



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.3.

11/3/2022

Subject:

Acceptance, Re: Binding Development Plan with Paul J. Marion, Kimberly Ann LaMattina, Kayla Marie Losat, and Jessica Lynn Ripper; and Robert Clay Kirk and Ethylmay Kirk (District 1)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

In accordance with Section 62-1157, it is requested that the Board of County Commissioners accept, and the Chair sign, the Binding Development Plan.

Summary Explanation and Background:

A BDP (Binding Development Plan) is a voluntary agreement presented by the 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 the Board's approval of the zoning request. Following staff and legal review, the BDP is presented to the Board in recordable form as a Consent Agenda item in order to finalize the zoning action.

On September 1, 2022, the Board held a public hearing to consider a change of zoning classification from AU (Agricultural Residential), SR (Suburban Residential), RU-1-11 (Single-Family Residential), and GML (Government Managed Lands), with an existing BDP on SR and RU-1-11 portions, to RU-1-7 (Single-Family Residential), removing the existing BDP and adding a new BDP. The Board approved the request with a BDP limiting the project density to 197 units. The attached agreement includes this provision.

Clerk to the Board Instructions:

Upon recordation, please return two certified copies of the BDP to Planning and Development.

Resolution 22Z00029

On motion by Commissioner Pritchett, seconded by Commissioner Tobia, the following resolution was adopted by a unanimous vote:

WHEREAS, Paul J. Marion, Kimberly Ann LaMattina, Kayla Marie Losat, and Jessica Lynn Ripper; and Robert Clay Kirk and Ethylmay Kirk have requested a change of zoning classification from AU (Agricultural Residential), SR (Suburban Residential), RU-1-11 (Single-Family Residential), and GML (Government Managed Lands), with an existing BDP (Binding Development Plan) on SR and RU-1-11 portions, to RU-1-7 (Single-Family Residential) with removal of existing BDP and adding a new BDP, on property described as (See Attached); and

WHEREAS, a public hearing of the Brevard County Planning and 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 and Zoning Board recommended that the application be approved with a BDP limiting development to 197 units; and

WHEREAS, the Board, after considering said application and Brevard County Planning and 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 BDP limiting development to 197 units; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from AU, SR, RU-1-11, and GML, with an existing BDP on SR and RU-1-11 portions, to RU-1-7 with removal of the existing BDP, be approved with a BDP, recorded on 11/08/22, in ORB 9653, Pages 2942 - 2948, limiting development to 197 units. The Planning and Development 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 November 8, 2022.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida

Kristine Zonka, Chair
Brevard County Commission

As approved by the Board on November 3, 2022.

ATTEST:

RACHEL SADOFF, CLERK

(SEAL)

P&Z Hearing – August 15, 2022
BCC Hearing - September 1, 2022

Please note: A CUP (Conditional Use Permit) will generally expire on the three-year anniversary of its approval if the use is not established prior to that date. CUPs for Towers and Antennas shall expire if a site plan for the tower is not submitted within one year of approval or if construction does not commence within two years of approval. A Planned Unit Development 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.**

22Z00029 (cont.)
Legal Description

Tax Parcels 12 & 265, as recorded in ORB 8804, Pages 1941 - 1943, of the Public Records of Brevard County, Florida; Tax Parcel 266, as recorded in ORB 5356, Page 1441, of the Public Records of Brevard County, Florida; Tax Parcel 17, as recorded in ORB 5379, Pages 3457 - 3459, of the Public Records of Brevard County, Florida; Tax Parcel 270, as recorded in ORB 8232, Pages 2256 - 2261, of the Public Records of Brevard County, Florida; Tax Parcel 109, as recorded in ORB 7325, Pages 1959 - 1960, of the Public Records of Brevard County, Florida. Section 08, Township 21, Range 35. (76.52 acres) Located on the south side of Brockett Rd., approx. .60 mile east of U.S. Highway 1. (No assigned address. In the Mims area.)



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

November 4, 2022

M E M O R A N D U M

TO: Jennifer Jones, Zoning

RE: Item F.3., Binding Development Plan with Ethylmay Kirk, Robert Kirk, Paul Marion, Kimberly Lamattina, Kayla Losat, and Jessica Ripper

The Board of County Commissioners, in regular session on November 3, 2022, accepted and executed Binding Development Plan with Ethylmay Kirk, Robert Kirk, Paul Marion, Kimberly Lamattina, Kayla Losat, and Jessica Ripper for property located in Tax Parcels 12 and 265, as recorded in ORB 8804, Pages 1941 – 1943, of the Public Records of Brevard County, Florida. Enclosed for your necessary action are two certified copies of the recorded documents.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

for: Donna Scott
for: Kimberly Powell, Clerk to the Board

/dt

Encls. (2)

Prepared by: Charles B. Genoni
Flordevco Corp.
4760 N. US1 #201
Melbourne FL 32935

**BINDING
DEVELOPMENT PLAN**

THIS AGREEMENT, entered into this 3 day of NOVEMBER 20 22 between the BOARD OF COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Ethylmay Kirk, Robert Kirk, Paul Marion, Kimberly Lamattina, Kayla Losat, & Jessica Ripper (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 rezoned the property to RU 1-7 zoning classification and desires to develop the Property as a Single-Family Subdivision, 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 landowners 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 the project density to 197 units.

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 Clerk of Courts the cost of recording this Agreement in the Public Records of Brevard County, Florida.

5. This Agreement shall be binding and shall insure 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 September 1 20 22. In the event the subject Property is annexed into a municipality and rezoned, this agreement shall be null and void.

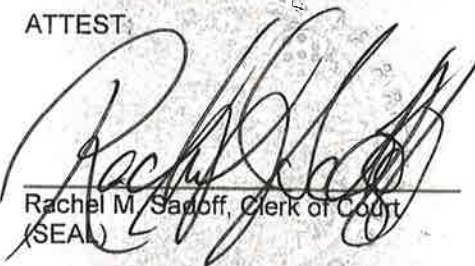
6. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as may be amended.

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.

8. Severability clause. If any provision of this BDP is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect without being impaired or invalidated in any way.

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

ATTEST:


Rachel M. Sadoff, Clerk of Court
(SEAL)



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


Kristine Zonka, Chair


As approved by the Board on 11/3/2022

(Please note: you must have two witnesses and a notary for each signature required, the notary may serve as one witness.)

WITNESSES:


Witness sign
CASEY CROWE
Witness Print Name

Witness sign
Victoria Milam
Witness Print Name

OWNERS


Paul Marion
Address
925 Indian River Ave.
Titusville, FL 32780

STATE OF Florida

COUNTY OF Brevard

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or
☐ online notarization, this 4th day of Oct., 2022.

by Victoria Milam as Notary of Public

who is personally known or produced Florida driver license as identification.

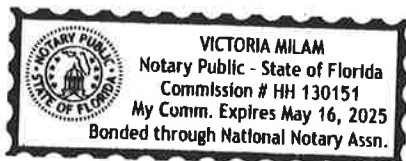
My commission expires May 16th 2025

Commission no HH130151

SEAL

Victoria Milam
Notary Public

(Name typed, printed or stamped)



Victoria Milam
Witness sign
Victoria Milam
Witness Print Name
Casey Crovatt
Witness sign
CASEY CROVATT
Witness Print Name

Kimberly Lamattina
Kimberly Lamattina
4851 Clarewood Blvd.
Address

STATE OF Florida
COUNTY OF Brevard

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or
___online notarization, this 4th day of Oct., 2022

by Victoria Milam, as Notary of Public

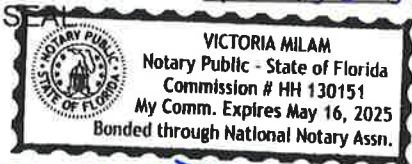
who is personally known or produced Florida Driver License as identification.

My commission expires May 16th 2025

Commission no HH 130151

Victoria Milam
Notary Public

(Name typed, printed or stamped)



Sabrina B Page
Witness sign
Sabrina B Page
Witness Print Name
Christine Nicolson
Witness sign
CHRISTINE NICOLSON
Witness Print Name

Kayla Losat
Kayla Losat
Address

11361 Bram Bay Ct.
San Antonio, FL 33576

STATE OF Florida
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or
___online notarization, this 11th day of October, 2022

by Sabrina B Page, as Notary of Public

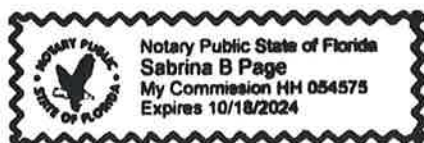
who is personally known or produced Florida Driver License as identification.

My commission expires 10/18/24

Commission no HH 054575

Sabrina B Page
Notary Public

(Name typed, printed or stamped)



Andrea Wik
Witness sign
Andrea Wik
Witness Print Name
Jason Surmick
Witness sign
Jason Surmick
Witness Print Name

Jessica Ripper
Jessica Ripper
Address
98 Donald Dr.
Buffalo, NY 14225

STATE OF New York
COUNTY OF Erie

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or
☐ online notarization, this 17th day of October, 2022

by _____, as _____ of _____,

who is personally known or produced nysdlc as identification.

My commission expires 9/07/2025

Commission no _____

SEAL

Andrea Wik
Notary Public

(Name typed, printed or stamped)

ANDREA D WIK

Notary Public, State of New York

01WI6030115

Qualified in ERIE County

My commission expires SEPTEMBER 7, 2025

Cliff Hester
Witness sign
Cliff Hester
Witness Print Name
Michelle King
Witness sign
Michelle King
Witness Print Name

Ethylma Kirk
Ethylma Kirk
203 N. Brown Ave.
Address Titusville, FL 32796

STATE OF Florida
COUNTY OF Brevard

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or
☐ online notarization, this 7th day of Oct, 2022

by _____, as _____ of _____,

who is personally known or produced FL. Drivers License as identification.

My commission expires _____

Commission no _____

SEAL

Notary Public

(Name typed, printed or stamped)



Clifford Kirk
Witness sign
Robert J. Kirk
Witness Print Name
Michelle King
Witness sign
Michelle King
Witness Print Name

Robert Kirk
Address 925 Cleveland St.
Titusville, FL 32780

STATE OF Florida
COUNTY OF Brevard

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or
☐ online notarization, this 7th day of Oct. 2022

by _____, as _____ of _____,

who is personally known or produced Drivers License as identification.

My commission expires _____

Commission no _____

SEAL

Notary Public
(Name typed, printed or stamped)

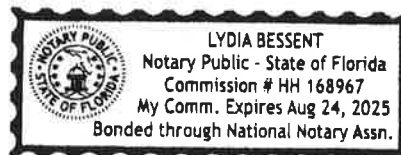


Exhibit "A"

Tax Parcels 12 & 265, as recorded in ORB 8804, Pages 1941 - 1943, of the Public Records of Brevard County, Florida; Tax Parcel 266, as recorded in ORB 5356, Page 1441, of the Public Records of Brevard County, Florida; Tax Parcel 17, as recorded in ORB 5379, Pages 3457 - 3459, of the Public Records of Brevard County, Florida; Tax Parcel 270, as recorded in ORB 8232, Pages 2256 - 2261, of the Public Records of Brevard County, Florida; Tax Parcel 109, as recorded in ORB 7325, Pages 1959 - 1960, of the Public Records of Brevard County, Florida. Section 08, Township 21, Range 35. (76.52 acres)

STATE OF FLORIDA New York
COUNTY OF BREVARD Erie

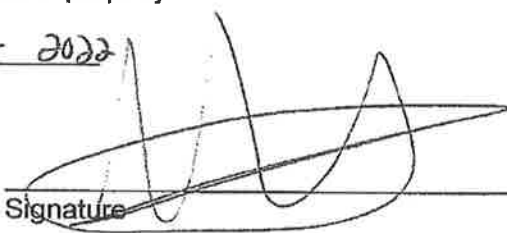
Jessica Ripper, after being duly sworn, deposes and says:

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

W 10 FT OF N 1/2 OF SW 1/4 OF NW 1/4 OF NE 1/4 & PART OF N 1/2 AS DESC AS TRACTS
1 THRU 5 IN ORB 1719 PG 905 EXC RD R/W & W 25 FT OF S 1/2 OF NE 1/4 OF NW 1/4
PARS 13, 15, 16 & 254 40.39 Acres 2102878
Together with
E 1/2 OF S 20 AC OF N 30 AC OF SE 1/4 OF NW 1/4 10 Acres 2102918

There are no mortgages on the above described property

Dated this 20 day of September 2022

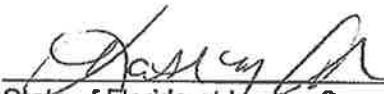
Signature 

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was sworn to before me this 20 day of September, 2022, by

Jessica Ripper, who is personally known to me or who has
produced NYSD 375291456 as identification, and who did take an oath.

Notary Public:


State of Florida at Large New York
My Commission Expires: 7/16/23

(SEAL)

KATHLEEN M AUGENBAUGH
Notary Public - State of New York
NO. 01AU6061712
Qualified in Erie County
My Commission Expires Jul 16, 2023

STATE OF FLORIDA
COUNTY OF BREVARD

Kim LaMattina, after being duly sworn, deposes and says:

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

W 10 FT OF N 1/2 OF SW 1/4 OF NW 1/4 OF NE 1/4 & PART OF N 1/2 AS DESC AS TRACTS
1 THRU 5 IN ORB 1719 PG 905 EXC RD R/W & W 25 FT OF S 1/2 OF NE 1/4 OF NW 1/4
PARS 13, 15, 16 & 254 40.39 Acres 2102878
Together with
E 1/2 OF S 20 AC OF N 30 AC OF SE 1/4 OF NW 1/4 10 Acres 2102918

There are no mortgages on the above described property

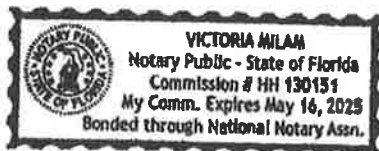
Dated this 20 day of September.

Kim LaMattina
Signature

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was sworn to before me this 20th day of September, by
Kim LaMattina, who is personally known to me or who has
produced Driver license as identification, and who did take an oath.

Notary Public:



Victoria Milan
State of Florida at Large
My Commission Expires:

(SEAL)

STATE OF FLORIDA
COUNTY OF BREVARD


Kayla Marie Losat, after being duly sworn, deposes and says:

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

W 10 FT OF N 1/2 OF SW 1/4 OF NW 1/4 OF NE 1/4 & PART OF N 1/2 AS DESC AS TRACTS
1 THRU 5 IN ORB 1719 PG 905 EXC RD R/W & W 25 FT OF S 1/2 OF NE 1/4 OF NW 1/4
PARS 13, 15, 16 & 254 40.39 Acres 2102878
Together with
E 1/2 OF S 20 AC OF N 30 AC OF SE 1/4 OF NW 1/4 10 Acres 2102918

There are no mortgages on the above described property

Dated this 16th day of September.

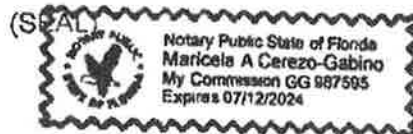

Signature

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was sworn to before me this 16th day of September, by
Kayla Marie Losat, who is personally known to me or who has
produced Florida ID as identification, and who did take an oath.

Notary Public:


State of Florida at Large
My Commission Expires:



STATE OF FLORIDA
COUNTY OF BREVARD

Paul J. Marion, after being duly sworn, deposes and says:

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

W 10 FT OF N 1/2 OF SW 1/4 OF NW 1/4 OF NE 1/4 & PART OF N 1/2 AS DESC AS TRACTS
1 THRU 5 IN ORB 1719 PG 905 EXC RD R/W & W 25 FT OF S 1/2 OF NE 1/4 OF NW 1/4
PARS 13, 15, 16 & 254 40.39 Acres 2102878
Together with
E 1/2 OF S 20 AC OF N 30 AC OF SE 1/4 OF NW 1/4 10 Acres 2102918

There are no mortgages on the above described property

Dated this 20th day of September.

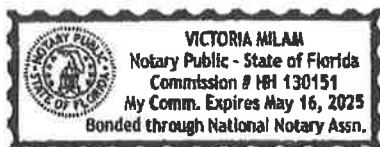
Paul J. Marion
Signature

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was sworn to before me this 20th day of September, by

Paul J. Marion, who is personally known to me or who has
produced Driver License FL as identification, and who did take an oath.

Notary Public:



Victoria Milam
State of Florida at Large
My Commission Expires:

(SEAL)

STATE OF FLORIDA
COUNTY OF BREVARD

Robert C Kirk, after being duly sworn, deposes and says:

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

E 1/2 OF SW 1/4 OF SW 1/4 OF NE 1/4 & SE 1/4 OF SW 1/4 OF NE 1/4 EXC N 1 ACRE OF E
1/2 OF SW 1/4 OF SW 1/4 OF NE 1/4 PAR 18 14 Acres 2102882

Together with

S 330 FT OF SE 1/4 OF NW 1/4 10 Acres 2102919

Together With


BLK 262 S 70.00 FT OF S 1/4 OF SW 1/4 OF NW 1/4 OF SEC S 08 T 21 R 35 SUBID 00 2.12 Acres
3018268

Together with

PART OF E 450 OF S 100 FT OF SE 1/4 OF NE 1/4 E OF US HWY 1 AS DESC IN ORB 7325
PG 1959 EXC ORB 8232 PG 2262 2113544 .01

There are no mortgages on the above described property

Dated this 16 day of September


Signature

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was sworn to before me this 16 day of September, by
Robert C. Kirk, who is personally known to me or who has
produced FL Driver License as identification, and who did take an oath.

Notary Public:


State of Florida at Large
My Commission Expires: 4-4-2026

(SEAL)



JAMES HEFFERNAN
Commission # HH 248804
Expires April 4, 2026

STATE OF FLORIDA
COUNTY OF BREVARD

Ethyl May Kirk, after being duly sworn, deposes and says:

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

E 1/2 OF SW 1/4 OF SW 1/4 OF NE 1/4 & SE 1/4 OF SW 1/4 OF NE 1/4 EXC N 1 ACRE OF E
1/2 OF SW 1/4 OF SW 1/4 OF NE 1/4 PAR 18 14 Acres 2102882
Together with
S 330 FT OF SE 1/4 OF NW 1/4 10 Acres 2102919
Together With
BLK 262 S 70.00 FT OF S 1/4 OF SW 1/4 OF NW 1/4 OF SEC S 08 T 21 R 35 SUBID 00 2.12 Acres
3018268
Together with
PART OF E 450 OF S 100 FT OF SE 1/4 OF NE 1/4 E OF US HWY 1 AS DESC IN ORB 7325
PG 1959 EXC ORB 8232 PG 2262 2113544 .01

There are no mortgages on the above described property

Dated this 16 day of September

Ethyl May Kirk
Signature

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was sworn to before me this 16 day of September, by
Ethyl May Kirk, who is personally known to me or who has
produced FL Driver License as identification, and who did take an oath.

Notary Public:

James Heffernan
State of Florida at Large
My Commission Expires: 4-4-2022

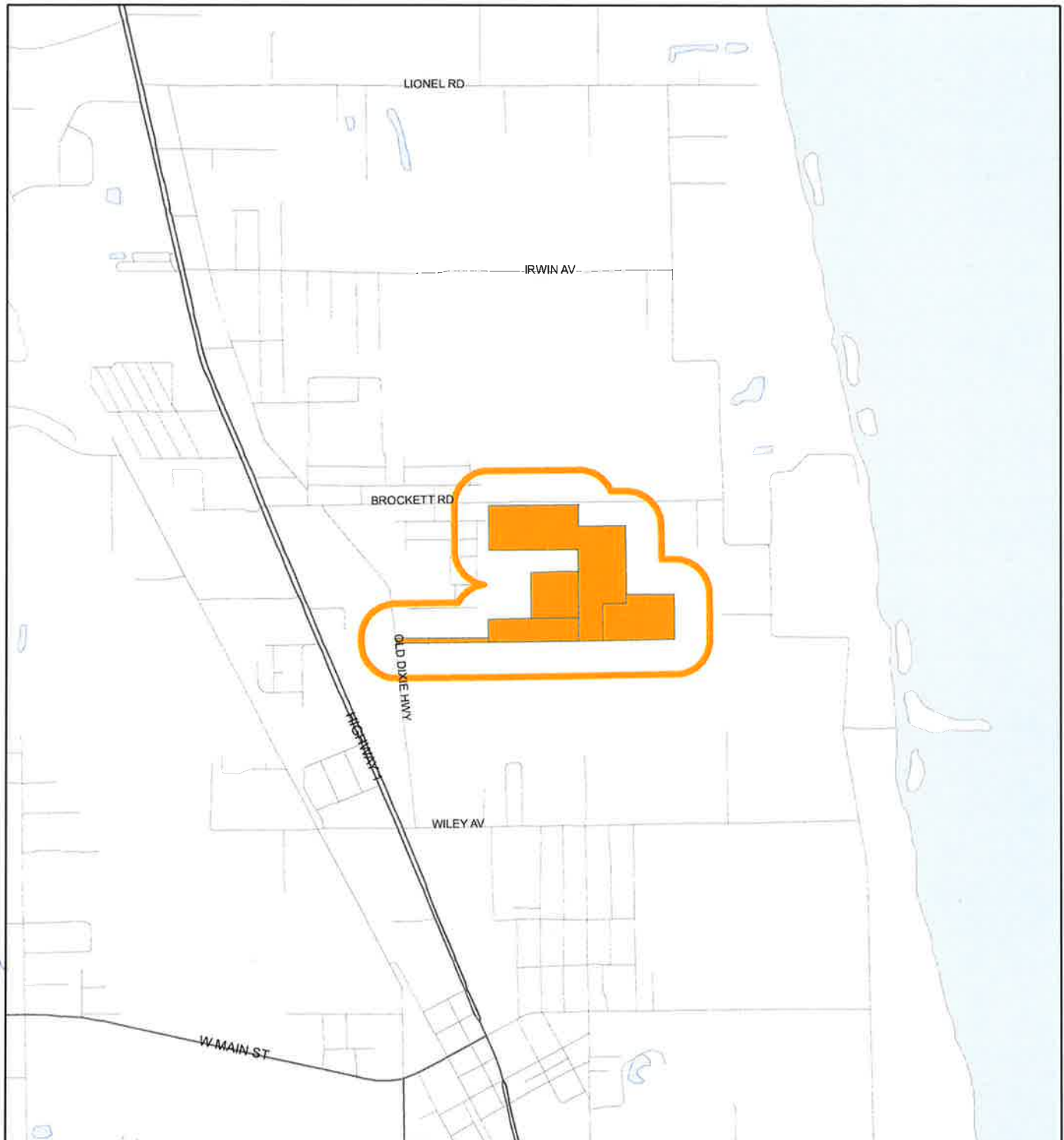
(SEAL)



JAMES HEFFERNAN
Commission # HH 248804
Expires April 4, 2026

LOCATION MAP

MARION, Paul; LAMATTINA, Kimberly; LOSAT, Kayla; RIPPER, Jessica; KIRK, Ethylmay and Robert
22Z00029



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

Buffer Distance: 500 feet

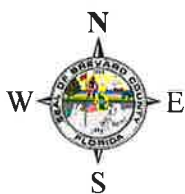
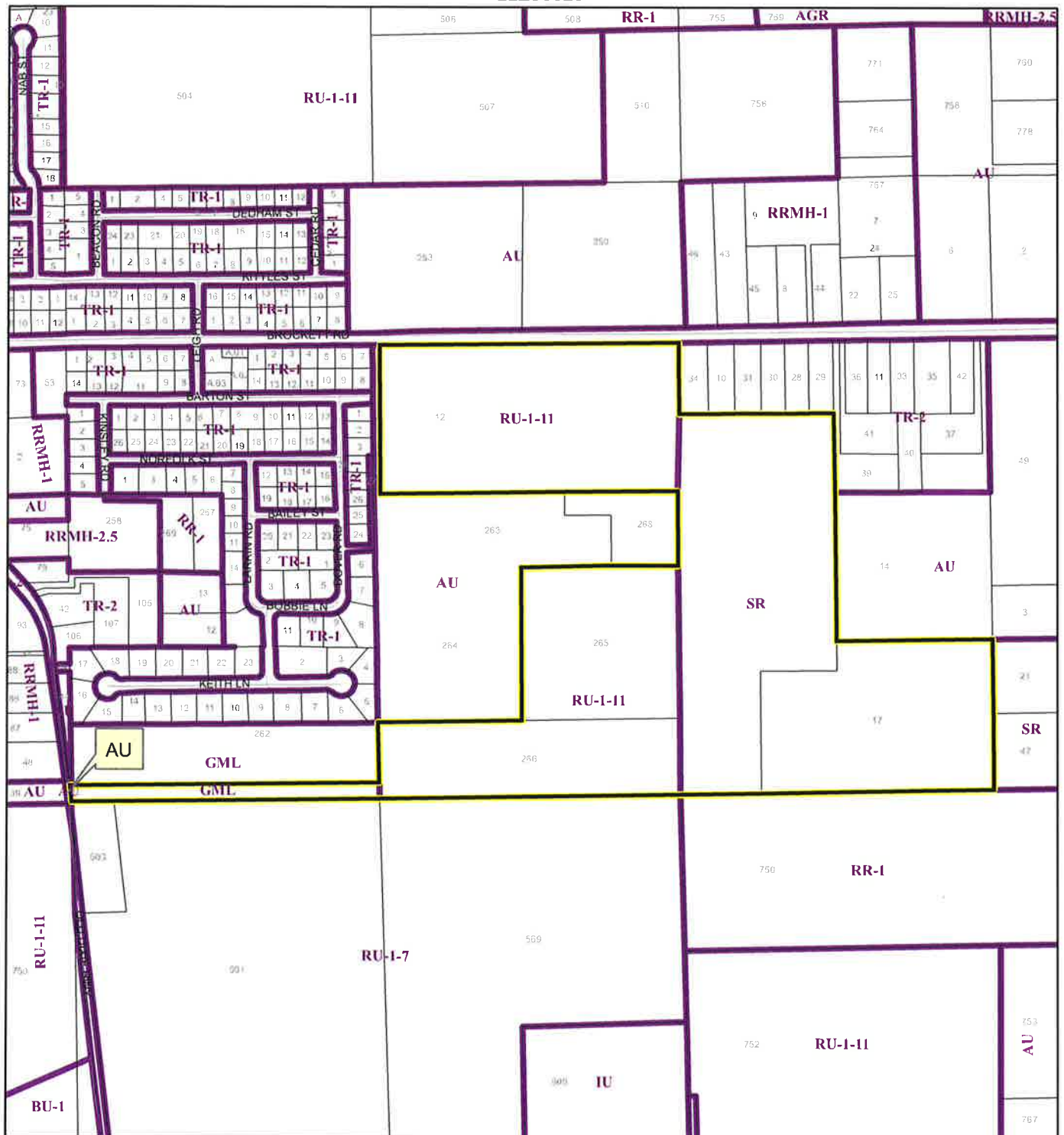
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 6/13/2022

— Buffer
■ Subject Property

ZONING MAP

MARION, Paul; LAMATTINA, Kimberly; LOSAT, Kayla; RIPPER, Jessica; KIRK, Ethylmay and Robert
22Z00029



1:7,200 or 1 inch = 600 feet

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.

Produced by BoCC - GIS Date: 6/13/2022

— Subject Property

□ Parcels

□ Zoning

BCC ACTION: Pritchett/Tobia - Approved, and adopted Ordinance 22-26. The vote was unanimous.

5. (22SS00008) **Paul J. Marion, Kimberly Ann LaMattina, Kayla Marie Losat, and Jessica Lynn Ripper; and Robert Clay Kirk and Ethylmay Kirk** (Chad Genoni) request a Small Scale Comprehensive Plan Amendment (22S.11), to change the Future Land Use designation from RES 2 (Residential 2) to RES 4 (Residential 4). The property is 35.36 acres, located approx. 385 ft. south of Brockett Rd., and approx. 0.72 mile east of U.S. Highway 1. (No assigned address. In the Mims area.) (Tax Accounts 2102878 & 2102882) (District 1)

LPA Recommendation: Filiberto/Moia - Approved. The vote was unanimous.

BCC ACTION: Pritchett/Tobia - Approved, and adopted Ordinance 22-27. The vote was unanimous.

6. (22Z00029) **Paul J. Marion, Kimberly Ann LaMattina, Kayla Marie Losat, and Jessica Lynn Ripper; and Robert Clay Kirk and Ethylmay Kirk** (Chad Genoni) request a change of zoning classification from AU (Agricultural Residential), SR (Suburban Residential), RU-1-11 (Single-Family Residential), and GML (Government Managed Lands), with an existing BDP (Binding Development Plan) on SR and RU-1-11 portions, to RU-1-7 with removal of existing BDP and adding a new BDP. The property is 76.52 acres, located on the south side of Brockett Rd., approx. 0.60 mile east of U.S. Highway 1. (No assigned address. In the Mims area.) (Tax Accounts 2102878, 2102918, 2102919, 2102882, 3018268, & 2113544) (District 1)

LPA Recommendation: Filiberto/Sullivan - Approved with a BDP limiting development to 197 units. The vote was unanimous.

BCC ACTION: Pritchett/Tobia - Approved with a BDP limiting development to 197 units. The vote was unanimous. The BDP will be scheduled as a Consent Item on a subsequent County Commission agenda, per Policy BCC-52. Resolution to be completed upon receipt of recorded BDP.

7. (22Z00035) **Lynda L. Lyles** (Nita Salmon) requests removal of an existing BDP (Binding Development Plan), in an AU (Agricultural Residential) zoning classification. The property is 20.25 acres, located on the northeast corner of Fleming Grant Rd. and Hitchin Post Lane. (9385 Fleming Grant Rd., Micco) (Tax Account 3010233) (District 3)

P&Z Recommendation: Moia/Alward - Approved the removal of an existing BDP, and adding a new BDP limiting development to a total of two lots. The vote was unanimous.

BCC ACTION: Tobia/Smith - Approved with a BDP limiting development to a total of two lots, with one single-family residence on each lot. The vote was unanimous. The BDP will be scheduled as a Consent Item on a subsequent County Commission agenda, per Policy BCC-52. Resolution to be completed upon receipt of recorded BDP.

8. *A Text Amendment to the Comprehensive Plan adding the Coastal High Hazard Area map to the Coastal Management Element X, and correcting scrivener's error in the Glossary Element XVI.*

PLANNING AND ZONING BOARD RECOMMENDATIONS

- Item H.1. Laura and Earl McCullough. Pritchett/Tobia. Approved the request of changing the zoning classification from SR, with an existing BSP, to RR-1, retaining the existing BSP. (22Z00026).
- Item H.2. 2354 Talmadge Drive, LLC. Pritchett/Smith. Approved the request of changing the zoning classification from AU to RU-1-11. (22Z00028).
- Item H.3. Carla Theadora Reece. Pritchett/Tobia. Approved the request of changing the zoning classification from RR-1 to AU. (22Z00032).
- Item H.4. Daren T. and Regina M. Dempsey. Pritchett/Tobia. Approved the request of changing the zoning classification from AU to RU-1-13, with a BDP limiting one house on each lot. (22Z00033).
- Item H.5. Robert Clay and EthylMay Kirk. Pritchett/Tobia. Adopted Ordinance No. 22-26, setting forth the fourteenth Small Scale Comprehensive Plan Amendment (22S.10), to change the Future Land Use designation from REC to RES 4. (22SS00007).
- Item H.6. Paul J. Marion, Kimberly Ann LaMattina, Kayla Marie Losat, and Jessica Lynn Ripper; and Robert Clay Kirk and Ethylmay Kirk. Pritchett/Tobia. Adopted Ordinance No. 22-27, setting forth the fifteenth Small Scale Comprehensive Plan Amendment (22S.11), to change the Future Land Use designation from RES 2 to RES 4. (22SS00008).
- Item H.7. Paul J. Marion, Kimberly Ann LaMattina, Kayla Marie Losat, and Jessica Lynn Ripper; and Robert Clay Kirk and Ethylmay Kirk. Pritchett/Tobia. Approved the request of changing the zoning classification from AU, SR, RU-1-11, and GML, with an existing Binding Development Plan on SR and RU-1-11 portions, to RU-1-7, removing the existing Binding Development Plan, and adding a new Binding Development Plan. (22Z00029).
- Item H.8. Lynda L. Lyles. Tobia/Smith. Approved the request of removing an existing Binding Development Plan; and approved adding a new Binding Development Plan, limiting development to two lots with one house on each lot in AU zoning classification. (22Z00035).
- Item H.10. Brian G. and Debra S. Lawson; and David and Alicia McCabe. Pritchett/Tobia. Approved the request of changing of zoning classification from GU to RR-1 with a Binding Development Plan, limiting the property that is not Homesteaded, which is Tax Account 2314737, that it would apply to the remaining acreage there, and limiting the development of that to three units. (22Z00005).

Alena & Denis Knoepfler
109 Franklyn Ave
Indialantic, FL 32903

District 5 Commission Office
7101 S. Highway 1
Titusville, FL 32780

October 12, 2022

Request Disapproval Rezoning from BU-1-A to RU-2-12 (22Z00046)
Daisy Mae of Brevard, Inc.

Good day Mrs. Zonka,
dear Ladies and Gentlemen,

My husband and I appreciate that we were informed proactively by your team with flyers to get heard.

We are residents/owners of 109 Franklyn Ave, Indialantic (the '109 Franklyn Ave Trust'), the second property west to the subject property, and we would like to oppose the rezoning.

There are plenty of fact-based testimonies and expert opinions, which will be summarised below:

- 1) The rezoning application is NOT consistent and compatible with the current intensity and density nearby.
- 2) The rezoning application is NOT consistent with the former zoning and current zoning nearby.
- 3) The traffic will be increased.
- 4) The parking and public safety situation will become worse.
- 5) The value of the nearby single-family homes as well as of the one-story duplexes will decrease.
- 6) The majority of the neighborhood also denies the request of rezoning up to 6 units on a .5 acre lot.
- 7) There is no hardship or need to upzone from a former RU-1-11 to a RU-2-12.
- 8) Other rezoning applications will most likely follow to change your Beachside District to a higher-density zone.

Ad 1 and 2) Density, intensity and zoning

The historic land use pattern is a mixture of Neighborhood Commercial (NC) land use along Highway A1A with single-family residences to the west and multi-family residences mainly east of Highway A1A. The A1A Highway separates the multiple-family residences and condos from the mainly single-family homes - all mainly one story homes - west of the A1A Highway.

In 1977 the property was rezoned from RU-1-11 to BU-1-A (Z-4366). Single-family homes were built, small businesses and restaurants were established. The lot has remained vacant over 45 years, zoned as BU-1-A.

a) All nearby properties are one-story houses only and have an overall moderate density.

- To the north is a restaurant at the A1A followed by the two duplex-homes (one story homes only).
- East of the vacant lot is a delicious ice cream restaurant.
- South is a small-business complex, all are one stories too.
- West of the subject property is a single-family home adjacent to the vacant lot.

There has been one zoning action approved within the last 3 years (21Z00033) from RU-1-11 to RU-2-12 with a BDP limiting uses for the property to not be used as a resort dwelling. The density is limited to two units, constructed as a duplex. Access was limited to one unit to Franklyn Avenue and one unit to Gross Pointe Avenue. **However, the development has not started or constructed yet, the parcel is for sale after the rezoning. Also, there is no actual development over the immediately preceding.**

b) Increasing the density up to (6) six Multifamily residential units as three (3) duplexes increases the level of noise dramatically and interferes with the peaceful enjoyment of the neighbors' premises, their and our quality of life.

c) Further the view from 107 Franklyn Ave - and all other nearby homes - would be disrupted.

d) On the one hand the Board of County Commissioners states in their staff states comments that the proposed property "would be considered consistent with the character of the area" and on the other hand they state that the property "could be considered as buffer between more intense commercial and single-family residential zoning to the west".

- For us, a "buffer" is not equal to a consistent character of the area, esp. not, when it would be the only RU-2-12 2 story building surrounded by mainly one-story family homes.

Again, there is no actual development over the immediately preceding or just one that was approved and has been started - 21Z00033 was rezoned and listed for a higher price: 117 Franklyn Ave, Indialantic, FL 32903.

- Further, the staff comments switch from a "Neighborhood Commercial and Community Commercial designation" to a more "intense commercial zone" wording, in order to argue for the rezoning approval, which needs a buffer.
- The restaurants, single-family homes as well as the two duplexes need for sure no "buffer", esp. not when it comes to getting a fresh air-breeze from the ocean and not noise from a 6-unit building or resort dwelling...

Ad 3 and 4) Traffic, parking and public safety issues

a) Imagine just for a moment, you would approve up to 6 units - with about 12 additional cars/SUVs.

Where would these new residents park their 12 vehicles? Challenging as a .5 acre lot with three duplexes on it. And what if these new residents of the 6 units would invite also family and friends visiting with their cars?

Please know, that the adjacent ice cream restaurant to the east is crowded with guests and their vehicles esp. on weekends. Not a fun for residents like us, who would like to enjoy a peaceful and quiet evening... besides a free driveway.

b) Furthermore, there is a public beach access right from Grosse Pointe which is used by many non-residents just to park their vehicles 500 feet from the ocean. The small business owners created a tow-away zone; additional traffic and cars would cause more conflicts not only with these business and restaurant owners.

c) Franklyn Avenue is the main route for school buses and youngsters to get to Indialantic Elementary School. All would be happy to get a safe sidewalk at Franklyn Ave or Grosse Pointe for public safety because of the increased number of cars and trucks - instead of a higher density.

d) We doubt that the closest concurrency management segment to the subject property is Highway A1A. Actually it is Franklyn Ave and Grosse Pointe which have to be evaluated in terms of the percentage of MAV utilization (according to 7.6 trips per unit x 6 units per day).

Ad 5 and 6) Devalue the nearby properties - unhappy neighborhood

a) Please know that increasing the density up to six units with triplex units and 2 stories increases the level of noise dramatically and interferes with the peaceful enjoyment of the neighbors' premises, their and our quality of life.

Families' (homes) and small businesses, who are your voters and the backbone of the Beachside District 5 - your district - will suffer.

b) Also, we consider the subject property as 'money making machine' for the owner but at the same time this "buffer house" would devalue the spacious single-family parcels of all nearby neighbors. It just ruins the restrictive housing character west of the A1A Highway.

c) The main issue is the devalue of the nearby single-family homes of over 5%. Would you like to own a single-family house that is close to a triplex with an average of $3 \times 6 = 18$ people? Or a resort dwelling?

Please review the aerial pictures attached as they show what we put into writing.

d) Could the Building & Zoning department please confirm that a much heavier construction like the proposed six (6) Multifamily residential units as three (3) duplexes - or a resort - would not cause any cracks and structural damages on surrounding single family houses and one story duplexes?

Ad 6 and 7) Comparable project and our full support for a duplex or triplex (RU-1-11)

Please allow us to use a probably exceptional example to demonstrate what is the overall issue with the rezoning request.

On 10/06/2022 you evaluated the rezoning classification from RR-1 to RU-2-4 (22Z00039) of the A1A Highway Oceanfront vacant parcel of my client Dieter Tytko from Germany. You certainly remember this public hearing.

The two condo complexes with 46 units north and 11 units west of this 1 acre lot were not amused to get another multi-family of 3-4 units in the middle. However, it is 1 acre, fits to the character; and 3-4 units are way less than the units of the other condo complexes.

When we compare this situation to the current subject property, the owner seeks for more than the neighbors are doing. **All other dwellings are just one-story houses, duplexes instead of triplexes, and no resort overdevelopments.**

Exactly this is what we request and demand for - not a "buffer", not more noise and not an overdevelopment that changes the character of this great neighborhood. Please protect the private property rights and do not allow more than neighbors are doing.

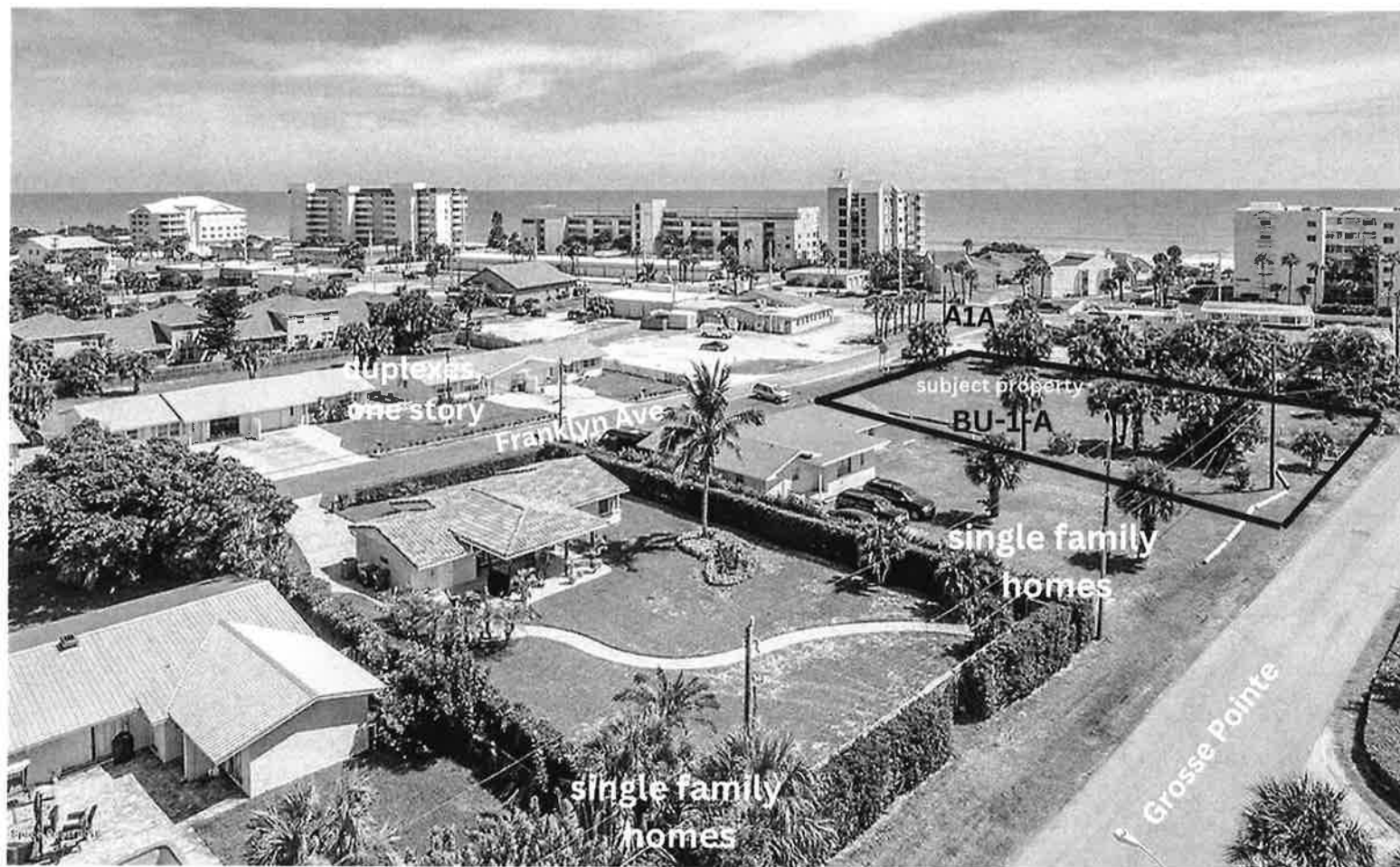
Over decades the property was not rezoned. So why now with an approach for a resort dwelling or two-story triplexes?

Others will follow: rezone, sell and leave - like the applicant for 21Z00033.

Please let us know if you have any questions or would like to discuss.

Respectfully,
Alena & Denis Christian Knoepfler

109 Franklyn Ave, Indian Shores FL, 32903
Cell 321-285 2323





1 Daisy Mae of Brevard - subject property: BU-1-A (Tax ID: 2731679) former RU-1-11

2 Wendy Kleefisch - current: 1 single family (RU-1-11)
 (owns a small business) at 107 Franklyn Ave 108 (Tax ID: 2731680)

3 Jagare Hunters LLC - current: 2 Duplexes (one story)
 106 Franklyn Ave and 108 Franklyn Ave (Tax IDs: 2733572, 2731675)

4 109 Franklyn Ave Trust - 1 single family (RU-1-11)
 owner: Alena & Denis Knoepfler (Tax ID: 2731681)

