



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.2.

11/7/2019

Subject:

Thomas L. and Barbara S. Tofte (Anjelika Teynor) request a change of zoning classification from GU (General Use) to SR (Suburban Residential) with a BDP (Binding Development Plan) limited to one lot. (19PZ00098) (Tax Accounts 2000804, 2000810, 2000811) (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 GU (General Use) to SR (Suburban Residential) with a BDP (Binding Development Plan) limited to one lot. (19PZ00098) (District 1)

Summary Explanation and Background:

The applicants' current application covers three (3) lots and a land area of 1.34 acres in order to obtain approval for one combined lot consisting of parcels referenced above for residential purposes. The property is 1.34 acres, located on the north side of Golden Shores Boulevard, approximately 0.44 mile west of U.S. Highway 1, Mims.

Although this parcel is bisected by a drainage tract, the entire area can be combined into one lot. Section 62-1188(4) of Brevard County Code states: If two or more lots or a combination of lots and portions of lots with contiguous frontage in single ownership are of record, and if all or part of the lots do not meet the requirements for lot width, lot area and lot depth as established in this section, the lands involved shall be considered to be an undivided parcel for the purposes of this chapter. Where two or more nonconforming lots of record are combined for the purpose of requesting a new zoning classification which would make the combined lots conforming as one parcel, the lots shall not be subdivided subsequent to the rezoning except where such division would create lots consistent with all other provisions of the comprehensive plan and zoning regulations.

The Board may wish to consider the applicants' request to amend the current zoning from GU (General Use) to SR (Suburban Residential) with BDP (Binding Development Plan) limiting development for all three underlying lots to one single-family residential lot to help mitigate the introduction of the SR zoning classification into the area which consists mostly of GU, RR-1 (Rural Residential) and RRMH-1 (Rural Residential Mobile Home) zonings.

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On October 7, 2019, the Planning and Zoning Board heard the request and unanimously recommended approval.

Clerk to the Board Instructions:

Once resolutions are received, please execute and return to Planning and Development.

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ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

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

Administrative Policy 2

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

Criteria:

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

Administrative Policy 3

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

Criteria:

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

1. historical land use patterns;
2. actual development over the immediately preceding three years; and
3. development approved within the past three years but not yet constructed.

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

Administrative Policy 4

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

Criteria:

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

Administrative Policy 5

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

Criteria:

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

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

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

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

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

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

CONDITIONAL USE PERMITS (CUPs)

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

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

(c) General Standards of Review.

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

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

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

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

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

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

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

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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

STAFF COMMENTS

19PZ00098

Thomas L. and Barbara S. Tofte

GU (General Use) to SR (Suburban Residential) with BDP (Binding Development Plan) limited to one lot

Tax Account Number: 2000804, 2000810, and 2000811
 Parcel I.D.: 20G-34-03-AI-8-6.24; 20G-34-03-AI-8-7.06; and 20G-34-03-AI-8-7.07
 Location: North side of Golden Shores Boulevard, approximately 0.44 mile west of U.S. Highway 1. (No assigned address. In the Mims area.) (District 1)
 Acreage: 1.34 acres

Planning and Zoning Board: 10/07/19
 Board of County Commissioners: 11/07/19

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, if limited by a Binding Development Plan (BDP) limiting potential development to one unit per acre (RES 1).
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	GU	SR with BDP limit to 1 SF unit
Potential*	0	1
Can be Considered under the Future Land Use Map	YES Residential 1	YES** Residential 1

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. ** Yes when limited by BDP to one unit per acre.

Background and Purpose of Request

The applicants are requesting to develop a single-family home on their property. Under previous application submittal, **18PZ00163**, the applicants' submittal had two lots for consideration containing a land area of 0.89 acres. Zoning action for **18PZ00163** was tabled by the Planning & Zoning Board on March 11, 2019, and later withdrawn by the applicants on March 25, 2019, due to the issue of nonconforming status versus comprehensive plan requirement of one-acre lot size. The applicants' current application covers three (3) lots and a land area of 1.34 acres in order to obtain approval for one combined lot consisting of parcels referenced above for residential purposes.

Land Use Compatibility

The subject property retains the Residential 1 FLU designation. Although the current zoning of GU (General Use), is consistent with this land use designation, the lot fails to meet the minimum lot size and area requirements; therefore, the lot needs to be rezoned to a classification which is consistent with the current lot size. The applicant has chosen the SR (Suburban Residential) zoning classification for compliance with lot width parameters. In order to allow this application to be consistent with the FLU, a BDP (Binding Development Plan) is required to limit the residential development to one unit per acre.

FLUE Policy 1.9 addresses the Residential 1 Future Land Use designation. Residential 1 permits low density residential development with a maximum density of up to one dwelling unit per acre, except as otherwise may be provided for within the Future Land Use Element.

Environmental Considerations

No noteworthy land use issues were identified. Natural Resources Management reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Preliminary Concurrency Analysis

The closest concurrency management segment to the subject property is U.S. Highway 1, between Burkholm Road and Volusia County, which has a Maximum Acceptable Volume (MAV) of 40,300 trips per day, a Level of Service (LOS) of C, and currently operates at 10.53% of capacity daily. The maximum development potential from the proposed rezoning does increase the proposed trip generation by 0.02%. The corridor is anticipated to continue to operate at 10.55% of capacity daily (LOS C). The proposal is not anticipated to create a deficiency in LOS Applicable Land Use Policies.

The subject property is not served by potable water or sewer and the provision of such would need to be provided by well and septic or a private sewer system.

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

Applicable Land Use Policies

The applicants are requesting to develop a single-family home on their property. The applicants' three lots are all under the original zoning of GU. The GU classification is a holding category, allowing a single-family residence on a 5-acre lot with a minimum width and depth of 300 feet. The minimum house size in GU is 750 square feet. These lots have not been proven to be nonconforming; the applicants are attempting to rezone to the SR zoning classification in order to create a residential lot that meets the minimum lot area required by the Future Land Use Map (FLUM).

The lot frontage along Golden Shores Boulevard is less than 125 feet in width for the eastern two (2) tracts, the applicants have opted to apply for the SR zoning classification, rather than requesting a variance for lot width.

The SR classification permits single family residences on minimum half acre lots, with a minimum width of 100 feet and a depth of 150 feet. The minimum house size in SR is 1,300 square feet. In

order to request this zoning classification, the applicants have submitted a BDP (Binding Development Plan) which will limit the combined parcels to one single-family lot upon a total lot area of 1.34 acres.

The property to the north and east of these parcels is zoned GU (General Use). To the south across from Golden Shores is RR-1 (Rural Residential) and RRMH-1 (Rural Residential Mobile Home). The RRMH-1 classification permits single-family mobile homes and detached single-family residential structures on a minimum one acre lot, having minimum lot width and depth dimensions of 125 feet. This zoning classification permits horses, barns and horticulture as accessory uses. The minimum house size is 600 square feet. The property located to the west of this site is zoned RR-1 and GU.

Aside from the recent withdrawal of zoning action **18PZ00163** from this property, the only other zoning action within a half-mile radius of this site performed within the last three years is identified as **16PZ00046**. This action was a change from GU & RR-1 to AU (Agricultural Residential). The location of this prior zoning item is in a NW direction approximately 1,225 feet from the parcels under review. 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.

For Board Consideration

The applicants are requesting to develop a single-family home on their property. Under previous application submittal, **18PZ00163**, the applicants' submittal had two lots for consideration containing a land area of 0.89 acres. Zoning action for **18PZ00163** was tabled by the Planning & Zoning Board on March 11, 2019, and later withdrawn by the applicants on March 25, 2019, due to the issue of nonconforming status versus comprehensive plan requirement of one-acre lot size. The applicants' current application covers three (3) lots and a land area of 1.34 acres in order to obtain approval for one combined lot consisting of parcels referenced above for residential purposes.

Although this parcel is bisected by a drainage tract, the entire area can be combined into one lot. Section 62-1188(4) of Brevard County Code states: If two or more lots or a combination of lots and portions of lots with contiguous frontage in single ownership are of record, and if all or part of the lots do not meet the requirements for lot width, lot area and lot depth as established in this section, the lands involved shall be considered to be an undivided parcel for the purposes of this chapter. Where two or more nonconforming lots of record are combined for the purpose of requesting a new zoning classification which would make the combined lots conforming as one parcel, the lots shall not be subdivided subsequent to the rezoning except where such division would create lots consistent with all other provisions of the comprehensive plan and zoning regulations.

The Board may wish to consider the applicants' request to amend the current zoning from GU to SR with BDP limiting development for all three underlying lots to one single-family residential lot to help mitigate the introduction of the SR zoning classification into the area which consists mostly of GU, RR-1 and RRMH-1 zonings.

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

Item # 19PZ00098

Applicant: Thomas & Barbara Tofte

Zoning Request: GU to SR w/ BDP limiting to one SFR

Note: Applicant wants to combine three parcels and build one SFR

P&Z Hearing Date: 10/07/19; **BCC Hearing Date:** 11/07/19

Tax ID Nos: 2000804, 2000810 & 2000811

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

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Hydric Soils
- Aquifer Recharge Soils
- Floodplain
- Florida Scrub Jay
- Protected Species
- Heritage Specimen Trees

No noteworthy land use issues were identified. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Land Use Comments:

Hydric Soils

The subject parcel contains a small area of mapped Basinger sand on the southeast corner of the subject area, as shown on the USDA Soil Conservation Service Soils Survey map. This is an indicator that hydric soils and wetlands may be present on the property. If wetlands are present, then per Section 62-3694(c)(2), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy would render a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. The preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a

maximum percentage limiting wetland impacts as described in Sec. 65-3694(c)(1)a above. Application of the one-unit-per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property as defined in Sec. 65-694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) and 62-3696, including avoidance of impacts. Accessory structures are not permitted in wetlands. A wetland determination/delineation may be required at time of building permit submittal. If the owner/applicant has any questions regarding any potential limitations, s/he is encouraged to contact NRM at 321-633-2016 prior to any land clearing activities or design of any plans.

Aquifer Recharge Soils

Basinger sand may also function as an aquifer recharge soil. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Floodplain

Portions of the combined parcels are mapped as being within the floodplain, potentially isolated, as identified by FEMA and as shown on the FEMA Flood Zones Map. The portions of the property located within the floodplain are subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Per Section 62-3724(3)(d), compensatory storage shall be required for fill in excess of that which will provide an upland buildable area within an isolated floodplain greater than one third (1/3) acre in size. Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

Florida Scrub Jay/Protected Species

Information available to NRM indicates that federally and/or state protected species may be present on the property. Specifically, the subject property has a mapped Florida Scrub Jay polygon over the entire site as shown on the Scrub Jay Occupancy Map. Prior to any plan, permit submittal, or development activity, including land clearing, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service, as applicable.

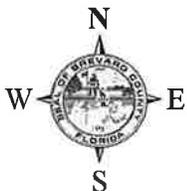
Heritage Specimen Trees

Aerials indicate that Heritage Specimen Trees (greater than or equal to 24 inches in diameter) may reside on subject property. Section 62-4331, Purpose and Intent, Brevard County Landscaping, Land Clearing and Tree Protection ordinance: The Brevard County Board of County Commissioners finds that the health, safety and welfare of its citizens can best be protected by land use regulations that support and enforce the following community goals:

(1) Promote the establishment, management and conservation of native vegetative communities; and (3) Encourage the protection of Heritage or Specimen Trees. In addition, per Section 62-4341(18), Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing,

Landscaping, and Tree Protection, for specific requirements for tree preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.

LOCATION MAP
TOFTE, THOMAS L. AND BARBARA S.
19PZ00098



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

Buffer Distance: 500 feet

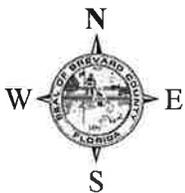
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 7/29/2019

- Buffer
- Subject Property

ZONING MAP

TOFTE, THOMAS L. AND BARBARA S.
19PZ00098



1:4,800 or 1 inch = 400 feet

- Subject Property
- Parcels
- Zoning

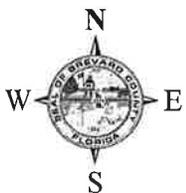
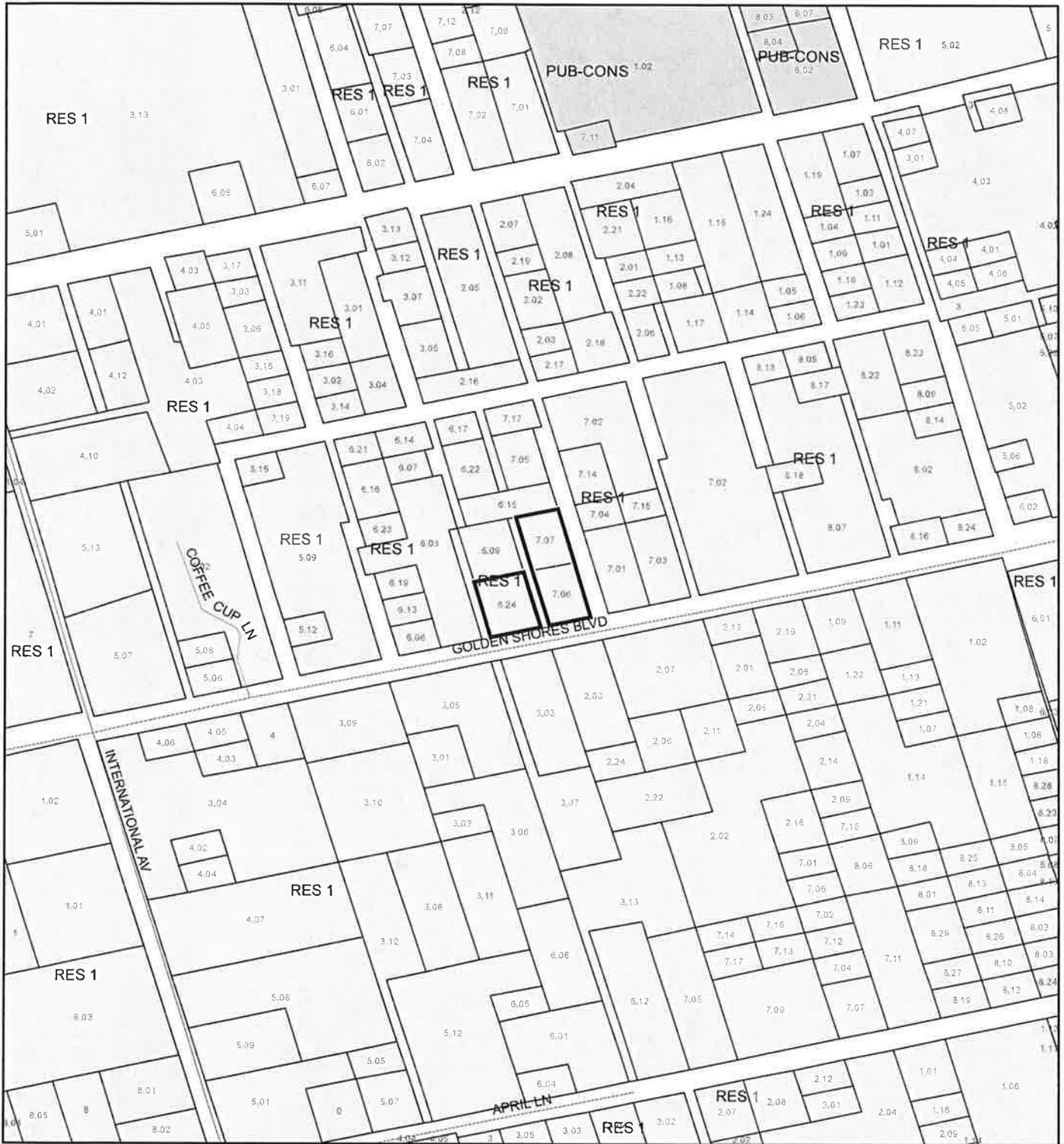
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 7/29/2019

FUTURE LAND USE MAP

TOFTE, THOMAS L. AND BARBARA S.

19PZ00098



1:4,800 or 1 inch = 400 feet

-  Subject Property
-  Parcels

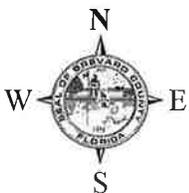
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 7/25/2019

AERIAL MAP

TOFTE, THOMAS L. AND BARBARA S.

19PZ00098



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2019

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Produced by BoCC - GIS Date: 7/29/2019

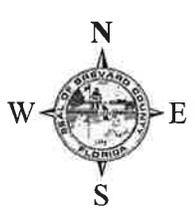
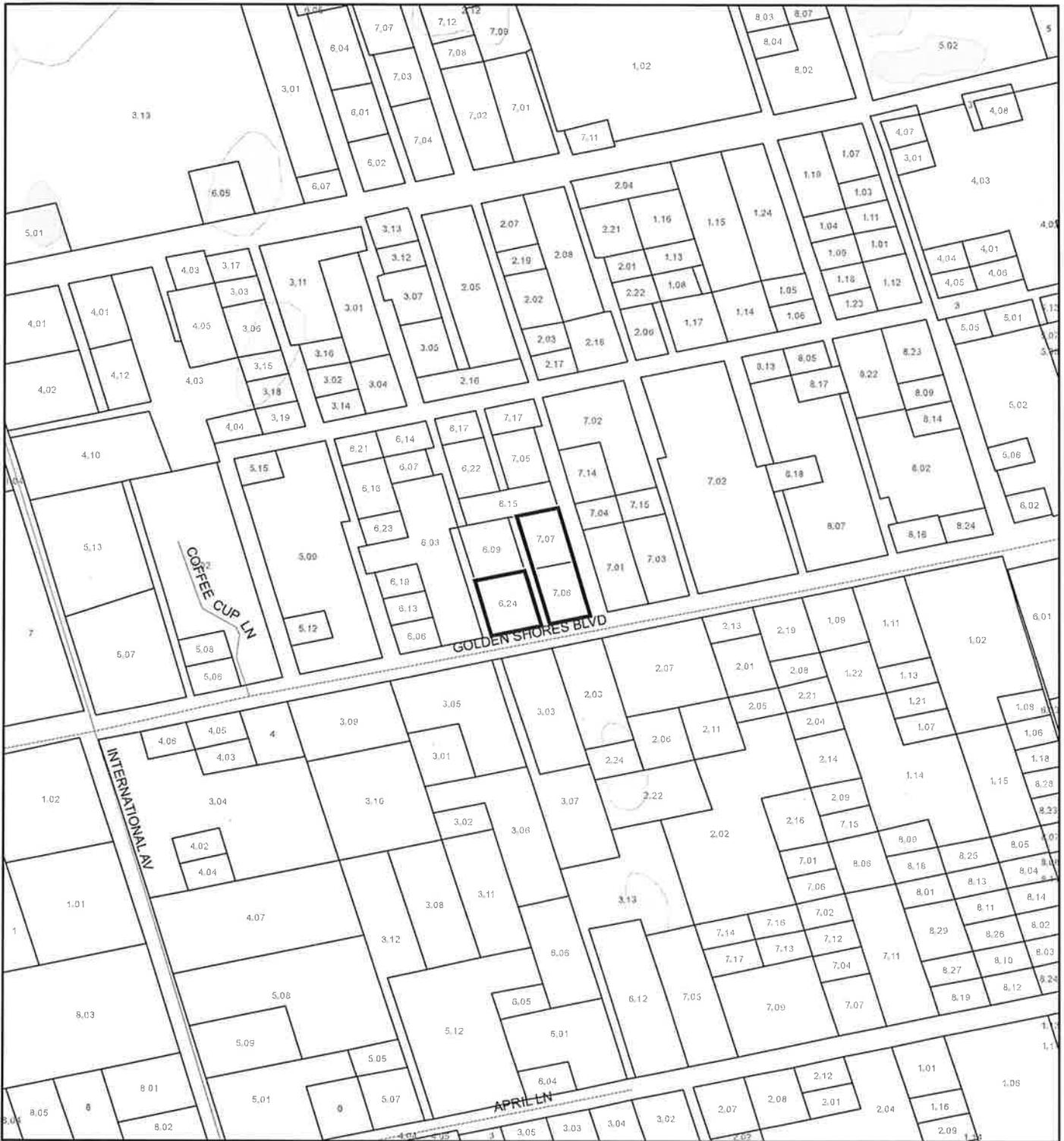
 Subject Property

 Parcels

NWI WETLANDS MAP

TOFTE, THOMAS L. AND BARBARA S.

19PZ00098



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 7/25/2019

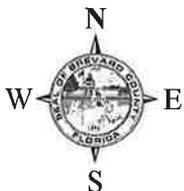
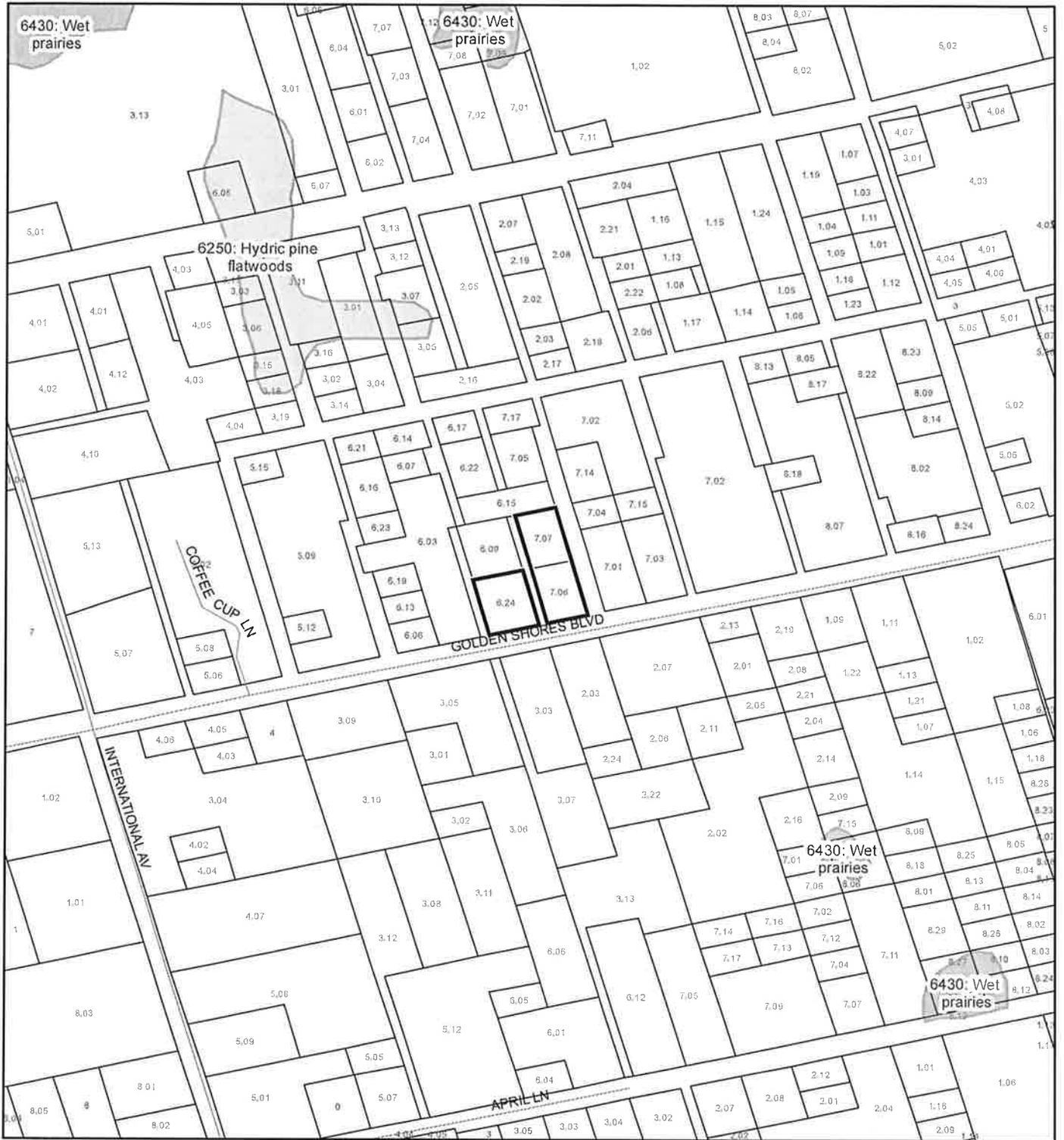
National Wetlands Inventory (NWI)

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

SJRWMD FLUCCS WETLANDS - 6000 Series MAP

TOFTE, THOMAS L. AND BARBARA S.

19PZ00098



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 7/25/2019

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

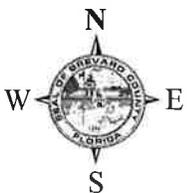
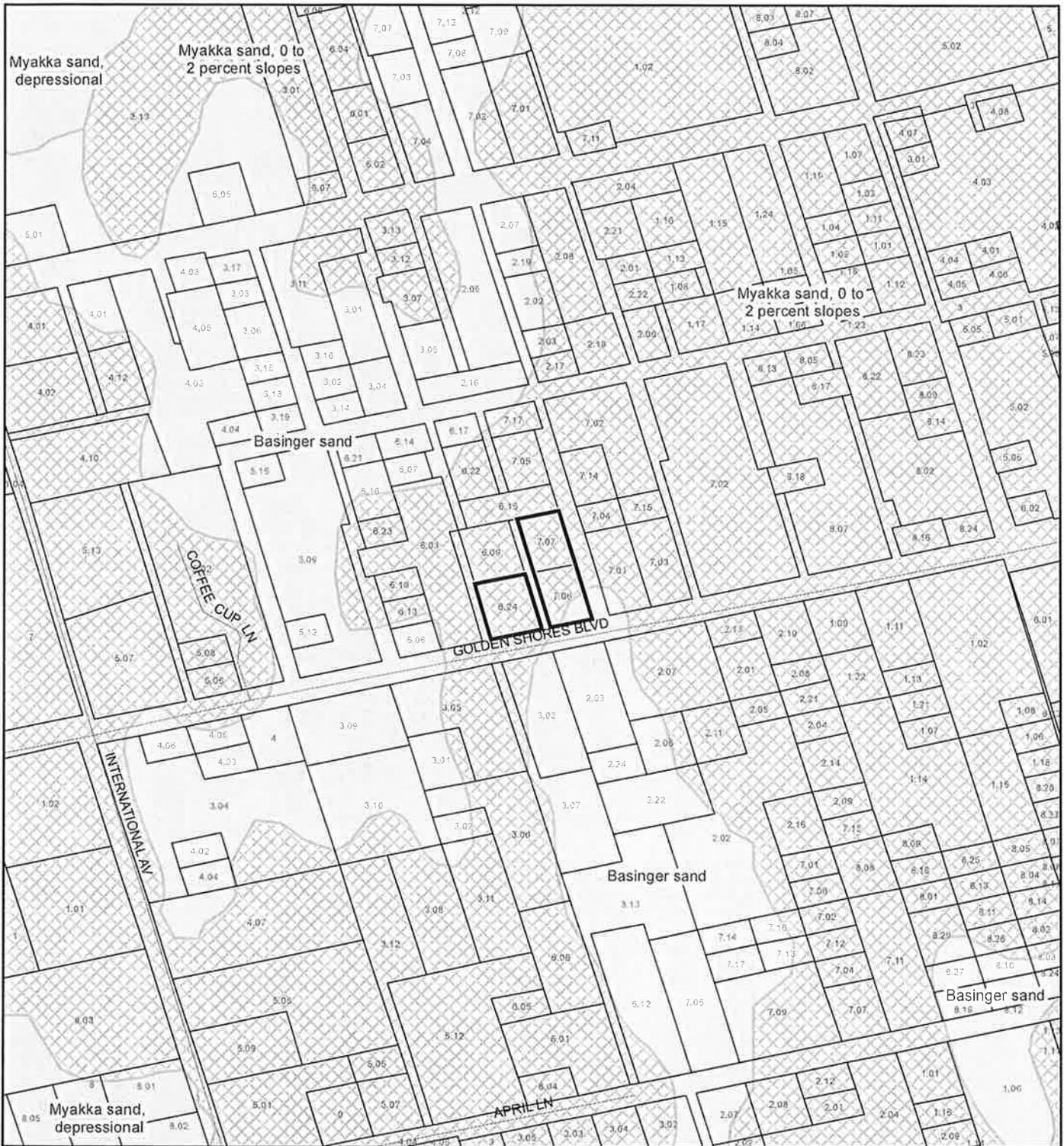
 Subject Property

 Parcels

USDA SCSSS SOILS MAP

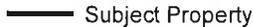
TOFTE, THOMAS L. AND BARBARA S.

19PZ00098



1:4,800 or 1 inch = 400 feet

USDA SCSSS Soils

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

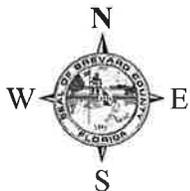
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 7/25/2019

FEMA FLOOD ZONES MAP

TOFTE, THOMAS L. AND BARBARA S.

19PZ00098



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 7/25/2019

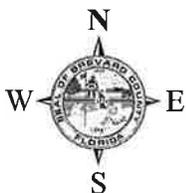
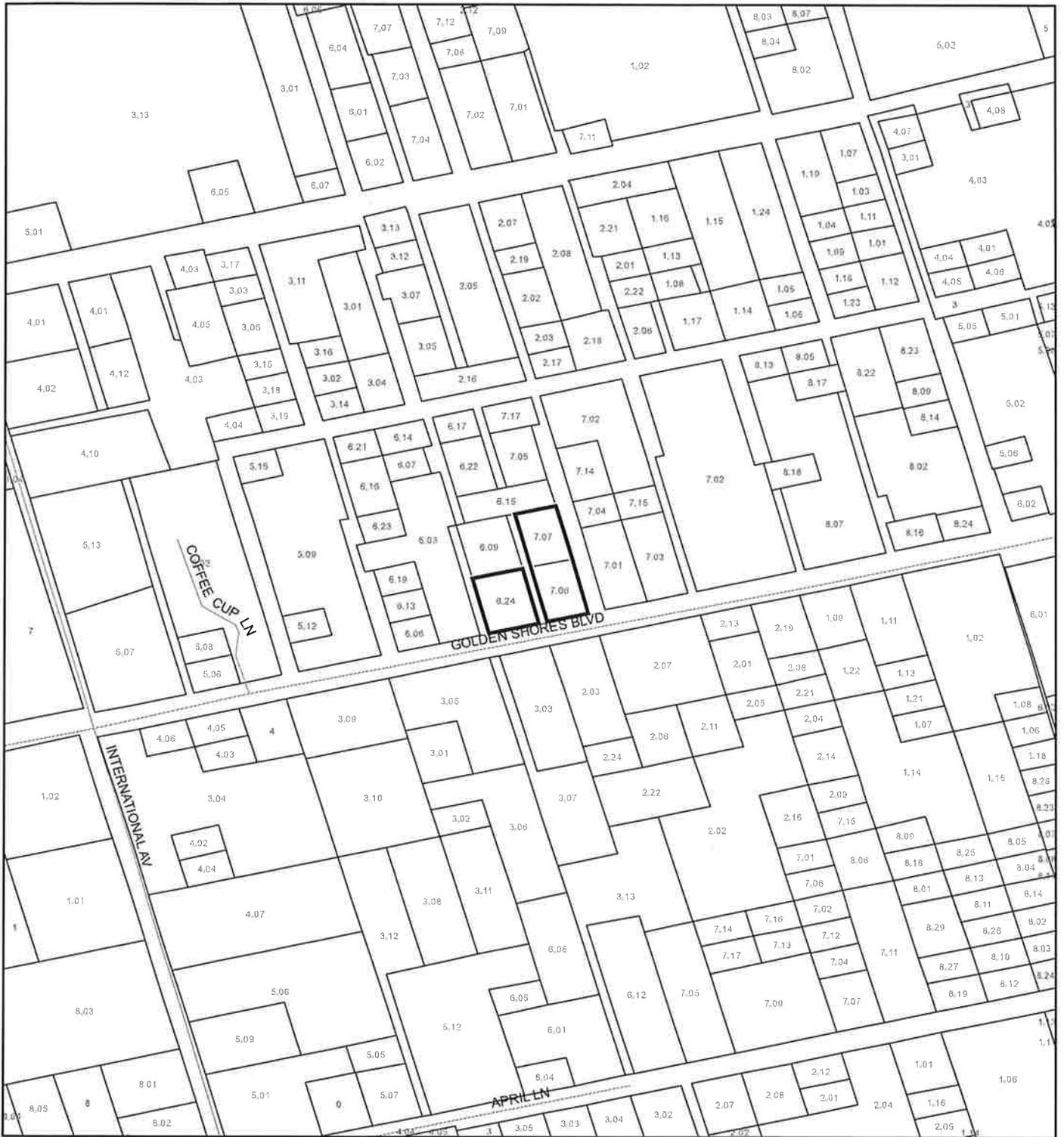
FEMA Flood Zones

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

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

TOFTE, THOMAS L. AND BARBARA S.

19PZ00098



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 7/25/2019

— Subject Property

 Parcels

Septic Overlay

 40 Meters

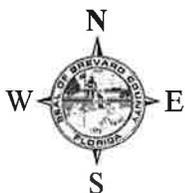
 60 Meters

 All Distances

EAGLE NESTS MAP

TOFTE, THOMAS L. AND BARBARA S.

19PZ00098



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 7/25/2019

 Subject Property

 Parcels

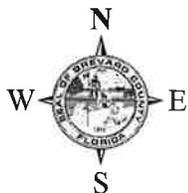
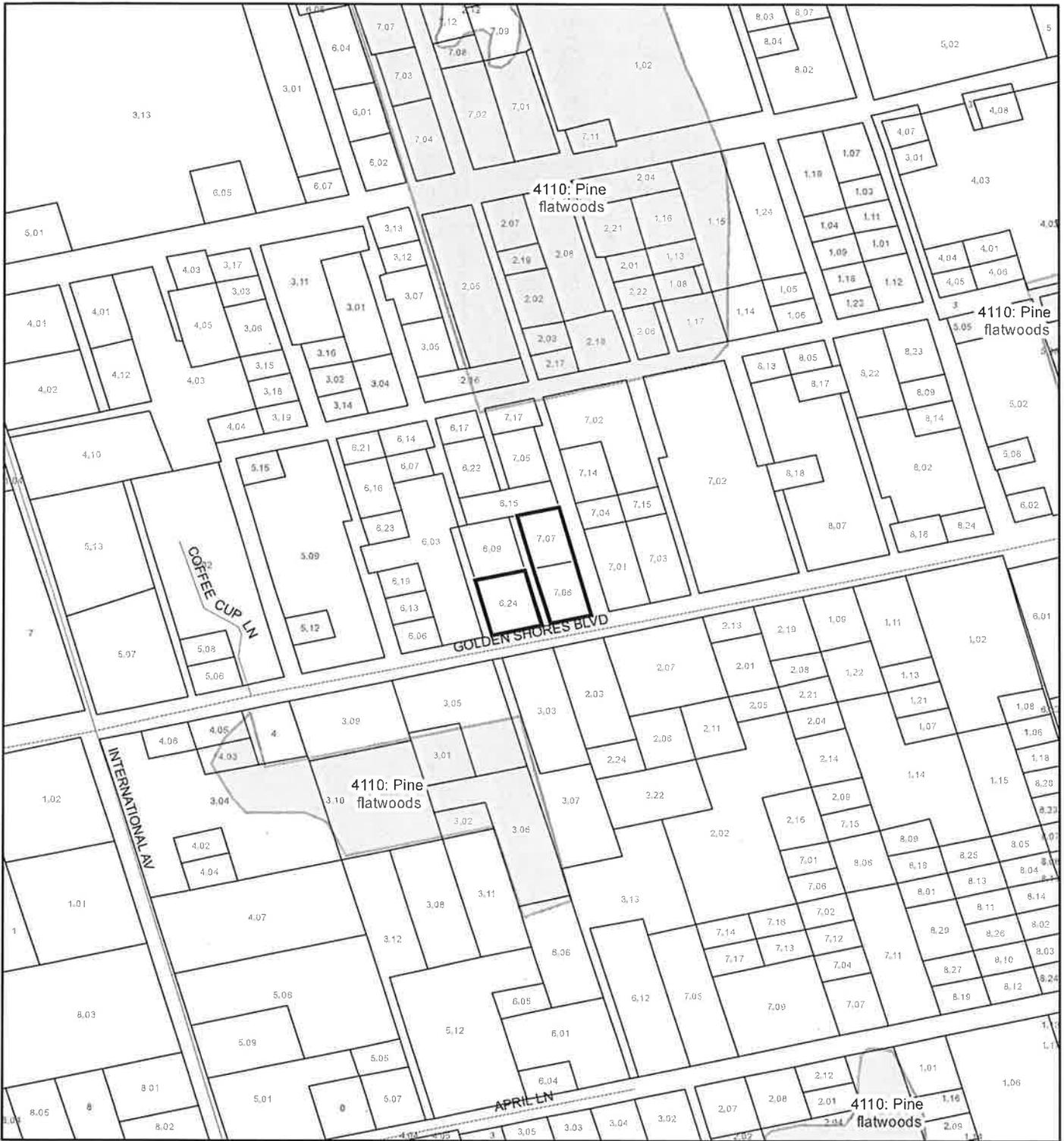


Eagle Nests
FWS 2010

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

TOFTE, THOMAS L. AND BARBARA S.

19PZ00098



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 7/25/2019

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

Prepared by: Angelika Teynos
Address: _____

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 15 day of July, 2019 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Thomas & Barbara Tofte, 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 SR zoning classification(s) and desires to develop the Property as residential, 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)

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.

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, October 7, 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 at 3:00 p.m.

Board members present were: Ron Bartcher; Rochelle Lawandales; Brian Hodgers; Ben Glover; Mark Wadsworth, Chair; Bruce Moia; 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; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Agenda

2. Thomas L. and Barbara S. Tofte (Anjelika Teynor):

A change of zoning classification from GU (General Use) to SR (Suburban Residential) with a BDP (Binding Development Plan) limited to one lot. The property is 1.34 acres, located on the north side of Golden Shores Boulevard, approximately 0.44 mile west of U.S. Highway 1. (No assigned address. In the Mims area.) (19PZ00098) (District 1)

Anjelika Teynor, 3637 Kirby Court, Mims, stated she represents the applicants, who are asking to rezone three parcels on Golden Shores Boulevard. She stated the staff comments explain the request in good detail, and she would be happy to answer any questions.

Public comment:

Michael Buono, 540 Eloise Avenue, Titusville, stated he owns the parcel directly behind the Tofte's. He said the issues with the properties in the area are twofold: having enough property for the zoning, which is solved by rezoning; and the other issue is road frontage. The Tofte's have all of the road frontage, so everyone behind them is essentially landlocked. He said he doesn't necessarily object to the rezoning, but he will be asking for an easement, or legal ingress and egress, and he'd like to have it either prior to, or in conjunction with, the binding development plan.

Ms. Teynor stated it's not that the properties behind the Tofte's are landlocked, there are surveys that show the land that was reserved for future roadways, so there are rights-of-way, and she would not consider Mr. Buono's property landlocked.

Mark Wadsworth asked if the survey shows an easement on either side of that property. Ms. Teynor replied there is not easement, but there are several rights-of-way. She said there is a ditch on one side of the property, which is deeded to the County and therefore reduced the frontage for the Tofte's, which is why they had to combine three parcels in order to request the rezoning. She noted there is also a 30-foot strip of land in the middle, separating the lots, which was reserved but never dedicated to the County, so that one is just sitting there and no one knows who it belongs to, and there is no tax account number, but it's there because when the subdivision was planned many years ago, that land was reserved for roads or driveways. She stated on the west side of the property is another similar 25-foot right-of-way on the survey, so if anyone wanted access they would have to go about it a certain way, but she is not sure of the process.

Mr. Wadsworth asked if the strip in the middle of the lots belongs to the County. George Ritchie stated it's designated for a drainage right-of-way, but it was an unrecorded subdivision plat, and staff doesn't know who actually owns the property. He said the property records describe the land on

either side of it, so staff is using a part of the Code that talks about properties that are split by rights-of-way to consider this piece of property.

Rochelle Lawandales asked if staff evaluated the access issues for the properties to the rear and the rights-of-way on either side, and if staff has identified them as valid rights-of-way where others can have access to the remaining lands in the back. Mr. Ritchie replied in this case, they actually provided a deed showing that 25 feet of their lot is dedicated to the County for creating a road right-of-way, and that's where the eastern lot is not as wide as the western property, but this is in an area where there was no recorded subdivision plat that set aside the ownership, so they provided that document to staff with the application.

Ms. Lawandales asked if staff knows if the properties on the right side of the right-of-way have done the same, and if there are deeds that have dedicated 25 feet on this side as well, so there would be a 50-foot right-of-way. Mr. Ritchie replied that is a different piece of property, so staff didn't check to see if the whole right-of-way was created.

Mr. Wadsworth clarified that there is a drainage ditch on both sides of the subject property. Ms. Teynor stated there is a drainage ditch owned by the County, and nothing can be accessed by going through that ditch. She said it is a private issue between the owners. Many of the lots behind the Tofte's are so small that nothing can be done with them unless they are combined, and then access is a secondary issue, which there is a provision for in the future.

Bruce Moia stated if they don't own it they don't have rights to it, and rezoning it doesn't give rights to it.

Ms. Teynor stated the survey shows the Tofte's do own that land, because it was never dedicated to Brevard County, it was just reserved, so they do own the right-of-way on the western side.

Mr. Wadsworth asked if the strip of land between the two lots is on the survey. Ms. Teynor replied that strip of land does not belong to the Tofte's, and what she is talking about is the land, or potential access to the back and west side of the property.

Mr. Moia stated ownership doesn't have anything to do with the request before the board.

Jad Brewer stated the area is difficult because the plats were never recorded and staff is going off old sales maps. It will be up to a court of competent jurisdiction to determine, and he's not sure the County can solve that complicated legal issue at this time. Mr. Moia noted changing the zoning doesn't infer anymore rights than they already have.

Motion by Bruce Moia, seconded by Rochelle Lawandales, to approve the requested change of zoning classification from GU to SR with a BDP limited to one lot. The motion passed unanimously.