



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

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

**STAFF COMMENTS**

**23Z00077**

**John L Hearton**

**EU (Estate Residential) to SEU(Suburban Estate Residential)**

Tax Account Number: 2633100  
Parcel I.D.: 26-37-34-DW-\*-3.03  
Location: East and west side of S Tropical Trail, 1,750 ft south of Stockton  
(District 4)  
Acreage: 1.17 acres  
  
Planning & Zoning Board: 01/08/2024  
Board of County Commissioners: 02/01/2024

**Consistency with Land Use Regulations**

- Current zoning cannot 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)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	EU	SEU
<b>Potential*</b>	1 Single-family unit	1 Single-family units
<b>Can be Considered under the Future Land Use Map</b>	NO RES 1	YES RES 1

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

**Background and Purpose of Request**

The applicant is requesting to rezone the property from EU (Estate Residential) to SEU (Suburban Residential Use) to have the zoning classification consistent and compatible with the Residential 1 (RES 1) Future Land Use Map designation. This will allow for future development of one single family residence. Currently, the existing EU zoning classification is not consistent with the RES 1 (FLUM) designation per #62-1255. Rezoning this property will correct this inconsistency.

The subject property is currently a vacant lot. It was originally platted as of 09/15/1881 as a

4 acre parcel. The parcel was divided to its' current configuration in 02/27/2015 and the lot is part of "JW Stewarts" lots 3 & 4 as described in ORB 7341 Pg 499. This lot split caused the lot to lose its' nonconforming status. The current EU (Estate Use) is inconsistent with the RES 1 FLU as well. Additionally, the applicant applied for variance to Sec. 62-1337(4), to permit a 9% deviation for the lot width in a SEU zoning classification. The variance was approved on November 20, 2023 by the Board of Adjustment.

The subject property is located on the east and west side of S. Tropical Tr. The primary site is on the east side of the roadway with a small sliver of land on the west side. Both portions front on a water body. The majority of the land area is located on the east side of S. Tropical Tr.

Sec 62-2116(2) Where the land area on either side of the public or private right-of-way fails to meet the minimum requirements for lot size in the designated zoning classification, then the land owner shall be deemed the owner of one lot, plot, tract or parcel for the purposes of this chapter, and the principal structure or dwelling unit shall be located on the side or part having the greater land area.

There are no current code enforcement cases applicable to the subject property.

### **Surrounding Area**

	<b>Existing Land Use</b>	<b>Zoning</b>	<b>Future Land Use</b>
<b>North</b>	Single-family residence	EU	RES 1
<b>South</b>	Single-family residence	EU	RES 1
<b>East</b>	Water body	N/A	N/A
<b>West</b>	Water body	N/A	N/A

The current EU classification permits single family residential development on lots of 15,000 square feet (minimum) with a minimum width of 100 feet and depth of 100 feet. The minimum house size is 2,000 square feet. Although the subject site could comply with these minimum requirements, the EU (Estate Residential) is not in compliance with the FLU of RES 1.

The proposed SEU classification permits single family residences on minimum 1 acre (43,560 sf) with a minimum width and depth of 125 feet and a minimum depth of 200 feet. The minimum house size is 2,000 square feet. The subject property would meet these standards.

### **Future Land Use**

The subject property is currently designated as Residential 1 (RES 1) Future Land Use Map (FLUM) Designation. The current EU zoning is not consistent with the existing RES 1 FLUM

Designation. The proposed SEU zoning is consistent with the existing RES 1 FLUM Designation.

**FLUM Policy 1.7** – The RES 1 FLU land use designation affords an additional step down in density from more highly urbanized areas. This land use designation permits a maximum density of up to one (1) unit per acre, except as otherwise may be provided for within the Future Land Use Element.

The applicant's request can be considered consistent with the existing Future Land Use. The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 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:**

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;

**Since SEU zoning has a larger lot size requirement and similar uses to EU zoning, it is not anticipated to diminish the enjoyment of safety or quality of life in existing neighborhood within the area.**

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

**Only a certified MAI (Master Appraiser Institute) appraisal can determine if material reduction has or will occur due to the proposed request.**

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

- 1. historical land use patterns;

**The historical land use patterns can be characterized as single-family residences on properties ranging in size from .23 acres to 8 acres in size.**

**To the north of the subject property is a single-family home and to the south is a vacant residential lot. This area is all within the RES 1 FLUM designation. The 0.50 mile radius is predominantly residential development and use.**

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

**There have been no FLU changes within 0.5 miles.**

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

**There has been no development approved within the past three years.**

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

**No material violation of relevant policies has been identified.**

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

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 or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

**Staff analysis indicates the property is located within a residential area not a neighborhood. The closest parcel with SEU zoning is located north 2,065 feet approximately. The majority of sites within the subjects' immediate area are zoned EU to the north and RU-1-13 to the south.**

**The request is not anticipated to materially or adversely impact the surrounding area.**

- 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.

**The property is located in an existing platted residential area. There are clearly established roads and residential lot boundaries as well as rivers to the east and west bounding the subject property.**

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.

**The request is not for commercial use. It is located in an existing single-family residential neighborhood.**

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.

**The area is primarily single-family residential with no commercial zoning nearby.**

### **Analysis of Administration Policy 7**

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

**Based on the summary of mapped resources and noteworthy land use issues. These include wetlands and hydric soils, Coastal High Hazard Area, floodplain, and the Indian River Lagoon Nitrogen Reduction Overlay. These issues may limit the development of the property.**

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is S Tropical Trail between Mathers Bridge to Pineda Causeway, which has a Maximum Acceptable Volume (MAV) of 12,480 trips per day, a Level of Service (LOS) of E, and currently operates at 11.67% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.00%. The corridor is anticipated to operate at 11.67% 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.

Water is provided by the city of Cocoa. No central sewer is available and the applicant will need a septic system. The entire property is mapped within the Indian River Lagoon Nitrogen Reduction Overlay. Per Chapter 46, Article II, Division IV – Nitrogen Reduction Overlay, if adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required. The NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

## Environmental Constraints

### Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands and Hydric Soils
- Aquifer Recharge Soils
- Coastal High Hazard Area
- Floodplain Protection
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Surface Waters of the State
- Protected and Specimen Trees
- Protected Species

The eastern portion of the subject parcel contains mapped National Wetlands Inventory (NWI) wetlands. **A wetland delineation will be required prior to any land clearing activities, site plan design, or building permit submittal.**

**Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres** unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. **This density may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total residential acreage as set forth in Section 65-3694(c)(6).** 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 plan or permit submittal.**

The subject property is located on the Indian River Lagoon (IRL), designated as an Impaired Water (as defined in 62-303.200 F.A.C.), a Class II Water, an Outstanding Florida Water (OFW), and an Aquatic Preserve in this location. **A 50-foot Surface Water Protection Buffer is required.** The removal of native vegetation located within the Buffer is prohibited. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

Both the east and west sides of this property are located within the Coastal High Hazard Area (CHHA) as defined by Florida Statute 163.3178(2)(h), and as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates Coastal High Hazard Areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute. The parcel may be susceptible to nuisance flooding.

Both the east and west sides of this property are mapped as being within estuarine floodplain as identified by FEMA and as shown on the FEMA SFHA Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the

Floodplain Ordinance. 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."

**Information available to NRM indicates that unpermitted land clearing activities occurred on the parcel and within the Surface Water Protection Buffer. As a result, the parcel is experiencing erosion. Both the east and west shorelines are within the CHHA, FEMA floodplain and potentially contain wetlands. This activity may result in code enforcement action and/or require shoreline restoration to protect S. Tropical Trail and water quality of the Indian River Lagoon.**

### **For Board Consideration**

The Board may wish to consider if the request is consistent and compatible with the surrounding area. The Board may also wish to consider the development, given the environmental constraints identified with the property.

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

**Item No. 23Z00077**

**Applicant:** Dave Andrew Okonsky (Owner: John L. Hearnton)

**Zoning Request:** EU to SEU

**Note:** to be consistent with RES 1 FLU to build SFR

**Zoning Hearing:** 01/08/2024; **BCC Hearing:** 02/01/2024

**Tax ID No.:** 2633100

- 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 and Hydric Soils
- Aquifer Recharge Soils
- Coastal High Hazard Area
- Floodplain Protection
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Surface Waters of the State
- Protected and Specimen Trees
- Protected Species

The eastern portion of the subject parcel contains mapped National Wetlands Inventory (NWI) wetlands. **A wetland delineation will be required prior to any land clearing activities, site plan design, or building permit submittal.**



**Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres** unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. **This density may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total residential acreage as set forth in Section 65-3694(c)(6).** 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 plan or permit submittal.**

The subject property is located on the Indian River Lagoon (IRL), designated as an Impaired Water (as defined in 62-303.200 F.A.C.), a Class II Water, an Outstanding Florida Water (OFW), and an Aquatic Preserve in this location. **A 50-foot Surface Water Protection Buffer is required.** The removal of native vegetation located within the Buffer is prohibited. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

Both the east and west sides of this property are located within the Coastal High Hazard Area (CHHA) as defined by Florida Statute 163.3178(2)(h), and as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates Coastal High Hazard Areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute. The parcel may be susceptible to nuisance flooding.

Both the east and west sides of this property are mapped as being within estuarine floodplain as identified by FEMA and as shown on the FEMA SFHA Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. 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."

**Information available to NRM indicates that unpermitted land clearing activities occurred on the parcel and within the Surface Water Protection Buffer. As a result, the parcel is experiencing erosion. Both the east and west shorelines are within the CHHA, FEMA floodplain and potentially contain wetlands. This activity may result in code enforcement action and/or require shoreline restoration to protect S. Tropical Trail and water quality of the Indian River Lagoon.**

#### **Land Use Comments:**

## **Wetlands and Hydric Soils**

The eastern portion of the subject parcel contains mapped National Wetlands Inventory (NWI) wetlands. A wetland delineation will be required prior to any land clearing activities, site plan design, or building permit submittal.

Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. This density may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total residential acreage as set forth in Section 65-3694(c)(6). 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 plan or permit submittal.

## **Aquifer Recharge Soils**

This property contains mapped aquifer recharge soils (Paola fine sand, 0 to 8 percent slopes) as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations indicate the soils may consist of Type 3 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

## **Coastal High Hazard Area**

The eastern portion of this property, on the Banana River shoreline, is located within the Coastal High Hazard Area (CHHA) as defined by Florida Statute 163.3178(2)(h), and as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates Coastal High Hazard Areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute. The parcel may be susceptible to nuisance flooding.

## **Floodplain Protection**

Both the east and west sides of this property are mapped as being within estuarine floodplain as identified by FEMA and as shown on the FEMA SFHA Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. 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."

### **Indian River Lagoon Nitrogen Reduction Septic Overlay**

The entire property is mapped within the Indian River Lagoon Nitrogen Reduction Overlay. Per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay, if adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

### **Surface Waters of the State**

The subject property is located on the Indian River Lagoon, designated as an Impaired Water (as defined in 62-303.200 F.A.C.), a Class II Water, an Outstanding Florida Water (OFW), and an Aquatic Preserve in this location. A 50-foot Surface Water Protection Buffer is required. Primary structures shall be located outside the Surface Water Protection Buffer. Accessory structures are permissible within the Buffer with conditions (e.g., storm water management is provided, avoidance/minimization of impacts, and maximum 30% impervious). The removal of native vegetation located within the Buffer is prohibited unless approved through an active development order. **Information available to NRM indicates that unpermitted land clearing activities occurred on the parcel within the Surface Water Protection Buffer, and as a result, the parcel is experiencing erosion on both the east and west shorelines.** The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

### **Protected and Specimen Trees**

Protected and Specimen Trees may exist on the parcel. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), encourages the protection of Specimen Trees. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

### **Protected Species**

Federally and/or state protected species may be present on properties with aquifer recharge soils. Specifically, there is potential for existence of Gopher Tortoises on site. The applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife

Conservation Commission and/or U.S. Fish and Wildlife Service prior to any plan, permit submittal, or development activity, including land clearing, as applicable.