



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.3

12/10/2019

Subject:

Acceptance, Re: Binding Development Plan with Joseph J. and Barbara J. Tulske (18PZ00159) (District 2)

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 authorize the Chair to sign, the Binding Development Plan.

Summary Explanation and Background:

On September 5, 2019, the Board approved an amendment to an existing BDP (Binding Development Plan) in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification. The BDP 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 approval of the rezoning request by the Board. Following staff and legal review, a BDP is presented to the Board in recordable form as a Consent Agenda Item in order to finalize the zoning action.

The limitations in the BDP include, but are not limited to, the following:

- The uses on the property shall be limited to recreational vehicle display/sales with detailing and minor repairs
- The only access to the site shall be from the existing access on North Tropical Trail and the existing access on Tangerine Avenue
- An opaque access gate on North Tropical Trail
- The property shall be completely buffered by a combination of plantings, fence, and the opaque gate on North Tropical Trail;
- Parking of vehicles or equipment from any use on the site will not be allowed outside the property
- No other BU-2 uses shall be permitted. Any other uses of the subject property shall be limited to those within the Brevard County Land Development Code under the BU-1 commercial zoning classification listed as "permitted uses".

Clerk to the Board Instructions:

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

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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

December 11, 2019

MEMORANDUM

TO: Jennifer Jones, Zoning

RE: Item F.3., Binding Development Plan Agreement – Joseph J. and Barbara J. Tulsie

The Board of County Commissioners, in regular session on December 10, 2019, executed Binding Development Plan with Joseph J. and Barbara J. Tulsie. Said Plan was recorded in OR/BK 8613/815. Enclosed for your necessary action are two certified copies of the recorded document.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/dt

Encls. (2)

cc: Contracts Administration

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this _____ day of _____, 20__ between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred as "County") and Joseph J. and Barbara J. Tulskie (hereinafter referred to as "Developer/Owner").

RECITALS

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

WHEREAS, Developer/Owner has requested a BU-2 zoning classification with a Binding Development Plan amendment and desires to develop the Property as a Motor Home and Travel Trailers Sales (Travel Trailers shall include all types of RV Vehicles and equipment) 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 future 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 BU-2 uses on the property shall be limited to RV Display/Sales with Detailing and Minor Repairs.

3. The only access to the site will be from the existing access on North Tropical Trail and the existing access on Tangerine Avenue which will be updated to current Brevard County Standards.

4. There shall be an opaque access gate on North Tropical Trail.

5. The property will be completely buffered by a combination of plantings, fence and the opaque gate on North Tropical Trail.

6. No parking of vehicles or equipment from any use on the site will be allowed outside the property.

7. The Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developers/Owners agreement to meet additional standards or restrictions in future development of 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.

8. The Developer/Owner, upon execution of this Agreement, shall pay to the County the cost

of recording this Agreement in Brevard County, Florida.

9. 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 9/5/19. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

10. 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.

11. No other BU-2 uses shall be permitted. Any other uses of the subject property shall be limited to those within the Brevard County Land Development code under the BU-1 commercial zoning category listed as "permitted uses".

12. Conditions precedent. All mandatory conditions set forth in the 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 10 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:

[Signature]

Scott Ellis, Clerk
(SEAL)

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

[Signature]

Bryan Lober, Chair
As approved by the Board on 12/10/19

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

WITNESSES:

[Signature]
Mitch Hular

[Signature]
Stacy Hancock
(Witness Name typed or printed)
Stacy L Hancock

OWNER

[Signature]
Joseph J. Tulske, Jr.

300 Point Dr. Cocoa Beach
(Address)

WITNESSES:

[Signature]
Mitch Hular

[Signature]
Stacy Hancock
(Witness Name typed or printed)
Stacy L Hancock

OWNER

[Signature]
Barbara J. Tulske

300 Point Dr. Cocoa Beach FL
(Address) 32931

STATE OF Florida §

COUNTY OF Brevard §

The foregoing instrument was acknowledged before me this 27th day of September
20 19, by Barbara Joe Tulske President of _____, who is personally
known to me or who has produced _____ as identification.

My commission expires
SEAL
Commission No.:

[Signature]
Notary Public
Stacy L Hancock
(Name typed, printed or stamped)



KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being the authorized agent and signatory for the owner and holder of that certain Mortgage dated 7/11/2018, given by _____ as mortgagor, in favor of the undersigned, Fidelity Bank of Florida, as mortgagee, recorded in Official Records Book 8210, page 319, Public Records of Brevard County, Florida, and encumbering lands described in said Mortgage, does hereby join in the foregoing Binding Development Plan for the purpose of consenting to the change of property use and development requirements as set forth therein.

WITNESSES:

Brandy Dorsagno

Brandy Dorsagno
(Witness name typed or printed)

Sheri Chamberlain

Sheri Chamberlain
(Witness name typed or printed)

MORTGAGEE NAME/ADDRESS

Fidelity Bank of Florida, N.A.

1380 N. COURTNEY PK
MERRITT ISLAND FLA 32953

(Address)

[Signature]
Authorized Agent Signature

STEWART A. GERSHOFF, SUP/CCO
(Name/title typed, printed or stamped)

STATE OF FLORIDA §

COUNTY OF BREVARD §

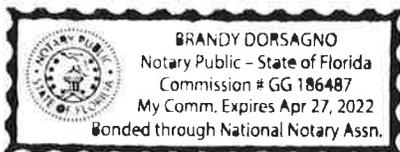
The foregoing instrument was acknowledged before me this 24th day of JUNE, 2019, by _____, who is personally known to me or who has produced personally known as identification.

My commission expires

SEAL

Commission No.:

Brandy Dorsagno
Notary Public
Brandy Dorsagno
(Name typed, printed or stamped)



LEGAL DESCRIPTION OF PROPERTY

Lots 1, 2, 3, 4 and 5 and the East 112 feet of the North 49 feet of Lot 34, Block D, MERRITT WINTER HOMES DEVELOPMENT SUBDIVISION, Map No. 2, according to the plat thereof as recorded in Plat Book 2, page 78, public records of Brevard County, Florida.

Resolution 18PZ00159

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

WHEREAS, Barbara J. and Joseph J. Tulske, Jr. have requested an amendment to an existing BDP (Binding Development Plan), in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification, on property described as Lot 1, Block D, Merritt Winter Homes Development Subdivision, as recorded in Official Records Book 8210, Pages 319 – 320, of the Public Records of Brevard County, Florida; and Lot 3, Block D, Merritt Winter Homes Development Subdivision, as recorded in Official Records Book 8203, Pages 2720 – 2721, of the Public Records of Brevard County, Florida. **Section 35, Township 24, Range 36.** (1.55 acres) Located on the southeast corner of Tangerine Avenue and North Tropical Trail. (Lot 1 = 140 North Tropical Trail, Merritt Island; Lot 3 = No assigned address); 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 the following limitations: 1.) The uses on the property shall be limited to recreational vehicle display/sales with detailing and minor repairs; 2.) A retail and office building of a maximum of 2,600 square feet; 3.) The only access to the site will be from the existing access on North Tropical Trail and the existing access on Tangerine Avenue; 4.) An opaque access gate on North Tropical Trail; 5.) The property shall be completely buffered by a combination of plantings, fence, and the opaque gate on North Tropical Trail; 6.) Parking of vehicles or equipment from any use on the site will not be allowed outside the property; 7.) No other BU-2 uses shall be permitted; 8.) Any other uses of the property shall be limited to those within the BU-1 (General Retail Commercial) zoning classification listed as Permitted Uses; 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 as recommended; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested amendment to an existing BDP, in a BU-2 zoning classification, be approved with a BDP recorded on December 13, 2019, in Official Records Book 8613, Pages 815 – 820 the following limitations: 1.) The uses on the property shall be limited to recreational vehicle display/sales with detailing and minor repairs; 2.) A retail and office building of a maximum of 2,600 square feet; 3.) The only access to the site will be from the existing access on North Tropical Trail and the existing access on Tangerine Avenue; 4.) An opaque access gate on North Tropical Trail; 5.) The property shall be completely buffered by a combination of plantings, fence, and the opaque gate on North Tropical Trail; 6.) Parking of vehicles or equipment from any use on the site will not be allowed outside the property; 7.) No other BU-2 uses shall be permitted; 8.) Any other uses of the property shall be limited to those within the BU-1 (General Retail Commercial) zoning classification listed as Permitted Uses. 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 December 13, 2019.

BOARD OF COUNTY COMMISSIONERS

Brevard County, Florida

Bryan Andrew Lober

Bryan Lober, Chair

Brevard County Commission

As approved by the Board on December 10, 2019.

ATTEST:

Scott Ellis

SCOTT ELLIS, CLERK

(SEAL)

Planning and Zoning Board Hearing – August 5, 2019

Board of County Commissioners Zoning Hearing – September 5, 2019

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 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.**