

Meeting Date
May 17, 2016



AGENDA	
Section	CONSENT
Item No.	II.A.6

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Binding Development Plan, Re: Ralph & Cynthia Perrone (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 March 3, 2016, the Board of County Commissioners approved a Small Scale Plan Amendment from NC to CC, and a change from BU-1-A to BU-1 and removal of a BSP, on property located on the northeast corner of N. Courtenay Pkwy., and Skyline Blvd. (140 Skyline Blvd., Merritt Island), subject to a Binding Development Plan as follows:

- Developer/Owner shall provide a minimum 8-ft. masonry wall, as allowed by County Code, Section 62-2109, along the eastern boundary of the Property, along with a 20-ft. Type A vegetative buffer on that boundary. Developer/Owner shall be required to maintain both sides of the masonry wall in good and sanitary condition. The 20-ft. in width vegetative buffer on the eastern boundary of the property shall include an additional 3 trees of at least 8-ft. height at installation and a 20% increase in shrubbery at time of planting. A Type A vegetative buffer 6-ft. in height and 20-ft. in width shall also be installed along the eastern 30-ft. of the north property boundary to enhance the buffering for the residences to the north of the property. Tree and shrub species shall be evergreen and selected in consultation with the Natural Resources Department to offset any potential noise, lighting, and visual incompatibilities.
- Developer/Owner agrees to landscape and maintain the median buffer on Skyline Blvd. to the south with landscaping approved by Brevard County.
- Developer/Owner will work with the County and FDOT to minimize traffic impacts to the residents and property owners along Skyline Blvd.
- Use of the Property is limited to a restaurant with a drive-through lane or other use allowed in BU-1-A. As long as Property maintains a restaurant use, the Developer/Owner agrees to limit the height of the building to one story.
- Developer/Owner agrees the setback of the building from the eastern boundary will be a minimum 74.6-ft. as depicted on the conceptual site plan, so long as the County or FDOT does not require road improvement along N. Courtenay Pkwy that would require the entire site plan to be shifted to the east.
- Developer/Owner shall move the dumpster from location on Exhibit B to the western portion of the property.

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"/>
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County Manager		Department Director / Extension Robin M. DiFabio, AICP, Director Planning & Development Dept. Ext. 56363
Stockton Whitten		



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

May 18, 2016

MEMORANDUM

TO: Robin DiFabio, Planning and Development Director

RE: Item II.A.6., Binding Development Plan for Ralph and Cynthia Perrone

The Board of County Commissioners, in regular session on May 17, 2016, tabled consideration of the binding development plan for Ralph and Cynthia Perrone, to the May 26, 2016, Board meeting.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

This Instrument Prepared By
And To Be Returned To:
Kim Rezanka, Esquire
DEAN MEAD
7380 Murrell Road, Suite 200
Melbourne, Florida 32940
(321) 259-8900

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this ____ day of _____, 2016, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County"), Mark Homer (hereinafter referred to as "Developer") and Ralph and Cynthia Perrone ("Owners").

RECITALS

WHEREAS, Owners own 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 desires to develop the property as Sonic Restaurant and has requested the BU-1 zoning classification, and pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer and Owners wish 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/Owners, their 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 shall provide a minimum eight foot (8') masonry wall, as allowed by Brevard County Code, Section 62-2109, along the eastern boundary of the Property, along with a twenty foot (20') Type A vegetative buffer on that boundary. The Developer/Owners shall be required to maintain both sides of the masonry wall in good and sanitary condition. The twenty foot (20') in width vegetative buffer on the eastern boundary of the property shall include an additional three (3) trees of at least eight feet (8') height at installation and a 20% increase in shrubbery at time of planting. A Type "A" vegetative buffer six feet (6') in height and twenty feet (20') in width shall also be installed along the eastern thirty feet (30') of the north property boundary to enhance the buffering for the residences to the north of the property. Tree and shrub species shall be evergreen and selected in consultation with Brevard County Natural Resources Department to offset any potential noise, lighting and visual incompatibilities.

3. The Developer agrees to landscape and maintain the median buffer on Skyline Boulevard to the south of the Property with landscaping approved by Brevard County.

4. The Developer and Owners will work with the County and Florida Department of Transportation ("FDOT") to minimize traffic impacts to the residents and property owners along Skyline Boulevard.

5. The Developer and Owners agree to limit the use of the Property to a restaurant use with a drive through lane or other use allowed in BU-1-A. So long as the Property maintains a restaurant use, the Developer and Owners agree to limit the height of the building to one story.

6. The Developer and Owners agree that the setback of the building from the eastern boundary will be a minimum of 74.6 feet as depicted on the conceptual site plan, attached hereto as **Exhibit "B"**, so long as Brevard County or FDOT does not require road improvement along N. Courtenay Parkway that would require the entire plan to be shifted to the east. The Developer shall move the dumpster from its location on Exhibit "B" to the western portion of the Property.

7. The Developer and Owners 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.

8. The Developer and Owners, 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 March 3, 2016. 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. 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 10 above.

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11

IN WITNESS THEREOF, the parties hereto have caused these presents to the 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, Florida 32940

James Barfield
James Barfield, Chairperson

As approved by the Board on May 17, 2016

STATE OF FLORIDA)
COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me this 17 day of May, 2016, by James Barfield, Chairperson of the Board of County Commissioners of Brevard County, Florida, who is personally known to me or who has produced _____ as identification.

Notary Public

Deborah W. Thomas

My Commission Expires:

June 10, 2016

(Name typed, printed or stamped)

SEAL

Commission No.: EE206892

WITNESSES:

Mark Homer, DEVELOPER
504 W. 12th Street
Austin, Texas 78701

D. Seremetis

Mark Homer

Laurie Seremetis

(Witness Name typed or printed)

Christina Pagano

Christina Pagano

(Witness Name typed or printed)

STATE OF Texas)
COUNTY OF Travis)

TABLET
but full

11.A.6
1/1

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

ATTEST:

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

Scott Ellis, Clerk
(SEAL)

James Barfield, Chairperson
As approved by the Board on May 17, 2016

STATE OF FLORIDA)
COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me this 17 day of May, 2016, by James Barfield, Chairperson of the Board of County Commissioners of Brevard County, Florida, who is personally known to me or who has produced _____ as identification.

My Commission Expires:
June 10, 2016

Notary Public
Deborah W. Thomas

(Name typed, printed or stamped)

SEAL
Commission No.: EE206892

WITNESSES:

Mark Homer, DEVELOPER
504 W. 12th Street
Austin, Texas 78701

L. Seremetis

Mark Homer

Launie Seremetis
(Witness Name typed or printed)

Christina Pagano

Christina Pagano
(Witness Name typed or printed)

STATE OF Texas)
COUNTY OF Travis)

The foregoing instrument was acknowledged before me this 19th day of April, 2016, by MARK HOMER, who is personally known to me or who has produced TX DL Exp 08/28/17 as identification.

[Signature]
Notary Public

My Commission Expires:
06/19/2019

Kasey Ann Cardenas
(Name typed, printed or stamped)

SEAL
Commission No.: 13026763-7



WITNESSES:

RALPH S. PERRONE, SR. OWNER
585 N. Courtney Parkway
Merritt Island, Florida 32952

(Witness Name typed or printed)

(Witness Name typed or printed)

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by RALPH PERRONE, who is personally known to me or who has produced _____ as identification.

Notary Public

My Commission Expires:

(Name typed, printed or stamped)

SEAL
Commission No.: _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by MARK HOMER, who is personally known to me or who has produced _____ as identification.

Notary Public

My Commission Expires:

(Name typed, printed or stamped)

SEAL

Commission No.: _____

WITNESSES:

RALPH S. PERRONE, SR. OWNER
585 N. Courtney Parkway
Merritt Island, Florida 32952

[Signature]

SCOTT MURRAY
(Witness Name typed or printed)

[Signature]

[Signature]

JEFF DENCAIS
(Witness Name typed or printed)

STATE OF Florida)
COUNTY OF Brevard)

The foregoing instrument was acknowledged before me this 14th day of April, 2016, by RALPH PERRONE, who is personally known to me or who has produced personally known as identification.

[Signature]

Notary Public

My Commission Expires:
4-14-16

Lory Milton

(Name typed, printed or stamped)

SEAL

Commission No.: _____



WITNESSES:

CYNTHIA L. PERRONE, OWNER
585 N. Courtney Parkway
Merritt Island, Florida 32952

[Signature]
Scott Murray
(Witness Name typed or printed)

[Signature]
Cynthia L. Perrone

[Signature]
JEFF DUNCAN
(Witness Name typed or printed)

STATE OF Florida)
COUNTY OF Brevard)

The foregoing instrument was acknowledged before me this 14th day of April, 2016, by CYNTHIA PERRONE, who is personally known to me or who has produced personally known as identification.

[Signature]
Notary Public

My Commission Expires:
4-29-16

(Name typed, printed or stamped)

SEAL
Commission No.: _____





CFN:2005189850

OR Book/Page: 5474 / 5306

FROM THE SE CORNER OF THE NE 1/4 OF THE SW 1/4 OF SECTION 14, TOWNSHIP 24 S., RANGE 36 E., BREVARD COUNTY, FLORIDA; RUN W. A DISTANCE OF 1184.44 FEET TO THE EASTERLY R/W LINE OF S.R. A1A (NOW KNOWN AS NORTH COURTENAY PARKWAY); THENCE N. 9°01' W. ALONG SAID EASTERLY R/W LINE OF S.R. A1A A DISTANCE OF 167.06 FEET TO THE NORTH R/W LINE OF THE PROPOSED 60 FOOT R/W FOR SKYLINE DRIVE AND THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUE N. 9°01' W. ALONG SAID R/W LINE A DISTANCE OF 200.00 FEET; THENCE EAST PARALLEL WITH THE S. LINE OF THE NE 1/4 OF THE SW 1/4 A DISTANCE OF 252.71 FEET TO THE WEST LINE OF A PROPOSED 15 FOOT PLANTING EASEMENT; THENCE S. 0°07' WEST PARALLEL WITH THE EAST LINE OF THE NE 1/4 OF THE SW 1/4 A DISTANCE OF 197.43 FEET TO THE NORTH R/O LINE OF SKYLINE DRIVE; THENCE WEST A DISTANCE OF 220.96 FEET TO THE POINT OF BEGINNING.

EXHIBIT "A"

PRELIMINARY SITE SKETCH
 SONIC DRIVE-IN
 SKYLINE BLVD & COURTENAY PKWY
 MERRITT ISLAND, FL
 DRIVE-IN STALLS: 20
 EMPLOYEE PARKS: 11
 PATIO PARKS: NA
 12-22-15
 PROJECT: FLIME - SKYLINE
 LAYOUT: 06
 DESIGNER: VH
 OWNER: MARK HOMER
 SCALE: 1" = 30'
 AREA = 99 FT

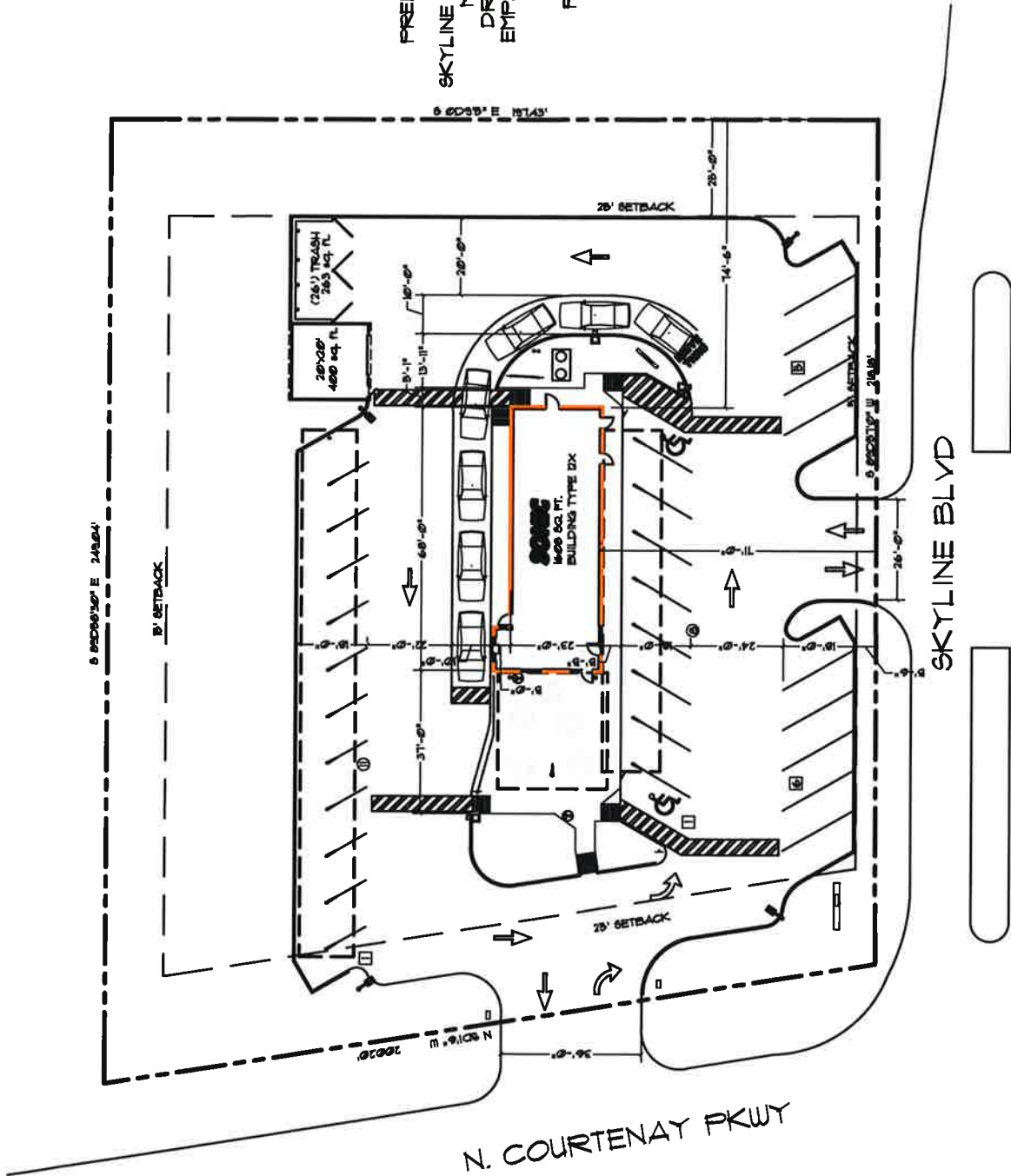


EXHIBIT "B"

JOINDER IN BINDING DEVELOPMENT PLAN

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, May 20, 2005, and recorded in O.R. Book 5474, Page 5307, as modified by Mortgage Modification Agreement recorded in O.R. Book 5771, Page 8354 and assigned to Janus Capital Corporation by Assignment recorded in O.R. Book 6298, Page 2049 and further modified by Mortgage and Note Modification Agreement recorded in O.R. Book 7350, Page 2198, 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.

Janus Capital Corporation
4224 Bay-to-Bay Boulevard
Tampa, FL 33629-6008

WITNESSES:

By: P. Douglas Freedle
Its: PRESIDENT
P. Douglas Freedle
(Print Name)

[Signature]
Denise M Bero
(Print Name)

[Signature]

Darlene M Lindsey
(Print Name)

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 14th day of APRIL, 2016, by P. DOUGLAS FREEDLE who (check one) is personally known to me, produced a driver's license (issued by a state of the United States within the last five (5) years) as identification, or produced other identification, to wit: _____

Bonnie E. Lovell
Print Name: BONNIE E. LOVELL
Notary Public, State of Florida



IV. PUBLIC HEARINGS

B. PLANNING & ZONING BOARD and LPA AGENDA MONDAY, January 4, 2016 – 3:00 P.M. & BOARD OF COUNTY COMMISSIONERS THURSDAY, February 4, 2016 – 5:00 P.M.

Both at the
BREVARD COUNTY GOVERNMENT CENTER
2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida

The Board of County Commissioners may approve or deny the requested classification, or may approve a classification of lesser intensity than that requested.

DISTRICT 1

IV.B.2. (15PZ00069) – JOSEPH W. & EDELMIRA HADDOW – requests a change of classification from RU-2-10(6.6) to AU on 5 acres, located on the east side of Adamson Rd., approx. 0.68 mile north of S.R. 524 (1085 Adamson Rd., Cocoa)

P&Z Recommendation: Cannon/ Lawandales – Approved. Vote was unanimous.

BCC ACTION: Fisher/Anderson – APPROVED as recommended. Vote was unanimous. Commissioner Infantini absent. 15PZ00069.

DISTRICT 2

IV.B.3. (15PZ00071) – 123 HARDING, LLC – requests a change of classification from BU-1 and RU-2-10 to all RU-2-10 on 0.21 acres, located on the south side of Harding Ave., approx. 175 ft. east of N. Atlantic Avenue. (123 Harding Ave., Cocoa Beach)

P&Z Recommendation: Lawandales/LaMarr – Approved. Vote was unanimous.

BCC ACTION: Fisher/Anderson – APPROVED as recommended. Vote was unanimous. Commissioner Infantini absent. 15PZ00071.

IV.B.4. (15PZ00076) – BONAVENTURE ENTERPRSE, LLC – (Charles Schenck) – requests a change of classification from RA-2-10(5) to AU and removal of a BSP on 40.63 acres, located on the west side of Crescent Dr., approx. 0.19 mile west of Clearlake Rd., (Tax Parcels 8, 9, & 9.4 = No assigned address. Lot 50 = 853 Evening Side Dr., Cocoa)

P&Z Recommendation: Aydelotte/Barber – Approved. Vote was unanimous.

BCC ACTION: Anderson/Smith – APPROVED as recommended. Vote was unanimous. Commissioner Infantini absent. 15PZ00076.

IV.B.5. (15PZ00078) – RALPH & CYNTHIA PERRONE – (Mark Homer) – requests a Small Scale Plan Amendment (15S.08) from NC to CC, and a change of classification from BU-1-A to BU-1, and removal of a BSP, on 1.07 acres, located on the northeast corner of N. Courtenay Pkwy., and Skyline Blvd. (140 Skyline Blvd., Merritt Island)

LPA Recommendation: Lawandales/Barber – Approved. Vote was 9:1, with Thodey voting nay.

P&Z Recommendation: Barber/Lawandales – Approved with a BDP (Binding Development Plan) limited to the following: Providing a minimum eight foot (8') masonry wall along the eastern boundary of the property, and a Type A buffer along the easterly 30 feet of the north property line, along with a twenty foot (20') wide vegetative buffer along the east boundary with an additional three trees at least 8 feet high or greater and a 20% increase in shrubbery at the time of installation; median buffer on Skyline Blvd. shall be landscaped and maintained by the Developer/Owners; Developer/Owners will coordinate with the County and FDOT to minimize traffic impacts to the residents and property owners along Skyline Blvd; use of the property shall be limited to a

restaurant use with a drive through lane or other use allowed in BU-1-A, and the height of the building shall be limited to one story provided the use is limited to a restaurant; the setback of the building from the eastern boundary will be at least 74.6 feet as depicted on the conceptual site plan, provided that road improvements to North Courtenay Parkway are not required by FDOT that would result in the site improvements being shifted to the east; and that the trash receptacle is to be moved to the western portion of the property.

BCC ACTION: Anderson/Fisher – TABLED to the March 3, 2016, BCC meeting. Vote was unanimous. Commissioner Infantini absent.

IV.B.6. (15PZ00079) – SOUTHGATE INVESTMENTS, INC. – (Jake Wise) – requests a Small Scale Plan Amendment (15S.09) from NC and Residential 15 to CC, and a change of classification from RU-2-15 and RU-1-11 to BU-1, on 9.90 acres +/-, located on the southeast corner of Pioneer Rd., and N. Courtenay Pkwy. (No assigned address. In the Merritt Island area.)

LPA Recommendation: Lawandales/Barber – Approved. Vote was unanimous.

P&Z Recommendation: Moia/Lawandales – Approved. Vote was unanimous.

BCC ACTION: Fisher/Anderson – TABLED to the March 3, 2016, BCC meeting. Vote was unanimous. Commissioner Infantini absent.

DISTRICT 4

IV.B.7. (15PZ00074) – THE VIERA COMPANY – (Jake Wise) – requests a CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in Conjunction with a Restaurant in a PUD zoning classification, on 1.10 acres +/-, located on the west side of Stadium Pkwy., approx. 0.098 mile north of Viera Blvd. (No assigned address. In the Viera area.)

P&Z Recommendation: Barber/LaMarr – Approved. Vote was unanimous.

BCC ACTION: Fisher/Smith – APPROVED as recommended. Vote was unanimous. Commissioner Infantini absent. 15PZ00074.

IV.B.8. (15PZ00075) – MURRELL PROPERTIES OF BREVARD, LLC – requests a change of classification from RR-1 to BU-1-A on 1 acre, located on the east side of Murrell Road, approx. 0.32 mile south of Roy Wall Boulevard (3545 Murrell Rd., Rockledge)

P&Z Recommendation: LaMarr/Lawandales – Approved. Vote was unanimous.

BCC ACTION: Anderson/Smith – APPROVED as recommended. Vote was unanimous. Commissioner Infantini absent. 15PZ00075.

IV.B.9. (15PZ00077) – INDIAN RIVER COLONY CLUB, INC. – (John Robinson) – requests a change of classification from IN(L) to PUD on 3.19 +/- acres, located on the south side of Continental Ave., approx. 361 ft. east of Murrell Rd. (6845 Murrell Rd., Melbourne)

P&Z Recommendation: Thodey/Moia – Approved. Vote was unanimous.

BCC ACTION: Smith/Anderson – APPROVED as recommended. Vote was unanimous. 15PZ00077.

TABLED ITEMS

- Item IV.A.1. Item was Withdrawn by the Applicant
- Item IV.A.2. Imperial South, Inc. Infantini/Smith, denied. Commissioner Anderson voted nay.
- Item IV.A.3. Ralph and Cynthia Perrone. Infantini/Anderson, approved as recommended, with a Binding Development Plan. Commissioner Barfield voted nay. The Board adopted Ordinance No. 16-01, Small Scale Plan Amendment 15S.08. Infantini/Anderson. Commissioner Barfield voted nay.
- Item IV.A.4. Southgate Investments, Inc. Barfield/Infantini, approved as recommended, with a Binding Development Plan. The Board adopted Ordinance No. 16-02, Small Scale Plan Amendment 15S.09. Barfield/Infantini.

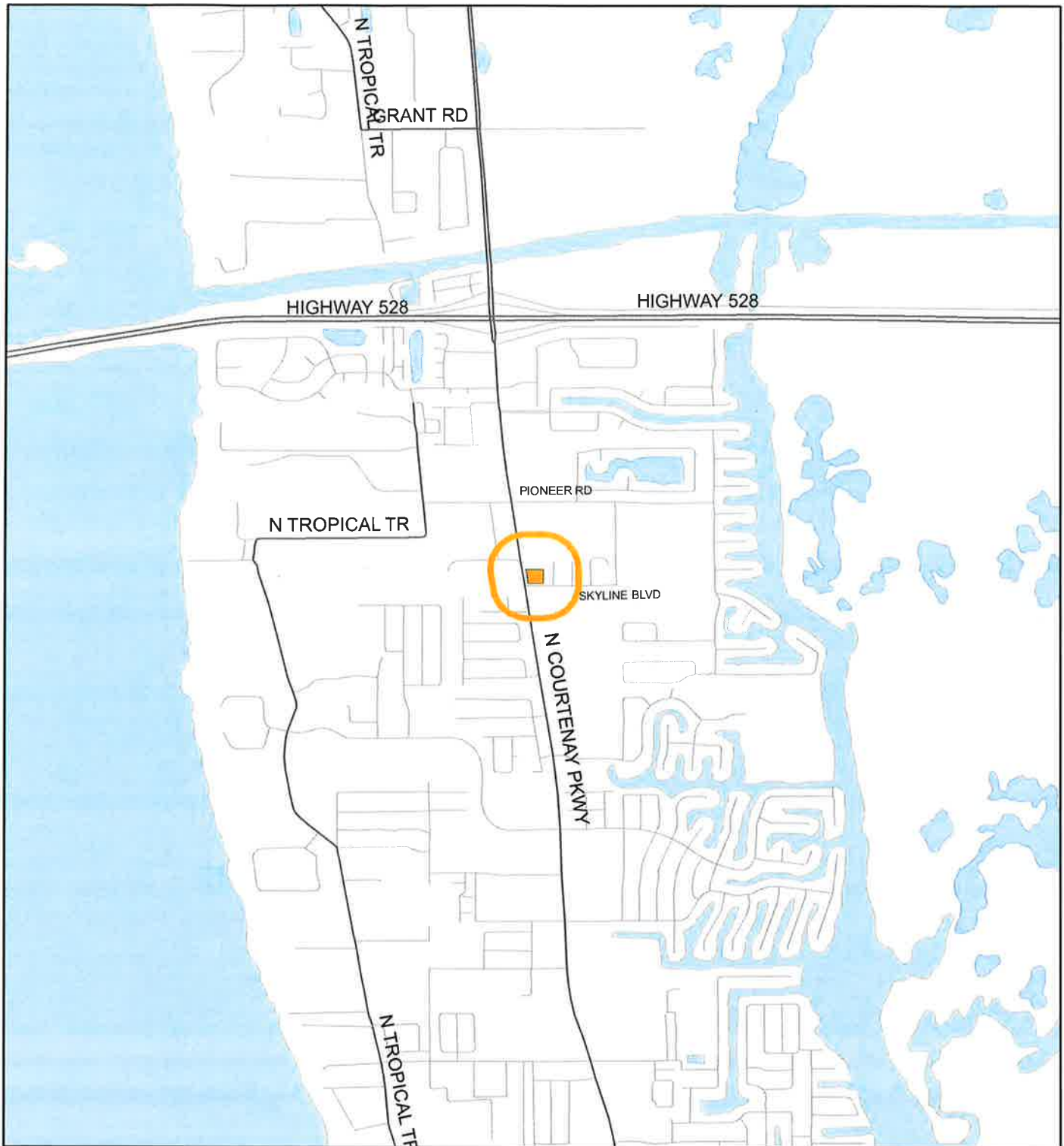
PLANNING AND ZONING BOARD RECOMMENDATIONS OF JANUARY 4, 2016

- Item IV.B.1. Richard A. and Joyce V. Marschall. Anderson/Fisher, approved the rezoning, and the requirement to remove the Binding Site Plan (BSP) was withdrawn by staff.

LOCATION MAP



PERRONE, RALPH S SR

15PZ00078 and Small Scale Amendment 15S.08



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.

Produced by the Brevard County Planning and Zoning Office - GIS Section Date: 11/17/2015

