



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.7.

2/4/2021

Subject:

Thomas R. and Rachel Darnell (Kendall Moore) requests a change of zoning classification from SEU to AU. (20Z00037) (Tax Account 2700779) (District 5)

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 SEU (Suburban Estate Use) to AU (Agricultural Residential).

Summary Explanation and Background:

The applicant is requesting a change of zoning classification from SEU (Suburban Estate Use Residential) to AU (Agricultural Residential) for the purpose of having more horses than are allowed through a conditional use permit in SEU, as well as 4 to 5 goats. The animals will be for the personal use of the property owner. The parcel is located at 5685 Lake Washington Road, and currently contains a single-family residence and a pole barn. SEU is the original zoning of the parcel. The SEU zoning classification permits single-family detached dwellings on one acre lots, with a minimum width of 125 feet and depth of 200 feet.

The property retains Residential 2 Future Land Use designation, which may be considered to be consistent with the current zoning of SEU and the requested AU zoning.

The majority of lots in the area are zoned SEU, with the exception of two 12.69-acre lots zoned AU approximately 1,200 feet to the west. There is a subdivision on the opposite side of Lake Washington Road within the jurisdiction of the City of Melbourne. There are several large parcels owned by the City of Melbourne consisting of a water treatment facility located approximately 2,000 feet to the west.

The Board may wish to consider whether the introduction of the AU zoning classification is consistent and compatible with the surrounding neighborhood, given the surrounding area is primarily SEU. In addition, the Board may wish to consider the potential effects of agritourism in the surrounding area.

On January 11, 2021, the Planning and Zoning Board heard the request and unanimously recommended approval with a BDP (Binding Development Plan) prohibiting agritourism, and agricultural related packing, processing and sales of commodities raised on the premises.

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 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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Viera, Florida 32940

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<https://www.brevardfl.gov/PlanningDev>

STAFF COMMENTS

20Z00037

Thomas and Rachel Darnell

SEU (Suburban Estate Use Residential) to AU (Agricultural Residential)

Tax Account Number: 2700779

Parcel I.D.: 27-36-09-00-758

Location: South side of Lake Washington Rd., approximately 550 feet west of McGraw Ave. (District 5)

Acreage: 5.45 acres

Planning and Zoning Board: 1/11/2021

Board of County Commissioners: 2/04/2021

Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

| | CURRENT | PROPOSED |
|--|----------------|-----------------|
| Zoning | SEU | AU |
| Potential* | 1 SFR lot | 1 SFR lot |
| Can be Considered under the Future Land Use Map | YES RES 2 | YES RES 2 |

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

Background and Purpose of Request

The applicant is requesting a change of zoning classification from Suburban Estate Use Residential (SEU) to Agricultural Residential (AU) for the purpose of having more horses than are allowed through a conditional use permit in SEU, which limits the total to six, as well as 4 to 5 goats. The lot currently contains a single-family residence as well as a pole barn. These animals will be for personal use of the owner.

SEU is the original zoning of the lot. The flag lot was created December 8, 1994 by **AA-966**.

Land Use

The property retains Residential 2 (RES 2) Future Land Use (FLU) designation. The existing zoning classification SEU is consistent with the RES 2 FLU designation. The proposed zoning classification, AU, is also consistent with the current FLU designation.

Environmental Constraints

The subject parcel contains mapped hydric soils with potential for wetlands. Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. The Brevard County Property Appraiser's Office establishes Bona Fide Agricultural land classification and should be contacted at 321-264-5393 for classification requirements. Section 62 3694 states that non-bona fide agricultural and forestry operations utilizing best management practices are permitted in wetlands provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands.

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.

Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and Section 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any land clearing, site plan design or building permit submittal.

Preliminary Concurrency

The closest concurrency management segment to the subject property is Lake Washington Road, between the lake and Harlock Road, which has a Maximum Acceptable Volume (MAV) of 17,700 trips per day, a Level of Service (LOS) of D, and currently operates at 29.59% of capacity daily. The maximum development potential from the proposed rezoning not does increase the percentage of MAV utilization. The corridor is anticipated to continue to operate at 29.59% of capacity daily. The proposal is not anticipated to create a deficiency in LOS D.

The parcel has water access through the City of Melbourne. The parcel is not serviced by Brevard County sewer. The closest available Brevard County sewer line is located approximately 4.4 miles northeast of the subject property on the south side of Post Road.

Applicable Land Use Policies

FLUE Policy 1.8 - The Residential 2 land use designation permits lower density residential development with a maximum density of up to two (2) units per acre, except as otherwise may be provided for within this element. The Residential 2 land use designation may be considered for lands within the following generalized locations, unless otherwise limited by this Comprehensive Plan.

The Board should evaluate the compatibility of this application within the context of Administrative Policies 3 - 5 of the Future Land Use Element.

Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area. The parcel is a flag lot with frontage along Lake Washington Road. The parcels to the north, east, and south are vacant lots zoned SEU with a FLUM of RES 2. The parcel to the west is a lot developed with a single-family home zoned SEU with a FLUM of RES 2. The majority of lots in the area hold this SEU and RES 2 pattern, with the exception of two 12.69 acre lots zoned AU with a FLUM of RES 2 approximately 1,200 feet to the west.

Analysis of Administrative Policy #4 - Character of a neighborhood or area. The subject property is currently developed with a single-family home and a pole barn. The area is primarily single-family homes on lots larger than an acre, with some lots containing pole barns or other structures accessory to agricultural uses. There is a subdivision on the opposite side of Lake Washington Road that lies within the jurisdiction of the City of Melbourne. There are several large parcels owned by the City of Melbourne consisting of a water treatment facility along the waterfront of Lake Washington located approximately 2,000 feet to the west.

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 permits all agricultural pursuits, including the packing, processing, and sales of commodities raised on the premises. The AU classification also permits the raising/grazing of animals, fowl, beekeeping and plant nurseries. Additionally, the AU zoning classifications allows exceptions to the number and size of accessory buildings.

The SEU zoning classification permits single-family detached dwellings on one acre lots, with a minimum width of 125 feet and depth of 200 feet.

Surrounding Area

The parcel is a flag lot with frontage along Lake Washington Road. The parcels to the north, east, and south are vacant lots zoned SEU with a FLUM of RES 2. The parcel to the west is a lot developed with a single-family home zoned SEU with a FLUM of RES 2. The majority of lots in the area hold this SEU and RES 2 pattern, with the exception of two 12.69 acre lots zoned AU with a FLUM of RES 2 approximately 1,200 feet to the west. The majority of lots in the area hold this SEU and RES 2 pattern, with the exception of two 12.69 acre lots zoned AU with a FLUM of RES 2 approximately 1,200 feet to the west.

Zonings in the surrounding area are: SEU and AU.

There have been no zoning actions within a half-mile radius of the subject property within the last three years.

For Board Consideration

The Board may wish to consider whether the introduction of the AU zoning classification is consistent and compatible with the surrounding neighborhood, given the surrounding area is primarily SEU. In addition, the Board may wish to consider the potential effects of agritourism in the surrounding area.

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

Item # 20Z00037

Applicant: Moore for Darnell

Zoning Request: SEU to AU

Note: Applicant wants to have more horses and goats than current zoning allows.

P&Z Hearing Date: 01/11/21; **BCC Hearing Date:** 02/04/21

Tax ID No: 2700779

- 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/Wetlands
- Floodplain
- Protected and Specimen Trees
- Protected Species

The subject parcel contains mapped hydric soils with potential for wetlands. Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. The Brevard County Property Appraiser's Office establishes Bona Fide Agricultural land classification and should be contacted at 321-264-5393 for classification requirements. Section 62-3694 states that non-bona fide agricultural and forestry operations utilizing best management practices are permitted in wetlands provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands.

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.

Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and Section 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any land clearing, site plan design or building permit submittal.

Land Use Comments:

Hydric Soils/Wetlands

The subject parcel contains 100% mapped hydric soils (Malabar-Holopaw-Pineda soils and Riviera sand) as shown on the USDA Soil Conservation Service Soils Survey map; an indicator that wetlands may be present on the property. Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. The Brevard County Property Appraiser's Office establishes Bona Fide Agricultural land classification and should be contacted at 321-264-5393 for classification requirements. If Bona Fide Agriculture classification is not established, then land clearing and construction of accessory structures, including barns, are not permitted in wetlands. A wetland delineation will be required prior to any land clearing activities.

Section 62-3694 states that non-bona fide agricultural and forestry operations utilizing best management practices are permitted in wetlands provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands.

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 Section 65-3694(c)(1)a of wetland ordinance. Application of the one-unit-per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property as defined in Section 65-694(c)(6).

Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and Section 62-3696.

Floodplain

A portion of the property is mapped as being within the floodplain as identified by the Federal Emergency Management Agency (FEMA) and as shown on the FEMA Flood Zones Map. The parcel is within the riverine floodplain defined as lands which have a surface water connection to a major freshwater surface water body during a 100-year flood. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Per Section 62-3723(1)(a), Agricultural pursuits, including forestry silviculture operations, utilizing best management practices, and agricultural structures which will not restrict the flow of floodwaters above the ten-year floodplain elevation are permitted uses within the riverine 100-year, riverine 25-year, riverine ten-year floodplains of the county. Any applications for a building permit will require determining elevations of the riverine 100-year, riverine 25-year, and ten-year floodplains utilizing the best available data. Per Section 62-3724, development shall not result in a net change in the rate and volume of floodwater discharged from the pre-development riverine floodplain, and compensatory storage requirements shall apply. 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 applicant is encouraged to contact NRM at 321-633-2016 prior to any building permit submittal.

Protected and Specimen Trees

A majority of the subject property is mapped within SJRWMD FLUCCS codes 4340-Upland mixed coniferous and hardwoods. Protected Trees (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) are included in these FLUCCS codes, and are likely found on the subject 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 Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for tree preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.

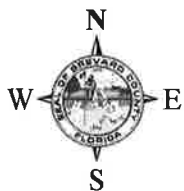
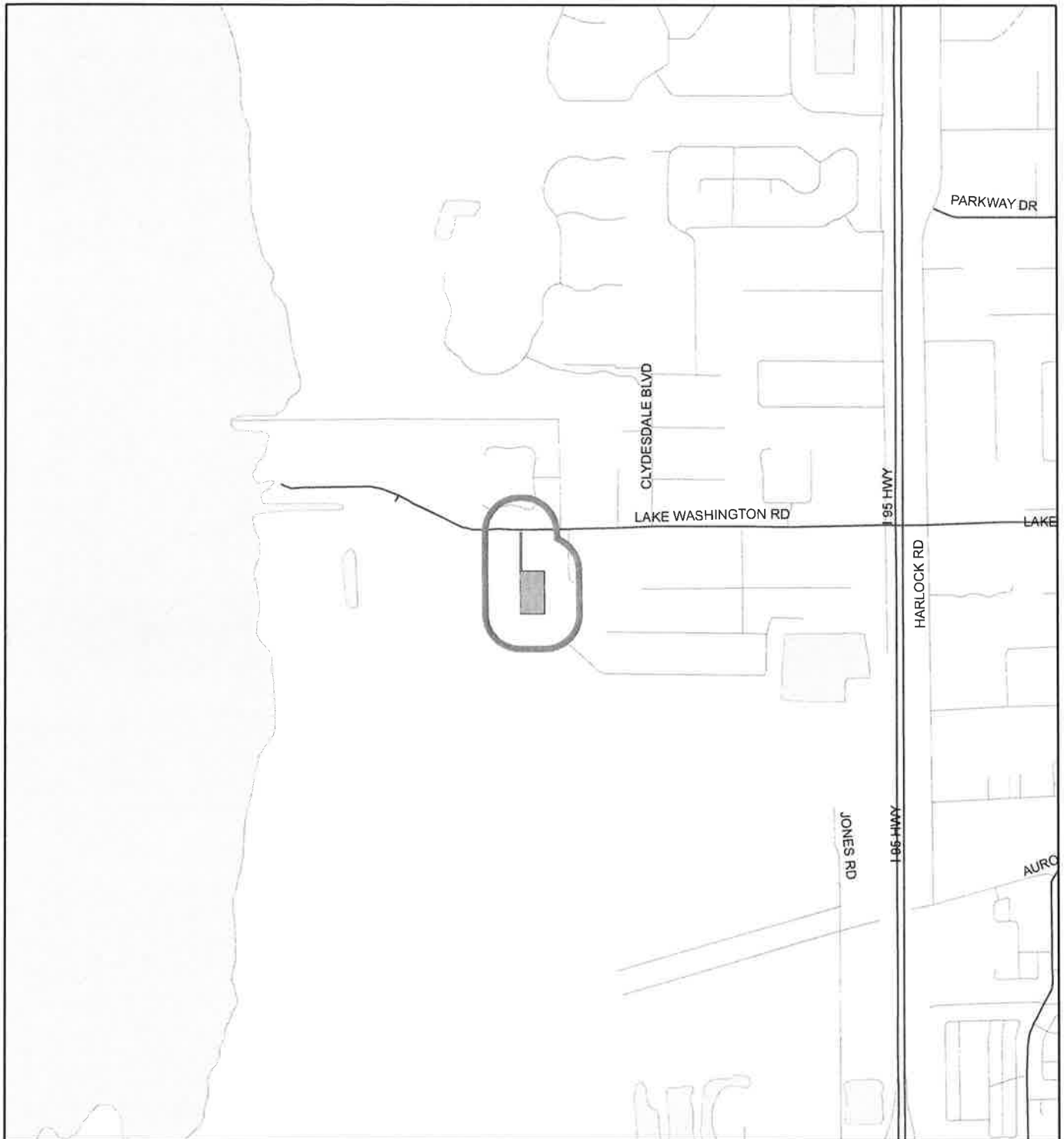
Protected Species

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

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

LOCATION MAP

DARNELL, THOMAS R. AND RACHEL
20Z00037



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.

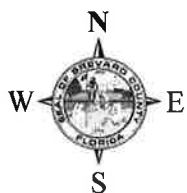
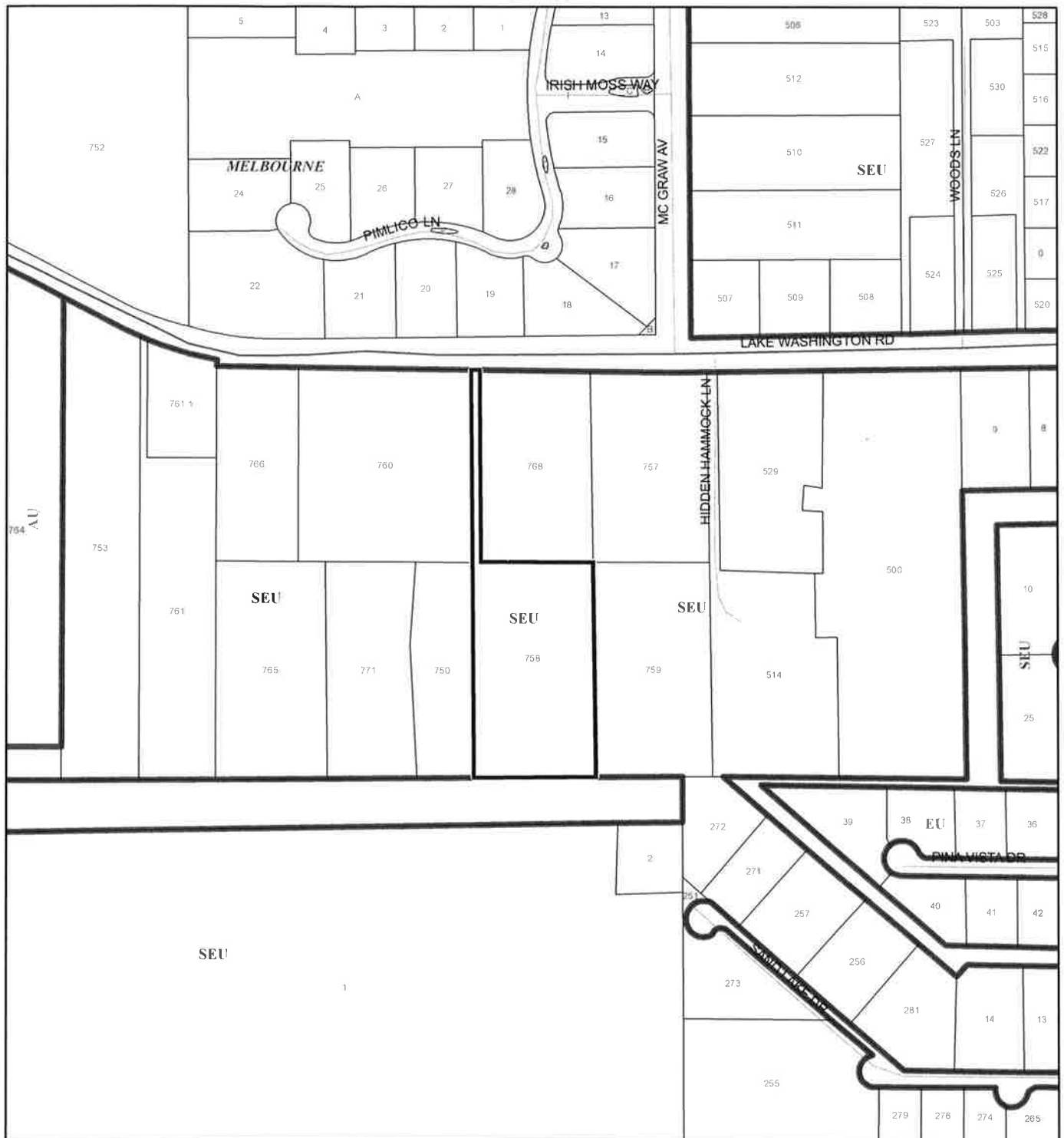
Produced by BoCC - GIS Date: 11/16/2020

Buffer
Subject Property

ZONING MAP

DARNELL, THOMAS R. AND RACHEL

20Z00037



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/16/2020

Subject Property

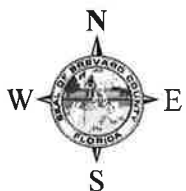
Parcels

Zoning

AERIAL MAP

DARNELL, THOMAS R. AND RACHEL

20Z00037



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2020

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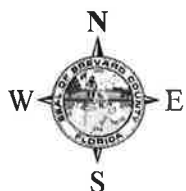
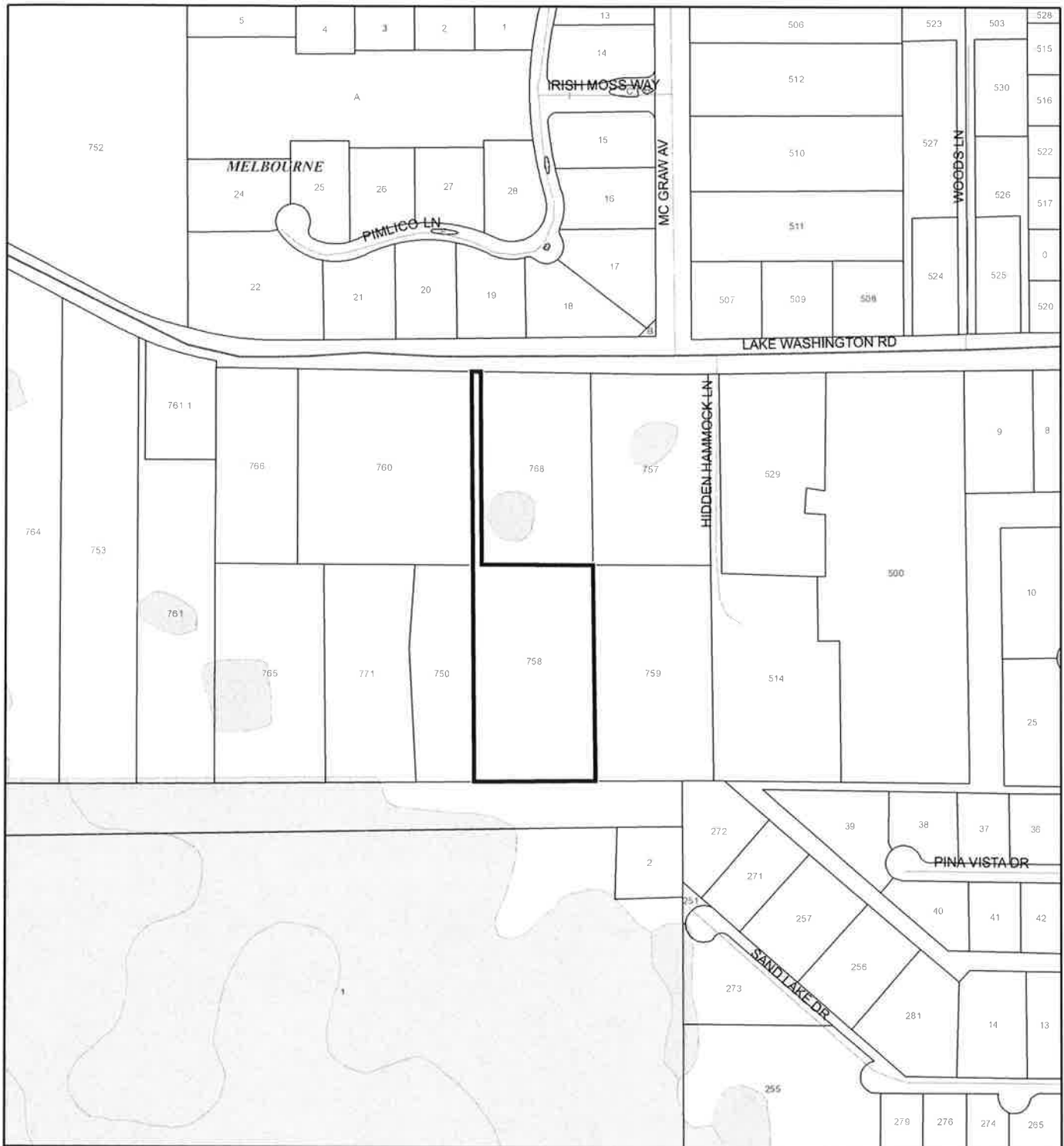
Produced by BoCC - GIS Date: 11/16/2020

— Subject Property
□ Parcels

NWI WETLANDS MAP

DARNELL, THOMAS R. AND RACHEL

20Z00037



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/16/2020

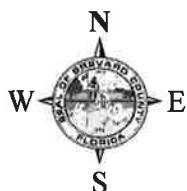
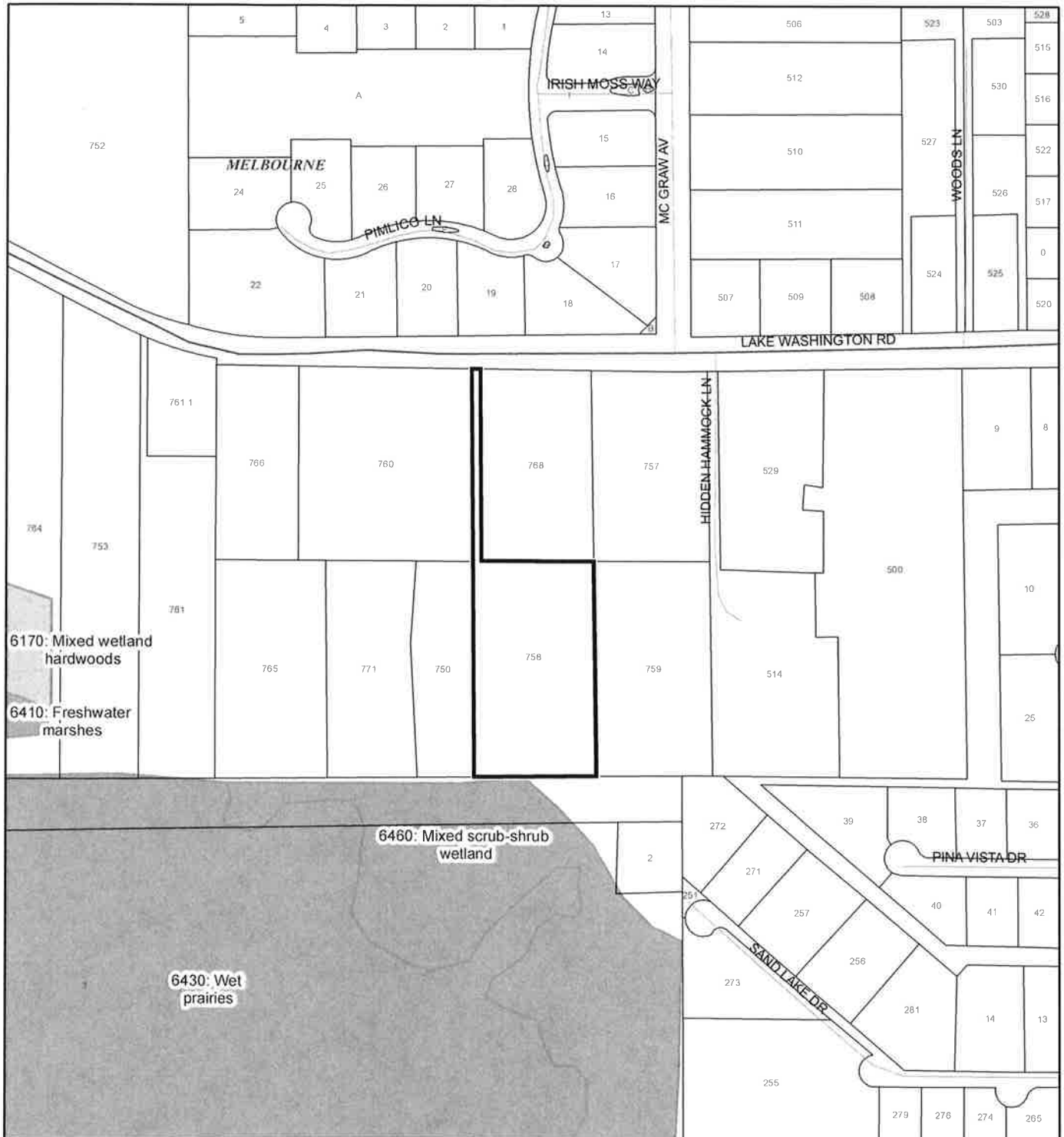
National Wetlands Inventory (NWI)

| | | | |
|--|-----------------------------------|--|-----------------|
| | 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

DARNELL, THOMAS R. AND RACHEL

20Z00037



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: 11/16/2020

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

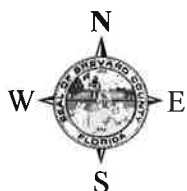
 Subject Property

 Parcels

USDA SCSSS SOILS MAP

DARNELL, THOMAS R. AND RACHEL

20Z00037









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: 11/16/2020

USDA SCSSS Soils

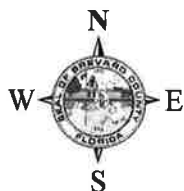
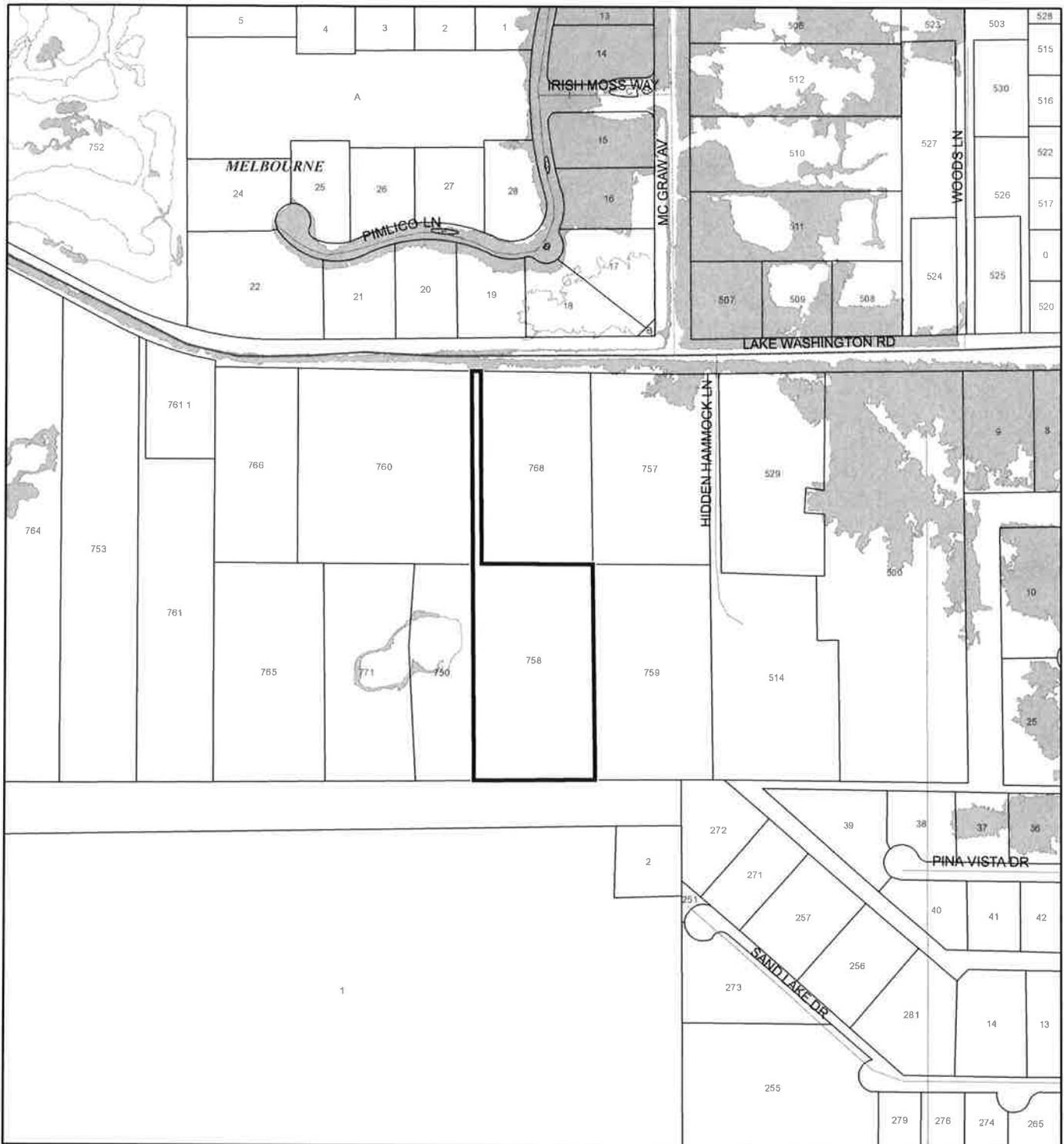
-  Aquifer and Hydric
-  Aquifer
-  Hydric
-  None

-  Subject Property
-  Parcels

FEMA FLOOD ZONES MAP

DARNELL, THOMAS R. AND RACHEL

20Z00037



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: 11/16/2020

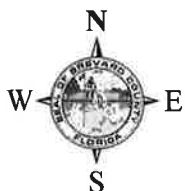
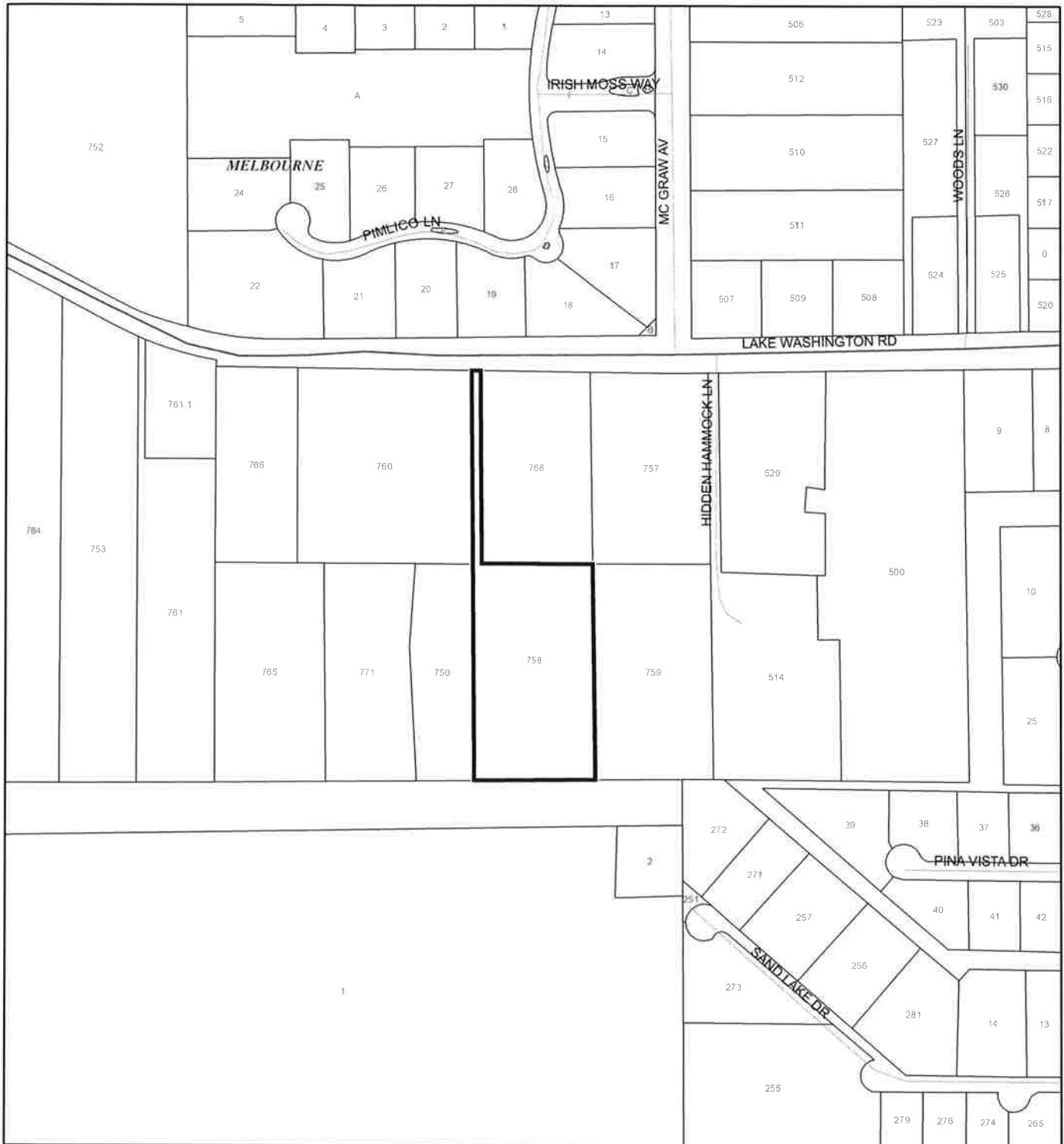
FEMA Flood Zones

- | | | |
|---|------------|----------------------|
| 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 | |

COASTAL HIGH HAZARD AREA MAP

DARNELL, THOMAS R. AND RACHEL

20Z00037



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: 11/16/2020

— Subject Property

□ Parcels

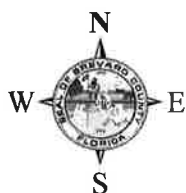
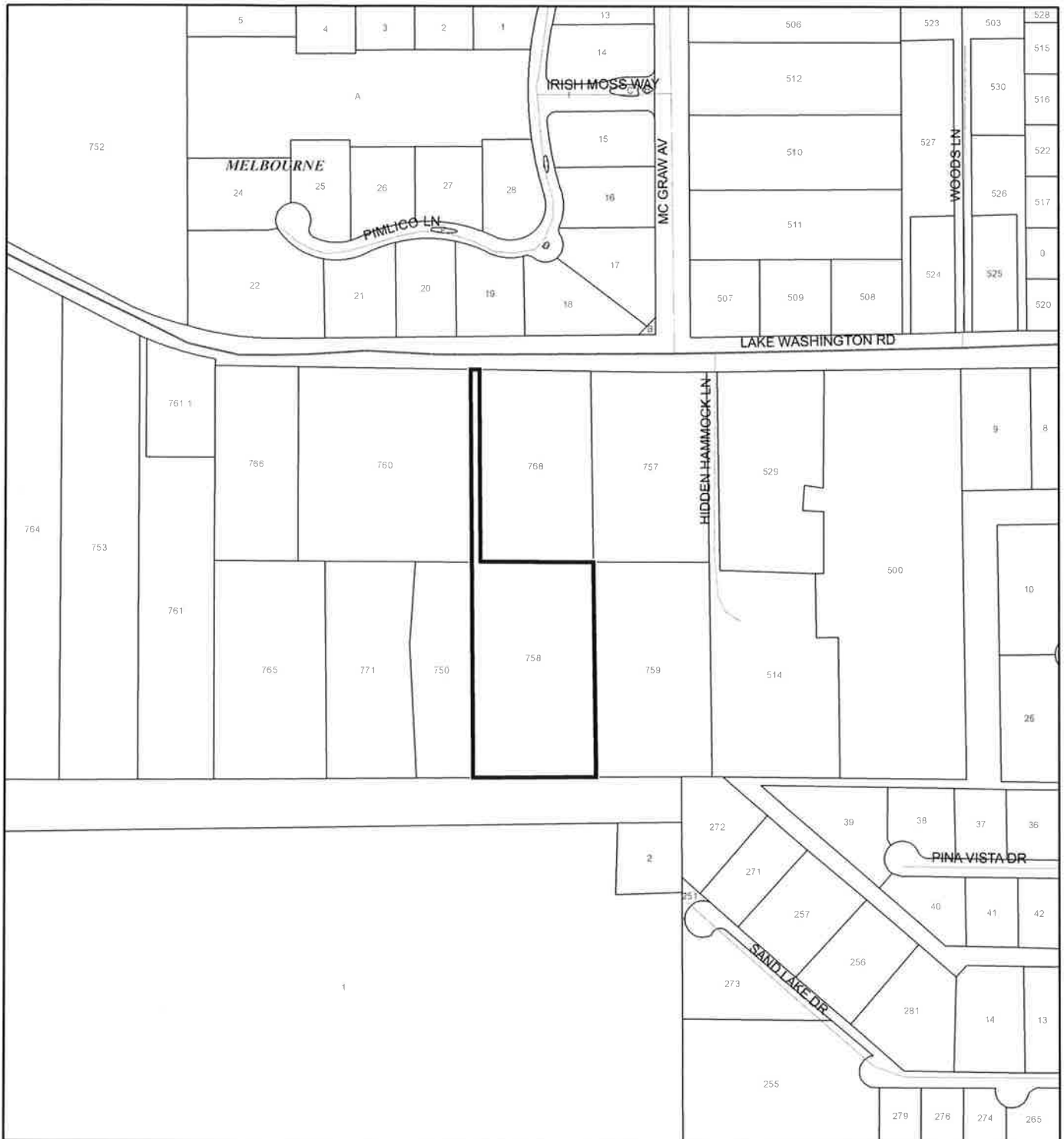
Coastal High Hazard Area

■ SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

DARNELL, THOMAS R. AND RACHEL

20Z00037



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/16/2020

— Subject Property

□ Parcels

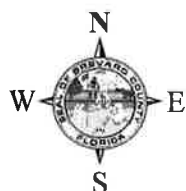
Septic Overlay

■ 40 Meters

■ 60 Meters

■ All Distances

DARNELL, THOMAS R. AND RACHEL
20Z00037



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.

— Subject Property
 □ Parcels
 ▨ Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

DARNELL, THOMAS R. AND RACHEL
20Z00037



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/16/2020

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



BOARD OF COUNTY COMMISSIONERS

Planning and Development

2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940
321-633-2070

**Application for Zoning Action, Comprehensive Plan Amendment, or
Variance**

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

PZ # 20200037

Existing FLU: RES 2 Existing Zoning: SEU

Proposed FLU: RES 2 Proposed Zoning: AU

PROPERTY OWNER INFORMATION

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

Thomas & Rachel Darnell N/A
Name(s) Company
5685 Lake Washington Rd Melbourne FL 32934
Street City State Zip Code
aeguru@gmail.com 321-508-0992
Email Phone Cell

APPLICANT INFORMATION IF DIFFERENT FROM OWNER:

☒ Attorney ☐ Agent ☐ Contract Purchaser ☐ Other _____

Kendall T. Moore The Moore Law Group, PLLC
Name(s) Company
895 Barton Blvd., Ste B Rockledge FL 32955
Street City State Zip Code
Kendall@meblawfirm.com 321-636-2221
Email Phone Cell

11

APPLICATION NAME

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

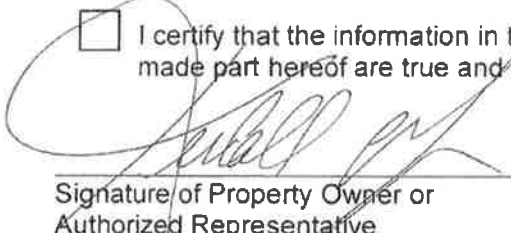
Acreage of Request: 5.45

Reason for Request:

The raising and grazing of animals is a permitted use in the AU zoning classification. The client desires to keep more than 3 horses and 4 to 5 goats on their property for personal use which exceeds the amount of horses/goats allowed with a conditional use permit in the SEU zoning classification. The clients also have a stockade fence abutting the property to the west and are willing to install any additional fences as required.

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

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

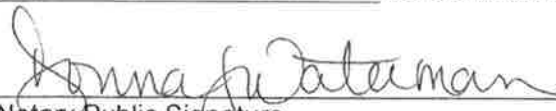

Signature of Property Owner or
Authorized Representative

11/12/2020
Date

State of FLORIDA

County of BREVARD

Subscribed and sworn before me, by ☒ physical presence or _____ online notarization,
this 12th day of November, 20 20, personally appeared
Kendall T. Moore, who is personally known to me or ~~produced~~
_____ as identification, and who did / ~~did not~~ take an oath.


Notary Public Signature

Seal



Office Use Only:

Accela No. 20200037 Fee: 588.00 Date Filed: 11/6/2020 District No. 5

Tax Account No. (list all that apply) 2700 779

Parcel I.D. No.

27 36 09 00 758
Twp Rng Sec Sub Block Lot/Parcel

Planner: KH Sign Issued by: KH Notification Radius: 500'

MEETINGS

DATE

TIME

| | | |
|---|------------------|----------------|
| <input checked="" type="checkbox"/> P&Z | <u>1/11/2021</u> | <u>3:00 pm</u> |
| <input type="checkbox"/> PSJ Board | _____ | _____ |
| <input type="checkbox"/> NMI Board | _____ | _____ |
| <input type="checkbox"/> LPA | _____ | _____ |
| <input type="checkbox"/> BOA | _____ | _____ |
| <input checked="" type="checkbox"/> BCC | <u>2/4/2021</u> | <u>5:00 pm</u> |

Wetland survey required by Natural Resources ☐ Yes ☒ No Initials KH

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

☐ Yes ☒ No If yes, list _____

Location of subject property:

South side of Lake Washington Rd, approx. 550 feet west of McGraw Avenue

Description of Request:

Rezone from SEU to AV

Notice to Applicants for Change of Land Use

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

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

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

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

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

Environmental factors.

Compatibility with surrounding land uses.

Consistency with the character of the area.

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

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

NOTES:

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

Please transmit staff's comments via:

Donna@meblawfirm.com or (321) 636-2224 or U.S. Mail _____
e-mail address fax number

Yes No

I have received a copy of this notice:

[Signature]
(APPLICANT SIGNATURE)

Owner's Name: Thomas & Rachel Darnell
Hearing Date: January 11, 2021

202.00037

THIS AFFIDAVIT IS TO BE PRESENTED AT THE PUBLIC HEARING

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF BREVARD

Before me, this undersigned authority, personally appeared, Brian Lock,
to me well known and known to me to be the person described in and who executed the foregoing
affidavit, after being first duly sworn, says:

1. That the affiant posted the notice provided by the Brevard County Planning & Zoning Office, which contains the time(s) and date(s) of the Public Hearing(s) involved.
2. Said posted notice contains the name of the applicant, the total acreage of the property in question, the existing land use classification, special use classification or conditional use designation, and the requested amendment to the official zoning maps. Said notice also contains the time and place of the public hearing on the consideration of said application by the Board of County Commissioners of Brevard County, if applicable.
3. The said notice has been posted in a conspicuous place on the subject property not more than twenty-five (25) days, nor less than fifteen (15) days prior to the first public hearing before the applicable board (as indicated on notice). If the property abuts a public road right-of-way, the notice has been posted within ten (10) feet of the road right-of-way in such a manner as to be visible from the road right-of-way.
4. The affiant understands that this affidavit is intended to be submitted as a requirement for a public hearing, and as such, will be officially filed with the Government of Brevard County, Florida.

Brian Lock
Signature

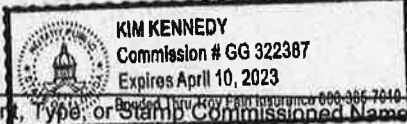
Sworn and Subscribed before me, this

KK

~~21~~ 21st

day of

December



(Print, Type, or Stamp Commissioned Name of Notary Public)

Kim Kennedy
Notary Public, State of Florida

Personally known OR Produced Identification

Type of I.D. Produced: _____

THIS AFFIDAVIT IS TO BE PRESENTED AT THE PUBLIC HEARING

PHOTOGRAPHS



BREVARD COUNTY CODE ENFORCEMENT



| Mo./Day/Year | Address | Zng App.# |
|--------------|---------------------------|-----------|
| 12/21/2020 | 5685 Lake Washington Road | 20Z200037 |



Brian Lock

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, January 11, 2021**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

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

Board members present were: Ron Bartcher; Harry Carswell; Brian Hodgers; Ben Glover; Joe Buchanan; and Peter Filiberto, Vice Chair.

Staff members present were: Tad Calkins, Planning and Development Director; George Ritchie, Planner III; Abigail Jorandby, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Minutes

Thomas R. and Rachel Darnell (Kendall Moore)

A change of zoning classification from SEU (Suburban Estate Use Residential) to AU (Agricultural Residential). The property is 5.45 acres, located on the south side of Lake Washington Rd., approx. 550 ft. west of McGraw Ave. (5685 Lake Washington Rd., Melbourne) (20Z00037) (Tax Account 2700779) (District 5)

Kendall Moore, 895 Barton Boulevard, Rockledge, stated his clients are requesting a zoning change from SEU to AU, because they would like to have more horses for personal use. Potentially, there was an option to get a CUP under SEU, but that would have only allowed six animals in total. The staff comments state that the current zoning proposal would be proper to consider under the existing Future Land Use. The use will remain residential, along with an ancillary use that many in the area already enjoy, which is a pole barn or other structure used in conjunction with an agricultural use. He noted the horses will be for personal use only; there is no business intent of any kind, so there will not be any changes in traffic generation, concurrency or other issues. He said he believes there has been some precedent that goes back to the late 1980's where a neighboring property was changed from SEU to AU for a similar purpose, and at that time there was also a limitation, or condition, that there not be any kind of agricultural commercial use at that time, so he would not have a problem stipulating to the same, because it is strictly intended for his clients to have additional horses for personal use.

Ben Glover asked if there a specific number of horses his clients would like to have and if they would be willing to cap the number of horses. Mr. Moore replied his clients would like to have the maximum number available to them. He noted on the property that was rezoned in the 1980's the number of horses was capped at 16, and that was on 12 acres. He said his clients would like to have as many as they can, and that number may be in the range of 10. He pointed out that the code is structured to include horses, mules, goats, and barns, so ultimately their goats would count toward the total number, so it would be a collective number of total animals. He said the horses would be for personal use, but he is hesitant to limit all commercial uses because they do have other businesses, some of which may be located at the property, but wholly unrelated to agriculture.

Mr. Bartcher asked if Mr. Moore's clients would be willing to enter into a BDP (Binding Development Plan) that stipulates there will be no packing, processing, or sales of commodities raised on the premises. Mr. Moore replied if it is limited to agriculture, yes. He elaborated that his clients own a food truck, so limiting the commercial components, anything that would be normally available to them today under that zoning category, he would want them to be able to do that, but he would agree to restrict anything that is agricultural, animal, or any related purposes.

Mr. Bartcher stated he is concerned if they have agricultural products that they are using and then selling at that location, it could create a traffic situation. Mr. Moore replied the horses and goats do not have anything to do with any their commercial operations, he just wants to be careful their other businesses are not impacted.

Mr. Bartcher stated he's also concerned that without a BDP to restrict it, if they sell the property in the future, there could be packing, processing, and sales of commodities that could create a problem. Mr. Moore stated his clients would agree to a BDP to limit those agricultural uses.

Mr. Hodgers asked if any of the business activities include riding lessons, or the boarding of horses. Mr. Moore replied there will be no horse-related business whatsoever.

No public comment.

Motion by Brian Hodgers, seconded by Joe Buchanan, to approve a change of zoning classification from SEU to AU, with a BDP (Binding Development Plan) prohibiting agritourism, and agricultural related packing, processing, and sales of commodities raised on the premises. The motion passed unanimously.

Prepared by:
The Moore Law Group, PLLC
895 Barton Blvd., Suite B
Rockledge, Florida 32955

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this _____ day of _____, 2021 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 AND RACHEL DARNELL (hereinafter referred to as "Owner").

RECITALS

WHEREAS, 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, Owner has requested the AU zoning classification pursuant to the Brevard County Code, Section 62-1157; and

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

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

NOW, THEREFORE, the parties agree as follows:

1. The Owner and County stipulate and agree that upon successful granting and approval of the requested zoning change to AU by the County, the Owner agrees

that no agricultural tourism, no agricultural packing, processing or sales of any agricultural commodities located on the Property will occur.

2. The Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Owner's agreement to meet additional standards or restrictions on the Property. This agreement provides no vested rights against changes to the Brevard County Comprehensive Plan or land development regulations as they may apply to this Property.
3. Owner, upon execution of this Agreement, shall pay to the Clerk of Court all costs of recording this Agreement in the Public Records of Brevard County, Florida.
4. 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 shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and shall 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.
5. Violation of this Agreement shall constitute a violation of the zoning classification and this Agreement. This Agreement may be enforced by Sections 1-7 and 62-5 of the Code of Ordinances of Brevard County, Florida, as may be amended.
6. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and shall be satisfied before Owner may

implement the approved use(s), unless stated otherwise. The failure to timely comply with any condition is a violation of this Agreement and constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 5 above.

7. Severability clause. If any provision of this BDP is held by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provision shall continue in full force and effect without being impaired or invalidated in any way.

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, Florida 32940

Rachel Sadoff, Clerk of Court

Rita Pritchett, 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:

THOMAS DARNELL:

WITNESS SIGNATURE

Address: 5685 Lake Washington Road
Melbourne, Florida 32934

WITNESS PRINTED NAME

WITNESS SIGNATURE

WITNESS PRINTED NAME

STATE OF _____ §

COUNTY OF _____ §

The foregoing instrument was acknowledged before me, by means of _____
physical presence or ___ online notarization, this ___ day of _____, 20___, by
THOMAS DARNELL, who is personally known to me or who has produced
_____ as identification.

SEAL

NOTARY PUBLIC
MY COMMISSION EXPIRES: _____

(Name typed, printed or stamped)

RACHEL DARNELL:

WITNESS SIGNATURE

Address: 5685 Lake Washington Road
Melbourne, Florida 32934

WITNESS PRINTED NAME

WITNESS SIGNATURE

WITNESS PRINTED NAME

STATE OF _____ §

COUNTY OF _____ §

The foregoing instrument was acknowledged before me, by means of _____
physical presence or _____ online notarization, this _____ day of _____, 20____, by
RACHEL DARNELL, who is personally known to me or who has produced
_____ as identification.

SEAL

NOTARY PUBLIC
MY COMMISSION EXPIRES: _____

(Name typed, printed or stamped)

EXHIBIT "A"

Parcel ID: 27-36-09-00-758

5685 Lake Washington Road, Melbourne, Florida 32934

Legal Description:

A portion of those lands described in Official Records Book 1089, Page 773, as recorded in the Public Records of Brevard County, Florida, being more particularly described as follows:

Commence at the intersection of the East line of Section 9, Township 27 South, Range 36 East and the South right of way of Lake Washington Road, as presently occupied; thence S.89°54'31"W., along said South right of way 549.29 feet to the Point of Beginning; thence continue S.89°54'31"W., 25.00 feet; thence S.00°23'12"E., parallel with the West line of the Southeast one-quarter of the Southeast one-quarter of Section 9, a distance of 1170.68 feet to the South line of Section 9; thence N.89°31'29"E., along the South line of Section 9, a distance of 345.00 feet; thence N.00°46'54"W., 633.45 feet **thence S.89°54'10"W., 315.64 feet; thence N.00°23'12"W., 535.00 feet to the Point of Beginning.**