

October 28, 2005

Mayor Ronald G. Swank
Titusville City Council
City Hall
555 S. Washington Ave
Titusville, FL 32780

Dear Mayor Swank:

I have reviewed the file for SSA #16-2005 and have prepared the following list of objections, concerns and issues with the proposal as it currently exists. I have separated these issues into three major categories: wetland issues; land use, Zoning, Comprehensive Plan and Florida Administrative Code issues; and Windover Community Consistency, unique characteristics and other issues. I submit these comments for your consideration.

WETLAND ISSUES

The St. Johns River Water Management District (SJRWMD) has NOT performed a FORMAL and BINDING jurisdictional wetland line determination to date. The SJRWMD has only performed an INFORMAL wetland determination on the subject property. The SJRWMD has notified City staff that informal wetland determinations are not official.

In the October 3, 2005 correspondence from the SJRWMD regarding informal line determinations the SJRWMD states, "While these reviews have always been informal, non-binding and for guidance purposed only, they have mistakenly been considered official approval of the line." (See Wetland Issues Attachment 1) Without an official and binding jurisdictional wetland line that is currently determining the demarcation between Conservation and Residential One Land use and between Open Space & Recreation and Residential Zoning, the City Staff do not have sufficiently complete or accurate data and analysis, as required, to support an amendment to the Future Land Use Map (FLUM) in the City of Titusville's Comprehensive Plan. How can this proposed amendment to zoning and the FLUM in the Comprehensive Plan proceed without factually knowing OFFICIALLY where that line falls? Even a slight revision of the informal wetland determination line toward Windover Way would likely render Parcel C unbuildable, and possible Parcel B.

Staff report for SSA #16-2005 inaccurately states, "the survey confirms that there are no longer wetlands on the portion of the site, the applicant is requesting to rezone.", when in reality NO OFFICIAL DETERMINATION has been made by the SJRWMD, and currently only the line has even been looked at not the entire parcel.

The Joint Planning Agreement Review (JPA) by Brevard County, Natural Resources Management Office states, "Hydric soils are present. These soils can be wet and associated with wetland areas" (see JPA Review Figure A – see color version below). While the presence of hydric soils alone does not mean it IS a wetland, it certainly provides for a potential for wetlands, further highlighting the necessity of obtaining a FORMAL WETLAND DETERMINATION FROM THE SJRWMD BEFORE MODIFYING THE FLUM

The definition wetlands from the Florida Administrative Code identifies hydric soils as wetland soils:

Chapter 62-340.200(19), Florida Administrative Code

“Wetlands,” as defined in subsection 373.019(17), F.S., means those areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto.

Brevard County JPA Review SSA # 16-2005
Figure A – Hydric Soils (indicated in pink)



In the City of Titusville Comprehensive Plan's Conservation Element, under Water, Objective #1 is, "**To protect streams, lakes, rivers, estuaries, wetlands and the coastline from environmentally destructive alterations both quantitatively and qualitatively**", this is pursuant to Chapter 9J-5.013(2)(b)(2), F.A.C.

The Cities current approach, to set the land use and zoning boundary lines at the wetland boundary line on SSA #16-2005 (and other properties), **ignores the interdependence of wetlands with transition zones and uplands and how critical the adjacent uplands are to the qualitative and quantitative function of wetlands** including water quality, water quantity, energy and nutrient systems, and wildlife habitat. More importantly it also ignores the Cities responsibility under the comprehensive plan to protect those very qualitative and quantitative functions

This vital linkage and interdependence between wetlands and the adjacent upland has been well documented and supported by the SJRWMD, The Florida Department of Environmental Protection, the Army Corps of Engineers and the University of Florida Center for Wetlands and Water Resources, among many others. There are well-documented buffer widths required to retain specific wetland function and quality. The following are upland buffer requirements documented in scientific literature:

- **≥300 ft. buffer** is considered sufficient to protect wetlands, and is used for wetland permitting evaluation by the ACOE
- **322 ft.** buffer width needed to protect freshwater and saltwater marshes in East Central Florida
- **550 ft. buffer** to protect forested wetlands in East Central Florida
- **492 ft** to protect 90% of bird species (Spackman and Hughes, 1995)

The University of Florida Center for Wetlands and Water Resources reports,

"The areas immediately adjacent to wetlands is often a transition zone (ecotone) between wetlands and uplands and exhibits vegetation, soils, and hydrologic characteristics that are similar to and intermediated between wetlands and uplands. **To protect the values and functions of wetlands, protection must be afforded to the transition zone and adjacent upland.** Disturbance and alteration of the transition zone and adjacent upland can result in elimination of wildlife species that utilize both uplands and wetlands, a loss in plant diversity, and increase of sedimentation and erosion into the wetland, and alteration in hydrologic patterns within both the upland and wetland."

"It has long been regarded that the **highest plant species diversity occurs in the transition zones between wetlands and uplands.** Studies of Florida landscapes indicate that plant species diversity is higher in transition zones than either the adjacent wetland or upland. Likewise, wildlife species richness also shows direct spatial relationships to the increased diversity of the transition zone. It has been found that species richness and abundance of herptofauna were greater along the edge of six wetlands in north central Florida than either in the wetland or upland habitat."

LAND USE, ZONING, COMPREHENSIVE PLAN and STATE ISSUES

The Cities LDR's for Open space and Policy clearly states **OR ZONING IS NOT INTENDED TO BE A HOLDING DESIGNATION**, yet that is EXACTLY how this and other property with OR zoning is being treated by the City.

Titusville Land Development Regulations Sec. 59-641, states the purpose and intent of OR Zoning:

DIVISION 3. OPEN SPACE AND RECREATION (OR)

Sec. 59-641. Purpose and intent.

The Open Space and Recreation (OR) District is established to provide for the conservation and protection of sensitive lands within the City. It is intended that this district **WILL NOT FUNCTION AS A HOLDING DESIGNATION** for land but rather a **PERMANENT CLASSIFICATION** in order to ensure that present and future residents of the City are able to enjoy the benefits of the natural environment of the City. It is further intended that the district will implement the goals, objectives and policies of the Comprehensive Plan.

(Ord. No. 7-1992, 4-16-92)

Excluding uplands from the Conservation Land Use and (OR) Zoning is **not consistent with the objectives and policies of the Comprehensive Plan** (Future Land Use and Conservation Elements, nor the Cities responsibilities for comprehensive planning set forth in Chapter 9J-5, Florida Administrative Code (F.A.C.) (Specifically Chapter 9J-5(2)b3-4, Chapter 9J-5(2)c3., Chapter 9J-5(2)c5-6, and Chapter 9J-5(3).

Under Chapter 9J-5, F.A.C, the City has a responsibility to protect native vegetative communities, wildlife, wildlife habitat on both uplands and wetlands, in addition to protecting threatened and endangered species and other natural resource values. (See Attachment – Relevant Excerpts from Chapter 9J-5 Florida Administrative Code)

OR zoning and Conservation Land Use **IS NOT and SHOULD NOT BE INTERPRETED TO BE EXCLUSIVE TO WETLANDS.** Based upon recent actions, it appears to have been the position by the City that once uplands are identified, even informally, on OR zoned property the zoning and land use are immediately transferred to a higher density zoning administratively, inconsistent with numerous goals, objectives, and policies spelled out in the Cities Comprehensive Plan. In addition, there are numerous examples of OR zoned property with Conservation Land Use that contain uplands.

After multiple request, City staff have not been able to produced any records that document the basis for the OR zoning on this specific property that excludes all other natural resource values and open space benefits for this specific property.

Adoption of SSA #16-2005 would be inconsistent with the following goals objectives and policies of Titusville’s Comprehensive Plan, as amended June 11, 2002 (for full text of policies see attachment - Relevant Excerpts from the City of Titusville’s Comprehensive Plan):

Future Land Use Element-

- Goal #1, Objective #2
- Objective #12
- Objective #12, Policy #1
- Objective #12, Policy # 2
- Objective #13
- Objective #13, Policy #1
- Objective #17
- Objective #17, Policy #1

Conservation Element

- LAND, Goal#1
- LAND, Objectives #1 and #2
- LAND, Objective #3,
- LAND, Objective #3, Policy #2
- LAND, Objective #6
- LAND, Objective #6, Policy #2
- LAND, Objective #6, Policy #3, Strategy #1
- LAND, Objective #6, Policy #3, Strategy #3
- LAND, Objective #6, Policy #3, Strategy #4
- WATER, Objective #1
- WATER, Objective #2
- WATER, Objective #2, Policy #1)

Recreation and Open Space Element

- Goal #2
- Goal #2, Objective #1
- Goal #3
- Goal #3, Objective #1
- Goal #3, Objective #1, Strategy #5
- Goal #3, Policy #2

WINDOVER FARMS COMMUNITY CONSISTENCY, UNIQUE CHARACTERISTICS, & OTHER ISSUES

Windover Farms residents have repeatedly **SPOKEN OUT AGAINST ANY** zoning changes more intensive than are currently in place on properties along our front entrance on Windover Way. This includes permitted, accessory or conditional uses under any zoning category (including the 50 ft access to the portion of the property zoned Community Commercial).

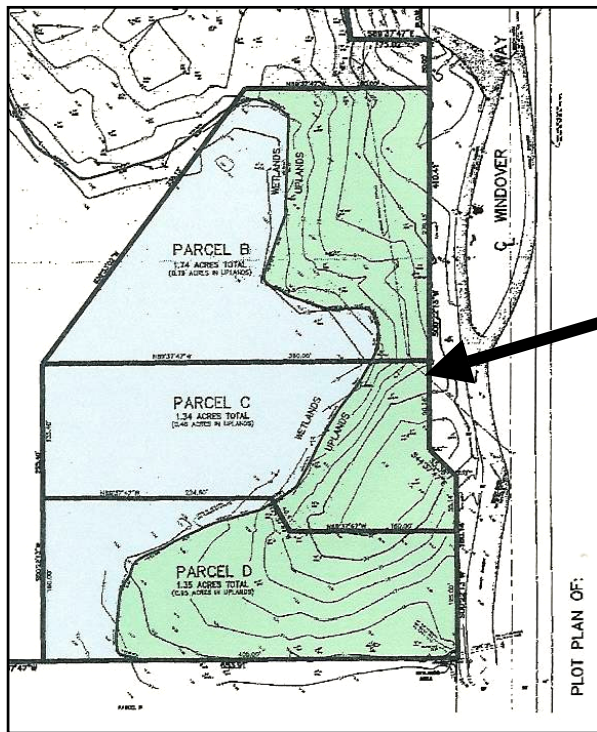
Windover Farms is a mature community with few undeveloped lots remaining. Our community is characterized large wooded home sites that area set well back from the front lot line on large wooded lots. Retaining the OR zoning with its development criteria is most consistent with the Windover Community and will retain character of Windover entrance. OR zoning requires 50 ft set backs from front of lot consistent with Windover Farms Covenants and Deed Restrictions:

Windover Farms Covenants and Deed Restrictions

Section 5. Setback

All buildings shall be set back not less than **fifty (50) feet from all Lot lines facing existing or platted streets** and not less than twenty (20) feet from all rear Lot lines and twenty (20) feet from side Lot lines.

There is limited developable upland a on Parcels B and C. Parcel C only has 0.46 acres upland with a lot depth (from the front lot line) of approx 50 feet on one side. This small lot size will require a home site to be placed closer to the front property line than is typical for home sites as built in Windover Farms. This will also require removal of more trees and native vegetation, simple due to restricted buildable area and construction activity within that small area, not to mention the additional filling and grading required if the developer's request to waive the requirement for a sewer connection is granted. The buildable lot size is inconsistency was also pointed out by Brevard County in the JPA review of this project.



Parcel C - ONLY ~50 ft depth from front lot line along Windover Way and only 0.46 acres uplands – THIS IS NOT CONSISTENT WITH WINDOVER HOMESITES

Parcel D DOES appear to have sufficient uplands and be most consistent with the Windover Farms Community, with similar buildable home site size and the ability to meet similar set back requirements. However, the validity of this assumption would ultimately depend on the formal wetland line determination.



The entrance of Windover Farms is unique in Brevard County, and is inextricably tied to the character of the neighborhood. It sets the tone that defines our Community. The entrance was a factor for many of us who decided to purchase property in Windover Farms. It is an asset enjoyed on every trip to town and every return home, and ultimately affects our property values and quality of life.

It would be a travesty to degrade such a beautiful and unique amenity for the community at large after remaining intact nearly 30 years since the subdivision was started.

The last zoning change on the property, in 2002, established Community Commercial zoning for a portion of the lot that fronts on SR 405, but retained the OR zoning along Windover Way, and reaffirmed that the OR zoning was a permanent classification and that the conservation features would be preserved. The report for the 2002 rezoning states:

“The Open Space & Recreation portion will remain. The request will lay the groundwork for commercial development while preserving existing conservation features.” SSA 18-2002 pg 3 & page 10.

This language gave further assurance to Windover Farms residents that this property was going to be permanently protected under OR Zoning and Conservation Land Use.

I challenge **ANYONE** to find a property in the City that is better represents the very definition of the intent of the Conservation Land Use and OR zoning.



OR zoning is much more compatible to Windover Farms and the environmental sensitivity of the site, especially when compared against some of the permitted, accessory and conditional uses allowed under RE zoning such as schools, professional offices, group homes, churches, an daycare facilities.

In addition to the issues raised above there are numerous inconsistencies between the staff report and the application including lot size and the requested zoning change, among others.

For me investigating this latest requested rezoning started with a trip to City Hall to look at the file for this project. I was stunned to find in that file maps indicating EXISTING zoning and future land use for this property that were substantially different than all other readily available sources of information. The City had clearly planned on revising these maps at the request of the developer for this subject property without ANY public notification or input. I cannot believe that this is by any stretch of the imagination good public policy. All it does is foster a sense of distrust for the City, which is hard to earn back once its lost. Attached is a time line of map revisions for this project that have occurred over the past month. I sincerely hope that the City will elect to do business differently in the future with full disclosure and full opportunities for due process for the public.

Having a good community vision takes more than just textbook planning, it requires looking at the big picture, considering long-term impacts, and planning today for quality of life of residents well into the future. Most importantly it requires the consideration and protection of the unique qualities, natural resources, and community character that make us want to live here today.

October 28, 2005

For Windover Farms Residents, the natural beauty and charm of the entrance is a key part of what drove us to choose this neighborhood as home. We have relied on the existing OR zoning and Conservation Land Use and it is clearly the most appropriate zoning consistent with our community and the environmental sensitivity of the property. Please look at the commitments made in the Cities Comprehensive Plan and Land Development Regulations and states requirements for those documents and deny the requested rezoning for SSA #16-2005. Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Sandra Clinger".

Sandra Clinger
2680 Bobcat Trail
Titusville, FL 32780

Wetland Issues Attachment 1

October 28, 2005

Message

Page 1 of 1

Stephens, Jim

From: Susan Moor [smoor@sjrwmd.com]
Sent: Monday, October 03, 2005 11:28 AM
To: Harris, Courtney; Stephens, Jim
Cc: Michelle Reiber, cbarrios@ibigroup.com; wendys@biologicalresearch.com
Subject: wetland line review & Tallister Ridge

This email, as you requested, summarizes our discussions on 9/29.

Due to increased work load and time constraints associated with review of permit applications, we are no longer conducting informal wetland boundary reviews. The wetland line will be reviewed as part of the assessment of the application for either an Environmental Resource Permit or a formal (binding) wetland determination. In addition to the time management constraints, wetland line review has sometimes been problematic as staff may review only portions of a line during an informal and do not have the topographic survey, survey with numbered wetland flags, and other site information. While these reviews are always informal, non-binding, and for guidance purposes only, they have been mistakenly considered official approval of the line. We have been spending a great deal of time conducting these reviews on sites that often do not move forward with design and permitting. We hope that this change will result in a more efficient use of staff time and will allow us to concentrate our efforts on projects that have submitted applications. Please note, where there are specific development plans and a question about permit requirements, or a question about jurisdiction in a difficult area, we will still provide guidance though not approval of the line.



Specifically regarding the Tallister Ridge project, I reviewed a portion of the wetland lines with Ryan Spohn of Environmental Solutions, on April 17, 2003. The areas I reviewed in this informal assessment were primarily on the southeast corner, where the Sereno Pointe subdivision was permitted, and on the south side of the larger parcel. In addition, Michelle Reiber conducted a site inspection on April 22, 2005, with Wendy Swindell of Biological Research Associates. Our file includes a May 2, 2005, letter from BRA with a summary of this inspection and the status of the wetland line review. This site visit was limited to the southwest portion of the property and was a cursory review of the flagged line. A more thorough site inspection would be needed for review and approval of the wetland lines. Although there are uplands along the west side of this property, District staff have not assessed the wetland line here and cannot confirm the extent of the wetlands.

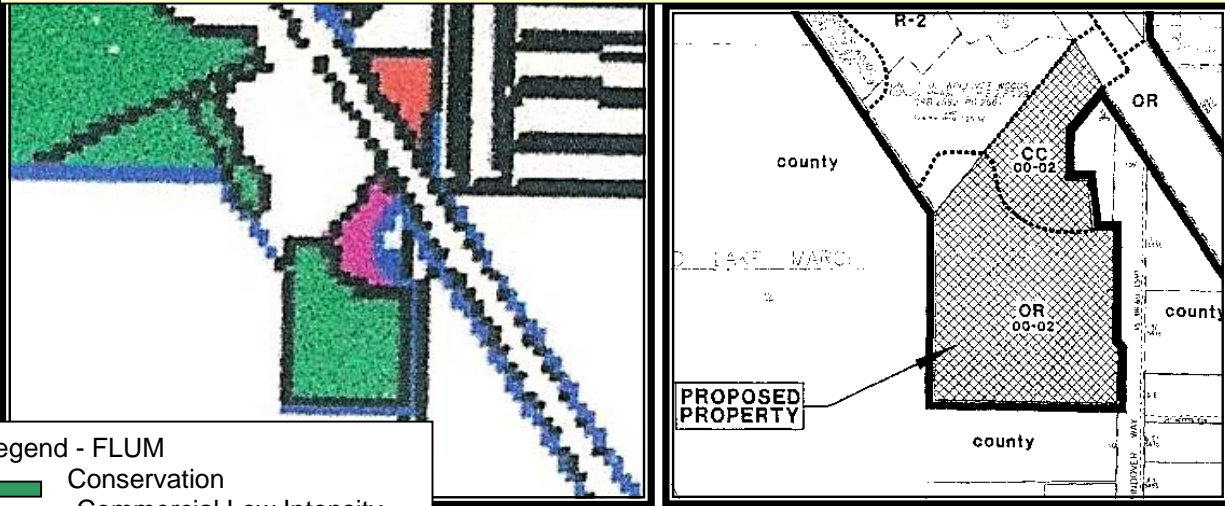
Please feel free to contact me if you have other questions or concerns regarding this or other projects in Titusville.

Susan R. Moor
Senior Regulatory Scientist
SJRWMD
525 Community College Parkway S.E.
Palm Bay, FL 32909
smoor@sjrwmd.com
(321) 676-6626

10/3/2005

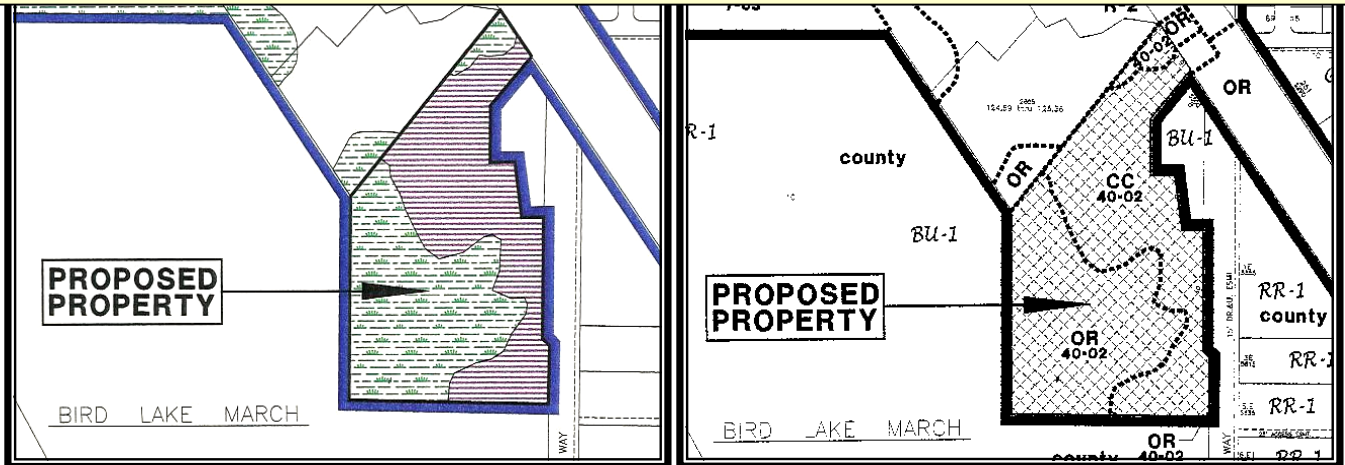
TIME LINE OF MAP CHANGES

This is the map of the EXISTING Future Land Use Map (FLUM) and EXISTING ZONING as of July 15, 2005. No small scale amendments have been filed to change from this to date.

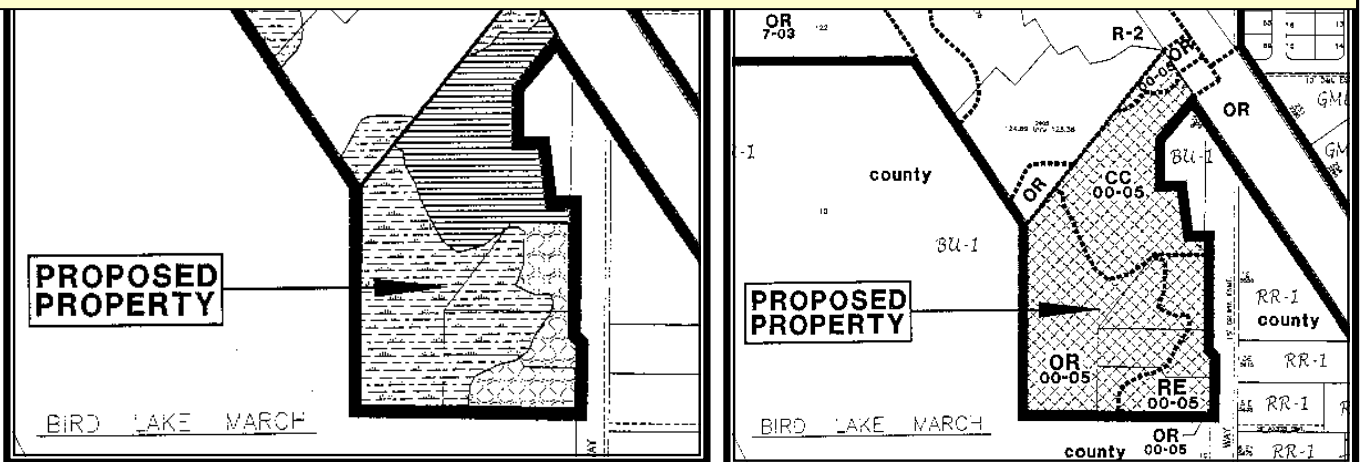


Legend - FLUM
 Conservation
 Commercial Low Intensity

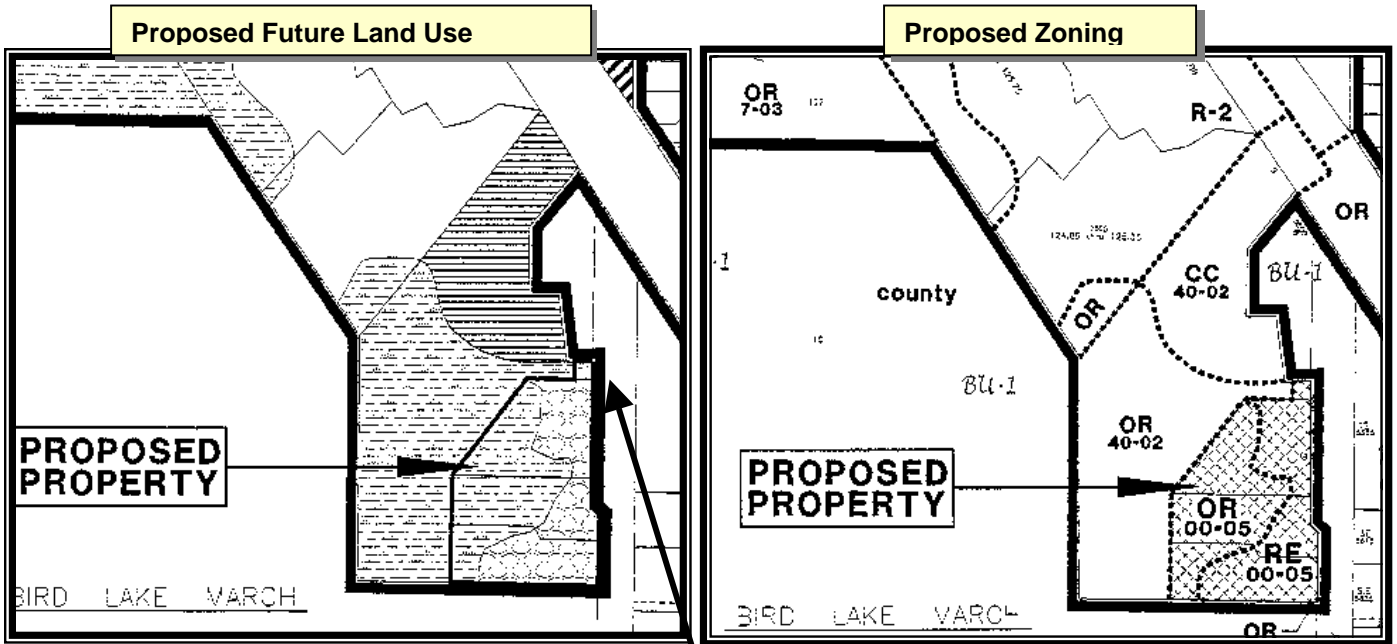
This Map that was in the City file for the Pearson property on September 27, 2005 **represented as the EXISTING FUTURE LAND USE AND EXISTING ZONING**, City stated this change was done administratively, and they didn't have to get public input.



This Map was presented to Brevard County for the JPA review, as **PROPOSED FUTURE LAND USE AND PROPOSED ZONING** included in the staff report on SSA #16-2005. The existing zoning and Future Land Use maps were not provided in the packet that went to the County.



For P&Z on 10/19/05 the files made available to the public for SSA #16-2005 looked like this:



NOTE: The small square added to the line depicting the proposed property was never discussed in the staff report, and was removed from the proposal at P&Z before any discussion. The latest version of the map still contains the 50 ft (road width) access along Windover Way