



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.4.

11/4/2021

Subject:

Rodney F. McConkey requests a change of zoning classification from GU to AU. (21Z00023) (Tax Accounts 2312740, 2312741, 2312742, 2312743) (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 AU (Agricultural Residential).

Summary Explanation and Background:

The applicant is seeking a change of zoning classification from GU (General Use) to AU (Agricultural Residential) for the purposes of raising and grazing animals for both livestock and personal use, with agricultural uses to include a barn.

The property consists of four 2.09-acre nonconforming lots in terms of lot area and width under the current GU zoning. Currently, the lots are considered one lot. Rezoning to AU would allow up to three lots where such division would create lots consistent with all other provisions of the comprehensive plan and zoning regulations." The subject property does not have access to county owned and maintained roads, as required by Section 62-102 for the purposes of obtaining a single-family building permit. Such access issues must be resolved under separate processes prior to obtaining a building permit.

The subject property retains the RES 1:2.5 FLU (Future Land Use) designation. The existing zoning classification of GU and the proposed AU both are consistent with the FLU.

The surrounding area can be characterized as vacant large lots to the northwest, east, south, and west that is a mixture of public conservation, public recreation, and residentially zoned land with limited road access. The majority of these properties are zoned GU with some zoned AU. Across the drainage right-of-way and canal abutting the subject property to the north is the southwestern limits of the Port St. John community, which consists of Single-Family Residential lots.

The proposed AU classification permits single-family residences and agricultural pursuits on 2.5-acre lots, with a minimum lot width and depth of 150 feet, and a minimum house size of 750 square feet. The AU classification also permits commercial crops, packaging, processing, and sale of commodities raised on the

premises as provided in Chapter 86, Article IV, the raising/grazing of animals, including unlimited cattle and horses, up to four adult hogs, fowl, and beekeeping.

The parcel is not serviced by Brevard County sewer. The closest available sewer is approximately 3,000 feet northeast of the subject property. The parcel is not serviced by Brevard County or City of Cocoa water. The closest municipal water service is located approximately 200 feet north of the subject property.

The Board may wish to consider whether this request for AU zoning is consistent and compatible with the properties in the surrounding area. In addition, the Board may wish to consider the potential impacts of Agritourism, or any of the more intense agricultural uses permitted in AU, on surrounding properties.

On October 11, 2021, the Planning and Zoning Board heard the request and voted 6:1 to recommend approval with the stipulation that agritourism be prohibited.

Clerk to the Board Instructions:

Once resolution is received, please execute and return a copy 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

2725 Judge Fran Jamieson Way

Building A, Room 114

Viera, Florida 32940

(321)633-2070 Phone / (321)633-2074 Fax

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

STAFF COMMENTS

21Z00023

Rodney F. McConkey

General Use (GU) to Agricultural Residential (AU)

Tax Account Number: 2312740; 2312741; 2312742; and; 2312743
Parcel I.D.: 23-35-28-01-02-8; 9; 10, and; 11
Location: East side of Golfview Avenue, approximately 500 feet north of the
Intersection of Port Saint John Parkway and I-95 (District 1)
Acreage: 8.36 acres

Planning and Zoning Board: 10/11/2021

Board of County Commissioners: 11/04/2021

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	GU	AU
Potential*	1 unit	3 units
Can be Considered under the Future Land Use Map	YES, RES 1:2.5	YES, RES 1:2.5

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

Background and Purpose of Request

The applicant is seeking a change of zoning classification from GU (General Use) to AU (Agricultural Residential) for the purposes of raising and grazing animals for both livestock and personal use, with agricultural uses to include a barn.

The property consists of four 2.09-acre nonconforming lots in terms of lot area and width under the current GU zoning. Currently, the lots are considered one lot. Rezoning to AU would allow up to three lots where such division would create lots consistent with all other provisions of the comprehensive plan and zoning regulations." The subject property does not have access to county owned and maintained roads, as required by Section 62-102 for the purposes of obtaining a single-family building permit. Such access issues must be resolved under separate processes prior to obtaining a building permit.

Land Use

The subject property retains the RES 1:2.5 Future Land Use designation (FLU). The existing zoning classification of GU is consistent with the FLU. The proposed zoning classification of AU is consistent with the RES 1:2.5 FLU. Each of the four individual lots of the subject property predates the September 9, 1988 Comprehensive Plan and can be considered as nonconforming to the FLU area requirement.

Applicable Land Use Policies

The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 of the Future Land Use Element.

FLUE Policy 1.10 - The Residential 1:2.5 land use designation, which establishes the lowest density of all the residential future land use designations, permits a maximum density of up to one (1) unit per 2.5 acres, except as otherwise may be provided for within 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 property retains RES 1:2.5 FLU. It is located just north of Canaveral Groves and south of the westernmost parts of the developed residential community of Port Saint John in the northwestern quadrant of the I-95/Port Saint John Parkway interchange. The abutting property to the north of the western third of the subject property is vacant and unimproved County park land with Recreation (REC) FLU. The abutting property to the north is a developed single-family subdivision with Residential 4 (RES 4) FLU. The abutting and surrounding properties to the east, south, and west, are all vacant and retain RES 1:2.5 FLU. Lands to the northwest and farther west of this area consist of vacant properties with existing uses of public conservation and parkland with REC and Public Conservation (PUB-CONS) FLU's.

Analysis of Administrative Policy #4 - Character of neighborhood or area.

The surrounding area can be characterized as vacant large lots to the northwest, east, south, and west that is a mixture of public conservation, public recreation, and residentially zoned land with limited road access. The vast majority of these properties are zoned GU with some zoned AU. Across the drainage right-of-way and canal abutting the subject property to the north is the southwestern limits of the Port Saint John community, which consists of Single-Family Residential (RU-1-9) lots, zoned and platted prior to the 1988 Comprehensive Plan and developed in the 1980's and '90's.

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

The proposed AU classification permits single-family residences and agricultural pursuits on 2 ½ acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits commercial crops, packaging, processing, and sale of commodities raised on the premises as provided in Chapter 86, Article IV, the raising/grazing of animals, including unlimited cattle and horses, up to four adult hogs, fowl and beekeeping.

The RU-1-9 classification permits single family residential development on lots of 6,600 square feet (minimum). The minimum house size is 900 square feet.

The GML(P) classification allows parks or recreational land uses for governmental purposes.

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

Surrounding Area

Abutting the subject property to the north is a 100-foot wide drainage right-of-way and a vacant parcel zoned Government Managed Lands (Parks and Conservation) (GML(P)). The parcel to the east is vacant and zoned AU. To the south is vacant AU, vacant GU, and a drainage pond in the Port Saint John Parkway/Golfview Avenue rights-of-way. To the west is a 15-foot wide parcel zoned GU and owned by Brevard County which is adjacent to the Golfview Avenue right-of-way.

Environmental Constraints

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands/Hydric Soils
- Aquifer Recharge Soils
- Protected Species
- Land Clearings and Landscape Requirements

The subject parcel contains mapped SJRWMD wetlands and hydric soils; indicators that wetlands may be present on the property. A wetland determination will be required prior to any land clearing activities, site plan design or building permit submittal. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at (321) 633-2016.

Information available to NRM indicates that land clearing activities may have occurred between 2016 and 2017, and again between 2017 and 2018. The discovery of unpermitted land clearing activities or wetland impacts may result in enforcement action.

Preliminary Concurrency

The closest concurrency management segment to the subject property is Golfview Avenue, between Port Saint John Parkway and Fay Boulevard, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of E, and currently operates at 35.78% of capacity daily. The maximum development potential from the proposed rezoning does increase the percentage of MAV utilization by 0.18%. The corridor is anticipated to continue to operate at 35.96% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

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.

The parcel is not serviced by Brevard County sewer. The closest available sewer is approximately 3,000 feet northeast of the subject property.

The parcel is not serviced by Brevard County or City of Cocoa water. The closest municipal water service is located approximately 200 feet north of the subject property.

For Board Consideration

The Board may wish to consider whether this request for AU zoning is consistent and compatible with the properties in the surrounding area. In addition, the Board may wish to consider the potential impacts of Agritourism, or any of the more intense agricultural uses permitted in AU, on surrounding properties.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT
Zoning Review & Summary
Item #21Z00023**

Applicant: Rodney McConkey

Zoning Request: GU to AU

Note: Applicant wants farm animals, agricultural use, barn, and single-family home

P&Z Hearing Date: 10/11/21; **BCC Hearing Date:** 11/04/21

Tax ID Nos: 2312740, 2312741, 2312742 & 2312473

- 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:

- Wetlands/Hydric Soils
- Aquifer Recharge Soils
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- Land Clearings and Landscape Requirements

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Information available to NRM indicates that land clearing activities may have occurred between 2016 and 2017, and again between 2017 and 2018. The discovery of unpermitted land clearing activities or wetland impacts may result in enforcement action.

Land Use Comments:

Wetlands/Hydric soils

The subject parcel contains mapped SJRWMD wetlands, and hydric soils (Basinger sand and Anclote sand) as shown on the SJRWMD Florida Land Use & Cover Codes, and USDA Soil Conservation Service Soils Survey maps, respectively; indicators that wetlands may be present on the property. A wetland determination/delineation will be required prior to any land clearing activities, site plan design, or building permit submittal. Information available to NRM indicates that land clearing activities resulting in potential impacts to wetlands may have occurred when portion of the site was

cleared between 2016 and 2017, and again between 2017 and 2018. The discovery of unpermitted wetland impacts may result in enforcement action.

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 specific requirements to meet this classification.

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. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any site plan design.

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.

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.

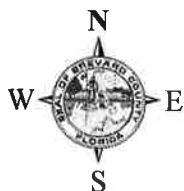
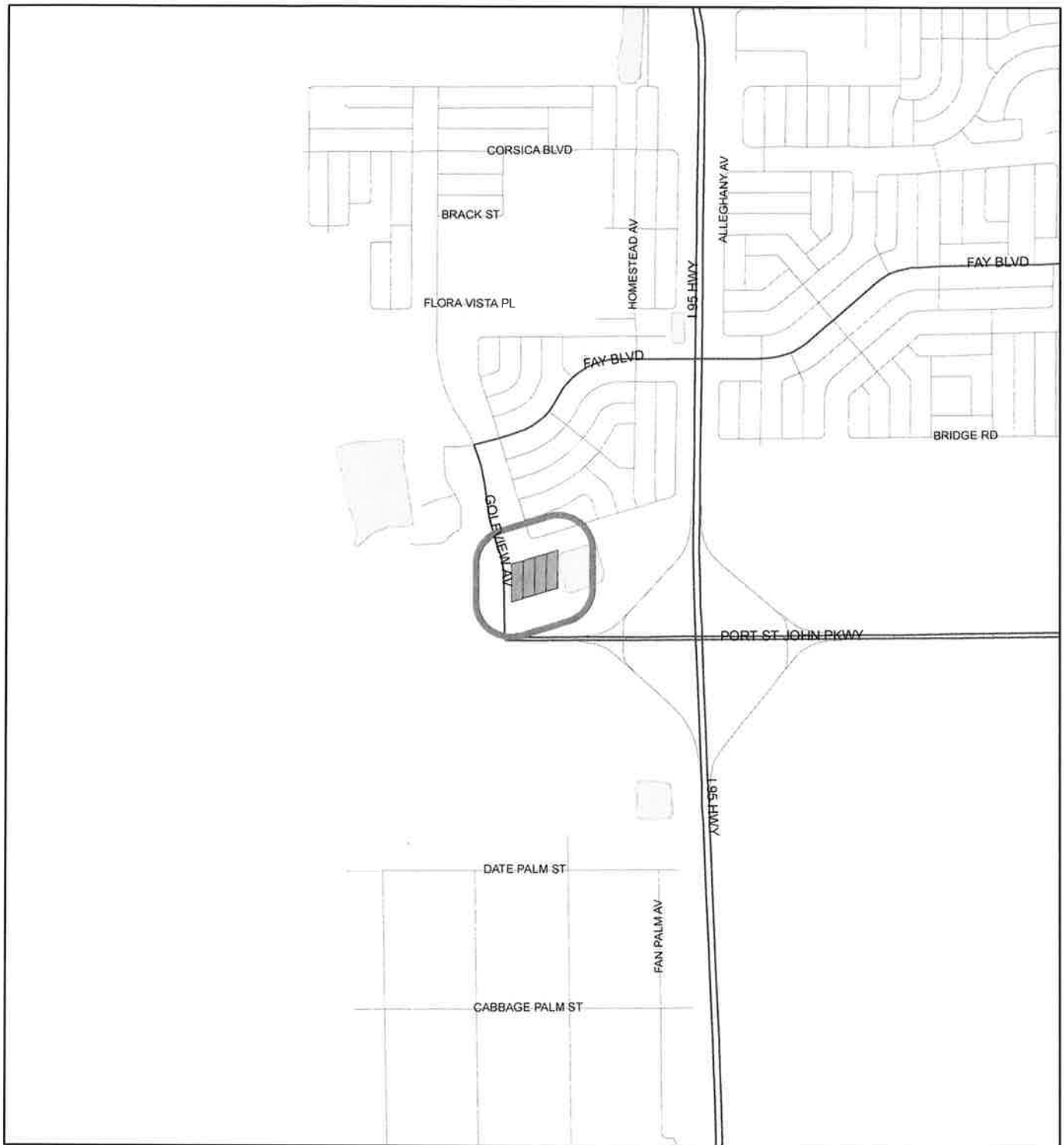
Protected and Specimen Trees

Aerials indicate that Protected (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) may exist on subject property. Information available to NRM indicates that unpermitted land clearing activities may have occurred. The discovery of unpermitted land clearing activities may result in enforcement action. 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. 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

McCONKEY, RODNEY F.

21Z00023





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

Buffer Distance: 500 feet

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

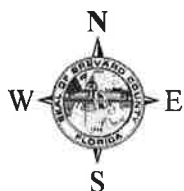
Produced by BoCC - GIS Date: 8/16/2021

-  Buffer
-  Subject Property

ZONING MAP

McCONKEY, RODNEY F.

21Z00023



1:4,800 or 1 inch = 400 feet

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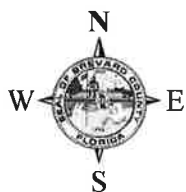
Produced by BoCC - GIS Date: 8/16/2021

- Subject Property
- Parcels
- Zoning

FUTURE LAND USE MAP

McCONKEY, RODNEY F.

21Z00023



1:4,800 or 1 inch = 400 feet

— Subject Property
 □ Parcels

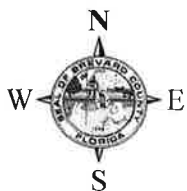
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 8/16/2021

AERIAL MAP

McCONKEY, RODNEY F.

21Z00023




1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2021

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Produced by BoCC - GIS Date: 8/16/2021

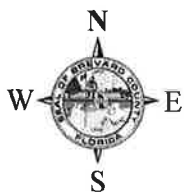
 Subject Property

 Parcels

NWI WETLANDS MAP

McCONKEY, RODNEY F.

21Z00023



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/16/2021

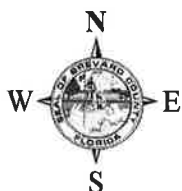
National Wetlands Inventory (NWI)

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

McCONKEY, RODNEY F.

21Z00023



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/16/2021

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

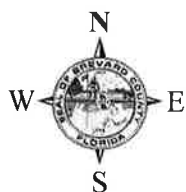
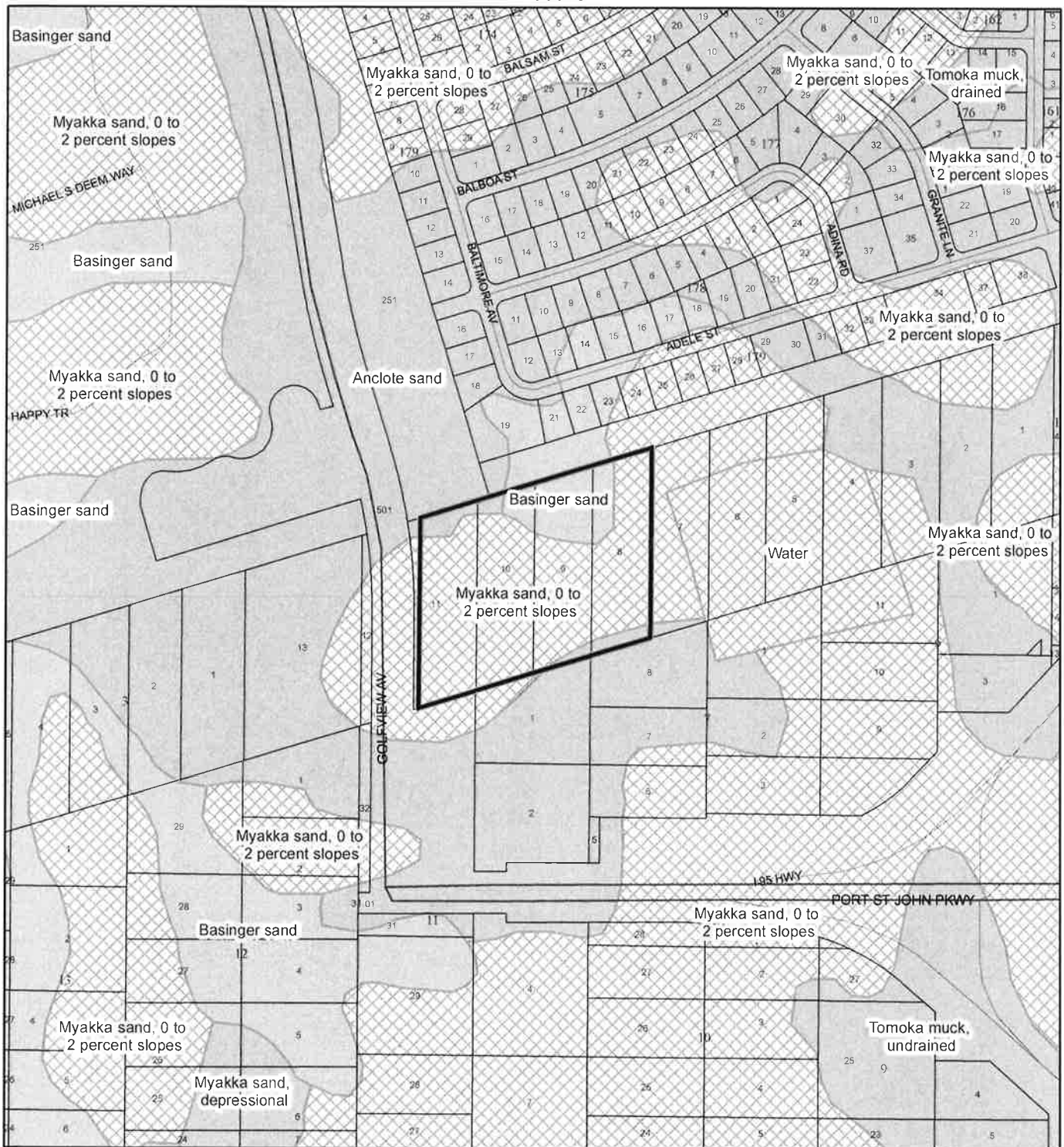
Subject Property

Parcels

USDA SCSSS SOILS MAP

McCONKEY, RODNEY F.

21Z00023



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 8/16/2021

USDA SCSSS Soils

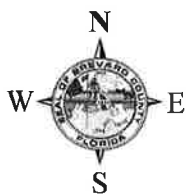
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

FEMA FLOOD ZONES MAP

McCONKEY, RODNEY F.

21Z00023



1:4,800 or 1 inch = 400 feet

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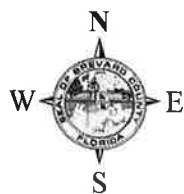
Produced by BoCC - GIS Date: 8/16/2021

FEMA Flood Zones

COASTAL HIGH HAZARD AREA MAP

McCONKEY, RODNEY F.

21Z00023



1:4,800 or 1 inch = 400 feet


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

Produced by BoCC - GIS Date: 8/16/2021

 Subject Property

 Parcels

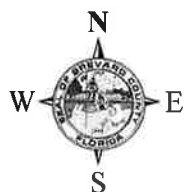
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

McCONKEY, RODNEY F.

21Z00023



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/16/2021

Subject Property

Parcels

Septic Overlay

40 Meters

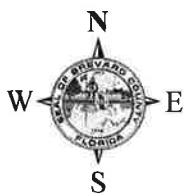
60 Meters

All Distances

EAGLE NESTS MAP

McCONKEY, RODNEY F.

21Z00023



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Produced by BoCC - GIS Date: 8/16/2021

 Subject Property

 Parcels

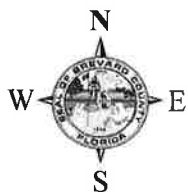


Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

McCONKEY, RODNEY F.




21Z00023



1:4,800 or 1 inch = 400 feet

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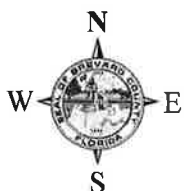
Produced by BoCC - GIS Date: 8/16/2021

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

McCONKEY, RODNEY F.

21Z00023







1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 8/16/2021

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



Water Hydrants

◆ Cocoa Utilities

Water Mains

— Water Main

Force Mains

— Cocoa

Gravity Mains

— Cocoa

Reclaim Mains

— Reuse Main

ACCT #2312740
Cocoa, FL



Disclaimer: Maps are for reference purposes only and are not intended to replace any off record. The user is responsible for confirming the accuracy of all data contained herein. **105**

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, October 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 (D1); Brian Hodgers (D2); Mark Wadsworth, Chair (D4); Liz Alward (D4 - Alt); Bruce Moia (D5); Peter Filiberto, Vice Chair (D5); and David Bassford (D5 - Alt).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; George Ritchie, Planner III; Peter Martin, Planner II; Alex Esseeesse, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Minutes

Rodney McConkey

A change of zoning classification from GU (General Use) to AU (Agricultural Residential). The property is 8.36 acres, located on the east side of Golfview Ave., approx. 500 ft. north of Port St. John Parkway. (No assigned address. In the Port St. John area.) (Tax Accounts 2312740, 2312741, 2312742, 2312743) (District 1)

Rodney McConkey, 2000 Cheney Highway, No. 103, Titusville, stated he would like to use the property for farming, as well as have farm animals, such as cows and horses. He would like to grow fruits and vegetables to sell at a roadside stand or to a co-op in Titusville.

Ron Bartcher asked if Mr. McConkey has any plans for growing commercial crops, packaging, or processing, the higher intensity commercial uses. Mr. McConkey replied no, not at all.

Liz Alward stated part of the agricultural zoning classification includes agritourism and asked Mr. McConkey if he plans on any kind of agritourism, such as barn weddings. Mr. McConkey replied he has not considered doing anything like that, he just wants a place to be able to grow fruit and vegetables and have animals. He said a wedding venue might be in future plans, but it is not in the cards right now.

Ms. Alward asked if Mr. McConkey would be willing to consider a stipulation that doesn't include agritourism at this time if the board were to consider approving AU. Mr. McConkey replied if necessary, but he doesn't think it's an issue. Ms. Alward stated at some point in the future if he considers doing agritourism, he could always come back to the board and request it. Mr. McConkey replied he has no problem with the stipulation.

No public comment.

Motion by Peter Filiberto, seconded by Liz Alward, to recommend approval the requested change of classification from GU to AU, with the stipulation that agritourism is prohibited. The motion passed 6:1, with Bruce Moia voting nay.

Bruce Moia stated he is opposed because the whole strip of land there is zoned AU and he doesn't see a need to restrict him over and above his neighbors.

NOTICE OF NON-ACCEPTANCE

Brevard County, Florida, a political subdivision of the State of Florida hereby provides notice that the properties described in the Easement Deed for Ingress and Egress recorded at Official Records Book 9193, Page 760, Public Records of Brevard County, Florida was not delivered to or accepted by the Board of County Commissioners Brevard County, Florida at any time. The Board of County Commissioners, Brevard County, Florida rejects any and all interests attempted to be transferred by Official Records Book 9193 Page 760, Public Records of Brevard County, Florida.

ATTEST:


Rachel Sadoff, Clerk to the Court

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

By: 
Rita Pritchett, Chair

Date: October 26, 2021

As approved by the Board on 10/26/2021
Agenda Item # F.4.



October 27, 2021

MEMORANDUM

TO: Marc Bernath, Public Works Director

RE: Item F.4., Approval for Notice of Non-Acceptance of Easement Deed for Ingress and Egress Conveyed from Rodney F. McConkey

The Board of County Commissioners, in regular session on October 26, 2021, approved and authorized the Chair to execute the Notice of Non-Acceptance of Easement Deed for Ingress and Egress conveyed from Rodney F. McConkey. Enclosed is the fully-executed Notice.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script, reading "Kimberly Powell".
Kimberly Powell, Clerk to the Board

Encls. (1)

BOARD OF COUNTY COMMISSIONERS

AGENDA REVIEW SHEET

#3390

AGENDA: Non-Acceptance of Easement Deed for Ingress and Egress

AGENCY: Public Works Department / Land Acquisition

AGENCY CONTACT: Lisa J. Kruse, Land Acquisition Specialist

CONTACT PHONE: 321-350-8353 Ext. 58353

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Lucy Hamelers, Supervisor	<u></u>	<u> </u>	<u>9-27-21</u>
COUNTY ATTORNEY Christine Schverak Assistant County Attorney	<u>cms</u>	<u> </u>	<u>9/28/2021</u>

Subject:

Approval, Re: Notice of Non-Acceptance of Easement Deed for Ingress and Egress conveyed to Brevard County from Rodney F. McConkey – District 1

Fiscal Impact:

None

Dept/Office:

Public Works Department / Land Acquisition

Requested Action:

It is requested that the Board of County Commissioners approve and authorize the Chair to execute the attached Notice of Non-Acceptance.

Summary Explanation and Background:

The subject properties are located in Section 36, Township 24 South, Range 36 East, east of Golfview Avenue, north of Port Saint John Parkway in Cocoa.

On September 24, 2021, it was discovered that an Easement Deed for Ingress and Egress from Rodney F. McConkey to Brevard County was recorded on July 19, 2021 in Official Records Book 9193, page 760, of the Public Records of Brevard County, Florida. Said Easement Deed was not submitted to the Brevard County Board of County Commissioners for approval and acceptance. Since this Easement Deed for Ingress and Egress has been recorded without the County's knowledge, a Notice of Non-Acceptance must be recorded in the Public Records to disclaim ownership and rebut any presumption of a valid conveyance of this easement.

The User Department approves this request.

This acquisition follows the policies and procedures as set forth in Administrative Order 37.

Clerk to the Board Instructions:

Upon execution by the Chair, Public Works Department will contact the Clerk's office to make arrangements to pick up the original executed Notice of Non-Acceptance.

NOTICE OF NON-ACCEPTANCE

Brevard County, Florida, a political subdivision of the State of Florida hereby provides notice that the properties described in the Easement Deed for Ingress and Egress recorded at Official Records Book 9193, Page 760, Public Records of Brevard County, Florida was not delivered to or accepted by the Board of County Commissioners Brevard County, Florida at any time. The Board of County Commissioners, Brevard County, Florida rejects any and all interests attempted to be transferred by Official Records Book 9192 Page 760, Public Records of Brevard County, Florida.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

Rachel Sadoff, Clerk to the Board

By: _____
Rita Pritchett, Chair

Date: _____

As approved by the Board on _____
Agenda Item # _____

Prepared by: *Rodney McCorkay*

HC
Return to: *Rodney McCorkay*
2000 Chang Hwy Ste 103-310
Titusville, FL 32780

EASEMENT DEED FOR INGRESS AND EGRESS

KNOW ALL MEN BY THESE PRESENTS, this *19* day of *July*, 20*21* that for the true and actual consideration of:

the receipt of which is hereby acknowledged, the grantor,

Rodney F. McCorkay
2000 Chang Hwy Ste 103-310
Titusville, FL 32780

hereby GRANTS to the grantee,

Brevard County Florida Power and Light
Emergency vehicle access

a(n) *Utility/Emerg. Veh.* easement for ingress and egress and incidental purposes over the following described real property (Servient Tenement) in the County of *Brevard* State of Florida. Parcel ID: *2312740, 2312741, 2312742, 2312743*
As shown in "Exhibit A" attached hereto and incorporated herein.

Said *Utility/Emerg. Veh.* easement is appurtenant to and for the benefit of the following described real property (Dominant Tenement) in the County of *Brevard*, State of Florida. Parcel ID: _____
As shown in "Exhibit B" attached hereto and incorporated herein.

This appurtenant *Utility/Emerg. Veh.* easement is described as a portion of the Servient Tenement and more specifically described in "Exhibit C" attached hereto and incorporated herein.

This appurtenant *Utility/Emerg. Veh.* easement shall run with the lands described above and for the sole benefit of the Dominant Tenement and shall bind the heirs, successors and assigns of the grantor and grantee.

Purpose of easement:

The County Recorder is hereby instructed to index this Easement Deed for Ingress and Egress in the ☒ Grantor / ☐ Grantee index under the names of the respective parties.

In witness whereof, the grantor has signed and sealed these presents on the day first above written.

Signature: [Signature]
 Print Name: Rodney E. McConkey
 Capacity: Owner / Grantor

Signature: _____
 Print Name: _____
 Capacity: _____

Signature: [Signature]
 Print Name: Gusory Adams
 Capacity: Witness

Signature: _____
 Print Name: _____
 Capacity: _____

Signature: [Signature]
 Print Name: Angela Barreto
 Capacity: witness

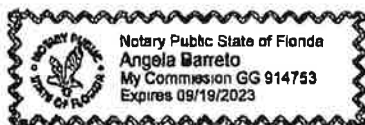
Signature: _____
 Print Name: _____
 Capacity: _____

Construe all terms with the appropriate gender and quantity required by the sense of this deed

STATE OF Florida
 COUNTY OF Brevard

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 19 day of July, 2021 by Rodney F. McConkey

FL DL, who ☐ is personally known to me or ☒ produced a
 as identification, regarding the attached instrument
 described as purpose of easement and to whose signature this notarization applies.



[Signature]
 notary public signature
Angela Barreto
 notary public printed name

EXHIBIT A

Servient Tenement Description

Parcel ID Number:

Commonly known as:

Legal description:

See Attached

EXHIBIT C

Easement Description

Easement description: *Utility and Emergency Vehicle easement*

CERTIFIED TO:

RODNEY F McCONKEY

LEGAL DESCRIPTION: (BY SURVEYOR)

A 25 FOOT WIDE INGRESS/EGRESS, EMERGENCY VEHICLE, UTILITY, AND FP&L EASEMENT ACROSS THE SOUTH 25 FEET OF LOTS 8 THROUGH 11, BLOCK 2, CANAVERAL GROVES SECTION 28, RECORDED IN SURVEY BOOK 2, PAGE 52, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA

CALCULATIONS/DRAWN/CHECKED BY AEG/JML/EKG

BOUNDARY

DATE: 17 JULY 21

GAI Surveyors

LB No 7928

A. EARL GORDON, JR, PSM No LS 2866
EARL K GORDON, PSM No LS 5363

1 OLEANDER ST. COCOA, FL 32922
(321) 806-3908 GAI@CFL.RR.COM

LOCATION MAP

Section 28, Township 23 South, Range 35 East - District: 1

PROPERTY LOCATION: East of Golfview Avenue north of Port Saint John Parkway

OWNERS NAME(S): Rodney F. McConkey

