time he accepts sewage, treats sewage in "open" tanks, or spreads human feces on his fields. I tried notifying the Florida Department of Health (no Saturday contact), the EPA (no Saturday contact), left messages at State Level offices, contacted Brevard County Sheriff Department (nonemergency), and advised to recontact code enforcement. The aforementioned agencies are aware of my complaints for years. Your site computers were down and no number at code enforcement to leave message (cycled back to main menu). Now leaving message (Sunday by email). I have also emailed Brevard County Manager's Office. According to zoning regulations that I find, the Board of County Commissioners need to approve a Waste Treatment Facility. I would like to request the approval paperwork of Ray (Mel) Colgin approval. If not, an explanation of why he is able to operate? The treatment plant should be commercial property by zoning, but I don't see this. Please forward my complaint to anyone who is responsible. I truly feel that stage waste is best managed by a municipality, the County, and if more volume needed, the taxpayers should bear the burden of expanded facilities (maybe at the dump?).

Sincerely,
Gary Dana
6450 Highway 520, Cocoa, FL 32926 (property address, not mailing address)
321-698-0454

Prepared by: Charles B. Genoni
Beachland Managers, LLC
4760 N. US1 #201
Melbourne FL 32935

Draft BDP 402
19PZ00118
Ray Colgin
Submitted 09/13/19

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this_____day of _____, 20__ between the BOARD OF COMMISIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Beachland Managers, LLC , a Florida Limited Liability Company (hereinafter referred to as "Developer/Owner").

RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner has requested the RU 1-7 zoning classification and desire to develop the Property as a Single Family Subdivision, and pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property. NOW,

THEREFORE, the parties agree as follows:

The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.

2. The Developer/Owner shall limit the project density to the Future Land Use Designation at the time of the adoption of the zoning request.

3. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This agreement provides no vested rights against changes to the Comprehensive Plan or land development regulations as they may apply to this Property.

4. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Courts the cost of recording this Agreement in the Public Records of Brevard County, Florida.

5. This Agreement shall be binding and shall insure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property and be subject to the above referenced conditions as approved by the Board of County Commissioners on _____, 20___. In the event the subject Property is annexed into a municipality and rezoned, this agreement shall be null and void.

6. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as may be amended.

7. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 8 above.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA
2725 Judge Fran Jamison Way
Viera, FL 32940

_____
Scott Ellis, Clerk
(SEAL)

_____
_____, Chair
As approved by the Board on_____

(Please note: you must have two witnesses and a notary for each signature required, the notary may serve as one witness.)

WITNESSES:

DEVELOPER/OWNER

Beachland Managers, LLC

_____

_____
(Witness Name typed or printed)

4760 N. US1 #201 Melbourne FL 32935

_____

As Manager Member

_____
(Witness Name typed or Printed)

Marie Charles B. Genoni

STATE OF_____

COUNTY OF_____

The foregoing instrument was acknowledged before me this_____day of ____,20__,

by_____, as_____of_____,

who is personally known or produced_____as identification.

My commission expires_____
Commission no_____
SEAL

_____
Notary Public
(Name typed, printed or stamped)

Exhibit "A"

PARCEL I

The West½ of the West½ of the West½ of the Southwest¼ of Section 21, Township 24 South, Range 35 East, and a portion of the West ½ of the West ½ of the West ½ of Section 28, Township 24 South, Range 35 East lying North of State Road No. 520, less the Northwest ¼ of the Northwest ¼ of the Northwest ¼ of the Northwest ¼ thereof, all lying in Brevard County, Florida, the same being more particularly described as follows:

Begin at the Northwest corner of said Southwest ¼ of Section 21; thence N 89° 25'24" E along the North line of said West ½ of the West½ of the West ½ of the Southwest¼ of Section 21, a distance of
332.37 feet of the Northeast corner of said West ½ of the West ½ of the West ½ of the Southwest ¼ of Section 21; thence S 00° 02'00" W along the East line of said West ½ of the West ½ of the West ½ of Southwest ¼ of Section 21, a distance of 2646.50 feet to the Southeast corner of said West ½ of the West ½ of the West ½ of the Southwest ¼ of Section 21; thence S 89° 20'32" W along the South line of said West½ of the West½ of the West½ of the Southwest¼ of Section 21, a distance of331.58 feet to the Southwest corner of said Section 21; thence N 00° 00'59" E along the West line of said Southwest ¼ of Section 21, a distance of 2646.10 feet to the Northwest corner of the Southwest ¼ of Section 21 and the POINT OF BEGINNING, together with the following described parcel of land: Commence at the Northwest corner of said Section 28; thence S 00° 05'00" W along the West line of the Northwest¼ of said Section 28, a distance of 326.44 feet to the Southwest corner of the Northwest ¼ of the Northwest ¼ of the Northwest ¼ of the Northwest ¼ of Section 28 and the POINT OF BEGINNING; thence N 00° 35'20" E along the South line of said Northwest ¼ of the Northwest ¼ of the Northwest ¼ of the Northwest¼ of Section 28, a distance of 331.72 feet to the Southeast corner of said Northwest ¼ of the Northwest ¼ of the Northwest ¼ of Section 28; thence S 00° 03'27" E, a distance of 3915.28 to the Northerly right of way line of State Road No. 520, a 200 foot wide right of way; thence N 74° 04'00" W along said Northerly right of way line, a distance of 354.56 feet to the West line of said Southwest¼ of Section 28; thence N 00° 03'26" E along said West line, a distance of 1530.40 feet to the Northwest corner of said Southwest ¼ of Section 28; thence N 00° 05'40" E along said West line of the Northwest ¼ of Section 28, a distance of 2285.09 feet to the Southwest corner of said Northwest ¼ of Northwest ¼ of the Northwest ¼ of the Northwest ¼ of Section 28 and the POINT OF BEGINNING.

PARCEL2

The Northwest ¼ of the Northwest ¼ of the Northwest¼ of the Northwest ¼ of Section 28, Township 24 South, Range 35 East, Brevard County, Florida, the same being more particularly described as follows:

Begin at the Northwest corner of said Section 28; thence N 89° 29'32" E along the North line of said Northwest ¼ of the Northwest ¼ of the Northwest ¼ of the Northwest ¼ of Section 28, a distance of
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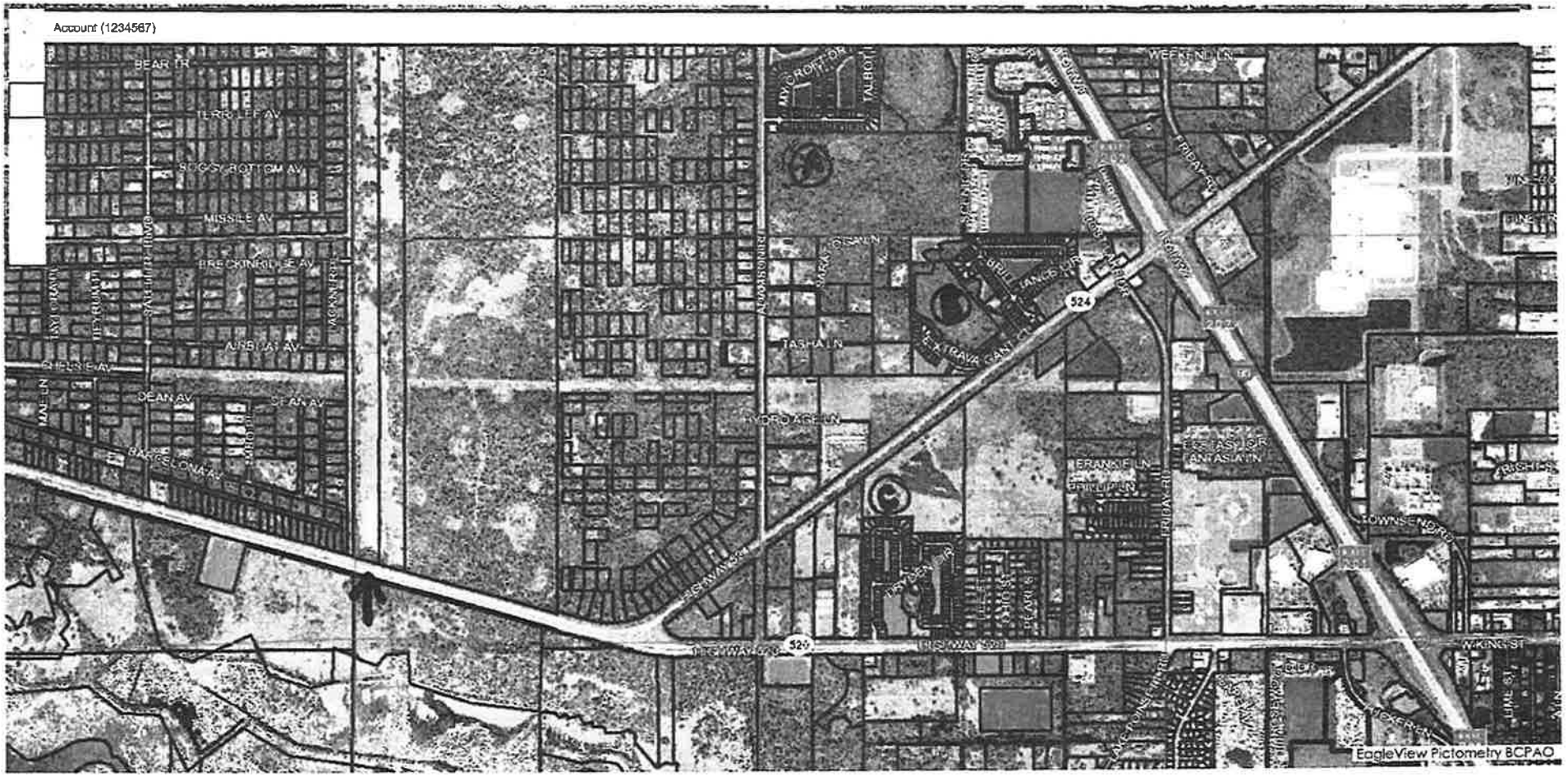

(A) Adamson Creek
(B) Emerald Lakes PUD
(C) Fern Meadows

LOCAL PLANNING AGENCY/PLANNING AND ZONING BOARD MINUTES

The Brevard County Local Planning Agency/Planning & Zoning Board met in regular session on Monday, November 18, 2019, at 3:00 p.m., in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order by Chair Mark Wadsworth, at 3:00 p.m.

Board members present were: Ian Golden; Ron Bartcher; Ben Glover; Mark Wadsworth, Chair; Peter Filiberto, Vice Chair; and Dane Theodore.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Jad Brewer, Assistant County Attorney; George Ritchie, Planner III; Darcie McGee, Assistant Director, Natural Resources Management; and Mary Taylor, Land Development Specialist.

Excerpt of Complete Agenda

1. An ordinance amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, Florida, entitled The Comprehensive Plan, setting forth the adoption of Large Scale Plan Amendment 2019-2; amending Section 62-501, entitled Contents of the Plan; specifically amending Section 62-501 as described below; and provisions which require amendments to maintain internal consistency with this amendment; providing legal status; providing a severability clause; and providing an effective date.

Plan Amendment 2019-2.1
A proposal initiated by Ray L. Colgin, to amend Part XI, the Future Land Use Element, to change the Future Land Use Map Series designation from RES 1 (Residential 1) to RES 2 (Residential 2). The property is 52.53 acres, located on the north side of State Road 520, approximately 0.64 mile west of the intersection of State Road 524 and State Road 520. (6500 State Road 520, Cocoa) (19PZ00075) (District 1)

2. Ray L. Colgin (Chad Genoni/Kim Rezanka)
A request for a change of zoning classification from AU (Agricultural Residential) to RU-1-7 (Single-Family Residential), with a BDP (Binding Development Plan) limited to two units per acre, on 52.53 acres, located on the north side of State Road 520, approximately 0.63 miles west of the intersection of State Road 520 and State Road 524. (6500 State Road 524, Cocoa) (Tax Account 2441237) (19PZ00118) (District 1)

(All documents submitted to the board can be found in file 19PZ00118, located in the Planning and Development Department)

Kim Rezanka, Cantwell & Goldman, P.A., 96 Willard Street, Cocoa, distributed a map to the board and staff. She explained that the purpose of the Comprehensive Plan amendment and rezoning is to allow flexibility, as the property is long and narrow, and at approximately 322 feet in width, there are some challenges in developing it, along with some environmental constraints. She said the request for RU-1-7 is to allow for smaller lots. The aerial map she gave the board shows where the property is located, and also indicates recent development in nearby City of Cocoa, which are all plats of 50-foot lots. She stated the property to the immediate east of the subject property is Sterling Stables, which is a wedding venue and ranch, and the owner, Gary Dana, spoke to the board at the August 19th meeting. She said a lot of the undeveloped property in the area is unplatted subdivisions of one or two acres and easements, but now there is a four-lane road and sewer availability. She said all of the issues of sewer, water, access, and drainage will be done at site plan. She stated as to the Comprehensive Plan amendment, to the south of State Road 520 is Residential 2. She said the

comments from Natural Resources talks about environmental issues, and those will be dealt with during site plan. The transmittal comments for the Comprehensive Plan amendment resulted in no comments; the Department of Economic Opportunity had no comments; St. Johns River Water Management District had no comments; the Department of Environmental Protection found nothing that resulted in adverse impacts to important State resources; and Florida Department of Transportation stated the Comprehensive Plan amendment is not anticipated to result in significant adverse impacts to the State highway system or strategic intermodal system. She said as to the rezoning, RU-1-7 is made compatible by the BDP and will only be developed to the number of units that the Future Land Use allows, so if the board does not approve the Residential 2, it would stay Residential 1 and the maximum would be 52 lots. If Residential 2 is approved, the maximum would be 105 lots. She noted most of the parcels to the west are 2.5 acres, but there are few residential lots that are developed; they are modular homes for the most part and most are not developed because there are no roads to them.

Mark Wadsworth asked if there is a percentage of wetlands on the property. Ms. Rezanka replied the applicant has not done a topographical survey on the property, as he has not yet purchased the property, but she knows wetlands cannot be impacted more than 1.8 percent.

Mr. Wadsworth asked for comment from Natural Resources Management. Darcie McGee, Assistant Director, Natural Resources Management, stated St. Johns has identified there has been unpermitted wetland impacts on the property, and she let the applicant know that at the time of permitting they may be looking at some restoration. She said the applicant would get 1.8 percent of the project area, but any unpermitted wetland impacts would count against the 1.8 percent, and anything else would have to be restored. She explained that for many years the owner had bonafide agriculture and was regulated by the State for biosolids, so the things done under that permit that the State does not say is a violation, then that would not count against the 1.8 percent, but it could be challenging because it's a narrow lot.

Mark Wadsworth called for public comment, and seeing none, he brought the item back to the board.

Motion by Ben Glover, seconded by Peter Filiberto, to approve the Large Scale Comprehensive Plan amendment initiated by Ray L. Colgin to change the Future Land Use designation from Residential 1 to Residential 2. The motion passed unanimously.

Motion by Ben Glover, seconded by Peter Filiberto, to approve the change of zoning classification from AU to RU-1-7, with a BDP limited to two units per acre. The motion passed unanimously.

Adjournment:
Upon consensus of the board, the meeting adjourned at 3:12 p.m.

H.6

From: Ball, Jeffrey
To: Jones, Jennifer
Subject: FW: Ray Colgin property --How is this going to work?
Date: Wednesday, December 4, 2019 2:07:39 PM
Attachments: cpplicjgbddaggcn.png

FYI

From: Douglas and Mary Sphar <canoe2@digital.net>
Sent: Wednesday, December 4, 2019 11:53 AM
To: Mcgee, Darcie A <Darcie.Mcgee@brevardfl.gov>
Cc: McCullough-Wham, Lee Ann <LeeAnn.McCullough-Wham@brevardfl.gov>; Calkins, Tad <tad.calkins@brevardfl.gov>; Ball, Jeffrey <Jeffrey.Ball@brevardfl.gov>; Barker, Virginia H <Virginia.Barker@brevardfl.gov>
Subject: Re: Ray Colgin property --How is this going to work?

Hi Darcie,

Thanks for this information. Doug and I are very concerned about what has been going on at that property for many years.

As you know, this property is right down 520 from our neighborhood. Doug has spent a lot of time looking into the St. Johns biosolids problem during the past year.

Mr. Colgin has been processing septage (pumpout from septic tanks), not the somewhat-treated biosolids like Deer Park spreads. He had to mix the septage with lime to satisfy EPA regs.

Effective January 1, **2016**, the spreading of septage on land in Florida is illegal. However, you will notice the "Correspondence" in your agenda item H.6, in which Gary Dana emails Code Enforcement about a very smelly situation on Dec. 9, **2017** (see bottom of that Correspondence email chain -- too gross for me to quote). If indeed, Mr. Colgin accepted septage for processing on that date, it would have been against the law.

The septage facility is not visible from 520 like it used to be. Doug looked at some pictures of the property with Google Maps. In a photo dated 2017, the lime piles were not visible, but your aerial, photo year 2019, included in the GIS maps in the agenda packet, shows a large quantity of what appears to be piles of lime. We are wondering what Mr. Colgin was using the lime for in 2019 since, as just noted, spreading of septage on land has been illegal since January 1, 2016.

The NRMD report in your agenda item states:

> The current site owner has been processing septic tank waste with lime for approximately 20-30 years. The resulting biosolids were spread on the property. **The activity was permitted under a Florida Department of Environmental Protection (FDEP) permit**. However, FDEP denied additional permits in 2018, as the property could no longer support the activity.

However, information we obtained yesterday from David Smicherko of FDEP indicates that Mr. Colgin never managed to obtain an FDEP permit:

> Mr. Sphar,
>
> Circle C Ranch had an Agricultural Use Plan (AUP) for a short time, to apply residuals, and applied for a FDEP permit in the early to mid-1990's for the septage facility (so he could process more than 10,000 gpd of septage) but did not received a FDEP permit for the facility or the site. Since that time Circle C Ranch was operated under DOH. In 2017 Mr. Colgin applied for a permit for his DOH facility to come under FDEP, but that was eventually denied. There has never been a permit issued from FDEP to Melvin Colgin for the Circle C Ranch and FDEP has never had an enforcement action against Circle C Ranch.
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> **Environmental Manager**
> Florida Department of Environmental Protection
> Central District – Orlando
> david.smicherko@floridadep.gov
> Office: 407-897-4169

Do you have a copy of the DOH permit Mr. Colgin probably had? We have not managed to track it down.

Thank you for considering this information. We are concerned for the health of future occupants of the property, and you know how much we care about the health of the St. Johns River.

Doug and Mary Sphar

321-636-0701

On 12/4/2019 11:02 AM, Mcgee, Darcie A wrote:

> Hi Mary,
>
> Regarding the wetlands violation: The violation stays with the property. Our CE Officer is out on medical leave, but should be back soon. We will talk about this when he gets back and I'll update you on our path.
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> Regarding sewer: Only a small portion of site in in SFHA. Perhaps P&D will want to weigh in on the previous discussions/commitments.

Regarding biosolids: We just conducted soil sampling at Deer Park. Results and analysis should be done within a month. This should give us a better idea of how P behaves in the soil columns.

Lastly, if any property annexes, we no longer regulate them. I believe that this is a standard language in BDPs.

Regards,
Darcie

From: Douglas and Mary Sphar <canoe2@digital.net>
Sent: Tuesday, December 3, 2019 11:32 AM
To: Mcgee, Darcie A <Darcie.Mcgee@brevardfl.gov>
Subject: Ray Colgin property --How is this going to work?

Hi Darcie,

If Ray Colgin sells his property before cleaning up his wetlands mess, will Comp Plan Conservation Element Policy 5.2.C be enforced on the new owner?

> C. If an activity is undertaken which degrades or destroys a functional wetland, **the person performing such an activity shall be responsible for repairing and maintaining the wetland**. If it is not feasible or desirable for the responsible person to perform the repair and maintenance of the wetland, then the responsible person shall mitigate for the wetland loss. Mitigation can include, but not be limited to: wetland restoration, wetland replacement, wetland enhancement, monetary compensation or wetland preservation.

I believe the safest thing to do is require cleanup of the wetlands before any property transfer.

Also, from the Staff Report (Planning Dept.):

> The subject property is served by municipal potable water. The provider is the City of Cocoa Utilities Department. **The nearest sanitary sewer** is provided by Brevard County Utilities and **is located at the intersection of State Roads 520 and 524 approximately 3,600 feet to the east**; site is currently not connected to sewer.

I am concerned that there is no requirement in the BDP for the property owner to

hook up to sewer. Also you would think there could be a health hazard for residents of any new subdivision, considering the fact that the property is in a Special Flood Hazard Area of the St. Johns riverine floodplain.

Please note that on August 19th at the P&Z transmittal hearing the following exchange took place, as noted in the minutes:

> Ron Bartcher asked if Mr. Genoni said he would or would not connect to sewer. Mr. Genoni replied at this point, he is not 100% sure if they are going to connect to sewer. He said originally, they were Page 8 planning on septic tanks, but they were hoping to get through to the zoning phase to determine what it would be allowed. Mr. Bartcher asked if he thinks he will have an answer when he comes back for the rezoning request. Mr. Genoni replied yes.

It appears from the minutes that the issue became more confusing at the LPA adoption hearing/P&Z zoning hearing. From the LPA/P&Z minutes:

> She [Kim Rezanka] said a lot of the undeveloped property in the area is unplatted subdivisions of one or two acres and easements, but now there is a four-lane road **and sewer availability**. She said all of the issues of sewer, water, access, and drainage will be done at site plan.

This statement appears to conflict with information in the Staff report quoted above. Which information is correct?

With the damage caused by biosolids spreading over many years, the St. Johns River does not need more pollution from this property from septic systems.

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What this means is that even if the BDP were to include conditions for wetland cleanup and/or sewer hookup, these conditions along with the entire BDP would go away with an annexation.

Mary

From: Ball, Jeffrey
To: Jones, Jennifer
Subject: FW: Ray Colgin property --How is this going to work? - more info
Date: Wednesday, December 4, 2019 2:09:27 PM
Attachments: image001.png
septage_alternatives.pdf

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Cc: McCullough-Wham, Lee Ann <LeeAnn.McCullough-Wham@brevardfl.gov>; Calkins, Tad <tad.calkins@brevardfl.gov>; Ball, Jeffrey <Jeffrey.Ball@brevardfl.gov>; Barker, Virginia H <Virginia.Barker@brevardfl.gov>
Subject: Re: Ray Colgin property --How is this going to work? - more info

Darcie,

The Department of Health has permitting responsibility for septage disposal of quantities up to 10,000 gpd. For quantities over 10,000 gpd, FDEP has permitting responsibility. From the early 1990's until January 1, 2016 he legitimately operated under a DOH permit for land application of lime stabilized septage. At one point he applied for a FDEP permit for quantities greater than 10,000 gpd, but that was denied, as was a later application for a FDEP permit.

Effective January 1, 2016 Florida statute 381.0065(6) banned land application of septage. According to the attached DOH document, at that point his options were:

- Treat the septage at a domestic wastewater treatment facility
- Dispose the septage at a Class I landfill
- Increase level of treatment to Class B, Class A, or Class AA

The document record in the agenda package raises some questions as to what he did after January 1, 2016. Somewhere around December 10, 2107, an adjacent property owner owner, Gary Dana, 6450 Hwy 520, Cocoa filed a code complaint claiming that Circle C "was accepting septic sewage with his septic treatment plant only 5 feet from my property line and there was an overwhelming smell of human feces at approximately 10:30 AM on Saturday, December 9, 2017". This was dated December 10, 2017. Mr Dana goes on to say "This has been an ongoing complaint for years. It stinks every time he accepts sewage." This complaint was assigned to Brevard County Chief Enforcement Officer Dail Echevarria, Brevared County Code Enforcement Division, Case Number 17CE-02290. This would seem to suggest Circle C was accepting septage after the ban on land spreading went into effect. Furthermore, the 2109 aerial photo in the agenda package shows numerous piles of lime staged on the property.

So the issue is: Subsequent to the January 1, 2016 ban, was or is some type of septage processing occurring on the property. Mr. Dana's complaint suggests there was.

Doug Sphar

On 12/4/2019 12:24 PM, Mcgee, Darcie A wrote:

> Thanks Mary for your interest in this application. I'll have to go back and look at my notes on the history. My understanding is that most of the operations, up until recent permit denial, were legit (except some of the wetland impacts).
>
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Mary

REPORT ON ALTERNATIVE METHODS FOR THE TREATMENT AND DISPOSAL OF SEPTAGE

Bureau of Onsite Sewage Programs

February 1, 2011

State Surgeon General

Rick Scott
Governor

Table of Contents

Executive Summary

Section 381.0065(7), Florida Statutes, requires the land application of septage to be discontinued by January 1, 2016. The section further requires the Department of Health to prepare a report on alternative methods for the treatment and disposal of septage.

Approximately 100,000 onsite sewage treatment and disposal systems are pumped each year generating 100 million gallons of septage requiring treatment and disposal. Currently this septage is treated and disposed of at a number of DEP-regulated and DOH-regulated septage treatment facilities. The treated septage is then land applied at DEP-regulated and DOH-regulated land application sites. Existing state rules applicable to septage treatment and land application meet the federal standards in 40 CFR Part 503.

Current alternatives to land application of septage include treatment at a Wastewater Treatment Facility (WWTF) with subsequent application at DEP-regulated sites or dewatering with subsequent disposal at a sanitary landfill. These alternatives are generally used in areas of greater density of population where availability and proximity of central facilities make them more economically attractive than transport to and disposal on open land. The distance between central facilities with available treatment capacity and septage collected in rural areas can make transport to such facilities cost prohibitive. Central facilities refusing to accept septage containing restaurant waste and counties prohibiting disposal of septage from another county can exacerbate the situation. Longer transport distances disproportionately impact the smaller hauling businesses that have fewer and smaller trucks and may render them unable to successfully compete.

Costs to local governments and small businesses owning the treatment facilities vary based on the treatment alternative selected and volume of septage treated. Costs to small businesses servicing the onsite sewage systems vary based on fees charged by treatment facilities and distance to the treatment facility. Costs to individuals and small businesses having their onsite systems serviced are affected by the treatment alternative selected and the fees charged by the service company.

To discontinue land application, the department recommends the following:

1. Legislation requiring local governments to make provision for the treatment and disposal of septage generated within their geographic jurisdiction.
2. Legislation requiring county comprehensive plans to include provision for the treatment and disposal of septage if the plan includes areas already developed or to be developed using septic tanks.
3. Legislation requiring WWTFs to make provision for receiving and treating septage if there are septic systems within their franchise area.
4. Legislation that provides incentives for WWTFs and landfills to accept grease.
5. Legislation requiring local governments to provide for the disposal of grease.

The land application of septage at DOH-regulated land application sites could be eliminated within two years following the availability of sufficient, reasonably located, alternative treatment facilities that are actively accepting septage. Because of the cost to businesses and individuals and lack of alternatives in more rural areas of the state, the department recommends that, instead of being discontinued, land application practices be enhanced with increased third-party inspection and oversight along with enhanced nutrient and soil sampling.

REPORT ON ALTERNATIVE METHODS FOR THE TREATMENT AND DISPOSAL OF SEPTAGE

Introduction

This report is prepared in response to S. 381.0065(7), Florida Statutes, as amended in 2010, which reads:

> (7) LAND APPLICATION OF SEPTAGE PROHIBITED.—Effective January 1, 2016, the land application of septage from onsite sewage treatment and disposal systems is prohibited. By February 1, 2011, the department, in consultation with the Department of Environmental Protection, shall provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, recommending alternative methods to establish enhanced treatment levels for the land application of septage from onsite sewage and disposal systems. The report shall include, but is not limited to, a schedule for the reduction in land application, appropriate treatment levels, alternative methods for treatment and disposal, enhanced application site permitting requirements including any requirements for nutrient management plans, and the range of costs to local governments, affected businesses and individuals for alternative treatment and disposal methods. The report shall also include any recommendations for legislation or rule authority needed to reduce land application of septage.

Current Situation

Septage is the material that is removed from septic tanks and other onsite sewage treatment and disposal systems when they are cleaned. In addition to septage, onsite systems serving restaurants include tanks that separate grease from the sewage stream and that grease is hauled, treated and land applied similarly to septage. Therefore any discussion of septage treatment and disposal should include some discussion of grease treatment and disposal. Currently there are approximately 2.6 million onsite sewage systems in the state containing, at any time, upwards of 2.6 billion gallons of septage. The United States Environmental Protection Agency (EPA) and the Department of Health (DOH) recommend that onsite systems be cleaned every three to five years in order to assure proper continued operation of the system (Onsite Wastewater Treatment Systems Manual, EPA, 2002). While approximately 13,500 onsite systems are currently under some form of routine maintenance contract, property owners frequently neglect the remaining systems resulting in a pumping frequency much less than that recommended. Nevertheless, approximately 100,000 systems are pumped each year generating 100 million gallons of septage requiring treatment and disposal.

DOH has jurisdiction over septage treatment facilities treating up to 10,000 gallons of septage per day. Department of Environmental Protection (DEP) has jurisdiction over larger septage treatment facilities and any facility that additionally treats Wastewater Treatment Facilities (WWTF) residuals. DOH has jurisdiction over land application sites receiving treated septage only from DOH-regulated septage treatment facilities. There are currently 92 land application sites regulated by the DOH receiving septage treated at 108 DOH-regulated septage treatment facilities. Approximately 40% of the septage removed from onsite sewage treatment and disposal systems is treated at septage treatment facilities and then taken to the land application sites. The remainder of the septage is taken to a WWTF or is dewatered with the liquid fraction going to a wastewater treatment plant and the solid fraction going to a municipal landfill facility. WWTFs and landfills are more frequently used as an alternative in more populous settings while land application sites are more likely in rural areas. Availability of open land versus the

proximity to centralized treatment facilities and the cost of centralized treatment facilities impact the economics and logistics that drive the decision whether to use land application or an alternative. Many WWTFs and sanitary landfills choose not to accept loads of septage that include restaurant waste containing grease. This choice can make land application the only available option for the disposal of grease. Other alternatives such as incineration, bioenergy production and conversion to fertilizer have not yet captured a significant portion of the septage treatment industry and would require large capital commitments from government or industry.

DOH requirements for the land application of septage are in rule 64E-6.010, Florida Administrative Code. The state requirements achieve the federal requirements for the treatment and land application of septage regarding treatment levels and application site location and management (EPA 40CFR Part 503). The septage is screened for litter and then treated with lime to raise the pH to 12 for a minimum of two hours or to 12.5 for thirty minutes. While the lime stabilization alone meets the federal requirements for septage treatment and land application, the state rule includes site restrictions that the federal regulations apply only to untreated septage. Finally, the state rule echoes federal regulations for nitrogen loading restrictions and requires further limitations for phosphorous where required by state law.

Alternatives to Land Application of Septage

Treatment of Septage at Domestic Wastewater Treatment Facilities - There are some benefits of treating septage at a WWTF. Treating septage takes advantage of available WWTF capacity while at the same time centralizing waste treatment operations. However, accepting septage, which is a high strength waste, has the potential to upset WWTF processes and may result in a variety of increased operation and maintenance requirements and costs. Septage can be added to the liquid treatment system, the biosolids handling system, or a combination of the two. Allowable loadings are site specific and vary depending on the WWTFs treatment processes and their design capacity. The quantity of septage that can be treated is normally limited by the facility's available aeration and/or solids handling capacity. Both the available organic and hydraulic capacity must be evaluated to determine if it is possible for a WWTF to consider accepting septage.

Adverse impacts of septage addition increase significantly if septage is discharged as a slug load (e.g., directly from the septage hauler's truck to the main lift station or headworks of the WWTF). As a result if a WWTF is going to accept septage, septage receiving facilities (e.g., holding tanks) are extremely desirable. The receiving facilities must be designed to allow septage addition to the liquid treatment system at a relatively constant, controlled rate, (i.e., "slow bleed") minimizing the potential for short term overloading of downstream processes. Assuming a holding tank is provided and that septage is added to the sewage flow on a semi-continuous basis, Figure 6-5 of EPA's "Septage Treatment and Disposal" handbook provides estimates of allowable rates of septage addition. For example, a conventional activated sludge plant with a primary clarifier designed for 10 million gallons per day (mgd) and operating at 80 percent of design capacity should be able to receive a septage flow of 0.6 percent of 10 mgd, or 60,000 gallons per day. A 10 mgd extended aeration plant operating at 70 percent design capacity should be able to receive 0.4 percent of 10 mgd, or 40,000 gallons per day.

A variety of methods may be used to treat septage in the biosolids handling system. The septage may be treated by adding it directly to the WWTFs chemical conditioning system or to the WWTFs aerobic/anaerobic digesters. Also, the septage may be added directly to the WWTFs biosolids dewatering process which would require further treatment to stabilize the septage if land application is used as opposed to landfill disposal.

Septage addition at a WWTF increases operation and maintenance requirements. Records of septage sources and volumes and routine sampling are parts of a comprehensive management program. Record keeping and sampling protocols deter haulers from discharging incompatible materials, such as industrial wastes. In addition, this information can be helpful if an upset occurs in the treatment process. Operational data such as biosolids production, chemical and power consumption, and grit and screening volumes should be monitored to assess the impact of septage on overall plant operation.

Larger WWTFs are more capable of accepting septage. While Florida has over 2,000 WWTFs, only 60 WWTFs have capacities over 10 mgd. Less than 30% of the counties in Florida have a WWTF rated over 10 mgd located within that county. Some large WWTFs choose not to accept grease with septage and that necessitates the transport of grease for separate treatment land application. Areas served by OSTDSs need to be within an economical hauling distance of a WWTF willing to accept septage. Rural areas frequently have no large WWTF within an economical hauling distance. As some counties prohibit the acceptance of septage from another county, the hauling distance can be increased prohibitively. These centralized facilities in the rural areas will necessitate longer transport distances and disproportionately impact the smaller hauling businesses having fewer and smaller trucks. Many smaller business owners are predicting that they may not be able to successfully compete.

Currently, wastewater treatment facilities commonly charge the septage haulers (small businesses) $60 to $120 for treatment and disposal of 1,000 gallons of septage. The industry estimates that the increase in costs for disposal fees and transport to an available facility would double and in some cases triple the existing cost to homeowners and small businesses that need to have their systems serviced. The facility hardware cost required at the WWTF would vary from negligible if the septage were simply offloaded into the headworks; to $50,000 to $200,000 for storing and slowly metering 40,000 gallons per day into the facility; to $3,650,000 to treat 40,000 gallons per day separately from the WWTF stream. The upgrades to the WWTF would be a cost to local government if the utility were owned by the local government. In addition, continuing costs for manpower, energy, and equipment maintenance, repair and replacement would likewise be factored into the WWTF operation expense.

Disposal of Septage at Landfills - Another option for septage disposal is acceptance at a permitted, Class I landfill. Acceptance of septage at a landfill increases microbial activity within the landfill and results in increased waste decomposition and more rapid waste stabilization. However, landfill instability (such as differential settlement and slope instability) may result due to disposal of the wet waste stream, and increased difficulty in operating compaction equipment may result due to creation of a slick working surface. Also, if not quickly covered with initial cover, the landfill may experience increased odors; health impacts on workers due to pathogens; and attraction of vectors such as birds, insects, and rodents. Lined Class I landfills offer containment and management of potential contaminants that may result from septage disposal. In contrast to land application of treated septage, landfill disposal requires less area than land application, and no additional land is required if septage is managed at an existing landfill. There are presently 48 active Class I landfills in the state.

Disposal of septage in a Class I landfill must be in accordance with Chapter 62-701, F.A.C. Rule 62-701.300(10), F.A.C., prohibits the discharge of septage in a landfill unless it passes the Paint Filter Liquids Test using Method 9095B as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Pub. No. SW-846). The Paint Filter Test is conducted by placing a 100-milliliter sample of waste on a conical 400-micron paint filter. If

liquid passes through the filter in 5 minutes, the waste is considered a free liquid, and thus fails the test and cannot be landfilled. Because septage is typically about 2 to 3% total solids and it takes about 12% total solids to pass the paint filter test, significant dewatering is required for landfill disposal. Dewatering equipment, such as a belt filter press, would need to be installed or be available at the landfill or other location. The effluent from dewatering equipment would need to be routed to a wastewater disposal system or sewer, perhaps with the landfill leachate. Operators at some Class I landfills have also added other materials to liquid wastes like saw dust or soils so that the mixture passes the Paint Filter Test. If allowed in the landfill permit, this also may be an option in some cases for managing the septage.

Current dewatering/landfill operations charge the septage haulers (small businesses) approximately $100 per 1000 gallons of septage. The industry estimates that the increase in costs for disposal fees and transport to an available facility would double the existing cost to homeowners and small businesses that need to have their systems serviced. These centralized facilities in the rural areas will necessitate longer transport distances and disproportionately impact the smaller hauling businesses having fewer and smaller trucks. Many smaller business owners are predicting that they may not be able to successfully compete. The facility hardware for dewatering 40,000 gallons per day would cost approximately $200,000. Such a facility, if located at the landfill, would be a cost likely borne by the local government that operated the landfill. Continuing costs for manpower, energy, and equipment maintenance, repair and replacement would likewise be factored into the dewatering/landfill facility operation expense.

Increasing the Treatment Level for Land Application

As the current practice of lime stabilization for two hours at a pH of 12 meets the federal regulations, the necessity of higher levels of treatment is questionable.

A 40,000 gallon per day (40 homes per day) stand-alone treatment facility to produce biosolids meeting Class-A requirements comes with a cost estimate of $3,650,000 for the treatment facility. Such a facility would likely be owned by a small business such as a septage hauler or a local government or municipality if located at a wastewater treatment facility.

Possible Enhancements to Existing Land Application Practices

Current land application rules meet the requirements for nutrient reduction and management under the federal regulations. The enhancements listed below would be above what EPA currently requires for septage management and land application but may address concerns that lead to the requirement to discontinue land application by January 1, 2016.

Enhancing existing land application practices rather than requiring the implementation of higher-cost alternatives could avoid the possible unintended consequences of individuals seeking unapproved disposal alternatives that adversely impact quality of life, public health and the environment.

1. Require third-party oversight of septage treatment and land application activities:

    - Class C WWTF Operator visits to oversee operations.
    - Increase frequency of DOH inspections.
    - Establish regional DOH inspections.
    - Limit application sites to use by one applier only.

2. Change Operational Procedures:

- Metered receiving at treatment facilities.
- Require larger stabilization and holding tanks at treatment facilities.
- Require longer treatment exposure times and post-treatment holding times.
- Require electronic pH meters to replace testing with paper strips.
- Require sampling of stabilized septage.
- Tracking yearly nutrient loading based on septage sampling.
- Require annual soil sampling of active application sites.

The listed enhancements to existing land application practices could be accomplished within the existing statutory rulemaking authority for DOH-regulated septage treatment and application sites.

Kimberly Powell

From:	Jones, Jennifer <jennifer.jones@brevardfl.gov>
Sent:	Monday, December 9, 2019 10:24 AM
To:	Kimberly Powell
Cc:	patty@cfglawoffice.com
Subject:	Colgin BDP Letter
Attachments:	4. 19PZ00118 BDP Letter.pdf; BDP MODEL Revised Clean 11-2019.docx; Joinder Example 10 17 19.pdf

Kim,

Attached is the BDP letter for Ray Colgin. Also attached is a sample BDP (with Bryan Lober as Chair) and a sample joinder if there is a mortgage on the property.

Thank you,

Jennifer Jones
Special Projects Coordinator
Brevard County
Planning and Development Department
Office line: 321-633-2070 ext. 58300
Direct line: 321-350-8300
jennifer.jones@brevardfl.gov

Planning & Development Department
2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

December 9, 2019

Goldman & Cantwell, P.A.
Attn: Kim Rezanka
96 Willard St.
Cocoa FL 32926

RE: Binding Development Plan for property located in Section 21, Township 24, Range 35

Dear Ms. Rezanka:

This letter is to inform you that the final approval of the rezoning of the above referenced property is pending until this office receives your original Binding Development Plan (BDP). BCC Policy 52 requires that "Where a rezoning action has been approved by the Board of County Commissioners subject to a BDP, the applicant shall submit the **final signed BDP**, **in recordable form**, to staff within **60 days** from the date of approval of the rezoning action." This means that you should submit your original BDP to me by **February 3, 2020**. Staff will then have 30 days to review the draft BDP for completeness and accuracy, and then schedule the item for a subsequent Board of County Commissioners meeting, as a consent item.

Also, please note that Section 62-1157(1)(g) of the Zoning Code requires that the document shall be recorded in the public records of the County within 120 days of approval by the Board of County Commissioners, and approval of the zoning action is not effective until such criteria are satisfied. This section also states that if the BDP is not recorded prior to the expiration of 120 days from the date of approval by the Board of County Commissioners, then the application will be considered to have been withdrawn.

Please remember that once you submit your final BDP, with the check, made out to the Brevard County Clerk, for recording the document, there is a review period that can take up to 30 days. Therefore, it is highly recommended that you submit your BDP within the **60 days,** as required by Board policy.

Please contact me at (321) 633-2069, ext. 58300, if you have any questions regarding this procedure.

Sincerely,

S/ Jennifer Jones
Special Projects Coordinator

Phone (321) 350-8300 • Fax (321) 633-2074
jennifer.jones@brevardcounty.us
Website: www.brevardcounty.us/PlanningDev/Home

Prepared by: _____
Address: _____

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this _____ day of _____, 20__ between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and _____, a _____ corporation (hereinafter referred to as "Developer/Owner").

RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner has requested the _____ zoning classification(s) and desires to develop the Property as _____, and pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.

2. Developer/Owner shall provide a _____ foot buffer on the _____ portion of the Property.
3. The Developer/Owner shall limit density to _____ units per acre and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.
4. The Developer/Owner shall limit ingress and egress to

   _____.
5. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This agreement provides no vested rights against changes to the Comprehensive Plan or land development regulations as they may apply to this Property.
6. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Court the cost of recording this Agreement in the Public Records of Brevard County, Florida.
7. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on _____. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.
8. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as may be amended.
9. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 8 above.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA
2725 Judge Fran Jamieson Way
Viera, FL 32940

_____ _____

Scott Ellis, Clerk
(SEAL)

Bryan Lober, Chair
As approved by the Board on_____

(Please note: You must have two witnesses and a notary for each signature required. The notary may serve as one witness.)

WITNESSES:

(INSERT BUSINESS NAME or INDIVIDUAL NAME(s))
as DEVELOPER/OWNER

_____ _____

_____ _____

(Witness Name typed or printed) (Address)

_____ _____

(President)

_____ _____

(Witness Name typed or printed) (Name typed, printed or stamped)

STATE OF _____ §

COUNTY OF _____ §

The foregoing instrument was acknowledged before me this _____ day of , 20___, by _____, President of _____, who is personally known to me or who has produced _____ as identification.

_____

My commission expires
SEAL
Commission No.:

Notary Public

(Name typed, printed or stamped)

JOINDER IN BINDING DEVELOPMENT PLAN BY MORTGAGEE CORPORATION

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being the authorized agent and signatory for the owner and holder of that certain Mortgage dated _____, given by _____, as mortgagor, in favor of the undersigned, _____, as mortgagee, recorded in Official Records Book _____, Page _____, of the Public Records of Brevard County, Florida, and encumbering lands described in said Mortgage, does hereby join in the foregoing Binding Development Plan for the purpose of consenting to the change of property use and development requirements as set forth therein.

MORTGAGEE CORPORATION NAME AND ADDRESS

_____
Mortgagee Corporation Name

_____ _____ _____ _____
Street City State Zip Code

_____ _____
*Authorized Agent Signature Authorized Agent Printed Name and Title

*Note: All others besides CEO or President require attachment of original corporate resolution of authorization to sign documents of this type.

AFFIX CORPORATE SEAL

WITNESSES

_____
Signature

_____
Print Name

_____
Signature

_____
Print Name

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20 ____,

by _____, who is personally known to me or who has produced

_____ as identification.

_____
Notary Public Signature

_____ SEAL
Name Printed