

Meeting Date
March 17, 2015



AGENDA	
Section	CONSENT
Item No.	II.A.2

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Binding Development Plan, Re: KMM-FL, LLC (District 4)
DEPT/OFFICE:	Planning & Development Department

Requested Action:

It is requested that the Board approve, and the Chairman sign, the subject Binding Development Plan.

Summary Explanation & Background:

A Binding Development Plan (BDP) is a voluntary agreement by a property owner to self-impose limits upon development of a property in support of a change of zoning or conditional use permit. Pursuant to Section 62-1157, a BDP shall be recorded in the public records within 120 days of approval of the zoning application by the Board. Following staff and legal review, a BDP is routinely presented to the Board in recordable form as a Consent agenda item in order to finalize the zoning action.

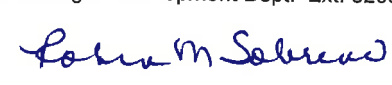
On February 5, 2015, the Board of County Commissioners approved a Small Scale Plan Amendment (14S.07) to change the Future Land Use from NC (Neighborhood Commercial) to CC (Community Commercial), and a change of classification from GU (General Use) and RU-2-10 (Medium-Density Multi-Family Residential) to BU-2 (Retail, Warehousing, and Wholesale Commercial) on property located on the east side of Waelti Dr., approx. 0.28 mile north of Wickham Rd. A Binding Development Plan encumbering the westerly (RU-2-10 zoned) property has been proffered by the owner, which stipulates to the following:

- Developer/Owner, agrees the following uses shall be prohibited: Auditoriums; Automobile hire; Automobile paint/body repair; Automobile repairs; Automobile sales; Automobile tires/muffler sales/service; Automobile washing – mechanized; Boat service; Building materials/supplies; Cabinetmaking and carpentry; Commercial entertainment and amusement enterprises; Contractors outdoor storage yards; Engine service; Farm machinery sales/service; Feed/hay for animals/stock; Fertilizer stores; Flea markets; Gasoline service stations; Hotels; Lumber sales; Motels; Motorcycle sales/service; Outside sale of mobile homes; Pet kennels; Plant nurseries; Recovered materials processing facility; Restaurant outdoor seating; Seafood processing plants; Service station for automotive vehicles and U-Haul service; Sharpening/grinding shops; Theaters; Towers/antennas; Trailer/truck service; Treatment & recovery facility; Welding repairs/metal fabrication. Outdoor storage or display of large items or material which may require forklift, front-loader, tractor, or similar machinery to move shall be prohibited. Outdoor intercoms and public address systems shall be prohibited. Digital or electronic signs and billboards, whether static, animated, or intermittent, shall be prohibited.
- Freestanding signs shall be limited to not exceed ten feet in height
- The gross floor area ratio (FAR) shall not exceed 0.75, consistent with the Neighborhood Commercial Comprehensive Plan category (December 2014)

A companion application to vacate abutting 50' wide rights-of-way (Bluefish Way and Seventh St.) was approved by the Board at the January 27, 2015 meeting. Pursuant to the representations at the February 5, 2015 meeting, the applicant has included the adjacent 25' of right-of-way for Bluefish Way and Seventh St. into the BDP.

Clerk to the Board instruction: After recordation, forward two certified copies to the Planning and Development Department

Exhibits Attached: Binding Development Plan, with exhibits, and check for recording

Contract /Agreement (If attached): Reviewed by County Attorney		Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager	Assistant County Manager	Department Director / Extension Robin M. Sobrino, AICP, Director Planning & Development Dept. Ext. 52069					
Stockton Whitten	Mel Scott, AICP						



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999
March 24, 2015

Telephone: (321) 637-2001
Fax: (321) 264-6972

MEMORANDUM

TO: Jennifer Jones, Zoning

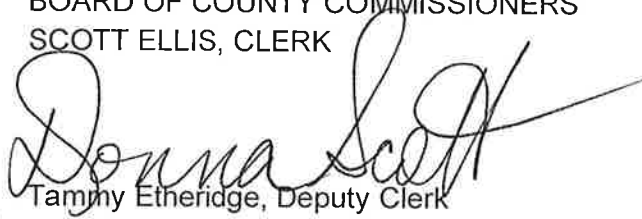
RE: Item II.A.2., Binding Development Plan Agreement with KMM-FL, LLC

The Board of County Commissioners, in regular session on March 17, 2015, executed Binding Development Plan Agreement with KMM-FL, LLC for Part of plan of Pineda. Said Agreement was recorded in ORBK 7327 PGs 1899 through 1903. Enclosed are two certified copies of the recorded document.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

for 
Tammy Etheridge, Deputy Clerk

/jl

Encl. (2)

cc: Contracts Administration



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972

March 23, 2015

MEMORANDUM

TO: Recording

RE: Item II.A.2., Binding Development Plan Agreement with KMM-FL, LLC

The Board of County Commissioners, in regular session on March 17, 2015, executed Binding Development Plan Agreement with KMM-FL, LLC for Part of plan of Pineda. Enclosed are original Binding Development Agreement and Check Number 1039 in the amount of \$14.00. **Please record the Agreement in the Public Records and return the recorded instrument to this office.**

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge

Tammy Etheridge, Deputy Clerk

/jl

Encl. (2)

On motion by Commissioner Smith, seconded by Commissioner Barfield, the following resolution was adopted by a unanimous vote:

WHEREAS, KMM-FL, LLC has requested a Small Scale Plan Amendment (14S.07) to change the Future Land Use from NC (Neighborhood Commercial) to CC (Community Commercial), and a change of classification from GU (General Use) and RU-2-10 (Medium Density Multi-Family Residential) to BU-2 (Retail, Warehousing, and Wholesale Commercial), on property described as Lots 10 – 16, Block 40, Plan of Town of Pineda, as recorded in ORB 7202, Page 2039, Public Records, Brevard County, Florida; and Lots 13 – 16, Block 39, Plan of Town of Pineda, as recorded in a portion of ORB 7202, Pages 1931 – 1932, and Plat Book 1, Page 41, Public Records, Brevard County, Florida. (1.38 acres +/-) Located on the east side of Waelti Dr., approx. 0.28 mile north Wickham Rd. (Lots 10 – 16, Block 40 = No assigned address. In the Melbourne area. Lots 13 – 16, Block 39 = 3325 Bluefish Way, Melbourne)

Section 12, Township 26 S, Range 36 E, and,

WHEREAS, a public hearing of the Brevard County Planning & Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning & Zoning Board recommended that the application be approved; and,

WHEREAS, the Board, after considering said application and the Brevard County Planning & Zoning Board’s recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be Approved with a Binding Development Plan, including legal description of vacated right-of-ways, prohibiting certain uses, limiting freestanding signs to 10 feet in height, and limiting the gross floor area ratio (FAR) to no more than 0.75; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested Small Scale Plan Amendment (14S.07) to change the Future Land Use from NC to CC, and a change of classification from GU and RU-2-10 to BU-2, be APPROVED with a Binding Development Plan, recorded in ORB 7327, Pages 1899 through 1903, dated 03/23/15, including legal description of vacated right-of-ways, prohibiting certain uses, limiting freestanding signs to 10 feet in height, and limiting the gross floor area ratio (FAR) to no more than 0.75, and that the zoning classification relating to the above described property be changed, and the Planning & Zoning Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of March 23, 2015.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida



by Robin Fisher, Chairman
Brevard County Commission
As approved by Brevard County Commission on March 17, 2015.

ATTEST:



SCOTT ELLIS, CLERK
(SEAL)

(P&Z/LPA Hearing – November 10, 2014)
(BCC Zoning Hearing – December 4, 2014)

Please note: A Conditional Use Permit will generally expire on the three year anniversary of its approval if the use is not established prior to that date. Conditional Use Permits for Towers and Antennas shall expire if a site plan for the tower is not submitted within one (1) year of approval or if construction does not commence within two years of approval. A PUD Preliminary Development Plan expires if a final development plan is not filed within three years. THE GRANTING OF THIS ZONING DOES NOT GUARANTEE PHYSICAL DEVELOPMENT OF THE PROPERTY. AT THE TIME OF DEVELOPMENT, SAID DEVELOPMENT MUST BE IN ACCORDANCE WITH THE CRITERIA OF THE BREVARD COUNTY COMPREHENSIVE PLAN AND OTHER APPLICABLE LAWS AND ORDINANCES.

Prepared by: Thomas O Lang
Address: 5303 Picardy Ct.
Viera, Fl, 32955

CFN 2015056555, OR BK 7327 PAGE 1899.
Recorded 03/23/2015 at 04:37 PM, Scott Ellis, Clerk of Courts,
Brevard County
Pgs:5

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 17th day of March, 2015 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and KMM-FL, LLC, a Florida Limited Liability Company (hereinafter referred to as "Developer/Owner")

RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, and

WHEREAS, Developer/Owner has requested the community commercial zoning classification(s) and desires to develop the Property as a One Story Office Building and Mini Warehouse and Storage Facility, and pursuant to the Brevard County Code, Section 62-1157, and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements

2. The Developer/Owner shall limit land use as follows:

a) The following uses shall be prohibited

Auditoriums; Automobile hire, Automobile paint and body repair; Automobile repairs; Automobile sales; Automobile tires and mufflers sales and service, Automobile washing—mechanized; Boat service; Building materials and supplies; Cabinetmaking and carpentry, Commercial entertainment and amusement enterprises; Contractors outdoor storage yards, Engine service; Farm machinery sales and service; Feed and hay for animals and stock, Fertilizer stores; Flea markets, Gasoline service stations; Hotels; Lumber sales; Motels; Motorcycle sales and service; Outside sale of mobile homes; Pet kennels, Plant nurseries; Recovered materials processing facility; Restaurant outdoor seating, Seafood processing plants; Service station for automotive vehicles and U-haul service; Sharpening and grinding shops; Theatres; Towers and antennas; Trailer and truck service; Treatment and recovery facility; Welding repairs and metal fabrication. Outdoor storage or display of large items or material which may require forklift, front-loader, tractor, or similar machinery to move shall be prohibited. Outdoor intercoms and public address systems shall be prohibited. Digital or electronic signs and billboards, whether static, animated, or intermittent, shall be prohibited.

- b) Freestanding signs shall be limited to not exceed ten feet in height.
- c) The gross floor area ratio (FAR) shall not exceed 0.75, consistent with the Neighborhood Commercial Comprehensive Plan category (December 2014).

3 Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This agreement provides no vested rights against changes to the Comprehensive Plan or land development regulations as they may apply to this Property.

4 Developer/Owner, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in the Public Records of Brevard County, Florida.

5. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on 3-17-15. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

6 Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as may be amended

7. **Conditions precedent.** All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 6 above

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:

Scott Ellis
Scott Ellis, Clerk
(SEAL)

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA
2725 Judge Fran Jamieson Way
Viera, FL 32940

Robin Fisher, Chairman
As approved by the Board on 3-17-15

(Please note You must have two witnesses and a notary for each signature required. The notary may serve as one witness.)

WITNESSES

Charles Shideman
CHARLES SHIDEMAN

(Witness Name typed or printed)

Conor Lisa Armstrong
Conor Lisa Armstrong
(Witness Name typed or printed)

DEVELOPER/OWNER

Bryan Moffat
440 BRIDGE TOWN CT
SATELITE BEACH

(Member)

(Name typed, printed or stamped)

STATE OF Florida §

COUNTY OF Brevard §

The foregoing instrument was acknowledged before me this 16 day of May, 2015 by Bryan Moffat, President of Kmm LLC, who is personally known to me or who has produced FL DL as identification.

My commission expires 2/22/2018
SEAL
Commission No. FF 74219

Conor Lisa Armstrong
Notary Public
Conor Lisa Armstrong
(Name typed, printed or stamped)



Gunvor Lisa Armstrong
State of Florida
MY COMMISSION # FF 74219
Expires: February 22, 2018

SKETCH OF BOUNDARY SURVEY

DESCRIPTION:

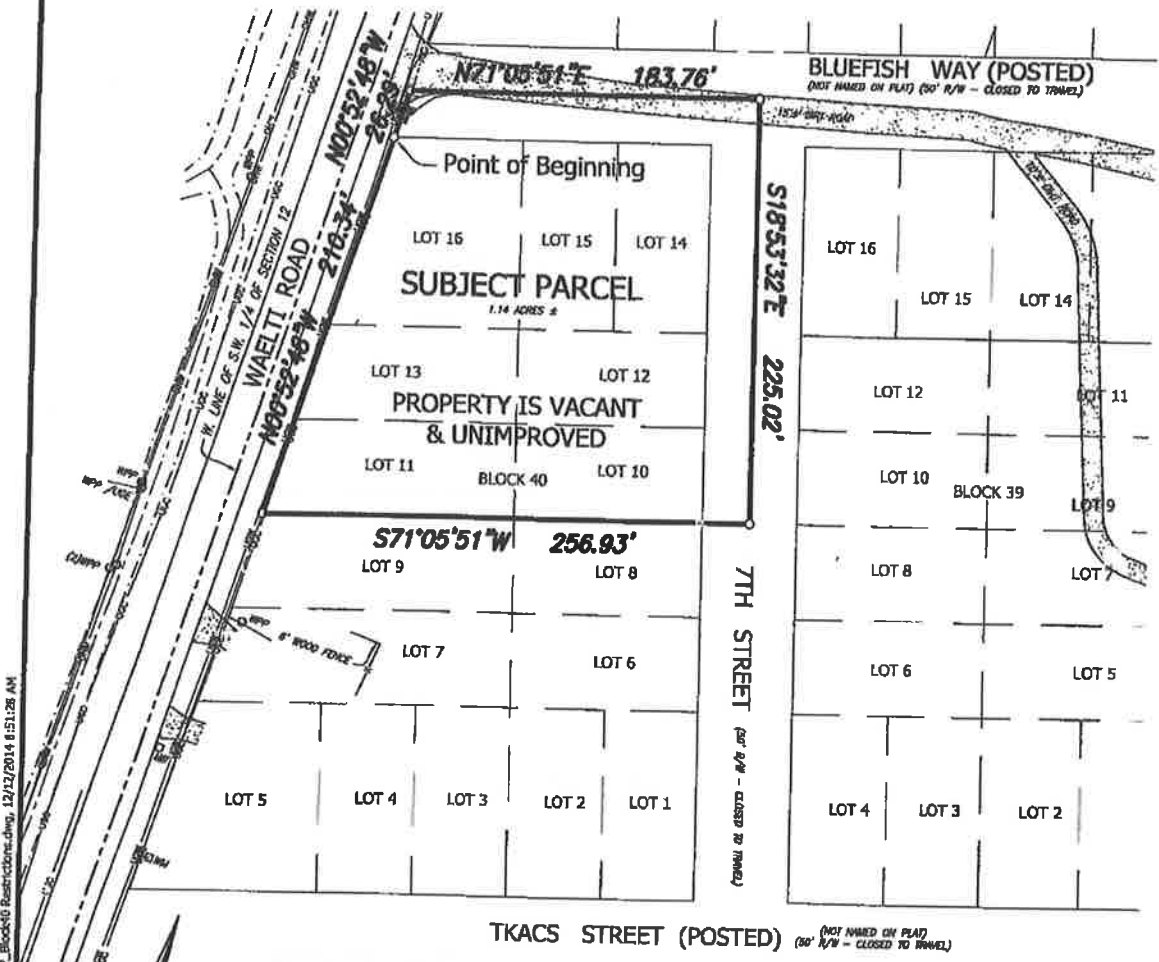
Block 40 Tract to be subject to Use Restrictions

Lots 10 through 16, Block 40, together with a portion of the South one-half of that un-named 50 foot wide Street right of way (now posted Bluefish Way) and a portion of the West one-half of 7th Street a 50 foot wide right of way all being shown on the PLAN OF TOWN OF PINEDA according to the plat thereof as recorded in Plat Book 1, Page 41 of the Public Records of, Brevard County County, Florida and being more particularly described as follows:

Begin at the Northwest corner of said Lot 16; thence $N00^{\circ}52'48''W$, along the West line of said Plat, a distance of 26.29 feet to the centerline of said Bluefish Way; thence $N71^{\circ}05'51''E$, along said centerline of Bluefish Way, a distance of 183.76 feet, to the centerline of said 7th Street; thence $S18^{\circ}53'32''E$, along the centerline of said 7th Street, a distance of 225.02 feet, to the easterly extension of the South line of said Lot 10; thence $S71^{\circ}05'51''W$, along said easterly extension and the South line of said Lots 10 and 11, a distance of 256.93 feet, to the West line of said Block 40; thence $N00^{\circ}52'48''W$, along said West line, a distance of 210.34 feet, to the POINT OF BEGINNING; Containing 1.14 acres, more or less.

SURVEYOR'S NOTES:

1. Only platted easements, unless noted otherwise, are shown.
2. Unless otherwise noted, underground improvements (foundations, septic tanks, utilities etc.) were not located.
3. The bearings shown are based on the West line of Section 12, Township 26 S., Range 36 E. having a bearing of $S00^{\circ}52'48''W$.
4. According to FIRM (Flood Insurance Rate Map) Map Number 12009C05100, Panel Number 125092 0510 G, Map index date: March 17, 2014, this property lies within FIRM Zones X'.
5. There are no plottable items listed in Schedule B - Section 2 of Fidelity National Title Insurance Company's Title Report File #4932083, Customer Reference #312864-3, dated August 28, 2014.



ABBREVIATIONS:

- | | |
|-----|----------------------------|
| LB | LAND SURVEYING BUSINESS |
| MB | MAIL BOX |
| OHW | OVERHEAD WIRE |
| R/W | RIGHT OF WAY |
| TRB | TELEPHONE RISER BOX |
| UGC | UNDERGROUND COMMUNICATIONS |
| UGE | UNDERGROUND ELECTRIC |
| UCW | UNDERGROUND WATER |
| WM | WATER METER |
| WPP | WOOD POWER POLE |

SURVEYOR'S CERTIFICATION:

I hereby certify to KMM-FL LLC; Fidelity National Title Insurance Company and Gray Robinson that the attached Sketch of Survey and the Survey on which it is based were prepared under my direction, in accordance with all applicable requirements of the "Minimum Technical Standards," for land surveying in the State of Florida, described in Chapter 5J-17, Florida Administrative Code, pursuant to Chapter 472.027, Florida Statutes.

ALLEN ENGINEERING, INC.

LEGEND:

○ = SET 5/8" IRON ROD WITH PLASTIC CAP STAMPED "ALLEN ENG LB 266"

CERTIFICATE OF AUTHORIZATION #LB266

ALLEN
Engineering, Inc.
SURVEYING - ENGINEERS
100 COCKE LANE
Cocoa Beach, Florida 32909

TELEPHONE: (321) 783-7448 - FAX: (321) 783-4200
WEBSITE: www.alleneng.com - EMAIL: info@alleneng.com

J.	
2.	
1.	
DATE: 12-12-14	DRAWN BY: DJG
JOB NO.: 040071.2	SCALE: 1" = 60'

Not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.

BY: ROBERT M. SALMON
Professional Surveyor & Mapper
Florida Registration No. 4262

PREPARED FOR:

ADVANTAGE CONCRETE

L:\Survey\Drawings\2005\040071.Plan of Town of Pineda Block 39-40\040071_2_Sketch of Boundary Survey.dwg, 12/12/2014 8:51:28 AM

10/17

11. A 2

STATE OF FLORIDA
COUNTY OF BREVARD

Bryan Moffit, after being duly sworn, deposes and says:

The undersigned is the owner of the real property described as follows:

(Insert legal description of property here)

There are no mortgages on the above described property

Dated this 16 day of January, 2015.


Signature

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was sworn to before me this 16 day of January, by Bryan Moffit, who is personally known to me or who has produced FL DL as identification, and who did take an oath.

Notary Public:



State of Florida at Large
My Commission Expires: 2/22/2018

Gunvor Lisa Armstrong

State of Florida

MY COMMISSION # FF 74219

Expires: February 22, 2018



BrevardClerk.US

Scott Ellis, Clerk of Court

700 South Park Avenue, Bldg. B
 P.O. Box 2767
 Titusville, FL 32781-2767
 (321) 637-2006



DBLIVE Transaction

#: 1486663

Receipt #: 61457845

Cashier Date: 03/23/2015

4:37:58 PM

Print Date:

03/23/2015 4:37:59 PM

Customer Information	Transaction Information	Payment Summary
() LANG DEVELOPMENT AND CONSULTING INC 5303 PICARDY CT ROCKLEDGE, FL 32955	DateReceived: 03/23/2015 Source Code: Titusville - Six Story Q Code: Titusville - Six Story Return Code: Hand Carried Trans Type: Recording Agent Ref Num:	Total Fees \$44.00 Total Payments \$44.00

1 Payments
CHECK 1039 \$44.00

1 Recorded Items						
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Indexing @ 1st 4 Names Free, Addt'l=\$1 ea.	2	\$0.00				

0 Search Items

0 Miscellaneous Items