

Meeting Date
October 6, 2015



AGENDA	
Section	UNFINISHED BUSINESS
Item No.	V.C

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	<u>Binding Development Plan, Re:</u> 1322 Clearlake, LLC (District 2) FISCAL IMPACT: NONE
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 August 6, 2015, the Board of County Commissioners approved removal of a BDP on a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoned property located on the east side of Clearlake Rd., between Melrose St. and Furnari St. (1322 Clearlake Rd., Cocoa), subject to a replacement Binding Development Plan as follows:

- The owner shall:
 - a. Restrict the Retail, Warehousing, and Wholesale Commercial (BU-2) permitted uses to a document shredding facility; otherwise, uses of the Property shall be limited to those enumerated in Section 62-1482(1) of the Brevard County Code of Ordinances for General Retail Commercial (BU-1);
 - b. Maintain the six (6') foot-high masonry wall along the Property's east property line;
 - c. Restrict access to the Property so that sole access will be from Clearlake Road; and
 - d. Provide that the loading docks shall be located no less than twenty-five (25') feet from the Property's east property line

Staff Contact: Jennifer Jones

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 No PR

County Manager

Stockton Whitten

Department Director / Extension
 Robin M. Sobrino, AICP, Director
 Planning & Development Dept. Ext. 56363



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

October 7, 2015

MEMORANDUM

TO: Recording

RE: Item V.C., Binding Development Plan Agreement with 1322 Clearlake, LLC

The Board of County Commissioners, in regular session on October 6, 2015, executed Binding Development Plan Agreement with 1322 Clearlake, LLC. for property located at 1322 Clearlake Rd., Cocoa. Enclosed are original Binding Development Plan Agreement and check number 5871 in the amount of \$44.00; and check number 5891 in the amount of \$8.50. **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, Deputy Clerk

/dt

Encls. (2)

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

#: 1592868

Receipt #: 61562129

Cashier Date: 10/8/2015

10:00:36 AM



Print Date:

10/8/2015 10:00:40 AM

Customer Information	Transaction Information	Payment Summary
() WIDERMAN MALEK, P.L. 1990 W. NEW HAVEN AVENUE SUITE 201 MELBOURNE, FL 32904	DateReceived: 10/08/2015 Source Code: Titusville - Six Story Titusville - Q Code: Six Story Return Code: Hand Carried Trans Type: Recording Agent Ref Num:	Total Fees \$52.50 Total Payments \$52.50

2 Payments

CHECK 5871	\$44.00
CHECK 5891	\$8.50

1 Recorded Items

(AG) AGREEMENT	<i>BK/PG: 7468/2161 CFN:2015198857</i> <i>Date:10/8/2015 10:00:35 AM</i> <i>From: To:</i>	
Recording @ 1st=\$10 Add'l=\$8.50 ea.	6	\$52.50
Indexing @ 1st 4 Names Free, Add'l=\$1 ea.	2	\$0.00

0 Search Items**1 Miscellaneous Items**

(AGTR) AGENT TRANSMITTAL

RETURN: Clerk to the Board #27

BINDING DEVELOPMENT PLAN

THIS BINDING DEVELOPMENT PLAN ("Second Amended Agreement") made and entered into this 6 day of October 2015, and between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida ("County"); and **1322 CLEARLAKE, LLC**, a Florida limited liability company ("Owner"):

RECITALS:

WHEREAS, Owner owns real property ("Property") located in Brevard County, Florida, said Property being more particularly described in **Exhibit "A,"** which is attached hereto and incorporated herein by this reference; and

WHEREAS, Owner desires to develop and use the Property as a shredding facility; and

WHEREAS, prior owner did heretofore and on the 1st day of October, 2001, execute in favor of the County a Binding Development Plan Agreement ("Initial BDP"), said Initial BDP being recorded in Official Records Book 4471, at Page 1972 *et seq.*, Public Records of Brevard County, Florida; and

WHEREAS, prior owner did heretofore and on the 7th day of February, 2002, execute in favor of the County a Binding Development Plan Amended Agreement ("Second BDP"), said Second BDP being recorded in Official Records Book 4567, at Page 0351 *et seq.*, Public Records of Brevard County, Florida; and

WHEREAS, the parties hereto intend by this Second Amended Agreement to cancel and make of no further force and effect the Initial BDP or the Second BDP, together with exhibits thereto, and replace and provide in lieu thereof this Second

Amended Agreement; 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 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. That the Owner shall:
 - a. Restrict the Retail, Warehousing and Wholesale Commercial (BU-2) permitted uses to a document shredding facility; otherwise, uses of the Property shall be limited to those enumerated in Section 62-1482(1) of the Brevard County Code of Ordinances for General Retail Commercial (BU-1).
 - b. Maintain the six (6') foot-high masonry wall along the Property's east property line;
 - c. Restrict access to the Property so that sole access will be from Clearlake Road; and
 - d. Provide that the loading docks shall be located no less than twenty five (25') feet from the Property's east property line.
3. That the Owner shall comply with all regulations and ordinances of the County. This Second Amended Agreement provides no vested rights against changes to the comprehensive plan or land development regulations as they may apply to this

Property.

4. That the Owner represents to the County that the Owner is the sole owner of the Property.

5. That the Owner, upon execution of this Second Amended Agreement, shall pay the County the cost of recording this Second Amended Agreement among the Public Records of Brevard County, Florida.

6. That this Second Amended Agreement shall be binding upon and shall inure to the benefit of the successors or assigns of the parties hereto and shall run with the Property unless or until rezoned or otherwise modified by formal act of the County and shall be binding upon any person, firm, or corporation who may become the successor in interest directly or indirectly to or of the Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on August 6, 2015. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

7. Violation of this Second Amended 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.


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

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed as of the day and year first above written at Brevard County, Florida.



Scott Ellis, Clerk
(Seal)

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

By: 

Chairman ("County")

As Approved by the Board on: 10/06/ 2015


Witnesses as to Owner:

1322 CLEARLAKE, LLC

Print Name: Patricia Ransden

By: 

Anthony Salamone, Manager

Sign Name: 

1300 N. Federal Highway, Suite 202
Boca Raton, FL. 33432

Print Name: Steve Melman

Sign Name: 

STATE OF FLORIDA :
COUNTY OF BREVARD :

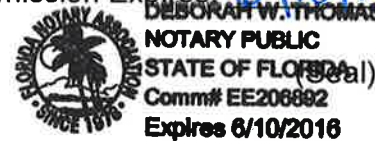
The foregoing instrument was acknowledged before me this 6^o day of Oct., 2015, by Robin Fisher as the Chairman, and Scott Ellis, as Clerk of the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, on behalf of said entity. They are [] personally known to me or [] who has produced _____ as identification.

Deborah Thomas
Notary Public, State of Florida at Large

Print Name: DEBORAH THOMAS

Commission No. EE206892

My Commission Expires: 6/10/16



STATE OF FLORIDA :
COUNTY OF Palm Beach :

The foregoing instrument was acknowledged before me this 11th day of August, 2015, by Anthony Salamone as the Manager, of **1322 CLEARLAKE, LLC** a Florida limited liability company, on behalf of said entity. He is [] personally known to me or [] has produced _____ as identification.

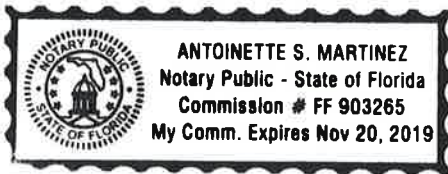
Antoinette Martinez
Notary Public, State of Florida at Large

Print Name: Antoinette Martinez

Commission No. FF 903265

My Commission Expires: 11/20/19

(Seal)



RETURN: Clerk to the Board #27

EXHIBIT "A"

That portion of Lot 9 of ATKINSONS SUBDIVISION, PLAT NO. 1, as recorded in Plat Book 9, Page 35 of the Public Records of Brevard County, Florida, being more particularly described as follows:

Commence at the Southwest corner of said Lot 9, and run Easterly along the South line of said Lot 9, a distance of 10.0 feet to an intersection with the Easterly Right of Way line of Clearlake Road and the Point of Beginning; thence continue Easterly, along said South line of Lot 9, a distance of 200.0 feet; thence Northerly, parallel with the East line of said Lot 9, a distance of 100.0 feet; thence Westerly, parallel with said South line of Lot 9, a distance of 200.0 feet to a point on the aforementioned Easterly Right of Way line of Clearlake Road; thence Southerly, along said Easterly Right of Way line, a distance of 100.0 feet to the Point of Beginning. Same being the South 100.0 feet of the East 200.0 feet of the West 210.0 feet of said Lot 9, otherwise described as Lot 1, PAUL'S SUBDIVISION, according to the Plat thereof recorded in Plat Book 10, Page 62A, Public Records of Brevard County, Florida.

LESS AND EXCEPT the North 20 feet of the above described parcel.

AND

A tract of land in Lot 8, ATKINSONS SUBDIVISION, PLAT NO. 1, as recorded in Plat Book 9, Page 35, of the Public Records of Brevard County, Florida, being more particularly described as follows:

Commence at the Northwest corner of said Lot 8, and run Easterly, along the North line of said Lot 8, a distance of 10.0 feet to an intersection with the Easterly Right of Way line of Clearlake Road and the Point of Beginning; thence continue Easterly, along said Northerly line of Lot 8, a distance of 200.0 feet; thence Southerly, parallel with the East line of said Lot 8, a distance of 75.0 feet; thence Westerly, parallel with the North line of said Lot 8, a distance of 200.0 feet to a point on the aforementioned easterly Right of Way line of Clearlake Road; thence Northerly, along said Easterly Right of Way line, a distance of 75.0 feet to the Point of Beginning.

AND

Lot 2 and the North 20 feet of Lot 1, LESS and EXCEPT road right of way, of REPLAT OF LOTS 9 AND 10 of ATKINSON'S SUBDIVISION, PLAT NO. 1 a/k/a Paul's Subdivision, according to the Plat thereof as recorded in Plat Book 10, Page 62A, Public Records of Brevard County, Florida.

ANTHONY SALAMONE'S AFFIDAVIT

STATE OF FLORIDA
COUNTY OF ~~BREVARD~~ *Palm Beach*

Anthony Salamone, after being duly sworn, deposes and says:

The undersigned is the Manager and a Member of 1322 Clearlake, LLC who is the owner of the real property located at 1322 Clearlake Rd., Cocoa, Florida 32922.

There are no mortgages on the above described property.

Dated this 11th day of August, 2015.

1322 Clearlake, LLC

Anthony Salamone

Anthony Salamone, Manager
1300 N. Federal Highway, Suite 202
Boca Raton, FL. 33432

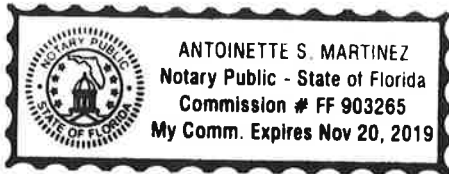
STATE OF FLORIDA
COUNTY OF ~~BREVARD~~ *Palm Beach*

The foregoing instrument was sworn to before me this 11th day of August,
2015, by Anthony Salamone, who is personally known to me or who has
produced _____ as identification, and who did take an oath.

Notary Public:

Antoinette S. Martinez

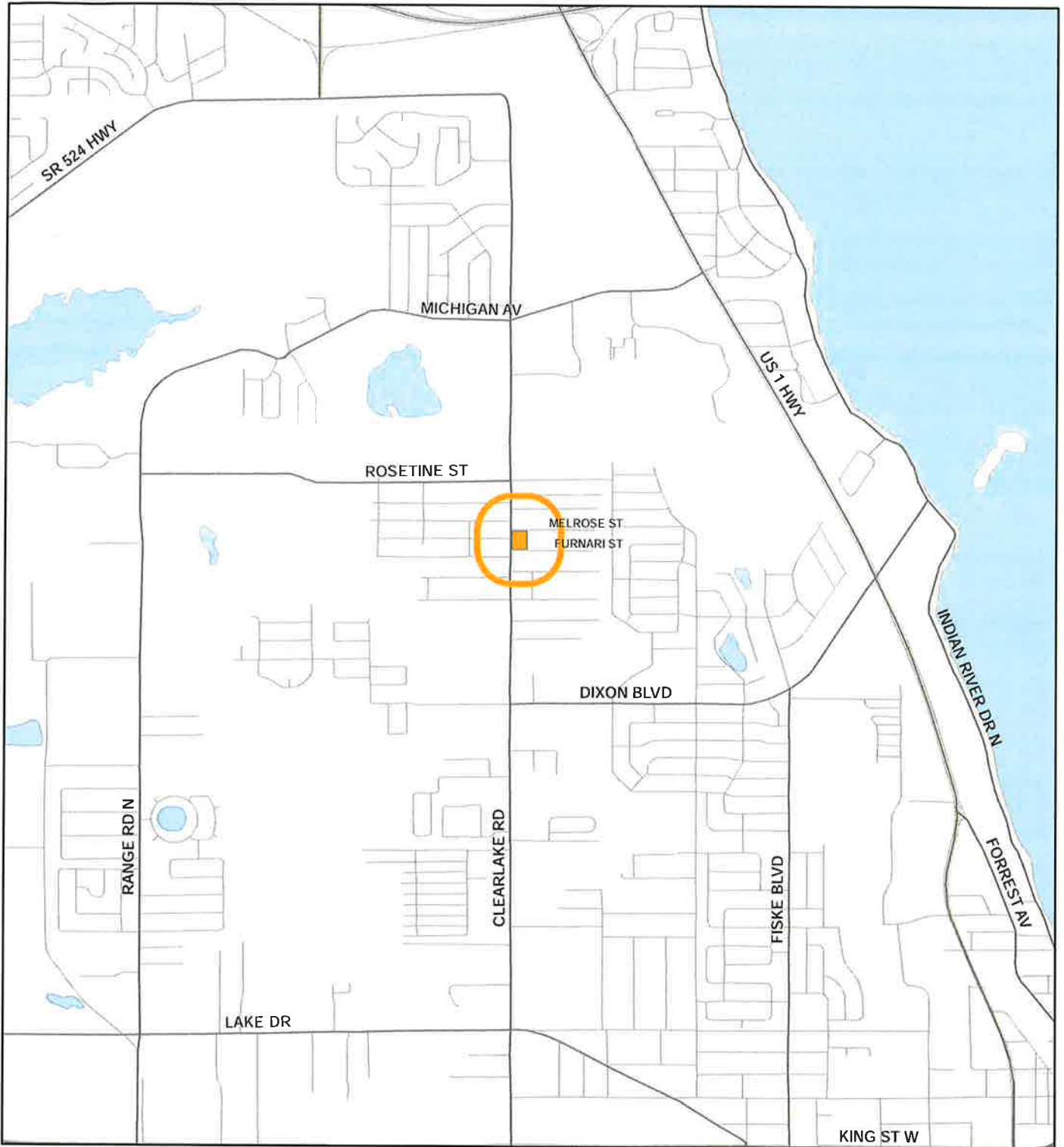
State of Florida at Large
My Commission Expires: 11/20/19



(SEAL)



LOCATION MAP

1322 CLEARLAKE LLC
15PZ00028



1:24,000 or 1 inch = 2,000 feet

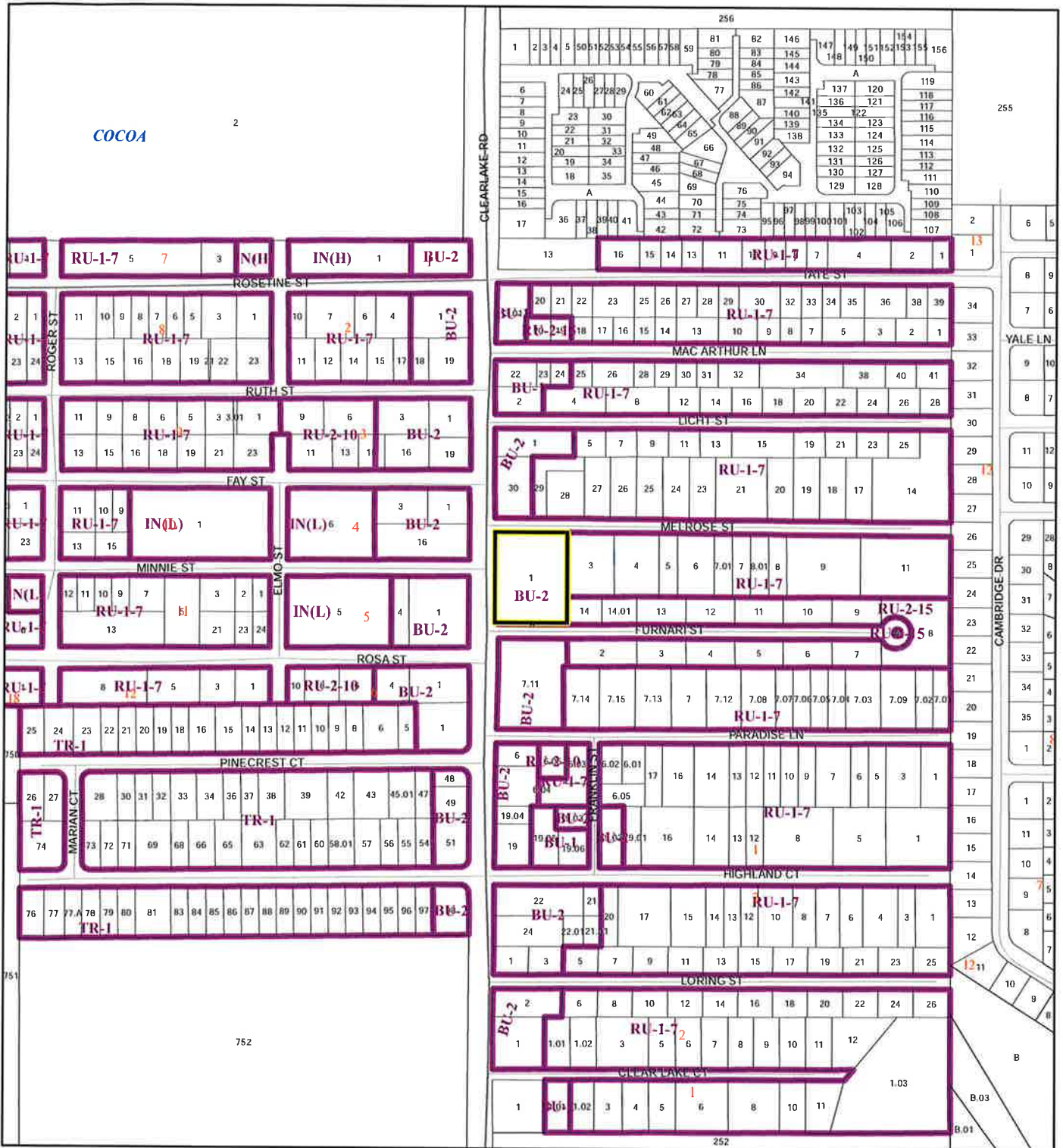
Buffer Distance: 500 feet

-  Buffer
-  Subject Property

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

ZONING MAP

1322 CLEARLAKE LLC
15PZ00028



1:4,800 or 1 inch = 400 feet

- Subject Property
- Parcels
- Zoning

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions herein.

DISTRICT 2

III.B.5. (15PZ00022) – LINDA E. SPAIN, TRUSTEE – (Lisa Frazier) - requests a change of classification from SEU to AU, on 4.08 acres, located on the west side of N. Tropical Trail, approx. 460 ft. south of Indianola Dr. (2105 N. Tropical Trail, Merritt Island)

P&Z Recommendation of 07/20/15: Thodey/Aydelotte – Approved with a BDP as follows: 1.) No commercial retail operation on the property. Wholesale of commodities may be allowed but may not include on premise signage advertising hours of operation and products. Wholesale transactions will allow no more than two transactions per day on the property. 2.) No structures for the large scale commercial packing, processing, and sales of commodities raised on the premises will be constructed on the property. 3.) No more than six (6) livestock animals at one time (horses, cows, pigs, goats, etc.) Vote was unanimous.

BCC ACTION: Barfield/Smith – APPROVED with a Binding Development Plan as follows: 1.) No commercial retail operation on the property. Wholesale of commodities may be allowed but may not include on premise signage advertising hours of operation and products. Wholesale transactions will allow no more than two transactions per day on the property. 2.) No structures for the large scale commercial packing, processing, and sales of commodities raised on the premises will be constructed on the property. 3.) No more than six (6) livestock animals at one time (horses, cows, pigs, goats, etc.) Vote was unanimous. BDP TO BE SCHEDULED AS A CONSENT ITEM ON A SUBSEQUENT BCC AGENDA, PER POLICY BCC-52. RESOLUTION NUMBER TO BE ASSIGNED UPON RECEIPT OF RECORDED BDP.

III.B.6. (15PZ00028) – 1322 CLEARLAKE LLC – (Scott Widerman and Mason Williams) – Requests removal of a BDP in a BU-2 zoning classification, on 1.21 acres, located on the east side of Clearlake Rd., between Melrose St. and Fumari St. (1322 Clearlake Rd., Cocoa)

P&Z Recommendation: Lawandales/McLellan – Approved with a BDP limited to BU-1 uses, except to allow a document shredding company. Vote was unanimous.

BCC ACTION: Infantini/Smith – APPROVED with a Binding Development Plan limited to BU-1 uses, except to allow a document shredding company. Vote was unanimous. BDP TO BE SCHEDULED AS A CONSENT ITEM ON A SUBSEQUENT BCC AGENDA, PER POLICY BCC-52. RESOLUTION NUMBER TO BE ASSIGNED UPON RECEIPT OF RECORDED BDP.

DISTRICT 3

III.B.7. (15PZ00029) – SEBASTIAN INLET MARINA, LLC – (T.P. Kennedy) – requests a CUP for Alcoholic Beverages (beer & wine only) in Conjunction with a Restaurant, in a BU-2 zoning classification, on 2.85 acres, located on the east side of U.S. 1, approx. 425 ft. south of Overlook Dr. (8685 U.S. Hwy 1, Micco)

P&Z Recommendation: Ron McLellan/Rochelle Lawandales – Approved. Vote was unanimous.

BCC ACTION: Infantini/Smith – APPROVED with the condition that parking is determined to be sufficient for uses on the site. Vote was unanimous. 15PZ00029.

PLANNING AND ZONING BOARD RECOMMENDATIONS OF JULY 6, 2015

- III.B.1. Calvin D. & Debra D. Baldwin. Anderson/Barfield, approved as recommended; and adopted Ordinance No. 15-21, Small Scale Plan Amendment (15S.06)
- III.B.2. Darrell & Traci Freeman, and Kathleen Holcomb. Anderson/Smith, approved as recommended.
- III.B.3. Swallowtail, LLC. Infantini/Smith, approved as recommended.
- III.B.4. Swallowtail, LLC. Anderson/Smith, approved as recommended; and adopted Ordinance No. 15-22, Small Scale Plan Amendment (15S.07)
- III.B.5. Linda E. Spain, Trustee. Barfield/Smith, approved as recommended with a BDP as follows: 1.) No commercial retail operation on the property. Wholesale of commodities may be allowed but may not include on premise signage advertising hours of operation and products. Wholesale transactions will allow no more than two transactions per day on the property. 2.) No structures for the large scale commercial packing, processing, and sales of commodities raised on the premises will be constructed on the property. 3.) No more than six (6) livestock animals at one time (horses, cows, pigs, goats, etc.)
- III.B.6. 1322 Clearlake LLC. Infantini/Smith, approved as recommended with a BDP limited to BU-1 uses, except to allow a document shredding company.
- III.B.7. Sebastian Inlet Marina, LLC. Infantini/Smith, approved with the condition that parking is determined to be sufficient for uses on the site.