



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

F.2.

5/3/2022

### Subject:

Acceptance, Re: Binding Development Plan with Norfolk Parkway, LLC (District 5)

### Fiscal Impact:

None

### Dept/Office:

Planning & 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 April 7, 2022, the Board approved a change of zoning classification from GU (General Use) with a CUP (Conditional Use Permit) for Tower & Antenna, to BU-2 (Retail, Warehousing, and Wholesale Commercial) and removal of the CUP for Tower & Antenna, with a BDP. The conditions of the BDP include, but are not limited to, the following:

- Developer/Owner shall provide a 50-foot undisturbed vegetative buffer and maintain the existing vegetative buffer along the west and north boundaries of the Property. No improvements shall be allowed within the buffer.
- Developer/Owner shall limit the number of outdoor storage spaces to 350.
- Developer/Owner shall limit ingress and egress to Norfolk Parkway.
- The site shall be developed as a Boat and RV storage facility and related ancillary services and facilities.
- No sewage dump station shall be allowed, unless public sewer connection is obtained.
- Outdoor lighting is limited to 17 feet in height from grade to bottom of light fixture.
- Developer/Owner shall provide a traffic study detailing any required roadway improvements including, but not limited to a westbound right turn lane, at the time of site plan submittal. If an improvement is

warranted, and is approved by the City of West Melbourne, it shall be constructed accordingly.

- No residing or overnight stays within the stored vehicles shall be allowed.
- Developer/Owner shall comply with all applicable requirements of the FDEP Guidance for Disturbance and Use of Old Closed Landfills or Waste Disposal Areas in Florida.

The attached agreement includes these provisions.

### **Clerk to the Board Instructions:**

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

**Resolution 22Z00006**

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

**WHEREAS, Norfolk Parkway, LLC** has requested a change of zoning classification from GU (General Use) with CUP (Conditional Use Permit) for Tower & Antenna to BU-2 (Retail, Warehousing, and Wholesale Commercial) and removal of CUP for Tower & Antenna, on property described as follows: SEE ATTACHED; and

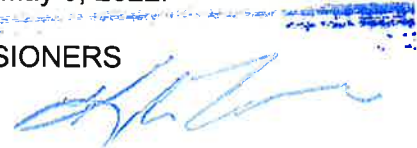
**WHEREAS,** a public hearing of the Brevard County Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning and Zoning Board recommended that the application be approved with a BDP including a 50-foot vegetative buffer, limiting the number of outdoor storage spaces, limiting ingress and egress to Norfolk Parkway, limiting use to a boat and RV storage facility, prohibiting an RV dump station unless sewer connection is obtained, limiting outdoor lighting, providing a traffic study, prohibiting overnight stays within the stored vehicles, and compliance with the FDEP Guidance for Disturbance and Use of Old Closed Landfills or Waste Disposal Areas in Florida; 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 including a 50-foot vegetative buffer, limiting the number of outdoor storage spaces, limiting ingress and egress to Norfolk Parkway, limiting use to a boat and RV storage facility, prohibiting an RV dump station unless sewer connection is obtained, limiting outdoor lighting, providing a traffic study, prohibiting overnight stays within the stored vehicles, and compliance with the FDEP Guidance for Disturbance and Use of Old Closed Landfills or Waste Disposal Areas in Florida; now therefore,

**BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from GU with a CUP for Tower & Antenna to BU-2 and removal of CUP for Tower & Antenna, be approved with a BDP, recorded on 05/05/22, in ORB 9496, Pages 418 - 422, including a 50-foot vegetative buffer, limiting the number of outdoor storage spaces, limiting ingress and egress to Norfolk Parkway, limiting use to a boat and RV storage facility, prohibiting an RV dump station unless sewer connection is obtained, limiting outdoor lighting, providing a traffic study, prohibiting overnight stays within the stored vehicles, and compliance with the FDEP Guidance for Disturbance and Use of Old Closed Landfills or Waste Disposal Areas in Florida. 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 May 5, 2022.

BOARD OF COUNTY COMMISSIONERS  
Brevard County, Florida



Kristine Zonka, Chair  
Brevard County Commission  
As approved by the Board on May 3, 2022.

ATTEST:



RACHEL SADOFF, CLERK

(SEAL)

Planning and Zoning Board Hearing – March 14, 2022  
Board of County Commissioners Hearing - April 7, 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.**

**22Z00006 (continued)**

**Legal Description**

A portion of the lands described in ORB 3277, Page 924, of the Public Records of Brevard County, Florida, said lands lying in **Section 13, Township 28S, Range 36E**, and being more particularly described as follows: Beginning at the SW corner of Tract ST-1, Sawgrass Lakes Phase One, according to the plat thereof, as recorded in Plat Book 60, Pages 52 – 63 of the said public records, said point being the Point of Beginning; thence S89deg32'31"W, along the north right-of-way line of Norfolk Parkway, per said Sawgrass Lakes Phase One, a distance of 662.33 ft. to the easterly line of said Sawgrass Lakes Phase One; thence N01deg30'06"E, along said east line, a distance of 1,151.77 ft.; thence leaving said line, N89deg32'54"E, a distance of 662.19 ft. to the east line of Parcel 1 of said ORB 3277, Page 924; thence S01deg29'41"W, along the east line of said Parcel 1 and the east line of Parcel 2 of ORB 3277, Page 924, a distance of 1,151.69 ft. to the Point of Beginning. (17.5 acres) Located on the north side of Norfolk Pkwy., approx. 1,200 ft. west of Minton Road. (Parcel 756 = 3545 Carriage Gate Dr. Unit Tower, Melbourne; Parcel 758 (part) = No assigned address. In the Melbourne 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

May 4, 2022

**M E M O R A N D U M**

**TO:** Jennifer Jones, Zoning

**RE:** Item F.2., Binding Development Plan Agreement with Norfolk Parkway, LLC

The Board of County Commissioners, in regular session on May 3, 2022, executed Binding Development Plan with Norfolk Parkway, LLC, for property located at a portion of the lands described in ORB 3277 page 924, of the Public Records of Brevard County, Florida, said lands lying in Section 13, Township 28S, and Range 36E. Enclosed for your necessary action are two certified copies of the recorded document.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

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

/dt

Encls. (2)

Prepared by: MBV Engineering, Inc.  
Address: 1250 W. Eau Gallie Blvd., Melbourne, FL 32935

**BINDING DEVELOPMENT PLAN**

THIS AGREEMENT, entered into this 3rd day of May, 2022 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Norfolk Parkway, LLC (hereinafter referred to as "Developer/Owner").

**RECITALS**

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

WHEREAS, Developer/Owner has requested the BU-2 zoning classification(s) and desires to develop the Property as a boat and RV storage facility and pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impacts 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. Recitals. The above recitals are true and correct and are incorporated into this Agreement by their reference.
2. 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.

3. Developer/Owner shall provide a 50 foot undisturbed vegetative buffer and maintain the existing vegetative buffer along the west and north boundaries of the Property. No improvements shall be allowed within the buffer.
4. The Developer/Owner shall limit the number of outdoor storage spaces to 350.
5. The Developer/Owner shall limit ingress and egress to Norfolk Parkway.
6. The site shall be developed as a Boat and RV storage facility and related ancillary services and facilities.
7. No sewage dump station shall be allowed, unless public sewer connection is obtained.
8. Outdoor lighting is limited to 17 feet in height from grade to bottom of light fixture.
9. The Developer/Owner shall provide a traffic study detailing any required roadway improvements including, but not limited to a westbound right turn lane, at the time of site plan submittal. If an improvement is warranted, and is approved by the City of West Melbourne, it shall be constructed accordingly.
10. No residing or overnight stays within the stored vehicles shall be allowed.
11. The Developer/Owner shall comply with all applicable requirements of the FDEP Guidance for Disturbance and Use of Old Closed Landfills or Waste Disposal Areas in Florida.
12. 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 prior to issuance of an approved development order.
13. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Court all costs of recording this Agreement in the Public Records of Brevard County, Florida.
14. 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 shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and shall be subject to the above referenced conditions as approved by the Board



of County Commissioners on 4/7/22. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

15. Violation of this Agreement shall constitute a violation of the zoning classification and of this Agreement. This Agreement may be enforced by Sections 1-7 and 62-5 of the Code of Ordinances of Brevard County, Florida, as may be amended.
16. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and shall be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any condition is a violation of this Agreement and constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 15 above.
17. 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.

[The remainder of this page left intentionally blank]

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

*Rachel Sadoff*  
Rachel Sadoff, Clerk of Court  
(SEAL)

*Kristine Zonka*  
Kristine Zonka, Chair  
As approved by the Board on May 3, 2022

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

WITNESSES:

NORFOLK PARKWAY, LLC  
as DEVELOPER/OWNER

Alex Spanin  
Steve SPANIN  
(Witness Name typed or printed)

129 West Hibiscus Suite 0  
MELBOURNE FL 32901  
(Address)

John Woodson  
John Woodson  
(Witness Name typed or printed)

*FR*  
(President)  
FRED BOOZER  
(Name typed, printed or stamped)

STATE OF Florida §

COUNTY OF Brevard §

The foregoing instrument was acknowledged before me, by means of X physical presence or  
       online notarization, this 8<sup>th</sup> day of April, 2022, by  
Fred D. Boozer Jr., President of Norfolk Parkway LLC, who is  
personally known to me or who has produced        as identification.

My commission expires  
SEAL  
Commission No.:

*[Signature]*  
Notary Public  
(Name typed, printed or stamped)



Exhibit "A"

A portion of the lands described in ORB 3277, Page 924, of the Public Records of Brevard County, Florida, said lands lying in **Section 13, Township 28S, Range 36E**, and being more particularly described as follows: Beginning at the SW corner of Tract ST-1, Sawgrass Lakes Phase One, according to the plat thereof, as recorded in Plat Book 60, Pages 52 – 63 of the said public records, said point being the Point of Beginning; thence S89°32'31"W, along the north right-of-way line of Norfolk Parkway, per said Sawgrass Lakes Phase One, a distance of 662.33 ft. to the easterly line of said Sawgrass Lakes Phase One; thence N01°30'06"E, along said east line, a distance of 1,151.77 ft.; thence leaving said line, N89°32'54"E, a distance of 662.19 ft. to the east line of Parcel 1 of said ORB 3277, Page 924; thence S01°29'41"W, along the east line of said Parcel 1 and the east line of Parcel 2 of ORB 3277, Page 924, a distance of 1,151.69 ft. to the Point of Beginning.

STATE OF FLORIDA  
COUNTY OF BREVARD

Fred Boozer Jr. of Norfolk Parkway, LLC  
\_\_\_\_\_ after being duly sworn, deposes and says:

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

(Insert legal description of property here)

There are no mortgages on the above described property

Dated this 19th day of April, 2022.

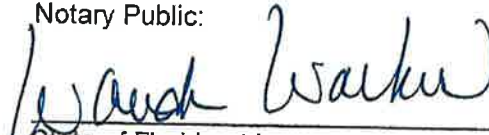


\_\_\_\_\_  
Signature

STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was sworn to before me this 19th day of April 2022 by  
Fred Boozer Jr., who is personally known to me or who has  
produced \_\_\_\_\_ as identification, and who did take an oath.

Notary Public:

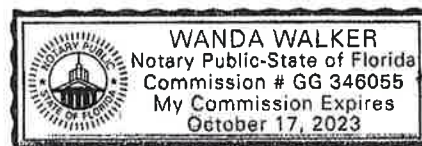


State of Florida at Large

My Commission Expires:

10-17-2023

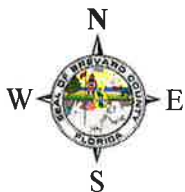
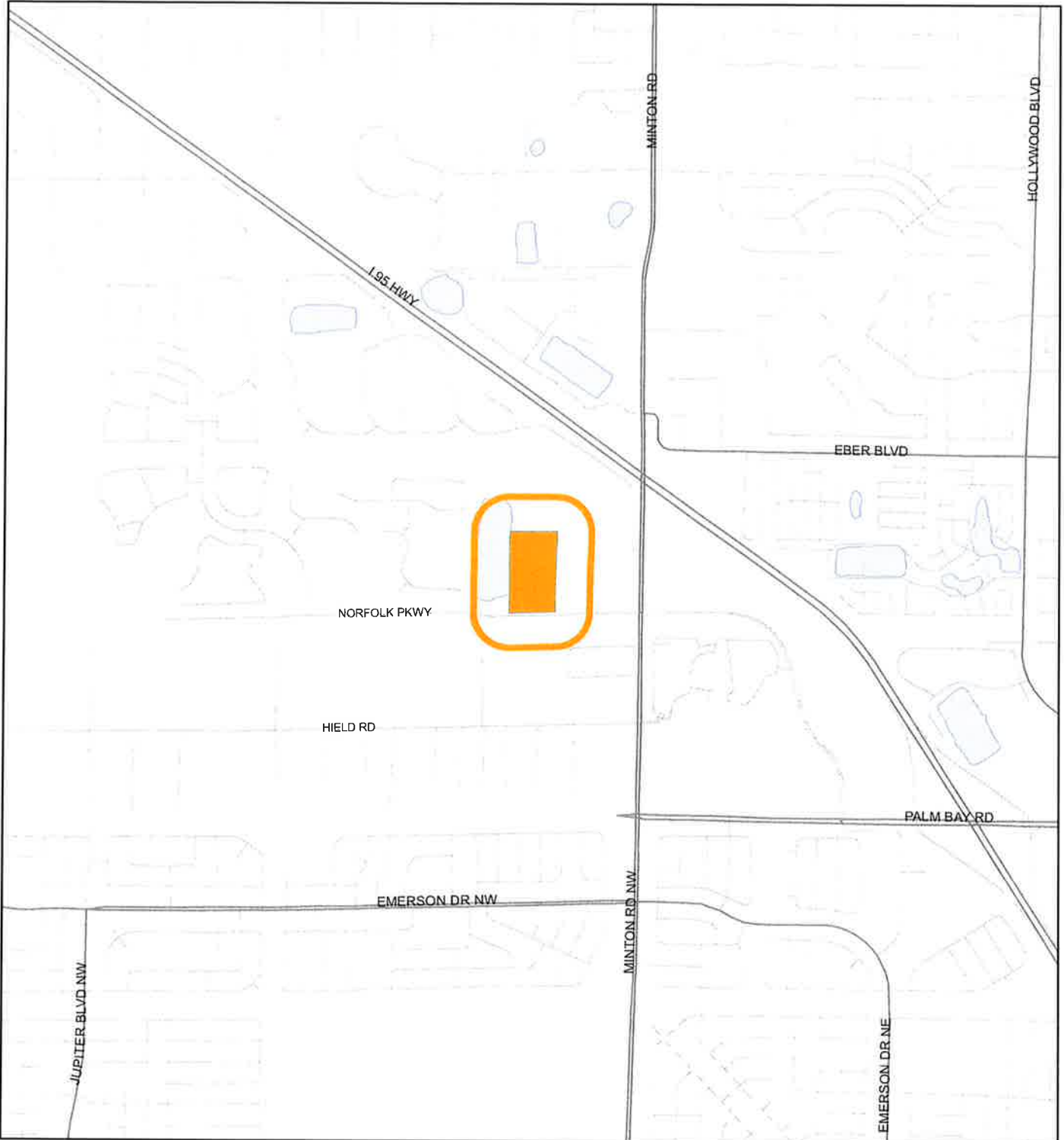
(SEAL)



# LOCATION MAP

NORFOLK PARKWAY, LLC

22Z00006





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.

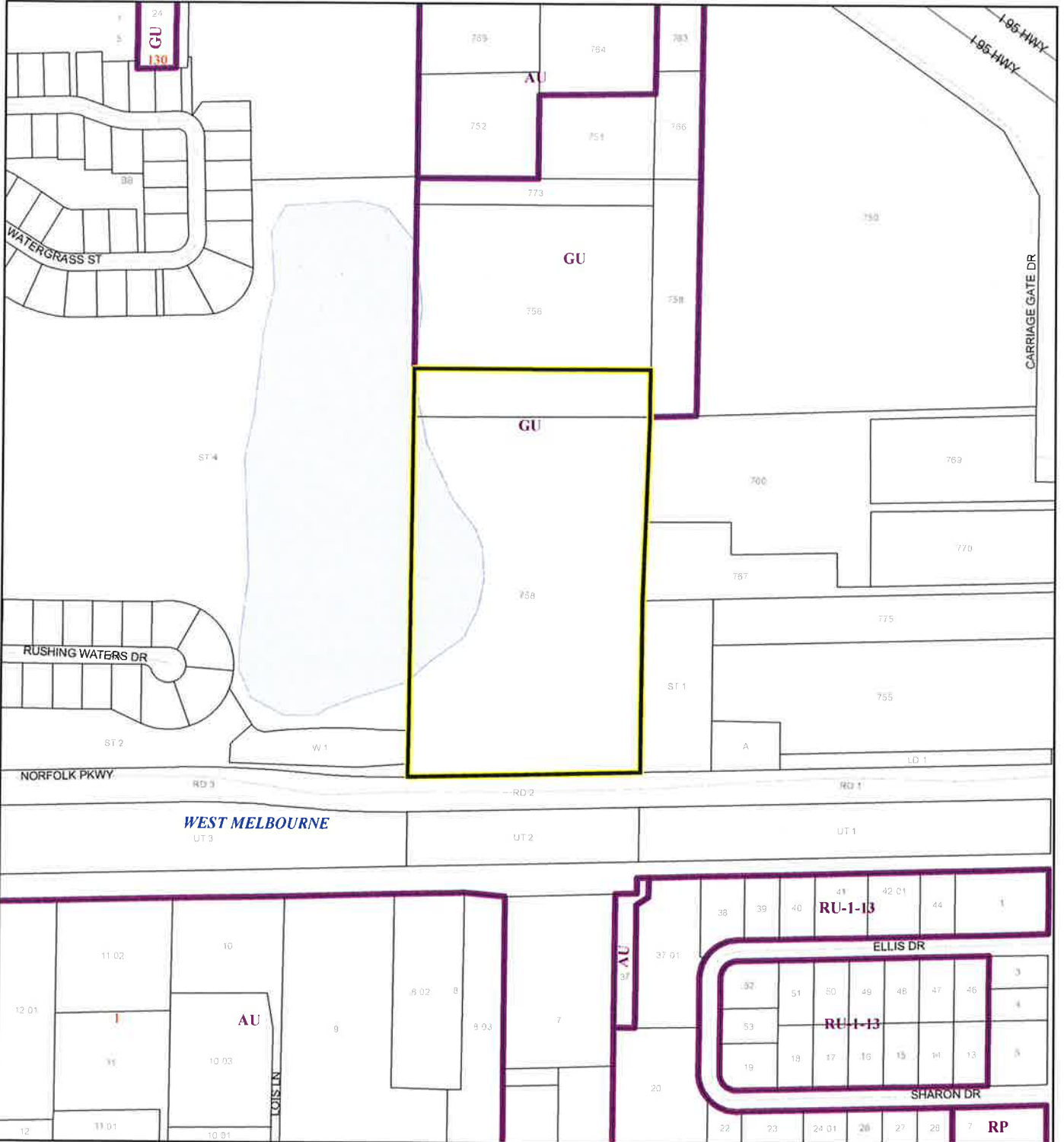
Produced by BoCC - GIS Date: 1/12/2022

-  Buffer
-  Subject Property

# ZONING MAP

NORFOLK PARKWAY, LLC

22Z00006



1:4,800 or 1 inch = 400 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: 1/12/2022

-  Subject Property
-  Parcels
-  Zoning

- 13. (22Z00006) NORFOLK PARKWAY, LLC** (Bruce Moia) requests a change of zoning classification from GU (General Use) with a CUP (Conditional Use Permit) for Tower & Antenna to BU-2 (Retail, Warehousing, and Wholesale Commercial) and removal of CUP for Tower & Antenna. The property is 17.5 acres, located on the north side of Norfolk Pkwy., approx. 1,200 ft. west of Minton Road. (Parcel 756 = 3545 Carriage Gate Dr.; Parcel 758 (part) = No assigned address. In the Melbourne area.) (Tax Accounts 2802674 & 2802676) (District 5)

**P&Z Recommendation:** Glover/Bartcher - Approved with a BDP. The vote was unanimous. (David Bassford recused)

**BCC ACTION:** Smith/Pritchett - Approved as recommended, with a BDP including a 50-foot vegetative buffer, limiting the number of outdoor storage spaces, limiting ingress and egress to Norfolk Parkway, limiting use to a boat and RV storage facility, prohibiting an RV dump station unless sewer connection is obtained, limiting outdoor lighting, providing a traffic study, prohibiting overnight stays within the stored vehicles, and compliance with the FDEP Guidance for Disturbance and Use of Old Closed Landfills or Waste Disposal Areas in Florida. The vote was unanimous. The Binding Development Plan 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.

#### **14. Wireless Telecommunications Facilities**

**LPA Recommendation:** Bartcher/Hopengarten - Denied. The vote was 6:1, with Koss voting nay.

- Item H.11. Murrell Properties of Brevard, LLC; and Harmony Villas Properties, Inc. Pritchett/Smith. Approved the request of changing the zoning classification from BU-1-A to BU-1. (21Z00049).
- Item H.12. The Heather Calligan Trust. Pritchett/Smith. Adopted Ordinance No. 22-08, setting forth the sixth Small Scale Comprehensive Plan Amendment 22S.01, changing the Future Land Use designation from RES 1 to RES 4. (22PZ00001).
- Item H.13. Norfolk Parkway, LLC. Smith/Pritchett. Approved the request to change the zoning classification from GU with a CUP to BU-2 and removal of CUP, with a Binding Development Plan. (22Z00006).