



GROWTH AND RESOURCE MANAGEMENT DEPARTMENT
PLANNING AND DEVELOPMENT SERVICES DIVISION
123 West Indiana Avenue, DeLand, Florida 32720
(386) 736-5959

PUBLIC HEARING: September 16, 2021 – Planning and Land Development Regulation Commission (PLDRC)

CASE NUMBER: V-21-130

SUBJECT: A variance to separate nonconforming lots and the minimum yard requirements on Prime Agriculture (A-1) zoned property

LOCATION: 2840 Apaloosa Trail, Deltona

APPLICANT(S): Nika Hosseini

OWNER(S): William Clark Jr. Trust

I. SUMMARY OF REQUEST

The applicant is requesting variances to separate nonconforming lots and to reduce the front and side yards for an existing single-family residence. The requested variances are as follows:

- Variance 1: A variance to Section 72-206(1) of the Zoning Ordinance to separate parcel 8102-00-00-0011 from parcel 8102-00-00-0052.
- Variance 2: A variance to reduce the front yard from 100 feet to 93 feet for an existing single-family residence.
- Variance 3: A variance to reduce the side yard from 50 feet to 38.6 feet for an existing single-family residence.

Staff Recommendation:

Approve the variance requests 1 through 3, case number V-21-130, as the variances successfully meet all five criteria for granting said variances.

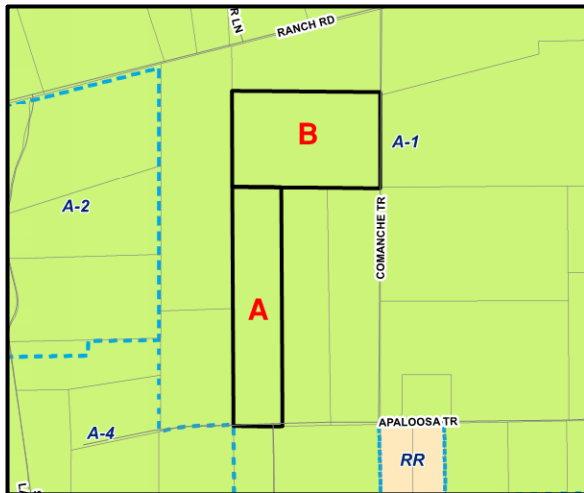
II. SITE INFORMATION

- 1. Location: North side of the intersection of Apaloosa Trail and Courtland Boulevard, in the Deltona area.
- 2. Parcel Number(s): 8102-00-00-0011 and 8102-00-00-0052
- 3. Property Size: +/- 5 acres and +/- 6.5 acres, respectively
- 4. Council District: 3
- 5. Zoning: Prime Agriculture (A-1)
- 6. Future Land Use: Rural (R)
- 7. Overlays: Not Applicable
- 8. Local Plan Area: Not Applicable
- 9. Adjacent Zoning and Land Use:

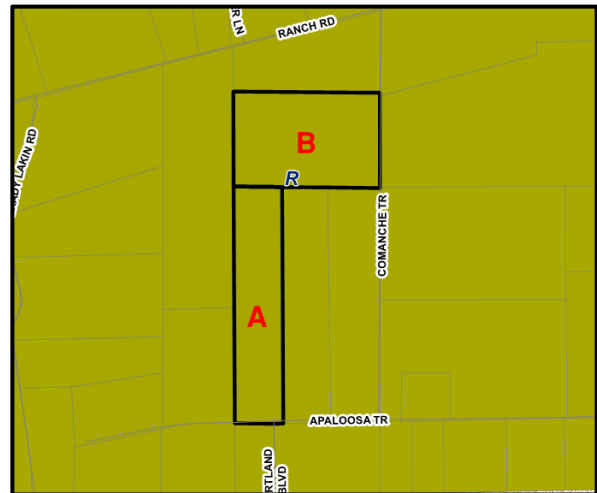
DIRECTION	ZONING	FUTURE LAND USE	EXISTING USE.
North:	A-1	Rural	Vacant / Feed Lot
East:	A-1	Rural	Single-Family Residence
South:	A-1	Rural	Single-Family Residence
West:	A-1	Rural	Single-Family Residence

10. Location Maps:

ZONING MAP



FUTURE LAND USE MAP



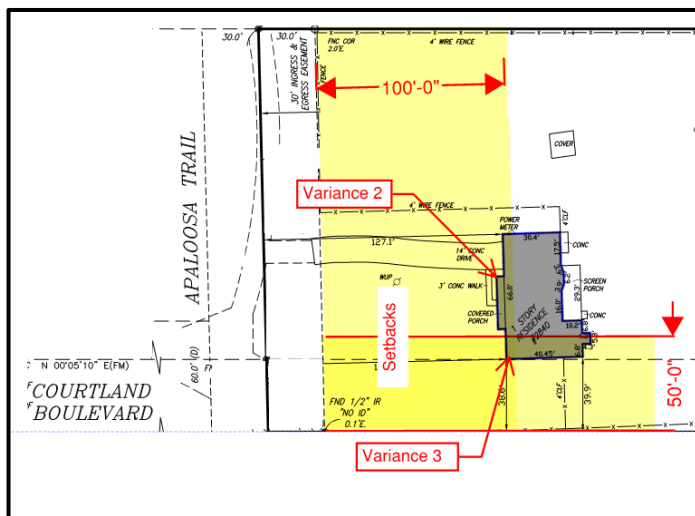
III. BACKGROUND AND OVERVIEW



The subject property, Parcel 8102-00-00-0011 (hereinafter referred to as "Parcel A") is located on the north side of the intersection of Apaloosa Trail and Courtland Boulevard, in the Deltona area. Parcel 8102-00-00-0052 (hereinafter referred to as "Parcel B") is located adjacent to it on the north. Parcel A is five acres, vacant and developed with a single-family residence. Parcel B is six-and-one-half acres and is undeveloped and used for agricultural purposes.

Parcel A was created as Lot 1 of the Clark Unrecorded subdivision in 1982. In 1984, the Zoning Ordinance changed the minimum A-1 lot size from five acres to ten acres. The owner was granted relief from the

nonconforming lot provision of the code for the two lots to the east of it. However, Parcels A and B were not included in the 1984 County Council action. Parcels A and B are zoned Prime Agriculture (A-1). Both parcels are nonconforming to the lot area as they are less than 10 acres. Pursuant to Section 72-206(1) of the Zoning Ordinance, nonconforming lots, which abut in single ownership, are considered an undivided lot and no portion shall be sold in a manner that does not comply with the lot width or lot area established by that zoning classification. Therefore, in order for Parcels A and B to be eligible for future building permits, a variance to this code requirement is necessary.



Variances 2 and 3 have been included in this request to legitimize the placement of the existing single-family residence upon Parcel A. The house was constructed in 1982. In reviewing the survey, it appears the house was placed 127 feet from the south property line when it should have been measured from the 30-foot ingress/egress easement. The house as constructed encroaches into the front and side yards 17 feet and 11.4 feet, respectively.

IV. REVIEW CRITERIA AND ANALYSIS

Section 72-379(1)a.4 of the Zoning Ordinance contains five applicable criteria by which a variance application may be granted. The following staff evaluation is based on these criteria:

i. Special conditions and circumstances exist which are peculiar to the land, structure, sign, or building involved and which are not applicable to other lands, structures, signs, or buildings in the same zoning classification.

Variance 1: The applicant argues the parcels were created prior to the A-1 zoning district requiring a minimum of 10 acres. It was the 1984 code change that made these lots nonconforming.

Staff finds that this criterion is met.

Variances 2 and 3: A building permit was issued in 1982 with the house encroaching into the south front yard, and east side yard. The owner constructed the improvements in accordance with the approved permits.

Staff finds that this criterion is met.

ii. The special conditions and circumstances do not result from the actions of the applicant.

Variance 1: The applicant is not responsible for changing the A-1 lot size from five acres to 10 acres.

Staff finds that this criterion is met.

Variances 2 and 3: The special conditions and circumstances are not the result of the actions of the applicant, since the house was constructed in accordance with an approved permit.

Staff finds that this criterion is met.

iii. Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification, under the terms of the ordinance, and would work an unnecessary and undue hardship on the applicant.

Variance 1: The applicant is unable to obtain a good nonconforming lot letter due to the common ownership of Parcels A and B, which prevents the current or future owners from obtaining a building permit for a new single-family residence on Parcel B. In order to obtain building permits, a variance to separate nonconforming lots is required. Therefore, literal interpretation of the provisions of this ordinance would deprive the applicants of the ability to obtain building permits.

Staff finds that this criterion is met.

Variations 2 and 3: The literal interpretation of the Zoning Ordinance would not allow the house to be replaced in its current location if damaged or destroyed. This could be considered an unnecessary and undue hardship as the house was built consistent with approved building permits.

Staff finds that this criterion is met.

iv. The variance granted is the minimum variance that will make possible the reasonable use of the land, building, structure, or sign.

Variance 1: This variance is the minimum necessary that will make it possible for the applicant to create a lawful nonconforming lot that is eligible for building permits.

Staff finds that this criterion is met.

Variations 2 and 3: This is the minimum variance that will allow the location of the house to be consistent with the front and side yard requirements and allow the owner to replace the house in its current location if damaged or destroyed.

Staff finds that this criterion is met.

v. The grant of the variance will be in harmony with the general intent and purpose of this ordinance and the Volusia County Comprehensive Plan Ordinance No. 90-10, as amended, and that such variance will not be injurious to the area involved.

Variations 1 through 3: Granting these variations will not be injurious to the area property owners, and it will not compromise public health, safety and welfare. No changes in land use, increases in density, or intensification in land use will result from the granting of these variations. The house was constructed in accordance with a 1982 building permit. The error in the placement of the house was unknown until the survey was reviewed for this variance. The applicant has also provided letters of support from nearby property owners.

Staff finds that this criterion is met.

V. STAFF RECOMMENDATION

Approve variations 1, 2, and 3, case number V-21-130, as the variations successfully meet all five criteria for granting said variations.

VI. ATTACHMENTS

- Written Petition
- Site Plan
- Survey
- Clark Unrecorded
- Environmental Permitting Comments
- Letters Of Support
- Maps

VII. AUTHORITY AND PROCEDURE

The commission may, except as otherwise provided in Section 72-379 of the Zoning Ordinance, authorize, after due public notice upon application on a form prescribed by the Zoning Enforcement Official, such variance or variances from the terms of this ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provision of this ordinance would result in unnecessary and undue hardship. Said variance application shall be heard only if it is presented by the person owning 51 percent or more of the specific area of land involved or upon an administrative application by the County Council.

Pursuant to Section 72-412, no variance shall be granted, in whole or in part, unless four members concur. A tie vote shall be grounds for continuance to the next scheduled meeting.

Any new information to be presented at the Planning and Land Development Regulation Commission meeting for any application will be grounds to continue an application to the next Planning and Land Development Regulation Commission meeting. Applicants shall inform and provide staff with the new information prior to the Planning and Land Development Regulation Commission meeting.

Written Petition for a Variance
Parcel IDs: 810200000052 & 810200000011

What special conditions and circumstances exist which are peculiar to your land, structure, building or sign that are not applicable to other lands, structures, buildings or signs in the same zoning classification. Are these special conditions and circumstances the result of actions by you?

This variance request seeks authorization for the property owner to reduce the lot sizes for both contiguous parcels from 10 acres to 6.52 acres for parcel ID: 810200000052 and from 10 acres to 5 acres for parcel ID: 810200000011 under the applicable A-1 zoning district. In addition, this variance request seeks authorization to reduce the southern front yard setback from 100 feet to 97.1 feet and the eastern front yard setback from 100 feet to 0 feet for parcel ID 810200000011.

In November of 1981, the property owner purchased approximately 20 acres of property to divide into four homesites for his family, including parcel ID 810200000011 described above. At this time, the zoning was similar to A-2, which provided a minimum of 5 acre lots, with a front yard setback of 50 feet and a side yard setback of 25 feet. The County approved the subdivision in 1982 and the same year, the property owner built a home on parcel ID 810200000011. This home was permitted by the County and met the applicable zoning regulations at the time. However, in March of 1984, the zoning regulations changed and provided that a lot in this area must now be a minimum of 10 acres with a 50 foot side yard setback and a 100 foot front yard setback. Due to this change in law, the existing parcels, and the existing home, are now nonconforming with the regulations. This change in the regulations is a special circumstance not caused by the property owner.

In addition, the property known as parcel ID 810200000011 is bounded by one private access easement and one unopened right of way within the property on the southern and eastern side. These easements take up almost 70 feet collectively and because the property is technically fronted on two sides by right of ways, the Volusia County zoning code requires a 100-foot front yard setback, not only from each side of the property, but from the right of way line *within* the property. If the easements were not present, the normal required setback for the side and front yard under A-1 zoning would be 50 feet for the side yard and 100 feet for the front yard, from the property line. This would mean a southern front yard variance would not be required without the encroaching 30 foot access easement as the residence is 127.1 feet from the property line. Moreover, with the zoning in place in 1982, when the residence was constructed, an eastern front yard variance would not be required either, as it was previously characterized as a side yard.

The property owner also owns parcel ID 81020000052, which is contiguous to the other property and similar to the other lots in the area, which are less than 10 acres. As such, based on this change in law, the property owner respectfully requests variances for lot size on both parcels and a variance for the front yard setbacks of the existing home on the parcel as described above.

How would literal interpretation of the zoning ordinance deprive you of rights commonly enjoyed by other properties in the same zoning classification? How would this interpretation be an unnecessary and undue hardship on you?

The majority of properties in proximity to the properties subject to this application are also less than 10 acres and have existing homes on them. The A-1 zoning classification contemplates single family homes and the County permitted the existing home and the subdivision of the lots. Removing the existing home or being forced to combine the properties would result in a severe hardship by significantly limiting the ability of the properties to be sold separately and to be used as two parcels with single family homes on each parcel.

Moreover, with respect to parcel ID 81020000011, most properties are only impacted by one front yard setback. This property is not only impacted by two front yard setbacks, but both right of ways are substantially within the property itself. The resulting restrictions impose a severe hardship by significantly limiting the ability of the property to be used in accordance with its permitted use.

Explain how the variance you are requesting is the minimum variance that will make possible the reasonable use of your land, building, structure, or sign.

The requested variances are attempting to work within the constraints of the subject properties' current boundaries and existing home. The requests will not confer any additional privileges or benefits to the owner but will allow the property owner to make reasonable use of the land.

How is your request consistent with the general intent and purpose of the Volusia County Zoning Ordinance and Comprehensive Plan, which are to promote public health, safety, morals, and the general welfare; and to preserve the character, appearance and aesthetic qualities of Volusia County?

The requests as presented are an attempt to preserve the existing subdivision of the properties and the existing structure on one of the properties, which are commonly associated with both properties' A-1 zoning classification and land use, while

minimizing the impact of reconstructing or removing the existing structure on the property. The variances requested will not result in negative impacts to public health, safety, morals or welfare. The variances are necessary to make reasonable use of the land by preserving the existing structure and allowing the owner to use the properties as contemplated under the zoning ordinance and in a manner that is consistent with the Comprehensive Plan.

Explain how your request for a variance will not be injurious to the surrounding area.

The structure on the property and the lot sizes are of a character and nature that is common on surrounding properties in the area. Numerous other lots in the surrounding area are also less than 10 acres and have existing homes on them. As such, the requests, as presented, will not be injurious to the surrounding area but in keeping with the surrounding area.

Inter-Department
Memorandum

TO: Robert J. Gilpatrick
Zoning Coordinator

DATE: November 12, 1984

FROM: Thomas C. Kelly *TKelly*
County Manager

FILE: CM-84-1110

SUBJECT: Request for Relief from Section 600.01 REFERENCE: 84-Z-464
(Non-Conforming Lot Provision)

At the meeting of November 8, 1984, the Volusia County Council approved the request of William D. Clark for relief from Section 600.01 (Non-Conforming Lot Provision) of the Zoning Ordinance, for Parcels 2 and 3, Clark Unrecorded Subdivision #3 (reference #867).

TCK/DM/rr

cc: J. Hugh Gordon
Doug Weaver
✓ William D. Clark

Inter-Department
Memorandum



TO: Thomas C. Kelly
County Manager

DATE: October 25, 1984

FROM: Bob Gilpatrick *Bob Gilpatrick*
Zoning Coordinator

FILE: 84-Z-464

SUBJECT: Request Relief Section 600.01
of the Zoning Ordinance -
William D. Clark, Clark
Unrecorded Subdivision #3

REFERENCE:

This is in reference to a request from Mr. William D. Clark, Post Office Box 967, Orange City, Florida 32763 for relief from Section 600.01 of the Zoning Ordinance.

Description and Conditions

In a letter to the Zoning Office dated October 19, 1984, Mr. Clark stated that he purchased approximately 20 acres of land on November 12, 1981 for the purpose of providing four (4) homesites. At that time the property was classified A-1 and the minimum lot size requirement was five (5) acres. He applied for an exemption to the subdivision regulations and received approval from the County Engineer's Office to divide the property into four pieces on May 19, 1982. Since that time, Mr. Clark has built two houses on two of the exempted parcels, Parcel 1 and Parcel 4.

On March 19, 1984 the Zoning Ordinance was amended so that the A-1 classification now requires a minimum lot size of ten (10) acres. Mr. Clark is planning on building a third house on Parcel 2 and has gone so far as to sign a contract. However, when he applied for a building permit he was advised that minimum lot for the A-1 classification changed in March of 1984.

The subject property is located about two miles east of Lake Helen at the north end of Cortland Boulevard just north of the third area in Deltona. The two remaining undeveloped lots, Parcel 2 and Parcel 3, which have adjoining road frontage, each contain five (5) acres. Mr. Clark is requesting relief from Section 600.01 of the Zoning Ordinance so that he may build a house on each of the two remaining parcels.

Mr. Thomas C. Kelly
 October 25, 1984
 Page Two

Analysis and Alternatives

The subject lots are presently non-conforming under the terms of the Zoning Ordinance. Section 600.01 of the Zoning Ordinance requires an owner owning enough property to meet the minimum lot requirements in any classification, including combinations of previously platted lots, keep those lots with adjoining frontage combined to meet the present Zoning Lot requirements. In December of 1982, the Council determined that the Board of Adjustments no longer had the power to grant variances to Section 600.01 of the Zoning Ordinance. They further stated that applicants with these problems should appeal directly to the County Council to request relief.

The subject lots as presently platted are in compliance with the Volusia County Subdivision Ordinance.

Recommendations

The County Council may in their discretion either grant or deny relief to Mr. Clark for Parcels 2 and 3 in the Clark Unrecorded Subdivision #3 reference number 867. If Mr. Clark is granted the relief he is requesting, he can obtain a building permit for a single family residence on each lot provided he meets all other requirements such as set backs, septic tanks, and minimum living area.

Attachments

- (1) General location map
- (2) Property Area Map
- (3) A copy of Mr. Clark's letter to the County Commissioners dated October 19, 1984
- (4) A copy of a letter to Mr. W.D. Clark from Claud Edwards dated May 19, 1982

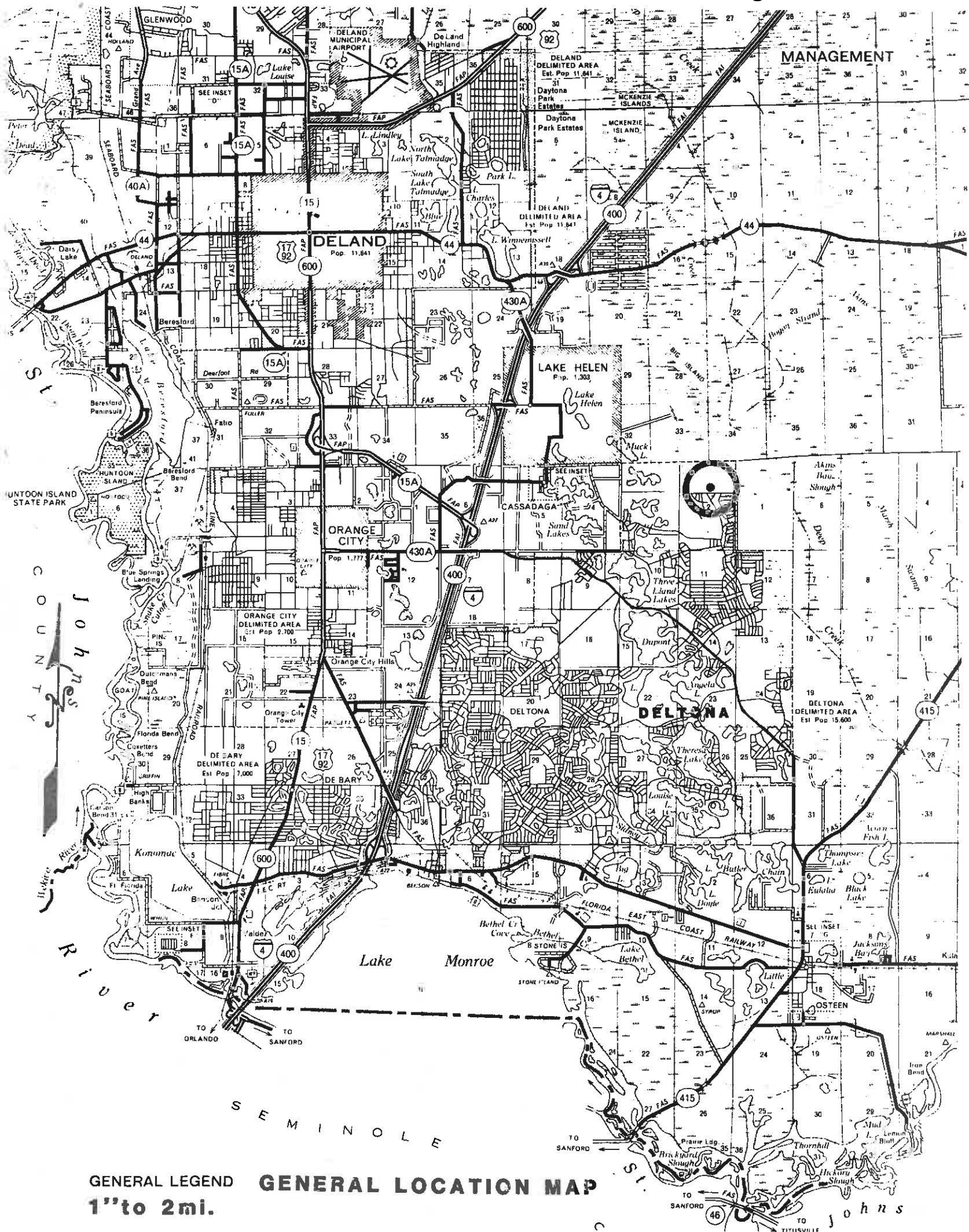
Distribution

Hugh Gordon
 Doug Weaver
 Bob Oshinski
 William D. Clark

BG:rcs

APPROVED AGENDA ITEM

FOR _____
 BY _____

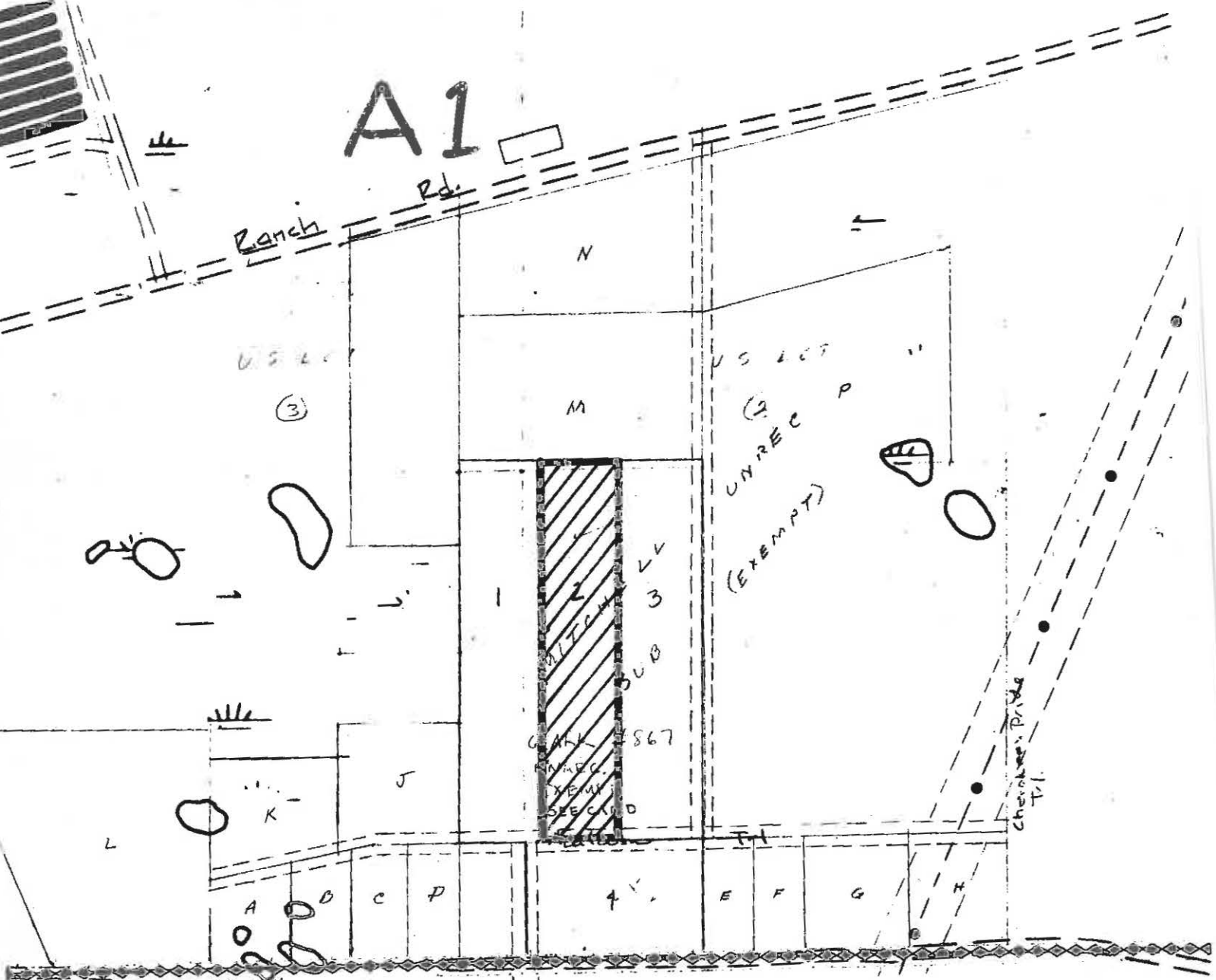


GENERAL LEGEND GENERAL LOCATION MAP
 1" to 2 mi.

TO ORLANDO TO SANFORD
 TO SANFORD TO TITUSVILLE

A1

Ranch Rd.



A1

2

P. O. Box 967
Orange City, FL 32763
Telephone: 228-2772
October 19, 1984

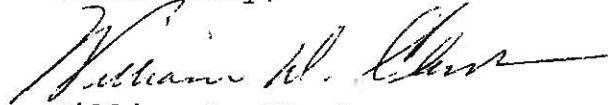
County Commissioners
Volusia County, Florida

RE: Clark Unrecorded Subdivision #3
Reference #867
Tax Parcel #8102-00-00-0011

On November 12, 1981, my wife and I purchased approximately twenty (20) acres of land for the purpose of providing four (4) homesites; one for ourselves, one for each of our two daughters and their families, and one for my aged mother. In anticipation of this, we applied for and received permission to subdivide the property on May 19, 1982 (see attached letter from the Department of Public Works, survey map and individual tax notices for each parcel). Since then, we have built two (2) houses on this property, one for my wife and myself on Parcel #4 and one for my youngest daughter and her husband on Parcel #1. We are planning to build a third house for my oldest daughter and her family on Parcel #2 and have gone so far as to sign a contract; however, when applying for the building permit, we were advised that due to a change in the zoning rules in March 1984, the current requirements are ten (10) acres for a residence instead of the five (5) acres required when we purchased the land. Needless to say, this comes as a shock since it conflicts with the original plans for this property as indicated by my subdividing the land and construction of the two existing homes.

In view of this, I am asking relief from this hardship and request your approval to build a house for my daughter and her family on Parcel #2 now, and later to build a house on Parcel #3.

Yours truly,


William D. Clark

attachments (6)

County of Volusia Florida

DEPARTMENT OF PUBLIC WORKS

136 N. Florida Avenue
DeLand, Florida 32720
Telephone 904/736-2700



May 19, 1982

Mr. W. D. Clark
105 Pine Tree Lane
Altamonte Springs, Florida 32701

RE: Clark Unrecorded Subdivision #3
(Revised Lot Configuration) Reference #867
Tax Parcel #8102-00-00-0011

Dear Mr. Clark:

In accordance with your request, the subject unrecorded subdivision was examined by the Engineering Division for exemption from the requirements of the Volusia County Subdivision Regulations. As a result of this examination, I have determined the subdivision exempt from the requirements of the Subdivision Regulations.

The connection of the proposed access road to the public road must conform to the Use Permit Ordinance (#70-19). Building permits will not be issued until the connection to the right of way is constructed and approved under the Use Permit Ordinance.

Based on the configuration herein approved, the sale of lots may take place. Upon application for a building permit or when requesting additional information, please refer to the subdivision as referenced above.

Very truly yours,

Claude V. Edwards

Claude V. Edwards, P.E.
Design Engineer
For Vohnnie L. Pearson, Jr.
County Engineer

CVE:ACC:mb 19W07
PW-EG-82-746

cc: J. H. Gordon, Jr., Director, Development
Coordination John Turner, Director of Assessments
(with copy of subdivision)
Frank Landrove, Health & Rehabilitative Services (with
copy of subdivision.

COUNTY COUNCIL MEMBERS

Jack Ascherl - At Large P.T. Fleuchaus - At Large Alice Cycler - District #1
Edgar Bennett - District #2 Donald K. Adams - District #3 Robert N. Hartman - District #4 Clyde R. Mann - District #5

*Inter-Office
Memorandum*



TO: Darren Ebersole, Planner II **DATE:** August 8, 2021
FROM: Samantha J. West, Environmental Specialist III
SUBJECT: Parcel #: 8102-00-00-0011 and 8102-00-00-0052
Case #: V-21-130

Environmental Permitting (EP) has reviewed the application for variances to separate lots and minimum yard requirements on Prime Agriculture (A-1) zoned property. EP provides the following report for the requested variances:

Overview

The subject properties are located within the Deep Creek and Deltona watersheds.

According to the property appraiser records, the properties hold active agricultural exemptions from 2003. Therefore, the agricultural uses must comply with best management practices regulated by the St. Johns River Water Management District.

Wetlands

A minimum 25-foot buffer is required from all wetlands. Any encroachment into wetlands or buffers requires a Wetland Alteration Permit with a mitigation plan and justification for the encroachment.

Protected Species

This property has been identified as containing suitable habitat for the gopher tortoise. The gopher tortoise is a Candidate species for federal protection and designated as threatened in the State of Florida.

Conclusion

EP does not object to the variance requests. However, any future development must comply with the applicable requirements of the Land Development Code at the time of building permit application.

From: scpets@aol.com,
To: scpets@aol.com,
Date: Sun, Jun 27, 2021 10:38 am

Dear Planning and Land Development Regulation Commission:

I reside at 2820 Apaloosa Trail adjacent West to the Clark properties. I support the variance application and associated variances for the properties

with respect to a proposed reduction to minimum lot size requirements and reductions in the setback requirements to permit the home that is currently

in place to remain.

Thank You.

NAME...Signature Melvin C Arbogast Print Melvin C Arbogast

ADDRESS 2820 Apaloosa Tr Deltona FL 32738

From: scpets@aol.com,
To: scpets@aol.com,
Subject: LETTER
Date: Sun, Jun 27, 2021 10:44 am

Dear Planning and Land Development Regulation Commission:

I reside at 2850 Apaloosa Trail adjacent West and South to the Clark properties. I support the variance application and associated variances for the properties

with respect to a proposed reduction to minimum lot size requirements and reductions in the setback requirements to permit the home that is currently

in place to remain.

Thank You.

NAME...Signature Joan M. Duffy Print JOAN M. DUFFY

ADDRESS 2850 APALOOSA TRAIL, DETONA, FL 32738

From: scpets@aol.com,
To: scpets@aol.com,
Subject: LETTER
Date: Sun, Jun 27, 2021 10:47 am

Dear Planning and Land Development Regulation Commission:

I reside at 2741 Ranch Road adjacent West to the Clark properties. I support the variance application and associated variances for the properties

with respect to a proposed reduction to minimum lot size requirements and reductions in the setback requirements to permit the home that is currently

in place to remain.

Thank You.

NAME...Signature Robin McCrae Print Robin McCrae

ADDRESS 2741 Ranch Rd, Lake Helen, FL 32744

From: scpets@aol.com,
To: scpets@aol.com,
Subject: LETTER
Date: Sun, Jun 27, 2021 10:51 am


Dear Planning and Land Development Regulation Commission:

I reside at 2795 Ranch Road adjacent North to the Clark properties. I support the variance application and associated variances for the properties

with respect to a proposed reduction to minimum lot size requirements and reductions in the setback requirements to permit the home that is currently

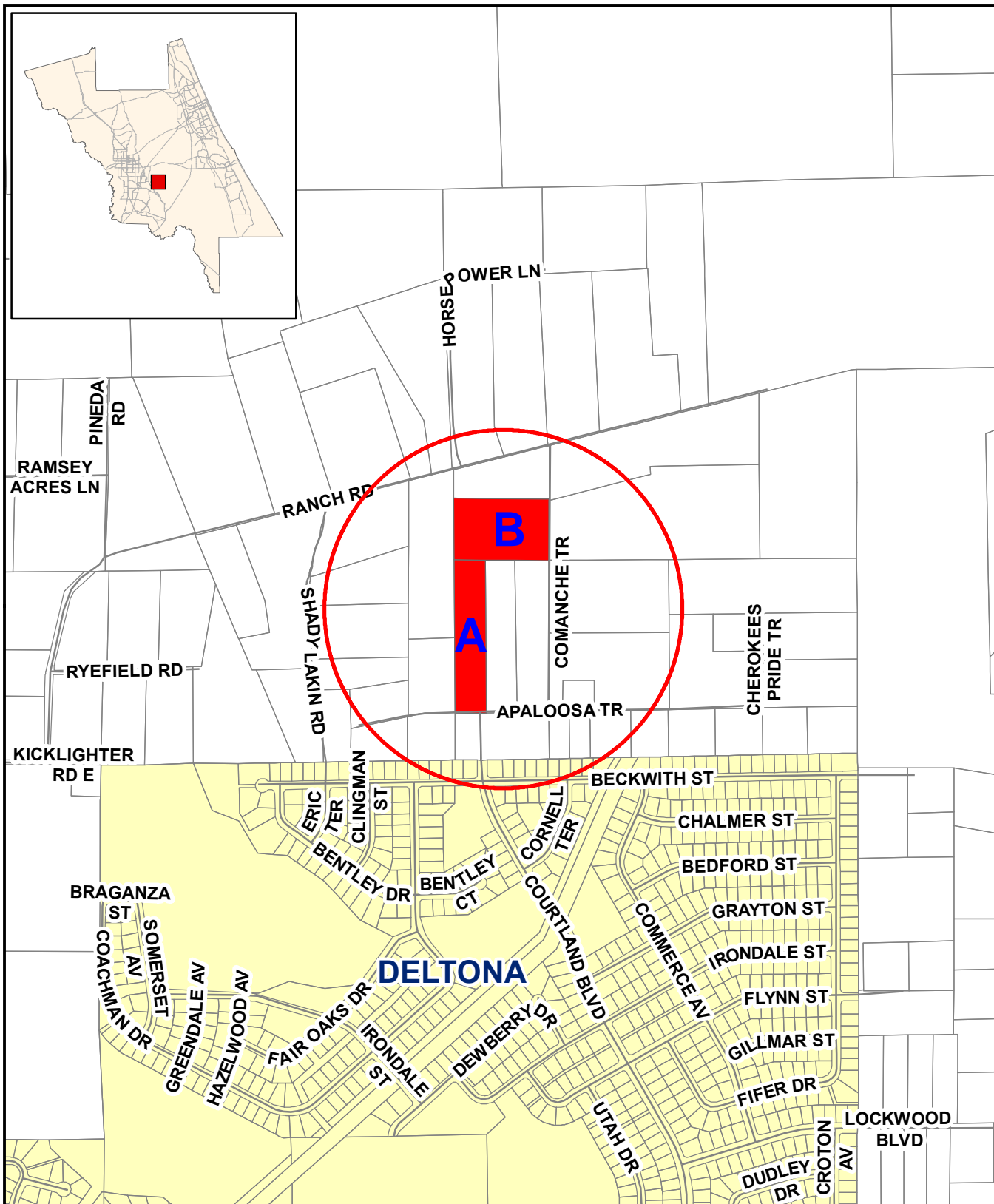
in place to remain.

Thank You.

NAME...Signature...  ...Print... Yovani Quinon

ADDRESS... 2795 Ranch Rd, Lake Helen, FL, 32744

PROPERTY LOCATION V-21-130



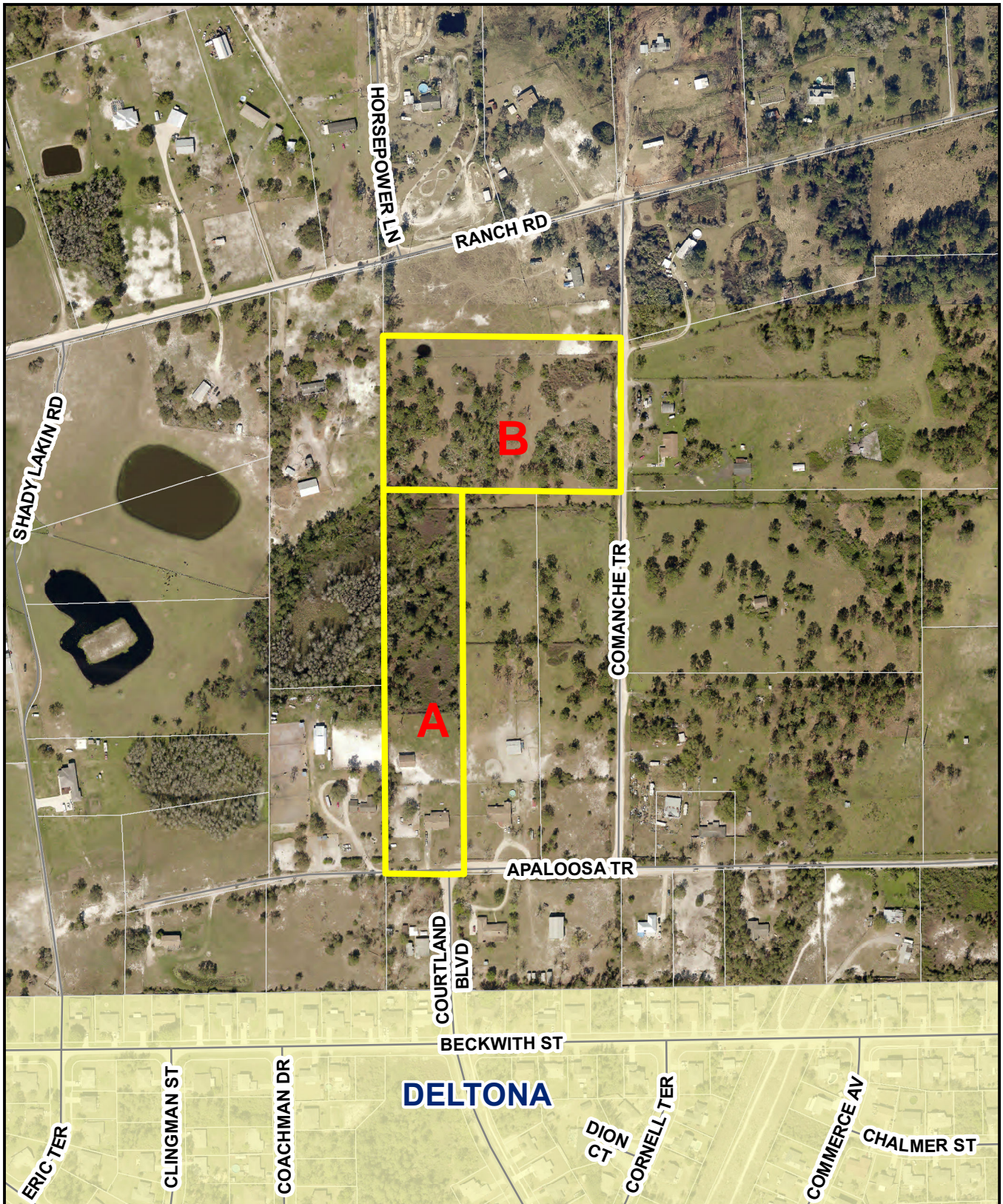
 SUBJECT PROPERTY



1" = 1,000'

8/2/2021

AERIAL V-21-130



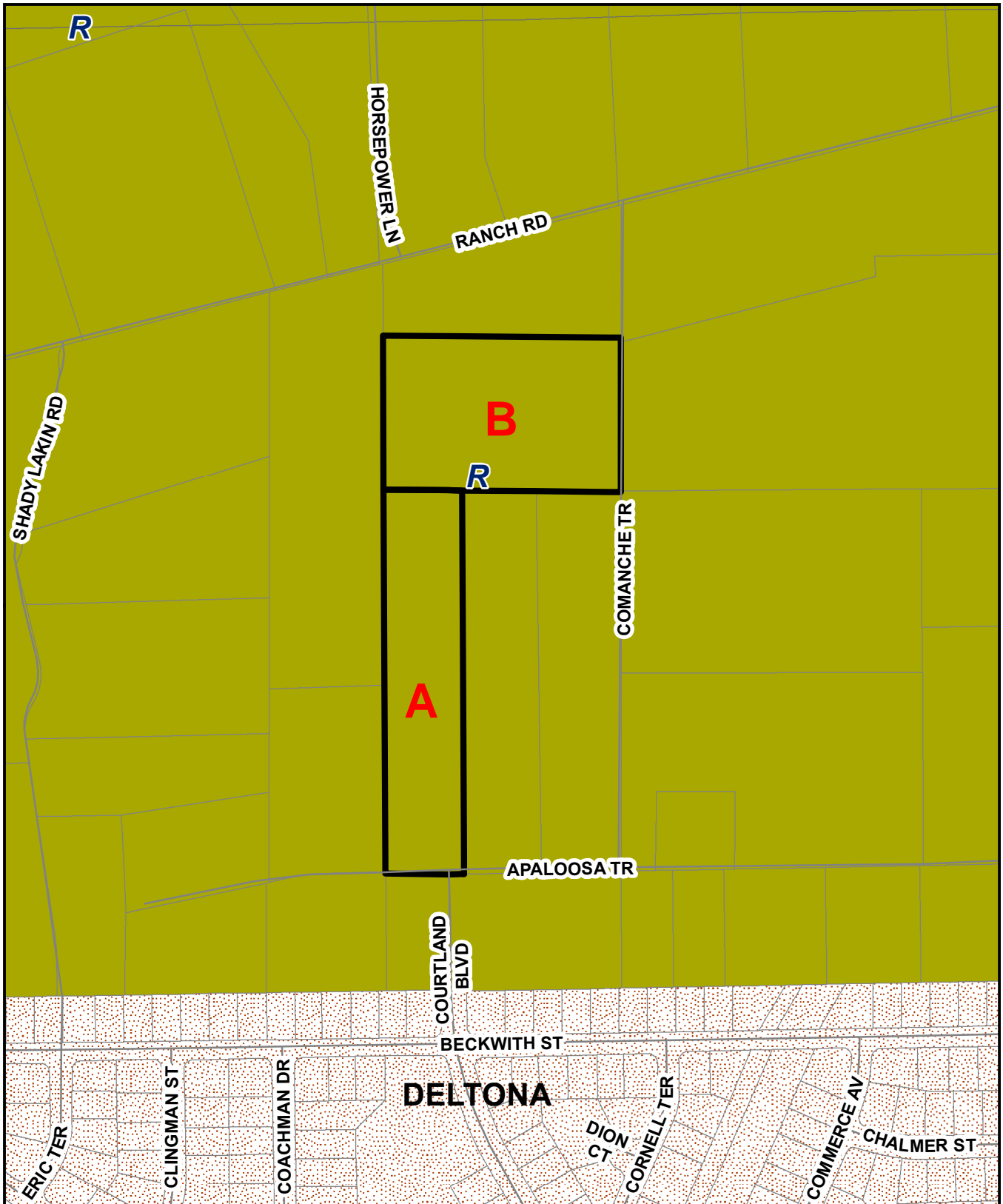
 SUBJECT PROPERTY




IMAGE DATE 2018




1" = 400'
8/2/2021

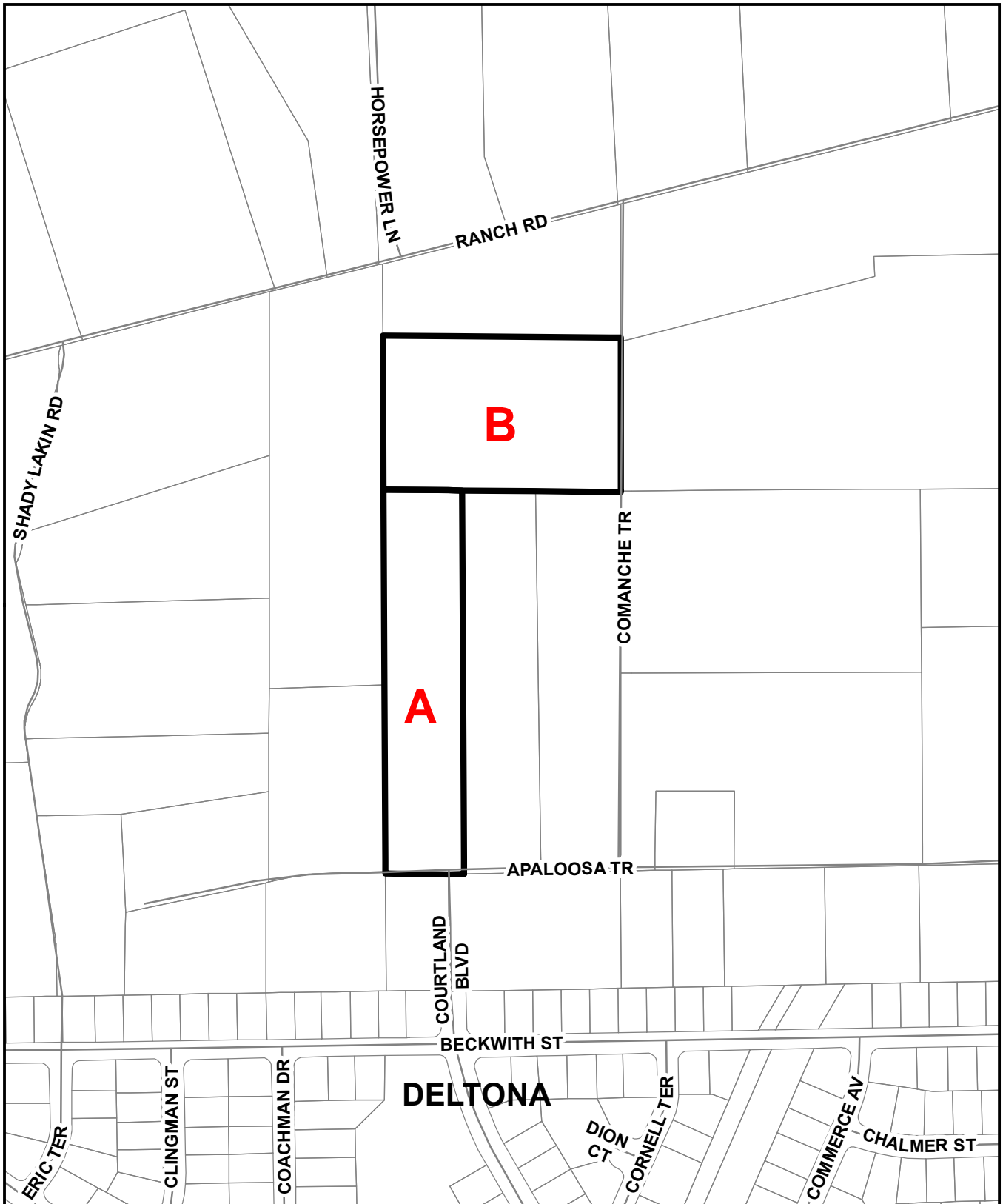
FUTURE LAND USE V-21-130






-  SUBJECT PROPERTY
-  INCORPORATED
-  RURAL

 1" = 400'
8/2/2021

ECO/NRMA OVERLAY V-21-130



-  SUBJECT PROPERTY
-  ECO
-  NRMA



1" = 400'
8/2/2021