



BOARD OF COUNTY COMMISSIONERS

## Planning and Development Department

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

### STAFF COMMENTS

**21Z00018**

**395 East LLC (Michael E. Maguire)**

**SEU (Agricultural Residential) to EU (Estate Use Residential)**

Tax Account Number: 2511450  
Parcel I.D.: 25-36-24-00-31  
Location: SW corner of Curry Dell Lane and S. Courtenay Parkway (District 2)  
Acreage: 6.33 acre

Planning and Zoning Board: 07/12/2021

Board of County Commissioners: 8/05/2021

### 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
<b>Zoning</b>	SEU	EU
<b>Potential*</b>	3-Single Family Units	4-Single Family Units
<b>Can be Considered under the Future Land Use Map</b>	Yes RES 3 Directive	Yes RES 3 Directive

\* 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 SEU (Suburban Estate Residential) to EU (Estate Use Residential) for the purpose of creating a 4-unit subdivision. The proposed subdivision will consist of two flag lots; one located off South Tropical Trail and one located off S. Courtenay Parkway, along with two lots, one abutting the east side of S. Courtenay Parkway and one abutting the west side of S. Courtenay Parkway. The proposed subdivision will not have access thru Curry Dell Lane. The applicant did not provide staff with a proposed development plan or a Binding Development Plan (BDP) that would limit the development potential or offer other mitigations with this application.

The subject parcel was originally zoned EU from 1958 to September 10, 1959. Since that time the parcel was zoned AU per zoning action **Z-0237**.

In 2020 the previous property owner had applied for rezoning from AU to EU per zoning action **20Z00013**. This previous rezoning request to EU was for a proposed 11-unit subdivision. However, The Brevard County Commission modified and approved the zoning change from AU to SEU on October 1, 2020, which will only permit three-units.

## **Land Use**

The subject property retains the Residential 3 Directive (RES 3 DIR) FLU designation. RES 3 DIR is a Future land Use the Board approved in the Central and South Merritt Island Study. The RES 3 DIR permits a density of three units per acre.

## **Applicable Land Use Policies**

The parcel is located in the RES 3 DIR (Residential 3 Directive) of the Central and South Merritt Island Directive

This parcel is located within the Central and South Merritt Island Study area where only the following classifications can be requested: EU, SR, SEU, RR-1, REU, AU, PA, GU, AGR, RRMH-1, RRMH-2.5, RRMH-5 and TR-2. The current zoning of SEU as well as the proposed EU zoning classification is consistent with this FLU designation.

The Board should evaluate the compatibility of this application within the context of the Board's Directive of the Future Land Use Element, outlined in the Central and South Merritt Island Study Area.

## **Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area.**

The subject property is vacant land and lies within the RES 3 DIR (Residential 3 Directive) Future Land Use designation. The abutting parcels and the surrounding parcels lie within the RES 3 DIR Future Land Use designation. The RES 3 DIR Future Land Use designation is compatible with the current SEU zoning. The proposed EU zoning is also considered consistent with the RES 3 DIR Future Land Use designation.

There has been no FLU change in the RES 3 DIR designation of the Central and South Merritt Island Study Area in the past 10 years. Existing development of the surrounding area is generally described as single-family homes on lots that are 0.33 acre or larger. There has been one new subdivision, Georgiana Reserve Subdivision, Plat Book 68, Page 90, approved in the immediate area on December 08, 2020.

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

The subject parcel is a remnant undeveloped SEU parcel surrounded by EU west of S. Courtenay Parkway and SEU (Suburban Estate Residential Use) zoning classification east of S. Courtenay Parkway.

The current SEU zoning permits suburban estate residential uses on lots of one acre (minimum) with a width of 125 feet and a depth of 200 feet. It also requires a minimum floor area is 2,000 square feet of living area.

The proposed EU zoning classification is an estate single family residential zoning classification. The minimum lot size is 15,000 square feet with a minimum lot width and depth of 100 feet. The minimum living area is 2,000 square feet. (A smaller lot size with the same living area requirement as SR)

Most of the subject property lies between South Tropical Trail and South Courtenay Parkway. This portion of the property is proposed to be split into three parcels. The portion accessed by S. Tropical Trail will be developed as a 1.0+ acre flag lot. The portion accessing S. Courtenay Parkway is proposed to be developed as two parcels, one a 1.0+ acre flag lot and one parcel abutting S. Courtenay Parkway. There is also a portion lying east of S. Courtenay Parkway extending to the Banana River which contains an estimated 1.24 acres. Most of the abutting residential lots are developed with single-family houses.

### **Surrounding Properties**

The developed character of the surrounding area is residential. The abutting parcels to the north are zoned EU. The parcel to the east of S. Courtenay Parkway is also part of this application request. The abutting parcels to the south are EU except for that portion lying east of S. Courtenay Parkway which is zoned SEU. The abutting developed parcel to the west is zoned EU.

There has been one recent zoning action within a half-mile of the subject property within the last three years.

On July 09, 2020, application **20PZ00015** changed the zoning classification from AU to EU. This parcel is located on the east side of South Tropical Trail abutting the subject parcel on the northwest of the parcel.

### **Environmental Constraints**

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

- NWI Wetlands
- SJRWMD Wetlands
- Hydric Soils
- Aquifer Recharge Soils
- Coastal High Hazard Area
- Floodplain
- Indian River Lagoon Nitrogen Reduction Overlay
- Protected and Specimen Trees
- Protected Species

The subject parcel contains mapped NWI and SJRWMD wetlands, and hydric soils. Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For subdivisions greater than

five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) including avoidance of impacts, and 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design or permit submittal.

A wetland delineation will be required prior to any site plan design, land clearing activities, or building permit submittal.

The majority of the property located on the east side of S. Courtenay Parkway is located within the Coastal High Hazard Area (CHHA) 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 Coastal Management Element of the Comprehensive Plan, Objective 7.0, limits densities within the coastal high hazard zone and directs development outside of this area. Objective 7.0, Policy 7.6 states that existence of sewer, water, roadways or other public infrastructure shall not be considered adequate rationale for an increase in zoning density or intensity within the coastal high hazard area.

The entire parcel 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 alternative septic systems designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is S. Courtenay Parkway, between S. Tropical Trail to Banana Boulevard, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of D, and currently operates at 62.05% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.07%. With the maximum development potential from the proposed rezoning, the corridor is anticipated to operate at 62.12% of capacity daily (LOS D). The proposal is not anticipated to create a deficiency in LOS.

At this time, Tropical Elementary School, Jefferson Middle School and Merritt Island High School are projected to have enough capacity for the total of projected and potential students from the South Curry Dell development.

The parcel can be serviced by City of Cocoa water. There is no sewer service in the area. The closest Brevard County sewer connection is 3.125 miles to the north.

This area is within the Indian River Lagoon Nitrogen Reduction Overlay and if not connected to sewer facilities will need to utilize alternative septic systems designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes.

### **For Board Consideration**

The Board may wish to consider whether the request is consistent and compatible with the surrounding area.

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

**Item # 21Z00018**

**Applicant:** Berkovich for Maguire

**Zoning Request:** SEU to EU

**Note:** Applicant wants to develop a 4-lot subdivision

**P&Z Hearing Date:** 07/12/21; **BCC Hearing Date:** 08/05/21

**Tax ID No:** 2511450

- 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:**

- NWI Wetlands
- SJRWMD Wetlands
- Hydric Soils
- Aquifer Recharge Soils
- Coastal High Hazard Area
- Floodplain
- Indian River Lagoon Nitrogen Reduction Overlay
- Protected and Specimen Trees
- Protected Species

The subject parcel contains mapped NWI and SJRWMD wetlands, and hydric soils. Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For subdivisions greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) including avoidance of impacts, and 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design or permit submittal.

A wetland delineation will be required prior to any site plan design, land clearing activities, or building permit submittal.

The majority of the property located on the east side of S. Courtenay Parkway is located within the Coastal High Hazard Area (CHHA) 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 Coastal Management Element of the Comprehensive Plan, Objective 7.0, limits densities within the coastal high hazard zone and directs development outside of this area. Objective 7.0, Policy 7.6 states that existence of sewer, water, roadways or other public infrastructure shall not be considered adequate rationale for an increase in zoning density or intensity within the coastal high hazard area.

The entire parcel 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 alternative septic systems designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required.

### **Land Use Comments:**

#### **Wetlands**

The subject parcel contains mapped NWI (Freshwater forested shrub wetlands), SJRWMD (Mixed scrub-shrub wetlands), and hydric soils (Ancloste sand – frequently flooded, and St. Johns sand) as shown on the NWI Wetlands, SJRWMD Florida Land Use & Cover Codes, and USDA Soil Conservation Service Soils Survey maps, respectively. All are indicators that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities.

Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For subdivisions greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) including avoidance of impacts, and 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design or permit submittal.

#### **Aquifer Recharge Soils**

A large area of the subject parcel, located on the west of S. Courtenay Parkway, contains mapped aquifer recharge soils (Paola fine sand and Orsino fine sand) as shown on the USDA Soil Conservation Service Soils Survey map. 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 majority of the property located in the east side of S. Courtenay Parkway is located within the CHHA 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 Coastal Management Element of the Comprehensive Plan, Objective 7.0, limits densities within the coastal

high hazard zone and directs development outside of this area. Objective 7.0, Policy 7.6 states that existence of sewer, water, roadways or other public infrastructure shall not be considered adequate rationale for an increase in zoning density or intensity within the coastal high hazard area.

### **Floodplain**

A large portion of the property located on the east side of S. Courtenay Parkway is mapped as being within the floodplain as identified by the Federal Emergency Management Agency as shown on the FEMA Flood Zones Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. 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."

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

The property is located on Class II surface waters designated by the State as Outstanding Florida Waters and an Aquatic Preserve. A 50-foot surface water protection buffer (buffer) is required. Except as allowable under Section 62-3668 (7), primary structures shall be located outside the buffer. Alteration or construction other than that which is allowed under this division shall be prohibited, unless it is shown to be in the public interest and does not adversely impact water quality and natural habitat. All alteration shall demonstrate avoidance and minimization of surface water protection buffer impacts, including the location of the alteration within the most landward portion of the buffer, as practicable. The remainder of the surface water protection buffer shall be maintained in unaltered vegetation, except for non-native invasive plants.

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

The entire parcel 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 alternative septic systems designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required. Per Section 62-3666 (14), all onsite sewage treatment and disposal systems (OSTDS) shall be set back at least 100 feet from the buffer establishment line, the safe upland line, mean high water line or ordinary high-water line.

### **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 reside on subject property. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4341(18), Protected and 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.